



Transport Accident Act

No Fault Dispute Resolution Protocols – 1 July 2016

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1. INTRODUCTION

- 1.1 The Transport Accident Commission (TAC) is a statutory authority established by the *Transport Accident Act 1986 (Vic)* (TAA). The TAC manages a statutory compensation scheme in respect of people who sustain injury or die as a consequence of a transport accident (claimant/s).
- 1.2 Consistent with its mission and vision statement, *Client Service Charter* and public commitment to all stakeholders to adhere to the *Model Litigant Guidelines*, the TAC strives to prevent or minimise disputes between it and claimants.
- 1.3 The TAC recognises the role played by claimants' lawyers in resolving claimants' disputes by initiating and facilitating the most appropriate dispute resolution pathway and outcome for claimants in accordance with the provisions of the TAA.
- 1.4 These protocols have been agreed by the TAC, Law Institute of Victoria (LIV) and the Australian Lawyers Alliance (ALA). The TAC, LIV and ALA all agree that:
 - 1.4.1 the interests of the claimant are the foremost consideration in working to resolve any dispute a claimant has regarding a decision of the TAC under Part 3 or Part 10 of the TAA (Decision);
 - 1.4.2 in the event a claimant wishes to dispute a Decision, these protocols provide an appropriate alternative dispute resolution pathway which enables claimants to exercise their legal rights in a cost effective and expeditious manner; and
 - 1.4.3 they and their membership will comply with these protocols, and promote their use as the preferred method for resolving claimants' disputes regarding a Decision.

2. OBJECTIVES

- 2.1 The objectives of these protocols are to ensure:
 - 2.1.1 there is a fair, efficient, cost effective and transparent pathway to facilitate the resolution of disputes regarding a Decision between the TAC and claimants;
 - 2.1.2 that relevant information is exchanged by the TAC and the claimant's lawyer (the parties) at an early stage of a dispute;
 - 2.1.3 that disputes are resolved at the earliest opportunity to ensure that claimants receive the benefits to which they are entitled in accordance with the TAA in a timely and efficient manner; and
 - 2.1.4 in recognition of the *Civil Procedure Act 2010 (Vic)*, the TAC, the claimant and the claimant's lawyer endeavour to resolve disputes about a Decision utilising these protocols before resorting to contested review proceedings at the Victorian Civil and Administrative Tribunal (VCAT).

3. OPERATION

- 3.1 These protocols will apply to all Dispute Resolution Applications (DR Application/s) (as detailed in Chapter 5) lodged on or after 1 July 2016.

- 3.2 Any dispute application lodged before 1 July 2016 will be determined in accordance with the No Fault Dispute Resolution Protocols 2005.
- 3.3 Where the TAC is notified that the claimant is represented by a lawyer, the TAC will advise the claimant's lawyer of a Decision at the same time as the claimant.

4. GUIDING PRINCIPLES

- 4.1 A Dispute Resolution, or DR (also referred to as a 'pre-issue review' pursuant to Section 77(1A)(b) of the TAA), involves the review of a Decision by the exchange and assessment of information by the parties in accordance with Chapters 5 to 6 and 10 to 15 followed by a conference in accordance with Chapter 7 (if required).
- 4.2 The parties recognise that the exchange of relevant information by agreement is necessary to facilitate resolution of a DR.
- 4.3 A DR may be resolved by the parties at any time by agreement and without the need for a DR conference. The parties agree that every effort should be made to resolve the DR in a timely manner without relying on maximum timeframes to drive resolution. Where possible, the parties will aim to resolve the DR within 120 days of lodgement.
- 4.4 The parties commit to the importance of timely communication, and will endeavour to keep each other informed of any factors that may affect the progress of the DR.
- 4.5 Where the claimant's authority, which is provided to the TAC in accordance with Section 67A of the TAA, is used to obtain information the TAC must comply with the Protocols for Authority Use by the TAC as agreed between the TAC, LIV and ALA.
- 4.6 In accordance with the TAC's *Privacy Policy*, where the TAC requires information about a claimant from a claimant's treating practitioner in order to facilitate resolution of a DR, the TAC agrees to request a report from the claimant's treating practitioner at first instance, and only request clinical notes where:
 - 4.6.1 the report is insufficient; and
 - 4.6.2 it is necessary to establish liability for a known pre-existing injury or condition that is affecting the transport accident injuries; or
 - 4.6.3 it is necessary to establish liability with respect to the claim.

