

WINTER 2020



Message from the

Editor

In the Winter edition of the Legal Check-up we bring you a special TAC issue authored by our TAC experts Genna Angelowitsch and Shyla Sivanas.

We guide you through the requirements for lodging a TAC claim, treatment options for your injured patient and what to do if your patient can't work due to their transport-related injury.

Our FAQs cover fee related questions as well as some interesting scenarios where the TAC has funded more than just standard medical expenses.

If you would like further information about any of the topics discussed in this edition of the Legal Check-up, or wish to confidentially discuss any patient concerns, call a lawyer for free legal advice on (03) 9321 9988.

Bree Knoester, Partner

Lodging a claim with the TAC

Any person who has been involved in a transport accident can make a claim to access support and assistance through the Transport Accident Commission (TAC).

The relevant legislation governing this compensation scheme defines a 'transport accident' as an incident directly caused by the driving of a motor car or motor vehicle, a railway train or tram.

If a person is involved in a transport accident in Victoria, or the incident involves a Victorian registered vehicle, the patient will automatically be eligible for assistance from the TAC.

Ordinarily, it does not matter if the patient was solely responsible for the transport accident in which they were injured – the initial claims process is considered a "no fault" system, meaning an injured party does not have to prove that someone else was at fault for their injuries in order to access assistance.

There are some exceptions

If the injured patient is convicted of a criminal offence as a result of the transport accident. Offences relating to driving while under the influence of drugs or alcohol will often mean that the patient is unable to access weekly payments of lost wages, but can still access medical expenses to treat the injuries they sustain in the transport accident.

... and specific circumstances

The legislation also outlines specific circumstances which are 'deemed' to be a transport accident, meaning a patient can still access assistance if they are injured in

these circumstances. These specific examples include:

- an incident involving a motor vehicle, railway train or tram which is out of control
- a collision involving a bicycle and a stationary motor vehicle
- a collision between a bicycle and an open or opening door of a motor vehicle
- a collision between a bicycle and a motor vehicle, where the cyclist is travelling to or from their place of employment
- an incident involving the opening or closing of the door of a bus, tram or railway train.

To lodge a TAC claim, your patient will need to call and speak to a representative from the TAC on 1300 654 329. A claim lodged within 12 months of a transport accident or the date the injury manifested will be automatically accepted by the TAC. If the claim is lodged outside of 12 months, but within three years of the transport accident, the TAC can exercise their discretion to reject the claim if they do not believe there is a reasonable basis for the delay.

A patient cannot lodge a claim for compensation beyond three years after the transport accident.

Genna Angelowitsch, Special Counsel

Seeking treatment through the TAC

If a patient sustains an injury in a transport accident and has an accepted claim through the TAC, they can access payments towards the cost of the medical treatment and services required for their accident related injuries.

It depends when the accident occurred

If the accident occurred **on or after** 14 February 2018, **or** the patient was required to spend at least one night in hospital because of their injuries, they will not be required to pay a medical excess to access these entitlements.

If the accident occurred **before** 14 February 2018 **and** the patient did not spend one night in hospital, they must prove that at least \$651 of expenses have been incurred to treat their injury before the TAC will commence funding their expenses. This 'medical excess requirement' can be satisfied by establishing that the expenses have been covered through Medicare, private health policies or from the patient's own pocket.

All expenses must be reasonable

The requirement for reasonableness has often been interpreted to mean that there must be some kind of "measurable benefit" towards the recovery of the patient. The TAC has published a schedule of fees for a variety of medical and rehabilitation services designed to indicate what they consider to be "reasonable expenses". This list can be provided by Adviceline Injury Lawyers and is also located on the TAC website.

The expense must also be incurred as a direct result of the transport accident in order for it to be recoverable from the TAC. Pre-existing injuries or underlying asymptomatic conditions that are aggravated through transport accidents can be covered by the TAC, and treatment provided under the TAC claim number. However, TAC may choose to reject liability for the treatment cost if it believes that the expense would have been incurred by the patient even if the transport accident had not occurred.

Finally, the TAC can only pay for expenses that are incurred within Australia. If a patient chooses to seek medical treatment overseas, the TAC is not responsible for reimbursement of the costs associated with this treatment. Should a patient require equipment or aides that are provided by an international supplier, we recommend that an Australian based intermediary place the order for the patient, to enable the patient to seek reimbursement of the invoice provided by the Australian intermediary, rather than by the international supplier.



