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TAC INSIGHTS - OVERVIEW

This Injury Briefing online starts our series of TAC Insights.

The first Insight is a General Overview and includes up to date entitlements as indexed from July 1, 2009.

Further Insights will follow in September and October covering Frequently Asked Questions, Income Benefits, Impairment Benefits and Common Law Entitlements.

Tim Adam and Tim Connor have each been practising in Transport Accident Law for over 20 years. They have the expertise and experience to ensure that serious injury claims are pursued in the best interests of the injured person.

For further information about our Personal Injury practice see our website or if you wish to discuss a particular matter please do not hesitate to contact us.

Regards,

Tim Adam
Principal

The Transport Accident Commission (TAC) administers a scheme to pay compensation to people whom are injured in a transport accident.

What is a Transport Accident?

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

How is the Claim Made?

The TAC accept telephone lodgement of a claim. After initially lodging the claim by way of telephone, the TAC send out a claim form to be signed and returned to the TAC. There is not a valid claim until the claim form is returned.

The telephone lodgement system allows a person to have a claim lodged on their behalf.

In limited circumstances a hard copy of the claim form can be obtained from the TAC and the claim can be lodged in writing without utilising the telephone lodgement system.

Time Limit to Make a Claim

A person must lodge a claim with the TAC within 12 months of the accident. The TAC have a discretion to accept a claim up to 3 years after an accident. If the claim has been lodged outside the initial 12 month period, an explanation must be provided as to why the claim was not lodged on time.

If the claim has not been lodged within 3 years of the transport accident, the right to make a claim is lost. There is no discretion to accept a claim outside that 3 year period. The one exception is for children. A child has 3 years from their 18th birthday to lodge a transport accident claim.

The Compensation

A person injured in a transport accident is entitled to some or all of the following benefits from the TAC:

1. Payment of medical and like expenses;
2. Loss of income;
3. Lump sum compensation for permanent impairment;
4. Damages at common law;
5. Death benefits.

Medical and Like Expenses

There are a large range of services that are paid by the TAC. These include the costs of medical treatment, pharmaceutical expenses, rehabilitation, home help and domestic services. For the more seriously injured the TAC pay for car and home modifications and attendant care. The TAC also pay for retraining and support in returning to work.

Under the transport accident scheme, you can access medical services as a private patient. This means that an injured person does not need to continue to visit outpatients at a public hospital or be on a waiting list of a public hospital. A person can obtain a referral to a private practitioner. That practitioner of course should contact the TAC and obtain approval for any proposed treatment.

If an injured person has paid for any expenses out of their own pocket, they must claim reimbursement of those expenses from the TAC within 2 years of the date that they incurred the expenses. In general the injured person should not be paying for any expenses out of their own pocket. Medical providers should be submitting their accounts directly to the TAC.

The TAC does generally require that a person pay for gym membership and travel expenses from their own pocket and then seek reimbursement.

Medical Excess

If the person was not an inpatient as a result of the accident, they will need to pay a medical excess which is currently \$564.00. If a number of family members were involved in the same accident, a single excess applies to the whole family.

Payment for Loss of Earnings

The law does not require that the TAC pay loss of earnings for the first 5 working days after an accident. After the first 5 days, the TAC will pay loss of earnings based on 80% of the injured person's pre-accident earnings (up to \$1,035.00). The loss of earnings benefit is payable for 18 months after the accident. These benefits are a gross amount with income tax deductible.

Loss of earning capacity benefits are payable from 18 months post accident until 3 years after the accident. The loss of earning capacity benefits are not taxable and are based on 80% of the injured person's pre-accident earning capacity up to a maximum of \$875.00 net per week.

A person may only receive loss of earning capacity benefits beyond the third anniversary of the accident if their level of impairment has been determined at 50% or more. In those limited circumstances the loss of earning capacity benefits would continue to be paid until the person's 65th birthday, although the TAC are committed to review the entitlement every 5 years.

If after the third anniversary of the accident, an injured person receives hospital services (inpatient or day surgery), the person may be entitled to a hospital support benefit as a replacement for the lost income whilst in hospital. This benefit is subject to a limit of \$4,030.00.

Impairment Benefits

If an injured person has suffered a permanent impairment as a result of their transport accident, they may be entitled to receive an impairment benefit.