Where the TAC seeks to obtain clinical notes, the TAC will write to the claimant's lawyer setting out why a request for clinical notes (rather than a treating practitioner report) is appropriate.

- 4.7 Anything said or done in the course of a DR, including a conference or mediation, may not later be disclosed in any subsequent proceeding before the VCAT unless the parties agree that the disclosure may be made or unless required by law.
- 4.8 It is agreed that Joint Medical Examinations (JMEs) can be utilised in these protocols. JMEs are governed by the Joint Medical Examination Protocols which are to be read in conjunction with these protocols.

- 4.9 Where these protocols require the parties to reach agreement regarding the DR process, both parties shall act reasonably to reach agreement.
- 4.10 Where these protocols require either party to provide documents or information to the other party, and that document or information has already been provided to the other party prior to the DR Application, that document or information need not be provided again.
- 4.11 The TAC will exchange documents and information obtained pursuant to Section 127A of the TAA, unless the release of the documents and information may prejudice a current law enforcement function of the TAC.

5. **LODGEMENT**

- 5.1 A claimant or a person whose interests are affected by or who is dissatisfied with a Decision may, at any time within 12 months of becoming aware of the Decision, lodge a DR through their lawyer.
- 5.2 The DR must be lodged using the prescribed form (DR Application) and identify the Decision/s in dispute, whether in whole or in part, and the reason/s why the claimant does not agree with the Decision/s.
- 5.3 Documents and information, as described in Chapters 10 to 15, which are in the possession of the claimant's lawyer at the time of lodging the DR and which will be relied upon by the claimant shall be provided by the claimant's lawyer with the DR Application. Where it is reasonably practical for the claimant's lawyer to do so, the claimant's lawyer shall ask the claimant to provide them with all relevant information for the DR that the claimant has in their possession.
- 5.4 The claimant's lawyer may elect to provide the additional information and proposed timetable detailed in Clause 5.5 and the proposed DR conference dates detailed in Clause 5.6 either:
 - 5.4.1 with the initial lodgement of the DR Application; or
 - 5.4.2 within 21 days upon receipt of the TAC's information pursuant to Clause 6.1.
- 5.5 Where the claimant's lawyer plans to rely on additional information in support of the claimant's DR which is yet to be collected, the claimant's lawyer should provide to the TAC operator with conduct of the DR (where relevant):
 - 5.5.1 details of the additional information to be collected;
 - 5.5.2 any request for JMEs relating to the Decision/s in dispute;
 - 5.5.3 any other information that requires TAC approval to pay for its collection in accordance with Chapters 10 to 15; and
 - 5.5.4 a proposed timetable regarding the collection of the additional information, including scheduled examination dates and anticipated timeframes when the additional information will be exchanged with the TAC.
- 5.6 The claimant's lawyer should provide to the TAC three proposed dates when they and the claimant will be in a position to participate in a DR conference.

- 5.7 The DR Application must be lodged with the Review Manager, Transport Accident Commission by:
- 5.7.1 the online smart form available at <https://smarteform.com.au/tac/servlet/SmartForm.html?formCode=TACDRA>
 - 5.7.2 email to review@tac.vic.gov.au; or
 - 5.7.3 mail to 60 Brougham Street Geelong 3220.
- 5.8 Within 7 days of receipt of the DR Application, the TAC will provide the claimant's lawyer with written confirmation of lodgement, including the date on which the DR Application was received and confirmation that the DR process has commenced.

