

Date 16 April 2026

Mr Joe McCracken MP
Chair, Legislative Council Legal and Social Issues Committee
Parliament House
Spring Street
East Melbourne VIC 3002

Dear Mr McCracken,

Re: Inquiry into claims made through the Transport Accident Commission

The Law Institute of Victoria ('LIV') is Victoria's peak body for lawyers, representing more than 21,000 members of the Victorian legal profession, as well as individuals who work with them. The LIV has a long history of contributing to, shaping and developing state and federal legislation and policies.

The LIV welcomes the opportunity to provide its views to the Legislative Council Legal and Social Issues Committee's ('Committee') inquiry ('Inquiry') into claims made through the Transport Accident Commission ('TAC'). We note the Inquiry is particularly focussed on processes around legitimate claims, including disputed claims and circumstances related to fraudulent claims.

This letter is informed by the considered views the LIV's Transport Accident Committee, Health Law Committee and Disability Law Committee. These committee members have vast experience representing diverse injured individuals and have firsthand and sustained exposure to the TAC scheme's practical operation and its real-world impact on claimants.

Executive Summary

The LIV recognises that effective mechanisms to identify and address fraudulent conduct are necessary to maintain public confidence in the TAC scheme. However, the LIV considers that fraudulent claims are rare and not representative of broad claimant behaviour. Any response to address 'fraud' must remain evidence based, proportionate and clearly distinguish between deliberate system misuse and the genuine complexity that can accompany injury claims (particularly around chronic pain, psychological injury or evolving medical needs). Counter fraud initiatives must not presume scepticism to all claimants.

The LIV strongly cautions against a policy response that ignores claimant protections, and advances reforms to impose burdensome evidentiary requirements that delays access to treatment and income support. This is inconsistent with the protective and remedial character of the TAC scheme and could have profound human consequences for injured individuals and their families. Any changes arising from this inquiry must ensure that injured persons do not experience reduced procedural fairness, diminished access to independent review mechanisms, or heightened financial uncertainty as a result of system-wide reform.

In light of these considerations, the LIV encourages the Committee to approach its inquiry in a manner that is balanced, nuanced and informed by practical experience. This includes careful consideration of how fraud prevention measures interact with claims assessment processes, dispute resolution pathways and claimant experience in practice. In particular, the LIV encourages the Committee to recognise the TAC Protocols developed in partnership between the TAC, LIV and Australian Lawyers Alliance ('ALA'). The TAC Protocols provide an efficient alternative dispute resolution ('ADR') that ensures claimants are afforded timely justice whilst minimising risk that fraudulent claims are processed.

General Comments

1. The LIV acknowledges that the Committee is tasked to primarily examine legitimate and fraudulent TAC claims processes. The LIV considers it essential to emphasise that this must be considered within the broader TAC scheme purpose to provide timely and effective support, compensation and treatment to Victorians who are genuinely injured in transport accidents.
2. The LIV's comments seek to strike a balance between safeguarding the scheme from system abuse and preserving its accessibility, fairness and remedial objectives. LIV members note that injured persons already face significant procedural, medical and financial hurdles to navigate TAC systems. Measures that are overly restrictive, opaque or driven primarily by fraud prevention risk compounding these challenges and deter legitimate claimants from lawful entitlements.
3. The LIV believes it is important for the Committee to be aware of the TAC's historical background, the development of the TAC protocols, and how the protocols enable both the TAC and the injured individual to ensure that legitimate claims are fully considered. This is addressed in detail below.

Establishment of the TAC

4. Prior to the TAC's no-fault transport accident compensation approach, injured road users would rely on common law action which was protracted, costly, uncertain and inequitable (compensation often depended on the injured person proving negligence, rather than on the severity of injury or need for care).¹ The previous Motor Accidents Board (MAB) (established in the 1970s) sought to introduce a no-fault claims process. However, the MAB was criticised for financial instability and creating differential outcomes between those who could, and could not, pursue common law damages.²
5. By the mid-1980s, the inadequacy and fiscal unsustainability of the existing arrangements prompted bipartisan recognition that a more comprehensive and durable model was required. In response, the TAC was established under the *Transport Accident Act 1986* (Vic) ('Act') and commenced on 1 January 1987. The TAC introduced a hybrid scheme that combined universal no-fault benefits

¹ Research Data Australia, *Transport Accident Compensation* (Webpage) <<https://researchdata.edu.au/transport-accident-compensation/490143>>.

