

Transport Accident Act Common Law Protocols – 1 April 2005

(amended as from March 2010)

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 deliver common law benefits to seriously injured claimants as expeditiously as possible.
- 1.2 The TAC, Law Institute of Victoria (LIV) and Australian Lawyers Alliance (ALA) all agree these protocols recognise the appropriate mechanisms to deliver common law benefits and ensure that claimant's legal rights and obligations are being observed and are not abandoned for the lack of opportunity to enforce them.
- 1.3 The role played by claimant's lawyers in this process is recognised by the TAC.
- 1.4 The protocols have been agreed by the TAC with Law Institute of Victoria (LIV) and Australian Lawyers Alliance (ALA) who agree that they and their membership will comply with them.

2. OBJECTIVES

- 2.1 The objectives of these protocols are to ensure:
 - 2.1.1 Processes and procedures contemplated in Section 93 of the *Transport Accident Act* (TAA) provide an efficient and expeditious process to deliver appropriate damages to people (claimants) who sustain serious injuries as a result of a transport accident;
 - 2.1.2 The processes giving rise to proceedings are, by the mutual and early exchange of information and documents, productive of quality decision making by the TAC, the claimant and their legal representatives;
 - 2.1.3 The TAC maintains a public commitment to all stakeholders to adhere to model litigant guidelines;
 - 2.1.4 Consistent management of serious injury requests and court processes;
 - 2.1.5 The TAC, the claimant and their lawyer endeavour to resolve common law claims early and appropriately before resorting to contested legal proceedings;² and
 - 2.1.6 The overall time for common law benefit delivery from the time of a claimant's transport accident is reduced from 60 months on average to less than 30 months on average. The reduction will be achieved by:
 - 2.1.6.1 Reducing the time from a claimant's transport accident to the time when a claimant's request for a serious injury certificate is received by the TAC from 36 months to 18 months;
 - 2.1.6.2 Reducing the average time for the TAC to evaluate a claimant's serious injury request and make a serious injury decision from seven months to six months;

¹ *Justice Statement May 2004*, Modernising Justice at paragraph 3.3

² The TAC *Client Service Charter* recognises that clients will be treated as individuals, be kept informed of claims management progress and have their issues resolved

- 2.1.6.3 Reducing the average time to resolve a common law claim after a serious injury certificate is granted from 12 months to six months;
- 2.1.6.4 Reducing the average time to resolve legal costs and finalise common law claims from 3.5 months to one month.
- 2.1.7 The TAC, LIV and ALA will together develop appropriate common law benefit delivery information packs to be provided to the public and claimants to enhance community understanding of the processes and expectations of the TAC and the legal profession;

3. APPLICATION

- 3.1 These protocols apply to the following procedures and proceedings under Section 93 of the TAA:
 - 3.1.1 Requests to the TAC for a serious injury certificate³;
 - 3.1.2 Applications to a Court for leave to bring an action for damages⁴; and
 - 3.1.3 Actions for damages⁵ where the TAC is on risk.⁶
- 3.2 These protocols take effect from 1 April 2005.
- 3.3 These protocols do not apply to any requests, applications or actions of the types described in Chapter 3.1 made or brought before 1 April 2005.
- 3.4 30% whole person impairment determinations made on or after 1 April 2005 are considered Common Law Protocols matters unless the request for an impairment determination or a serious injury certificate was made prior to that date. In those cases, the lawyer representing the claimant may choose to have the matter included within the Common Law Protocols.

4. REQUEST FOR SERIOUS INJURY

- 4.1 An application for a serious injury certificate cannot be made before the earlier of:
 - 4.1.1 The TAC has identified and commenced an impairment assessment; or
 - 4.1.2 The claimant's lawyer lodges a claim for an impairment assessment.
- 4.2 An application for a serious injury certificate must be made in writing and be signed by the claimant.⁷
- 4.3 An application for a serious injury certificate should:
 - 4.3.1 Specify the injury or injuries relied on by the claimant;
 - 4.3.2 Specify the sub-paragraphs of the definition of serious injury in Section 93(17) of the TAA relied upon by the claimant to constitute a serious injury;
 - 4.3.3 Attach medical evidence that the condition relied upon is stable or at least substantially stable;

