

SUMMER 2020

Personal Injury Yearly Review



Message from the
Editor

Our Summer edition of the Legal Check-up brings you the key changes in personal injury law during 2019, and shares some of our client success stories.

We are delighted to announce that Genna Angelowitsch has been promoted to Special Counsel and appointed head of our TAC claims division. Find out more on the inside page.

We appreciate and thank you for your support in 2019, and look forward to continuing to help your patients in 2020 and beyond.

If you require further information about any of the topics discussed in this edition of the Legal Check-up, contact us on (03) 9321 9988.

Bree Knoester, Partner

Treaters of patients with a compensable injury play a vital role in assisting with patient claims. With your help, we have achieved some great legal results for your patients, allowing them to focus on recovery.

A speedy dust disease settlement

In October 2019, the Adviceline dust diseases team settled one of the largest impairment benefit claims for a Victorian worker with silicosis.

For many years our client was exposed to silica dust in the course of his employment as a stonemason, ultimately leading to significant respiratory impairment and diagnosis of silicosis.

His claim was successfully settled in October 2019, only four months after his initial meeting with leading dust diseases lawyer, Bree Knoester.

A tender Comcare victory

Adviceline successfully obtained compensation for a client who was injured while employed as a residential support worker.

Our client sustained a serious injury after a resident threw a large washing machine at him, hitting his left shoulder. Following this incident, our client developed post-traumatic stress disorder and complex regional pain syndrome.

He was unable to return to work and suffered constant pain in his

left shoulder, prohibiting him from driving. He also began to have nightmares and panic attacks.

Adviceline Injury Lawyers was able to obtain our client a six-figure settlement without the need to issue court proceedings.

Our client now plans on taking his wife on a honeymoon.

A slippery workers' compensation outcome

Adviceline assisted a gentleman with lodging and successfully settling two common law claims simultaneously against the same employer.

Our client suffered from a physical injury from a slip and fall event and separately, a psychiatric injury due to bullying and harassment over the course of his employment.

In both cases, we managed to obtain substantial compensation without the need to go to court.

We are currently considering a third claim of compensation for our client, also against his same employer, for physical injuries sustained from heavy, repetitive and manual labour.

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A controversial traffic accident resolution

A teenage girl was travelling as a passenger in a vehicle which was struck by another car, causing the airbags to deploy. She sustained catastrophic damage to her eyesight.

Our team obtained the maximum amount of compensation payable under the law for her pain and suffering, as well as a significant amount of compensation for her restricted future work capacity.

A timely workers' compensation result

The Adviceline workers' compensation team helped a worker referred by his GP obtain a significant settlement, without the need to go to court.

The worker suffered a serious injury to his knee over 10 years ago at work due to unsafe work practices.

Having had an accepted WorkCover claim, the worker underwent surgery, gradually returning to work. Sadly, his knee was never the same, and he had to give up his beloved hobby of golf.

Usually, a worker has six years to sue an employer for compensation, however, we were confident that the case could be brought out of time.

Bree Knoester, Partner

Our new head of TAC claims

Adviceline Injury Lawyers is pleased to announce the appointment of Special Counsel Genna Angelowitsch to the head of our Traffic Accident Commission (TAC) division.

Genna is a Law Institute of Victoria (LIV) accredited specialist in personal injury law who has been working in the field for more than 10 years. Most recently, she has been responsible for representing the families of the deceased victims of the Bourke Street attack.

Genna is excited to take on this new role, committed to assisting families impacted by road traffic accidents and ensuring they have access to the best legal support possible.

Genna said despite what had appeared to be a downward trend in traffic-related accidents, the number of people being injured on the roads has increased significantly recently.

"In 2019 we saw a dramatic increase in the number of lives lost on Victorian roads compared to the previous year," Genna said.

"This leads to so much trauma for those involved – both physically and emotionally."

"During my time as head of the TAC claims division I am determined to ensure that individuals who have been subjected to road trauma and their families have access to the services they need to manage their recovery quickly and with dignity."



Find out more about Genna, her new role, and how she can assist your patients after a traffic accident in the Autumn edition of the Legal Check-Up.



Cases you need to know

In 2019 there were some significant decisions and settlements of claims made under the Comcare scheme. In particular, the case of *Comcare v Martin* finally reached its conclusion, and the High Court delivered its much awaited ruling in *Comcare v Banerji*.

Comcare v Martin

Ms Martin lodged a Comcare claim for an aggravation of her mental health condition in 2012. Her claim was rejected on the basis that her injury was a result of “reasonable administrative action” and therefore non-compensable.

The case was complex, and was taken through to court and tribunal hearings before Comcare accepted liability for Ms Martin’s claim.

The complex history of this case demonstrates the difficult nature of claims for psychiatric injuries, and the importance of obtaining legal advice early in the process.