² Transport Accident Commission, *History of the TAC* (Webpage) <<https://www.tac.vic.gov.au/about-the-tac/our-organisation/what-we-do/history-of-the-tac>>. ('History of the TAC')

with a retained right to pursue common law damages. This compromise reflected an intention to balance social protection, individual rights- and financial viability.³

6. Importantly, the TAC scheme was designed with broader public policy objectives beyond compensation alone, including:
 - 6.1. ensuring timely access to treatment and support for injured persons;
 - 6.2. reducing the social and economic costs of transport accidents;
 - 6.3. promoting road safety and accident prevention; and
 - 6.4. providing a system that is administratively efficient, financially sustainable, and publicly accountable.⁴
7. Over time, amendments to the Act have refined exclusion provisions, clarified entitlement thresholds and adjusted benefit structures, often in response to judicial interpretation, actuarial advice or emerging policy concerns. Whilst these changes have sought to preserve the integrity and viability of the scheme, they have also attracted scrutiny where reforms have had the potential to narrow access to benefits or increase administrative complexity for claimants.
8. More recently, the TAC has also been the subject of integrity and governance attention, including oversight by bodies such as the Independent Broad-based Anti---corruption Commission (IBAC) in relation to allegations of improper billing practices involving service providers.⁵ These matters have underscored the ongoing need for strong controls, transparency and accountability within a large and complex statutory compensation system, whilst also reinforcing the importance of distinguishing systemic issues from claimant behaviour.

TAC Protocols

9. Any inquiry into TAC processes must recognise, and understand, the importance and benefit of the TAC Protocols ('Protocols'). In brief, the Protocols establish an alternative dispute resolution ('ADR') process between the TAC and legal practitioners to settle claims in a time-efficient manner without litigation. The protocols are a voluntary process, but the vast majority of legal practitioners use them in recognition that the Protocols promote access to, and administration of, justice.
10. The Protocols were first established in 2005 as an agreement between the TAC, LIV and Australian Lawyers Alliance ('ALA') in response to the growing complexity of compensation claims and increasing litigation. The Protocols were most recently updated in 2026, and include:

³ Ibid.

⁴ Samantha Cockfield, 'Road Safety - The Experience of the Transport Accident Commission in Victoria, Australia' (No 24, Transport Accident Commission (TAC), September 2011) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2011/09/road-safety_g17a2055/5kg29s4v6448-en.pdf>; See also History of the TAC (n 2).

⁵ Transport Accident Commission, 'TAC statement on IBAC investigation' (Media Release, 14 November 2025) <<https://www.tac.vic.gov.au/about-the-tac/media-room/for-the-record/articles/tac-statement-on-ibac-investigation>>.