6. EXCHANGE AND ASSESSMENT OF INFORMATION

- 6.1 Within 28 days of receiving a DR Application the TAC must provide the claimant's lawyer with a list and copy of all relevant information in the TAC's possession that the TAC considered, or ought to have considered, in making the Decision. This information may include:
- 6.1.1 Police reports and statements taken by the police;
 - 6.1.2 Investigation reports, witness statements, and surveillance which the TAC has obtained;
 - 6.1.3 Ambulance, hospital, treating doctor and/or treating practitioner case sheets, clinical notes and reports, test and diagnostic reports, medico-legal reports and clinical panel review documentation and material;
 - 6.1.4 Vocational and other relevant rehabilitation assessments and reports;
 - 6.1.5 Any report by a non-medical expert witness where this is in existence;
 - 6.1.6 A TAC income assessor's report, calculations, assumptions and conclusions together with any documents considered and/or examined;
 - 6.1.7 An expert accountant's report together with any documents considered and/or examined;
 - 6.1.8 Documentation and material obtained from the claimant's current, prior or prospective employer/s and/or the claimant's accountant/s;
 - 6.1.9 Any other relevant information obtained by the TAC pursuant to an authority signed by the claimant or the TAC's statutory authority pursuant to Sections 127(1) or 127A of the TAA (e.g. material from the claimant's previous, current or prospective employer/s, the claimant's accountant/s, Centrelink, superannuation funds, Workcover or other insurers, Medicare or other government departments or agencies, a claimant's criminal history); and
 - 6.1.10 Any other relevant internal documents including file notes, forms and phone call records.
- 6.2 Within 28 days of receiving the proposed timetable for the collection of additional information detailed in Clause 5.5 the TAC must:

- 6.2.1 Confirm that the Decision/s identified in the Application is/are subject to review according to Section 77 of the TAA;
 - 6.2.2 Request from the claimant's lawyer any relevant information not yet provided that would assist the TAC in its assessment of the DR;
 - 6.2.3 Decide whether to approve a JME request;
 - 6.2.4 Respond to any request for the TAC to pay for the collection of information in accordance with Chapters 10 to 15;
 - 6.2.5 Advise the claimant's lawyer of any suggested amendments to the proposed timetable, including by reason of any additional relevant information the TAC wishes to obtain; and
 - 6.2.6 Where appropriate, provide the claimant and the claimant's lawyer with an outcome in accordance with Chapter 8 of these protocols.
- 6.3 Within 28 days of receiving the proposed DR conference dates detailed in Clause 5.6, the TAC must confirm and arrange a DR conference in accordance with the claimant's lawyer's proposed dates or alternatively, propose a different DR conference date with a reason as to why the dates proposed by the claimant's lawyer are not suitable.
- 6.3.1 If the TAC fails to confirm the DR conference date, or propose an alternative DR conference date within 28 days, the DR conference can proceed in accordance with the first proposed conference date confirmed in writing by the claimant's lawyer to the TAC.
- 6.4 The claimant's lawyer will have 14 days (or an alternative timeframe if agreed to by the parties) to respond to the TAC's request pursuant to Clause 6.2 regarding any request for information, an amended timetable and/or an alternative DR conference date. If the claimant's lawyer fails to respond to the TAC within this timeframe the TAC can proceed with the collection of the information, the amended timetable and/or the alternative DR conference date.
- 6.5 If the parties cannot reach agreement regarding the information to be collected, the applicable timetable for the collection and exchange of that information and/or a DR conference date, the DR must proceed to a conference in accordance with Chapter 7 or an outcome in accordance with Chapter 8 without the information in question.
- 6.6 Where the TAC fails to meet the requirements described in Clauses 6.1, 6.2 and 6.3, the Decision/s in dispute is/are deemed affirmed and the claimant's lawyer will notify the TAC pursuant to Clause 8.4.
- 6.7 All information must be exchanged in accordance with the timetable agreed to by the parties. Where necessary, the timetable for the collection and exchange of information may be varied by the parties by agreement.

7. CONFERENCE

- 7.1 A DR conference requires the attendance of:
 - 7.1.1 the claimant and/or their authorised representative; and

