

Message from the Editor

In the first Legal Check-up of 2021, we provide a wrap up of relevant changes to personal injury law in 2020, including how COVID-19 has impacted the workers' compensation system.

We also outline two significant cases concerning the Transport Accident Commission which affected the entitlements of patients injured in traffic accidents.

Despite unprecedented times, our team of lawyers were able to adapt quickly and efficiently to assist your patients navigate their claims across a number of practice areas.

The cooperation from already busy health professionals was essential to this success.

If you would like further information about any of our practice areas, or wish to confidentially discuss any patient concerns, contact our lawyers for free legal advice on (03) 9321 9988.

Lisa Paul, Partner

SUMMER 2021

Meet the Editor

I have been with Adviceline Injury Lawyers for 20 years. I joined this firm because I was passionate about giving people real, reliable advice and expert representation at a very difficult and emotional time in their lives.

As a Partner at Adviceline, and an Accredited Specialist in Personal Injury Law, I predominantly assist people affected by work-related injuries and I have significant experience in public liability claims.

I am thrilled to be the editor of the Legal Check-up as I have a great relationship with and work closely with health professionals who are usually the first point of contact when our clients are injured.

Our team is able to support in a number of practice areas including:

- **Workplace injuries**
- **Traffic accidents**
- **Medical Negligence**
- **Public liability (slips and trips)**
- **Coronial inquests**
- **Sexual abuse**
- **Income protection and disability insurance**

Often, healthcare professionals and their patients are uncertain of the steps to take and who they should be in contact with following an injury. Contacting us on **(03) 9321 9988** will put you or your patient in direct contact with a lawyer for an obligation free first consultation.

We are available to assist in any queries that you or your patients may have to ensure that your patients are getting access to the compensation they are entitled to.

We look forward to supporting you in 2021 and beyond.

Lisa Paul, Partner





Impact of COVID-19

WorkCover claim trends

The prolonged Victorian lockdown saw a decline in the number of traditional workplace injuries. However, from August 2020, we experienced a surge of cases for workers from essential services industries, particularly aged care, who had contracted COVID-19 in the course of their employment. WorkCover claims lodged in relation to COVID-19 positive cases have generally been accepted without dispute, although it remains to be seen as to how any long-term health conditions caused by COVID-19 will be handled by the WorkCover scheme.

Remote court hearings

Court cases for injured workers shifted online during 2020. We conducted numerous remote hearings throughout the year during which our clients and medical witnesses gave evidence over Zoom, Webex and Microsoft Teams. For medical and other professional witnesses, it is expected that giving evidence remotely will be the norm into the future, alleviating the inconvenience and frustration of travelling to court and waiting to be called to give evidence.

Legislative amendments to offset the financial impact on injured workers

The Victoria Government introduced a number of protections for injured workers via the COVID-19 Omnibus (Emergency Measures) Act 2020 and the Justice Legislation Amendment (Supporting Victims and Other Matters) Act 2020. The most notable of these protections were:

- the suspension on WorkCover insurers' ability to terminate long-term injured workers' entitlements to weekly payments throughout 2020 on the basis of a current work capacity (known as a 130 week termination)
- adjusting the way in which "pre injury average weekly earnings" are calculated to determine a workers' compensation entitlements, so that the period between 1 March 2020 and 31 December 2020 is excluded. This ensures that any temporary reduction in a worker's hours and earnings due to COVID-19 does not impact the rate of payment of WorkCover entitlements where they have later gone on to suffer injury.

Electronic Subpoenas

In litigated WorkCover claims, a worker's medical/hospital records are often requested by the Defendants via a subpoena. During COVID-19 restrictions, courts enabled electronic documents to be provided to the court's registry via an online portal which enabled medical practitioners to securely deliver documents to the court in electronic form rather than having to print or transfer electronic documents to a USB or CD. It is hoped that this change in practice will be permanent.

Introduction of the Workers Compensation Independent Review Service

The Workers Compensation Independent Review Service (WCIRS) was rolled out by WorkSafe in 2020 in response to the recommendation made by the Victorian Ombudsman following a review of how complex claims are being managed by WorkSafe's authorised insurers (Agents).

Requesting a review

An injured worker who is dissatisfied with the decision of an Agent can use the WCIRS to make an internal review application to independently assess the process taken by the Agent in reaching its decision in relation to a "reviewable decision".

What are reviewable decisions?

