



Transport Accident Act Joint Medical Examination 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). The interests of claimants are the foremost consideration of all parties to these protocols.
- 1.2 Consistent with its mission and vision statement, *Client Service Charter* and public commitment to *Model Litigant Guidelines*, the TAC strives to assess and deliver appropriate damages and entitlements to claimants as expeditiously as possible.
- 1.3 The TAC recognises the role played by claimants' lawyers in benefit delivery to claimants, including initiating applications under the Impairment, No Fault and Common Law Protocols, proactively arranging and initiating medical examinations and Joint Medical Examinations (JMEs), obtaining and collating documentation, and engaging in negotiation with the TAC to facilitate the most appropriate outcome for claimants in accordance with the provisions of the TAA.
- 1.4 These protocols have been agreed between the TAC, Law Institute of Victoria (LIV) and Australian Lawyers Alliance (ALA) and define a Joint Medical Examination (JME) process for the purpose of arranging JMEs under Section 60(2F) of the TAA.
- 1.5 The TAC, LIV and ALA all agree:
 - 1.5.1 that the processes giving rise to the delivery of benefits and entitlements to claimants may involve assessments by medical examiners and that attending multiple examinations may be stressful for claimants;
 - 1.5.2 to a commitment to assess claimants' benefits and entitlements in a manner that minimises the number of examinations that claimants are required to attend;
 - 1.5.3 that they and their membership will comply with these protocols, and promote their use as the preferred method for examination of claimants.
- 1.6 In this document the term 'examiner' means a registered health practitioner within the meaning of the Health Practitioner Regulation National Law.
- 1.7 In this document the term 'referring parties' means the TAC and the claimant's lawyer.

2. OBJECTIVES

- 2.1 The objectives of these protocols are to ensure that:
 - 2.1.1 the process contemplated in Section 60(2F) of the TAA provides an efficient and expeditious method to assess claimants for the delivery of appropriate damages and entitlements as a result of a transport accident;
 - 2.1.2 the number of medical examinations that a claimant is required to attend are minimised; and
 - 2.1.3 the JME process is incorporated into the No Fault Dispute Resolution Protocols, Impairment Assessment Protocols and Common Law Protocols.
- 2.2 All parties maintain compliance with the overarching obligations of the *Civil Procedure Act 2010*.

3. OPERATION

- 3.1 These protocols apply to JMEs conducted for the purpose of determining benefits, disputes or common law entitlements under Parts 3, 6 and 10 of the TAA.

4. JME LODGEMENT AND PROCESS

- 4.1 All requests for JMEs should be made using the JME Request form on the TAC's website or the PDF version and must be lodged via email to JMERequests@tac.vic.gov.au.
- 4.2 The process for a claimant's lawyer to lodge a JME request is detailed at (<http://www.tac.vic.gov.au/providers/for-legal-professionals/joint-medical-examination-process-for-legal-professionals>).
- 4.3 If a claimant's lawyer has arranged or proposes to arrange medical examinations for the claimant, the claimant's lawyer will notify the TAC by submitting a JME Request form at least 28 days prior to the examination date.
- 4.4 The TAC must advise the claimant's lawyer within 21 days of receipt of the JME Request form whether they agree to the examinations proceeding as JMEs.
- 4.5 In the event that the TAC fails to respond to a JME Request form within 21 days of receipt, the TAC is deemed to have agreed to the examinations proceeding as JMEs for the purpose of Section 60(2F) of the TAA.
- 4.6 If a claimant's lawyer wishes to convert an examination into a JME and the examination is scheduled within 28 days, they should submit the JME Request form in accordance with Clause 4.1 and telephone the JME Coordinator on (03) 5225 7097 to explain the reasons for the delayed request and to ensure the approval process can be expedited.
- 4.6.1 The TAC recognises that it must approach these situations in a practical and flexible manner to ensure expeditious benefit delivery to claimants and to minimise disruption and loss to examiners who may be unable to re-book the appointment at short notice.

