

Transport Accident Act No Fault Dispute Resolution Protocols – 1 March 2005 (amended as from August 2008)

1. INTRODUCTION

- 1.1 Consistent with its mission and vision statement, *Client Service Charter* and public commitment to model litigant guidelines, the Transport Accident Commission (TAC) strives to prevent or minimise disputes between it and claimants.
- 1.2 The TAC, Law Institute of Victoria (LIV) and Australian Lawyers Alliance (ALA) all agree these protocols recognise that appropriate mechanisms to resolve disputes are important for ensuring that claimants' legal rights and obligations are being observed and are not abandoned for the lack of opportunity to enforce them.¹
- 1.3 The role played by claimants' lawyers in this process is recognised by the TAC.
- 1.4 The protocols have been agreed by the TAC with LIV and ALA who agree that they and their membership will comply with them.

2. OBJECTIVES

- 2.1 The processes giving rise to the assessment, consideration and delivery of benefits are, by the mutual and early exchange of relevant and reasonable information and documents, productive of quality decision making by the TAC.
- 2.2 Benefit delivery processes and procedures for administrative review of Part 3 or Part 10 decisions made under the *Transport Accident Act* (TAA) are fair, efficient and provide an expeditious transparent process for the delivery of appropriate no fault benefits to people who sustain injuries as a result of a transport accident.
- 2.3 The TAC maintains a public commitment to all stakeholders to adhere to model litigant guidelines.
- 2.4 The TAC, the claimant and their lawyer will endeavour to resolve Part 3 and Part 10 benefit disputes utilising these protocols before resorting to contested review proceedings at the VCAT.

3. APPLICATION

- 3.1 These protocols will apply to the resolution of all Part 3 and Part 10 TAA disputes arising subsequent to a TAC decision, including a deemed decision.
- 3.2 These protocols will apply to every TAC Part 3 or Part 10 decision made on or after 1 March 2005 where a TAC claimant has, at any time after the transport accident, retained a lawyer who which is a member of either LIV or ALA to provide advice about the consequences of the accident injury.
- 3.3 Claimants who choose not to be represented by lawyers will have the opportunity to have their issues resolved through the TAC's existing informal review process.
- 3.4 The TAC confirms that the claimant's lawyer will always be advised of a decision at the same time as the claimant.

¹ Justice Statement May 2004 Modernising Justice at paragraph 3.3

4. MERIT REVIEW AT THE VCAT

- 4.1 Subject to Chapter 6, a claimant or a person whose interests are affected by a decision made by the TAC under Part 3 or Part 10 of the TAA may, not earlier than three months and not later than 12 months of becoming aware of the decision, apply to the VCAT for a review of the decision.²
- 4.2 Subject to Chapter 6 of these protocols, a claimant, who is represented by a lawyer who is a member of LIV or ALA, may not issue an application for review to the VCAT until a pre-issue review has been completed in accordance with these protocols, unless both the claimant and the TAC, in writing, consent, or unless clause 4.3 applies.³
- 4.3 If a claimant has not applied to the TAC for a pre-issue review within nine (9) months of becoming aware of the TAC's decision:
- 4.3.1 The claimant may apply to the VCAT for review of the decision in accordance with Clause 4.1.⁴ The provisions of Section 78 of the TAA will apply and compliance with Chapters 6, 7 and 9 to 14 of these protocols will constitute compliance with Section 78 of the TAA; and
 - 4.3.2 The claimant must contemporaneously serve a dispute application on the TAC in accordance with Clauses 6.1 and 6.3; and
 - 4.3.3 Chapters 6, 7 and 9 to 14 of the protocols will apply and no further steps will be taken at the VCAT until the pre-issue review has been concluded.

5. STATEMENT OF REASONS

- 5.1 It is recognised a claimant has an entitlement to request from the TAC a statement of reasons for decision and that the TAC will give a statement of reasons on request pursuant to the VCAT Act.⁵
- 5.2 Provision is made in these protocols to enable claimants to make these requests and for the TAC to comply prior to claimants proceeding with a request for TAC to review its decision.

