

## **TAC COMMON LAW CLAIMS**

The expressions “TAC common law damages claim” or “TAC common law claim” refer to a claim for damages that a seriously injured TAC claimant can bring in circumstances where his or her injuries have been caused by the negligence of another person.

### **Negligence – proving liability**

To be successful in a TAC common law claim, an injured accident victim must be able to prove that another person, usually another motorist, acted negligently to cause his or her injuries. If negligence, or liability, can be proven, the claimant can recover damages to compensate for injury, loss or damage sustained.

### **“Serious Injury”**

In order to qualify to bring a TAC common law claim, the claimant must firstly have undergone an “impairment assessment” and secondly, have a “serious injury”.

There are two ways for a claimant to reach the “serious injury” threshold. A claimant is deemed to have a “serious injury” if he or she is determined to have an impairment rating of 30% or more. Alternatively, a claimant has a “serious injury” if he or she satisfies one of four narrative definitions of “serious injury” as contained in Section 93(17) of the *Transport Accident Act 1986*.

All Victorian registered (and unregistered) motor vehicles are covered by compulsory third party insurance through the Transport Accident Commission (“the TAC”). This means that in the vast majority of common law damage claims, the wrongdoer or negligent party (“the defendant”) will be indemnified or covered by TAC as the insurer. This means that it is the TAC itself, rather than the defendant, who has to pay the damages to the accident victim (“the plaintiff”).

**Damages**

In a common law damages claim, the plaintiff can recover two types of damage, namely:

- 1 Pain and suffering damages; and
- 2 Pecuniary loss damages.

As the name suggests, pain and suffering damages are awarded for just that, pain, suffering and loss of enjoyment of life. Essentially pain and suffering damages represent compensation for the claimant’s injuries. The maximum sum that can be awarded in a TAC common law claim for pain and suffering damages is currently \$450,460.00.

There is also a minimum threshold that must be reached in order to obtain pain and suffering damages. The threshold is currently \$45,030.00. If a plaintiff is awarded less than this amount, for example \$ 30,000.00, then the plaintiff receives no pain and suffering damages. In our experience in acting for hundreds of accident victims in TAC common law claims, we are yet to have our first case where this threshold has ever posed a problem.

Pecuniary loss damages are economic loss damages. Essentially, pecuniary loss damages are awarded for lost income both past and future. A plaintiff is entitled to claim lost income from the 18 month anniversary of the accident through to the time of resolution of the claim - lost earnings. Additionally, a plaintiff is entitled to claim an allowance for income losses that go into the future through to normal retirement age - lost earning capacity.

The maximum sum that can currently be awarded for pecuniary loss in a TAC common law claim is \$1,013,560.00.

There is also a minimum threshold that has to be reached in order to recover pecuniary loss damages. The plaintiff must receive more than \$45,030.00 in order to recover anything for pecuniary loss damages.

This particular threshold can pose a problem for some claimants. For example, people of a relatively advanced age who had a part time job at the time of the accident and only earned limited income can be negatively impacted by the threshold. It is important to obtain advice from a specialist TAC lawyer about the operation of the threshold.

In the context of pecuniary loss damages there are also Centrelink implications and considerations that can be relevant.

**Time frames and limitations periods**

Contrary to popular belief, TAC common law claims need not take years to prepare and resolve. We have been able to resolve some common law damage claims within three months of an accident occurring. Every case is different, however, once a person's injuries

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are stable and if they have a “serious injury”, there is no reason why resolution of the claim needs to take a protracted period of time.

TAC common law claims must be commenced within six (6) years of the date of the accident. This six year period is not absolute in the sense that under the *Limitation of Actions Act*, Judges have a discretion to extend the limitation period in certain circumstances. If an accident victim has not brought a common law claim within six years, it is very important for that person to obtain advice from a specialist TAC lawyer.

***For further information about TAC common law claims contact either Peter Burt or Clara Davies, specialist TAC Lawyers of Burt & Davies, Level 11, 451 Little Bourke Street, Melbourne.***

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