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INJURED IN A MOTOR VEHICLE ACCIDENT



COMPENSATION LAW
ACCIDENT CLAIMS

commitment to make a difference

INJURED IN A MOTOR VEHICLE ACCIDENT?

The Victorian Transport Accident Commission (“TAC”) insure all motor vehicles registered in Victoria and administer the Victorian Transport Accident Act 1986 compensation scheme for people injured in a transport accident involving a Victorian registered vehicle.

1. What do I have to do if I am injured in a motor vehicle accident involving a vehicle registered in Victoria ?

You should lodge a claim with the TAC regardless of who is to blame for the accident.

You must report the accident to the police before lodging a claim. You will need to contact the police directly if they did not attend the scene of the accident.

2. What types of accidents are defined as a “motor vehicle accident”?

A motor vehicle accident can include accidents involving a car, truck, motorcycle, bus, train or tram. Pedestrians and cyclists injured in accidents caused by the driving of a car or any other motor vehicle listed above may be covered by the TAC if the vehicle involved was registered in Victoria.

3. How long do I have to lodge a claim?

You must lodge your claim with the TAC within 12 months of the date of the accident or within 12 months from the date upon which an injury from the accident first becomes evident.

If you have not lodged a claim within this time frame, you should seek legal advice immediately as there may be circumstances in which the TAC will exercise their discretion to accept a claim lodged out of time, provided it is lodged within three years. The TAC has no discretion to accept a claim for injury lodged outside this three year time limit.

4. How do I lodge a TAC claim?

To lodge a claim, you will need to call the TAC on 1300 654 329. The TAC will ask you for information about the accident, including the location and circumstances of the accident, the details of any witnesses and details of your employment and income if you have had more than 5 days off work.

The TAC will provide you with a claim number and will send you a Claim for Compensation form. You need to check that the information in this claim form is correct and then you must sign and return the claim form to the TAC.

You will also need to complete an Authority to Release Information form, which allows the TAC to gather information that may affect your claim, including your medical records.

5. What benefits am I entitled to if my initial TAC claim is accepted?

Medical and like expenses

If your TAC claim is accepted, the TAC will pay the reasonable cost of medical treatment and expenses, hospital, nursing, rehabilitation and ambulance services. TAC will continue to pay your medical and like expenses as long as they are reasonable and related to the accident.

You may be required to pay a medical excess before the TAC will start to pay your medical and like expenses. There is no excess payable by you if the injury you sustained required admission to hospital as an inpatient (or a stay of at least one day). The medical excess applies once only per family, which includes your partner, parents, children or siblings.

The payment by TAC of medical and like expenses can include medication and equipment, travelling expenses in attending appointments for treatment purposes, home help services and any other out of pocket expenses reasonably incurred as a result of a transport accident.

Loss of earnings

If you are unable to work as a result of an injury sustained in a motor vehicle accident and you have had more than 5 days off work, the TAC will make “loss of earnings” payments in respect of your lost income. In most cases, the TAC will pay 80% of your pre-accident gross income.

You must obtain Certificates of Capacity from your doctor that states your capacity to work is impacted by the injuries you sustained in the accident.

Loss of earnings benefits are made for a period of up to 18 months after the accident, whilst you remain incapacitated for work. If, after this 18 month period you have a loss of earnings capacity as a result of the accident injuries, you may be entitled to a further 18 months of “loss of earnings capacity” benefits.

If you are assessed as having an impairment of 50% or greater as a result of injuries sustained in a transport accident you can continue to receive loss of earnings capacity benefits until retirement age (usually age 65).

6. What do I do if my claim is rejected or if I disagree with a decision made by the TAC?

If you disagree with a decision made by the TAC, you can request that the TAC conduct an informal review of the decision. This involves a TAC Review Manager reviewing all available information relevant to the decision and deciding whether to change or uphold the original decision. This request must be made within 12 months of the date of the decision.

If you are not satisfied with the outcome of the informal review and you are legal represented, your solicitor can request a dispute resolution application with the TAC and arrange for a dispute conference to take place. This request must also be made within 12 months of the date of the decision.