6. PRE-ISSUE REVIEW

- 6.1 A claimant or a person whose interests are affected by or who is dissatisfied with a TAC decision may, subject to Clause 4.3, at any time within 12 months of becoming aware of the TAC decision, through the claimant's lawyer apply to the TAC in writing for a pre-issue review (dispute application).⁶
- 6.2 The dispute application must identify the decision(s) to be the subject of the pre-issue review, whether in whole or in part and the reasons why the claimant does not agree with the decision(s).
- 6.3 A pre-issue review involves the exchange of material by the claimant and the TAC in accordance with Chapters 9 through 14 followed by a pre-issue conference. A dispute may be resolved by the parties prior to a pre-issue conference.
- 6.4 The dispute application must be supported by the information and documents in accordance with Chapters 9 to 13 in the possession of the claimant or person at that time and which are to be relied on in the pre-issue review. Any other supporting material which is either

² Sections 63 and 77 TAA

³ The TAC may require, as a condition to providing its consent, that the dispute proceed thereafter in compliance with the provisions of Section 78 TAA

⁴ It is recognised that Section 77 timeframes are substantive and are not affected by these protocols

⁵ Sections 45 and 46 of the VCAT Act

⁶ It is recognised that Section 77 timeframes are substantive and are not affected by these protocols

unavailable or in the process of collection at the time of service must be provided to the TAC within 28 days of the delivery of the dispute application.

- 6.5 Dispute applications must be served on the Manager, Dispute Resolution, Transport Accident Commission, 60 Brougham Street, Geelong 3220 or DX 216079, Geelong.
- 6.6 The TAC must, within 14 days of receiving a dispute application, commence a pre-issue review by acknowledging receipt of the dispute application to the claimant and the claimant's lawyers. The acknowledgement may be in writing or by email and must include the date on which the dispute application was received.
- 6.7 The TAC must conclude a pre-issue review either within 14 days of the conclusion of the pre-issue conference or if the dispute has been resolved before the pre-issue conference, within 14 days of the resolution.
- 6.8 Where the TAC fails to commence a pre-issue review within 14 days of receiving a dispute application the decision(s) the subject of a dispute application is or are deemed affirmed and the claimant may issue an application for review at the VCAT in respect of the decision(s).
- 6.9 If the timelines for the completion of a pre-issue review extend to at least nine (9) months after the claimant became aware of the TAC decision, then the claimant may make an application for review to the VCAT and Chapter 4, Clauses 4.3.1 and 4.3.3 will apply.

7. PRE-ISSUE CONFERENCE

- 7.1 Unless the issues in dispute have been otherwise resolved, the disputants must commence a pre-issue conference within 90 days of the dispute application being received by the TAC.
- 7.2 Once commenced, the pre-issue conference must be concluded within 120 days of the dispute application.
- 7.3 A pre-issue conference may take place at the TAC's premises, the claimant's lawyer's office or at another venue convenient to the participants.⁷
- 7.4 A pre-issue conference requires the attendance by the disputants to facilitate the resolution of the dispute between the parties in accordance with Clause 7.5 through 7.11.⁸
- 7.5 Who must attend the conference:
 - 7.5.1 The claimant and, where a guardian or administrator has been appointed by the VCAT, the guardian or administrator;
 - 7.5.2 The claimant's lawyer;
 - 7.5.3 A professional qualified interpreter where the claimant has indicated a requirement for an interpreter⁹;
 - 7.5.4 A representative of the claims management division(s) within the TAC responsible for making the decision(s) and who has authority to resolve the issue(s) in dispute.
- 7.6 These protocols recognise that different dispute resolution pathways should be available to reflect disputants' needs and expectations.¹⁰ Accordingly, during the course of a pre-issue conference the disputants may agree:

⁷ The TAC supports conferences being conducted in rural cities and towns

⁸ A pre-issue conference can be held by telephone. A telephone conference will not be considered a pre-issue conference for the purposes of these protocols unless all those the no fault dispute resolution protocols require to be in attendance are in attendance

⁹ The TAC will arrange for the attendance of and pay for the reasonable cost of the professional interpreting service