- 7.1.2 the claimant's lawyer; and
 - 7.1.3 a representative of the TAC who has authority to resolve the issue/s in dispute.
- 7.2 A DR conference is usually conducted by telephone.
- 7.3 Where the claimant and the claimant's lawyer consider that a face-to-face DR conference would assist the parties to resolve the issues in dispute, the claimant's lawyer may request a face-to-face DR conference by writing to the TAC employee with conduct of the DR. Where it is reasonably practical to do so and the TAC agrees that a face-to-face conference will assist the parties to resolve the dispute, the TAC will attend a face-to-face DR conference at a location to be agreed between the parties. With the prior approval of the TAC, the TAC agrees to pay the reasonable travel expenses of a claimant's lawyer to attend a face-to-face conference where the claimant's lawyer is usually located within Victoria but more than 100kms from the agreed location of the DR conference.
- 7.4 Where the claimant requires a professional interpreter for the DR conference and the TAC's prior approval is sought, the TAC agrees to pay the reasonable costs of the interpreter.
- 7.5 Prior to or during the course of a DR conference the parties may agree to appoint an independent mediator and/or a joint expert. The TAC will pay the costs of the mediator and/or joint expert.
- 7.6 If, during the course of a DR conference, the parties agree that a mediator and/or joint expert should be appointed, necessitating an adjournment of the DR conference, it is expected that the parties will agree to an amended timetable, including a time to reconvene the DR conference. Where agreement regarding the amended timetable and/or further DR conference date cannot be reached between the parties then Clause 6.5 applies.
- 7.7 Where a mediator and/or joint expert is appointed the following may apply:
- 7.7.1 On recommendation of the mediator and/or joint expert, the parties may agree that information be obtained from a third party where such information is relevant to and would assist in the resolution of the issues in dispute between the parties. The TAC agrees to fund the cost of obtaining such information. Where the parties cannot reach agreement Clause 6.5 applies;
 - 7.7.2 The parties may agree to a joint instruction letter/s and agreed attachments; or
 - 7.7.3 The parties may agree that they are bound by the joint expert's report.
- 7.8 With the prior approval of the TAC, the claimant may engage Counsel to attend a DR Conference. The TAC agrees to pay the reasonable costs of Counsel up to \$2,500 to attend a DR Conference.
- 7.9 A scheduled DR conference date may only be varied by agreement.
- 8. OUTCOME**
- 8.1 The TAC must conclude a DR either within:

- 8.1.1 14 days of the agreed date of resolution if the dispute has resolved prior to a DR conference being held; or
- 8.1.2 14 days of the conclusion of the DR conference,
unless agreed otherwise by the parties.
- 8.2 At the conclusion of the DR, the TAC must notify the claimant and the claimant's lawyer of its decision pursuant to Section 77(1A)(b) of the TAA (the Notification letter). The Notification letter must advise whether TAC:
 - 8.2.1 Affirms its Decision; or
 - 8.2.2 Revokes its Decision; or
 - 8.2.3 Confirms resolution of the DR pursuant to the agreed terms between the parties.
- 8.3 Where the TAC affirms its Decision pursuant to Clause 8.2.1, the TAC's Notification letter must be sent to the claimant and the claimant's lawyer and must state that:
 - 8.3.1 the dispute has been the subject of a DR which has concluded; and
 - 8.3.2 the claimant has 3 months from the date of the Notification letter or 12 months from the date of the Decision, whichever is the latter, to lodge a review at the VCAT.
- 8.4 If the TAC does not:
 - 8.4.1 meet the requirement/s in Clauses 6.1, 6.2 and 6.3 (deemed affirmed – see Clause 6.6); or
 - 8.4.2 send a Notification letter in accordance with Clause 8.3 (affirmed),

the claimant's lawyer should write to the TAC advising the matter is concluded and of the claimant's intention to lodge an application at the VCAT in accordance with Chapter 9. The TAC must then provide a Notification letter to the claimant's lawyer in response within 7 days of receiving the claimant's lawyer's letter.

9. MERIT REVIEW AT THE VCAT

- 9.1 A claimant may issue an application for merit review at the VCAT in respect of the Decision/s in accordance with Section 77 of the TAA where the Decision/s which is/are the subject of a DR is/are deemed affirmed or affirmed.
- 9.2 If the TAC has not sent a Notification letter in accordance with Clauses 8.2, 8.3 or 8.4, the DR is not concluded and the 3 month time limit referred to in Section 77(1A)(b) of the TAA is taken not to have commenced running.
- 9.3 The parties will make reasonable endeavours to exchange all relevant material and documents during the DR on which they intend to rely at VCAT.

