



## TAC case review clarifies meaning of “as a result of a transport accident”

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The [TAC scheme](#) is designed to provide compensation for those injured as a result of a transport accident in Victoria. However, the meaning of “as a result of a transport accident” has been brought into question in the Victorian Supreme Court, Court of Appeal.

The case of [Van Der Wolf v Transport Accident Commission \[2025\] VSCA 24](#) raises an argument for whether an interlock system, which, when activated, caused Mr Van Der Wolf to suffer from acoustic trauma and tinnitus, and whether that injury/condition was directly caused by the driving of a motor vehicle.

### Incident that led to the TAC claim

In 2016, Van Der Wolf was charged and convicted of drunk driving. As a result of this criminal conviction, the Magistrates’ Court (Victoria) ordered Van Der Wolf to lose his license for 6 months, and on return to driving in July 2017, he would be required to have a WR3 alcohol interlock device fitted into his van.

An alcohol interlock device requires the driver of the vehicle to pull over or stop in traffic at random intervals and complete a breath test to be able to continue operating the vehicle. If the driver of the vehicle is unable to do so, an alarm will sound and continue until the test has been completed. The driver will still be able to continue operating the vehicle as per safety regulations.

On 1 September 2017, Van Der Wolf was driving his van on Maroondah Highway when the interlock requested a retest. Van Der Wolf was able to park his car in a side street; however, he was unable to complete the retest within the set 5 minutes required of the device due to heavy traffic.

As a result, the interlock alarm system sounded for 45 seconds until he was able to retest successfully. Van Der Wolf alleged that the interlock alarm was too loud, which caused him to suffer hearing loss, tinnitus and psychological injuries.

Van Der Wolf lodged a TAC claim for compensation as he developed acoustic trauma and tinnitus as a result of the alarm.

On 25 February 2019, the TAC denied the claim on the basis that the injury/condition was:

- not a “transport accident”, as defined in the *Transport Accident Act 1986* (“**the Act**”); and
- not directly caused by the driving of a motor vehicle.

Van Der Wolf appealed the decision of the TAC to the Victorian Civil and Administrative Tribunal (VCAT).

## What is a transport accident for the purposes of a TAC claim?

Section 35(1) of the Act provides:

*“[a] person who is injured as a result of a transport accident is entitled to compensation in accordance with this Act’.*

*The terms ‘injury’ and ‘transport accident’ are both defined in the Act, as follows:*

*injury, except in Part 10, means physical or mental injury and includes nervous shock suffered by a person who was directly involved in the transport accident or who witnessed the transport accident or the immediate aftermath of the transport accident; ...*

*transport accident means an incident directly caused by the driving of a motor car or motor vehicle, a railway train or a tram”*

## VCAT decision

On 18 January 2023, Senior VCAT Member E Wentworth upheld the TAC’s decision of 25 February 2019 to deny the TAC claim as:

*“The incident in this case was not directly caused by the driving of a motor vehicle, and is not therefore a transport accident within the definition in the Act. Any injuries Mr Van Der Wolf suffered were likewise not directly caused by the driving of a motor vehicle”*

Van Der Wolf then appealed the decision of VCAT to the Victorian Supreme Court trial division.

## Supreme Court of Victoria trial division decision

Justice Richards J heard the application on appeal from VCAT. On 5 June 2024, he agreed with the decision of VCAT to reject this appeal. The Court agreed that the sounding of the interlock alarm (and any injuries caused by the alarm) were not directly caused by the driving of the vehicle.

Further, the Court affirmed that the alarm was sounded as Van Der Wolf failed to complete the retest within five minutes while the van's engine was on and he was driving, but that the alarm would have sounded even if the van was stationary. As such, his injuries could not have been directly caused by the driving of the vehicle and therefore would not fall within the meaning of "transport accident" under the Act.

Van Der Wolf appealed the decision of Richards J to the Supreme Court of Victoria, Court of Appeal.

## Court of Appeal decision

Van Der Wolf argued that the alarm was intimately connected to driving, and in his case, was a precondition for driving. He further argued that the failure to retest (within 5 minutes) was an "ineffectiveness of driving", which would mean the claim arose out of the use or driving of a vehicle.

The TAC argued that the alarm's operation was unconnected to the actual driving (propulsion or movement) of the vehicle. The alarm sounded due to Van Der Wolf's failure to retest, not because of the vehicle's motion or control. The alarm would sound even if the vehicle was stationary or empty, as long as the engine was running. As such, it was separate from any feature of driving.

Van Der Wolf's appeal was heard by Justice Beach, Justice Forbes and Justice Forrest J in the Court of Appeal. Their Honours handed down their judgement on 6 March 2025.

The Court found that the alarm sounding had **no** relationship to the van's propulsion or movement. It was an independent function of the interlock, unrelated to Van Der Wolf's control of the vehicle's motion. The fact that driving was a precondition for the alarm sounding didn't satisfy the direct causation test.

The Court reiterated that the "direct causation" requirement means a **causal link between the injury and some feature of the driving** (i.e., the movement or propulsion of the vehicle). It's not enough for an incident to be a "but for" cause or intimately connected to the **use of the vehicle**.

Therefore, the Court was satisfied that VCAT came to the proper conclusion that the incident was **not a transport accident**, within the meaning of the *Transport Accident Act 1986*.

## What are other examples of a transport accident?

As upheld in the Van Der Wolf case, a transport accident is an incident **directly caused by the driving of a vehicle**. Vehicles that are included within the *Transport Accident Act 1986* include motor cars, motorcycles, bicycles, railway trains and trams.

A transport accident can also include scenarios where:

- a motor vehicle, [train or tram](#) that is out of control and directly causes injury;
- a [collision between a cyclist](#) and a stationary motor vehicle;
- a collision between a [door](#);
- a collision between a cyclist and a motor vehicle while the individual cycling, is travelling between their home and place of employment;
- an incident directly caused by the opening/closing of a bus, tram or train door;
- a [pedestrian is injured on the road](#), including hit-and-run incidents.

## What are the takeaways from the Van Der Wolf case?

This case makes it clear that simply being in a vehicle when an injury occurs, or even if the incident arises from the general "use" of the vehicle, is not enough. The Courts require a direct causal link between your injury and the actual act of driving - meaning the propulsion, movement, or direct control of the vehicle.

The case further highlights that the legal definition of "transport accident" in Victoria is narrow, having been intentionally tightened by legislation. For injured road users, this means a thorough understanding of the specific facts of their incident and how they directly relate to the vehicle's driving functions is paramount.

Given the complexities of establishing this direct causation and the potentially subtle distinctions involved, seeking early legal advice from a personal injury lawyer is recommended to assess the strength of your case and navigate the intricate legal requirements.

## How Guardian Injury Law can help

When injured in a transport-related accident, it is completely normal to feel unsure about what you are legally entitled to. The TAC claim's process can also be highly stressful for injured claimants.

Guardian Injury Law can help you understand exactly what you are entitled to and make the entire process of obtaining compensation for your injury much easier. We can assist on a "no win no fee" basis, meaning if we are unsuccessful in your compensation claim, there are zero legal fees. There is no risk in finding out where you stand.

## Contacting Guardian Injury Law

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