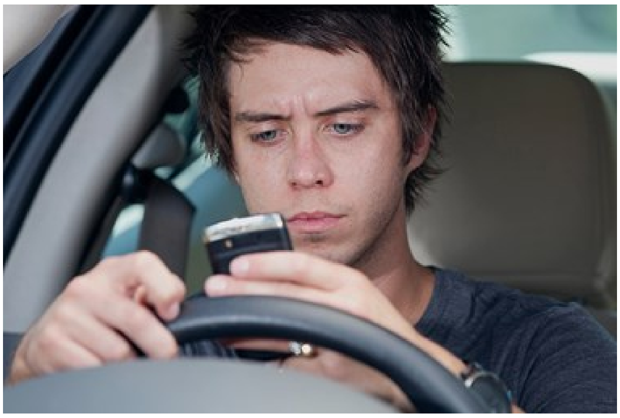

Can I bring a TAC claim if I was at fault in the accident?

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Transport accidents in Victoria are a common occurrence. While some may involve damage to the vehicles only, sadly, many result in injuries to the occupants of the vehicles. A common question we hear is whether TAC compensation is available to drivers who were at fault in an accident.

The short answer is that drivers who were at fault in a road accident can be entitled to TAC compensation for their injuries. There are some exceptions to that, and the options for compensation are more limited than those available to other injured parties who were not at fault.

TAC no-fault benefits after a motor vehicle accident

Broadly speaking, there are three entitlements under a TAC claim that all road users in Victoria, including drivers, may have if injured in a motor vehicle accident, regardless of whose fault the accident was.

1. **Medical and like expenses**
2. **Loss of earning capacity benefits**
3. **Impairment benefits**

TAC medical and like expenses

This category of benefit covers the cost of treatment for injuries and services required following a road accident.

Examples of some of the medical treatments the TAC can cover include:

- hospital treatment;
- ambulance cover;
- specialist appointments, including but not limited to physiotherapy, chiropractor, podiatry, osteopathy, exercise physio, optometry;
- medication;
- mental health support.

The ‘like’ expenses can cover costs such as domestic help if you are unable to, for example, clean your home or tend to gardening while you recover from your injuries or other similar expenses.

You may also be able to claim the cost of travel expenses to and from medical appointments related to your injuries and accommodation if you live far from the health providers.

If your initial TAC claim is rejected or any subsequent requests for treatment are rejected, there is a process by which you can request a review of the decision. We recommend seeking the assistance of an experienced TAC lawyer in this process.

Free advice to find out where you stand: 1300 700 761

TAC loss of earning capacity benefits – weekly payments

If you were working at the time of your accident and you are unable to work for more than five days following the accident, you may be entitled to claim loss of earning benefits (TAC weekly payments) while you recover from your injuries, **even if you were at fault**.

In order to claim weekly payments, your doctor will need to certify that you cannot work due to the injuries you sustained in the motor vehicle accident.

The TAC assesses a person's eligibility for loss of earning benefits on a case-by-case basis. These benefits are generally paid to eligible persons at 80% of their average weekly earnings from the 12 months prior to the accident.

TAC impairment benefits – lump sum compensation

If your injuries are of a more serious and permanent nature, you may also be entitled to an impairment benefit payment, **even if you were at fault** in the accident. An impairment benefit is a one-off lump sum payment for persons who can demonstrate at least an 11% whole-person impairment stemming from a physical or psychological injury sustained in a motor vehicle accident.

The payment is aimed at compensating for permanent loss of function a person has suffered in a motor vehicle accident. Some examples of injuries which may entitle a person to an impairment benefit payment include:

- brain injuries;
- spinal cord injuries;
- permanent scarring or disfigurement injuries;
- injuries to any body part which will restrict their movement in a permanent way, for example, rotator cuff injuries or knee injuries;
- psychological injuries which are considered to be of a permanent nature.

Whether a person meets the relevant threshold is determined by an independent medical assessor qualified in the relevant field. If the determination comes in under the relevant threshold, there are options to dispute this decision.

In order to make a claim for a TAC impairment benefit, forms and supporting documents, such as medical reports from treating doctors, must be lodged with the TAC. These claims can be complex to prepare and, if not fully and accurately prepared, can have a negative impact on your claim. We suggest seeking the assistance of an experienced Transport Accident Lawyer to assist you in this process.

It is important to understand that only the driver of the vehicle responsible for the motor vehicle accident is usually considered 'at fault'. Any passengers in the vehicle would usually be considered not at fault and therefore have greater compensation options available to them than the driver.

When is TAC compensation not payable after a motor vehicle accident?

The *Transport Accident Act* sets out various situations in which they are **not** liable to pay compensation to an injured driver, passenger or pedestrian.

The primary situation in which TAC compensation is not payable for a transport accident is if a crime was committed at the time of the accident.

The following is a non-exhaustive list of the types of criminal offending which would mean compensation is either not payable entirely or where the amount of compensation to be paid may be significantly reduced:

- Driving without a licence or while your licence is suspended;

- Driving under the influence of alcohol or drugs at the time of the accident (unless you can prove that the alcohol and/or drugs did not contribute to the accident);
- If the vehicle was being used for the commission of a criminal offence (this applies to any driver or passengers in the vehicle);
- Murder, manslaughter, or child homicide where the commission of the offence involved the motor vehicle;
- Dangerous driving causing death;
- Culpable driving causing death.

Sports accidents involving participants in an organised race or a speed trial are generally not covered either, with a few exceptions. Accidents in which a person is driving an unregistered vehicle on private land are also not covered.

Get help from a TAC lawyer

If you've been injured in a motor vehicle accident, even if you were at fault, you may still be eligible for financial assistance from the TAC. We recommend seeking the assistance of an experienced transport accidents lawyer to assess your claim.

At Guardian Injury Law, we have a lot of experience bringing TAC claims in a variety of circumstances, including for drivers who were at fault. Contact us today for an obligation free chat to discuss your potential claim.

Contacting Guardian Injury Law

1300 700 761

enquiries@guardianinjurylaw.com.au

Amber Community – road trauma support services Victoria

At Guardian Injury Law, we are committed to using a trauma-informed approach with all our clients and actively working with their support network after involvement in a road accident in Victoria.

If you are seeking assistance and support to address the trauma you are experiencing as a result of a motor vehicle accident, we recommend contacting Amber Community.

Amber Community is a not-for-profit organisation that facilitates various support options for people affected by road trauma to contribute to the safety and wellbeing of Victorian road users. Amber Community can be contacted on 1300 367 797.

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.