³ Section 93(4)(c) TAA

⁴ Section 93(4)(d) TAA

⁵ Under Part 6 TAA

⁶ The claimant must inform the TAC that the proposed defendant is likely to be indemnified by the insurer other than the TAC or that contribution is to be sought from another responsible party

⁷ Where they have the capacity to do so

- 4.3.4 Attach copies of all medical reports⁸ regarding the injury and relevant pre-existing conditions that are to be relied upon⁹ and which have not previously been delivered to the TAC; and
- 4.3.5 Where scarring is relied upon, attach colour photographs or a digital image of the affected body part or parts.¹⁰
- 4.4 An application for a serious injury certificate must attach either an affidavit¹¹ or a summary detailing:
- 4.4.1 If the client has been known by a previous surname¹² details must be disclosed;
 - 4.4.2 Where a claim has not previously been accepted by the TAC, a description of the accident circumstances¹³ including, where available, the registration numbers of all vehicles involved in the accident¹⁴;
 - 4.4.3 Any body function or body functions said to be impaired and on which reliance is placed;
 - 4.4.4 The nature and extent of the pain and suffering relied on including details of any restriction in domestic, recreational or sporting activities undertaken before the accident;
 - 4.4.5 The effect of the injury or injuries on the claimant's past and future employment and earning capacity;
 - 4.4.6 The nature of any work (paid or unpaid) that has been undertaken subsequent to the transport accident including the periods during which it was undertaken, and attempts by the claimant to obtain alternative duties or return to work;
 - 4.4.7 The consequential extent of the pain and suffering or inability to engage in work or domestic activities where a behavioural disturbance or disorder is relied on;
 - 4.4.8 The insurer, where this is known, where a proposed defendant is not indemnified by the TAC.¹⁵
- 4.5 Where loss of earning capacity consequences are claimed, an application for a serious injury certificate must attach or exhibit any relevant supporting evidence not previously provided to the TAC for the assessment of loss of earnings or loss of earning capacity entitlements under Part 3.¹⁶
- 4.6 Any information or supporting material not provided to the TAC in support of a serious injury request, which was in the possession of the claimant or their lawyer and which could have

⁸ Including material relied on by the author of a report

⁹ The TAC should not be requested to or be required to pay for a medico legal report not relied upon under Section 60 or as a disbursement in the proceedings

¹⁰ Date-stamped and preferably, A4 size

¹¹ An affidavit will carry a higher fee than a summary and is intended to shorten timelines.

¹² For example, a person who changes name after marriage

¹³ Accident circumstances will be particularly relevant where claimant is injured in the course of employment and the claimant is in receipt of VWA or Comcare benefits

¹⁴ Registration assists indemnity and Section 96 TAA identification

¹⁵ For example, where a local authority is the responsible party

¹⁶ Examples of documents include duplicate group certificates, payment summaries or, in the case of self-employed claimants, an accountant's report, individual and partnership, corporation or trust returns of entities in which the claimant has a material interest for at least three years before the transport accident. Where such returns are not available and cannot reasonably be obtained then other proof of loss of income for the three years before the transport accident must be provided (for example, books of account, bank statements, accountant's report, evidence of substitute labour payments, etc.).

been provided to the TAC, cannot later be relied on by the claimant in support of an application to a Court under Section 93(4)(d) except by consent or by leave of the Court.¹⁷

5. SERVICE

- 5.1 The application and all supporting material must be served on the Manager, Victorian Common Law, Transport Accident Commission, 60 Brougham Street, Geelong 3220 or DX 216079, Geelong.
- 5.2 The TAC must acknowledge receipt of the request within 14 days of receipt of the serious injury request. The acknowledgement may be in writing or by email and must include the date on which the application was received.

