



Message from the Editor

This month we are opening an office in Kirk Street, Moe, to better service our asbestos clients in the Latrobe Valley. I will be working in the Moe office every Tuesday. This is an opportunity for me to work in the area in which I grew up and to help clients who are suffering from asbestos diseases. The Latrobe Valley was the home of electricity production but the devastating side-effect of this industry is that more than 140,000 power station workers were exposed to asbestos in the course of their employment. This legacy remains a significant issue throughout the Latrobe Valley. Our new office is easily accessible via car and train. I look forward to working with clients and practitioners in the local area from 13 January 2015.

Bree Knoester, Partner

The Latrobe Valley dust legacy

The terrible legacy of the Latrobe Valley's power industry continues with Latrobe Valley power industry workers contracting mesothelioma at seven times the state average. Between the 1920s and the 1980s, over 140 000 Latrobe Valley power station workers were exposed to asbestos and with some asbestos related diseases having a 20-40 year latency period, the rates of a diagnosis in the region continue to increase.

In October 2008, the Gippsland Asbestos Related Diseases Support Inc (GARDS) group negotiated an apology from former Premier John Brumby to acknowledge Latrobe Valley former power industry workers' and their families' exposure and suffering.

In January 2015, Adviceline Injury Lawyers opened its Moe office which focuses on assisting clients suffering from asbestos related diseases who reside in the Latrobe Valley. Partner, Bree Knoester grew up in Traralgon. Bree's grandfather was a local builder and often enlisted her mother and uncle to help cut up asbestos cement sheeting whilst other family members worked in the local power stations where asbestos lagging was commonplace.

The treating practitioners of those suffering from asbestos related diseases play a critical role in any claim for compensation.

In Victoria, compensation is available for people suffering from:

- a. Asbestos induced carcinomas (lung, gastrointestinal, larynx, ovaries, kidneys)
- b. Mesothelioma (pleura and peritoneum)
- c. Asbestos related pleural disease
- d. Asbestosis

Reports from treating practitioners greatly assist in applications for expedited timetables and the court allocating priority to cases involving terminal illnesses.

Similarly, reports which address the effects of an asbestos related disease and prognosis can become focus points during settlement discussions. Often, reports and records need to be obtained extremely quickly after a client has seen their lawyer. If a practitioner has any concerns about being able to assist in a short timeframe it is essential they speak with the lawyer requesting the material.

Sometimes, a client's case and the ability to commence proceedings all rests on the provision of a short report from a general practitioner.

Medical Panel opinions and reasons for opinions



Treating practitioners will be aware of the ongoing need to provide medical reports in relation to a patient's injury including opinions in relation to treatment needs and work capacity. Often, in disputes between the worker and the insurer, the final decision will involve a referral to the Medical Panel who independently assesses the questions in dispute and provides a binding opinion (unless, as is demonstrated below, the Medical Panel has made errors in law).

Since the recent Court of Appeal decision in the Supreme Court of Victoria in *Gruma Oceania Pty Ltd v Bakar* [2014] VSCA 252, more onerous obligations have been placed on the doctors who provide Medical Panel opinions. In particular, the Medical Panel are now required to provide more reasons for their opinions.

In the case of *Gruma*, Ms Bakar was employed as a process worker at a bread manufacturing factory. She developed left shoulder pain overtime and lodged a WorkCover claim for her left shoulder injury.

Ms Bakar's claim for compensation was accepted and she was paid weekly payments of compensation.

Her weekly payments were later terminated because the insurer had decided that she had a current work capacity, or alternatively that her incapacity for work was not likely to continue indefinitely. Ms Bakar disputed this decision and her dispute was referred to the Accident Compensation Conciliation Service (ACCS). The ACCS later referred two medical questions to the Medical Panel.

The Panel provided the below responses to the following two questions:

Question 1: What is the nature of the worker's medical condition (including any sequelae) relevant to the claimed injury?

Answer: *In the Panel's opinion the worker is currently suffering from a residual left shoulder dysfunction following a rotator cuff injury, surgically treated, and from a rotator cuff dysfunction of the right shoulder, relevant to the claimed left shoulder injury.*

Question 2: Does the worker have no current work capacity? If so, is this situation likely to continue indefinitely?

Answer: *In the Panel's opinion the worker has a current work capacity.*

Ms Bakar was capable of performing the following jobs:

- **School crossing supervisor**

Reason: Based on the Panel's collective knowledge, experience and expertise and its clinical findings on examination of Ms Bakar, the Panel concluded that she has sufficient transferable skills for the job

- **Small product assembler**

Reason: Assessment based on the Panel's knowledge and experience of industry

- **Ticket seller**

Reason: As above

- **Sandwich maker**

Reason: As above

Ms Bakar was incapable of performing the following jobs:

- **Retail sales assistant**

Reason: Ms Bakar was physically unable to work with arms elevated or to undertake heavy lifting

- **Mail sorter**

Reason: As above

- **Packer**

Reason: Job will not allow Ms Bakar to work with her arms below horizontal and with her elbows by her side

- **Process worker (plastic)**

Reason: As above

- **Car park attendant**

Reason: Job requires computer skills and English communication skills not possessed by Ms Bakar

Ms Bakar challenged the Panel's decision by appealing the decision to the Supreme Court arguing that the Panel did not provide adequate reasoning for its decision in relation to what she was capable of doing. The judge who heard the appeal agreed with Ms Bakar and ordered that the opinion be set aside and for the medical questions to be determined by a new Panel.

