



Footscray

Community Legal Centre Inc

Motor Vehicle Accident Manual



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Disclaimer

The information contained in this manual is of a general nature only and is not intended as a substitute for legal advice. The information is current at the time of printing, but may change without notice.

Acknowledgments

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1 Purpose of manual

This manual has been drafted for the use of CLC and VLA lawyers. It provides information about how to best help drivers who are on a low-income and who have been involved in motor vehicle accidents. This manual has been designed to steer people away from time-consuming court litigation. Its purpose is to provide clients with an accessible and affordable recourse to justice without the need for court intervention.

2 How to use this manual

This manual is divided into relevant sub-headings and is intended to provide information and resources for each stage of a motor vehicle accident dispute.

For ease of reference, a lawyer with limited experience of MVA disputes is encouraged to read the manual in the following order:

- Preliminary steps (section 3)
- Instructions (section 4)
- Is the client at fault?
 - Client is not at fault (section 6)
 - Client is at fault (section 7)

An overview of the dispute resolution processes under the General Insurance Code of Practice is provided at section 5. Disputes involving taxi drivers or owners are discussed at section 8.

Template letters are provided at the back of this manual (section 13) and can be adapted for individual use.

3 Preliminary steps

3.1 Conflict check

Complete a conflict check before the client is seen. Ensure that we have never acted for:

the driver of the other party's motor vehicle.

the owner of the other party's motor vehicle (if applicable).

(If our client is the driver of the motor vehicle and not the owner)-the owner of the motor vehicle our client was driving (if applicable).

(If our client is the owner of the motor vehicle and not the driver)- the driver of the motor vehicle (if applicable).

Do not act for the owner of the motor vehicle and the driver at the same time.

3.2 Don't know the name or address of the other party?

If the other party has not provided their name and address, the client should immediately report the accident to the nearest police station by providing the registration number of the other party's motor vehicle. The police will investigate the matter. The client should be advised that if the accident is their fault then they could be charged or fined by the police.

Once a report has been made to the police, the client can obtain the name and address of the other party by completing and lodging an 'Over The Counter Request' form. This form can be obtained at a police station. Applications are lodged free of charge. Please refer to Appendix I for a copy of a completed Over the Counter Request form. The information released by the police is restricted to the following:

Name

Address; and/or

Vehicle registration details

of the relevant drivers.

3.3 Reporting the accident

The client should report the accident to the police, as soon as practicable, if there was any damage caused to property (other than the client's vehicle) and the owner of that property was not present or is not known. However, the client should be advised that if the accident was their fault the Police could charge or fine them.

3.4 Limitation eriods

The other party and our client have a limitation period of **6 years** from the date of the motor vehicle accident to initiate court proceedings.

Time can be re-started if:

- a. Payment is made; or
- b. An acknowledgment is made of the debt.

If proceedings are initiated, against our client, after the expiry of the limitation date, a Notice of Defence should be filed pleading expiration of the limitation period.

3.4.1 W

The client has 21 days (from the date of service of the complaint) to file a Notice of Defence. Only draft a Notice of Defence for the client, if the principal solicitor agrees and there is merit in the client's case. Do not draft a Notice of Defence if the client is at fault and does not dispute quantum.

If the client does not file a Notice of Defence within 21 days of service of the complaint, then the other party can apply for an order.

3.4.2 Judgment has been obtained in favour of the other party

If judgment has been obtained, the other party has 15 years to enforce this judgment. The client will have a bad credit rating for 5 years. Interest will accrue on this judgment.

Methods of enforcement include:

- a. an instalment order (to have the debt paid via instalment)
- b. warrant to seize property (personal property)
- c. warrant of seizure and sale (land)
- d. attachment of earnings (up to 20% of wages)
- e. attachment of debt (any debts owed to the client are paid to the creditor. This includes money held in a bank account.)
- f. creditors bankruptcy (debt must be over \$5,000.00). The other party (the creditor) can enforce judgment via bankruptcy if the amount owing is **at least \$5,000** (this includes pre-judgment interest and costs: a judgment for \$4,900 plus \$100 of pre-judgment interest plus \$100 of costs is a judgment for \$5,100 and will meet this requirement. A judgment for \$4,900 will not meet this requirement even if at the time of seeking the issue of the Bankruptcy Notice the amount owing pursuant to that judgment is \$4,900 plus \$200 of post judgment interest).

3.5 Payment of excess

3.5.1 Client has insurance (third party property insurance or comprehensive insurance) (insurer is a subscriber to FOS) and has made a claim but cannot pay their excess or the client does not want to pay the excess as they believe they are not at fault

Step 1 – Referral to Internal dispute resolution (IDR)

Client cannot pay their excess

Refer to Appendix IV for a precedent letter. This letter expresses dissatisfaction and triggers the IDR process. Ask the client to return to the centre immediately upon receiving a response or 45 days after sending the precedent letter in Appendix IV.

Client believes that they are not at fault

Read the insurance policy carefully to find out whether payment of the excess is required. If the insurance policy allows for it and the client is not at fault send the letter in Appendix IV to the

insurance company. Ask the client to return to the centre immediately upon receiving a response or 45 days after sending the precedent letter in Appendix IV.



Step 2 – Referral to Financial Ombudsman Service (FOS)

If the client has not heard from the insurance company 45 day after sending the letter in Appendix IV or the claim is rejected, refer to the precedent letter in Appendix V. This letter should be sent to FOS.

4 Instructions

4.1 Preliminary instructions

- Write down a description of the documents provided by the client, for example:
 - a. *Letter of demand from AAMI dated 23 April 2011.*
- Advise the client that we provide free legal advice. We will **NOT** take on their case, unless we advise otherwise. If we do take on their case we will advise the client of what we will and won't do.
- If our client continues to drive the vehicle that was involved in the accident ascertain whether it is roadworthy.
- In certain cases the other party may try to claim costs of repairs for pre-existing damage. If our client has received a quote from the other party itemising repairs make enquiries with the client as to whether there was any pre-existing damage.
- If our client has received a letter of demand and the other party is alleging that an independent witness saw the accident request a copy of their statement to ascertain whether it is harmful to the client's case.

4.2 Get details of the accident from the client

Get the following details from our client:

- a. address of accident;
- b. date of accident;
- c. time of accident;
- d. road conditions: for example, wet and slippery;
- e. any admission of liability;
- f. name of independent witness;
- g. address of independent witness;
- h. evidence likely to be given by independent witness; and
- i. name of passenger(s) in vehicle.

Get the following details of the vehicle our client was driving:

- a. make;
- b. model;
- c. year;
- d. name of owner;
- e. whether there is any finance on the vehicle. If the vehicle is financed and our client owns the vehicle then we must advise our client to continue to pay the car finance.
(**Note:** most financed vehicles have comprehensive insurance).

4.3 Client's insurance details

Find out if our client had insurance at the time of the accident. Please get:

- a. name of insurance company;
- b. address;
- c. type of insurance; ie third party property insurance, comprehensive or third party property insurance with fire and theft. Is the insurance company a member of the Financial Ombudsman Service ? Find out if the insurer is a member by searching <http://www.fos.org.au>

4.4 Other party's insurance and contact details

Find out if the other party has any insurance. Please get:

- a. name and address of other party
- b. name and address of insurance company;
- c. type of insurance. Is the insurance company a member of the Financial Ombudsman Service? Find out if the insurer is member by searching <http://www.fos.org.au>

Please refer to Appendix A for a template instruction sheet which incorporates the above information.

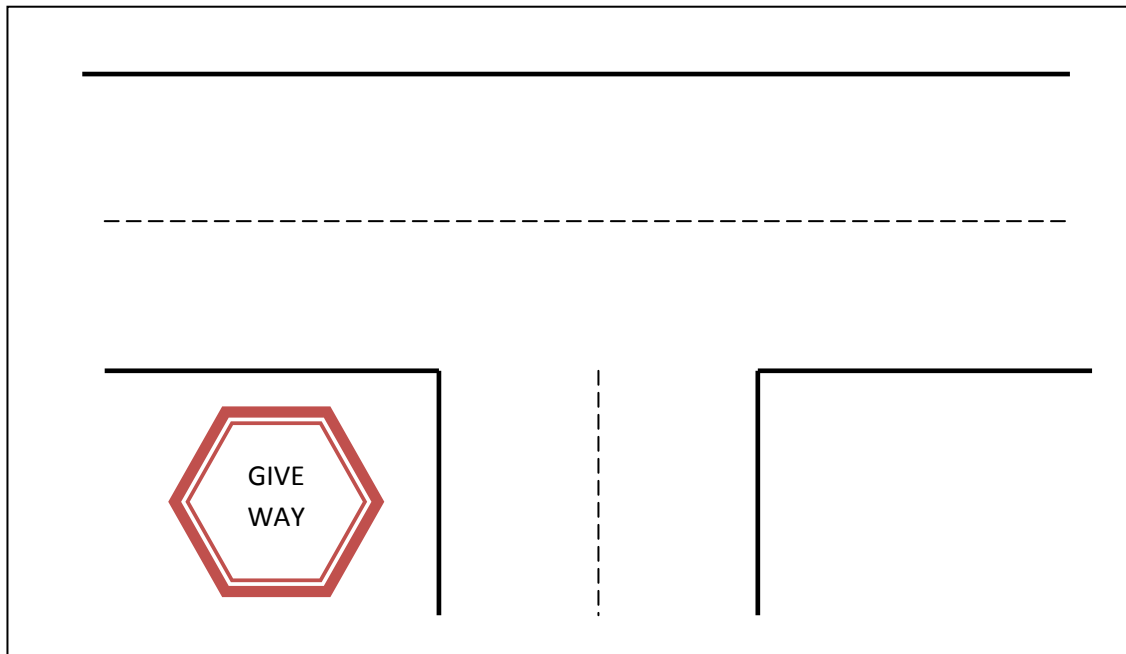
4.5 Licence and registration details

Ask the client how long they have had a driver's licence for and if there are any conditions attached to their licence. If there are any conditions consider whether or not they have been breached. Get a copy of the client's licence.

Find out if the car our client was driving was registered at the time of the accident. If the car was unregistered does the other party know this? If they do know, is there a risk that they might notify Victoria Police? If the police are notified they could be charged or fined. Having an accident whilst driving an unregistered motor vehicle in Victoria may affect the client's Transport Accident Commission (TAC) entitlements. The client must check this point with a TAC lawyer.

4.6 Diagram of accident

Ask the client to draw the accident and indicate where the damage is located on their vehicle and on the vehicle of the other party:



Determine who is at fault by making reference to the road rules. Sometimes an itemised quote for repairs from the panel beater can help to decide who is at fault.

4.7 Don't know the name of the other party's insurer?

Most letters of demand (98%) are issued by insurance companies. If our client has received a letter and it does not state that there is an insurance company involved, record the name of the solicitor or debt recovery agent. It will help to identify the insurance company.

Below are the names of debt recovery agents/solicitors and their corresponding clients:

- Ligeti Partner Lawyers generally act for AAMI;
- Hoyle Da Silva generally act for QBE Insurance;
- Hall & Wilcox Lawyers act for Alliance;
- CKB Partners act for AAM;
- Mendelsons Lawyers act for GIO & Ansva Insurance;
- Harwood Andrews Lawyers act for Lumley General Insurance Ltd;
- Frenkel Partners act for Elders Insurance Ltd & Australian Alliance Insurance and AAMI;
- Turks Legal act for Lumley General Insurance Ltd;
- Valentino Tyson Associates and Lawyers act for AIG;
- Mills Oakley Lawyers act for AAMI;
- RMS act for RACV;

- Austral Mercantile Collections for ARL;
- Recoveries Corporation P/L act for RACV, CGU and AAMI;
- ARMS Global Group P/L act for RACV;
- ARL (Australian Receivables Limited) act for Allianz, RACV, CGU; and
- Universal Legal Recoveries act for RACQ.

This list should help you find out which insurance company is involved.

Some major corporations are self-insured after a certain monetary amount. When damages exceed this amount, they are sometimes underwritten by a major insurer. If a mercantile agent, acting for the other party or the other party directly advises that they are self-insured make enquiries about whether they are underwritten by an insurer and if they are who the underwriter is. The underwriter could be a subscriber to the Financial Ombudsman Service.

4.8 Police and traffic accident report – don't know who is at fault?

Ask the client if the police attended the scene of the accident. If the police attended did they indicate who was at fault?

If the police attended the accident scene consider whether;

- a. an infringement notice; or
- b. a Charge and Summons was issued against the client or other party.

This could also indicate where the fault may lie.

Advise the client that if the police attended the scene of the accident, the client may seek a Traffic Accident Report to see who the police believe is at fault. This report might be helpful if the other party is disputing liability and you believe the client is not at fault. This report can often help to resolve a liability dispute. If the other party is insured, sometimes their insurance company can be persuaded to apply for and provide the Traffic Accident Report at no cost to our client.

To get a Traffic Accident Report complete a 'Vehicle Accident Information Application Form – Individual Use' form and the accompanying Statutory Declaration. These forms can be downloaded from www.police.vic.gov.au under 'Our services', 'Accident records' The driver will need to attach a copy of an approved form of identification, for example a driver's licence or passport to this form. It will take Victoria Police at least 10 days to process the application. A search fee is payable.

Please refer to Appendix II for an example of a completed application and a precedent cover letter.

4.9 TAC and injuries

Ask the client if they or anyone else was injured in the accident. If anyone was injured (including passengers or pedestrians) and the police did not attend the scene of the accident, the client should report the incident to the police. The client must attend a police station in person to report the accident. Advise the client that the police could charge or fine them if the accident was their fault.

If the client was injured they have **12 months** from the date when the injuries manifested to make a TAC claim.

To make a TAC claim, the client must go to a personal injury law firm such as Shine Lawyers (ph 13 11 99), Slater & Gordon (ph 1800 555 777), Maurice Blackburn (ph 1800 810 856) who can assist clients on a no win/no fee basis. We cannot help with TAC matters; however we can prepare a letter for the client to provide to the personal injury lawyer. Please refer to Appendix III for a precedent letter.

5 The General Insurance Code of Practice

The General Insurance Code of Practice is a voluntary code which sets out the minimum standards that people can expect when dealing with insurance companies that are signatories to the code. The Code is designed to raise the insurer's service standards when they are selling insurance, dealing with insurance claims, responding to disasters and catastrophes, and the complaint handling process (including internal dispute resolution (IDR) and External Dispute Resolution (EDR)).

The Financial Ombudsman Service (FOS) is responsible for monitoring compliance with the code. You can find a register of companies that have agreed to adopt the code on the Financial Ombudsman Service website.

Unfortunately, Taxi Clubs are not signatories to the code.

A copy of the General Insurance Code of Practice can be downloaded at: <http://codeofpractice.com.au/>

5.1 Internal dispute resolution

Pursuant to section 912A of the *Corporations Act 2001* and ASIC Regulatory Guide 165 all Australian Financial Services (AFS) licensees (all major insurance companies are AFS licensees) must have a dispute resolution system available. This means the company must have a system for resolving dispute internally. They must also be members of an ASIC approved EDR scheme, such as the Financial Ombudsman Service. Complaints about the insurer's products, services or the complaints handling process itself can be dealt with through the insurer's IDR process.

Taxi Clubs do not have AFS licenses because they are incorporated associations and are therefore exempt from the Corporations Act 2001.