6. SERIOUS INJURY DECISION

- 6.1 The TAC will, within 60 days of receiving the application, provide medical reports or other relevant information not previously provided.¹⁸
- 6.2 The TAC must, within 60 days of receiving the application, or within 60 days of making a determination in accordance with either sections 46A or 47(7) of the TAA¹⁹, whichever is the later, either issue a serious injury certificate or reject the application unless the TAC reasonably requires:
 - 6.2.1 Additional information about any matter contained in the application and supporting material;
 - 6.2.2 An authority signed by the claimant;
 - 6.2.3 Additional medical material of a fundamental nature as a consequence of an issue in a medical report attached to the application;
 - 6.2.4 The claimant to be independently medically examined.
- 6.3 The TAC must make the request for additional information from the claimant or a third party or inform the claimant and their lawyer of the medical examination within 60 days after receiving the application.
- 6.4 A claimant must take reasonable steps to comply with the TAC's request for further information and within a further 60 days provide:
 - 6.4.1 The additional information; or
 - 6.4.2 An explanation of all reasonable steps undertaken to obtain the information; or
 - 6.4.3 A statement explaining why the request for information is considered to be unreasonable or unnecessary and the extent to which it has not been complied with.²⁰

¹⁷ Examples of documents which were not in possession include supplementary or update reports from treating practitioners or future treatment or surgery reports not in existence at this point. However, such reports must be served on the TAC within 30 days of being received if they are to be relied on.

¹⁸ Unless a contemporaneous impairment assessment process remains incomplete in which case the TAC will provide all remaining reports at the conclusion of the impairment process

¹⁹ It is anticipated that where a determination is made at less than 30%, the claimant will not issue an application for review at VCAT on the impairment when a serious injury certificate is provided by the TAC

²⁰ Where a statement has been provided under this clause, the TAC may choose to deny the serious injury request and, on being served with an Originating Motion, issue an early return of subpoena under Order 4.210 in respect of the information or documents previously requested

- 6.5 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 ALA, the LIV and the TAC.²¹
- 6.6 The TAC's serious injury decision must be provided within a further 60 days of the receipt of the independent medical examination report or the further additional information requested, or the written explanation in accordance with clause 3 above being received, whichever is the later.
- 6.7 If the TAC does not make a decision within 60 days of the request for serious injury being received or within 60 days of receipt of the further or additional information or independent medical report then the TAC will be deemed to have denied the serious injury certificate for the purposes of Section 93(4)(c) and (d).
- 6.8 The TAC serious injury decision letter will be forwarded to the claimant and their lawyer and:
 - 6.8.1 Provide a serious injury certificate where consent is given;
 - 6.8.2 Where a serious injury certificate is refused, give the reasons for refusing to grant the serious injury certificate;
 - 6.8.3 Attach the information and documents used to make the decision where this has not been previously provided;²²
 - 6.8.4 Confirm whether or not the TAC indemnifies the proposed defendant if this is known.

7. ORIGINATING MOTION

- 7.1 The claimant must make application to a Court within six years of the date of the accident²³ or within 28 days²⁴ of the TAC refusing a serious injury certificate, whichever is the later.
- 7.2 In order to expedite the common law process the claimant's lawyer shall use best endeavours to issue an originating motion within 60 days of the later of:
 - 7.2.1 The TAC's refusal to issue a serious injury certificate; or
 - 7.2.2 The finalisation of impairment by the TAC or the VCAT below 30%.
- 7.3 Subject to the rules of a Court, where an affidavit has been served in support of a serious injury request, then that affidavit must be served in support of the originating motion.²⁵
- 7.4 Subject to the rules of a Court, where an affidavit was not provided in support of a serious injury request under Chapter 4, then the claimant affidavit supporting the originating motion must be served together with the originating motion and must contain all of the information and exhibit all of the documentation and reports contemplated in Clause 4.4.
- 7.5 In circumstances where proceedings have been issued, the parties agree that Court orders should be sought by consent in the following terms:
 - 7.5.1 Subsequent affidavits in support of or in opposition to the application by either party will be as in accordance with the scheduling of the Court and pursuant to Court orders;

²¹ Consistent with the TAC's *Privacy Principles*

²² This will include all investigation and surveillance reports, statements obtained by the TAC and medical and allied health reports

