



Richmond and Bennison

VICTORIAN TRANSPORT ACCIDENT CLAIMS - A GUIDE TO YOUR ENTITLEMENTS

This guide includes the following:

- What is a transport accident?
- Who is the TAC?
- How do I make a claim?
- When will I know if my claim has been accepted?
- If my claim is accepted what benefits am I entitled to?
- What do I do if I am unhappy with a decision made by the TAC?
- What is a serious injury?
- What is negligence?
- Damages
- What if someone dies?
- How long do I have to sue?

What is a transport accident?

A transport accident is an incident directly caused by the driving of a motor car or motor vehicle, a bus, a railway train or a tram.

Who is the Transport Accident Commission (TAC)?

The TAC is a Victorian Government-owned organisation whose role is to pay for treatment and support services for people injured in transport accidents.

NO FAULT BENEFIT CLAIMS

All owners of registered cars pay insurance to cover people injured in transport accidents various benefits. These benefits are paid to any person injured in a transport accident irrespective of who caused the accident unless the accident occurred in the course of employment in which case no fault benefits are paid by WorkCover.

How do I make a claim?

Before any claim is made the accident must have been reported to the police, or if an accident involving a tram or train, to the Public Transport Corporation. A claim form, which can be obtained from the TAC, must be completed and submitted to the TAC. The claim form asks for many details about your life and history. You can ring the TAC and a member of their staff can fill in the form over the phone and send it to you for signing. You should check the form carefully to ensure the details are correct.

In most cases a claim for compensation must be submitted within 12 months of the date of the accident. If no injury has manifested itself at the time of the transport accident, a claim can be made within 12 months after any injury first manifests itself. If you were injured before your 18th birthday you have 12 months from your 18th birthday to make a claim. In some restricted circumstances an extension of time can be obtained to submit a claim within 3 years of the date of an accident.

When will I know if my claim has been accepted?

Within 21 days after receiving a claim for compensation the TAC must either:

- (a) accept or reject liability to pay compensation; or
- (b) make a reasonable request to you to provide further information in relation to the claim or submit to a medical examination; or
- (c) make a reasonable request to another person to provide information in relation to the claim and advise you of that of the request.

After receiving the information requested the TAC has 14 days to notify you of their decision. In most cases, the TAC notify you in writing. If the TAC do not notify you within these time limits your claim is said to have been rejected and you must seek review of that decision (see below).

If my claim is accepted what benefits am I entitled to?

No fault benefits include medical and like expenses, loss of earnings benefits (for the first 18 months after an accident), loss of earning capacity benefits, death benefits and an impairment benefit where permanent injury is sustained.

Medical and like expenses

If you have been injured and you were admitted to hospital and stayed in hospital for more than one day because of your injuries you do not need to reach the medical excess nor are you required to pay any of your medical expenses. All accident related accounts should be sent directly to the TAC for payment. Ambulance expenses are also payable by the TAC.

If you have been injured and you did not go to hospital or if you stayed in hospital for less than a day the TAC will not pay for your first \$564.00* of medical expenses. The initial accounts should be claimed from Medicare or your private health insurer. If your doctor bulk bills, you should keep the slips provided by the doctor to include in the first \$564.00 of expenses incurred. The TAC will be paying for your treatment outside of hospital, such as visits to your local doctor once you have reached the medical services to the value of \$564.00.

* This medical excess amount is for accidents that occurred or will occur between 1 July, 2007 and 30 June, 2008. This amount may change yearly and it is usually indexed according to the Average Weekly Earnings (AWE).

Medical expenses that can be paid by the TAC include accident related services provided by:

- | | | |
|--|---|---|
| ✓ doctors | ✓ chiropractors | ✓ optometrists |
| ✓ dentists | ✓ osteopaths | ✓ psychologists/psychiatrists |
| ✓ physiotherapists | ✓ hospital services | ✓ nursing services |
| ✓ home help [†] | ✓ funeral expenses | ✓ rehabilitation services |
| ✓ home or car modifications | ✓ return to work program costs | ✓ the cost of medications and dressings and bandages |
| ✓ traveling expenses to and from doctors | ✓ child care made necessary by the injuries | ✓ family counseling (where a person dies or is seriously injured) |

The TAC will only pay for the **reasonable** costs of treatment and services related to your transport accident injuries which contributes to your recovery and rehabilitation. The TAC does not pay when no progress is evident or no clear benefit can be seen. The TAC covers medical treatment expenses for as long as they are necessary. However, costs will not be covered indefinitely by the TAC when a treatment shows no signs of helping your recovery. The TAC does not pay when no progress is evident or no clear benefit can be seen.

The TAC sets maximum fees for most treatments and services.