- 10.1. Protocols Agreement Framework 2026 (**Annexure A**)
 - 10.2. Joint Medical Examination Protocol 2026 (**Annexure B**)
 - 10.3. Common Law Protocol 2026 (**Annexure C**)
 - 10.4. Impairment Assessment Process Protocol 2026 (**Annexure D**)
 - 10.5. No Fault Dispute Resolution Protocol 2026 (**Annexure E**).
11. The Protocols provide an agreed and structured ADR process that, since 2005, have clearly demonstrated success and provided an overall benefit to the TAC claims process that reduce timelines and minimise instances of fraud. The Protocols provide a process that:
- 11.1. Enables parties to clarify the factual and medical basis of disputes at an early stage, address evidentiary gaps, and reassess decisions in light of additional material or refined issues to resolve matters without litigation.
 - 11.1.1. For those matters that do proceed to litigation following engagement under the Protocols, they are typically more clearly defined and streamlined for court consideration.
 - 11.2. Promote a collaborative rather than adversarial approach to dispute resolution. They provide practitioners with confidence that there is an established and recognised pathway to engage with the TAC on contested issues without immediately triggering formal proceedings.
12. The Protocols are restricted to legally represented claimants, as legal practitioners are best placed to use the Protocols to navigate successful outcomes for all parties. Legal practitioners are best placed to:
- 12.1. understand statutory entitlements, medical and vocational evidence, procedural obligations, and the strategic framing of disputed issues, and
 - 12.2. Assess the merits of a claimant's position, identify the appropriate evidentiary material required to advance or respond to a dispute and engage with the TAC in a structured and constructive manner.
13. Without legal assistance, many injured persons, particularly those experiencing serious injury, cognitive impairment, or financial distress, may struggle to meaningfully navigate or utilise the Protocols to achieve their intended purpose. Accordingly, access to legal support should be recognised as a critical enabler of the Protocols, ensuring that they function as an effective, fair and accessible mechanism for dispute resolution within the TAC scheme rather than an informal process that only those with specialised knowledge can truly navigate.
14. The Protocols also exemplify how cooperative, non-statutory mechanisms can sit alongside formal review structures to improve system performance. Their continued relevance lies in their flexibility: they are capable of adapting to shifts in scheme design, legislative amendment and emerging dispute trends without the rigidity of formal procedural rules.

Specific Comments

15. The comments set out below are not intended to address every aspect of the Terms of Reference (ToR), but highlight key considerations that the LIV considers relevant to the Committee's deliberations arising from LIV members' experience.

(i) Processes around legitimate claims, including disputed claims

16. The LIV observes that, generally speaking, the TAC's processes for legitimate claims operate effectively and as intended. Many claims are appropriately accepted and managed without the need for formal dispute resolution which reflects no-fault compensation benefits.

17. However, practitioners report ongoing difficulties at the claim acceptance stage around providing, and interpreting, medical evidence. The TAC can require contemporaneous or highly specific medical evidence to demonstrate causation between the transport accident and the claimed injury. This can be difficult, especially where there is psychological injury, chronic pain, or delayed symptom onset, and can result in contested or delayed claims, even where injury is genuine.

18. In this context, legal assistance is critical. Legal practitioners are able to identify relevant statutory tests, ensure appropriate medical material is obtained, and frame claims to align evidence with legislative requirements. Without legal assistance, injured persons may struggle to understand why a claim has not been accepted or what further material is required. As noted earlier in our submission, the Protocols play a vital role to assist as well.

(ii) Circumstances and systems related to fraudulent claims

19. The LIV recognises it is important to ensure TAC scheme integrity. Fraudulent claims undermine public confidence in the TAC and impact financial sustainability. Robust systems to detect and respond to fraud are necessary and appropriate. However, these safeguards already largely exist through TAC's significant statutory powers to obtain documents, compel information and investigate claims (in some cases these powers extend beyond those ordinarily available to police in a criminal investigation). For example, Section 127A of the Act authorises a TAC employee to:

19.1. enter, inspect and examine at any reasonable time any premises,

19.2. require a person in or on those premises to give information and produce documents,

19.3. inspect, examine and make extracts from, or copies of, any documents in or on those premises.

20. Section 127B of the Act makes it a criminal offence for a person to obstruct a person exercising the above powers.

21. Given the breadth of these powers, the LIV emphasises the need for strong accountability and safeguards to ensure they are used proportionately, transparently and for proper purposes. Injured persons pursuing legitimate claims should not be exposed to undue surveillance, information gathering or adversarial treatment as a result of broad anti-fraud initiatives.

22. Legal representation is again a key protective mechanism. Lawyers assist claimants in understanding the scope of TAC information-gathering powers, responding appropriately to requests and ensuring that the pursuit of fraud prevention does not result in procedural unfairness or the erosion of claimant rights.
23. The LIV cautions against reforms that might inadvertently conflate claimant complexity with fraud risk, noting that many genuine claims involve evolving medical evidence or inconsistent presentation that is not indicative of wrongdoing.

