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Message from the Editor

Michael Lombard, our Partner in Charge of our TAC Group, is an accredited specialist in personal injury law and author of *The Guide to Injury Compensation in Victoria* and the current co-author of *Motor and Traffic Law*. Michael's commitment and dedication to his clients is matched by his commitment and dedication to open water, long-distance swimming which he does when most of us are enjoying our last hour of sleep! Read about Michael's recent swimming success on page four and feel free to contact him with any TAC (or swimming!) questions you or your patients may have.

Bree Knoester, Partner

Who is entitled to TAC benefits?

The TAC may be able to pay benefits to your patient, with a few qualifications and exceptions, if the injury is directly caused by driving. They can also help your patient's family and dependents - they just need a completed claim form.

Most people do not realise how helpful the TAC can be after a transport accident.

If a person is injured or dies as a result of a transport accident, the TAC will assess whether to pay compensation to them or their families upon receiving a claim form.

The TAC may pay benefits to a person who

- is injured
 - has an injury aggravated, or
 - is killed
- in an incident directly caused by the driving of a motor vehicle, tram or train.

The TAC may also pay benefits to someone who

- is a family member of that person
- is a dependent of that person, or
- witnesses the incident and is affected by it.

... with a few qualifications...

To come under the scheme, the accident must have:

- occurred in Victoria
- involved a Victorian resident, or
- involved a Victorian registered vehicle.

The accident must have been reported to police or the train or tram operator and there must be evidence of injuries and treatment.

... and a few exceptions...

People not be able to access the full benefits of the TAC scheme include those injured:

- in unregistered or uninsured vehicles on private land

- during motor sports, or
- while committing an offence, including drink driving.

Generally, if a transport accident happens at work or during the course of a person's employment it is covered by WorkCover.

... and some special circumstances...

Your patients will be covered if they are injured:

- by an open or opening car door
- by a runaway vehicle, or
- if they ride their bike into a parked car on the way to work.

Cycling accidents do not automatically fall within the TAC definition of a transport accident. A cyclist's injury must be directly caused by the driving of a motor vehicle, tram or train. This includes cyclists colliding with open or opening car doors or swerving to avoid a collision with a car.

They can also help your patient's family and dependents...

The dependants or immediate family of an injured person may be able to access:

- family counselling services
- financial support
- funeral expenses, or
- money for travel and accommodation expenses when visiting an injured person in hospital.

... they just need the claim form.

It is not always obvious that help is available to injured and affected people. To find out if a person is eligible for TAC support of some kind, encourage them to seek legal advice and put in a claim with the TAC.

- Sarah Thorn, Lawyer



The garbage truck case - arising out of the use of a motor vehicle

When the accident is clearly not a “transport accident”, the TAC may still be the insurer required to pay if a registered car is involved.

There are many circumstances which are called “transport accidents”. But when the accident is not a “transport accident”, the TAC may still pay compensation if a registered car is involved. This is because the law requires the TAC to insure owners of vehicles who cause injury, “arising out of the use of the vehicle.” One recent case managed by Michael Lombard and Genna Angelowitsch has become known as the “Garbage Truck Case.”

A cafe owner in Yarraville was standing out the front of his cafe when a garbage truck came to collect the rubbish. The mechanical arm picked up the bin but spilt some rubbish on the footpath. The driver left the truck, intending to clean up the mess, leaving the mechanical arm up in the air.

Without warning, the mechanical arm came down on the cafe owner crushing his shoulder. He came to Adviceline Injury Lawyers as the TAC informed him he was not covered under the scheme. Michael Lombard explained that this was correct but because he had been injured due to the negligence of the owner or driver of the registered truck, he could sue for compensation for all his expenses, lost wages and his pain and suffering. Although the cafe owner was not directly covered by the TAC scheme with all the ‘no-fault benefits’, the TAC were required to stand behind the negligent owner as the accident occurred in a situation “arising out of the use of a motor vehicle.”

