

Car accidents

Making a
Transport Accident
Commission
claim



LAWYERS

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Stringer
Clark

Am I
covered?

Hundreds of people are injured in motor vehicle accidents every year. If you or a family member has been involved in an accident, compensation can help you get your life back together.

If you have been badly injured as the result of a motor vehicle accident in Victoria you may be entitled to substantial compensation under the Transport Accident Act.

The Act also covers Victorian residents who have an accident in another state or territory, provided that the vehicle was registered in Victoria and you were the driver of, or a passenger in, the vehicle.

If you were injured on a train or tram, or you collided with the opening door of a motor vehicle while riding a bicycle, you can also claim for compensation.

So if you are injured, you are almost certainly entitled to some level of compensation under the Transport Accident Act, such as weekly payments, medical expenses, lump sum payments and possibly common law damages.

This brochure explains your rights under the TAC system. If you decide to apply for compensation, a good lawyer can make lodging a TAC claim relatively quick and inexpensive.

Our lawyers are happy to offer you a free, no obligation initial consultation as part of the Stringer Clark service.

How to make a claim

1. Report the accident

A simple rule: you must report your accident to the police. The TAC cannot accept your claim unless the accident has been reported. If you do not report the accident at the time it occurred, you should attend your local police station as soon as possible.

2. Lodge a TAC claim

Call the Transport Accident Commission on 1300 654 329 to lodge your claim over the phone. The TAC will mail you a hard copy of the claim form to check and complete. Time limits apply on lodging a claim, so call as soon as possible after the accident.

3. What if my claim is unsuccessful?

If the TAC rejects your claim, you are entitled to an explanation. You should always contact your lawyer to discuss whether to appeal the decision.

What
are the
benefits?

Medical expenses

If your injury or illness is a result of a transport accident, or has been aggravated by a transport accident, you can claim medical expenses, including medical treatment, rehabilitation services, disability services, travel and household support services. If you require housekeeping, home help or gardening assistance you should ask your doctor to stipulate this on your medical certificate.

Medical excess

If you were admitted to hospital as an inpatient for one day or more no medical excess applies.

If you do not go to hospital, the TAC will start paying your medical expenses once you have paid the first \$564.00 (this amount may change yearly).

You should have these expenses paid through Medicare. Keep a list of all your expenses so that you can inform the TAC when the excess has been met.

Weekly payments

Loss of earnings

If you require time off work, or you arranged to commence employment but are unable to do so as a result of your injuries, you will be entitled to loss of earnings benefits. These benefits are calculated at 80% of your gross pre-accident weekly wage and then income tax is deducted. The first five working days are not covered except in cases of severe financial hardship.

Medical certificates stating you are unfit for employment must be supplied. Should you fail to provide medical certificates, the benefits will cease. If you are able to work reduced hours or modified duties so that you suffer a partial loss of earnings, you may also be compensated for that loss.

Loss of earning benefits are payable for a maximum of 18 months from the date of the accident. The maximum amount payable is \$965 net per week, subject to indexation.

Loss of earning capacity benefits

If you are still unable to work 18 months after the accident, you may be entitled to loss of earning capacity benefits even if you were not working at the time the injury occurred.

Loss of earning capacity benefits are based on an estimate of your pre-accident earning capacity as assessed by the TAC. The TAC will also consider promotions or increases that you may have secured if you were still employed. The maximum amount payable is \$815 (indexed) net per week and unless you are found to have a permanent impairment of 50% or more of the whole person, the payments cease three years after the accident date.

Lump sum claims

Lump sum no fault impairment benefits

Once your condition has stabilised, your injury will be assessed against the American Medical Association Guidelines. If you have a permanent impairment affecting 10% or more of your body, you will be entitled to a lump sum impairment benefit. You are entitled to this benefit regardless of who was at fault in the accident.

For each percentage point above 10%, you are entitled to approximately \$950 for accidents before 16th December 2004. So someone with a 15% impairment is entitled to a lump sum of approximately \$4,750.00 (indexed).

For accidents occurring on or after 16th December 2004 more generous amounts apply. For instance, an injured person with 11% impairment is entitled to \$4,860.00 (indexed) plus approximately \$1,080.00 for each additional percentage point.

Common law rights and entitlements

Under the Transport Accident Act, serious injury is defined as 30% whole person impairment, or:

- serious long term impairment or loss of a body function;
- permanent serious disfigurement;
- severe long term mental or severe long term behavioural disturbance or disorder;
- loss of a foetus.