The ASIC Regulatory guide 165, in summary, states that:

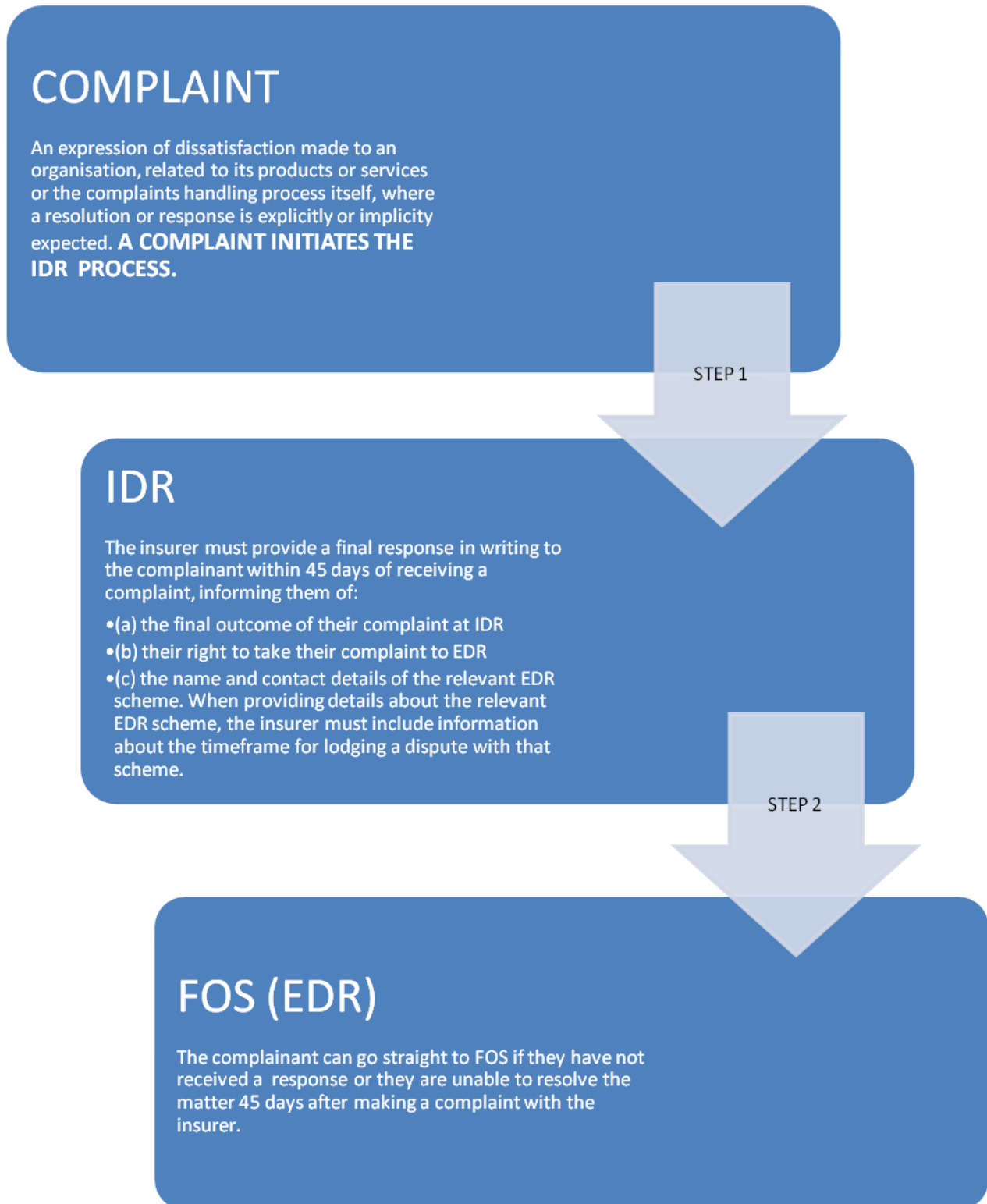
1. The AFS licensee should take reasonable steps to ensure that consumers are aware of the existence of IDR procedures.
2. The IDR procedure should enable a consumer to make a complaint by any reasonable means including by letter, telephone, email or in person.
3. As a general rule, the AFS licensee should aim to acknowledge receipt of the complaint immediately or as soon as practicable.
4. A final response to complaints should be done within 45 days from the date of dissatisfaction being made by the client or if a final response is unable to be provided within 45 days then the complainant being provided with information about referral to an EDR scheme.
5. The complaint procedure is handled free of charge.
6. The complaint should be addressed in an equitable, objective and unbiased manner through the complaints handling process.

5.2 Complaints handling procedures

Before a complaint is lodged with the insurer it is a good idea to seek information about their complaints handling process. A lot of insurance companies have this information readily available on their websites. Not all insurance companies have a uniform complaints handling process. Insurance companies use either a one-tier or two-tier process for handling complaints.

Note: The templates used in this manual are predicated on a one-tier complaints process, which can easily be adapted if the insurance company has a two-tier process.

The following is an example of a one-tier complaints handling process:



There are some insurance companies that use a more complicated two-tier complaints process.

The following is an example of a two-tier complaints process:

COMPLAINT

An expression of dissatisfaction made to an organisation, related to its products or services or the complaints handling process itself, where a resolution or response is explicitly or implicitly expected. **The complaint initiates the IDR process.**

STEP 1

IDR -COMPLAINTS

Clause 6.2 - 6.5. of the General Insurance Code of Practice. The insurer responds, within 15 business days, to a complaint (provided they have all the necessary information and have completed any necessary investigations) . The insurers response can be reviewed by the client by making a formal request for a review.

STEP 2

IDR - DISPUTE

Clause 6.6 - 6.9 of the General Insurance Code of Practice. The insurer's response is reviewed within 15 business days. The insurer responds in writing by giving reasons for their decision and information about how to access EDR.

STEP 3

FOS (EDR)

The complainant can go straight to FOS, AT ANY STAGE OF THE PROCESS if they have not received a response or unable to resolve the matter 45 days after making a the initial complaint.

5.3 External dispute resolution -the financial ombudsman service

Most insurers subscribe to the external dispute resolution scheme administered by the Financial Ombudsman Service (FOS).

The FOS provides a free service to help consumers deal with complaints. It is an alternative to taking legal action in court and provides consumers with an opportunity for an independent assessment of a dispute that has not been resolved through IDR. Their terms of reference can be found on the Ombudsman's website. Disputes are usually lodged with the Financial Ombudsman Service after a request for internal dispute resolution has been made. In urgent cases, however, a client can lodge a dispute directly with the Ombudsman and bypass the insurer's internal dispute resolution process.

FOS determinations are binding on insurers whereas customers who are not happy with a FOS determination can initiate court proceedings.

A copy of the FOS Terms of Reference can be downloaded at: <http://www.fos.org.au/about-us/terms-of-reference/?sstat=296961>

6 Client not at fault

6.1 Client = has comprehensive insurance

If the client is not at fault and has comprehensive insurance advise the client to make a claim and to pay their excess (if required by the insurance policy) as soon as possible. The insurer will usually refund the excess to the client once they have recovered their loss from the other party. (Note: some insurance companies do not require payment of excess if the other party is clearly at fault). We can help the client make a claim with their insurance company, if requested.

6.2 Client is uninsured and seeking damages from party at fault who is also uninsured

Step 1- Quotation

First the client must get a free quote from a panel beater, itemising the cost of repairs. The quote must be on the panel beater's letterhead. The client should go to a panel beater who has been accredited with major insurers such as AAMI, GIO or RACV to ensure quality of repairs.



Step 2 – Letter of demand

Draft a letter of demand to the other party. Refer to Appendix VI for a precedent letter of demand. If the client does not hear from the other party after 14 days, the client could either initiate legal proceedings or contact the Dispute Settlement Centre of Victoria to organise free mediation.

Mediation

It is probably best to attend mediation before starting proceedings. The website address of the Dispute Settlement Centre of Victoria is www.disputes.vic.gov.au The Department of Justice and Regulation website states that:

'The Dispute Settlement Centre of Victoria (DSCV) helps people to resolve their own disputes. Many disputes can be resolved through communication and negotiation, which can help to reduce costs, delays and legal action. The Dispute Settlement Centre provides a free service and can offer advice and tips for dealing with matters. The Centre also provides neutral, objective mediators to help resolve disputes of any size or complexity.'

Litigation

We cannot help the client start legal proceedings. Advise the client that going to court is expensive and there is no guarantee that they will be successful or be able to enforce judgment against the other party if judgment is obtained in the client's favour.

Advise the client that suing an uninsured driver is costly and in most cases a waste of time.

6.3 Client has third party property insurance. The insurer is a code member and subscribes to FOS. The other party is at fault and has no insurance. Client has not made a claim

Major insurance companies provide extended cover to policy holders where:

- a. the other party is uninsured
- b. the other party is wholly at fault; and
- c. the name and address of the other party has been obtained.

The amount of cover varies. It normally ranges between \$3,000 and \$4000. If the damage incurred exceeds this amount, then the client is responsible for providing the balance.

Get the names and statements of any independent witnesses. Any witness statements may need to be provided to the client's insurer to show that they are not at fault. Also get a copy of the 'Traffic Accident Report' from the police (if they attended the scene of the motor vehicle accident). Refer to section on 'Police and traffic accident report'.

Step 1 – Lodging a claim

Refer to Appendix VII for a precedent letter that could be sent to the insurer. The client should come back after 14 days if they have not heard from their insurance company. **Note:** Pursuant to clause 7.9 of the General Insurance Code of Practice 2014 the insurer has 10 business days to accept or deny a claim, if they have all necessary information and no further investigation or assessment is required. Insurance companies often require further time or information to investigate a claim. In exceptional circumstances they can take up to 12 months to accept or deny a claim.



Step 2 – Referral to IDR

If the client does not hear from their insurer within 14 days or the insurer rejects our client's claim then a letter should be drafted seeking that the matter be referred to IDR. Refer to Appendix VIII for such a precedent letter. The client should come back when they hear from the insurance company or 45 days after sending the letter in template Appendix VIII (whichever comes first).

Note: Alternatively the client could choose to complain directly to FOS instead of to their insurance company. FOS will refer the matter for the client and will wait 45 days before investigating.



Step 3 – Referral to FOS

If the client has not heard from their insurer 45 days after referring the matter to IDR or the claim is rejected then an application to FOS should be lodged. Please refer to Appendix IX.

6.4 Client has no insurance or only third party property insurance, and the client believes they are not at fault, and the other party has insurance and their insurer (a code member and subscriber to FOS) is disputing liability.

An uninsured driver or one with third party property insurance, can have their liability dispute with the other party's insurer referred to FOS. FOS will determine liability, for an amount up to an including \$5,000.00. An application to FOS can be made by completing and lodging a FOS application form. Applications can be made online from the FOS website <http://www.fos.org.au/resolving_disputes/> or refer to Appendix X for a letter that can be drafted for the client.

When completing the FOS application form write how the accident happened. It is also a good idea to draw the accident and make reference to how our client's version of events is consistent with the damage to our client's vehicle (you must have a quote from a panel beater to prove this).

Note: The client must prove on the balance of probabilities that it was the negligence of the other party which caused the accident. Attach any statements from independent witnesses that may need to be obtained (if applicable) and attached. You can also attach a copy of a police report (if

the police attended the scene of the accident). It is also a good idea to attach photographs and a Google map printout, to show how the accident happened.

7 Client at fault

7.1 Client has no insurance

7.1.1 Client has not received any paperwork from the other party

If the client is at fault, has no insurance and has not received a letter of demand from the other party or the other party's insurance company, advise the client to come back when they receive a letter of demand. We cannot help them at this stage.

7.1.2 Client is not impecunious and judgment has not been obtained by the other party

If the client is at fault, is not impecunious and judgment has not been obtained by the other party then it would be wise to settle the matter, especially if the other party is threatening court action.

If the client wants to dispute quantum they will need to get a report from an independent assessor, which will cost between \$275 and \$350. Disputing quantum is usually a waste of time and money.

The other party might agree to the client paying the full amount owing or a lesser amount as a lump sum payment. Generally the client's bargaining power decreases if they are asset rich or young.

The following are typical scenarios (with suggested settlement strategies) of the problems the clients present with:

1. The client is 19 years of age, earns \$40,000.00 per annum, has no credit card debts and owns a car worth about \$7,000.00 (this amount is below the current indexed amount in which a bankrupt may retain a car if it used mainly for transport). The client is living with their parents. The client has no dependents. The other party is seeking \$9,000.00 from the client. An initial settlement of 30 cents in the dollars should be offered. The matter should be settled on about 50 cents in the dollar. The client is in a strong position as they can bankrupt. The client would retain their vehicle if they were to bankrupt. The other party should be reminded of this.
2. The client is 37 years of age, earns \$47,000.00 per annum, is married with two dependent children, and his/her partner also works. The client has no savings. The client is healthy with no illness. The client is renting. The other party is seeking \$8,000.00 from the client. An initial settlement offer of 35 cents in the dollar should be made. Client should settle on about 45 cents in the dollar. The client is in a strong position as they can bankrupt. The other party should be reminded of this.
3. The client is 27 years of age, earns \$70,000.00 per annum, and is single with no dependent children. The client is healthy. The client is renting and has no savings. The other party is seeking \$10,000.00 from the client. An initial settlement offer of 60 cents in the dollar should

be made. The client should settle on about 75 cents in the dollar. The client is in a weak position as they earn a relatively high income and bankruptcy may not be the best option.

4. The client is 45 years of age, earns \$55,000.00 per annum, is married with three dependent children and owns a house that has \$450,000 in equity. The mortgage is nearly paid in full. The other party is seeking \$5,000.00 from the client. This is a difficult situation for the client as they own a house. However the other party may not be aware of this. An initial settlement offer of 50 cents in the dollar should be made. Client should settle on about 75 cents in the dollar. The client is in a weak position as they own a house with equity, which would be at risk if they were sued. If the client has paid most of his/her mortgage and has no savings to pay the debt they could consider re-drawing on their mortgage.
5. The client is a sole parent who is in receipt of Centrelink benefits. The client does not work or works part-time earning a minimal salary. The client has 3 dependent children and owns a property that has \$40,000.00 in equity. The other party is seeking \$3670.00 from the client. An initial settlement offer of 50 cents in the dollar should be made. The client should settle on about 70 cents in the dollar. The client is in a weak position as they own a property with equity which would be at risk if they were sued.

The client could also try to settle the matter by offering to pay the full amount owing via an instalment plan if they are unable to pay a lump sum settlement amount.

Please refer to Appendix XI for a letter that could be drafted on a "Without Prejudice" basis, seeking a settlement of the matter by way of an instalment plan or lump sum agreement.

Note: Don't make any instalment arrangements in which the debt cannot be re-paid within 2-3 years (clients are unlikely to abide to any long term plans).

If the matter does resolve itself through the payment of a lump sum settlement, then it would be a good idea to have the other party sign a release document. Please refer to Appendix XII.

Withhold payment until the release document has been signed and returned to the client.

Sometimes the other party will only consider settling a matter if a financial statement is completed. Only agree to complete a financial statement if the financial profile will show deficit. If the client does not want to complete a financial profile then the other party could be advised of the following:

'The financial statement or profile which you would like me to complete is not dissimilar to the information that could be obtained through an Application for a Summons for Oral Examination. Such an application obviously requires judgment against myself'

If the client has a partner never provide their financial details to the other party even if requested. If such a request is made the other party should be advised that their partner:

'does not have any involvement in the matter and therefore would be considered as a third party to the dispute. That they do not believe it is reasonable or ethical to provide such information when (i) he/she is not the debtor (ii) he/she is not involved in the matter (iii) he/she has refused consent.'

7.1.3 Client is not impecunious and judgment has been obtained by an insurance company

If judgment has been obtained in default of filing a Notice of Defence, advise the client that they can make an application for a re-hearing to set the judgment aside.

An application for re-hearing will suspend all enforcement action. The application must be made promptly and after due consideration of the merits of the client's case. That is the client must have a defence to the claim or dispute the amount owing and have a very good reason for not filing a Notice of Defence.

Advise the client that they will usually have to pay for the legal costs of the other party in relation to this application. Legal costs could be substantial. The client should ask the creditor to set aside judgment and agree to a re-hearing via consent orders, prior to making this application.

We cannot help the client make an application for a re-hearing if the client wants to litigate the matter at court. The client must seek assistance from a private lawyer.

If the client decides not to apply for a re-hearing, the matter could still be settled with the client agreeing to pay the full amount owing as a lump sum payment or via an instalment plan. It can also be settled with the other party, after negotiations, agreeing to accept a lesser amount as a lump sum payment. Insurers are unlikely to accept a lesser amount via instalment payments.

Setting aside judgment

The settlement offer should be made on the basis that any agreement reached is conditional upon the judgment being set aside, otherwise the client will have a bad credit rating for five years. All judgments that have been entered become a matter of public record.

The following are typical scenarios with suggested strategies for settling the matter on a lump-sum basis:

1. The client is 18 years of age, earns \$42,000.00 per annum, has no card debts and owns a car worth about \$6,000.00 (this amount is below the current indexed amount in which a bankrupt may retain a car if it used mainly for transport). The client is living with their parents. The client has no dependents. The insurer is seeking \$6,000.00 from the client. An initial settlement of 60 cents in the dollars should be offered. The matter should be settled on about 75 cents in the dollar.
2. The client is 54 years of age, earns \$48,000.00 per annum, is married with three dependent children, and his/her partner also works. The client has no savings. The client is healthy. The client is renting. The other party is seeking \$9,000.00 from the client. An initial settlement offer of 50 cents in the dollar should be made. Client should settle on about 65 cents in the dollar. The client is in a strong position as they can bankrupt. The other party should be reminded of this.
3. The client is 29 years of age, earns \$75,000.00 per annum, and is single with no dependent children. The client is healthy. The client owns a property with no mortgage. Client has no savings. The other party is seeking \$12,000.00 from the client. An initial settlement offer of 75 cents in the dollar should be made. The client should settle on about 90 cents in the dollar. The client is in a weak position as they earn a relatively high income which could be garnisheed and a property which is at risk.