5. RESCHEDULING A JME

- 5.1 A claimant's lawyer should submit a completed JME Reschedule form on the TAC's website www.tac.vic.gov.au via email to JMERequests@tac.vic.gov.au when:
- 5.1.1 rescheduling the date of an approved JME; or
- 5.1.2 varying the examiner who is performing the approved JME where the new examiner is of the same JME approved specialty.
- 5.2 Where a claimant's lawyer needs to alter an approved JME appointment less than 28 days from the rescheduled or varied examination date, the claimant's lawyer should submit a JME Reschedule form in accordance with Clause 5.1 and telephone the relevant TAC person who has conduct of the JME. If that person cannot be reached, contact can be made with the JME Coordinator on (03) 5225 7097 to explain the reasons for the alteration of the appointment.
- 5.2.1 The TAC recognises that it must approach these situations in a practical and flexible manner to ensure expeditious benefit delivery to claimants and to minimise disruption and loss to examiners who may be unable to re-book the appointment at short notice
- 5.3 A claimant's lawyer must submit a new JME Request form and follow the process outlined in Chapter 4 when seeking to:

5.3.1 swap an approved JME to a different claimant (eg. where a claimant cannot attend an appointment or their matter has resolved); or

5.3.2 vary the examiner who is performing the approved JME where the new examiner is not of the same JME approved specialty.

6. CONVERTING A TAC ARRANGED EXAMINATION TO A JME

6.1 If the TAC has already arranged Independent Medical Examinations (IMEs) at the time they are notified by a lawyer that they represent a claimant, the TAC will provide details to the claimant's lawyer within 21 days. When notifying the claimant's lawyer of the arranged examinations, the TAC must invite the lawyer to convert the examinations to JMEs and to send any additional information or questions they wish to provide to the examiners.

6.2 The claimant's lawyer may within 14 days of being notified of the examinations arranged by the TAC advise whether or not they agree to proceeding with the examinations as JMEs. Where a lawyer disagrees with the examinations arranged by the TAC they may propose alternative examinations to be undertaken and provide reasons. If no notification is received or adequate reasons provided, the TAC will proceed with the arranged examinations and the examinations will not be JMEs.

6.3 In circumstances where a claimant's lawyer provides an alternative proposal for examinations the TAC must respond to the proposal within 21 days. Indicative examples for proposing alternative examinations include:

6.3.1 the claimant's injuries indicate examination by a differently qualified examiner;
or

6.3.2 the examinations arranged by the TAC do not provide a full assessment of the claimant's clinically indicated injury caused by the transport accident.

7. JMEs AND THE IMPAIRMENT ASSESSMENT PROTOCOLS

7.1 Where the TAC identifies a claimant who appears to be, or is likely to be, entitled to an impairment benefit, the TAC will write to the claimant and their lawyer to advise that the impairment assessment process has commenced.

7.2 An examiner report (including a supplementary report) that was not an approved JME can be claimed as a disbursement pursuant to Chapter 11 of the Impairment Assessment Protocols.

8. JMEs AND THE NO FAULT DISPUTE RESOLUTION PROTOCOLS

8.1 Where a claimant's lawyer requests a JME in the Dispute Resolution Application (DR Application) pursuant to the No Fault Dispute Resolution Protocols, the TAC will respond to that request within 28 days in accordance with Chapter 6 of the No Fault Dispute Resolution Protocols. In this instance, a JME Request form is not required to be submitted. In all other instances, a JME Request form is required to be submitted in accordance with Chapter 4 of these protocols.

8.2 An examiner report (including a supplementary report) that was not an approved JME can be claimed as a disbursement pursuant to Chapter 16 of the No Fault Dispute Resolution Protocols.

9. JMEs AND THE COMMON LAW PROTOCOLS

9.1 Where a claimant's lawyer has arranged, or proposes to arrange, examinations for a Serious Injury Application or a common law conference in accordance with the Common Law Protocols the claimant's lawyer will notify the TAC by submitting a JME Request form.

- 9.2 An examiner report (including a supplementary report) that was not an approved JME can be claimed as a disbursement pursuant to Chapter 21 of the Common Law Protocols.

10. USE OF A JME IN COURT OR VCAT PROCEEDINGS

- 10.1 Either party may rely upon or call a JME in support of their case in any proceedings before a Court or the Victorian Civil and Administrative Tribunal (VCAT).
- 10.2 The parties agree that no adverse inference or ruling can be requested from a Court or VCAT for not relying upon a JME, regardless of the purpose for which the JME was obtained.
- 10.3 The adverse inference agreement in Clause 10.2 does not apply where a report is initially obtained on a joint basis and either party subsequently obtains an updated or supplementary report (not on a joint basis) for the purpose of proceedings at Court or VCAT.
- 10.4 The initiating party of the JME has the first opportunity to engage the examiner for a subsequent independent examination and updated opinion or report for the purpose of proceedings at Court or VCAT.
- 10.5 If the non-initiating party wishes to arrange a subsequent independent examination with the examiner, they must first contact the initiating party of the JME to clarify whether they intend to engage the examiner on an independent basis.

