



Understanding TAC decisions that reduce or stop your entitlements

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If you're injured in a transport accident in Victoria and your TAC claim for compensation is accepted, you may still face disputes over ongoing benefits. The Transport Accident Commission can stop or reduce weekly payments or refuse medical and like expenses for various reasons, including insufficient medical evidence, preexisting conditions or disputes about whether your injury is accidentrelated.

Understanding why the TAC makes these decisions can help you protect your entitlements and know your options for challenging them.

If you're looking for information about appealing an outright rejected or denied claim, you can read our earlier blog, ["Can I appeal a TAC decision I don't agree with?"](#)

Who can make a TAC claim?

You can lodge a claim with the TAC if you have sustained an injury through an incident directly caused by the driving of a motor vehicle, train or tram. This includes:

- if you were the driver or passenger of a motor vehicle and sustained injury;
- if you have been injured through [the driving of a train or tram](#);
- if you are a [cyclist who has sustained an injury because of colliding with a motor vehicle](#);

- if you are a [cyclist who has sustained an injury because of a stationary motor vehicle or the door of a motor vehicle](#); and
- if you have witnessed a transport accident and have sustained a psychological injury.

Claims can be lodged for both physical and psychological injuries, [including nervous shock](#), if you have witnessed a transport accident and developed a psychological injury. You can also make a claim if you sustained an injury, regardless of who was at fault for the accident. To read more about TAC claims eligibility and benefits, read our earlier blog, ["Guide to all your TAC entitlements after a motor vehicle accident"](#).

Why might the TAC reject my entitlement under an already accepted claim?

If your TAC claim has been accepted, you are entitled to reimbursement for medical and like expenses which involve costs for consultations with doctors, medication, treatment and associated services such as physiotherapy or psychology consultations for a psychological injury.

If your injuries have also prevented you from working, the TAC will pay loss of earnings and loss of earning capacity benefits, which aim to compensate for your lost salary.

If you request reimbursement for an entitlement (under an accepted claim) and the TAC refuses, it is usually for one of the following reasons:

Insufficient or unclear medical evidence

The TAC relies heavily on medical documentation to determine the extent of your injuries and their impact. Reimbursement for an entitlement could be refused where your treating doctors have not provided sufficient reasoning for why the expense is reasonable and necessary, due to your injuries.

Injury not clearly linked to the transport accident

Causation can usually be a point of contention, with the TAC arguing that your issues are not a direct result of the accident. For example, you claim reimbursement for medications for a psychological injury, but the TAC deems this psychological injury not to have been caused by the transport accident.

Pre-existing conditions

The TAC might argue that a pre-existing condition, rather than the accident, is the primary cause of your problems, or that the accident only temporarily aggravated a pre-existing issue. This could be where you had a pre-existing physical injury, and the TAC believes that the transport accident could not have aggravated the specific injury; thus, expenses related to this injury would not be

reimbursed.

Claim submitted too late

The TAC expects applications for reimbursement of expenses to be made as soon as practicable. The *Transport Accident Act 1985* provides that the TAC may only reimburse expenses incurred three years from the date of the accident or two years from the date the injured person starts receiving medical and like expenses. If you seek reimbursement after these dates, the TAC may reject your application for payment.

Another common dispute is where the TAC stops or refuses to pay you loss of earnings/loss of earning capacity benefits. This usually occurs where:

- they believe your injury does not cause a loss of earnings or earning capacity;
- they assess your pre-accident earnings or earning capacity differently than you expect;
- they deem you have some work capacity, even if you disagree or cannot find suitable employment;
- you've returned to work, even partially (e.g. on reduced hours), and they believe your entitlement should cease or be reduced more than you think;
- they argue your incapacity is due to non-transport accident-related reasons (e.g. a new illness, or inability to meet vocational requirements unrelated to the accident);
- you have not provided sufficient "certificates of capacity" from your treating medical practitioners.

