



# Victorian TAC scheme

**T**he Transport Accident Commission ("TAC") administers the Victorian transport accident scheme. *The Transport Accident Act* ("The Act") covers all accidents which occur in Victoria and provides compensation to occupants of Victorian vehicles in accidents anywhere in Australia.

## No Fault

The claim form must be delivered to TAC within twelve months of the accident. The current intrusive lengthy document demands an applicant to swear information including the circumstances of the accident, pre-existing problems (including vascular condition, drug dependency, psychological condition or treatment etc.), and details of previous workers' compensation or other claims. It demands the claimant authorise the TAC to obtain information from "a department agency or instrumentality of the Commonwealth, the State, or another State, administering Police, taxation, Health Insurance Commission payments or social welfare laws". APLA members have had limited success in advising clients to decline such authorisation.



The Act permits an extension of up to three years from the date of the accident or manifestation of injury if the Commission finds that there are reasonable grounds for the delay in making the claim.

The TAC must pay as compensation the reasonable costs of road accident rescue services, medical services, hospital services, nursing services, rehabilitation services and ambulance services received in Australia because of the accident. Where the claimant had, prior to the accident, been engaged mainly in housekeeping duties or care of a child, TAC will pay the costs of employing, for the first five years after the injury or death, an authorised person to undertake housekeeping duties or child care. Further the TAC will pay for services of a domestic nature or nursing services.

During the first eighteen months after the accident, where applicable, the TAC pays loss of earnings or partial loss of earnings benefits. LOE is 80% of the earner's pre-accident earnings, or \$347.00 (with additional increments for dependants, whichever is greater; but cannot exceed \$709.00 or 100% of the claimant's pre-accident earnings). Partial LOE is 85% of the difference between current earnings and pre-accident earnings, within similar qualifications.

Impairment benefit must be assessed by the TAC eighteen months after the accident or when the injury substantially stabilises, whichever last occurs. However, the TAC is only required to assess that impairment if it appears to the TAC likely that the claimant will have a level of permanent

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with AMA Guides, Second Edition. All accidents since that date must be assessed in accordance with the Fourth Edition.

In assessing psychiatric or psychological injury, regard must not be had to injury secondary to physical injury. This provision is often misinterpreted as implying that only "primary psychological injury" is assessable. In fact all psychological injury aside from the injury consequent to the physical injury is assessable.

### **Actions for Damages**

Common law claims are forbidden for injuries arising out of a transport accident unless the claimant has suffered "serious injury". There are five gateways to "serious injury". An assessment of 30% impairment or more deems the claimant to have sustained "serious injury".

As assessment of less than 30% can still be serious if it is:

- (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 of disorder; or
- (d) loss of a foetus.

A minimum threshold of \$33,280.00 must be achieved or else damages are not awarded for pain and suffering. A maximum of \$332,810.00 is awardable for pain and suffering.

A minimum threshold of \$33,280.00 must be achieved for financial loss or else no damages are awardable. The maximum for pecuniary loss is \$748,830.00.

Each of these minimum and maximum thresholds is indexed by CPI on the 1st July each year.

### **Commentary**

Okay, that is the theory, but how does it work for the victims of transport accidents?

Any comments as to whether the TAC delivers appropriate compensation to people entitled will be biased. The TAC will tell you that they are doing a great job. They use as objective measurements the fact that there are

only a small number of complaints to the Ombudsman.

Mind you, they do not advertise that you can complain to the Ombudsman. Indeed they do not really advertise that you can complain to anybody except complaining to the very same Claims Officer about whom you want to complain; or by going through their internal review procedure which all too often upholds the decision under review.

I am sure that Parliament did not intend the threshold for common law to be as onerous as it has become. Indeed the AMA Guides were not in place at the time that 30% impairment was considered to be the appropriate gateway to injuries being deemed "serious injury". On its own, it sounds like a moderate and acceptable threshold. In fact all plaintiff practitioners see people who have suffered from devastating injuries and yet who miss out on access to common law.

This, coupled with the former Kennett government using TAC funds as general revenue (and taking more than \$3 billion from TAC in that regard) leaves plaintiff practitioners the hollow moral high ground of asserting that the TAC scheme is being run as a cash cow for the Victorian government, rather than to deliver compensation to the people entitled to it.

TAC has proven itself to be a master of half truths and in particular of statistics. Resources have been pumped into maintaining good relations with the media (I have yet to understand why a statutory government monopoly needs to have corporate boxes at the football, the opera, etc.).

Worse, the system tends to punish those who go through the hard work of rehabilitation, by trivialising their injuries and awarding them insufficient compensation. Those who are unable to carry out rehabilitation, by comparison, are financially rewarded.

There is no doubt that the scheme has very significant advantages in assisting people towards rehabilitation. Its shortfalls, however, are in failing to compensate accident victims to help them get on with their lives. ■



impairment of more than 10% whole person impairment.

An earlier assessment of impairment can be demanded if it is for the purposes of obtaining access to common law. The applicant must show that the injury is substantially stabilised. The assessment of impairment must be carried out in accordance with AMA Guides to the Evaluation of Permanent Impairment.

Accidents occurring prior to 1st July, 1993 also take into account unrelated impairment. The applicant's entitlements must then be calculated in accordance with the formula which deducts the unrelated impairment from 100% prior to multiplying the accident related impairment.

All accidents prior to 19 May, 1998 must be assessed in accordance