

September 2009

## TAC INSIGHTS – Frequently Asked Questions

This Injury Briefing is the second in our series and focuses on frequently asked questions about who the TAC covers.

The interpretation of the issues can have an enormous impact.

In a recent case our client sustained severe spinal injuries when crushed by the family vehicle as it rolled down the driveway and onto the road. Through an oversight the registration and insurance had not been paid. Overcoming substantial hurdles we were able to establish her entitlement to lifetime rehabilitation and medical support as well as a substantial impairment benefit.

Our philosophy is that every seriously injured person deserves personal service from experienced and expert practitioners.

For further information or to discuss any issues, please contact us.

Regards

**Tim Adam**  
Principal

### What is a transport accident?

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

A transport accident includes a collision between a bicycle and an open or an opening door of a motor vehicle but does not include bicycle v bicycle or bicycle alone accidents.

Tractors, forklifts and other machinery are often registered and therefore claims can be made on the TAC where there is an accident. If that accident was in the course of employment, then the claim may in fact be a claim under the Accident Compensation Act with WorkSafe.

### Unlicensed drivers and unregistered motor vehicles

If you are an unlicensed driver whom is injured, you are covered by the TAC for all benefits except loss of income benefits in the first 18 months.

If your car is unregistered and you are injured as a driver or passenger, you are covered for all expenses except loss of income benefits in the first 18 months.

If you are a passenger injured in an accident where the driver was unlicensed or the car was unregistered (so long as you are not the owner of the car), your entitlement to compensation is not affected.

A learner driver is not considered to be a licensed driver unless a licensed driver was sitting beside them. This means that the learner driver will not qualify for loss of income benefits if injured and they did not have a licensed driver sitting next to them in the motor vehicle.

### Accidents on private land

Accidents on private land are covered by the TAC where the car involved is registered.

Accidents on public land such as state forests are covered by the TAC

### Motor racing and speed trials

The transport accident legislation excludes claims that relate to a motor race or timed speed trial.

Various groups organise for ride days at motor racing circuits. The circuit is private land and therefore it is important that the vehicle or motorcycle be registered to be covered by the TAC.

Timed events or speed trials on the racing circuit would mean that any accident would be excluded from the TAC. Events that are untimed and do not involve any type of race, may be covered by the TAC.

### The consumption of alcohol and an accident

An injured driver with a blood alcohol content of greater than 0.05 but less than 0.12, loses one third of any loss of income benefits paid in the first 18 months.

An injured driver with a blood alcohol content of 0.12 but less than 0.24 loses two thirds of any loss of income benefits paid in the first 18 months.

An injured driver with a blood alcohol content of 0.24 or greater does not receive loss of income benefits paid in the first 18 months.

If the injured driver with a blood alcohol content can satisfy the TAC that their consumption of alcohol did not contribute in any way to the accident, no penalty applies (e.g. Sitting in a stationary car at lights when hit).

Serious driving offences such as refusal to be tested can result in the loss of all income benefits and the impairment benefit.

Serious criminal offences such as culpable driving will result in the loss of all income benefits and the impairment benefit.

### Contributory negligence in common law

A seriously injured person may have the right to undertake a common law claim and receive compensation for both pain and suffering and loss of income.

To be successful in the common law claim, the injured person must establish negligence on the part of a road user.

The TAC will have the right to argue contributory negligence. This can result in a reduction of the compensation.

Examples of contributory negligence are as follows:

- Failing to wear a motorcycle helmet and sustaining a head injury;
- Failing to wear appropriate clothing and sustaining bodily injury related to that failure to wear appropriate clothing;
- Failure to wear a seatbelt;
- Travelling in a motor vehicle with a driver whom is intoxicated;
- Travelling in a motor vehicle with an unqualified driver or learner driver without an appropriate licensed driver.

Although some of the above events do not impact on a person's basic entitlements to compensation from the TAC, those same events can impact on the person's right to receive compensation at common law.

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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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