

**Submission
No 63**

**INQUIRY INTO CLAIMS MADE THROUGH THE TRANSPORT ACCIDENT
COMMISSION (TAC)**

Organisation: Australian Lawyers Alliance

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Inquiry into claims made through the Transport Accident Commission (TAC)

Submission to the Legislative Council Legal and Social
Issues Committee

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input to the Legislative Council Legal and Social Issues Committee (the **Committee**) on the Inquiry into claims made through the Transport Accident Commission (TAC) (The '**TAC Inquiry**')
2. The ALA is a national association of lawyers, academics, and other professionals committed to justice and fairness in the legal system. In Victoria, ALA members routinely represent injured road users and families engaging with TAC's no-fault and common law pathways and support claimants navigating treatment approvals, disputes, and interactions with other service systems. This submission draws on that practical experience of how the scheme operates.
3. Overall, the ALA recognises that the TAC scheme is a critically important statutory compensation scheme, and that its underlying structure has remained sound, achieving its intended objectives. In particular, the existence of the agreed protocols between the TAC, the ALA and the Law Institute of Victoria has been, and continues to be, a significant strength. In the TAC's latest annual report, in the period of 2024–25, the TAC supported 43,255 claimants with accident claims and paid \$1.87 billion to support claimants in recovery. It also outlines how it has helped 1,956 claimants return to work within 12 months and supported 101 claimants to access restorative justice services. Initiatives which the ALA has provided input and feedback.
4. The ALA also recognises that there are a number of recurring pressures that arise in the administration of TAC claims, particularly in relation to delay, communication, transparency in decision-making, accessibility of dispute pathways, provider fee structures, and the interaction between TAC supports and other service systems, including the National Disability Insurance Scheme (NDIS).
5. Evidence indicates that many of the most significant problems are not within the broad existence of entitlements, but rather with delay, opacity, some inconsistency, cost barriers, and at times, poor communication in the administration of those entitlements. Those operational issues are not peripheral. TAC's own 2024–25 Annual Report records 583 informal review requests, 2,278 dispute applications under the Protocols, and 335 merit review applications served on TAC during the year, with 580 merit review applications still open at year end.²

² https://www.tac.vic.gov.au/_data/assets/pdf_file/0009/1012320/TAC-annual-report-2024-25.pdf

6. This submission subsequently seeks to address both strengths and areas of opportunity within the current scheme, and by making practical recommendations aimed at improving timeliness, fairness, transparency and access while maintaining the integrity of the scheme.

Processes around Legitimate Claims, including disputed claims

7. The ALA notes that plaintiff Lawyers and the TAC have been able to negotiate agreements (“the **protocols**”) that allows for injured claimants to streamline disputed claims in relation to their statutory benefits, including medical and like expense and income support, and to resolve lump sum claims for compensation. The protocols aim to resolve disputes, where possible, without resorting to litigation thereby reducing cost to the scheme and allowing persons injured in transport accidents to get their lives back on track sooner.
8. The processes around **legitimate claims** (that being claims accepted by the TAC) require numerous checks and balances prior to the approval and funding of services. In relation to claims for medical expenses, there is an initial 90-day window where the TAC does not require pre-approval of services, which allows for claimants injured in a motor vehicle accident to obtain treatment for their injuries without bureaucratic red tape. The ALA views this as a significant strength of the scheme and emphasise the relative ease of the online claim form, improved call wait times in some instances, positive claimant feedback about the MyTAC app, and faster responses to routine administrative requests for information or copies of correspondence. Consideration should nevertheless be provided to extending this time frame to allow for further access to treatment for injured claimants to ensure that they are able to receive the treatment that they need.
9. **Disputation** can occur in relation to whether TAC accepts liability for an injury claimed to be caused by a transport accident. Disputation can also occur in the context of medical and like expenses in the context of whether further treatment is reasonable and/or the costs of the treatment is reasonable. Delay can arise both in relation to claim acceptance and in relation to treatment approval, and that, in the absence of a decision, there is often limited practical means by which a claimant can force the matter to progress. However, delays are frequently compounded by poor communication, including where TAC advises only that it is “*waiting for more information*” without identifying what information is outstanding, from whom it has been requested, or what steps are being taken to obtain it. This leaves claimants without treatment or clarity, even where they may have been able to assist in obtaining the required material from their providers.