10. DENIAL OF CLAIM DISPUTES

10.1 The claimant's lawyer shall provide to the TAC:

10.1.1 A signed statement by the claimant, setting out the relevant facts known to the claimant regarding the incident said to be a transport accident;

10.1.2 Relevant information, which may include but is not limited to:

- a) Any statements or reports of any witnesses relied upon by the claimant. The statements should be signed wherever possible;
- b) Ambulance, hospital, treating doctor and/or treating practitioner case sheets, clinical notes and reports, test and diagnostic reports and medico-legal reports;
- c) Material, documentation, reports and any other information TAC has agreed to fund pursuant to Clause 6.2.4;
- d) A police report and/or other material obtained from police;
- e) Relevant photographs or diagrams;
- f) Any report by a non-medical expert witness where this is in existence and will be relied upon.

10.1.3 If required, relevant legal contentions including citations of any legal authorities relied upon.

10.2 The TAC shall provide the claimant's lawyer with a copy of all relevant information as detailed in Clause 6.1.

10.3 If required, the TAC will provide legal contentions including citations of any legal authorities relied upon.

11. LOSS OF EARNINGS AND LOSS OF EARNING CAPACITY RATE DISPUTES

11.1 The claimant's lawyer shall provide to the TAC:

11.1.1 A signed statement by the claimant setting out:

- a) Details of the claimant's earnings in accordance with the TAA;
- b) Relevant facts and matters going to the assessment of the rate of loss of earnings in accordance with the TAA (e.g. as contemplated in Sections 4 to 7 of the TAA).

11.1.2 Relevant information, which may include but is not limited to:

- a) Copies of income tax returns, group certificates, payment summaries, or, in the case of self-employed claimants, individual and partnership, corporation or trust returns of entities in which the claimant has a relevant material interest;
- b) Details of any relevant Centrelink payments;

- c) An accountant's report;
- d) Any other relevant document/s or statement/s relied upon by the claimant in support of the claimant's contention in accordance with the TAA (e.g. books of account, bank statements, order books, substitute labour payments).

11.1.3 If required, relevant legal contentions including citations of any legal authorities relied upon.

11.2 The TAC shall provide the claimant's lawyer with a copy of all relevant information as detailed in Clause 6.1.

11.3 If required, the TAC will provide relevant legal contentions including citations of any legal authorities relied upon.

12. LOSS OF EARNINGS AND/OR LOSS OF EARNING CAPACITY ELIGIBILITY/DURATION DISPUTES

12.1 The claimant's lawyer shall provide to the TAC:

12.1.1 A signed statement by the claimant setting out:

- a) Details of the claimant's relevant earnings;
- b) Relevant facts and matters going to the assessment of the rate of loss of earnings/loss of earning capacity having regard to the employment status of the claimant, including in accordance with Section 7(a) to (e) of the TAA;
- c) Details of all work that has been undertaken subsequent to the transport accident and any attempts by the claimant to obtain alternative duties or to return to work, whether as an earner or otherwise.

12.1.2 Relevant information, which may include but is not limited to:

- a) Details of any relevant Centrelink payments;
- b) Copies of income tax returns, group certificates, payment summaries, or, in the case of self-employed claimants, individual and partnership, corporation or trust returns of entities in which the client has a relevant material interest;
- c) An accountant's report;
- d) If the claimant has been receiving loss of earnings or loss of earning capacity benefits under the TAA or other scheme;
- e) Ambulance, hospital, treating doctor and/or treating practitioner case sheets, clinical notes and reports, test and diagnostic reports and medico-legal reports;
- f) Any other relevant document/s or statement/s relied upon by the claimant in support of the claimant's contention in accordance with the TAA (e.g. books of account, bank statements, order books, substitute labour payments, etc.).

12.1.3 If required, relevant legal contentions including citations of any legal authorities relied upon.

12.2 The TAC shall provide the claimant's lawyer with a copy of all relevant information as detailed in Clause 6.1.

12.3 If required, the TAC will provide relevant legal contentions including citations of any legal authorities relied upon.

13. MEDICAL AND LIKE BENEFIT DISPUTES

13.1 The claimant's lawyer will provide to the TAC:

13.1.1 A signed statement by the claimant setting out:

- a) The nature and extent of the benefit or treatment sought;
- b) Any relevant service or treatment provided prior to the transport accident for injury/injuries which are the subject of the DR;
- c) The reasons why the benefit or treatment should be provided or continued.