Step 1 – Settlement offer

Please refer to Appendix XIII for a precedent letter. This letter offers to settle the matter by making a lump sum or instalment payment. This letter should be drafted on a “Without Prejudice” basis.

Step 2 – Application

If the parties have reached agreement and the other party has signed a letter of consent agreeing to set aside judgment, Form 46B Application and supporting affidavit should be drafted and filed at court. Please refer to Appendix XIV for the following precedents:

- a. Letter of Consent – to be signed by the creditor;
- b. Form 46B Application; and
- c. Affidavit.

Applying for an instalment order

If the matter cannot be resolved by negotiation then the client has the option of applying for an instalment order at court. This application must be made quickly. If an instalment order has been made and is complied with then no other enforcement methods can be carried out against the client.

The client must complete Form 61A (see Appendix XV) and 61B (or from 61C if a corporation) (see Appendix XVI).

Form 61B can be completed with the assistance of a Financial Counsellor. Forms 61A and 61B can be downloaded from the Magistrates’ Court website or obtained by the client from the Magistrates’ Court. Once the forms have been completed they must be filed at the Magistrates’ Court. Once filed they must be served on the other party.

As a rule of thumb the court is likely to grant an instalment application if the judgment debt can be paid within 2-3 years. Payment of the instalments should begin on the date ordered. It is imperative that the client does not breach the instalment order once it has been made.

Intention to present a Debtor’s Petition if judgment

The client could also consider lodging a declaration of an intention to present a debtor’s petition if judgment has been obtained and the insurer is not willing to settle on a full and final payment. For a period of 21 days beginning on the day the application is accepted, the insurer or sheriff will be restrained from, taking action to recover *unsecured* debts – such as seizing assets or garnishing the client’s wages. This procedure allows the client to negotiate payment of the debt to avoid bankruptcy.

This is a strategic procedure which should only be used if:

1. the client has minimal or no assets,
2. the client has an income less than the bankruptcy indexed threshold income (this information is available from the Australian Financial Security Authority website
<<https://www.afsa.gov.au/resources/indexed-amounts/indexed-amounts>>)
3. the client is willing to go bankrupt.
4. payment of the judgment, even by instalments, would financially cripple the client.

The client should be advised that this declaration is an act of bankruptcy upon which the insurer can petition for bankruptcy if no agreement is reached. However the client does not have to voluntarily proceed to bankruptcy themselves. It is imperative that the client obtains advice from an experienced financial counsellor before they proceed with such an action.

Mr. Martin Stevens, financial counsellor at Footscray Community Legal Centre Inc recommends the following strategy:

1. Sending an unsigned and undated declaration of intention to present a debtor's petition along with a covering letter. This letter should indicate to the insurer that the form is unsigned and has not lodged BUT would be signed and lodged if the matter is not resolved through negotiation of a full and final settlement.
2. If the insurer does not respond to the letter (which they usually don't) then a phone call should be made seeking an update.
3. If the insurer is not willing to negotiate then they should be provided with a friendly reminder that the client would officially lodge the declaration form. Sometimes insurers come to the party if they are informed that the client would attend a shareholders meeting to advise that the insurer rejected an offer of payment and the insurer choose to accept no money.
4. Normally this strategy will result in a full and final settlement.

7.1.4 Client is impecunious and the other party is insured. The insurer is a FOS member

The following are typical scenarios of clients who are impecunious:

1. The client is 68 years of age, on an aged pension, has no card debts and owns a car worth about \$1,000.00 (this amount is below the current indexed amount in which a bankrupt may retain a car if it used mainly for transport). The client is living in a rental property. The client has no dependents. The client has no savings. The insurer is seeking \$45,000.00 from the client.
2. The client is 54 years of age. The client is a long-term disability pensioner and unlikely to work again. The client is married with three dependent children. The client's partner works. The client has no savings or assets. The partner owns a house worth \$750,000.00. The insurer is seeking \$10,000.00 from the client.
3. The client is 29 years of age. The client is single with three dependent children. The client is healthy and in receipt of single parenting payments. The children are 4 months, 2 and 3 years of age. Client has no savings or assets. The client is renting a DHS property. This client does not have to work until the youngest child turns 6 years of age (effectively after the limitation date to initiate proceedings against the client expires or is close to expiry).

Step 1 – Letter seeking that the debt be waived

If client has received a letter of demand

If the client has received a letter of demand and is not disputing quantum, the letter in Appendix XVII should be drafted. This letter seeks to have the debt waived. **Note:** if the client wants to dispute quantum they will need to obtain a report from an independent assessor, which will cost between \$275 and \$350. Disputing quantum is usually a waste of time and money.

If client is experiencing financial hardship but they are working in a low paid, low skill job that is insecure use Letter Appendix XVIIa.

If judgment against our client has been obtained and quantum is not in dispute

If the other party has obtained judgment against our client, the letter in Appendix XVII should be drafted with a request that the debt be waived and judgment set aside.

If the other party has initiated proceedings but judgment has not yet been obtained.

If the other party has initiated proceedings, but not yet obtained judgment, the letter in Appendix XVII can also be drafted with a request that the insurance company not obtain judgment until they have considered the client's request for a waiver. **Note:** The insurance company is under no obligation to refrain from obtaining judgment.

It is always a good idea to attach a copy of the client's Centrelink Income Statement, bank statement and a financial profile (please refer to Appendix XVIII for a sample of a financial profile prepared by a financial counsellor) to the letter in Appendix XVII. If the client has a partner never provide their financial details to the insurer. These supporting documents will prove that the client is impecunious. The best results are obtained when the financial profile shows a deficit.



Step 2 - IDR

If our client has not receive a response to the above letter within 14 days or the insurer does not agree to a complete waiver then a further letter as set out in Appendix XIX should be sent. This letter refers the matter to IDR.



Step 3 – Letter to FOS

If the insurer is not able to resolve the client's complaint within 45 days then refer to Appendix XX. This letter refers the client's complaint to FOS.

Note:: The insurance company is under no obligation to waive the debt. Insurance companies are less likely to waive debts for younger people.

Debt waived

If the debt is waived it is very important that the insurer advises the client in writing. If the insurer refuses to put this in writing then the client could make a complaint to FOS that the insurer has breached **clause 10** of the Debt collection guideline: for collectors and creditors.



Step 4 – Debt not waived

If the insurer does not waive the debt at IDR or after going to FOS and insists on pursuing the client, then refer to the letter in Appendix XXI. This letter requests that the client not be harassed.

Note: Insurance Companies which are signatories to the General Insurance Code of Practice must comply with the ACCC and ASIC Debt Collection Guidelines: for Collectors and Creditors.

Bankruptcy

If the insurer refuses to waive the debt the client can consider applying for bankruptcy. Bankruptcy gives the client a fresh start by wiping most debts. Bankruptcy lasts for three years. The client's name will be listed on a commercial credit reference company for seven years. If the client is thinking about bankruptcy, advise the client to seek advice from a free financial counsellor. The client can find a financial counsellor in their local area by contacting the Financial and Consumer Rights Council (FCRC) on 1800 007 007.

The client also has the option of doing nothing and waiting to see if they are sued. The insurer is unlikely to sue a client who is impecunious and long term unemployed (not working for 12 months or more and is unlikely to obtain any permanent job because of age, disability or significant social problems).

7.2 Client has insurance

7.2.1 Client is at fault and has third party property insurance or comprehensive insurance

If the client is at fault and has third party property insurance or comprehensive insurance advise the client to make a claim and pay their excess to their insurance company, as soon as possible. We can help the client to make a claim, if requested.

7.2.2 Client is at fault, has insurance (insurer is a code member) and has made a claim but has not heard from their insurance company or the claim has been rejected

Step 1 – Referral to IDR

Refer to Appendix XXII for a precedent letter. This letter should be sent 10 business days after lodging the claim. This letter refers the matter to IDR. Advise the client to come back in 45 days time or as soon as they hear from their insurer.



Step 2 – Referral to FOS

If the client has not heard from their insurance company 45 days after sending the above letter **or** the claim is rejected at IDR, the matter should be referred to FOS by sending the letter in Appendix XXIII.

8 Unable to determine who is at fault

8.1 Client has no insurance, is not impecunious and it is very difficult to determine the party at fault or the client is more at fault.

Sometimes it is very difficult to determine who is at fault. If fault is uncertain or if the client, (on an apportionment), is more at fault than the other party, the best thing to do is to seek a settlement on an 'each bear own' basis. This settlement outcome is as good as a waiver. Always make these offers on a 'without prejudice' basis.

Step 1 – Letter to insurance company

Refer to Appendix XXXII for a precedent letter. This letter requests a settlement on an 'each bear own' basis.



Step 2 – Referral to IDR

If our client has not received a response to the above letter within 14 days then a further letter as set out in Appendix XXXIII should be sent. This letter refers the matter to IDR.



Step 3 – Letter to FOS

If the insurer is not able to resolve the client's complaint within 45 days then refer to Appendix XXXIV. This letter refers the client's complaint to FOS.

9 Taxi disputes

9.1 Client is a taxi driver

- 9.1.1 Client is a taxi driver (not owner), is at fault, has paid their excess with a taxi club and the taxi club is not indemnifying the client. The other party has insurance (insurance company is a code member and subscriber to FOS). The client is impecunious.**

The letter in Appendix XXIV should be sent to the other party's insurance company/debt collection agency. If the debt is not waived within 14 days then refer the matter to the insurance company's IDR department. It is a good idea to attach a copy of our client's bank statement and financial profile to this letter, if the client is in clear financial hardship. Quite often the insurance company will agree to waive the debt and pursue the taxi owner, if the client is able to advise them of the taxi owner's name and address. If the Insurer for the other party has initiated proceedings against the client, but judgment has not been obtained, then the letter in Appendix XXIV should be sent with a request that judgment not be obtained until the client's request for waiver has been considered.

If court proceedings have been initiated against the client and judgment has not been obtained the insurers will sometimes want to join the taxi owner to the court proceedings as a second defendant before they consider a request for a waiver. The insurer will usually request the client's consent before they provide any indication of whether the debt will be waived or enforcement proceedings against the client abandoned. In such a typical scenario the client should only agree to this request if they are impecunious as the insurer may not waive the debt. Furthermore even if the insurer abandons the claim against the client and goes after the taxi owner the taxi owner could seek indemnity from the client. If consent is given by the client then request that the matter be immediately referred to IDR. The client should only provide their consent on the basis that there is no order as to costs. The client could also refuse to provide their consent and instead request that the matter be referred to IDR. However the insurer is then less likely to waive the debt and abandon action against the client.

Often insurers require the drivers to pursue a claim against the Taxi Club if the Taxi Club is refusing to indemnify. Never agree to such a request. The insurer should be advised that:

'they have received legal advice that they should not to pursue the (Name of Taxi Club) because initiating proceedings against these associations are a waste of time and money. They are often trading when insolvent and they treat court judgments with contempt by refusing to pay. They also close their associations when judgment has been obtained. They subsequently open similar associations – a typical phoenix company scenario'

If the taxi driver is being pursued by a Suncorp owned company, that is AAMI, APIA, GIO, Shannons, Vero, Just Car and Bingle, then the following paragraph should be added to the letter in Appendix XXIV:

We refer to the joint submissions by Suncorp and the Footscray Community Legal Centre to the Victorian Taxi Industry Inquiry in which Suncorp stated that it had *'an internal policy (which was developed with Mr. Denis Nelthorpe as part of his Bulk Debt Negotiations and ensures that Suncorp complies with financial hardship provisions in the General Insurance Code of Practice) and would not normally pursue the driver. Principally the driver rarely has any assets or income that would allow this to ethically occur.'*

Refer to appendix XXXI for a copy of the joint submission by Suncorp and the Footscray Community Legal Centre to the Victorian Taxi Industry Inquiry.

9.1.2 Client is a driver (not owner), and does not know the name of the taxi owner and the insurance company for the other party has advised that they will pursue the owner of the taxi if their details are provided.

If the client does not know the name of the taxi owner then it would be advisable to make an FOI application with the Taxi Services Commission (TSC).

Once the TSC has received the FOI request and the FOI application fee (if applicable), they must communicate their decision in relation to the request in writing as soon as practicable, but no later than 45 days.

If the TSC refuses access to the documents sought, the client can appeal the TSC's decision and seek internal review. The client must lodge an appeal within 28 days of the date on which the decision was sent. The TSC must then reconsider the request and respond to the client within 14 days. If the client wishes to appeal further to the Victorian Civil and Administrative Tribunal the client must do so within 60 days of the date the client was notified of the result of the Internal Review. Please refer to Appendix XXV for an FOI request letter.

9.2 Taxi owners

9.2.1 Client is a taxi owner, is at fault, has paid their excess with a taxi club and the taxi club is not indemnifying the client and the other party has insurance (insurance company is a code member and subscriber to FOS).

The letter in Appendix XXVI should be drafted on behalf of the client to the other party's insurance company/debt collection company. If the debt is not waived within 14 days then refer the matter to the insurance company's IDR department. It is a good idea to attach a copy of the client's bank statement and financial profile to this letter, if the client is in clear financial hardship.

10 Repairs

10.1 Not happy with repairs?

If the insurer (code member) has selected and directly authorised repairs for the client's vehicle it must accept responsibility for the quality of workmanship and materials used by the repairer (refer to clause 3.14 of the General Insurance Code of Practice).

Step 1 – Letter to insurance company

Refer to Appendix XXVII for a precedent letter. This letter requests that the vehicle be repaired properly. Advise the client to return 45 days after sending this letter. **Note:** the client needs to establish, through the use of expert reports, that their vehicle has been unsatisfactorily repaired and the repairs have been done contrary to industry practice.

Step 2 – Letter to FOS

If the dispute is unresolved 45 days after sending the letter in Appendix XXVII the matter should be referred to FOS and the letter in Appendix XXVIII should be drafted on behalf of the client.

10.2 Client has insurance and wants to choose their own repairer

A careful reading of the insurance policy must be undertaken to determine whether the client is allowed to choose their own repairer. Some insurance policies allow their customers the freedom of choosing their own repairer. It is probably best to have the vehicle repaired by a panel beater which has been selected and authorised by the insurer to obtain the protection afforded by clause 7.20 of the General Insurance Code of Practice 2014 in case there are problems with the quality of the workmanship and materials.

11 Settlement offers

If the client believes the insurer has undervalued their vehicle then the letter in Appendix XXIX should be sent. **Note:** With any such dispute it is very important that the client provide supporting evidence of the value of the vehicle. The client can make reference to the vehicle's price by using information from the internet, magazines, newspapers, assessor's reports etc. If the matter cannot be resolved within 45 days then refer the matter to FOS for investigation and determination.

11.1 Client has insurance and wants a cash settlement instead of having their vehicle repaired

You must carefully read the insurance policy to determine whether this is permitted.

12 Debt recovery agencies

If you believe a debt recovery agent or an insurance company (Code member) in pursuit of a debt owing has engaged in conduct that is in breach of the ASIC and ACCC 'Debt collection guideline: for collectors and creditors' then an immediate complaint to FOS should be made. Clause 8.12 of the General Insurance Code of Practice 2014 allows FOS to investigate such claims. The Debt collection guidelines prohibit, amongst others, the following:

1. Harassment
2. Unreasonable communication
3. Coercion
4. Misleading Conduct
5. Breach of Privacy
6. Inconsistent and inappropriate correspondence
7. Use of physical force
8. Unconscionable conduct
9. Attempting to collect previously paid or settled debts.

The letter in Appendix XXX could be drafted and sent to FOS.