- 7.6.1 To appoint an independent mediator to mediate the issue between them; or
 - 7.6.2 To appoint a facilitator to assist with resolution; or
 - 7.6.3 That a joint expert be appointed where medical and like benefits or services under Section 60 are in dispute; or
 - 7.6.4 Where a novel issue of interpretation under AMA2 or AMA4 arises, to the appointment of a joint expert or special referee with Guides expertise acceptable to the parties.
- 7.7 A mediator, facilitator or joint expert or special referee may recommend to the disputants that the pre-issue conference be adjourned to enable the claimant, or the TAC, to obtain information from a third party where this information is relevant to and would assist a resolution of the issues between them.¹¹ Where the claimant's claim form authority is used to obtain the additional information the TAC must comply with the Protocols for Claim Form Authority Use by the TAC agreed between LIV, ALA and the TAC.
- 7.8 Where a joint expert or special referee is appointed, the disputants may agree that there will be one joint agreed instruction statement for the expert and agreed attachments for the expert.
- 7.9 The disputants will not, unless they agree, be bound by the report of an independent expert or special referee.
- 7.10 The TAC will pay the costs of the mediator, facilitator, joint expert or special referee.
- 7.11 Anything said or done in the course of a pre-issue conference or an associated mediation or facilitation may not later be disclosed in any subsequent proceeding before the VCAT unless the claimant's lawyers and the TAC agree that the disclosure may be made or unless required by law.
- 8. OUTCOME**
- 8.1 Upon the conclusion of a pre-issue review, the TAC must either:
- 8.1.1 Affirm its decision; or
 - 8.1.2 Vary its decision; or
 - 8.1.3 Set aside its decision and make a new decision; or
 - 8.1.4 Confirm resolution of the dispute and the agreed terms of the resolution and prepare a release for execution by the claimant reflecting the agreed terms.¹²
- 8.2 Where the TAC affirms or varies its decision, it will write to the claimant's lawyers confirming that the dispute has been the subject of pre-issue review and that the TAC's decision under review is affirmed or varied.
- 8.3 Subject to clause 4.3, the decision(s) the subject of a dispute application is or are deemed affirmed and the claimant may issue an application for merit review at the VCAT in respect of the decision(s) where the TAC fails to:
- 8.3.1 Commence a pre-issue review within 14 days of receiving the dispute application; or

¹⁰ Justice Statement Chapter 3.3

¹¹ Examples of third parties would include employers, doctors, the HIC, etc.

¹² Including e.g. by the provision of terms of settlement, consent orders or a release where appropriate

- 8.3.2 Provide the claimant's lawyers with all documentation the TAC considered to make the decision within 28 days of receiving the dispute application as required by clauses 9.3, 10.3, 11.3, 13.3 and 14.4¹³; or
- 8.3.3 Affirm, vary or set aside the decision or provide the written confirmation in Clause 8.2 within 14 days after concluding the pre-issue conference.

9. ELIGIBILITY DISPUTES

- 9.1 Where a dispute involves an eligibility decision under Sections 3 and 35 of the TAA, the disputants agree to provide documents and information to be relied upon in accordance with this Chapter.
- 9.2 Unless already provided to the TAC prior to its eligibility decision the claimant shall provide to the TAC:
 - 9.2.1 A signed statement by the claimant, setting out the relevant facts known to the claimant regarding the incident said to be a transport accident;
 - 9.2.2 Any statements or reports of any witnesses relied upon by the claimant. The statements should be signed wherever possible;
 - 9.2.3 Medical reports having regard to the denial of eligibility¹⁴;
 - 9.2.4 Relevant photographs or diagrams;
 - 9.2.5 Medical reports and treating medical or allied health professional practitioner notes, where these are relevant;
 - 9.2.6 Any report by a non medical expert witness where this is in existence and will be relied upon;
 - 9.2.7 When relevant, legal contentions including citations of any legal authority relied upon.
- 9.3 Unless already provided to the claimant, the TAC must provide the claimant's lawyers within 28 days of receiving the dispute application with all the documents the TAC considered to make the decision, including:
 - 9.3.1 Police reports and statements taken by the police where the TAC has them;
 - 9.3.2 Any report by a non medical expert witness where this is in existence;
 - 9.3.3 Statements of any witnesses to or about the incident that the TAC has obtained;
 - 9.3.4 Copies of any investigation reports which the TAC has obtained;
 - 9.3.5 Copies of any medical reports including treating practitioners reports and clinical notes, hospital admission documentation and ambulance case sheets where these were relied on to deny the claim; and
 - 9.3.6 When relevant, legal contentions, including citations of any legal authority relied upon and any relevant legal authorities.
- 9.4 Where the TAC fails to provide the claimant's lawyers with all documents the TAC considered to make the decision within 28 days of receiving the dispute application as required by clause

¹³ Applicable to dispute applications lodged on or after 1 September 2007

¹⁴ Where the TAC advises within seven (7) days of the dispute application that it will pay for the costs of such medical reports

9.3, the decision(s) the subject of the dispute application is/are deemed affirmed and the claimant may issue an application for review at the VCAT in respect of the decision(s)¹⁵.