10. When a dispute arises about liability for injury and/or whether a medical service is reasonable, the TAC will typically rely upon an independent medical opinion from a clinical panel member. The clinical panel process is relatively opaque to claimants. The clinical panel does not have clear time frames. The clinical panel member will provide an opinion without conducting an examination of the claimant and may have limited expertise in relation to the medical service being requested. The ALA, LIV and the TAC have worked closely to improve this process.
11. Processes have been put in place in the protocols to seek a prompt review of medical expense fees that are under the total fee paid. If the TAC is not prepared to accept payment of the entire fee, a dispute application is able to be lodged.
12. If the TAC rejects a claimant's entitlement to claimed medical and like expenses, the claimant has a period of 12 months to lodge an application for review at the Victorian Civil and Administrative Tribunal in order to seek that VCAT change the TAC's determination. If a claimant has engaged a lawyer, the claimant's lawyers may be able to resolve the dispute via a dispute application conference under the dispute application protocols.
13. The payment of income support requires a claimant to establish that they are incapacitated for employment on account of transport accident injury. The claim requires that a certificate of capacity be provided by a medical practitioner/allied health practitioner/psychologist to establish incapacity. The TAC can arrange independent medical examination(s) to challenge the claim of incapacity, if it holds concerns. If an entitlement to medical expenses is ceased, the claimant is able to proceed through a dispute application conference with the assistance of a lawyer or apply to VCAT for a review of the TAC's determination.
14. Lump sum payments are given considerable oversight by the TAC. To establish an entitlement to an impairment lump sum, a person injured in a transport accident must establish an impairment of 11% greater based on the AMA Guides 4th Edition/the Guide to the Evaluation of Psychiatric Impairment for Clinicians. The impairment must be supported by medical reports provided by qualified doctors, based on treating practitioner opinions. The AMA Guides place a high threshold for injuries to be eligible for compensation. For example, simple fractures of limbs typically do not qualify for compensation.
15. In order to establish an entitlement to common law damages a claimant must establish that they have a 'serious injury.' Medical material establishing the nature of the injury is required. In addition, TAC gives consideration to pre-existing medical material, affidavit material and

financial material. In the event that the TAC is not satisfied with a claim reaching the requirement to pursue common law damages, the injured person is able to apply to the County Court of Victoria for a 'serious injury' certificate. The 'serious injury' processes can, however, be affected by delay, duplication, and requests for extensive additional material, as well as a lack of coordination at times between TAC teams dealing with no-fault entitlements and serious injury/common law matters. Again, however, there is continued work with the ALA, LIV and the TAC to continue to improve on this process, through the TAC Serious Injury Protocols.

16. While the TAC scheme contains important strengths, including the 90-day treatment model and the continued operation of the Protocols, the ALA recommends that greater attention should be given to delay, transparency and practical accessibility in decision-making. In particular, the Committee should consider recommending more stringent and transparent timeframes for claim acceptance and treatment approvals, including a mechanism by which a claimant may initiate a dispute process where TAC has failed to make a decision within a reasonable time. Consideration should also be given to the following:

- Requiring that substantive requests to treating practitioners about treatment continuation or work capacity be made in writing and accompanied by an appropriate fee framework;
- Improving communication to claimants about the status of requests and what information is outstanding;
- Reducing unnecessary panel firm involvement in straightforward disputes;
- Ensuring that simpler disputes are dealt with more directly and efficiently; and
- Improving accessibility for claimants facing language, literacy or technological barriers.

Circumstances and Systems related to Fraudulent Claims

17. The ALA accepts that the TAC must have effective mechanisms to detect, investigate and address fraudulent claims. It is important that fraudulent claims are identified and that appropriate steps are taken to hold persons abusing the system accountable. This is integral to maintaining public confidence in the scheme. TAC's published compliance material similarly

emphasises that ensuring compliance with the *Transport Accident Act 1986* is integral to delivering a fair and balanced transport accident scheme.³

18. The ALA further accepts that the TAC has both broad investigative powers and is generally effective at identifying fraudulent claims. At the same time, ALA members have noted that the TAC frequently engages in surveillance of claimants to identify inconsistencies between claims for injuries and actions of injured people. Members observed that this surveillance can include social media reviews and in person surveillance in public, and expressed concern that surveillance is used too frequently, at considerable cost to the scheme, and often with limited evidence of wrongdoing.
19. It is the ALA's view that, where TAC has already obtained credit material that is plainly fatal to an individual's claim, there may be limited utility in prolonging the process by requiring a further interview or similar engagement with the claimant. In those circumstances, earlier exchange of that material, whether directly with the claimant or through their legal representative, may avoid unnecessary distress while still allowing TAC to protect the integrity of the scheme.
20. The ALA therefore recommends that the Committee support the implementation of a more proportionate and targeted approach to fraud investigation within the TAC scheme. Fraudulent claims should continue to be identified and pursued, but investigative tools such as surveillance should be used only where justified by the circumstances of the claim. Consideration should also be given to whether earlier disclosure of adverse credit material, where appropriate, could reduce unnecessary cost and distress while preserving TAC's ability to detect and address fraud.

Private Provider Discretion to Set Fees exceeding Medicare Benefits Schedule Rate

21. The ALA notes that the TAC is responsible for paying a reasonable fee for services. In practice, TAC uses schedule-based rates for approved treatment, and for medical practitioners, TAC has adopted the Medicare Benefits Schedule (MBS) rate as a baseline for the fees that it pays for services provided to TAC claimants.
22. However, the rate needs to be considered reasonable in the circumstances. Private practitioners retain discretion to set their own fees, with the result that TAC schedule rates will

³ <https://www.tac.vic.gov.au/about-the-tac/information-and-privacy/fraud-and-compliance/tac-compliance-and-enforcement-policy?>

not always align with the rate charged in the market. Where the TAC rate is inadequate, the practical effect may be that claimants are left to meet a gap payment, delay treatment, or seek to challenge the rate through the TAC's review processes. If a provider charges above the TAC rate, the claimant may be asked to pay the difference. TAC also maintains an Above Rate Service Agreement process through which providers may apply to charge above the scheduled fee, and the current No Fault Dispute Resolution Protocol contemplates that, where a payment gap exists, the legal representative should first ask TAC to consider the higher claimed rate before escalating the matter further.