Treatments covered by the TAC

In addition to being "reasonable" and related to the transport accident, a treatment expense must fall into one of the following categories in order for the TAC to reimburse/fund:

- medical services – usually traditional medical expenses such as consultation costs, services and medication
- hospital services – the service must be recognised under the Health Services Act or the Mental Health Act to be eligible
- nursing services – the provider must be registered under the Health Practitioner Regulation National Law for the services to be eligible
- disability services – usually covers any expenses relating to the attendant care, assistance, accommodation, support, community access, respite care or household help that a patient requires as a result of a transport accident
- rehabilitation services – these expenses include the provision of any aid, treatment, counselling, appliance, apparatus or other service required for a patient's transport accident related injuries
- transportation costs – a patient can access reimbursement of the costs of travelling to a rehabilitation service, disability services program or vocational rehabilitation service
- vocational rehabilitation services – this category covers a wide variety of services aimed at assisting patients to return to work after an accident, including vocational counselling and re-education, return to work planning and the provision of necessary aids.

Other categories include road accident rescue services, funeral expenses, ambulance services, childcare services, home services, post-acute care, travel costs for family members to visit the patient, vehicle related expenses and home modifications. Each of these categories has a specific threshold that a patient must satisfy before they are eligible for funding from the TAC.

For most categories, the TAC requires a service provider to have some type of registration. For categories such as medical services or nursing services, this registration is facilitated through the National Practitioner Health system, whereas other categories such as rehabilitation or disability services require a provider to be registered with the TAC.

If the TAC denies or terminates funding for any of these expenses, or otherwise makes a decision that a patient disagrees with, the patient only has a strict 12 month timeframe to dispute the decision. This is why it is important to seek legal advice about their potential avenues of dispute as early as possible.

Genna Angelowitsch, Special Counsel

What if a patient can't work?

If a patient is unable to perform their usual employment as a result of their transport accident-related injuries, they can access weekly payments from the TAC known as "loss of earnings benefits".

It is important to note that the TAC do not pay for income lost during the first five days after the transport accident. A patient should utilise ordinary sick leave entitlements from their employer during this period.

After the initial five days, the TAC can make payment if the patient was an "earner" at the time of the transport accident. A patient does not need to have been employed when the accident occurred to be eligible for these payments. They are eligible for assistance if, prior to the transport accident, they signed a contract of employment to start a new position or if they had been employed in the two years immediately prior to the transport accident.

In many cases, loss of earnings benefits can be paid by the TAC for up to three years after the transport accident.

Certificates of Capacity

In order to access loss of earnings benefits, a patient must provide the TAC with 'Certificates of Capacity'. An ordinary sick leave certificate will not be sufficient – it must be a valid Certificate of Capacity as published by the TAC and WorkSafe.

As the patient's treating doctor, you will be asked to provide an opinion on a number of things when completing a Certificate of Capacity:

- **the patient's current diagnoses**
It is important that the conditions listed in this section do not include anything unrelated to the transport accident, and preferably only include conditions accepted by the TAC as being caused by the transport accident. If you are unsure of these, you can ask the TAC, or call our free legal helpline, to confirm.
- **the patient's current capacity**
Is the patient able to perform physical tasks such as sitting, standing, squatting and lifting? How is their performance in mental health tasks such as attention span and memory? There are additional comment boxes for these sections, and you should use these to include any restrictions that are not adequately captured in the "tick box" section.
- **the impact of the patient's injuries on their capacity for pre-injury employment**
The form provides three options for you to select from:
 - a. the patient has full capacity for their pre-injury duties
 - b. the patient has capacity for "suitable" employment – meaning employment that has been modified to accommodate their transport accident-related injuries
 - c. the patient has no current capacity for work.
- **the likely duration of the patient's capacity**
The first Certificate issued following a transport accident cannot cover a period longer than 14 days. After the first certificate, subsequent Certificates of Capacity can span up to 28 days (or longer if a patient has received special dispensation from the TAC because their capacity is unlikely to change within a 28 day window).

At completion, you will need to sign the declaration section (section 7). The patient will also need to sign, confirming that they have not undertaken any undeclared work since providing their last Certificate of Capacity.

Genna Angelowitsch, Special Counsel



TAC FAQs

What if my fees are more than the TAC's schedule of fees?

If you charge more than the TAC's schedule of fees, the patient is responsible for the 'gap' payment. Alternatively, you can apply to the TAC to be approved as an Above Rate Service Provider to have your fees fully funded by the TAC.