²³ Subject to the provisions of the *Limitations of Actions Act 1958*

²⁴ Consistent with the TAC's waiver policy

²⁵ To expedite process and shorten time lines

- 7.5.2 An affidavit in support of or opposing a serious injury application may not contain information or exhibit documents or reports, which could have been served in accordance with Chapters 4 or 6 of these protocols except by consent or by the leave of the Court;²⁶
- 7.5.3 The first round of early return Order 42.10 subpoenas may be issued and served by either the TAC or the claimant within 60 days of the filing of a notice of appearance by the TAC.²⁷
- 7.6 Subject to any contrary orders of the Court, after the filing of the TAC's notice of appearance the parties will seek orders by consent that:
- 7.6.1 A directions hearing be held on a date within three months after filing the appearance, or at the earliest possible time thereafter;
 - 7.6.2 The particulars of injury be filed within 30 days of the order;²⁸
 - 7.6.3 The TAC may, with the agreement and assistance of the claimant's lawyer, prepare a joint Court Book index in accordance with Order 34A;²⁹
 - 7.6.4 The joint Court Book index must contain at least:
 - 7.6.4.1 The Court documents;
 - 7.6.4.2 Particulars of Injury (if any);
 - 7.6.4.3 Plaintiff's affidavit material;
 - 7.6.4.4 Defendant's affidavit material; and
 - 7.6.4.5 Relevant miscellaneous documents;
 - 7.6.5 Where a joint Court Book index has been prepared the defendant's solicitor must serve three copies of the joint Court Book index on the claimant's solicitor and file the joint Court Book index with the Court at least 10 days before the call over;
 - 7.6.6 In the event that the contents of the joint Court Book cannot be agreed upon then the parties agree to seek orders from the Court at the call over about the index of documents to be contained in the Court Book. The defendant's solicitor will then prepare and serve and file the joint Court Book index in accordance with those orders and Clause 7.5;
 - 7.6.7 Where there is no agreement for a joint Court Book the claimant may serve their Court Book in accordance with the appropriate Court orders;³⁰
 - 7.6.8 The parties agree to seek orders by consent from the Court to serve any notices of intention to cross-examine witnesses, specifying the identity of the witnesses to be cross examined no later than seven days before the date of the call over.
 - 7.6.9 At the directions hearing the parties agree to apply by consent for an order that the case will be listed for hearing at the earliest possible date.

²⁶ In accordance with Chapter 4 and to create a mutual obligation on the TAC

²⁷ The expectation is that this will not be required where there has been complete mutual exchange of information and documents

²⁸ Should be unnecessary as the particulars should be contained in the affidavit or summary delivered under Chapter 4

²⁹ To avoid duplication of Court Books, reduce timelines and unnecessary photocopying

³⁰ For example, County Court Order 34A. The parties to this protocol will endeavour wherever possible to prepare a joint Court Book index – where a claimant elects to prepare their own Court Book index, the Court Book index must comply with Clause 7.8 and the claimant agrees that cost of no more than five copies be recovered as a party and party disbursement

- 7.7 In accordance with the County Court Practice Direction concerning Originating Motions, a pre hearing conference shall take place prior to hearing in each Originating Motion matter where the TAC is the Defendant.

8. COMMON LAW CONFERENCE

- 8.1 A claimant must engage in a common law conference prior to the issuing of proceedings for damages³¹ where they become entitled to commence an action for common law damages after:

- 8.1.1 A TAC impairment decision in excess of 30%;
- 8.1.2 A VCAT review determination or resolution producing an impairment in excess of 30%;
- 8.1.3 Consent by the TAC in accordance with Section 93(4)(c); or
- 8.1.4 Leave of the Court after a serious injury application (Section 93(4)(d)).

9. EXCHANGE OF INFORMATION³²

- 9.1 The claimant must within 30 days of the entitlement to bring proceedings:

- 9.1.1 Provide the TAC with information and documents relating to liability where this is in issue including expert witness opinions to be relied upon; and
- 9.1.2 Nominate a suggested date and place for a common law conference to take place within a further 90 days; and
- 9.1.3 Where leave has been granted by a Court, provide the TAC with any updated claimant information, medical reports, pecuniary loss documentation provided to the TAC in accordance with Clause 4.4 or, in all other cases, provide the TAC with the information set out in Clause 4.4 unless already provided.