13.1.2 Relevant information, which may include but is not limited to:

- a) Ambulance, hospital, treating doctor and/or treating practitioner case sheets, clinical notes and reports, test and diagnostic reports and medico-legal reports;
- b) Vocational and other relevant rehabilitation assessments and reports;
- c) Reports from non-medical professionals (e.g. architect, builder, engineer).

13.1.3 Where the Decision/s in dispute relates to the quantum of the fee, cost and/or the reimbursement of a medical or like benefit a submission setting out factors that are relevant to the reasonableness of that quantum. In these matters, a signed statement by the claimant is not required.

13.1.4 If required, relevant legal contentions including citations of any legal authorities relied upon.

13.2 The TAC shall provide the claimant's lawyer with a copy of all relevant information as detailed in Clause 6.1.

13.3 If required, the TAC will provide relevant legal contentions including citations of any legal authorities relied upon.

14. DEPENDENCY AND DEATH BENEFIT DISPUTES

14.1 The claimant's lawyer will provide to the TAC:

14.1.1 A signed statement by the claimant, or their authorised representative or guardian, setting out the following where relevant and known:

- a) Details of the claimant's relationship with the deceased which support a dependency relationship between the claimant and the deceased;
- b) Details of any person, including children of the deceased, claiming to be dependent on the deceased;
- c) The duration of the relationship between the claimant and the deceased;
- d) Details of where the claimant and the deceased resided at the date of death and whether the property was owned or rented by either the claimant and/or the deceased;
- e) Details of any joint acquisition of assets or ownership of any joint property by the deceased and the claimant;
- f) Details of any joint liabilities by the deceased and the claimant;
- g) Details of any superannuation benefits paid as a result of the deceased's death including the beneficiaries of the benefits paid and any claim made by the claimant in respect of them.

14.1.2 Relevant information, which may include but is not limited to:

- a) Marriage or birth certificates;
- b) Documents and/or a letter from Centrelink confirming the amount, type and period of benefits received by the claimant and whether these payments were based on a single or married rate;
- c) Documents evidencing the claimant's financial dependency on the deceased at the time of the deceased's death (e.g. credit card statements, loan documents, bank statements, receipts, rental agreements, income tax returns, or details of child support payments);
- d) Documents evidencing the claimant and the deceased's living arrangements at the time of the deceased's death;
- e) Documents evidencing the amount that the deceased earner would have had the capacity to earn in the 12 months after the death, had the accident not happened; and
- f) Documents evidencing the dependency of any children upon the deceased.

14.1.3 If required, relevant legal contentions including citations of any legal authorities relied upon.

14.2 The TAC shall provide the claimant's lawyer with a copy of all relevant information as detailed in Clause 6.1.

14.3 If required, the TAC will provide relevant legal contentions including citations of any legal authorities relied upon.

15. IMPAIRMENT OR MINORS' ADDITIONAL BENEFIT DISPUTES

15.1 The claimant's lawyer will provide to the TAC:

15.1.1 A signed statement by the claimant, or their authorised representative or guardian, which sets out all matters known to the claimant which are relevant to the review of the Decision;

15.1.2 Ambulance, hospital, treating doctor and/or treating practitioner case sheets, clinical notes and reports, test and diagnostic reports and medico-legal reports;

15.1.3 If required, relevant legal contentions including citations of any legal authorities relied upon.

15.2 A claimant's lawyer may provide a summary if they determine clarification is required in respect of the impairment assessment which is not adequately addressed by the provision of a claimant's statement or in the medical reports relied upon. If a summary is provided by the claimant's lawyer it may:

a) Advise which specific parts of the TAC's impairment assessment are not in dispute;

b) Advise which parts of the TAC's impairment assessment are in dispute and why;

c) Comment on stability where this is the issue in dispute; and

d) Identify any other basis upon which the TAC's impairment assessment is incorrect or incomplete.

15.3 The TAC shall provide the claimant's lawyer with a copy of all relevant information as detailed in Clause 6.1.

15.4 If required, the TAC will also provide relevant legal contentions, including citations of any legal authorities relied upon.