10. LOSS OF EARNINGS RATE DISPUTES

10.1 Where a dispute involves a loss of earnings rate decision the disputants agree to provide documents and information to be relied upon in accordance with this Chapter.

10.2 Unless the information or documents have already been provided to the TAC prior to its loss of earnings rate decision, the claimant shall provide to the TAC a signed statement by the claimant setting out as best as the claimant is able to do so:

10.2.1 Details of the claimant's earnings in accordance with the TAA;

10.2.2 Relevant facts and matters going to the assessment of the rate of loss of earnings in accordance with the TAA¹⁶;

10.2.3 Copies of duplicate 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 material interest;

10.2.4 Details of any Centrelink payments – for example, unemployment, sickness or disability benefits;

10.2.5 An accountant's report (where relevant and where the TAC agrees to meet the reasonable cost of such a report);

10.2.6 Medical reports and treating medical or allied health professional practitioner notes, where these are relevant;

10.2.7 Any other relevant document or statement relied upon by the claimant in support of the claimant's contention (e.g. books of account, bank statements, order books, substitute labour payments, etc.) in accordance with the TAA; and

10.2.8 When relevant, legal contentions including citations of any legal authority relied upon.

10.3 Unless already provided to the claimant, the TAC must provide the claimant's lawyers within 28 days of receiving the dispute application with all the documents the TAC considered to make the loss of earnings rate decision, including:

10.3.1 The TAC Income Assessor's report, calculations, documents considered and/or examined, assumptions and conclusions;

10.3.2 The expert accountant's report where this was relied upon to make the decision;

10.3.3 Any statements obtained by the TAC; and

10.3.4 When relevant, legal contentions, including citations of any legal authority relied upon and any relevant legal authorities.

10.4 Where the TAC fails to provide the claimant's lawyers with all documents the TAC considered to make the decision within 28 days of receiving the dispute application as required by clause 10.3, the decision(s) the subject of the dispute application is/are deemed affirmed and the claimant may issue an application for review at the VCAT in respect of the decision(s)¹⁷.

¹⁵ Applicable to dispute applications lodged on or after 1 September 2007

¹⁶ For example, as contemplated in Sections 4, 5 and 6 of the TAA

¹⁷ Applicable to dispute applications lodged on or after 1 September 2007

11. LOSS OF EARNINGS DURATION AND LOSS OF EARNING CAPACITY DISPUTES¹⁸

- 11.1 Where a dispute involves the duration of loss of earnings or the assessment or duration of loss of earning capacity the disputants agree to provide documents and information to be relied upon in accordance with this Chapter.
- 11.2 Unless the information or documents have already been provided to the TAC prior to its loss of earnings/loss of earning capacity decision, the claimant shall provide to the TAC a signed statement by the claimant setting out as best as the claimant is able to do so:
- 11.2.1 Details of the claimant's relevant earnings having regard to the employment status of the claimant in accordance with the TAA;
 - 11.2.2 Relevant facts and matters going to the assessment of the rate of loss of earnings/loss of earning capacity having regard to the employment status¹⁹ of the claimant in accordance with the TAA;
 - 11.2.3 Details of any Centrelink payments – for example, unemployment, sickness or disability benefits;
 - 11.2.4 Copies of duplicate 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 material interest having regard to the employment status of the claimant in accordance with the appropriate provisions of the TAA;
 - 11.2.5 An accountant's report (where relevant and where the TAC agrees to meet the reasonable cost of such a report);
 - 11.2.6 Any other relevant document or statement relied upon by the claimant in support of the claimant's contention (e.g. books of account, bank statements, order books, substitute labour payments, etc.) in accordance with the TAA;
 - 11.2.7 If the claimant has been receiving compensation for loss of earnings or capacity under the TAA, notification of the return to any work (whether as an earner or otherwise);
 - 11.2.8 Details of all work that has been undertaken subsequent to the transport accident and attempts by the client to obtain alternative duties or to return to work;
 - 11.2.9 Medical reports and treating medical or allied health professional practitioner notes, where these are relevant; and,
 - 11.2.10 When relevant, legal contentions including citations of any legal authority relied upon.²⁰
- 11.3 Unless already provided to the claimant, the TAC must provide the claimant's lawyers within 28 days of receiving the dispute application with all the documents the TAC considered to make the loss of earnings decision, including:
- 11.3.1 Surveillance reports and video;
 - 11.3.2 Medical reports including clinical notes, test results and diagnostic reports and impairment assessment medical reports;
 - 11.3.3 Vocational rehabilitation reports;