13 CONTACTS

Dispute Settlement Centre of Victoria
 4/456 Lonsdale St
 Melbourne VIC 3000
 Tel: 03 9603 8370
 Tel: 1800 658 528 (toll free for regional callers)
 Email: dscv@justice.vic.gov.au
 Web: www.disputes.vic.gov.au

Motor Claim's Recoveries
 AAMI
 PO Box 14180
 MELBOURNE Vic 8001

CGU Insurance
 CGU Recoveries Unit
 GPO Box 390D
 Melbourne VIC 3000

Claims Consultant
 RACV
 PO Box 3030
 Melbourne VIC 3001

Allianz
 GPO Box 9897
 MELBOURNE VIC 3001

Financial Ombudsman Service
 GPO Box 3
 MELBOURNE VIC 3001
 Tel: 1300 780 808

Shine Lawyers
 Personal Injury Lawyers
 Tel: 131199

Slater and Gordon
 Personal Injury Lawyers
 Tel: 1800 555 777

Maurice Blackburn
 Compensation Lawyers
 Tel: 1800 675 306

14 Template letters

Appendix A: Motor Vehicle Accident Instruction Sheet

CLIENT NAME:

Family Name

First Name

Address:

NAME AND ADDRESS OF DRIVER OF OTHER VEHICLE:

Family Name

First Name

Address:

NAME AND ADDRESS OF DRIVER OF OTHER VEHICLE (if two car pile-up):

Family Name

First Name

Address:

(IF APPLICABLE) NAME AND ADDRESS OF OWNER OF OTHER VEHICLE:

Family Name

First Name

Address:

(IF APPLICABLE) IF CLIENT IS NOT THE VEHICLE OWNER –NAME AND ADDRESS OF VEHICLE OWNER

Family Name:

First Name

Address:

(IF APPLICABLE) IF CLIENT IS NOT THE DRIVER BUT THE OWNER OF THE VEHICLE- NAME AND ADDRESS OF DRIVER

Family Name:

First Name

Address:

Do not act for the owner of the motor vehicle and the driver at the same time

CONFLICT CHECK DONE OF ALL THE ABOVE NAMES (circle)

Yes or No

CONFLICT (circle)

Yes or No

TELEPHONE: (Home)

(Mobile)

DATE OF BIRTH:...../...../.....

Not Stated

GENDER (circle): Male Female Not stated

FAMILY TYPE (circle)

Two Parent with dependent children

Sole Parent with dependent children

Family Type Other, e.g. couple or independent children

Not living as a family, e.g. in a boarding house

Not Stated

NUMBER OF DEPENDENTS:

AGE OF DEPENDENTS:

INDIGENOUS STATUS Aboriginal but not Torres Strait Islander Torres Strait Islander but not Aboriginal
(circle) Both Aboriginal and Torres Strait Islander NOT Aboriginal or Torres Strait Islander
Not Stated

MAIN LANGUAGE SPOKEN AT HOME:

PROFICIENCY IN ENGLISH Very Well Well Not Well Not at all Not Stated

INTERPRETER REQUIRED? No Yes Interpreter provided? No Yes

NETT INCOME PER WEEK:

INCOME SOURCE (circle) Earned Wages Social Security No Income Other

(IF APPLICABLE) PERIOD OF TIME EMPLOYED

(IF APPLICABLE) PERIOD OF TIME ON CENTRELINK

(IF APPLICABLE) RENTING (circle) Yes or No Private or DHS Amount of rent:

(IF APPLICABLE) OWNER OF A HOUSE OR LAND? Yes or No

Name of person on title: Value of house or land: Mortgage amount:

BANK BALANCE:

CREDIT CARD DEBTS:

FINES:

UTILITY BILLS:

PERSONAL LOAN:

OTHER DEBTS:

COUNTRY OF BIRTH: YEAR of arrival in Australia?:.....

HOW DID THE CLIENT HEAR ABOUT OUR SERVICE?

WILL THE CLIENT RECEIVE A LUMP SUM PAYMENT IN THE NEXT 2 YEARS? (circle) YES or NO

When: Type of payment:

A trustee in bankruptcy cannot seize damages for awards received for personal injury matters

MENTAL ILLNESS (IF APPLICABLE):

DISABILITIES (IF APPLICABLE):

DOMESTIC VIOLENCE INDICATOR: Not Stated Not Applicable Yes

If an interpreter was used, please specify:

Please circle TIS (telephone interpreter service) FRIEND VOLUNTEER

How well did this interpreter assistance work?

ADVICE DATE:/...../..... Signed off by solicitor

ANY INJURIES:

Refer the client to a TAC Lawyer if they were injured.

DESCRIPTION OF DOCUMENTS PROVIDED BY CLIENT:

DATE AND TIME OF ACCIDENT:

ROAD CONDITIONS:

ADDRESS OF ACCIDENT:

ANY CONDITIONS OF CLIENT'S LICENCE:

LENGTH OF TIME CLIENT HAS BEEN DRIVING?

DIAGRAM OF ACCIDENT:

ANY ADMISSIONS OF LIABILITY (circle): Yes or No

DID THE POLICE ATTEND THE SCENE OF THE ACCIDENT (circle) Yes or No

(IF APPLICABLE) DID THE POLICE INDICATE WHO WAS AT FAULT (circle): Yes or No

(IF APPLICABLE) DID THE POLICE CHARGE OR FINE ANYONE AFTER THE ACCIDENT?

If the client was charged or fined make another appointment to take instructions.

DID THE AMBULANCE ATTEND THE SCENE OF THE ACCIDENT (circle): Yes or No

NAME OF PASSENGERS IN CLIENT'S VEHICLE:

MAKE, MODEL, REGO AND YEAR OF VEHICLE CLIENT WAS DRIVING OR OWNED:

IS THE CAR UNDER FINANCE? (circle) Yes or No

IS THE CAR REGISTERED? (circle) Yes or No

If the vehicle is financed and our client owns the vehicle

advise the client to continue to pay the car finance. Most

financed cars have comprehensive insurance.

(IF APPLICABLE) NAME AND ADDRESS OF CLIENT'S INSURANCE COMPANY

(IF APPLICABLE) TYPE OF INSURANCE (circle) 3P or full comprehensive or 3P fire & theft

(IF APPLICABLE) NAME AND ADDRESS OF INSURANCE COMPANY FOR OTHER PARTY

(IF APPLICABLE) TYPE OF INSURANCE (circle) 3P or full comprehensive or 3P fire & theft

MAKE, MODEL, REGO AND YEAR OF VEHICLE OTHER PARTY WAS DRIVING OR OWNED:

(IF APPLICABLE) DETAILS OF EVIDENCE LIKELY TO BE GIVEN BY ANY INDEPENDENT WITNESSES

GENERAL INSTRUCTIONS:

ADVICE:

LIMITATION DATES (circle):

- (a) 6 years to initiate court proceedings from the date of motor vehicle accident (time can be re-started if an acknowledgment is made or payment).
- (b) 21 days from the date of service of the complaint to file a notice of defence
- (c) 15 years to enforce judgment
- (d) 12 months to lodge a TAC claim from the date of injuries manifesting
- (e) 6 years to complain to FOS from the date of motor accident and 2 years from the date of receiving an IDR response.
- (f) Other (specify)

CHECKLIST (circle)

txd

- | | |
|--|-----------|
| 1. Obtained copy of client's drivers licence | yes or no |
| 2. Advised client to contact you for regular updates | yes or no |
| 3. Advised the client to contact you if they receive any documents from the other party | yes or no |
| 4. Obtained copies of any documents provided by client | yes or no |
| 5. (if applicable) Searched FOS website to ascertain if any of the insurance companies are FOS members | yes or no |

Appendix I: Over the Counter Request Form

Revised 01/10

VP Form 1146



VICTORIA POLICE

APPLICATION FOR VICTORIA POLICE VEHICLE ACCIDENT INFORMATION

OVER THE COUNTER REQUEST

(INSTRUCTIONS FOLLOW)

Section 1: Applicant type (tick relevant box)

Individual/organisation involved in the accident ☐ (Complete sections 1A & 2)
 Personal representative of individual/organisation involved in the accident ☐ (Complete sections 1B & 2)
 Authorised representative of individual/organisation involved in the accident ☒ (Complete sections 1C & 2)
 Insurer ☐ Solicitor ☒ Investigator ☐ Loss assessor ☐ Employee ☐

For examples of personal and authorised representatives refer to following information sheet (Section 2)

Section 1A: Individual /party involved in the vehicle accident

Surname: _____ First Name: _____

Address: _____

Postcode: _____

Telephone/Mobile No.: _____

Identification Attached: Birth Certificate ☐ Passport ☐ Driver's Licence ☐

Section 1B: Personal representative of individual/party involved in the vehicle accident

Surname: _____ First Name: _____

Address: _____

Postcode: _____

Telephone/Mobile No.: _____

Identification Attached: Birth Certificate ☐ Passport ☐ Driver's Licence ☐

Details of individual being represented:

Surname _____ First Name: _____

Organisation (if relevant): _____

Address: _____

Postcode: _____

Details of personal representation attached:

Parent/Guardian ☐ Executor/Administrator ☐ Administrator/Guardian ☐ Power of Attorney ☐

Section 1C: Authorised representative of individual/party involved in vehicle accident

Organisation: Footscray Community Legal Centre Ref. No. 20665Address: Level 1, 72 Buckley St, Footscray Postcode: 3011 DX: _____Telephone/Mobile No.: 9689 8444 Facsimile No.: _____ Date: 22/3/2010Name of authorised Representative: PRIYANKA SHETTY Signature: Priyanka

Details of individual/party being represented:

Surname: Smith First Name: John

Organisation (if relevant): _____

Address: 12/21 Michael RdSwanstone VIC Postcode: 3020

Authority of Individual/party attached

Yes ☒



STATUTORY DECLARATION

VICTORIA POLICE
I, PRIYANKA SHETTY
of Level 1, 72 Buckley St, Footscray
in the State of Victoria, do solemnly and sincerely declare:

- that I am an authorised person under Section 118N of the Police Regulation Act 1958 ie. a person:
 - (a) who is injured as a result of a vehicle accident; or
 - (b) whose property is damaged or destroyed as a result of a vehicle accident; or
 - (c) who is a personal representative of a person who dies or is injured, or whose property is damaged or destroyed, as a result of a vehicle accident; or
 - (d) who is an authorised representative of a person referred to in paragraph (a) or (b), or a personal representative referred to in paragraph (c)
- that I am requesting vehicle accident information for one or more of the following authorised purposes defined in Section 118L of the Police Regulation Act 1958;
 - (a) to obtain legal advice in relation to the vehicle accident; or
 - (b) to recover any loss or damage incurred or suffered, or costs incurred; as a result of the vehicle accident, whether by way of legal proceedings or otherwise; or
 - (c) to assess and determine a claim under a contract of insurance made in relation to-
 - (i) the death or injury of a person as a result of the vehicle accident; or
 - (ii) the damage to, or destruction of, property as a result of the vehicle accident; or
 - (d) to assess and determine a claim for compensation under a statutory insurance scheme law in respect of the death of or injury to a person as a result of the vehicle accident; or
 - (e) to investigate the vehicle accident for a purpose set out in paragraph (a), (b), (c) or (d).
- that the information requested will be handled in a manner consistent with section 118Q of the Police Regulation Act 1958, and that there will be no use or disclosure of this information for a purpose other than the authorised purpose for which the information is provided.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Signature Of Person
Making Declaration

Declared at _____ in the State of Victoria
on the _____ day of _____ 20____
Before me,

SIGNATURE	
PRINT NAME	<u>Ali Yildiz</u> ALI YILDIZ
ADDRESS	<u>Level 1, 72 Buckley St, Footscray</u> Footscray Community Legal Centre Inc. Level 1, 72 Buckley Street, Footscray 3011
STATUS	<input type="checkbox"/> Justice of the Peace or Bail Justice <input type="checkbox"/> Member of the Police Force <input checked="" type="checkbox"/> Person authorised under Section 107A(1) of the Evidence (Miscellaneous Provisions) Act 1958 to witness the signing of a Statutory Declaration

HOW TO PROCESS AN OVER THE COUNTER REQUEST FOR LIMITED VEHICLE ACCIDENT INFORMATION

1. Who can apply for vehicle accident information over the counter?

Any person listed in section 118N(1) of the Police Regulation Act 1958 may apply for vehicle accident information. This includes any person who is injured, or suffers property damage as a result of a traffic accident, or an authorised or personal representative.

2. Who can act as an authorised or personal representative?

Representative Type	Example	Description
Authorised Representative	Insurers Solicitors Loss Assessors Investigators Employee	Relevant insurer, or other third party with written authorisation from an individual or party involved in the accident to obtain information on their behalf. Also includes representative/employee of organisation directly involved in accident ie owner of property or vehicle.
Personal Representative	Parent Guardian Administrator Executor Power of Attorney	Person or party representing an individual involved in an accident who is not able to obtain written authority from the individual eg. the individual is a child, disabled, does not have the legal capacity or has died as a result of the vehicle accident

3. How may vehicle accident information be used?

Information may only be requested for the following authorised purposes:

- Obtain legal advice regarding the accident;
- Recover any loss or damage incurred or suffered, or costs incurred;
- Assess insurance claims relating to:
 - o death or injury of a person;
 - o damage or destruction of property;
- Assess a claim for compensation relating to the death or injury of a person;
- Investigation of a vehicle accident for any of the above purposes.

The disclosure or use of vehicle accident information for a purpose other than those listed above is prohibited and will incur penalties in accordance with section 118Q of the Police Regulation Act 1958.

4. What documentation should accompany an application?

Each application must be accompanied by a statutory declaration signed by the applicant certifying that the:

- a. applicant is a person to whom section 118N(1) of the Police Regulation Act 1958 applies;
- b. information is being sought for an authorised purpose under section 118L Police Regulation Act 1958;
- c. information obtained from Victoria Police will be managed in accordance with the principles of the Information Privacy Act 2000; and
- d. information will not be used or disclosed for a purpose other than the authorised purpose.

A statutory declaration has been designed specifically for this purpose and forms part of the 'Application for Victoria Police Vehicle Accident Information' kit.

The following documentation should **also** be attached to each application;

Individual applicants:

- Copy of an approved form of identification ie. driver's licence, passport or birth certificate.

Authorised Representatives:

- Solicitors, loss assessors and investigators are required to provide a signed authority from their client which clearly authorises the representative to obtain information on their client's behalf.
 - o If the client is a company, the authority must be signed by a company employee or officer on official company letterhead.
 - o In situations where a solicitor or loss assessor is representing an insurance company who in turn is representing an individual, a signed authority must be obtained from the individual.
- Employees or representatives of organisations directly involved in accident ie owner of property or vehicle are required to provide a signed authority from the organisation which clearly authorises the employee/representative. The authority should be signed by an organisation employee or officer on official organisation letterhead.

Personal Representatives:

- Copy of an approved form of identification ie. driver's licence, passport or birth certificate.
- Documentary proof of the following;
 - o Proof of parentage or guardianship;
 - o Proof of administration or guardianship under the Guardianship and Administration Act 1986;
 - o Proof of power attorney;
 - o Proof of administration or execution of the person's estate.

5. What information can be released over the counter?

Information released over the counter is restricted to the following:

- Name
 - Address; and/or
 - Vehicle registration details
- of the relevant driver(s).

6. Fees

No fee is payable for over the counter requests.

7. Privacy Collection Statement

This information is collected by the Victoria Police Accident Records Office for the purpose of processing requests for vehicle accident information in accordance with section 118 of the Police Regulation Act 1958.

Applicants are able to gain access to their personal information provided in this application and held at the Accident Records Office by contacting the Freedom of Information Unit at:

Freedom of Information Unit
P. O. Box 415
World Trade Centre
Melbourne Vic 3005
DX 210056

The information provided in this application will not be disclosed to any other person or organisation. For details regarding release of accident information refer to Section 5 of this instruction sheet.

8. Which requests should be referred to the Accident Records Office (ARO)?

- Requests for information from persons/parties other than those listed in Section 1 of this instruction sheet;
- Requests for information beyond that listed in Section 5 of this instruction sheet.

Accident Records Office
P. O. Box 415
World Trade Centre
Melbourne Vic 3005
DX 210056

Under the Police Regulation (Fees & Charges) Regulations 2004 a prescribed fee of \$42.00 is charged for the release of other vehicle accident information by the ARO.

Should you require any assistance in processing this form refer to Chief Commissioner's Instruction CCI 9/04. For further information regarding other aspects of vehicle accident information release please contact the ARO on (03) 9247 5255.

Appendix II: Vehicle Accident Information Application Form and Precedent letter

VP Form 1143



VICTORIA POLICE

VEHICLE ACCIDENT INFORMATION APPLICATION FORM – INDIVIDUAL USE

INDIVIDUAL USE ONLY

(INSTRUCTIONS ATTACHED)

The Victorian Accident Records Office deals only with accidents which occurred within the State of Victoria and which have been reported to Victoria Police.

Section 1: Applicant details

Surname: Smith First Name: John
 Address: 12/21 Michael Rd
Sunshine Postcode: 3020
 Telephone No.: 0432 444444
 Identification Attached: Birth Certificate ☐ Passport ☐ Driver's Licence ☒

Section 2: Information about the accident.

Date of Accident: 31/1/09 Time: _____
 Place of Accident: Sunshine - 304 Peters Rd, Sunshine
 Police Officer reported to: _____ Police Station: _____
 (if known)

Section 3: Information about the parties & vehicles involved in the accident.

Provide details of Vehicles, Drivers, Vehicle Owners, Passengers, Pedestrians, and/or Property Owners, if you have that information.