The permanent impairment is determined under the American Medical Association's Guides to the Evaluation of Permanent Impairment (4th Edition). The benefits are only payable for an impairment over

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10% of the whole body. The benefits start at \$6,340.00 for an 11% impairment with increments for each additional percentage point up to a maximum of \$289,960.00.

In general the impairment benefit is not payable until the injuries have stabilised. Where a person has been seriously injured and likely to have a level of impairment exceeding 30%, the TAC may pay an interim benefit.

Death Benefits

Where a person dies leaving a dependant (either fully or partially), spouse or children, a lump sum compensation in the amount of \$152,300.00 is payable.

Other benefits including compensation for loss of income may also be payable depending on the individual circumstances. The TAC will also pay the reasonable cost of burial or cremation.

Damages at Common Law

Serious Injury

A common law action for damages may be pursued if a person has a serious injury as defined by the *Transport Accident Act 1986*. An accident victim who is assessed under the Act as having a combined whole person impairment of 30% or greater is deemed to have a serious injury.

If a person is assessed as having an impairment of less than 30%, they may still recover damages if:

1. The TAC is satisfied that there is a serious injury and consents to the claim being brought; or
2. The court gives leave to bring the proceeding on the basis that there is a serious injury.

The *Transport Accident Act 1986* defines serious injury as:

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

The meaning of serious injury has been defined and clarified by the courts. Lawyers representing the injured person have the responsibility of establishing the seriousness of the injury and its consequences for the individual.

If the level of impairment is less than 30%, the lawyer has the responsibility of preparing and presenting an application for serious injury to the TAC. This is usually undertaken as a preliminary step prior to any type of legal proceedings being undertaken. In the large majority of cases these applications by a lawyer are successful and it is not necessary for a court to determine the question of serious injury.

Negligence

An injured person may only receive compensation as part of a common law claim if they are able to establish negligence on the part of another party. The TAC also have the right to argue contributory negligence on the part of the injured person. Examples of contributory negligence include the failure to wear a seatbelt and being a passenger in a car where the driver was intoxicated.

The issue of negligence is complex and challenging. The seriously injured person should explore their entitlements to compensation where another party is even partly responsible for the accident.

The Compensation

An injured person is entitled to receive compensation for pain and suffering damages up to a maximum of \$450,560.00. The person must establish a minimum loss of \$45,030.00.

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The injured person may also receive compensation for economic loss. They must establish a minimum loss of \$45,030.00. The maximum that may be claimed is \$1,013,560.00.

Damages for economic loss are taken into account in many factors including loss of income, loss of overtime, seniority or future promotional opportunities as well as compensation for the risk of early retirement.

Time Limit

There is a strict 6 year time limit for bringing a damages claim at common law.

In some circumstances the claim can be made outside the 6 year time limit. This may require an additional application to the court.

Disputes with the TAC

If an injured person is unhappy with the decision that is made by the TAC, they have the right to review that decision.

With the assistance of a lawyer, an injured person may utilise the dispute resolution protocols. This allows for the opportunity to resolve a dispute without the need to proceed to a court or a Tribunal. If there is a successful resolution, the TAC contribute to the legal costs of that lawyer.

If the dispute cannot be resolved, a person may make an application to the Victorian Civil & Administrative Tribunal (VCAT). Any application to VCAT must be made within 12 months of the date that the injured person receives notice of their decision from the TAC. If the application is not made within that strict time limit, the right to have the decision reviewed by VCAT is lost.

WorkCover and TAC

WorkCover have the responsibility of managing the claims where people are injured during the course of employment (even when it is a motor accident). That is the injured person must lodge a WorkCover claim. This includes people travelling as part of their employment.

If there is a damages claim and the person responsible for the accident is another road user, the TAC will then have the responsibility of managing the damages claim. This is a complex area especially where the accident involves forklifts and other machinery.

Interstate Claims

TAC also covers transport accidents in other States of Australia where a Victorian registered vehicle is involved and the injured person making the claim was either a Victorian resident or a passenger of the Victorian registered vehicle.

The Moores Legal Personal Injuries Team:

For further advice and guidance in this area, contact the Personal Injuries team at Moores Legal.

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DISCLAIMER: This Injury Briefing is of a general nature only. Specific legal advice should be sought rather than relying on this Briefing. The figures are correct as at 1 July 2009..

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