¹⁸ Including Section 55 TAA reviews

¹⁹ Including all of the matters to which the TAC must have regard in Section 7(a) to (e) of the TAA

²⁰ Consistent with VCAT Practice Note

- 11.3.4 Any statements obtained by the TAC; and
 - 11.3.5 When relevant, legal contentions, including citations of any legal authority relied upon and any relevant legal authorities.
- 11.4 Where the TAC fails to provide the claimant's lawyers with all documents the TAC considered to make the decision within 28 days of receiving the dispute application as required by clause 11.3, the decision(s) the subject of the dispute application is/are deemed affirmed and the claimant may issue an application for review at the VCAT in respect of the decision(s)²¹.

12. MEDICAL AND LIKE BENEFIT DISPUTES

- 12.1 Where a dispute involves a medical and like benefit decision under Section 60 of the TAA the disputants agree to provide documents and information to be relied upon in accordance with this Chapter.
- 12.2 Unless the information or documents have already been provided to the TAC prior to its medical and like benefit decision, the claimant shall provide to the TAC a signed statement by the claimant setting out as best as the claimant is able to do so:
- 12.2.1 Clarifying the nature and extent of the benefit or treatment sought;
 - 12.2.2 Any such service or treatment provided for this condition before the transport accident;
 - 12.2.3 The reasons why the benefit or treatment should be provided or continued;
 - 12.2.4 Medical reports and treating medical or allied health professional practitioner notes, where these are relevant; and
 - 12.2.5 Copies of reports by every relevant non medical or paramedical supporting expert relied upon such as a physiotherapist, pharmacist, chiropractor, occupational therapist, speech therapist, rehabilitation consultant, architect or builder.²²
- 12.3 Unless already provided to the claimant, the TAC must provide the claimant's lawyers within 28 days of receiving the dispute application with all the documents the TAC considered to make the medical and like benefit decision including:
- 12.3.1 Surveillance reports and video;
 - 12.3.2 Any statements obtained by the TAC;
 - 12.3.3 Medical reports including clinical notes, test results and diagnostic reports and impairment assessment medical reports;
 - 12.3.4 Vocational or other relevant rehabilitation reports;
 - 12.3.5 Relevant occupational therapist or other paramedical provider reports; and
 - 12.3.6 When relevant, legal contentions including citations of any legal authority relied upon and any relevant legal authorities.
- 12.4 Where the TAC fails to provide the claimant's lawyers with all documents the TAC considered to make the decision within 28 days of receiving the dispute application as required by clause

²¹ Applicable to dispute applications lodged on or after 1 September 2007

²² The TAC agrees to pay reasonable costs of experts such as architect or builder where this is relevant and the cost of the report is approved by the TAC in advance

12.3, the decision(s) the subject of the dispute application is/are deemed affirmed and the claimant may issue an application for review at the VCAT in respect of the decision(s)²³.

13. DEPENDENCY AND DEATH BENEFIT DISPUTES

13.1 Where a dispute involves a dependency dispute the disputants agree to provide documents and information to be relied upon in accordance with this Chapter.

13.2 Unless the information or documents have already been provided to the TAC before a decision about dependency or the rate of dependency benefits to be paid²⁴, the claimant²⁵ who claims to have been dependent shall provide to the TAC a signed statement as best the claimant is able to do including:

13.2.1 Details of the claimant's relationship with the deceased which support a dependency relationship between the claimant and the deceased²⁶;

13.2.2 Details relevant to any person²⁷ claiming to be dependent on the deceased;

13.2.3 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;

13.2.4 The duration of the relationship between the claimant and the deceased;

13.2.5 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 or the deceased;

13.2.6 Details of any joint acquisition of assets or ownership of any joint property by the deceased and the claimant;

13.2.7 Details of any joint liabilities by the deceased and the claimant;

13.2.8 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;

13.2.9 Documents evidencing the claimant's financial dependency on the deceased at the time of the deceased's death²⁸;

13.2.10 Documents evidencing that the claimant and the deceased were living together at the time of the deceased's death;