23. In regional areas, where service availability is often already constrained, TAC rates that are not competitive may mean that providers are unwilling to service TAC claimants. This can leave injured people without local treatment options or force them to travel considerable distances to obtain care. Such outcomes are undesirable, may impede recovery, and may ultimately increase costs to the scheme, including through reimbursement of additional travel and related expenses. ALA members also noted that shortfalls may be particularly acute in specialties more commonly delivered through private providers rather than the public system.
24. In the cases where TAC's rate for a service appears inadequate, a claimant is, as mentioned, able to lodge an application for review through VCAT, or, if they have engaged a lawyer, an informal review can be lodged through the TAC, which can progress to a dispute application if the claimed amount is not approved. The costs associated with challenging a TAC rate however will typically be prohibitive for a claimant to challenge the decision (i.e. VCAT issuing fee is approximately \$800) which makes these processes not always a realistic or proportionate means of resolving routine fee disputes.
25. The ALA therefore submits that the Committee should recommend a review of TAC fee-setting practices, particularly in specialties and regional markets where TAC schedule rates may not reflect the reasonable cost of treatment. Consideration should also be given to whether the current above-rate approval process is sufficiently accessible and responsive to protect claimants from delayed treatment, out-of-pocket costs and avoidable barriers to recovery.

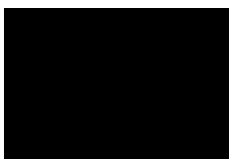
Interactions with other services, such as the National Disability Insurance Scheme (NDIS), and how TAC claimants have been impacted by federal reforms

26. The ALA notes that a growing and highly significant challenge for injured Victorians is the interface between TAC supports and the National Disability Insurance Scheme (NDIS), including the NDIA's compensation recovery and plan adjustment mechanisms and the practical operational reality of information sharing across jurisdictions.
27. The TAC-NDIS interface can in practice give rise to prolonged disputes about responsibility for supports, particularly where a claimant is also receiving severe injury supports through TAC, including Future Independence and Care (FIC) pathways.
28. ALA Members have particularly reported:
 - a. complex and at times contested boundary issues as to which system should fund particular supports, including therapy, community participation, supports, specialist disability accommodation, supported independent living arrangements, assistive technology, daily care and related services;
 - b. instances of TAC seeking to push responsibility for supports onto FIC or the NDIS, even where the relevant need arose from the transport accident;
 - c. support coordinators and service providers having a limited understanding of FIC funding, and even where aware of its existence, being reluctant to engage with it and proceeding only through NDIS processes;
 - d. repeated cycles of NDIS internal review, change of circumstances requests, functional capacity assessments, and Administrative Review Tribunal proceedings, sometimes over extended periods, even where there is present strong supporting evidence;
 - e. materially increased administrative burdens where more than one funding body is involved, including additional paperwork, liaison and assessment work, which in turn delays funding decisions and reduces time available for direct claimant service; and
 - f. practical harm to claimants while funding responsibility is being disputed, including delay in receiving supports, deterioration in function, prolonged use of equipment that no longer meets their needs, and increased caring burdens falling on family members.

29. ALA members reported concerns in specialist disability accommodation and supported independent living, including instances where providers, once aware of TAC or FIC supports, asserted care needs at a level that may not always reflect the claimant's actual requirements.
30. At the same time, it was observed that where FIC is appropriately understood and engaged, claimants with dual funding can experience fewer service gaps, faster approvals, and more adequate therapy and support worker arrangements and therefore, more effective overall support program than may be achieved through NDIS processes alone.
31. The ALA submits that the Committee should recommend the development of a formal TAC–NDIS interface protocol for dual-funded claimants, particularly those receiving severe injury supports through TAC, including Future Independence and Care pathways. That protocol should establish clearer principles as to funding responsibility, require early coordination between relevant decision-makers, include practical escalation pathways where responsibility is disputed, and ensure that claimants are not left without necessary supports while agencies determine who is to fund them. The ALA considers that, absent such a mechanism, the current overlap between TAC, FIC and NDIS risks leaving seriously injured people without timely supports while funding bodies dispute responsibility.

Conclusion

32. The ALA welcomes the opportunity to have input to the Committee on the TAC Inquiry.
33. The ALA reiterates its support for the TAC scheme and recognises the importance of strong claim controls, efficient administration and scheme sustainability. The experience of ALA members to date is that the principal pressures on claimants often arise from delay, poor communication, opacity in clinical review processes, disproportionate fee-dispute barriers, and scheme-boundary conflicts.
34. The ALA would welcome the opportunity to provide any further assistance to the Committee, including by elaborating on the issues raised in this submission.



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