Through their expertise and understanding of the law, Genna and Michael were able to obtain a lump sum payment for the cafe owner.

*Michael Lombard, Partner
Genna Angelowitsch, Lawyer*

What if my patient is responsible for the accident?

Often, if a person is injured in a car accident for which they were primarily responsible, they may not consider lodging a claim with the TAC or may be reluctant to do so. For example, if someone was driving at excessive speed or whilst under the influence of drugs or alcohol, they might automatically assume that they are not entitled to any assistance from the TAC and therefore don’t lodge a claim.

It’s important to remember that the majority of benefits available from the TAC are provided under a No Fault Scheme: this means that you can still access benefits regardless of whether you were the major cause of the crash or even if it is a single vehicle accident.

Some benefits may be restricted depending on the circumstances of the accident – for example, weekly payments for lost earnings will be reduced for people found driving under the influence of drugs or alcohol depending on how far over the legal limit they were at the time of the accident.

The important thing to remember is that it is very rare for someone to be denied any assistance from the TAC (unless they lodge their claim outside of 3 years from the date of the accident). An injured person has nothing to lose from asking for assistance, so make sure you encourage patients to lodge a claim and the TAC will make a formal decision.



Cyclists and the TAC

The death of a cyclist on Sydney Road has highlighted some of the risks of bike-riding on the road. It has also drawn attention to the position of cyclists under the TAC Scheme. To be entitled to compensation, the accident must be directly caused by the driving of a motor vehicle, train or tram.

This means that cyclists who are hit by a car, train or tram are immediately covered by the TAC. The definition of "transport accident" has been extended to cover cyclists in three situations that do not involve the driving of a motor vehicle, tram, train, or bus. A cyclist hit by an open or opening car door is regarded as being injured in a transport accident, as is a cyclist hit by an out of control vehicle. The third extension of the definition of a transport accident is when a cyclist collides with a stationary vehicle whilst riding to work. This entitlement came about after extensive lobbying on behalf Dale

Sheppard who became a paraplegic after hitting a stationary car on his way to work.

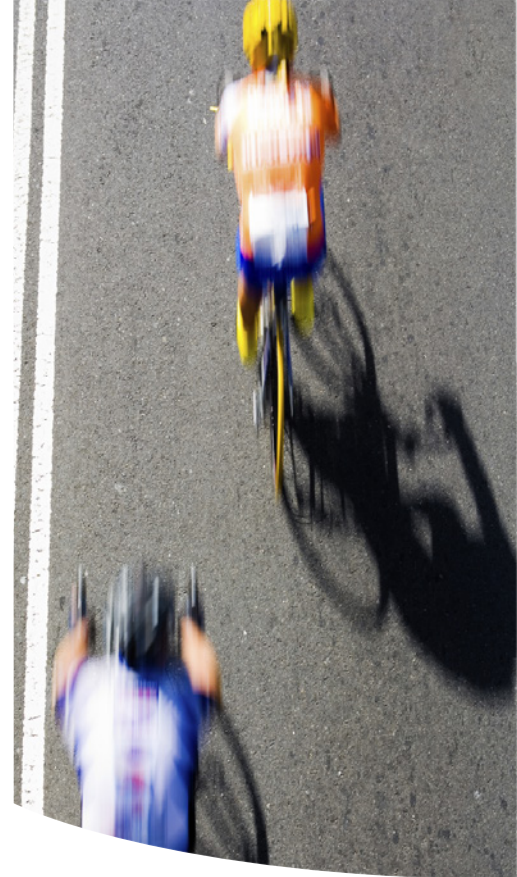
Cyclists included in the extended definitions of transport accidents receive benefits under the TAC scheme, depending upon their circumstances. The compensation available includes all reasonable hospital, rehabilitation and disability expenses related to the accident. It can also include some compensation for initial loss of earnings and a lump-sum payment for any permanent impairment.

Where cyclists are not involved in a transport accident, they will not be entitled to the automatic assistance from the TAC.