13.2.11 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 happened²⁹;

13.2.12 Documents evidencing the deceased's training skills and experience in the 12 months before the death³⁰;

13.2.13 Any additional material or information relied upon particularly in respect of children who are said to have been dependent upon the deceased;

²³ Applicable to dispute applications lodged on or after 1 September 2007

²⁴ Under Sections 57, 58 or 59 TAA

²⁵ Including a person who claims to have been dependent on the deceased

²⁶ Attaching a marriage or birth certificate where relevant

²⁷ Including children of the deceased

²⁸ For example, credit card statements, loan documents, bank statements, receipts, rental agreements, or income tax returns

²⁹ For example, evidence of earnings from all employment from a date at least 12 months pre-accident and supporting material from pre accident employers (Section 58(6) TAA)

³⁰ Section 58(6) TAA

- 13.2.14 When relevant, legal contentions including citations of any legal authority relied on.
- 13.3 Unless already provided to the claimant, the TAC must provide the claimant's lawyers, within 28 days of receiving a dispute application, with all of the documents the TAC considered to make the dependency decision including:
- 13.3.1 Any statements obtained by the TAC;
 - 13.3.2 Any investigation report into the question of dependency;
 - 13.3.3 Where relevant, legal contentions including citations of any legal authority relied on and any relevant legal authorities.
- 13.4 Where the TAC fails to provide the claimant's lawyers with all documents the TAC considered to make the decision within 28 days of receiving the dispute application as required by clause 13.3, the decision(s) the subject of the dispute application is/are deemed affirmed and the claimant may issue an application for review at the VCAT in respect of the decision(s)³¹.
- 14. IMPAIRMENT DISPUTES**
- 14.1 Where a dispute involves an impairment decision the disputants agree to provide documents and information to be relied upon in accordance with this Chapter.
- 14.2 Unless the information or documents have already been provided to the TAC prior to its impairment decision, the claimant shall provide to the TAC:
- 14.2.1 A signed statement by the claimant which sets out the circumstances surrounding the transport accident and all matters known to the claimant which are relevant to the review of the decision;
 - 14.2.2 Any additional medical reports or information relied upon in addition to the information provided or exchanged in support of the claim for impairment benefits and which were considered by the TAC in making the decision.
- 14.3 A claimant's lawyer may provide a summary if the lawyer determines clarification is required in respect of the following issues which have not been adequately dealt with by the provision of a claimant's statement or in the content of the medical reports relied upon:
- 14.3.1 Pre-existing injuries; or
 - 14.3.2 Overlap; or
 - 14.3.3 Unique point of law.
- 14.4 If a summary is provided by the claimant's lawyer it is to:
- 14.4.1 Identify the particular assessment that is disputed including identifying the Chapter and Table in AMA2 or AMA4 concerned;
 - 14.4.2 Identify which specific parts of the TAC's assessment about which there is no dispute; and
 - 14.4.3 Specify any conditions that have not stabilised and identifying the medical evidence for non stabilisation.

³¹ Applicable to dispute applications lodged on or after 1 September 2007

- 14.4.4 Any additional medical reports or information relied upon, in addition to the information provided or exchanged in support of the claim for impairment benefits and which were considered by the TAC.
- 14.5 Unless already provided to the claimant, the TAC must provide the claimant's lawyers within 28 days of receiving the dispute application with all the documents the TAC considered to make the impairment decision including:
- 14.5.1 Police reports and police statements where the TAC has them;
- 14.5.2 Medical reports including clinical notes, test results and diagnostic reports and impairment assessment medical reports;
- 14.5.3 A document that:
- 14.5.3.1 Sets out how the impairment is assessed and calculated;³²
- 14.5.3.2 Identifies which part(s) of the AMA assessment about which there appears no dispute or which has been compromised;
- 14.5.3.3 Identifies the particular assessment(s) that remain(s) in dispute including identifying the Chapter and Table in AMA2 or AMA4 concerned;
- 14.5.3.4 Specifies which conditions have not stabilised and identifying the medical evidence for non-stabilisation;
- 14.5.4 Copies of any surveillance reports and videos;
- 14.5.5 Any statements obtained by the TAC;
- 14.5.6 Vocational or other relevant rehabilitation reports where they have been relied upon;
- 14.5.7 Relevant occupational therapist or other paramedical provider reports; and
- 14.5.8 When relevant, legal contentions, including citations of any legal authority relied upon and any relevant legal authorities.
- 14.6 Where the TAC fails to provide the claimant's lawyers with all documents the TAC considered to make the decision within 28 days of receiving the dispute application as required by clause 14.5, the decision(s) the subject of the dispute application is/are deemed affirmed and the claimant may issue an application for review at the VCAT in respect of the decision(s)³³.