(iii) Private provider discretion to set fees exceeding the Medicare Benefits Schedule (MBS) Rate

24. Section 60 of the Act requires the TAC to pay for reasonable treatment at a reasonable cost. Whilst this framework offers necessary flexibility to accommodate diverse treatment needs, it also creates areas of uncertainty where providers charge fees exceeding the Medicare Benefits Schedule (MBS).
25. Practitioners note that disputes frequently arise as to whether particular treatment, or the cost of that treatment, is 'reasonable' within the meaning of the Act. These issues can have direct financial consequences for injured persons, particularly where gap payments are involved. The Protocols assist here, as they provide practitioners an avenue to seek internal review, provide comparative cost evidence, and negotiate outcomes that avoid unnecessary tribunal proceedings.
26. Again, the involvement of lawyers is central to ensuring that injured persons are not unfairly burdened by costs they do not understand or cannot afford. Lawyers are able to navigate the interaction between provider charging practices, statutory reasonableness tests, and internal TAC review mechanisms, thereby supporting client-centric outcomes and scheme stability.

(iv) Interactions With Other Services, Including the NDIS

a. Impact of Federal Reforms to the NDIA and the NDIS

27. The LIV notes increasing complexity at the interface between TAC and the National Disability Insurance Scheme (NDIS), exacerbated by ongoing federal reforms to the governance and operation of the NDIA. Practitioners report confusion and delay arising from overlapping eligibility criteria, responsibilities, and funding obligations.
28. TAC/NDIS clients often experience service gaps or delays in circumstances where:
 - 28.1. responsibility over the client is contested between state and federal systems,
 - 28.2. injuries are complex and unable to be considered in isolation from pre-existing conditions (complicating the question of which scheme provides which supports),
 - 28.3. circumstances change, requiring clients to re-engage with the TAC to seek variations or alternative arrangements.
29. Legal support is often necessary to navigate these interactions, advocate for timely support, and prevent cost shifting from occurring at the expense of the injured person. When disputes occur

between TAC and NDIS claims, clients risk having their functional impairments segmented that prevents holistic need consideration. Navigating this issue is difficult due to the scarcity of resources that explain the TAC and NDIS relationship. The TAC's online webpage, for example, only redirects clients to the NDIS website without clarifying their shared and distinct responsibilities or how disputes might be resolved.⁶

30. The Committee has the opportunity to clarify this relationship, and in doing so improve the experience of clients with catastrophic or long-term disabilities who require continuity of care and clear funding pathways between both schemes.

b. Health Privacy and Information Sharing Restrictions

31. Health privacy laws and restrictions on information sharing between state and federal agencies have further complicated cross scheme coordination. While privacy protections are essential, overly restrictive frameworks can impede claims processing, duplicate assessments and delay access to supports. For privacy reasons, health information that is not reasonably required should not be requested or accessible. However, health information that is reasonably required for the scheme, and is appropriately requested, should be easily accessible.
32. Practitioners frequently assist clients in managing consent processes, negotiating information exchange and responding to inconsistent or repeated requests for the same medical material. In the absence of legal support, injured persons may struggle to understand or control how their personal health information is used or disclosed across systems.
33. The LIV offers its submissions with the intent of providing the Committee with the learnings of practitioners who regularly act for injured persons and who are acutely aware of the practical operation of the TAC scheme, including the profound consequences that policy and procedural settings can have for individuals seeking support following serious injury.

The LIV would be pleased to engage directly with the Committee on matters raised in this submission. Should you have any queries, please do not hesitate to contact Mr Fernando Gallieto, Legal Policy Officer and Contracts Lawyer on 03 9607 9333 or via email.

Sincerely yours,

Adam Awty
Chief Executive

⁶ Transport Accident Commission, *The TAC and the National Disability Insurance Scheme* (Webpage) <https://www.tac.vic.gov.au/about-the-tac/community/national-disability-insurance-scheme>.