A cyclist injured in a transport accident which was not their fault may also be entitled to sue for further compensation. To do this, the cyclist must have sustained a "serious injury."

An article about serious injury, by Deidre Petrakis, appears below.

Sarah Thorn, Lawyer



A "serious injury" from a car crash



Many doctors and patients are puzzled when lawyers talk about "serious injury." We explain that injured people can't sue for compensation unless they meet this definition, but then it can be tricky to explain what "serious injury" means.

One of the best ways we can explain the phrase "serious injury" is to give examples. The Victorian Supreme Court of Appeal recently looked at the criteria for a "serious injury".

In 2009, Ms Davidson injured her left wrist when a car, in which she was a front seat passenger, left the road and hit a tree. She applied to the court for permission to sue for damages claiming that her wrist injury qualified as a "serious injury". She argued that her wrist injury deprived her of a career as a chef. It was agreed the wrist injury stopped her from becoming a chef. The important question then became - "had the accident not occurred, would she have achieved her ambition?" The first Judge hearing the case felt that Ms Davidson's wrist injury and loss of a possible career were not serious.

The Court of Appeal disagreed. They considered her prospects of obtaining a career as a chef had been lost. Taking into account her physical impairment, her young age and the fact that the consequences of the injury would be suffered over the whole of her lifetime, they decided that she suffered a serious injury as defined in the transport accident legislation.

This case reminds us that every injured person's life is different and the effects of injury can be far-reaching. That is why we try to spend a lot of time with your patients so we understand their situation well and can advise them on whether or not they may have a "serious injury".

Deidre Petrakis, Lawyer

Our News

City of Greater Dandenong Lunar New Year Festival

On 15 February 2015, we were the proud Presenting Partner of the City of Greater Dandenong Lunar New Year Festival which attracts over 60,000 visitors to Springvale. Our Springvale team hosted a very popular information stall and gave out balloons, lollies, show bags and provided free legal advice. Just like Springvale, our offices are multicultural and we speak Vietnamese, Macedonian, Greek, Dutch, Mandarin, Albanian and some "travellers" French and Spanish.



A bumpy ride to Rotto

Rottneest Island lies 19.4km off the coast of Western Australia and is famous for being the home of the Quokka. On one day for the last 25 years, however, the Quokka has had to take a back seat to the excitement of swimmers launching themselves into the water at Cottesloe and crossing the mass of water between the mainland and Rottneest.

Starting in waves of swimmers from 5.45am, approximately 2300 athletes started the journey on 21 February this year. Amongst them was Michael Lombard, a partner and TAC specialist at Adviceline Injury Lawyers. With him, in a team of four, was Brighton's well known Ophthalmologist, Dr Stephen Jones. Unfortunately the wind, even at an early time, was coming from the south, making the water fairly choppy with the forecast of worse to come.

Dr Jones and Michael Lombard had previously swum and won a local race called "The Bloody Big swim" together under the title "Blind Justice", before Stephen decided to pursue a solo career. They re-formed with two younger girls,

Kris and Jacqui, to form a team in the over 150 year Quad division.

Unfortunately, the forecast proved to be correct and it wasn't long before the wind swung around to the South West and chopped up the water for all entrants. Many escorting paddlers capsized and one escorting boat sank.

Dr Stephen Jones coped with the rough weather by adopting his 'power swimming' technique which all his team were grateful for as they struggled in the bouncy chop. As the wind was blowing at 20 knots and the towels and tops became wetter, the team became colder and colder. Michael and Stephen boasted that they had been preparing for this swim for many years by not holding back on their consumption of fatty foods!

The team led by Dr Stephen Jones and supported by Michael Lombard crossed the line in 7 hours 59 minutes and placed 31st from the 52 teams in their section. Michael said he enjoyed the experience but was very glad he wasn't going solo!

Doctor Q&A

1. Is my patient covered if they were not the driver/passenger in a car?

Yes, pedestrians and cyclists are also covered if they are involved in an accident with a car registered in Victoria.