15. LEGAL COSTS

- 15.1 In recognition of the value added by a claimant's lawyer during a pre-issue review under these protocols the TAC agrees to pay legal costs to a claimant's lawyer according to this Chapter where the TAC revokes or varies its decision the subject of a dispute.
- 15.2 Where a dispute is resolved as the result of a pre-issue review but before a pre-issue conference, the TAC shall pay legal costs of:
- 15.2.1 \$3,150 in respect of medical and like benefit disputes;
- 15.2.2 \$3,680 in respect of eligibility or loss of earnings rate disputes;

³² The existing TAC impairment calculation sheet

³³ Applicable to dispute applications lodged on or after 1 September 2007

- 15.2.3 \$4,200 in respect of impairment or loss of earnings duration and capacity disputes;
or
- 15.2.4 \$4,200 in respect of a dispute involving any combination of disputes identified in
this Clause.
- 15.3 Where a dispute is resolved as the result of a pre-issue review during or within 14 days after
a pre-issue conference, the TAC shall pay legal costs of:
 - 15.3.1 \$3,680 in respect of medical and like benefit disputes;
 - 15.3.2 \$5,250 in respect of eligibility or loss of earnings rate disputes;
 - 15.3.3 \$5,780 in respect of impairment or loss of earnings duration and capacity disputes;
or
 - 15.3.4 \$5,780 in respect of a dispute involving any combination of disputes identified in
this clause.
- 15.4 The legal price points described in Clauses 15.2 and 15.3 include counsel's fees and all other
disbursements except for the reasonable cost of records or reports provided to the TAC
pursuant to Chapters 9 to 14, the reasonable cost of Freedom of Information Act 1982
application fees and associated charges where the records obtained are provided to the TAC
pursuant to Chapters 9 to 14, the reasonable cost of interpreter fees incurred for a dispute
application and the reasonable travel costs incurred by the claimant's solicitor in attending a
pre-issue conference in Melbourne where the solicitor travels from an office in rural Victoria or
a regional city in Victoria. The reasonable cost of records or reports, Freedom of Information
Act 1982 application fees and associated charges and the reasonable cost of interpreter fees
provided or incurred in the circumstances prescribed, will be paid separately by the TAC.
Reasonable travel expenses will be paid by the TAC on the same basis as these would be
paid if claimed on a party/party basis.
- 15.5 For merit reviews at the VCAT legal costs shall, unless the VCAT otherwise orders, be based
on Scale A of the County Court scale of costs. An order for the TAC to pay an applicant's
legal costs shall by consent of the parties be limited in cases where there has been a pre-
issue review to:
 - 15.5.1 A lump sum payment calculated in accordance with the categories described in
Clause 15.3; plus
 - 15.5.2 Costs for activity following the conclusion of the pre-issue review.
- 15.6 The legal cost price points described in Clauses 15.2 and 15.3 will be indexed annually from
1 January 2006 in accordance with the Consumer Price Index for Melbourne as published by
the Australian Statistician for the preceding period prior to the indexation date.
- 15.7 The following clauses deal with points of overlap and what price points will be paid and in
what circumstances, where there are concurrent applications under the No Fault Dispute
Resolution and Common Law Protocols in relation to impairment generally or in relation to the
30% threshold and for a serious injury certificate and/or a common law settlement pursuant to
the provisions of the Common Law Protocols is negotiated.
 - 15.7.1 A No Fault Dispute Resolution Protocols (impairment) price point will be paid where
the following material is provided in support of a No Fault Dispute Resolution
Protocols (impairment) application and the conditions in clauses 15.7.1.4 and
15.7.2 are met:
 - 15.7.1.1 Claimant's statement (including a list of injuries); and
 - 15.7.1.2 Medical reports; and