- 9.2 The TAC must provide to the claimant's lawyer within 30 days of receiving the request for a common law conference any information and documents referred to in Clause 6.2 with all relevant documents that the TAC has in its possession including:

- 9.2.1 All investigations reports including all witness statements obtained;
- 9.2.2 Police reports and statements taken by the police where the TAC has them;
- 9.2.3 Medical reports not previously provided or exchanged;
- 9.2.4 Whether liability is admitted and, if not, a list of defences on which the TAC would rely on;
- 9.2.5 Any relevant documents not otherwise relied upon;
- 9.2.6 The identity of any other parties responsible for the damage including their insurers, where this is known; and
- 9.2.7 Expert witness opinions and reports.

³¹ The TAC and the claimant's lawyers may consent to dispense with a common law conference where a claimant is a minor or a person under disability

³² The common law protocols provisions and obligations in relation to exchange do not apply once proceedings have been issued following the conclusion of a common law conference as prescribed under the common law protocols

- 9.3 Information or documents not exchanged between the claimant and the TAC in support or defence of the common law claim which were, at the time of the exchange, in the possession of the party seeking to rely on the information or documents and which could have been provided to the other party, cannot later be relied on by that party except by consent or by leave of the Court.

10. APPROPRIATE DISPUTE RESOLUTION

- 10.1 The TAC and the claimant must, within 60 days of the TAC providing its documents, participate in a common law conference.
- 10.2 The claimant, their solicitor and a representative of the TAC able to provide instructions must attend a common law conference.
- 10.3 Either party may elect for a common law conference to be mediated, in which case:
- 10.3.1 The mediator shall be accredited and suitable to both parties;
 - 10.3.2 The TAC will pay the mediator's reasonable fee; and
 - 10.3.3 A mediator may with the consent of the parties adjourn the mediation for a further period to a date and place to be agreed for the resumption of the mediation.
- 10.4 A common law conference will conclude when the issues in dispute have resolved and a release has been signed by the TAC and the claimant or when resolution cannot reasonably be achieved as part of the common law conference process.
- 10.5 At the conclusion of a common law conference where a claim is not resolved the parties must certify in writing that the conference has concluded without resolution. The certification may identify key issues that have been agreed or admitted.³³
- 10.6 Anything said or done in the course of a common law conference may not later be disclosed in any subsequent proceeding before the Court unless the claimant's lawyers and the TAC agree that the disclosure may be made or unless required by law.
- 10.7 Where a common law conference or mediation does not result in resolution, the TAC reserves the right to serve an offer of settlement, in 'Calderbank' form except where the claimant was a minor at the time the common law conference took place.

11. COMMON LAW ACTION

- 11.1 If a claim does not resolve at the common law conference:
- 11.1.1 The parties agree that the claimant may issue a writ and statement of claim that are consistent with the terms of the certification described in Clause 10.5;
 - 11.1.2 The writ and statement of claim must be served on the TAC in accordance with the rules of a Court;
 - 11.1.3 Where the statement of claim cannot be served then the TAC must be informed;
 - 11.1.4 The defendant's appearance and defence must be prepared and served in accordance with the rules of a Court.
- 11.2 The parties agree that they will not apply for Court orders for service of interrogatories or discovery other than in circumstances where:

³³ For example, where liability or quantum is admitted

- 11.2.1 The TAC has served a defence denying liability or pleading voluntary assumption of the risk or contributory negligence; or
- 11.2.2 Where the claimant claims pecuniary loss damages, providing that the orders seek delivery of interrogatories limited to pecuniary loss and lost earning capacity and orders relating to discovery, seek discovery of relevant documentation going to the issue of earning capacity or pecuniary loss, where the claimant has at any stage between three years before the transport accident and the trial, been self employed or the recipient of income from a corporation or trust.