Surname: Citzen First Name: Adam Driver ☒ Owner ☒
 Registration No.: PLQ 455 Licence No.: 111 111 111 Pedestrian ☐ Passenger ☐
 Surname: _____ First Name: _____ Driver ☐ Owner ☐
 Registration No.: _____ Licence No.: _____ Pedestrian ☐ Passenger ☐
 Surname: _____ First Name: _____ Driver ☐ Owner ☐
 Registration No.: _____ Licence No.: _____ Pedestrian ☐ Passenger ☐
 Surname: _____ First Name: _____ Property Owner ☐
 Property Address _____

CHECKLIST:

All relevant sections completed? Yes ☐
 Proof of identification attached? Yes ☐

Statutory declaration attached? Yes ☐
 Relevant payment attached? Yes ☐

Revised July 2011



STATUTORY DECLARATION

VICTORIA POLICE

I, _____
 (Full name of the person making this declaration.)
 of _____
 (Address of the person making this declaration.)
 in the State of Victoria, do solemnly and sincerely declare:

- that I am an authorised person under Section 118N of the Police Regulation Act 1958 ie. a person:
 - (a) who is injured as a result of a vehicle accident; or
 - (b) whose property is damaged or destroyed as a result of a vehicle accident; or
 - (c) who is a personal representative of a person who dies or is injured, or whose property is damaged or destroyed, as a result of a vehicle accident; or
 - (d) who is an authorised representative of a person referred to in paragraph (a) or (b), or a personal representative referred to in paragraph (c)
- that I am requesting vehicle accident information for one or more of the following authorised purposes defined in Section 118L of the Police Regulation Act 1958;
 - (a) to obtain legal advice in relation to the vehicle accident; or
 - (b) to recover any loss or damage incurred or suffered, or costs incurred, as a result of the vehicle accident, whether by way of legal proceedings or otherwise; or
 - (c) to assess and determine a claim under a contract of insurance made in relation to-
 - (i) the death or injury of a person as a result of the vehicle accident; or
 - (ii) the damage to, or destruction of, property as a result of the vehicle accident; or
 - (d) to assess and determine a claim for compensation under a statutory insurance scheme law in respect of the death of or injury to a person as a result of the vehicle accident; or
 - (e) to investigate the vehicle accident for a purpose set out in paragraph (a), (b), (c) or (d).
- that the information requested will be handled in a manner consistent with section 118Q of the Police Regulation Act 1958, and that there will be no use or disclosure of this information for a purpose other than the authorised purpose for which the information is provided.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Signature Of Person Making Declaration	
--	--

Declared at _____ in the State of Victoria
 on the _____ day of _____ 20____
 Before me,

SIGNATURE	
PRINT NAME	
ADDRESS	
STATUS	<input type="checkbox"/> Justice of the Peace or Bail Justice <input type="checkbox"/> Member of the Police Force <input type="checkbox"/> Person authorised under Section 107A(1) of the Evidence Act 1958 to witness the signing of a Statutory Declaration

Revised July 2011

Letter to accompany Vehicle Accident Information Application Form

[DATE]

**Accident Records Office
GPO Box 913
DOCKLANDS VIC 3001**

Dear Sir/Madam,

Re: Traffic Accident Report

I write to you in relation to a motor vehicle accident which occurred on **[DATE OF ACCIDENT]**. Please find enclosed the following:

- i. Completed Vehicle Accident Information Form – Individual use;
- ii. Completed Statutory Declaration; and
- iii. Copy of identification.

Please find enclosed cheque for **[AMOUNT]** made payable to Victoria Police.

OR

I kindly request you to waive the application fee as I do not work and I am in receipt of a Centrelink Income. Please find enclosed the following documents as proof of same:

1. Centrelink Income Statement;
2. Copy of bank statement; and
3. Copy of current rental receipt.

I thank you for your assistance in advance.

Please contact me on **[CLIENT'S TELEPHONE NUMBER]** if you have any queries regarding this matter.

I have had the assistance of a lawyer from a community legal centre draft this letter for me.

Yours faithfully,

[CLIENT'S NAME AND ADDRESS]

Appendix III: Precedent letter to Personal Injury Lawyer

FOOTSCRAY COMMUNITY LEGAL CENTRE INC**Level 1, 72 Buckley Street, Footscray VIC 3011****[OUR REF]****[DATE]****[NAME OF LAW FIRM]****[ADDRESS]**

Dear Sir/Madam,

RE: TAC –Referral of **[NAME OF CLIENT]** **[DOB OF CLIENT]**We wish to refer **[NAME OF CLIENT]** for legal assistance.**[NAME OF CLIENT]** was injured as a result of a motor vehicle accident on **[DATE OF ACCIDENT]** at **[LOCATION OF ACCIDENT]**.

We have been instructed that her/his injuries are:

[LIST INJURIES]Since the incident he/she has been unable to **[PLEASE EXPLAIN THE EFFECT OF INJURIES]**.Our legal centre does not practice in personal injury law. We would be grateful if you could assist **[NAME OF CLIENT]** with his/her TAC claim.We are currently assisting **[NAME OF CLIENT]** with **[outline the assistance being provided ie. her/his civil dispute as a result of the collision]**.**[NAME OF CLIENT]** can be contacted on **[TELEPHONE NUMER]**.**[DELETE IF NOT APPLICABLE]-** **[NAME OF CLIENT]** is not fluent in English and requires the assistance of a **[LANGUAGE]** interpreter.

Please find enclosed copy of the following documents for your consideration:

[NAME OF DOCUMENT]

If you require any further information on this matter, please don't hesitate to contact the legal centre

Yours faithfully,

[NAME OF LEGAL CENTRE]

Appendix IV: Letter to Insurance Company.

[DATE]

[INSURANCE COMPANY & ADDRESS]

Dear Sir/Madam,

Re: Insurance Type: **[INSERT]**

Policy Number: **[INSERT]**

I refer to the above and confirm that I have lodged a claim on **[DATE CLAIM WAS LODGED]** but have been unable to pay the excess required under the insurance policy.

I confirm that you have advised me that my claim would not be processed until the excess of \$ **[EXCESS AMOUNT]** has been paid in full.

I am in financial hardship because of **[ADVISE OF REASONS FOR FINANCIAL HARDSHIP e.g. unemployment, illness, low income]** and therefore unable to pay the excess required by you. I request that this matter be referred to your IDR department.

I kindly request that you: **[DELETE IF NOT APPLICABLE]**

1. Deduct the excess from the claim to be paid to me.
2. Accept payment of the excess in instalments of \$___ per month/week/fortnight.

My request is made pursuant to Section 54 of the *Insurance Contracts Act 1984* and your duty of utmost good faith (Section 13 of the Insurance Contracts Act).

I point to the recent case in the NSW Court of Appeal (*Calliden Insurance Ltd v. Chisholm* (2009) NSWCA 398) which considered the position applicable where an insured could not pay the policy excess. Effectively the Court found the payment of an excess was not in that case a condition precedent to indemnity but instead relieved the insurer from payment of the excess amount.

OR

I confirm that I lodged a claim on **[DATE]**. I strongly believe that I am not at fault as the other party hit the rear of my vehicle whilst my vehicle was stationary at a set of lights and accordingly, pursuant to your insurance policy, I will not be paying the excess. I request that my claim be processed without payment of the excess and this matter referred to IDR.

Yours faithfully,

[CLIENT'S NAME & ADDRESS]

Appendix V: Letter to the Financial Ombudsman Service

[DATE]

Financial Ombudsman Service
GPO Box 3
MELBOURNE VIC 3001

Dear Sir/Madam,

Re: My insurance claim with **[INSURER]**
Policy number **[INSERT NUMBER]**

I wish to lodge a complaint for investigation against **[NAME OF INSURANCE COMPANY]**.
The following are details of my dispute:

1. I made a claim with **[NAME OF INSURANCE COMPANY]** on **[DATE OF CLAIM]**.
2. I sent a letter to **[INSURANCE COMPANY]** on **[DATE OF LETTER]** advising of my financial hardship. I requested that the matter be referred to IDR. Please find enclosed this letter for you to read **OR** I sent a letter to the **[INSURANCE COMPANY]** on **[DATE OF LETTER]** advising that I was not at fault and would not pay the excess as allowed by their insurance policy. I also requested that the matter be referred to IDR.

[DELETE IF NOT APPLICABLE]

3. To date, I have not received a response from **[INSURANCE COMPANY]** and do not believe I will. I am unaware if this matter has been investigated by **[INSURANCE COMPANY]**

[DELETE IF NOT APPLICABLE]

4. **[INSURANCE COMPANY]** rejected my claim on **[DATE]** after the matter was determined at IDR. I am in financial hardship and unable to pay my excess as required by them. I believe they have breached, Section 54 of the Insurance Contracts Act and their duty of utmost good faith (Section 13 of the Insurance Contracts Act).

OR

[INSURANCE COMPANY] rejected my claim on **[DATE]** after the matter was determined at IDR. I kindly request you to determine this matter as I am clearly not at fault and therefore not liable to pay the excess as set out in the insurance policy.

Yours faithfully,

[CLIENT'S FULL NAME]

Appendix VI: Letter of Demand

[DATE]**[NAME AND SURNAME OF OTHER PARTY]****[ADDRESS]**

Dear Sir/Madam,

RE: CLAIM FOR DAMAGES TO MOTOR VEHICLEI am writing to you about a motor vehicle accident on **[DATE]**.

I am the owner of motor vehicle registration number **[REGISTRATION NUMBER]**, which was damaged as a result of a collision at **[LOCATION]** with a motor vehicle **[REGISTRATION NUMBER]** driven by you.

[EXPLAIN HOW ACCIDENT HAPPENED] [ie. My motor vehicle was stationary on the corner of Buckley Street and Irvine Street, Footscray when the car being driven by you collided into the rear of my vehicle. I believe you are responsible for the damages to my motor vehicle due to your negligent driving].

[DELETE IF NOT APPLICABLE- PLEASE NOTE THAT IF YOU HAVE AN INDEPENDENT WITNESS IT IS VERY LIKELY THAT THE OTHER PARTY WILL WANT A COPY OF THEIR STATEMENT] I note that an independent witness observed the accident.

I hold you responsible for the loss I have suffered as a result of the accident. A copy of a quote from a panel beater is enclosed itemising the cost of repairs. The damages to my vehicle will cost **[\$INSERT AMOUNT]** to repair.

[DELETE IF NOT APPLICABLE] I also incurred the following costs as a result of the collision:-

Car hire - \$115/day for 5 days = \$575

Towing cost = \$350.00

TOTAL AMOUNT OWING \$

Please forward this letter to your insurer **[DELETE IF NOT APPLICABLE]** [your employer], or contact me within 14 days of the date of this letter to arrange payment of the total amount owing. If this payment is not made, or you do not contact me then I will have no option but to commence legal action against you.

I advise that I am willing to attend mediation at the Dispute Settlement Centre of Victoria to resolve the matter at hand.

I am writing this letter to provide you with an opportunity to settle this matter without the need for litigation.

Yours faithfully,

[NAME]**[ADDRESS]**

Appendix VII: Letter to insurance company

[DATE]

'Without Prejudice'

[NAME OF INSURANCE COMPANY]**[ADDRESS OF INSURANCE COMPANY]**

Dear Sir/Madam,

Re: Accident on ___ / ___ / ___

[POLICY NUMBER]

I confirm that I have third party property car insurance with **[NAME OF INSURANCE COMPANY]** and would like to make a claim pursuant to your uninsured motorist extension (UME)

I confirm that I was involved in a motor vehicle accident on **[DATE OF ACCIDENT]**. I advise that I am not at fault as the other party collided into the rear of my vehicle while I was stationary at a set of lights. The name and address of the other party is:

[NAME]**[ADDRESS]**

The other party does not have any insurance and admitted to liability after the accident.

[DELETE IF NOT APPLICABLE] Please find enclosed a statement from an independent witness. This statement confirms fault on the part of the other party.

OR

Please also find enclosed an 'accident report' from the police. The police have also determined that the other party is at fault.

OR

The police have issued the other party with an infringement notice – which indicates that the other party is at fault.

I look forward to your prompt written response.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix: VIII: Letter to Insurance Company requesting that the matter be referred to IDR

[DATE]

[NAME OF INSURANCE COMPANY]

[ADDRESS OF INSURANCE COMPANY]

Dear Sir/Madam,

Re: Accident on ___ / ___ / ___

[POLICY NUMBER]

I refer to our previous correspondences.

[DELETE IF NOT APPLICABLE]

I confirm that you have rejected my claim. Accordingly, I request that you refer this matter to your IDR Department.

OR

I confirm that it has been over 14 days since I have lodged a claim. I note that to date I have not heard from you and accordingly request that you refer this matter to your IDR Department.

I look forward to your prompt response.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix IX: Letter referring the matter to the Financial Ombudsman Service

[MY REF]

[DATE]

Financial Ombudsman Service
GPO Box 3
MELBOURNE VIC 3001

Dear Sir/Madam,

Re: Complaint

I wish to lodge a complaint for investigation against **[NAME OF INSURANCE COMPANY]**.

The following are details of my dispute:

I made a claim with **[NAME OF INSURANCE COMPANY]** on **[DATE OF CLAIM]**. Please find enclosed this letter for your records.

[DELETE IF NOT APPLICABLE]

I sent a further letter to **[INSURANCE COMPANY]** on **[DATE OF LETTER]** requesting that this matter be referred to IDR, once I had not heard from them. Please find enclosed the said letter.

OR

I sent a further letter to **[INSURANCE COMPANY]** on **[DATE OF LETTER]** requesting that this matter be referred to IDR, once my claim was rejected. Please find enclosed the said letter.

[DELETE IF NOT APPLICABLE]

To date, I have not received a response from **[INSURANCE COMPANY]** and do not believe I will. I am unaware if this matter has been referred to IDR. I believe I am entitled to make a UME claim.

OR

[INSURANCE COMPANY] rejected my claim on **[DATE]** after it had gone to IDR. I kindly request you to investigate this matter as I believe I am entitled to make a claim through the Uninsured Motorist Extension as allowed by my insurance policy.

I look forward to your prompt response.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix X: Letter referring matter to FOS

My ref:

[DATE]

Financial Ombudsman Service
GPO Box 3
Melbourne VIC 3001

Dear Sir/Madam,

Re: **[NAME OF INSURANCE COMPANY OF OTHER DRIVER]**

I wish to lodge a complaint against **[NAME OF INSURANCE COMPANY]**.

[NAME OF INSURANCE COMPANY] has refused to pay for the damages sustained to my vehicle after a motor vehicle accident with their insured.

I do not have any insurance or I only have third party insurance **[DELETE IF NOT APPLICABLE]**

I was involved in a car accident on **[DATE OF ACCIDENT]**. The insured for **[NAME OF INSURANCE COMPANY]** **[PLEASE WRITE HOW THE ACCIDENT HAPPENED]** ie. hit the rear of my vehicle whilst I was stationary on the corner of White Street and Droop Street, Footscray.

Following the accident, my vehicle sustained damages of **[AMOUNT OF DAMAGES]** as assessed by **[NAME OF PANEL BEATER]**. Please find enclosed copy of quote from the said panel beater.

The circumstances of the accident indicate that the insured for **[NAME OF INSURANCE COMPANY]** is at fault. **[NAME OF INSURANCE COMPANY]** is refusing to pay for the damages to my vehicle.

The insured for **[NAME OF INSURANCE COMPANY]** has advised me that they have made a claim and paid their excess.

I would like you to kindly investigate this matter and determine the party at fault.

Yours faithfully,

[NAME OF CLIENT]
[ADDRESS OF CLIENT]

Appendix XI: Letter to arrange settlement by way of an instalment plan or lump sum amount

[DATE]

[NAME]

[ADDRESS]

‘Without Prejudice’

Dear Sir/Madam,

Re: Motor Vehicle Accident on / /

I refer to the above and advise that I accept liability and the cost of repairing your vehicle.

I am prepared to settle the matter at hand by making a lump sum settlement offer of **\$(INSERT)**. This offer will expire within 14 days of this letter. This offer is conditional upon a release agreement being signed.

OR

I am prepared to settle the matter at hand by making instalment payments of \$100.00 per month until the debt is paid in full. This offer is made on the basis that you forbear from instituting legal proceedings against me as long as each instalment is paid on time,

I look forward to receiving your written response.

Yours faithfully,

[Client's full name]

[Client's contact details]

Appendix XII: Release agreement

RELEASE

THIS RELEASE is made between **[NAME OF OTHER PARTY]** of **[ADDRESS OF OTHER PARTY]** ("the Releasor") and **[OUR CLIENT'S NAME]** of **[ADDRESS OF OUR CLIENT]** ("the Releasee").