You should ensure that your medical practitioners forward all accident related medical expenses direct to the TAC for payment. Should you require surgery or radiological investigation (such as x-rays, CT scans, MRI scans, etc.) ensure that your medical practitioners seek funding for these services in writing to the TAC prior to undertaking any or these services.

The TAC will not pay for:

- ✗ Treatment or services that are unrelated to your accident.
- ✗ Treatment for a medical condition or injury that you had before your transport accident or that is not a direct result of your transport accident.
- ✗ Treatment or services that have no clear benefit to you.
- ✗ Treatment of services provided outside of Australia.
- ✗ Treatment that is provided by a person who is not appropriately registered, qualified or authorised to provide these services
- ✗ Alternative therapy treatment, such as naturopathy, unless provided by a registered health care professional
- ✗ Travel costs that are not related to your TAC claim.
- ✗ An outstanding account for treatment or a service you received over 2 years ago.

Loss of Earning Benefits (First 18 months after an accident):

No benefit is payable for the first 5 days you are away from work due to injury. In order to be paid for a period of time off work you must provide Certificates of Incapacity from your doctor which certify your ability to work in that period. If you can establish to the TAC that you are an “earner” you are then entitled to 80% of your pre-injury earnings up to a maximum amount that can be paid. Overtime and shift allowances will only be included in calculating your pre-injury earnings if these were regular and were expected to continue.

In some cases where you have been convicted of an offence as a result of the accident you may not be entitled to all or some of this benefit. For example, if you were drink driving.

[†] Reasonable home help services may be paid by the TAC in the first five years post-accident subject to medical certificates being provided to the TAC.

You must tell the TAC if you return to work. If you are only partially incapacitated for work and return to work for less than your normal hours, the TAC pay 85% of the difference between pre-injury earnings and current weekly earnings.

Benefits are paid fortnightly in arrears and the TAC will provide you with a group certificate at the end of the financial year.

Loss of Earning Capacity benefit (2nd 18 month period after an accident) (ie. Between 18 months to 3 years):

If 18 months have passed and you are still suffering a loss of earning capacity, even if you were not eligible for a loss of earnings benefit, you may be entitled to a loss of earning capacity benefit. These benefits are not taxable as they are compensation for the loss of an asset, that is, the capacity to earn income.

If you were employed prior to a transport accident and you no longer have any earning capacity loss of earnings benefits is usually 80% of your pre-accident earning capacity (after tax). If you did not work before your accident but intended to commence work in the future your benefit is calculated in accordance with a formula in the *Transport Accident Act 1986* (the Act).

If you have a partial loss of earning capacity the amount payable takes into account factors such as your potential and ability to undertake rehabilitation, your training, skills and experience and your age.

Loss of Earning Capacity benefit (after 3 years):

Loss of earning capacity payments can only continue after 36 months if your level of permanent impairment has been assessed at more than 50%. Payments can then continue until retirement age. Reviews of your level of permanent impairment must be made by the TAC every 5 years. Therefore if your level of impairment is subsequently assessed at less than 50% loss of earning capacity benefits will cease. If it is believed that notwithstanding your level of impairment, you have a capacity for work the benefit may be reduced or stopped.

Impairment Benefits:

“Impairment” means the permanent loss of a body part or function as a direct result of your transport accident. If you are likely to have a permanent impairment, the TAC will arrange to have your injuries assessed by independent medico-legal specialists.

The TAC will pay impairment benefits to a person who has been assessed as having a degree of impairment of 11% or more. A degree of impairment must be first determined in accordance with the Act and the Transport Accident Act (Impairment) Regulations 1998 ("the Regulations"). Should the TAC determine your degree of impairment at 10% or less you will not be entitled to receive an impairment benefit.

The type of impairment benefit and the amount of the impairment benefit you can receive is set out in the Act and is dependent on the date of the accident. An impairment benefit is only paid if your whole person level of permanent impairment (WPI) is greater than 10%. A formula is used to determine the amount payable for an impairment level.

Depending on the date of your transport accident, you may be eligible for the following payments:

- Accidents Before 1 September, 2003:

If you were an adult when you were injured your WPI cannot be assessed by the TAC until:

- 18 months after the date of the accident; or
- when your injuries stabilise, whichever is the latter.

If you were a minor (less than 18 years of age) when you were injured your WPI cannot be assessed by the TAC until you attain the age of 18 years.

For each 1% in excess of 10% you are entitled to a lump sum impairment benefit of approximately \$953.44[◇], up to a maximum of \$85,810[◇]. For example, if your impairment assessment has been determined at 15% you will be entitled to receive a lump sum impairment benefit of approximately \$4,767.22.

You may also be eligible for a weekly annuity benefit. This benefit is payable to a person who is not in receipt of Loss of Earning Capacity benefits and is also assessed pursuant to a formula and is paid for only a certain period of time.