In assessing the seriousness of your injury, the TAC will consider how your injuries have affected your capacity to earn income and your enjoyment of life. You should consult your lawyer about this aspect of your claim to obtain expert advice.

If you are found to have a serious injury the maximum amount payable for pain and suffering is \$422,900 and the maximum amount payable for loss of income is \$951,560. These amounts are subject to indexation.

Even after your common law claim is resolved, you will still be entitled to claim for ongoing medical and other expenses in accordance with the Transport Accident Act.

Fatal accident claims

If a person is killed in a motor vehicle accident that is partly or wholly someone else's fault, their dependants may make a common law claim for damages. This claim can include loss of income and services provided by the deceased, up to \$692,680.

Even if the accident was the deceased's fault, no-fault benefits may be available to dependants. These include a lump sum of up to \$142,980 based on the age of the deceased, plus a weekly payment of up to \$965.00 based on the earnings of the deceased. These amounts are subject to indexation.

Weekly payments are payable for up to five years to the spouse of the deceased. If there are dependant children, payments continue until they are 16 years old (or 25 if they are full time students). If the deceased was the full-time carer of children prior to the accident, the TAC will contribute to the costs of child care.

The TAC will also pay reasonable funeral costs directly to the funeral directors.

Lump
sum
deadlines

Can
benefits be
refused?

Lump sum and damages claims must be pursued within six years of the date of the injury or your right to pursue a lump sum could be lost forever.

Yes. You may not be eligible for loss of earnings benefits if you:

- Do not have a valid licence at the time of the accident.
- Are the vehicle owner and have failed to pay the TAC charge.
- Have been convicted of using the vehicle in a criminal activity.

Impact of blood alcohol level

Your entitlement to loss of earning benefits may be reduced if you were convicted of driving the motor vehicle under the influence of alcohol, unless you can show that the presence of alcohol did not contribute in any way to the accident.

Benefits are reduced as follows:

- One third reduction if the blood alcohol reading was more than .05 and less than .12.
- Two thirds reduction if the blood alcohol reading was more than .12 and less than .24.
- No benefits if the blood alcohol content was .24 or more.

Can I
appeal?

Appeals must be lodged within 12 months of a TAC decision.

You may appeal if the TAC rejects all or part of your claim, ceases or reduces your payments, or provides an inadequate assessment of your impairment.

If your claim is unfairly rejected, or you wish to make a no fault or common law claim for lump sum compensation, you will need expert legal advice. Stringer Clark provides a free first interview to discuss legal options, the likelihood of success and potential costs. A "No fee 'til you Win" policy is offered in some cases, although out-of-pocket expenses and other party's costs may still apply.

Comprehensive legal services

Work injuries

Lump sum and weekly benefit claims for work-related injury and disease, including back and neck injuries, hearing loss and exposure to toxic substances and asbestos. Experts in WorkCover and Comcare systems.

Personal injuries

Compensation claims for financial loss, pain and suffering resulting from exposure to asbestos, tobacco and other toxic substances, accidents, medical negligence, defective products and wrongful death.

Criminal law

Defence of charges in police and traffic matters and appearances in criminal courts.

Family law

Applications for divorce, maintenance, custody, access and restraint orders, division of property in matrimonial and de-facto relationships and separate representation of children.

Employment

Claims for unfair/wrongful dismissal, award breaches and underpayment, and contract advice.

Sexual/physical abuse

Compensation claims for victims abused by an individual or through contact with an organisation (e.g. church, school, residential institution).

Military compensation

Compensation claims for members of the armed forces and Reservists.

Anti-discrimination and equal opportunity claims

Sexual harassment and discrimination on grounds such as age, race, religion, sex, sexual orientation and disability.

Superannuation

Advice on termination and retirement entitlements, claims for disability benefits and Superannuation Complaints Tribunal applications.

Wills and probate

Preparation of Wills, administration of deceased estates and obtaining grants of probate and letters of administration.

Conveyancing

Sale and purchase of houses and land.
Section 32 Vendor's statements.

Victims of crime compensation

Compensation claims for pain and suffering and financial losses for victims of criminal activity.

Our network of offices

July 2007

In 2007 Stringer Clark joined forces with leading metropolitan law firm Ryan Carlisle Thomas to create Victoria's biggest network of legal services.

With offices in 21 metropolitan and regional locations, plus affiliates in Beechworth, Bendigo, Bright, Mildura, Mt Beauty, Myrtleford, Shepparton, Warragul and Wodonga, Stringer Clark can provide expert local service to clients throughout Victoria.

Our offices

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