1. The Releasee has agreed to pay the Releasor the sum of **[AMOUNT OF CONSIDERATION]** for loss caused to the Releasor as the result of a collision between a motor vehicle owned by the Releasor and a motor vehicle owned by the Releasee on **[DATE OF MOTOR VEHICLE ACCIDENT]** at **[LOCATION OF ACCIDENT]**
2. The Releasor accepts the said payment in full and final settlement of all claims, actions, disputes, differences, demands, proceedings, accounts, interest, costs, expenses and liabilities of whatsoever nature and howsoever arising out of or in any way connected with or incidental to the said collision. This Release may be pleaded or tendered by the Releasee as an absolute bar and defence to any proceedings brought or made against the Releasee by the Releasor in breach of this Release.
3. The Releasor acknowledges that payment has been made with an express denial of liability and for the sole purpose of avoiding legal action.

[DELETE IF NOT APPLICABLE]

4. The parties acknowledge that each of them obtained independent legal advice before executed this agreement

[NAME OF OTHER PARTY]**[OUR CLIENT'S NAME]****DATE / /****DATE / /****[NAME AND SIGNATURE OF WITNESS]****[NAME AND SIGNATURE OF WITNESS]****Date / /****Date / /**

Appendix XIII: Letter to Insurance Company seeking to settle matter

[DATE]

[NAME OF INSURANCE COMPANY]

[ADDRESS OF INSURANCE COMPANY]

'Without Prejudice'

Dear Sir/Madam,

Re: Motor Vehicle Accident on / /

Your ref: _____

[DELETE IF NOT APPLICABLE]

I wish to make a re-payment arrangement of **[\$INSERT]** per month until the judgement debt is paid in full. This offer is made on the basis that once the debt is paid in full judgment will be set aside by consent.

OR

I wish to pay **[\$INSERT]** by **[INSERT DATE]** as full and final settlement of the judgment debt owing on the basis that you consent to judgement being set aside.

If further information is required please let me know.

I assume that you will not take any further enforcement action whilst you are considering my request. If this assumption is incorrect please advise me in writing immediately.

I look forward to your response in writing.

Yours faithfully,

[CLIENT'S FULL NAME AND ADDRESS]

Appendix XIV: Letter of Consent, Form 46B Application and Supporting Affidavit

Our Ref:
Your Ref:

[DATE]

Civil Coordinator
Magistrates' Court of Victoria at **[LOCATION]**
[ADDRESS]

Dear Sir/Madam,

Court Case No.	[COURT NUMBER]
Plaintiff:	[NAME OF PLAINTIFF]
Defendant:	[NAME OF DEFENDANT]

I consent to the following orders being made in these proceedings:

- a. The order against the defendant dated __/__/__ (copy enclosed) be set aside.
- b. The complaint against the defendant dated __/__/__ being struck out with no order as to costs.

This letter may be produced to the court as evidence of consent.

Yours faithfully,

[NAME OF PLAINTIFF]
[ADDRESS OF PLAINTIFF]

MAGISTRATES' COURT GENERAL CIVIL PROCEDURE RULES 2010

Rule 46.08

FORM 46B

APPLICATION FOR RE-HEARINGIN THE MAGISTRATES' COURT
OF VICTORIA AT [SUBURB]

Case No

BETWEEN

[NAME OF OTHER PARTY]

Plaintiff

Of: [ADDRESS OF OTHER PARTY]

and

[OUR CLIENT'S NAME]

Defendant

Of: [ADDRESS OF CLIENT]

Date of Document:

Filed on Behalf of: [OUR CLIENT'S NAME]

Australian lawyer Name

Address

Code:

Telephone:

Reference:

TO: The registrar

AND TO [NAME OF OTHER PARTY]

of [ADDRESS OF OTHER PARTY]

*(Name and address of other parties to proceeding)*I did not appear at the hearing of the above complaint. The
Court on

[DATE OF ORDER]

*(date of order)*in my absence made an order against me for *[set out terms of order]*

CLAIM: [AMOUNT OF CLAIM AS STATED ON THE ORDER]

INTEREST: [AMOUNT OF INTEREST AS ON THE ORDER]

PAYABLE" [NAME OF OTHER PARTY]

[AMOUNT OF

COSTS AS

STATED ON

and for \$ THE ORDER] costs

TAKE NOTICE that I intend to apply to the Court for an order that that order be set aside and the complaint be re-heard as soon as possible.

I did not appear at the hearing for the following reason(s) *[set out reasons]*

*I did not file a notice of defence for the following reason(s) *[set out reasons]*

1. I was unaware that I could file a notice of defence.

My address for service is:

[OUR CLIENT'S ADDRESS]

(Signature of Applicant/Australian lawyer)

FILED:

The application will be heard by the Court at					
on		20	at		am/pm

Registrar

* *Delete if not applicable.*

IN THE MAGISTRATES' COURT Case No
 OF VICTORIA AT [SUBURB]
 BETWEEN

[NAME OF PLAINTIFF]	
	Plaintiff

and

[NAME OF DEFENDANT]

Defendant

AFFIDAVIT IN SUPPORT

Date of Document:

Filed by: **[OUR CLIENT'S NAME]**

Solicitor's Name

Address:

Solicitor's Code:

Telephone:

Reference:

NATURE OF COMPLAINT [state shortly]. {SEEKING TO HAVE THE COMPLAINT RE-HEARD AND THE DEFAULT JUDGMENT SET ASIDE}

I, [NAME, ADDRESS & OCCUPATION OF OUR CLIENT]

make oath and say:-

1. I was involved in a motor vehicle accident on **[DATE OF ACCIDENT]**.
2. I paid an excess of \$1500.00 to the Combined Taxi Welfare Club (my insurer) to indemnify me for any loss that I may incur.
3. I took no further action regarding the matter as I believed that the Taxi Club would indemnify me.
4. I did not file a notice of defence
5. I have subsequently discovered that on 16 February 2010 judgment was made against me in this matter.
6. With the assistance of Footscray Community Legal Centre Inc, I contacted the plaintiff regarding this matter, seeking to have the judgement against me set aside.
7. On 21 May 2011, I received a letter from the plaintiff's solicitors consenting to the default order on **[DATE OF ORDER]** being set aside.

Sworn at
in the State of Victoria on
[DATE]

)
)
)
)

[Signed by person]

Appendix XV: Form 61A Application
MAGISTRATES' COURT GENERAL CIVIL PROCEDURE RULES 2010

Rule 61.02(1)(a)

FORM 61A

APPLICATION

(Judgment Debt Recovery Act 1984)

IN THE MAGISTRATES' COURT
OF VICTORIA AT [SUBURB]

Court Number:

[NAME OF CREDITOR]

Judgment Creditor

and

[NAME AND ADDRESS OF DEBTOR]

Judgment Debtor

Date of Document: [DATE]

Filed on Behalf of: [NAME OF DEBTOR]

Australian Lawyer Name

Address: [ADDRESS OF DEBTOR]

Code

Telephone:

Reference:

An order was made at the Magistrates' Court at [SUBURB] on [DATE]

This application is for—

- * an instalment order;
- * ~~an instalment order in substitution of a previous instalment order;~~
- * ~~the variation of an instalment order (section 8);~~
- * ~~the cancellation of an instalment order (section 8).~~

1 Details of applicant (**Debtor / *Creditor*)

Name: [NAME OF DEBTOR]

Address: [ADDRESS OF DEBTOR]

Postcode:

Telephone Home

Business:

2 Details of respondent (~~*Debtor~~ / *Creditor)

Name: [NAME OF CREDITOR]

3 State: Victoria

(a) Amount ordered	Claim	\$4,960.73	
	Interest	\$108.73	
	Costs	\$1,000.00	
	Total (judgment debt)		\$6,069.46

LESS

(b) Amount paid since order of *(date)* \$NIL
(State amounts and dates paid)

<i>Date</i>	<i>Amount</i>
	- \$
	- \$
	- \$

Total amount paid \$NIL

EQUALS

(c) balance of judgment debt owing = \$6,069.46

PLUS

(d) Interest on the judgment debt until the date of this application + \$100.00

PLUS

(e) Any other amounts recoverable or payable in respect of the order
of *(date)* *(including any costs of warrant)*

Please specify

- | | |
|------|----|
| (i) | \$ |
| (ii) | \$ |

(iii) \$ NIL

Subtotal + \$NIL

EQUALS

(f) **Total amount owing** = \$6,169.46

(g) Amount to be paid per instalment \$100.00

(h) Periodical time for payment: ~~weekly~~
fortnightly
~~monthly~~

(i) Proposed date of first instalment 23 October 2011

(j) Person/corporation /firm to whom instalments are to be made

Name: [NAME OF CREDITOR]

Address [ADDRESS OF CREDITOR]

4. If this is an application for variation of an instalment order, state:

(a) The date of the current instalment order (*date*)(b) The amount of each instalment ordered \$ ~~weekly~~
fortnightly
monthly

5 Reasons for the application [STATE THE REASONS – ie I would like to resolve this matter as the creditor has recently threatened to bankrupt me]

6 State any other relevant details [STATE THE REASONS- ie I have recently obtained regular employment and I am able to pay the debt in full with the proposed instalment arrangement].

Dated: [dd/mm/yyyy]

Signature of *Applicant / *Applicant's Australian Lawyer

PLEASE Note:

1. IF THE APPLICANT IS THE JUDGMENT DEBTOR, A STATEMENT OF AFFAIRS TO THE EFFECT OF FORM 61B (OR FORM 61C IF A CORPORATION) MUST BE FILED WITH THIS APPLICATION.

2. A COPY OF THIS APPLICATION AND, IF THE APPLICATION IS BY THE JUDGMENT DEBTOR A STATEMENT OF AFFAIRS, MUST BE SERVED ON THE RESPONDENT PARTY.

3. IF YOU DO NOT UNDERSTAND THIS DOCUMENT, YOU SHOULD OBTAIN LEGAL ADVICE IMMEDIATELY. YOU MAY ALSO NEED TO OBTAIN FINANCIAL COUNSELLING.

* Delete if not applicable

Appendix XVI: Form 61B Application

FORM 61B

Rules 61.02(1)(b), 61.04(b)
IN THE MAGISTRATES' COURT

OF VICTORIA

AT

Court Number

BETWEEN

and

and

(Judgment Debt Recovery Act 1984)

Date of Document:

Filed on behalf of:

Australian Lawyer's Code:

DX:

Australian Lawyers

Telephone:

Reference:

To the Registrar

1. Amount and Source of Weekly Income (*Complete (a) - (c) where applicable)

(a) Employed Persons

Occupation:

Name and address of employer:

Gross Wage: \$

Current overtime: *(if any)* \$

Car and other allowances and commissions: \$

\$ 0.00

(b) Self-employed persons

Average earnings from self-employment or partnership for
the last 12 months:

\$

**(c) Unemployed person or persons not
working**

If unemployed, state length of last employment, date when
last employment ceased, and gross weekly amount earned:

Pension or other benefit received: \$

WorkCover received: \$

\$ 0.00

(d) **All persons**

Maintenance received:	\$
Superannuation received:	\$
Board or rent received:	\$
Average weekly income from investments, banks, building societies, shares etc:	\$
Other: (<i>e.g. family allowance –give details</i>)	\$

\$ 0.00

TOTAL GROSS WEEKLY INCOME:

\$ 0.00**2. Weekly expenses**

Income tax:	\$
Superannuation:	\$
Health Insurance:	\$
Union fees:	\$
Housing: (<i>mortgage, board, rent</i>)	\$
Municipal rates:	\$
Water and sewerage rates:	\$
Land Tax:	\$
Child care costs (kindergarten, day care, etc.):	\$
Maintenance actually paid:	\$
Instalment payments: (<i>state purpose</i>)	\$
	\$
	\$

\$ 0.00

Electricity:	\$
Gas:	\$
Telephone:	\$
Food:	\$
Other general household expenses:	\$
Car expenses: (<i>registration, insurance, maintenance, fuel</i>)	\$
Fares:	\$
Insurance Policies:	\$
School fees and other schooling costs:	\$
Clothing and shoes:	\$
Medical and chemist expenses:	\$
Entertainment:	\$

Payments on court orders and fines:	\$	
Other expenses: <i>(give details)</i>		
	\$	
	\$	
	\$ 0.00	
		<u>\$ 0.00</u>

3. Are there any persons who contribute to paying your expenses? If so, who are they and how much do they contribute?

4. Property and Assets

Market value of house <i>(place of residence)</i> owned:	\$	
Amount owing on mortgage:	\$	
Net value of interest in house:		\$ 0.00
Market value of any other house or land owned:	\$	
Amount owing on mortgage:	\$	
Net value or interest in any other house or land owned:		\$ 0.00
Market value of motor vehicle(s):		
(a) Year:		
Make/Model	\$	
(b) Year:		
Make/Model	\$	
Amounts owing, under finance, on motor vehicles:		
(a)	\$	
(b)	\$	
Net value of interest(s) on motor vehicles:		\$ 0.00
Cash in banks, building societies etc:	\$	
Cash on hand:	\$	
Value of other investments including shares, debentures, bonds:	\$	
Money owed to you: <i>(state reason)</i>		
	\$	
	\$	

		\$ 0.00
Value of interest in partnership or business: <i>(including stock, goodwill equipment, debtors)</i>		\$
State approximate re-sale value of furniture and personal goods:	\$	
Amount owing on these furniture and personal goods:	\$	
Net value of interest:		\$ 0.00
Other assets: <i>(give details)</i>		\$
	TOTAL NET VALUE:	\$ 0.00
Life insurance policies: <i>(specify insurer, policy number, surrender value(s))</i>		\$

	TOTAL PROPERTY AND ASSETS:	\$ 0.00

Are any assets jointly owned? Give details:

5. Debts and liabilities: *(give details)*

(Hire purchase, leases, credit cards, credit contracts, personal loans, store accounts, guarantees being paid off, etc.)

Total Amount due	\$	To:
Total Amount due	\$	To:
Total Amount due	\$	To:

	TOTAL OTHER DEBTS:	\$ 0.00

6. Have any of the above debts been jointly incurred with any other person? Give details:

7. Give details of any other circumstances which affect financial position: *(e.g.: number and age of dependants, marital status and health etc.)*

Dated:

.....

Judgment Debtor

WARNING

AN INSTALMENT ORDER THAT IS MADE AS A RESULT OF A FALSE STATEMENT MAY BE VARIED OR CANCELLED.

Appendix XVII: Letter to Insurer/Debt Collector seeking a waiver of debt

[DATE]

[INSURER/DEBT COLLECTOR/SOLICITOR]

[INSURER'S ADDRESS]

'without prejudice'

Dear Sir/Madam,

[RE: INSURER AND CLIENT NAME] [YOUR REFERENCE: NUMBER]

[DELETE IF NOT APPLICABLE] I refer to your letter of **[DATE]** seeking damages for a motor vehicle accident which occurred on **[DATE]** **OR** I refer to judgment obtained against me on **[DATE]** **OR** I refer to your 5A Complaint that was served on **[DATE]**. I confirm that you have not obtained judgment.

I accept liability for the accident and further accept your claim for damages of **[\$[AMOUNT]]**.

I advise that I am currently in receipt of **[TYPE OF BENEFIT]** from Centrelink and enclose a copy of my health care/pension card by way of proof. I also enclose a copy of my bank statement, Centrelink Income Statement and financial profile prepared by a financial counsellor.

I advise that my income is protected by Section 12 of the Judgment Debt Recovery Act 1984. I also advise that my assets will not be subject to seizure by the Sheriff as they are valued at less than \$6,000.00

I am considered to be judgment proof, that is my income and assets are protected by the provisions of the Judgment Debt Recover Act 1984. I advise that due to financial hardship I am unable to pay or even contribute towards the cost of this debt.

In addition, I have significant social problems which have impacted on my life and are likely to have a serious long term effect on my financial position for the foreseeable future. Briefly, the circumstances are: (add in basic facts about health, homelessness etc based on client instructions. Do not provide or offer to provide supporting evidence from doctors, psychiatrist, etc.)

I submit that it is in the interests of the insurer to minimise the expenses and losses associated with this debt. I also refer to the General Insurance Code of Practice 2014 and note that I fall within the terms of Clause 8 of the Code which deals with financial hardship.

[DELETE IF NOT APPLICABLE] I request that you give consideration to a waiver of this debt based on my financial circumstances **OR** I kindly request that you give consideration to a waiver of this debt based on my financial circumstances and further request that judgement be set aside via consent orders **OR** I request that you give consideration to a waiver of this debt based on my financial circumstances and hold in abeyance any further legal action, including obtaining judgment, whilst my request for a waiver is being considered.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

How to Resolve Your Client's 3rd Party Insurance Debt

Letter One Alternative - Financial Hardship Waiver

Insurer/debt collector/solicitor

Insurer's Name

Insurer's Address

Dear Sir/Madam,

Re: Insurer and (client name)

Your reference: (number)

We refer to your letter of the (date) to our client seeking damages for a motor vehicle accident which occurred on the (date).