- 15.7.1.3 Lawyer's statement (where provided); and
- 15.7.1.4 The material provided supports a whole person impairment determination greater than the TAC's determination and one of more than 10% at the time the serious injury certificate is granted or a common law settlement is negotiated.
- 15.7.2 The required material must have been received at the time the serious injury certificate is granted or the common law settlement is negotiated (whenever the payment of a No Fault Dispute Resolution Protocols price point is sought). Where a claimant is relying on the medical material held by the TAC and no additional medical material is to be provided, this must be clearly stated in a letter and any differing interpretation of the medical material articulated.
- 15.7.3 The price point that will be paid will depend on what stage the No Fault Dispute Resolution Protocols (impairment) dispute application has reached at the date the serious injury certificate is granted or the common law settlement is negotiated (whenever the payment of a No Fault Dispute Resolution Protocols price point is sought). If a pre-issue conference has been held at the date of granting or the resolution of any common law damages claim, then the 'pre-issue conference held' price point will be paid. If it has not then the price point applicable to where the application is resolved before a pre-issue conference is held will be paid.

16. THE VCAT

- 16.1 Unless the TAC and the claimant's lawyers consent in writing, an application for review to the VCAT shall be in accordance with Chapter 6.
- 16.2 A Directions Hearing will otherwise proceed in accordance with the VCAT Practice Note.³⁴
- 16.3 Both the claimant and the TAC may issue a summons for production of documents, notes or report returnable at the Directions Hearing.³⁵
- 16.4 An application for an expedited hearing may be made at a Directions Hearing subject to the provisions of Chapter 4.
- 16.5 Subject to the VCAT's direction, compliance with these protocols and their objectives should obviate the necessity for compulsory conferences or further mediation.
- 16.6 This protocol contemplates that where a dispute has been the subject of a pre-issue review, the Application for Review will have defined and confined the issues remaining in dispute and that all relevant documentation required for review of the decision that are relevant and in existence should have been exchanged.
- 16.7 The TAC may, with the agreement and the assistance of the claimant's lawyer, prepare a joint Tribunal Book for the VCAT. The joint Tribunal Book must contain:
 - 16.7.1 A Section 49 statement by the TAC;
 - 16.7.2 The client's statement of legal contentions;
 - 16.7.3 All of the documentation that was exchanged between the TAC and the client and by the client and the TAC which was provided at any stage up to the conclusion of the pre-issue review or pre-issue conference.

³⁴ Clauses 6, 8 and 13 of the Practice Note

³⁵ This provision will not limit the entitlement of either party to issue a summons for production and, where relevant, attendance returnable at the hearing

- 16.8 The supporting documents must be suitably paginated and indexed by the TAC in accordance with the VCAT Practice Statement.
- 16.9 It is anticipated that both parties will have exchanged all material and documents on which they intend to rely and will have included them in the Tribunal Book prepared in accordance with Clause 16.2. A party should not call a witness whose statement is not included in that Tribunal Book or adduce evidence in chief beyond that contained in any statement provided in the Tribunal Book in any proceeding before the VCAT, except by consent or by the leave of the VCAT.
- 16.10 Subject to Clause 16.3 it is expected that neither party will rely on evidence or documents which were not exchanged and disclosed at the pre-issue review or the pre-issue conference in accordance with Chapter 6 above, except by consent or by the leave of the VCAT.

17. TRAVEL COSTS

- 17.1 The TAC will meet the reasonable travel and accommodation costs associated with a claimant attending a pre-issue conference or mediation for the purposes of these protocols, where the claimant lives in rural Victoria or interstate. These costs will be met in accordance with the TAC's 'Travel and Accommodation Expenses' policy.

18. PROTOCOL DEVELOPMENT FORUM

- 18.1 The TAC will convene a forum with representatives of LIV and ALA at least once every six months after these protocols come into force.
- 18.2 The forum will discuss and review:
- 18.2.1 Quality improvement initiatives to enhance the effectiveness of these protocols;
 - 18.2.2 The procedures and definitions in these protocols;
 - 18.2.3 Specific identified examples of non compliance with these protocols, if any;
 - 18.2.4 Reports containing relevant data about participation in the protocol processes;
 - 18.2.5 Development and consideration of key indicators of success of these protocols;
 - 18.2.6 The development of reporting and measurement methodology for use with the protocols;
 - 18.2.7 Preparing a report to the VCAT's TAC Interest Group suggesting appropriate changes to the Tribunal's procedures processes, rules and practice directions;
 - 18.2.8 Any other matter of relevance to participants.