12. LEGAL COSTS

GENERAL

- 12.1 In recognition of the value added by a claimant's lawyer during the serious injury and common law processes, the TAC will pay to a claimant's lawyer legal costs and disbursements according to this Chapter.
- 12.2 Party and party legal costs and disbursements not specifically regulated in this Chapter are to be determined by reference to the appropriate Court scale.
- 12.3 Where more than one lawyer has acted for a claimant in the course of a common law claim legal costs and disbursements payable by the TAC will be paid to the lawyer acting for the claimant at the time of the payment.

GRANTED SERIOUS INJURY WHERE THE TAC IS NOT SOLELY ON RISK

- 12.4 Where following a request for serious injury made in accordance with Chapter 4, the TAC, prior to the issue of an originating motion, issues a certificate consenting to the bringing of common law proceedings but in circumstances where the TAC is not solely on risk, the TAC will pay to the claimant's lawyer within 14 days of the issue of the certificate either:
 - 12.4.1 \$1,050 for legal costs and disbursements in the case where the injury was deemed to be a serious injury pursuant to s93(3) TAA; or
 - 12.4.2 \$3,150 for legal costs and disbursements in the case where the TAC is satisfied a claimant's injury is a serious injury.
- 12.5 Subsequent legal costs in respect of an originating motion or for proceedings for the recovery of damages from the responsible parties will not be regulated by these Common Law Protocols but will be determined by reference to the appropriate Court scale.

IMPAIRMENT GATEWAY

- 12.6 Where a common law action is resolved in circumstances where a claimant's injury was deemed to be a serious injury pursuant to s93(3) TAA the TAC will pay legal costs limited to \$8,400 exclusive of disbursements.

NARRATIVE GATEWAY

- 12.7 Where a common law action is resolved in circumstances where the TAC is satisfied a claimant's injury is a serious injury and has issued a certificate consenting to the bringing of common law proceedings, the TAC will pay legal costs limited to \$10,500 exclusive of disbursements.

ORIGINATING MOTION

- 12.8 Where a serious injury request is denied and the claimant issues an Originating Motion, the TAC agrees to pay legal costs calculated on the appropriate court scale.

- 12.9 If a serious injury is granted by the TAC (including at an Originating Motion pre hearing conference such as that referred to in paragraph 7.7) or allowed by the court following the issue of an Originating Motion, the claimant must engage in a common law conference pursuant to clause 8 and where that common law action is resolved, the TAC, in addition to the court costs associated with the originating motion, will pay legal costs limited to \$8,400 exclusive of disbursements.
- 12.10 If the claim does not resolve at the common law conference and a Writ for damages is issued, upon finalisation of the Writ, the TAC will pay legal costs where ordered by the Court on the appropriate court scale.

UPLIFTS

- 12.11 The TAC will, in addition to the costs payable in accordance with previous Clauses, pay an uplift fee in the following circumstances:
 - 12.11.1 \$1,580 where an application for serious injury in accordance with Clause 4.4 attaches an affidavit(s) in support;³⁴
 - 12.11.2 \$2,100 where the TAC has not admitted liability prior to the conference,³⁵
 - 12.11.3 \$2,100 where the past and future pecuniary loss damages claim has been supported by the full and complete provision of information and documentation contemplated in Clauses 4.4, 4.5 and 9.1.3 where that information and documentation had not previously been provided to the TAC or \$2,630 in the same circumstances where the claimant is self employed.
 - 12.11.4 \$1,050 where a solicitor attends the common law conference without counsel.
 - 12.11.5 \$2,100 where a Common Law damages claim is resolved within 14 days of the concession of a Serious Injury Certificate at an Originating Motion pre hearing conference such as that referred to in paragraph 7.7 (in this case, no other uplifts will apply).

COURT APPROVAL

- 12.12 Where the resolution of a common law action has required and has received the approval of a Court, the TAC will pay an uplift fee of \$2,630 plus disbursements.

DISBURSEMENTS

- 12.13 The TAC will pay the claimant's costs and disbursements within 14 days of the date of agreement or receipt of the appropriate certificate from the Taxing Master after taxation. Where agreement cannot be reached on pre-issue disbursements, the dispute will be referred by the parties to the CEO of LIV for resolution by the CEO or their delegate.