Our client instructs us that he/she accepts liability for the accident and further accepts your claim for damages of \$(amount). We note that our client is not liable for costs in the absence of legal proceedings.

As you may be aware, our Centre assists many clients who are 'judgment proof'; whose sole source of income is from Centrelink, which is protected by section 12 of the Judgment Debt Recovery Act 1984 and who owns only normal household goods and does not own any assets valued at more than \$7,500. Our client is not a typical 'judgment proof' client as he/she is working; earning an income from paid employment. Their income is barely sufficient to cover his/her normal living expenses. Your client thus has a number of options to enforce the debt against our client, the most obvious being an instalment order, or an application for an attachment of earnings ('garnishee order') against our client's wages.

We submit that either of those options will end up being unsatisfactory for both our client and yours

[presuming that debt collector is acting for insurer].

We do not have specific instructions at present, but for argument's sake, if the client was to pay \$100 per month, with the total debt being [\$amount eg. \$10,000], it will take around [eg. For \$10,000 at \$100/month= 100 months,, which is almost nine (9) years to pay off.

We do not believe that it is in the interests of either party to establish a long-term instalment plan. The costs to your client of administering an instalment plan would arguably outweigh the value of the repayment of the debt itself.

With regard to a garnishee order, we stress that whilst our client is working, s/he is working part-time for a private company; not in the public service sector. Further s/he is working in a position that requires minimal skill and as such s/he is easily replaceable. S/he thus has no job security.

Alternatively, of course your client may chose to sit on the debt until such a time as our client is in a better financial position. However, we must point out we have no evidence to suggest that our client will ever obtain employment above that of the low-skill, low-income level. Our client was born in [where] and arrived in Australia in [when]. [insert residency status] He/she does not speak, read or write English [delete is not applicable] [did he/she complete schooling in Aus or elsewhere, what level?] [what employment did he/she have before coming to Aus; if any?]

Further, we submit that obtaining judgment or initiating legal action against our client poses significant costs to your client which as above, may never be recovered.

In addition, our client has significant social problems which have impacted on his/her life and are likely to have a serious long term effect on their financial position for the foreseeable future. Briefly, the circumstances are: (add in basic facts about health, homelessness etc based on client instructions. Do not provide or offer to provide supporting evidence from doctors, psychiatrist, ett.)

We submit that it is in the interests of the insurer to minimise the expenses and losses associated with this debt. We refer to the General Insurance Code of Practice and note that our client falls within the terms of Clause 8.6 and 8.8 of the Code which deal with financial hardship.

We request that you give consideration to a waiver of this debt based on the financial circumstances of our client.

We look forward to your response.

Appendix XVIII: Example of Financial Profile prepared by Martin Stevens Financial counsellor

Commitments (Instructions)	X 52	X 26	X 12	X 4	X 2	X 1	Total for	26	\$ in	Days in	Loan
	Weekly	F/nightly	Monthly	Qtrly	Half Yly	Yearly	Year	Fortnight	Arrears	Arrears	Balance
Rent			1000				12000	462			
Council rates											
House& Conts insur											
Councile services											
Gas			80				960	37			
Electricity			90				1080	42			
Water			40				480	18			
Telephone			50				600	23			
Internet			50				600	23			
Mobile Phone			30				360	14			
Travel exp			60				720	28			
Pay TV											
Car Registration											
Car Insurance											
Other & Licences											
Groceries & food			400				4800	185			
Educ & sch fees											
School uniforms											
School books											
Other sch exp./lunch											
Doctors			60				720	28			
Dentist											
Chemist/Script			50				600	23			

personal spending			50				600	23			
-------------------	--	--	----	--	--	--	-----	----	--	--	--

Life ins/Funeral plan											
Kids Pocket money											
Clothing			50				600	23			
Hair cuts				30			120	5			
Entertainment/sport											
Paper/magazines											
Holidays											
Fine											
Interstate travel											
Child care											
vet											
Pet costs											
Creditors:											
Ignite Mastercard											22161
CBA mastercard											4070
GE Money Mastercard											5204.8
Am. Express											6196.8
Child Support											
Total Commitment			2010	30			24240	932			37632
Income		845					21970	845		150%=	32955
Deficit		-87					-2270	-87			

Appendix XIX: Letter to Insurer requesting that the matter be referred to FOS

[REF]

[DATE]

[INSURER]

[INSURER'S ADDRESS]

Dear Sir/Madam,

[RE: INSURER AND CLIENT NAME]

[YOUR REFERENCE: NUMBER]

I refer to the above and to previous correspondences.

[DELETE IF NOT APPLICABLE]

I believe that your rejection of my offer/failure to respond to correspondence represents a failure to reach agreement for the payment of the debt to your company within the terms of Clause 8.8 of the Insurance Code Practice 2014.

I request that you refer this matter to your IDR Department or your insured's IDR Department. Please note that if I do not hear from you I will complain to the Financial Ombudsman Service.

I look forward to your prompt response but no later than 45 days from the date of receipt of this letter.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XX: Letter to the Financial Ombudsman Service

MY REF:**DATE**

Financial Ombudsman Service
GPO Box 3
MELBOURNE VIC 3001

Dear Sir/Madam,

Re: General Insurance Code of Practice – IDR Timelines

I wish to lodge a complaint that the insurer in this matter **[DELETE IF NOT APPLICABLE]** has failed to comply with Clause 10 and failed to refer my complaint to IDR as required by the Code OR has failed to resolve my complaint to my satisfaction within 45 days.

I request that you investigate the alleged breach or breaches of the Code by the insurer in this matter.

Please find attached a copy of my letter dated **[DATE OF LETTER]** which I have sent to the insurer, requesting that my dispute be referred to IDR.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXI: Letter to Insurance Company advising that pursuing matter is futile.

[REF]

[DATE]

[INSURER]

[INSURER'S ADDRESS]

Dear Sir/Madam,

[RE: INSURER AND CLIENT NAME]

[YOUR REFERENCE: NUMBER]

I refer to previous correspondences dated, **[INSERT DATES]**

I confirm that I am in receipt of a social security benefit which is my sole source of income. I confirm I have no assets other than ordinary household items.

According to law and the debt collection guidelines of ASIC/ACCC, you may only communicate with a debtor when it is necessary to do so and for a reasonable purpose.

As I have advised you I do not have capacity to repay the alleged debt. I require that you cease all contact with me as I deem it to be harassment.

Should you contact me again about this debt, I will instruct my lawyers to issue proceedings against you without further notice and furthermore lodge a complaint with FOS. I shall also inform the ACCC who may impose a civil penalty on a corporation for such behaviour.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXII: Letter to the Insurance Company

[DATE]

**[INSURANCE COMPANY]
[ADDRESS]**

Dear Sir/Madam,

RE: Insurance Type:
Policy Number:

I refer to the above and confirm that I lodged a claim on **[DATE CLAIM WAS LODGED]**.

[DELETE IF NOT APPLICABLE]

I have not heard from you since lodgement of my claim. I believe you have all the necessary information to assess my claim and have not requested any further documents or advised of any investigation.

I confirm that section 7.9. of the General Insurance Code of Practice 2014 requires you to accept or deny my claim within 10 business days.

I kindly request you to refer this matter to IDR.

OR

I confirm that you have denied my claim. I object to your decision to deny my claim because **[PROVIDE REASONS]** and I kindly request that this matter be referred to IDR

I look forward to your prompt written response.

Yours faithfully,

**[CLIENT'S NAME]
[CLIENT'S CONTACT DETAILS]**

Appendix XXIII: Letter to the Financial Ombudsman Service

[MY REF]

[DATE]

**Financial Ombudsman Service
GPO Box 3
MELBOURNE VIC 3001**

Dear Sir/Madam,

Re: Complaint.

I wish to lodge a complaint for investigation in regards to **[NAME OF INSURANCE COMPANY]**.

The following are details of my dispute.

I made a claim with **[NAME OF INSURANCE COMPANY]** on **[DATE OF CLAIM]**.

I sent a letter to **[INSURANCE COMPANY]** on **[DATE OF LETTER]** referring this matter to IDR. Please find enclosed the said letter for your perusal.

[DELETE IF NOT APPLICABLE]

To date, I have not received a response from **[INSURANCE COMPANY]** and do not believe I will. It has been over 45 days since I requested that the matter be referred to IDR. I am unaware if this matter has been referred to IDR.

OR

[INSURANCE COMPANY] rejected my claim on **[DATE]** and referred me to its internal dispute resolution department. It has been over 45 days since the matter was referred to IDR and I still do not have a final decision.

OR

[INSURANCE COMPANY] rejected my claim at IDR on **[DATE]**. I objected to their decision and now wish to have this matter reviewed by the Ombudsman on the following basis:

[ADVISE WHY THE YOU ARE OBJECTING]

I look forward to your prompt response.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXIV: Letter to Insurance Company of other party.

[DATE]

[NAME OF INSURANCE COMPANY]
[ADDRESS FOR INSURANCE COMPANY]

Dear Sir/Madam,

“Without Prejudice”

Re: Claim Number:
 Motor Vehicle Accident on **[DATE OF MOTOR VEHICLE ACCIDENT]**

I refer to your letter of **[DATE OF LETTER]**.

I write in relation to a motor vehicle accident which occurred whilst I was working as a taxi driver on **[DATE OF MOTOR VEHICLE ACCIDENT]** at **[LOCATION OF MOTOR VEHICLE ACCIDENT]**.

I was involved in a collision with a vehicle insured by **[NAME OF INSURANCE COMPANY]**. The vehicle driven by myself was owned by **[NAME OF TAXI OWNER]**, and leased to **[NAME OF LEASEE – IF APPLICABLE]**. Following the accident, I paid the sum of \$ **[AMOUNT PAID]** for the excess on an insurance policy to the **[NAME AND ADDRESS OF TAXI CLUB OR NAME OF TAXI OWNER]**. Please find attached receipt of payment of the excess as proof.

It was my belief that the payment of the excess would be full and final settlement of my third party liability in this matter. I entertained the reasonable belief that after payment of the insurance excess, any ensuing liability would rest with the owner of the taxi **[NAME OF TAXI OWNER]**, who is both the principal in an agent/principal relationship and vicariously liable as an employer for my actions within the scope of my employment. Up until the date of the accident, I had also been contributing **[MONTHLY/FORTNIGHTLY]** monetary amounts to **[NAME OF TAXI CLUB]**.

I also note Clause 6.6 of the Model Driver Agreement available on the Taxi Services Commission website states that the owner of the taxi must indemnify the driver in these circumstances.

[INSERT DETAILS OF THE CLIENT] e.g. *(I advise that I am a 27 year old full-time international student. I work approximately 20 hours each week to cover living expenses only. I send money overseas to my family and I am struggling to make ends meet. Please find enclosed my financial profile prepared by a financial counsellor and bank statement for your consideration.).*

I submit that it is in the interests of the insurer to minimise the expenses and losses associated with this debt. I also refer to the General Insurance Code of Practice 2014 and note that I fall within the terms of clause 8 of the Code which deals with financial hardship.

I request that you waive the debt which I owe. I maintain that I clearly demonstrated an intention to insure and meet my liabilities to third party drivers. I submit that liability should rest solely with **[NAME OF TAXI OWNER]** as the owner of the taxi, and the **[NAME OF TAXI CLUB]**.

Yours faithfully.

[NAME OF CLIENT]
[ADDRESS OF CLIENT]

Appendix XXV: Letter to the Victorian Taxi Directorate

MY REF:

[DATE]

Assistant Manager
Taxi Services Commission
GPO Box 1716 Melbourne VIC 3001

Dear Sir/Madam,

Re: FOI request re vehicle collision on (day month year), Taxi M**[NUMBER]**

I advise that I was involved in a motor vehicle accident, whilst driving a taxi, on or about **[DATE]**. The vehicle I was driving had a taxi registration number **M[NUMBER]**.

I kindly request you to provide me with the name and address of the owner of the taxi plate at the time of the accident.

I need to provide this information to the insurance company of the person I had the accident with.

[WHERE APPLICABLE] I request that the application fee be waived. Please find enclosed my Health Care Card/Pension Card in support.

OR

Please find attached a cheque for my application fee of \$**[INSERT]** made payable to the Department of Transport.

I look forward to your prompt response.

Yours faithfully,

[NAME OF CLIENT]
[ADDRESS OF CLIENT]

Appendix XXVI: Letter to Insurance Company of other party

Your ref:

[DATE]

[NAME OF INSURANCE COMPANY]

[ADDRESS FOR INSURANCE COMPANY]

“Without Prejudice”

Dear Sir/Madam,

Re: Claim Number:

Motor Vehicle Accident on **[DATE OF MOTOR VEHICLE ACCIDENT]**

I refer to your letter of **[DATE OF LETTER]**.

I write in relation to a motor vehicle accident which occurred on **[DATE OF MOTOR VEHICLE ACCIDENT]** at **[LOCATION OF MOTOR VEHICLE ACCIDENT]**.

I was involved in a collision with a vehicle insured by **[NAME OF INSURANCE COMPANY]**. Following the accident, I paid the sum of \$ **[AMOUNT PAID]** for the excess on an insurance policy to the **[NAME AND ADDRESS OF TAXI CLUB]**. Please find attached copy of said receipt.

It was my belief that the payment of the excess would be full and final settlement of my third party liability in this matter. I entertained the reasonable belief that after payment of the insurance excess, any ensuing liability would rest with **[NAME OF TAXI CLUB]**.

[INSERT DETAILS OF THE CLIENT] e.g. *(I advise that I am a 27 year old full-time international student. I work approximately 20 hours each week to cover living expenses only. I send money overseas to my family and I am struggling to make ends meet. I have no significant assets and will not be able to make any significant payment towards this outstanding debt. The taxi I own is subject to finance and the taxi licence is leased by me. Please find enclosed copy of my financial profile prepared by a financial counsellor and bank statement for your consideration).*

I submit that it is in the interests of the insurer to minimise the expenses and losses associated with this debt. I also refer to the General Insurance Code of Practice 2014 and note that I fall within the terms of clause 8 of the Code which deals with financial hardship.

I request that you waive the debt. I maintain that I clearly demonstrated an intention to insure and meet my liabilities to third party drivers. I submit that liability should rest solely with the **[NAME OF TAXI CLUB]**.

I look forward to your prompt written response.

Yours faithfully,

[NAME OF CLIENT]

[ADDRESS OF CLIENT]

Appendix XXVII: Letter to Insurance Company requesting rectification

[DATE]

[NAME OF INSURANCE COMPANY]

[ADDRESS OF INSURANCE COMPANY]

Dear Sir/Madam,

RE: Accident on [DATE]

Claim Number:

I refer to the above matter and confirm that, after I was involved in a motor vehicle accident, I had my vehicle repaired at a panel beater selected and directly authorised by you.

My vehicle has been unsatisfactorily repaired. Please find enclosed a report from an independent assessor to confirm same.

I request that you authorise the panel beater to undertake rectification work as recommended by the assessor within 14 days of this letter.

If you do not agree to undertake rectification work as recommended by the assessor please refer this matter to IDR.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

[DATE]

**Financial Ombudsman Service
GPO Box 3
MELBOURNE VIC 3001**

Dear Sir/Madam,

RE: Complaint

I wish to lodge a complaint for investigation against **[NAME OF INSURANCE COMPANY]**

The following are details of my dispute:

I was involved in a motor vehicle accident on **[DATE OF ACCIDENT]** and **[NAME OF INSURANCE COMPANY]** had my vehicle repaired at a panel beater selected and directly authorised by them. The vehicle has been unsatisfactory repaired.

I sent a letter to **[NAME OF INSURANCE COMPANY]** on **[DATE OF LETTER]** requesting that they have my vehicle repaired in accordance with an assessor's report which I have provided them. I confirm that clause 7.20 of the General Insurance Code of Practice 2014 requires the insurer to accept responsibility for the quality of workmanship and materials.

[DELETE IF NOT APPLICABLE]

To date I have not received a response from **[NAME OF INSURANCE COMPANY]** and therefore do not know if this matter has been referred to IDR.

OR

After this matter was referred to IDR the insurer refused to authorise rectification repairs to my vehicle as per the recommendations made by the independent assessor.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXIX: Letter to insurance company

[DATE]

[NAME OF INSURANCE COMPANY]

[ADDRESS OF INSURANCE COMPANY]

Dear Sir/Madam,

RE: Accident on [DATE]

Claim Number:

I refer to the above matter and advise that, after I was involved in a motor vehicle accident, I had my vehicle assessed as a total loss. My vehicle was valued at **[VALUE OF VEHICLE]**.