- Accidents Between 1 September, 2003 and 15 December, 2004:

If you were an adult when you were injured your WPI cannot be assessed by the TAC until:

- 3 months have elapsed from the date of the accident; or
- when your injuries stabilise, whichever is the latter.

If the TAC believes that you are likely to be entitled to an impairment benefit, the assessment may be undertaken 3 months after your accident and within 3 years of the accident, depending on whether your injuries have stabilised.

If you were a minor (less than 18 years of age) when you were injured your WPI cannot be assessed by the TAC until you attain the age of 18 years. If your injuries has not stabilised, your impairment must be assessed by the time you turn 21 years of age.

For each percent in excess of 10% you are entitled to a lump sum impairment benefit of approximately \$953.44[◇], up to a maximum of \$85,810[◇]. For example, should your WPI be determined at 40% you will be entitled to receive a lump sum impairment benefit of \$28,603.33.

You may also be eligible for a weekly annuity benefit. This benefit is payable to a person who is not in receipt of Loss of Earning Capacity benefits and is also assessed pursuant to a formula and is paid for a certain period of time.

If the TAC have not assessed your level of impairment, you can request an assessment 2 years after your accident. If the TAC believe that you are likely to have an impairment level of greater than 10% and your injuries are stable, they must assess your level of impairment within 12 months of your request. If your injuries have not stabilised, your level of impairment must be assessed within 2 years of your request.

If after 3 years your injuries are still not stable you may request that the TAC assess your WPI by agreeing to accept the current (not-stable) impairment assessment as the final impairment determination.

[◇] These figures may change yearly and are usually indexed according to the Consumer Price Index (CPI). This figure is current for the 2007/2008 financial year.

- Accidents After 16 December, 2004:

If you were an adult when you were injured your WPI cannot be assessed by the TAC until:

- 3 months have elapsed from the date of the accident; or
- when your injuries stabilise, whichever is the latter.

If the TAC believes that you are likely to be entitled to an impairment benefit, the assessment may be undertaken 3 months after your accident and within 3 years of the accident, depending on whether your injuries have stabilised.

If you were a minor (less than 18 years of age) when you were injured your WPI cannot be assessed by the TAC until you attain the age of 18 years. If your injuries has not stabilised, your impairment must be assessed by the time you turn 21 years of age.

Your lump sum impairment benefit is assessed based upon a formula. For example, should your WPI be determined at 11% you would be entitled to receive a lump sum impairment benefit of approximately \$5,940. Should your WPI be determined at 53% you would be entitled to receive a lump sum impairment benefit of approximately \$70,750. Should your WPI be determined at 100% you would be entitled to receive a lump sum impairment benefit of \$272,220[◇] (this is the maximum amount you can receive).

If the TAC have not assessed your level of impairment, you can request an assessment 2 years after your accident. If the TAC believe that you are likely to have an impairment level of greater than 10% and your injuries are stable, they must assess your level of impairment within 12 months of your request. If your injuries have not stabilised, your level of impairment must be assessed within 2 years of your request.

- General:

If your impairment level has not been assessed, you have six years from the date of your accident to apply for assessment if you were injured after 28 November 2000. If you do not apply, your level of impairment will not be assessed and you will not be entitled to an impairment benefit.

The TAC are **not** required to arrange for you to be medically assessed for impairment benefits should they believe that your WPI will be assessed at 10% or less.

Interim benefits can be paid to you if your injuries have not stabilised, if the TAC are satisfied that you are likely to have an impairment level of at least 30% or if your injuries are substantially stabilised. This only applies if you were injured on or after 16 June 2003.

If you are injured in more than one transport accident your level of impairment from the different accidents can be combined and if the combined impairment level is greater than 10% you may be paid a benefit.

[◇] These figures may change yearly and are usually indexed according to the Consumer Price Index (CPI). This figure is current for the 2007/2008 financial year.

Death Benefits:

If your partner has died in a transport accident a benefit is payable to you and for the benefit of any children of your partner. The benefits payable are calculated in accordance with formulae set out in the Act. The benefits payable can include a lump sum payment and a periodic payment for dependants of the deceased. Reasonable funeral expenses will also be paid, together with counselling for the surviving families members.

What do I do if I am unhappy with a decision made by the TAC?

If you are not happy with a decision made by the TAC in relation to any of the above benefits you have the right to seek a review of the decision from the TAC. Alternatively, or if not satisfied with the result of the TAC's internal review, you may seek to have the TAC's decision reviewed by the Victorian Civil and Administrative Tribunal (VCAT). We believe that in most cases legal assistance should be obtained when seeking review of a decision.

Applications for reviews of decisions made by the TAC **must** be made within 12 months of the date you were notified of the initial decision. If your initial claim for compensation has not been responded to, application must be made within 12 months of when the decision should have been notified by the TAC. If you do not apply for review of the decision within 12 months, you lose the right to challenge that decision. No extensions of time may be granted.