In some cases, the *Transport Accident Act 1985* provides that if you were convicted of certain serious driving offences at the time of the accident, your entitlement to loss of earning capacity benefits may be impacted or denied.

The TAC can make decisions not to reimburse you for an entitlement or to stop an entitlement altogether at any time after your TAC claim is accepted. We often see the TAC making adverse decisions after a few years of an injured person receiving benefits. This often revolves around the extent of a person's injuries and whether the injuries are permanent and continue to necessitate a certain level of care or entitlements.

If your injuries are serious and permanent, we may also be able to assist with other compensation options, such as obtaining lump sum compensation. You can read more about this in our earlier blog, ["TAC lump sum compensation due to permanent impairment"](#).

How to appeal an adverse decision of the TAC

If you disagree with a decision the TAC has made regarding your claim, there are several avenues available to appeal those decisions.

Informal Review by the TAC

If the TAC has made a decision that you do not agree with, you can directly request the TAC to conduct an informal review of their decision. During this process, a different TAC case manager/officer who was not involved in making the original decision will review your entitlements and the evidence in support of the entitlement to determine whether the original TAC decision was correct.

While this is an easy and quick way for an adverse decision to be overturned, the TAC will rarely change its decision. They may consider changing the decision where there is:

- evidence which shows that the TAC misunderstood or did not consider critical information which was supportive of the particular entitlement; or
- new evidence provided, which was not available to the original TAC decision maker at the time they made their decision.

Even with further information, this process does not usually change the TAC's decision and often leads to time being wasted.

Dispute Resolution Protocols

In order to appeal a decision through the Dispute Resolution Protocol, you will need to obtain legal representation. Guardian Injury Law can assist you in this process.

[FREE ADVICE FROM A TAC CLAIMS AWYER: 1300 700 761](tel:1300700761)

You have a strict time limit of 12 months from the date you became aware that the TAC made a decision regarding your entitlement to appeal through these protocols. As such, it is imperative that you speak to an experienced motor vehicle accident lawyer as soon as practicable after you find out about the TAC decision.

A motor vehicle accident lawyer will then write, on your behalf, to the TAC to lodge a formal dispute application outlining:

- the disputed decision(s);
- your reasons for disagreeing;
- supported relevant documents (e.g., medical reports, vocational assessments).

The TAC will then have 14 days to acknowledge receipt of the application, and within 90 days, they must organise a dispute conference in which you, your lawyer and the TAC will discuss the dispute and see if there is an agreement that can be reached.

After the conference, the TAC will have 14 days to provide its decision on review. The TAC could decide to change its decision, keep its original decision or resolve the dispute on different terms

that you agree to.

In our experience, a TAC dispute application is the most effective process for resolving disputes with the TAC.

At Guardian Injury Law, we are experts in motor vehicle accident matters and can help you obtain reimbursement for the entitlements you deserve.

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VCAT application

If your dispute remains unresolved after the formal dispute application process, or if you choose to bypass those steps, you can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the TAC's decision.

Again, there are strict time limits for making an application for review of the TAC's decision to VCAT. Your application for review must be made within 12 months of being aware of the TAC's decision regarding your entitlement or within 3 months of being notified of the TAC's decision on review made under the Dispute Resolution Protocols, whichever occurs last.

The TAC has 28 calendar days from receiving a copy of an application for review from VCAT to either affirm, vary or revoke the decision, or request further information.

VCAT may first refer the parties to a compulsory conference or mediation to try and resolve the dispute before a formal hearing. If no resolution is reached, the matter will proceed to a hearing before a VCAT member who will make a final, binding decision.

How a TAC claims lawyer can help

As you can see, the TAC can make adverse decisions after a claim has been accepted at any time and for several reasons. It can be difficult to navigate what evidence is required to support your ongoing claim on your own. We have years of successful experience assisting clients in disputing TAC decisions.

We offer initial free advice and run claims on a 'no win, no fee' basis, so there's no cost to finding out where you stand.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

enquiries@guardianinjurylaw.com.au

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.