

November 2009

## TAC INSIGHTS – Impairment

Our November Injury Briefing highlights the Impairment process. Given the potential no fault lump sum entitlement of up to \$289,960 we recommend that everyone seeking such benefit is legally represented.

As the Briefing indicates the TAC will pay legal costs pursuant to the protocols when a benefit is payable.

To discuss these and other matters, please contact us.

Regards

**Tim Adam**  
Principal

### Who is entitled to lump sum compensation?

Where a person is left with permanent impairment as a result of transport related injuries, they may be entitled to a lump sum impairment benefit.

The lump sum benefit will be awarded to those people who are assessed as having an 11% or greater degree of permanent impairment. This includes impairment arising from **all** injuries sustained in the transport accident both psychological and physical.

### How is Impairment Assessed?

The level of Permanent Impairment must be assessed by a qualified medical practitioner in accordance with the American Medical Association's Guides to the Assessment of Permanent Impairment (4<sup>th</sup> Edition).

The method of assessment will depend on the nature of the injuries.

### When does the Process commence?

Information regarding a person's medical condition may be collected from treating practitioners as soon as post accident treatment is underway.

Generally, an impairment assessment will only be conducted when the person's injuries have stabilised. That is, when their injuries are unlikely to become any better or worse in the foreseeable future.

### Who initiates the Process?

Where the TAC believes a person is likely to be entitled to lump sum compensation, they must arrange an impairment assessment within 3 years of the date of the transport accident.

However, if the TAC do not believe the injured person will have sufficient impairment, they will not initiate this process.

The injured person or their lawyer may approach the TAC directly and request that an impairment assessment be arranged.

If the person has a lawyer they may lodge an application under the TAC's Permanent Impairment Protocols.

### The advantages of the Permanent Impairment Protocols

The Protocols enable a person to obtain reports from their treating practitioners and to arrange some independent impairment assessments. The cost of these reports will be reimbursed by the TAC if a lump sum benefit is payable.

In many cases the TAC accept the independent assessments arranged by us without the need to arrange further examinations.

The TAC will also contribute up to \$5,070 to the injured person's legal costs if the claim is successful. In our experience this amount covers most, if not all, of the legal costs incurred.

### Is there a time limit?

Any application to the TAC for an impairment assessment must be made within 6 years of the date of the accident.

### Interim Benefits

Where a person has sustained significant injuries as a result of the transport accident, the TAC may pay an interim impairment benefit before an impairment assessment is conducted.

In our experience, the type of injuries where an interim benefit may be awarded include the loss of a limb or eye, a serious spinal injury or a traumatic brain injury. The TAC may also pay the benefit where there is significant financial hardship.

In such circumstances a request should be made to the TAC for an interim benefit.

Any remaining benefit will be forwarded to the person once the impairment assessments are complete.

### How much compensation will a person receive?

For injuries sustained on or after 16 December 2004 the amount of compensation ranges from \$6,340 to \$289,960. For injuries prior to this date a different rate applies.

The exact amount of compensation payable is based on a formula that is determined using the final impairment assessment figure.

### Reviewing the TAC's Impairment

If a person disagrees with the TAC's determination of their permanent impairment they may seek a review of this decision.

Reviewing the TAC assessments is important, as in our experience, the TAC often inadequately assess a person's injuries or miss some injuries altogether.

Where the review is successful, the TAC will reimburse the majority of the legal costs associated with the process.

The review must be sought within 12 months of the date of the decision.

### Connection with Common Law compensation

Where a person goes on to claim common law compensation, any lump sum impairment benefit paid to the person will be deducted from the total pain and suffering damages that they are awarded.

### Why is this process important?

Apart from the compensation that is payable to an injured person through the permanent impairment process, there are also a number of other important consequences:

- Where impairment is assessed at 30% or more the person will be deemed to have a "serious injury" and will have an automatic entitlement to claim further common law compensation;
- Where impairment is assessed at 50% or more they will be entitled to the ongoing payment for loss of earning capacity until retirement age.

This being the case, it is very important that an injured person obtains comprehensive advice and assistance in the assessment process.

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#### **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 information is of a general nature only. Specific legal advice should be sought rather than relying on this document. The figures are correct as at 1 July 2009.*

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