FAULT BASED CLAIMS

If you are injured:

If you are injured in a transport accident you may bring proceedings at common law claiming damages (money) to compensate you for your pain and suffering, loss of enjoyment of life and/or your loss of earnings and loss of earning capacity in certain circumstances.

You can only make this sort of claim if you can prove that your accident was caused by the negligence of another person or organisation[^]. Even if your accident has been caused by negligence you can only sue for damages if your level of impairment has been assessed and you have been assessed as suffering from a serious injury.

What is Serious Injury?

If you are injured in a transport accident and your level of impairment has been assessed at 30% or more you are automatically deemed to have suffered a serious injury.

Even if you have been assessed as having less than a 30% level of impairment you may still be found to have suffered a serious injury. Serious injury is also defined in the Act to mean:

- (a) serious long-term impairment or loss of a body function; or
- (b) permanent serious disfigurement; or
- (c) severe long-term mental or severe long term behavioural disturbance or disorder; or
- (d) loss of a foetus.

[^] An organisation may include VicRoads, a train company, a bus company, a taxi company, etc.

Application for a determination that you have suffered a serious injury in a transport accident is made to the TAC. If the TAC determine that you have not suffered a serious injury, then you may make an application to a Court to determine whether you meet one of the definitions of serious injury listed above.

It can be difficult to decide if you have suffered a serious injury. Many people have different views about the meaning of 'serious'. The Courts have given some guidance about what serious means. To be serious the Courts have said that the consequences of an impairment or loss of body function must be serious to you. These consequences will relate to loss of earnings and/or earning capacity and/or to pain and suffering and loss of enjoyment of life. The consequences of the injury or impairment is then judged in comparison to other cases of injury to the same or similar body part to determine if the impairment or loss of body function can fairly be described as at least very considerable and more than significant or marked. If you have suffered a mental or behavioural disturbance or disorder your injury must be severe. Severe is said to be more than serious.

What is Negligence?

Negligence means that the accident has occurred as the result of another person or organisation's[^] fault. Sometimes more than one person may have contributed to an accident. If you have contributed to your accident, your damages will be reduced by the percentage attributed to your fault. For example, another driver may be 80% responsible for an accident and you may be responsible for the other 20% of the accident.

Damages:

If you have been found to be seriously injured, you can then sue for damages provided you can prove negligence on the part of another party. If you prove negligence you will be able to recover damages for your pain and suffering, loss of enjoyment of life and your loss of earnings and earning capacity. There are minimum and maximum amounts that can be awarded.

If you are awarded damages for pain and suffering, loss of enjoyment of life, the Act requires you to repay the impairment benefit you received from the TAC. If you recover damages for your loss of earnings and earning capacity you are required to repay any amount you have received for loss of earning capacity benefits. You are not required to repay loss of earning benefits (the benefit received during the 1st 18 months after your accident) because you are not allowed to claim for your lost earnings during the first 18 months after your accident as part of your damages.

If you have received benefits from Centrelink following your accident, these must also be repaid. You may also be unable to receive benefits from Centrelink for a period of time following your accident.

No claim is made at common law for medical expenses incurred by you in the past, or for medical expenses you may incur into the future. As a result you are not required to repay the TAC for medical and like expenses paid by the TAC and your right to claim future medical treatment from the TAC is unaffected.

What if someone dies:

If someone dies in a transport accident, only persons who were dependant upon the deceased may make a claim for damages at common law. This can include children and the partner of the deceased. Sometimes other people may have been dependant upon the deceased, such as parents. Although the dependants of the deceased will have experienced pain and suffering and/or loss of enjoyment of life as a result of the

[^] An organisation may include VicRoads, a train company, a bus company, a taxi company, etc.

death of the deceased, the law does not allow any damages to be awarded for this type of damage. Only persons who were financially dependant, or dependant upon the deceased for services can claim damages. These damages are restricted to financial loss.

How long do I have to sue?

Generally common law claims must be brought within 6 years of the date of the accident. In some circumstances the TAC will agree to you bringing a claim outside the 6 year period, for example, when the TAC have not finished assessing your level of impairment or you are waiting for a Court to determine the question of serious injury. Sometimes applications can be made to the Court to extend the time within which you may sue however this will depend upon circumstances such as the reason for your delay.

Should you require further information or any assistance in relation to a transport accident claim please ring Tim Finemore or Michael Moran of Level 2, 116 Hardware, Street, Melbourne on (03) 9670 0488 or Toll Free on 1800 620 979.

Disclaimer: This information is of a general nature and should not be used to ascertain the entitlements of any particular individual. There can be exceptions to the above circumstances and individuals should obtain specific advice to address their circumstances. Further the law changes and information contained herein may no longer be accurate.