11. APPROVAL OF JME REQUESTS AND JME ASSESSMENT CRITERIA

- 11.1 There is a presumption that a request for a JME made by a claimant's lawyer will be approved by the TAC if it is for the purpose of assisting delivery of entitlements to claimants under the Impairment Assessment Protocols and/or Common Law Protocols or with the resolution of disputes under the No Fault Dispute Resolution Protocols.
- 11.2 In order to assist TAC with the approval process, a claimant's lawyer will provide supporting documentation with the completed JME Request form (where applicable).
- 11.3 A JME request will not be considered by the TAC in the following circumstances:
- 11.3.1 It has not been submitted on the published JME Request form; or
 - 11.3.2 It has not been submitted via email to JMERequests@tac.vic.gov.au.
- 11.4 A JME request will not be authorised by the TAC in the following circumstances:
- 11.4.1 For the purpose of proceedings at the VCAT or the Courts, unless a new issue is articulated; or
 - 11.4.2 If the claimant does not have an accepted TAC claim; or
 - 11.4.3 For impairment, if a claimant is excluded from impairment in accordance with Sections 39 and 40 of the TAA; or
 - 11.4.4 For treatment, if there is not an outstanding request for treatment on file; or
 - 11.4.5 For transport accidents that have occurred in the course of employment (where there is no entitlement to Section 60 of the TAA).
- 11.5 A JME request may not be authorised by the TAC in the following circumstances:
- 11.5.1 If a medico-legal report has been obtained from the same discipline within a previous 12 month period. However, TAC recognises that approval of a JME

will depend on the circumstances of each case and the purpose of the proposed examination; or

- 11.5.2 If a claimant is not stable, or expected to be stable, for the purpose of an impairment assessment at the time of the proposed examination date; or
 - 11.5.3 Where no actual decision of the TAC pursuant to Parts 3, 6 or 10 of the TAA is required.
- 11.6 Where a JME request is made by a claimant's lawyer in situations involving interstate common law claims the TAC:
- 11.6.1 may authorise the JME request if it is for the purpose of assessing a claimant's no fault benefit entitlements.
 - 11.6.2 will not authorise a JME request for the purpose of common law.

12. DISPUTE PROCESS FOR DENIAL OF JME REQUEST

- 12.1 If a claimant's lawyer disagrees with the TAC's decision to deny a JME request and wishes to seek a review of the decision, they must submit a Notice of Intention to Lodge a Dispute form (Notice of Intention to Dispute form) prior to lodging a DR Application under the No Fault Dispute Resolution Protocols.
- 12.2 The Notice of Intention to Dispute form and all supporting material must be submitted to the Review Manager, Transport Accident Commission, GPO Box 2751, Melbourne, VIC 3001 or by email to Review@tac.vic.gov.au.
- 12.3 The Notice of Intention to Dispute form must be submitted within 90 days of the TAC's decision to deny the JME.
- 12.4 In order to allow the TAC to effectively review the decision to deny the JME request, a claimant's lawyer should endeavour to fully complete the Notice of Intention to Dispute form and where relevant include the following:
- 12.4.1 Reasons as to why the medico-legal examination is required and why it should be approved as a JME; and
 - 12.4.2 Reasons as to why the TAC denial is unreasonable.
- 12.5 The circumstances where TAC will not, or may not, authorise a JME are outlined in Clauses 11.3 to 11.6 of these protocols.
- 12.6 If the TAC has denied a JME request, the claimant's lawyer may at any time, if circumstances change, submit a further JME Request form for that claimant.
- 12.7 If the TAC has denied a JME request and additional information is obtained, a claimant's lawyer may wish to contact the TAC to discuss the JME denial or submit a new JME Request form rather than lodge a Notice of Intention to Dispute form. Examples of additional information may include:
- 12.7.1 Treating doctor reports regarding the claimant's transport accident injuries, including the relationship of the injury to the transport accident;
 - 12.7.2 A statement from the claimant explaining the nature and effect of their injuries and their relationship to the transport accident; and
 - 12.7.3 Any additional information that would have been relevant when considering the initial JME request.
- 12.8 The TAC will write to the claimant's lawyer within 30 working days of receipt of the Notice of Intention to Dispute form to advise whether the decision to deny the JME is

overturned or affirmed. The TAC may contact the claimant's lawyer by telephone to discuss the matter prior to making the decision.