SET OFF

- 12.14 Where an order has been made against a claimant by a Court in favour of the TAC or a defendant entitled to indemnify under Section 94 TAA the TAC will be entitled to set off the amount of any such order against the sum which may otherwise be due to the claimant.

³⁴ This uplift is only available when a sworn affidavit is exchanged

³⁵ Not notwithstanding clause 9.2.4 the TAC should advise of its position in relation to liability within 21 days of a common law conference being arranged, or if the conference is arranged in less than 21 days, as soon as practicable. If it does not, or liability is not admitted within that period, this uplift can be claimed.

INDEXATION

- 12.15 Legal costs payable in accordance with this protocol 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.

PRICE POINTS PAYABLE ON CONCURRENT PROTOCOLS APPLICATIONS

- 12.16 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 Impairment Assessment, 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 terms of the Common Law Protocols is negotiated.

- 12.17 An Impairment Assessment Protocols price point (and uplift if appropriate) will be paid where the following material is received in support of an Impairment Assessment Protocols application and the conditions in clauses 12.17.4 and 12.17.5 are met:

12.17.1 Claimant's statement (including a list of injuries); and

12.17.2 Medical reports; and

12.17.3 Lawyer's statement (where provided); and

12.17.4 The material provided supports a whole person impairment determination of more than 10%.

12.17.5 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 an Impairment Assessment 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.

- 12.18 Where an Impairment Assessment Protocols price point is sought at the time a common law settlement is negotiated, the TAC will pay the impairment assessment protocol price point and uplift when a Common Law settlement is negotiated and resolved, provided the requirements of 12.17.4 and 12.17.5 are met. This includes where an interim impairment determination has been made.

- 12.19 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 12.19.4 and 12.19.5 are met:

12.19.1 Claimant's statement (including a list of injuries); and

12.19.2 Medical reports; and

12.19.3 Lawyer's summary (where provided); and

12.19.4 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 the common law settlement is negotiated.

12.19.5 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.

- 12.19.6 The price point that will be paid will depend on what stage the No Fault Dispute Resolution Protocols (impairment) 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.
- 12.20 Where an Impairment Assessment Protocols or No Fault Dispute Resolution Protocols (impairment) application has been made on the basis that the claimant has a 30% or more whole person impairment and a compliant Common Law Protocols (serious injury) request has been lodged, the relevant price point that will apply when the claimant's common law damages entitlements are resolved will be that applicable to a verbal threshold concession, regardless of whether a 30% (or more) whole person impairment determination was made or a serious injury certificate was granted.
- 12.21 A serious injury certificate request will be considered compliant for the purposes of clause 12.20 where the following have been received at the time of the granting of a serious injury certificate or the 30% (or more) whole person impairment determination:
 - 12.21.1 The application in the prescribed format and containing the prescribed detail; and
 - 12.21.2 The claimant's affidavit or summary containing the prescribed detail (including particulars of injury); and
 - 12.21.3 Material in support of any claim of a financial loss.

13. TRAVEL COSTS

- 13.1 The TAC will meet the reasonable travel and accommodation costs associated with a claimant attending a 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.

14. REVIEW FORUM

- 14.1 The TAC will convene a forum with representatives of LIV and ALA at least once every six months after these protocols come into force.³⁶
- 14.2 The forum will discuss and review:
 - 14.2.1 Quality improvement initiatives to enhance the effectiveness of these protocols;
 - 14.2.2 The extent to which the objectives have been achieved;
 - 14.2.3 The procedures and definitions in these protocols;
 - 14.2.4 Specific identified examples of non compliance with these protocols, if any;
 - 14.2.5 Reports containing relevant data about participation in the protocol processes;
 - 14.2.6 The development of reporting and measurement methodology for use with the protocols;

³⁶ The first forum will be held in June 2005 to review the first three months of activity

- 14.2.7 Suggestions for Practice Note or Rule changes for consideration by the County Court or Supreme Court;
- 14.2.8 The development of appropriate common law benefit information packs for use by the TAC, lawyers and the public;
- 14.2.9 Legal costs, including indexation.