Alternatively, or if you are not satisfied with the outcome of the dispute resolution process, you or your solicitor can lodge an application with the Victorian Civil and Administrative Tribunal (“VCAT”) for a review of the decision. A fee is payable for lodging this application, unless you can establish grounds of financial hardship. Again any application to VCAT must be lodged within 12 months of the date of the decision by TAC.

If your application to TAC or VCAT for dispute resolution is successful you will be entitled to make a claim for reimbursement of legal costs. These costs are regulated and may not cover all of your legal fees.

7. What happens if I have suffered a permanent injury?

If you have suffered a permanent physical or psychological injury or condition as a result of your transport accident, you may be entitled to a lump sum compensation payment called an impairment benefit.

An impairment benefit payment is separate from any compensation for loss of earnings and payment of medical and like expenses.

An impairment benefit is a once-off payment and so you must wait until your injury has stabilised before you can make a claim. An impairment claim can usually only be made 18 months after the date of your injury (unless your injury has fully stabilised before then).

An injury is considered stable if its effects are not expected to change significantly over time or after further treatment.

You do not need to complete a claim form to commence an impairment benefits claim. You or your solicitor can simply request in writing that the TAC organise an impairment assessment.

Physical impairment levels are measured using the American Medical Association Guides to the Evaluation of Permanent Impairment Fourth Edition (the “AMA” Guides) and psychological impairment levels are measured using the Guide to the Evaluation of Psychiatric Impairment for Clinicians (the “GEPIC” Guides).

To be eligible for an impairment benefit, your level of physical impairment or primary psychiatric impairment must be assessed at 11% or more.

The impairment assessment is done by a doctor specially trained to evaluate permanent impairment under the above Guides. You may be asked to attend more than one doctor from different fields of specialty depending on the nature of your injuries.

The doctor will then prepare a report for the TAC, providing a percentage score describing the level of your impairment for your assessed injury. The TAC will then write to you indicating whether they accept or reject liability for each of your claimed injuries, and specifying the level of permanent impairment for each accepted injury and the amount of your entitlement (if any).

The Transport Accident Act 1986 contains the formula that must be used by TAC to calculate your entitlement to an impairment benefit lump sum.

If you are suffering from more than one injury or illness resulting from the transport accident, TAC will combine the impairment percentages from each injury using a mathematical formula contained in the AMA Guides.

Whilst legal representation is not necessary to make an impairment benefits claim, you do have the right to legal representation if you choose and you are entitled to recover legal costs in accordance with TAC protocols if your claim is successful.

A permanent impairment claim must be considered by the TAC within 6 years of your date of injury or your impairment is deemed to be nil.

8. Can I sue for damages for my injuries?

If you have sustained a “serious” injury as a result of a transport accident involving a Victorian registered vehicle and there was another person or third party at fault in causing the transport accident, you may have the right to seek damages for your pain and suffering and pecuniary loss. This action is referred to as a “common law claim”.

A Common Law claim for damages must be commenced within 6 years of your date of injury or, if you were under the age of 18 years at the date of injury, within 6 years of you turning 18. If you have not commenced a claim for damages within this time frame, you should seek legal advice immediately, as there are circumstances in which the TAC (or the Court on application) will grant an extension of time.

If you are assessed as having a permanent impairment of 30% or more, your injury will be deemed to be “serious”. Alternatively, you must lodge a “serious injury application” and prove to the satisfaction of the TAC or a Court that you have suffered a “serious injury” as defined by the legislation.

If you wish to bring a claim for damages, you should seek legal advice, as a serious injury application must be accompanied by numerous documents and it is important that these documents show you have suffered a serious injury.

Even if you have a deemed serious injury (that is, if you were assessed as having a permanent impairment of 30% or more), you should obtain legal advice before seeking to bring a claim for damages.

Once a claim for damages is finalised, you will lose your right to claim further entitlements from the TAC other than medical and like expenses even if your injury or impairment deteriorates or worsens.



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