The employer, Gruma, appealed this decision. The Court of Appeal therefore had to look into the issue of whether the Panel had provided adequate reasons for its opinion.

The Court of Appeal ultimately agreed with Ms Bakar and decided that the Panel had not properly explained why Ms Bakar was capable of performing the jobs that they had said she was capable of doing.

The Court of Appeal also decided that the Panel did not properly explain how Ms Bakar's medical condition was linked to her work capacity. In this case, the Court of Appeal could not be satisfied that the Panel took into account all the relevant considerations it was obliged to consider in determining Ms Bakar's work capacity.

In light of the decision in *Gruma*, doctors are reminded of the importance of providing their path of reasoning for answering the medical questions posed in report requests. To avoid disputes like Ms Bakar, doctors should seek to ensure that they provide sufficient details in their reports to enable any Medical Panel to adequately consider the relevant factors, often, best known by the treating practitioner.

Liat Blacher, Special Counsel (pictured on the previous page) and Linda Hanley, Lawyer



In our Spring Legal Check-Up we reported that the Victorian Government was proposing changes to the *Wrongs Act (Vic) 1958*. We have now seen the draft Bill and can confirm the content of the proposed new laws:

- The psychiatric impairment threshold has been reduced to a 10% impairment rather than a greater than 10% impairment. This provides greater access to pain and suffering damages for those suffering from a primary psychiatric condition. This applies to injuries suffered on or after the Act is amended;
- There is a more generous provision for high income earners to claim some damages for lost wages, if they are able to keep working part time. Such a claim for damages is capped at three times the average weekly wage. This applies to new cases issued after the Act is amended;
- There is now an entitlement to claim damages for the loss of capacity to provide gratuitous services to dependants because of the injury. An example will be a mother unable to look after her children because she is in hospital for a prolonged period. This applies to new cases issued after the Act is amended;
- There is no longer the need for a sufferer of an asbestos-related disease to prove they have a greater than 5% whole person impairment to be entitled to compensation for pain and suffering. This amendment exempts all asbestos-related claims from this threshold and is also a welcome relief for sufferers of asbestos-related diseases;

It is very pleasing that the new state Andrews Government has indicated its willingness to adopt these changes previously proposed under the Napthine government. The bipartisan approach shows both sides of politics listened to complaints about the harshness of some provisions of the Wrongs Act. We will now await the passing of the Bill, hopefully some time in early 2015.

Andrea Tsalamandris, Partner

Tinnitus is Serious

Adviceline Injury Lawyers has helped a Victorian worker named Ian access compensation after he lost his hearing and developed tinnitus because of his employment. Ian had been employed as a trade teacher since 1986. In his early years of teaching, no hearing protection was provided and when he was recently provided ear muffs, Ian was prevented from instructing the class.

In around 2004, Ian's hearing began to seriously deteriorate, and in particular, the sound of "high pitched cicadas" ringing in his ears was making his life unbearable. He could get 3 hours sleep at the most each night and was barely able to function. Ian developed depression as nearly every aspect of his life was affected by this tinnitus or his hearing loss caused by work.

Initially, Ian was able to access a small lump sum under the WorkCover scheme for his hearing loss, but when he applied for compensation for the tinnitus that was so impacting his life, the Victorian WorkCover Authority refused, saying it wasn't a serious injury.

Michael Lombard and Genna Angelowitsch from Adviceline Injury Lawyers helped the injured employee dispute this decision in the County Court and after the first day of the hearing provided compensation to him.

It was a hard fought case but one that deserved to be won after a heartless decision clearly based on a lack of understanding decision.

"I am sure there are many others who are terribly affected by tinnitus developed through work," Michael Lombard said, "It is just that few people are aware of their rights and need help to fight stupid decisions of WorkCover."

If you or someone you know has suffered an injury at work, it is important that you get accurate advice from people skilled in personal injury law. We invite you to speak to one of our personal injury lawyers on (03) 9321 9988 to find out what you and your family are entitled to.

Michael Lombard, Partner

Questions asked by Doctors

We have had the great pleasure of meeting with lots of doctors at medical clinics across Melbourne in this last year. When sitting down and chatting to GPs there are some questions that come up time and time again. We thought that if enough of you have been curious to ask the same questions, we should let you all know what your colleagues most commonly want to ask a Personal Injury lawyer – and our answers to them!

1. What do I need to write on WorkCover certificates?

Certificates of Capacity are used by WorkCover Insurers and employers to determine a worker's capacity for work and the nature of their injury. The certificate should record the patient's work related injury and provide a medical opinion on the worker's current capacity and limitations based on the work-related injury, for example, no lifting above 5kgs.

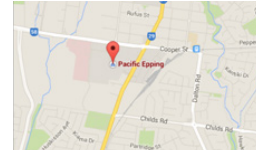
2. What if I have never seen the patient before and they want me to record an old work injury?

Workers often do not report injuries immediately. This can be for many reasons. Sometimes they do not believe the injury is initially serious but may report it after symptoms do not resolve. You can still record the history they give you in your records, even if it is some time after the injury occurred.

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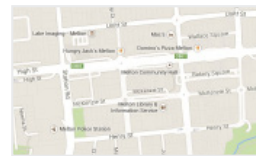
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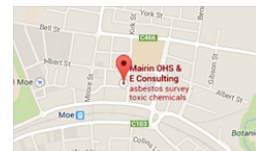
Melton

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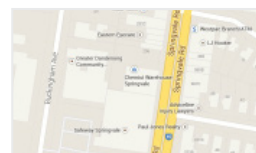
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