

Managing Risk in Litigation

Generally indorsed writs, investigating causes of action and diarising critical dates



Setting the scene

Topics for discussion

- Generally indorsed writs
- *Crowe v Lo & Anor* [2026] VCC 1157
- Investigating causes of action: risks, process tips, and techniques
- Diarising critical dates, things to consider from a risk management perspective



Generally indorsed writs

Supreme Court (General Civil Procedure) Rules 2025 (Vic)

5.04 Indorsement of claim on writ

1. A writ shall contain an indorsement of claim.
2. The indorsement of claim shall be—
 - a. a statement of claim; or
 - b. a statement sufficient to give with reasonable particularity notice of the nature of the claim and the cause thereof and of the relief or remedy sought in the proceeding.
3. An indorsement of claim on a writ shall constitute a statement of claim if, but only if, it is headed "Statement of Claim".

Generally indorsed writs (cont)

When use them? Why? How?

Renowden v McMullin (1970) 123 CLR 595 at 595 [3]:

... The indorsement marks out the perimeter or range of the area within which the plaintiff may express his claims in a formal fashion in his statement of claim, whether as originally filed or as sought to be amended. The statement of claim is the specific way of stating the claim endorsed on the writ.

Compare

Insufficient particularity:

The Plaintiff seeks damages arising from the Defendant's conduct on 3 March 2025, when he failed to provide the requested services.

Sufficient particularity:

The Plaintiff's claim is for damages for breach of contract arising from the Defendant's failure to perform his obligations under an agreement dated 1 March 2025, together with interest and costs.

Despite that he was required to do so under that agreement, on 30 March 2025 the Defendant failed to appear and perform at a children's birthday party, causing the Plaintiff's children extreme disappointment.

Examples of GIW's

- *Harris v Financial Services Partners Pty Ltd* [2024] VSC 16 (Irving AsJ), [13].
- *Transfield Philippines Inc v Pacific Hydro Ltd* [2006] VSC 175 (Hollingworth J), [20]-[21] and [28].
- *Gatto Corporate Solutions Pty Ltd v Moutney* [2016] VSC 752 (Daly AsJ), [1].
- *Jabiru Satellite Limited v Societe Generale* [2025] VSC 580 (Delaney J), [20]

(Note: this GIW properly set out the 'perimeter' of **SOME** but not *all* of the eventual claims sought to be made. A good example of *Renowden* in action).



Generally indorsed writs are a great tool when used properly – but they present a practice risk for the same reasons as they are useful:

You deploy them when you haven't yet precisely identified all the particulars of the claim you will bring!



Practice Points

A generally indorsed writ can give you the flexibility to plead a cause of action at a reasonable level of generality, but it does not relieve you of your obligations to:

1. Identify the essential nature of all the claims to be brought (i.e. the causes of action);
2. Ensure that there is a proper basis for the allegations; and
3. Ensure that the proceeding is capable of being commenced in the first place.

“Proper Basis” requirement

Civil Procedure Act 2010 (Vic)

18 Overarching obligation—requirement of proper basis

A person to whom the overarching obligations apply must not make any claim or make a response to any claim in a civil proceeding that—

- (a) is frivolous; or
- (b) is vexatious; or
- (c) is an abuse of process; or
- (d) does not, on the factual and legal material available to the person at the time of making the claim or responding to the claim, as the case requires, have a proper basis.

Proper basis requirement (cont)

○ *Elvin v Davey* [2022] VSC 214, [82] (Keogh J)

- (a) The overarching obligations prevail where there is an inconsistency between them and a legal practitioner's duty to a client. When determining whether an overarching obligation has been contravened it is not relevant to consider that a solicitor was following the client's instructions.
- (b) The time when it is necessary to assess whether there was a proper basis is when a claim is made in a proceeding, for instance by filing a pleading. The statutory obligation is not continuous or ongoing, and material which only becomes known at a later time is not relevant.
- (c) A person can discharge the overarching obligation by demonstrating a reasonable belief based on the available factual and legal material.

Crowe v Lo & Anor [2026] VCC 1157



Chronology

1. February 2019 – Injury
2. February 2022 – Generally indorsed writ (**GIR**)
3. March 2023 – Certificate of Assessment and ‘prescribed information’ served
4. Sept 2023 – Medical Panel finds ‘significant injury’ threshold met
5. Jan/Feb 2024 – Pay slips provided, Defendant points out the problem
6. June 2024 – Plaintiff files WorkCover claim
7. Aug 2024 – Time for service of GIR extended again
8. July 2025 – Serious Injury Certificate granted per WIRC Act
9. Nov 2025 – Plaintiff issues fresh proceedings

Bennett JR

[68] ... By extending the validity of the writ, the plaintiff's solicitors were keeping alive a proceeding that never should have been issued at a time when they knew or should have known the proceeding was a nullity.

[69] I am satisfied that the Plaintiff's solicitor's conduct in applying to extend the validity of the 2022 writ in August 2025, after there could be no doubt that the 2022 proceeding was *void ab initio*, was vexatious and amounted to an abuse of process. I am satisfied that this conduct contravened the Plaintiff's solicitor's overarching obligations to the Court.



Consequences in Crowe

[77] Pursuant to s 29(1)(c), it is in the interests of justice that the Plaintiff's solicitors pay the financial loss incurred by the first defendant arising from legal costs and disbursements incurred by it in relation to the following:

(a) ... *[lots of costs!]*

...

(k)



Crowe v Lo & Anor [2026] VCC 1157

Revisiting the practice pressure points:

- Obtaining instructions
- Issuing proceedings
- Extending the time for service
- An internal file handover between practitioners
- Your opponent pointing out a problem
- Advice from Counsel
- Attempting to fix the problem

**How could the issues
which arose be avoided
next time?**

Early investigation of causes of action:

1. **Facts:** what do you know? What don't you know? What is essential? How will you run missing facts to ground?
2. **Goals:** What does your client want to achieve?
3. **Urgency:** Subjective, and objective.
4. **Entitlement to sue / defend:** Standing, proper parties, authority.

Essential groundwork!

Mapping out possible causes of action

- What legal pathways am I considering?
- What are the elements I need to prove to make good the cause of action?
- Does the evidence support my case theory?
- Is this subject matter with which I am already familiar, or am I outside of my comfort zone?
- Am I in a position to give the client advice about the proposed course of action?
- Does this matter need advice from Counsel at an early stage?

Providing written advice as to prospects and costs

Providing written advice on prospects and costs at an early stage is an extremely helpful tool for:

1. Client management, and confirming instructions
2. Risk management, ensuring that you have a proper basis on the factual and legal material available at the time to make the relevant claims
3. Litigation strategy - developing a case theory, identifying strengths and weaknesses in your case

Diarising critical dates and events

- Paramount duty to the Court
- Don't just diarise external dates, diarise internal milestones as well
- Not just one practitioner's responsibility – team approach
- Manage your deadlines proactively with your clients and Counsel
- If slippage is occurring, deal with the problem early and proactively with the other side and the Court



Questions?