How long do I have to wait to receive payment from the TAC after I treat my patient?

Medical professionals are able to register for LanternPay with the TAC which enables payment decisions to be made instantly and invoices to be paid the next business day. This removes some of the uncertainty regarding whether a patient has been approved for TAC funding for a particular treatment.

How many years after an accident will the TAC still fund medical expenses for a patient's transport related injuries?

As long as you are satisfied that the injury is still related to the accident and provided that the expense is reasonable, the patient is entitled to seek funding from the TAC for the treatment, regardless of how many years have passed after an accident.

The entitlement to medical expenses does not stop if court or any other action is taken, unless TAC have made an express decision to cease medical expenses.

What services require pre-approval from the TAC?

Not all medical expenses are automatically approved by the TAC. In particular, unless your patient has a severe injury, any surgery after three months from the date of the accident requires pre-approval from the TAC.

In addition, treatments and services such as spinal injection, infusion therapy, home help, gardening and child care all require pre-approval from the TAC.

If a patient has had a gap in treatment of greater than 6 months, they will also require pre-approval from the TAC.

Shyla Sivanas, Lawyer

Meet our TAC team



Genna Angelowitsch special counsel
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Genna is the head of our TAC division at Adviceline Injury Lawyers, dedicating her practice to assisting injured Victorians achieve their proper entitlements from the Transport Accident Commission. She is also an LIV accredited specialist in personal injury litigation.

Prior to managing the transport accident division, Genna acted for individuals seeking compensation in a variety of circumstances, including through transport accidents and in the workplace. She also assists families who have lost loved ones navigate the Coronial system and access dependency entitlements.

Genna's priority is to empower clients by informing them of their rights and entitlements, and to expedite the progression of their claim as much as possible to allow a patient to focus on their recovery.

Sadly, psychiatric injuries are growing in prevalence throughout the community, and Genna has worked with many injured individuals who have been left with emotional trauma long after their physical injuries have healed. One client in particular was a volunteer CFA member who had committed decades of service to the community through some of our worst disasters, including Ash Wednesday and Black Saturday. Genna assisted the client in accessing compensation for the post-traumatic stress disorder he developed after his years of service. Following the successful resolution of his claim, he credited Genna with being an essential member of his support team, and continues to email updates on his recovery process to this day.



Shyla Sivanas lawyer
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Shyla grew up in Malaysia, migrating to Australia in 2012, and is fluent in Malay. She is passionate about ensuring that other migrants who may not be familiar with Victorian laws and the schemes available to them are accessing the benefits that they are entitled to.

Shyla has a strong focus on assisting clients injured in transport accidents and workplace injuries. She also assists clients with superannuation, public liability and crimes compensation claims as well as concurrent claims for transport or workplace injuries.

Where other lawyers might be hesitant, Shyla takes pride in pursuing challenging "out of the box" cases. This includes:

- obtaining a six-figure settlement for a client who was a passenger in a single vehicle accident where the driver hit a kangaroo. Despite there being no other vehicle at fault, Shyla argued that the driver who was insured by the TAC was at fault as he could have taken greater care at a time where wildlife was active on the roads.
- pursuing a claim for a client who was badly injured whilst riding a horse that was spooked by a passing vehicle
- obtaining compensation from a TAC claim for a client who suffered a head injury from being struck by electrical lines that had fallen because a vehicle had collided with an electrical pole
- pursuing a claim where a client developed allergic reactions to various products due to the stress caused by an accident.

Did you know?

It is not uncommon for the TAC to pay for expenses that fall outside what might be considered a typical "medical expense" when it comes to the long-term nature of road trauma injuries. Examples of expenses that TAC have funded include:

- the cost of IVF treatment for an individual who had been rendered a paraplegic in a transport accident and was unable to conceive children naturally
- the cost of further study and text books for a person who could no longer work as a diesel mechanic and intended to retrain as a teacher
- the cost of a quad bike, where the claimant had previously been a quad bike enthusiast, and the use of the quad bike was considered to be beneficial for the claimant's rehabilitation
- the cost of modification to the driveway of the claimant's parents. The claimant had regularly visited his aging parents prior to the transport accident but was rendered paralysed. He could not traverse their driveway in his wheelchair, and TAC were ordered to pay for the cost of modifying the parents' driveway.



If you would like to receive an **electronic copy** of the Legal Check-up, or to organise an **education session**, please **email** Marketing Manager, Lisa Aughsteeen at lisa.aughsteeen@alil.com.au.

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