I believe that my vehicle has been undervalued as evidence by the enclosed assessor's report dated **[DATE OF REPORT]**.

I kindly request you to re-assess the value of my motor vehicle.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXX: Letter to FOS

[DATE]

**Financial Ombudsman Service
GPO Box 3
MELBOURNE VIC 3001**

Dear Sir/Madam,

RE: Complaint

I wish to lodge a complaint for investigation against **[NAME OF INSURANCE COMPANY or NAME OF RECOVERY AGENT ACTING ON BEHALF OF NAME INSURANCE COMPANY]** for potential breaches of the General Insurance Code of Practice and the ACCC and ASIC Debt collection guideline: for collectors and creditors.

The following are details of the breach(s):

I was involved in a motor vehicle accident on **[DATE OF ACCIDENT]** at **[LOCATION]** with the insured of **[NAME OF INSURANCE COMPANY]**. The motor vehicle accident was my fault. I admitted to liability and accepted the claim of damages for **[\$AMOUNT]**.

[NAME OF INSURANCE COMPANY OR NAME OF RECVOERY AGENT] has **[WRITE HOW THE BREACH HAS OCCURRED ie. unnecessarily contacted myself 5 times a week for 3 months. I have advised them not to call as I am 89 years of age and have a heart condition. There frequent calls have exacerbated my heart condition]** I believe they have breached the ACCC and ASIC Debt collection guideline: for collectors and creditors and clause 8.12of the General Insurance Code of Practice 2014.

I kindly request you to investigate the matter at hand.

I look forward to receiving your response.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXXI: Suncorp and the Footscray Community Legal Centre joint Submission to the Victorian Taxi Industry Inquiry.



Suncorp and the Footscray Community Legal Centre

Joint Submission to the Victorian Taxi Industry Inquiry

2011

Victorian Taxi Industry Inquiry 2011

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Victorian Taxi Industry Inquiry 2011

The Suncorp Group (**Suncorp**) is pleased to respond to the Victorian Government's inquiry into the Taxi Industry. Suncorp is submitting with the support of the Footscray Community Legal Centre as a joint submission in relation to the Taxi Industry, specifically in regards to insurance and lack of insurance for taxi drivers.

Suncorp operates as a general insurer throughout Australia. In Victoria, Suncorp issues motor insurance under the following brands, AAMI, Apia, GIO, Shannons, Vero, Just Car, and Bingle.

All questions or comments in the first instance should be directed to:

Annabelle Butler
Executive Manager Public Policy and Stakeholder Management
Suncorp General Insurance
Phone: 03 86819428, Mobile: 0425294903
Email: annabelle.butler@suncorp.com.au

Or

Dennis Nelthorpe
Solicitor
Federation of Community Legal Centres Victoria
Suite 11, Level I
54 Victoria Street
CARLTONSOUTH VIC 3053
Phone: 0414545290
Email: denis.nelthorpe@iinet.net.au

Victorian Taxi Industry Inquiry 2011

Executive Summary

As a motor insurer Suncorp often has cause to recover from Taxi Drivers (or rather the Taxi Clubs that claim to indemnify the drivers). This process is difficult, unregulated and leaves the taxi driver open for liability that they assumed had been insured under their indemnity policy that they pay for from the Clubs.

From a community legal centre perspective the same driver will present themselves at a Taxi Driver Legal Clinic (at the Footscray Community Legal Centre) with concerns regarding recovery action that is being taken against them following on from the failure of the Taxi Club to provide third party property motor insurance as part of their indemnity.

The following submission examines the issues surrounding insurance for taxi drivers and other practices that arise in relation to motor vehicle accidents of this nature. It makes various recommendations which are listed below.

In writing this submission Suncorp supports the Federation of Community Legal Centres Victoria's submission to the Inquiry, which in part looks at similar issues.

Recommendations

- The Inquiry examines the issues relating to insurance and lack of insurance for Victorian Taxi Drivers in detail.
- The Inquiry consider making third party property insurance, held by the owner of the taxi compulsory in Victoria, as it is in NSW.
- Due to the difficulties of identifying who a taxi driver's employer is, when trying to recover costs after an accident (currently Suncorp has to apply for a court order for the Victorian Taxi Directorate [VTD] to release this information) it is recommended that an administrative process be introduced whereby the application could be made directly to the VTD to identify the name and address of the operator of the taxi involved in the collision.
- Drivers should be required to be issued with a licence or permit to drive taxis which include an accurate and up to date record of their name, address, date of birth and photo identity. Additionally a similar permit should be required to be carried within the taxi identifying the name and address of the particular operator of that taxi not just the driver.
- There should be a standard form taxi driver agreement which clearly identifies the name and address of the driver, the name and address of the employer and included in the agreement that the operator would be liable for the actions of the driver. There would be no issue then regarding vicarious liability of the operator of the taxi, as there is now.

Issues

Lack of Third Party Property Insurance and the Taxi Clubs

For both insurers and legal aid centres, the lack of compulsory third party property insurance for Victorian Taxi drivers has long been of great concern.

From an insurer's perspective, this lack of compulsory third party property insurance means that when a taxi driver hits an insured vehicle and is at fault it is very difficult to recover for the cost of the damage. Although action is generally against the Taxi Club (as the indemnifier) it is very difficult to recover from these clubs.

This is a result of several factors.

- Victorian taxi operators are permitted to self-insure against property damage. They generally do this by forming "taxi clubs". Members of taxi clubs make regular financial contributions and in return receive limited cover, which is granted on a discretionary basis. When an accident occurs the clubs generally pay for repairs to damaged taxis but often will not cover the third party property claim (if the taxi driver is at fault). Unfortunately this leaves the taxi drivers exposed to the personal liability for the third party claims.
- However from a Taxi driver's perspective, it appears that the Taxi Clubs represent to the taxi drivers that it is providing third party property insurance when in fact it is not. Often when an accident occurs the taxi driver will pay an excess to the club (often several thousand dollars), however this may be used to discharge repair costs to the taxi but it does not cover third party claims for the taxi driver. This cover appears only to be available to the taxi owner/operator who holds the membership with the Taxi Club, not the driver, despite clear vicarious liability issues.
- Unfortunately the majority of taxi clubs are unregulated. The Federation of Community Legal Centres contacted ASIC about this issue (16th August 2010) and were informed that taxi clubs (who are incorporated in accordance with the Associations Incorporations Act 1981 (Vic) – Section 53) do not require an Australian Financial Services Licence. This is because this Section of the Act along with Section 5F of the Corporations Act 2001 operate to exempt incorporated associations from the Corporations law (including both the Corporations Act and the ASIC 2001). Therefore ASIC cannot regulate these associations or the products that they deal in.
- Additionally often the Taxi Clubs are not individually liable and therefore there is no means of recovering from them. As their operations are not governed by any particular law as outlined above, they can and often do deny cover. It is also common for such clubs to take responsibility for a number of debts but then wind up their operations or go into liquidation claiming no funds or assets. The operators then set up as another

Victorian Taxi Industry Inquiry 2011

company and resume their operations under a new corporate identity. Due to the lack of regulation there is nothing to prevent the same Directors from conducting themselves in such a manner.

The unfortunate result of the above, is that the at fault taxi driver has no third party property insurance.

From an insurer's view this means that it incurs the liability for the accident despite their own insured not being at fault.

Suncorp has an internal policy (which was developed with Mr Dennis Nelthorpe as part of his Bulk Debt Negotiations and ensures the Suncorp complies with financial hardship provisions in the General Insurance Code of Practice) and would not normally pursue the driver. Principally the driver rarely has any assets or income that would allow this to ethically occur.

Although Suncorp does try to recover from the taxi clubs, this is a difficult exercise for the following reasons.

Ongoing Recovery Issues

1. Correctly Identifying the Taxi Operator

Although details are exchanged with the taxi driver following the collision, information regarding the actual operator of the taxi (i.e. the driver's employer) are either not provided or are incorrect. Where proceedings are issued, Suncorp needs to identify the operator of the taxi and name that person or company as a co Defendant. The Victorian Taxi Directorate [VTD] is required to keep a record of such taxi operators but will not release that information unless compelled to do so by Court Order. Therefore Suncorp (via its solicitors) are forced to issue an Application for pre-litigation discovery to obtain this information. This is an expensive process and requires Suncorp to satisfy the Court that all other avenues of enquiry have been exhausted. There is no guarantee that an order to release this information will be made against the VTD. It would be a lot simpler and more cost effective if an application for the identity of the operator of the taxi were made directly to the VTD.

2. Identity of the taxi driver

It is common for a taxi driver involved in an accident to provide a false name and address, or give the name and address of the person who should have been driving the taxi (drivers often drive under someone else's name). Therefore it is almost impossible to recover. To help prevent this, it should be required that drivers should hold a licence or permit to drive taxis that includes a record of their name, address, date of birth and photo identity (This may already be the law – some drivers just ignore it!). Additionally a similar permit should be required to be carried in the taxi identifying the name and address of the actual operator of the taxi, not just the driver. This concept is strongly supported by the Footscray Community Legal Centre.

3. The taxi operator denying liability

Suncorp assumes that the taxi driver is acting as an employee or agent of the taxi operator and therefore should be vicariously liable for the negligence of the driver. This is because of the financial and operational relationship between the taxi driver and the operator of the taxi. However the taxi operators (if Suncorp or in fact legal aid are able to work out who the operator is), will usually deny liability. The operator will maintain that the driver is a subcontractor, or has leased the taxi or is operating it on his or her own behalf or by asserting a bailment agreement whereby the operator claims to have no liability for the actions of the driver. These ploys are many and varied, however, the Courts will only consider them in the context of evidence regarding the actual working relationship between the driver and the taxi operator.

Invariably, the taxi operator retains control of the taxi, when and in what areas the driver is to operate and has strict requirements regarding the handling of monies. All these indicate an employer/employee relationship. This issue could be greatly simplified if there was a standard form taxi driver agreement which clearly identified the name and address of the driver, the name and address of the employer and included an agreement that the operator would be liable for the actions of the driver. This would require an end to bailment arrangements which Footscray Community Legal Centre strongly supports.

4. Accurate record keeping by the VTD

The Taxi Directorate is required to keep a record of the licence holder of a particular taxi plate. Often, the licence holder does not actually operate the taxi and assigns the licence to another person or entity. In that event, the name and address of the assignor ought to be recorded and a copy of the formal assignment document kept by the VTD.

However, it is Suncorp's experience that these records maybe not be accurate or up to date. Suncorp has encountered incidents where the proceedings have been issued against the named assignor but that person or entity claims to no longer have anything to do with the taxi or alleges that there has been a further assignment to another person or entity which is not recorded with the VTD.

The VTD do not guarantee the accuracy of their records and do not take responsibility for such inaccuracies or the information being out of date.

Additionally there appears to be no regulatory oversight by the VTD to ensure that assignors notify them of a further assignment of a licence.

This is a particular problem when dealing with the less reputable taxi operators who, when issued on, produce documents purporting to verify a further assignment and a different taxi operator.

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Costs

For Suncorp, this is a significant cost problem. Suncorp incurs additional costs to identify the owner of the taxi, costs to recover the debt, write off costs and costs to defend often exaggerated claims made by owners against Suncorp when our customer is the at fault driver. Suncorp estimates that it is currently writing off over \$1.2 million dollars in Victoria per annum.

Case Study

Please find attached (Appendix 1) from the Taxi Driver Legal Clinic. It demonstrates the ongoing games that are played by Taxi Clubs in relation to providing cover for an at fault accident by a taxi driver, including unsigned letters, unsigned cheques, changes regarding acceptance of liability etc.

Victorian Taxi Industry Inquiry 2011

Appendix 1

TAXI DRIVER LEGAL CLINIC

Case note

Client name: [REDACTED]
 File number: 24294
 CLSIS: 16409
 Author: [REDACTED]

Our client is a 30 year old Indian man. He arrived in Australia in 2007. He is married with dependent children.

Our client had a motor vehicle accident while driving a taxi in Gore Street, Fitzroy, on 17 May 2008. He instructs that he paid an 'excess' of \$1,500 to the Melbourne Taxi Club (MTC). In June 2008, he received a letter of demand from Shannons on behalf of the other driver, [REDACTED].

In November 2008, [REDACTED], Claims Consultant for the MTC, wrote to Shannons accepting liability and agreeing to pay \$4960.73 in two installments. Our client provided a copy of this letter. The letter was unsigned and was not on MTC letterhead.

In a letter dated 22 October 2009, Ligeti Partners wrote to our client advising that judgment had been entered against him for \$5,741.94. Our client instructs that he attended a summons for oral examination and told the court that he was a full time student, with no significant assets or permanent income.

On 26 October 2009, [REDACTED] wrote to Ligetis on behalf of MTC, offering to pay the judgment debt with an initial payment of \$1,000 and further instalments of \$500. The letter stated, 'I know that we did not abide by the terms of the first arrangement that was in place and that was due to an increase of claims from quite a few years ago having to be settled.'

On 27 April 2010, MTC sent a further letter to Ligetis, this time on letterhead, accompanied by an unsigned cheque for \$5,741.94.

On 15 July 2010, MTC wrote to Ligetis again, regarding a summons to attend an oral examination in relation to the outstanding debt. MTC proposed to pay the debt in monthly instalments of \$500.00.

Our client produced a further letter from MTC, dated 7 September 2010, addressed 'to whom it may concern.' It confirmed that our client and [REDACTED] 'paid excess' for the claim arising from the accident. The letter states, '[t]his matter is currently being handled by Melbourne Taxi Club Inc and we are currently trying to negotiate a payment arrangement.'

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We contacted Ligetis, who advised that they had closed their file and handed the matter back to Shannons. On 23 March 2011, we wrote to Shannons' internal dispute resolution service, the AAMI Consumer Appeals Service (CAS). We explained that our client 'entertained the reasonable belief that after paying the sum of \$1,500.00 to cover the insurance excess, any ensuing liability would rest with the Melbourne Taxi Club.'

We wrote that 'our client clearly demonstrated an intention to insure and meet his liabilities to third party drivers.' We submitted that liability for the outstanding amount should rest with the taxi owner and the MTC.

On 15 April 2011, the CAS wrote to us advising that Shannons would no longer pursue recovery of the debt. The CAS confirmed that our client 'should have been indemnified by Melbourne Taxi Club for this accident.'

On 5 May we provided Ligetis with a copy of the letter from CAS, requesting their assistance in getting the judgment debt set aside.

16 May 2011

Appendix XXXII: Letter to Insurance company requesting 'each bear own' settlement

MY REF:

[DATE]

'WITHOUT PREJUDICE'

**[INSURER/DEBT COLLECTOR/ SOLICITOR]
[ADDRESS]**

Dear Sir/Madam,

[RE: INSURER AND CLIENT NAME][INSURER REFERENCE NUMBER]

I refer to your letter dated **[DATE OF LETTER]** seeking damages for a motor vehicle accident which occurred on **[DATE]**.

I believe this matter should be resolved on an 'each bear own' basis as both parties are at fault.

I look forward to receiving your response.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXXIII: Referral to IDR where no response from Insurance company

[REF]

[DATE]

[INSURER]

[INSURER'S ADDRESS]

Dear Sir/Madam,

[RE: INSURER AND CLIENT NAME]

[YOUR REFERENCE: NUMBER]

I refer to the above and to previous correspondences.

[DELETE IF NOT APPLICABLE]

I believe that your rejection of my offer/failure to respond to correspondence represents a failure to reach agreement for the payment of the debt to your company within the terms of Clause 10 of the Insurance Code Practice 2014

I request that you refer this matter to your IDR Department or your insured's IDR Department. Please note that if I do not hear from you I will complain to the Financial Ombudsman Service.

I look forward to your prompt response but no later than 45 days from the date of receipt of this letter.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

Appendix XXXIV: Letter to Financial Services Ombudsman (FOS)

[MY REF]

[DATE]

Financial Ombudsman Service
GPO Box 3
MELBOURNE VIC 3001

Dear Sir/Madam,

Re: General Insurance Code of Practice – IDR Timelines

[NAME OF INSURER]

I wish to lodge a complaint that the insurer in this matter **[DELETE IF NOT APPLICABLE]** has failed to refer my complaint to IDR as required by the Code OR has failed to resolve my complaint to my satisfaction within 45 days.

I request that you investigate the alleged breach or breaches of the Code by the insurer in this matter.

Please find attached copies of all letters which I have sent to **[NAME OF INSURER]**.

Yours faithfully,

[NAME AND ADDRESS OF CLIENT]

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