16. LEGAL COSTS

16.1 The TAC agrees to pay the claimant's legal costs to the claimant's lawyer where the TAC revokes its decision or where the DR is resolved by way of agreement as follows:

16.1.1 \$7,030 in respect of denial of claim disputes (Chapter 10);

16.1.2 \$7,030 in respect of loss of earnings and loss of earning capacity rate disputes (Chapter 11);

16.1.3 \$7,680 in respect of or loss of earnings and/or loss of earning capacity eligibility/duration disputes (Chapter 12);

- 16.1.4 \$5,250 in respect of medical and like benefit disputes (Chapter 13);
 - 16.1.5 \$7,030 in respect of dependency and death benefit disputes (Chapter 14);
 - 16.1.6 \$7,680 in respect of impairment or minors' additional benefit disputes (Chapter 15); or
 - 16.1.7 \$7,680 in respect of a dispute involving any combination of disputes identified in this Clause.
- 16.2 The claimant's lawyer must write to the TAC outlining the claimed legal costs in Clause 16.1 and attach invoices and documentation for any disbursements claimed in accordance with Clause 16.4. The TAC will pay the agreed legal costs and disbursements to the claimant's lawyer within 14 days of receiving the letter and invoices.
- 16.3 The legal costs described in Clause 16.1 include all disbursements except for the costs itemised in Clause 16.4 below.
- 16.4 In addition to the legal costs set out in Clause 16.1, the TAC agrees to pay for:
- 16.4.1 Where the TAC has given its prior approval, regardless of outcome of the DR:
 - a) Interpreter fees as set out in Clause 7.4;
 - b) Counsel's fees as set out in Clause 7.8;
 - c) The reasonable cost of records or reports obtained where the claimant has not accepted TAC claim.
 - 16.4.2 The cost of a mediator and/or joint expert as set out in Clause 7.5;
 - 16.4.3 Where the claimant has an accepted TAC claim, the reasonable cost of records or reports, FOI application fees and associated charges incurred by the claimant during the conduct of the DR;
 - 16.4.4 Where the TAC agrees to hold a face-to-face DR conference:
 - a) the reasonable travel and accommodation expenses of a claimant (and/or their guardian/administrator) to attend the conference in accordance with the TAC's 'Travel and Accommodation Expenses' policy;
 - b) The reasonable travel expenses of a claimant's lawyer to attend a face-to-face conference where the claimant's lawyer is usually located within Victoria but more than 100kms from the agreed location of the DR conference, regardless of the outcome the DR.
 - 16.4.5 The reasonable cost of medico legal reports (and supplementary reports) not obtained on a joint basis upon successful resolution of a DR if the reports were reasonably required.
 - 16.4.6 Reasonable professional interpreter fees incurred in a claimant attending medical examinations and providing instructions to their lawyer with respect to their application under the Dispute Resolution Protocols.

- 16.4.7 Reasonable travel and accommodation costs associated with a claimant attending a medical examination (JME and/or IME) for the purpose of these protocols. These costs will be met in accordance with the TAC's 'Travel and Accommodation Expenses' policy. Also refer to the JME Protocols regarding reimbursement of reasonable travel and accommodation expenses incurred as a result of a JME.

- 16.5 For merit reviews at the VCAT, legal costs will, unless the VCAT otherwise orders, be based on the County Court scale of costs. An order for the TAC to pay an applicant's legal costs will by consent of the parties be limited in cases where there has been a DR to:
 - 16.5.1 A lump sum payment calculated in accordance with the legal costs described in Clause 16.1; and
 - 16.5.2 Costs on a standard basis pursuant to the County Court scale for work performed and activity following the conclusion of the DR.

- 16.6 Where a dollar amount is specified in these protocols, that amount will be indexed on the first anniversary of the commencement of these protocols and on each anniversary thereafter in accordance with the Consumer Price Index for Melbourne as published by the Australian Statistician for the preceding period immediately prior to the indexation date.

- 16.7 Where there are concurrent applications under the No Fault Dispute Resolution and Common Law Protocols, a Dispute Resolution (DR) (impairment) price point (Clause 16.1.6 of these protocols) will be paid if the common law claim resolves prior to the impairment dispute being resolved if:
 - 16.7.1 A completed DR Application form has been lodged; and
 - 16.7.2 The material provided supports an impairment percentage figure greater than the TAC's impairment determination and an entitlement to an impairment benefit.