2. What medical benefits will the TAC pay for to help injured patients recover?

All sorts of things – general practitioner fees, physiotherapy, medication, counselling, mobility aids, equipment around the house (such as shower rails), vehicle modifications etc.

3. How long does a patient have to lodge a TAC claim?

Usually 12 months, although the TAC has a discretion to accept a claim if it is lodged within 3 years of the accident and there are good reasons why the claim was not lodged in the first 12 months.

If you have any legal questions about TAC, please contact our TAC lawyers on (03) 9321 9704 for a confidential discussion.



Our News

Life after compensation

We often talk of special cases and our successes but for our clients, the world does not stop at the end of the Court case.

Sometimes, we are lucky enough to see the results of our work.

One recent example is Sculptor and Artist Michael Cartwright. He and his partner Shona Hudson (who is also a recognised Sculptor) were living in Castlemaine when Michael was badly injured in a road crash. Before his accident, Michael was particularly skillful at large pieces for companies and communities.

Michael was left with a badly injured ankle which restricted him from climbing and standing for long periods whilst sculpting. Even walking around the studio with the large stone chips and uneven surfaces caused Michael extreme pain.

Our transport accident partner, Michael Lombard looked after Michael's TAC claim.

He explained to the TAC the huge impact the injuries caused to Michael's working and home life.

The accident occurred in 2001 and after treatment and stabilisation of Michael's injuries, the claim was resolved with the TAC in 2005.

Michael was able to use the compensation he received to develop a studio in Italy. He developed his artistic gifts away from the larger pieces which caused him pain. Shona also worked creatively in their new space and both careers blossomed.

Our TAC partner Michael Lombard, was fortunate to attend Michael and Shona's latest Melbourne exhibition in March.

It is fantastic to know that our aim to help make a difference to our clients' lives can be achieved.



Lisa Paul returns to Adviceline and we open an office in Melton

We are pleased to advise that Lisa Paul (nee Maynard) has returned to work from maternity leave. Lisa now has 3 daughters - 5 year old Lyla and 1 year old twins Alli and Jade. Lisa will be based at our Melton and Melbourne offices.

Our Melton office is growing and soon we will move into new, larger premises! Melton is a central location for people in all western suburbs as well as country towns such as Geelong, Bacchus Marsh, Ballarat and Bendigo.

Our new office will allow more solicitors to be available for our clients based west of Melbourne. We hope it to be open by the end of 2015.



OUR NEWEST TEAM MEMBER - DEIDRE PETRAKIS, EPPING



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Deidre Petrakis is an experienced lawyer at Adviceline Injury Lawyer's Epping office, where she helps clients who have been injured at work or in a public place. Deidre has lived in the northern suburbs for the majority of her life and is fluent in Greek. She understands the particular needs of non-English speaking backgrounds.

Immediately prior to joining Adviceline, Deidre worked as a Child Protection Lawyer and Court Advocate, working to protect the rights of children. She was excited to join the Adviceline Injury Lawyers team in 2014, and return to private practice in her local community, a community she is passionate about. Deidre thrives on assisting her clients and ensuring they are properly compensated for their injuries.

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MEET OUR SPECIAL COUNSEL



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Liat joined the firm in 2004 as an articulated clerk and has stayed ever since. With over ten years experience exclusively in personal injuries litigation, Liat finds particular satisfaction in helping vulnerable people through a system that often hinders them. Liat is experienced across all Victorian civil jurisdictions having run cases for work injuries in the Magistrates' Court, County Court and Supreme Court including damages trials for negligence. She has also had experience at the appellate level in the Victorian Court of Appeal.



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Lisa Paul has been with the firm for 14 years and looks after the Melton practice. Lisa has had the satisfaction of being able to help hundreds of injured people at an extremely difficult and emotional time in their lives. Lisa is proud to have represented the Plaintiff whose winning case still sets the bar for those injured workers who are entitled to a serious injury certificate for their pain and suffering. She was the only personal injury solicitor in Victoria asked to be involved in the re-write of the Accident Compensation Act.