- a decision made by an Agent on or after 3 December 2019 and has been through the conciliation process and a Genuine Dispute Outcome Certificate (GDOC) has been issued
- within two (2) years of the date of the GDOC being issued
- prior to a Court listing the matter for final hearing

- prior to a referral to a Medical Panel.

Decisions that are not reviewable decisions

Decisions in the following categories are not reviewable:

- decisions made by self-insurers
- decisions relating to a worker's degree of impairment
- disputes relating to the death of a worker or their dependants
- decisions relating to a Serious Injury or Common Law Damages application
- any decision subject to a final Medical Panel determination.

What are the benefits?

If a worker is unhappy with a decision made by an agent, having it reviewed by the WCIRS is a quick and cost-effective option that does not involve a court. The average review time is 28 days.

As at October 2020, there were 136 valid applications. Of those applications, 72 were overturned/withdrawn by the insurer.

Lodging an application form is relatively straightforward. An injured worker may lodge an application on their own, nominate a family member or legal representative to assist them with the review.

Lauren Freeman, Special Counsel & Deidre Petrakis, Senior Associate



TAC during 2020

Over the course of 2020, a number of significant cases were run that directly affect the entitlements of patients who have been injured in transport accidents. The following is a brief overview of some of these significant cases:

Marsh v Transport Accident Commission

Mr Marsh was 19-years-old when his mother sadly passed away in a transport accident in December 2015. Ordinarily, this would mean that Mr Marsh was entitled to some assistance from the Transport Accident Commission (TAC), including a lump sum and potentially a weekly pension. However, the TAC rejected his application on the basis that, although he had enrolled in a full-time course, he had not commenced the course as yet, and therefore did not satisfy the definition of a full-time student at the time of his mother's death.

On appeal, the Supreme Court overturned the TAC's decision and confirmed Mr Marsh as a dependent child who was eligible for assistance from the TAC. The fact that he had not commenced his course was not determinative of his eligibility for assistance under the statutory system.

Moules v Transport Accident Commission

Mr Moules was injured in a transport accident on 4 September 2005 at the age of 8. As a child, he had until his 21st birthday to lodge a claim for assistance with the TAC, meaning a claim had to be lodged by 25 May 2018.

On 10 November 2011, Mr Moules' mother called the TAC and provided them with some information in relation to Mr Moules' injuries, but did not lodge a formal claim. Mr Moules consulted solicitors in November 2018, at which time a formal claim was lodged but was rejected by the TAC on the basis that it was outside of the prescribed time frame.

The Victorian Civil and Administrative Tribunal (**the Tribunal**) confirmed that the time limits for lodging a TAC claim are very strict and cannot be extended in any circumstances. The Tribunal also confirmed that speaking to the TAC over the phone does not constitute lodgement of a claim – a claimant is required to complete an actual claim form and return it to the TAC within the prescribed period to satisfy the requirement of "lodging a claim".

Genna Angelowitsch, Special Counsel &
Shyla Sivanas, Lawyer

Supporting our clients in 2020

Despite the drastic changes that we had to make in the way legal services were delivered in 2020, we were still able to support our clients in obtaining fantastic results.

A trucker's conun-drum

Sharlene Prasad, Lawyer

Adviceline assisted a truck driver who sustained a physical injury after a heavy drum fell on his right hand. As a result of the injury, our client also suffered psychiatric injuries and was unable to return to work. We were able to assist in obtaining lump sum compensation, as well as successfully settling a common law claim for damages against the employer.



A slippery situation

Linda Hanley, Senior Associate

Adviceline recently settled a common law claim for pain and suffering damages for a young gentlemen who suffered a right foot injury after slipping on a piece of cardboard that was used to cover up broken eggs while working at a supermarket. Despite our client being assessed as suffering from a "one per cent whole person physical impairment", we were still able to achieve a common law settlement of \$100,000 for our client. Both Adviceline and our client was incredibly pleased with the outcome.



Our team

Dedicated to helping get your patients' life back on track.



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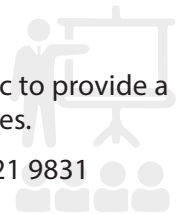
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Hearing Loss

Free legal in-service: We'll even bring lunch!

Based locally to you, a team of experts from Adviceline Injury Lawyers can attend your clinic to provide a **free information session** on entitlements under the main compensation schemes.

To schedule your free information session, please contact Lisa Aughsteen on (03) 9321 9831 or email lisa.aughsteen@alil.com.au.



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LOCATIONS

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