- 13.9 If lodgement of the Notice of Intention to Dispute form results in the TAC overturning its decision to deny the JME the TAC will pay an amount of \$500 in costs (indexed annually) and reasonable disbursements to the claimant's lawyer for the application. If the TAC affirms the decision to deny the JME then a claimant's lawyer can proceed to lodge a DR Application under the No Fault Dispute Resolution Protocols.

13. EXAMINATIONS

Referrals:

- 13.1 The non-initiating party of the JME will consider the initiating party's letter of instruction and attached documentation. The non-initiating party will send any additional questions and material they would like the examiner to answer/review, which will be provided to the examiner at least 14 days prior to the examination date.
- 13.2 The TAC and claimant's lawyer agree to take all reasonable steps to avoid unnecessary duplication of material sent to the examiner.

Interpreters:

- 13.3 The initiating party of the JME will arrange for a qualified interpreter to attend the examination, if required, unless otherwise agreed between the parties.
- 13.4 The TAC will pay the reasonable costs of an interpreter for the purpose of JMEs in accordance with its obligations under the TAA. Invoices and/or receipts should be submitted to TAC for payment after the JME.

Travel and Accommodation Costs:

- 13.5 Claimants' lawyers will liaise with TAC in respect to arranging travel and accommodation for claimants to be assessed through the JME process. The TAC is liable for payment of the reasonable travel and accommodation costs associated with the claimant attending JMEs.
- 13.6 The TAC will pay the reasonable cost of travel and accommodation in accordance with its obligations under the TAA where the examiner must travel to the claimant to conduct the examination. Invoices and/or receipts should be submitted to TAC after the JME.

Surveillance

- 13.7 The TAC will not use scheduling of a JME for the purpose of conducting surveillance of the claimant.

Non-Attendance Fees:

- 13.8 The referring parties will take all appropriate steps and make reasonable endeavours to ensure the claimant attends the JME arranged with the examiner at the scheduled time.
- 13.9 The claimant's lawyer will advise the TAC and examiner in writing as soon as practicable of any cancellations or rescheduling of appointments (also refer to Chapter 5 – Rescheduling a JME).
- 13.10 The TAC agrees to pay the reasonable cost of non-attendance fees where notification is provided less than 3 working days prior to the examination. The examiner should submit an invoice for the reasonable non-attendance fee to the TAC who will arrange for payment.

Reports:

- 13.11 Examiners will be required to send identical copies of the report to the TAC and the claimant's lawyer. All communications pertaining to the examination must be included in the report. There should be no separate communications (including written or verbal) to either party.

Supplementary reports:

- 13.12 A JME supplementary report can be requested by either party. Prior to arranging an IME or undertaking any further steps, the parties should first request a supplementary report from the relevant examiner.
- 13.13 In order for TAC to pay for a JME supplementary report, agreement must be reached by the parties to obtain a JME supplementary report. If agreement cannot be reached, either party can obtain a supplementary report at their own expense.
- 13.14 If a party wishes to obtain a supplementary report, they will notify the other party in writing. This notification should include a copy of the proposed letter and material to be sent to the JME. The other party should advise within 14 days of receipt if they wish to provide further questions and/or material or if they do not agree with the request.
- 13.14.1 In the event that the non-initiating party fails to respond to a supplementary report request within 14 days of receipt, the request is deemed to have been approved for the purpose of Section 60(2F) of the TAA. In extenuating or urgent circumstances, this process can be varied by agreement
- 13.14.2 The non-initiating party of the supplementary report request will consider the initiating party's request and attached documentation. The non-initiating party will send any additional questions and/or material to the initiating party in accordance with the timeframes in Clause 13.14.
- 13.14.3 The initiating party will compile the questions and/or material and send to the examiner, advising that the supplementary report is being obtained on a joint basis and directing the examiner to invoice the TAC directly.

Fees:

- 13.15 An examiner should invoice the TAC directly for the JME reports or JME supplementary reports.
- 13.16 The parties should refer to Clauses 13.12 to 13.14 in respect to the fees associated with JME supplementary reports.
- 13.17 The TAC will pay the reasonable costs of all reports agreed to be undertaken or deemed to be agreed to be undertaken as JMEs within 21 days of receiving a tax invoice for the report from the examiner.