Comcare v Banerji

Ms Banjeri was employed by the Department of Immigration and in 2012 began using an anonymous Twitter account to criticise the Department, its employees and its policies. She was terminated from her employment after this account was traced back to her and subsequently lodged a claim for compensation for depression and anxiety following her termination.

This claim was rejected on the basis that the Department’s termination was reasonable administrative action. Ms Banjeri appealed this decision, arguing that the Department’s actions could not be reasonable as they contravened her implied freedom of political communication.

The High Court found the actions of the Department to be reasonable and Ms Banjeri’s claim for compensation was unsuccessful.

New additions to the Comcare scheme

The Safety, Rehabilitation and Compensation (Specified Persons and Acts) Declaration became law in 2019. This legislative instrument specifies that volunteer employees of the following organisations shall now be taken to be employed the Commonwealth and covered by the Comcare compensation scheme:

- Australian War Memorial;
- The Great Barrier Reef Marine Park Authority.

Grace Bowran-Burge, Lawyer

An epidemic worse than asbestos

Forgotten industrial disease “silicosis” returned to the spotlight during 2018 when a number of Queensland stonemasons were diagnosed with the incurable disease. WorkSafe Victoria confirmed that the incidence of disease was not confined to an industry or state, reporting that they received 55 claims for silica-related conditions during the 2018-19 financial year.

Such reports across Australia prompted review into state workplace health and safety (WHS) laws and exposure limits, culminating in a decision by Australian Ministers to reduce the workplace exposure standard for crystalline silica by 50% to 0.05 mg per cubic meter over eight hours, lowered from 0.1 mg/m³. Ministers were in agreement that such measures should be implemented “as soon as practicable”; and the Victorian Government, in further support of the move, urged employers to adopt more stringent thresholds in individual workplaces.

Regulations banning dry stone cutting also came into effect during 2019, with the Andrews Government implementing tough new regulations on Victorian employers to ensure power tools are not used to cut, grind or abrasively polish engineered stone unless on-tool water suppression or dust extraction devices are in place and respiratory protection is used.

In addition, all workplaces across Australia must now monitor the health of workers who use, handle, generate or store crystalline silica on an ongoing basis where significant risk to their health is posed.

Adviceline funds immunotherapy treatment

A key development in the management of mesothelioma is the increased use of experimental treatment “immunotherapy”.

The Adviceline dust diseases team has worked extensively with patients who seek to prolong their life expectancy through use of certain immunotherapy drugs, namely Keytruda.

Understanding the significant cost of treatment and patient difficulty in finding funds, **Adviceline has undertaken an initiative to provide an upfront payment to fund the first round of treatment.** This initiative has assisted patients who otherwise may not have been able to fund treatment to spend more time with their loved ones.

If you have a patient who would benefit from accessing this upfront payment for treatment, contact our dust diseases team on (03) 9321 9879.

Bree Knoester, Partner



Public Liability

Negligence at a childcare centre

Childcare is essential for many working parents, and when children are left in the care of childcare professionals we trust that they will be safe. However, things don't always go to plan and accidents can happen.

Sometimes, injuries to children are caused by the negligence of those entrusted to care for them. When that happens, a parent or guardian may seek to bring a public liability claim against the childcare centre.

To bring a successful claim against a childcare centre, it must be established that:

1. The child suffered an injury;
2. The injury or loss suffered by the child is considered to be a "significant injury", as defined by law and determined by a qualified medical examiner; and
3. The significant injury occurred as a result of the negligence of the childcare centre where the child attended and/or the owner/occupier breached their statutory duty. This may include the centre falling short in the protection of the child from hazards or harm; adequate supervision; poor maintenance of the premises; and/or failing to maintain appropriate child/staff ratios.

If all requirements are met, compensation can be claimed for "pain and suffering" to compensate the child for current and/or future consequences they endure as a result of their injuries. Economic loss, including past and future medical expenses, loss of earnings or other financial losses incurred as a result of the child's injuries can also be claimed.

A claim for a child must be brought within six years from the date it is discovered the injury arose through the fault of another person.

Case Study

A parent successfully sued a childcare centre after her 3-year-old child fell and suffered a severe injury to her left arm when she slipped on a piece of laminated paper that was on the floor. The child was awarded \$70,000 plus legal costs by way of compensation and the centre was found to have breached their duty of care by falling short in protecting the child from harm.

After requesting reports and records from the client's treating doctors and arranging a medico-legal doctor to assess the child's injury, a settlement conference was held in an attempt to settle the claim prior to the hearing.

Given the child was not suffering any loss of income, the compensation took into account the cost of past and future treatment of the child and any loss of wages by the parents for any additional care required as a result of the injury.

Ursula McBride, Senior Associate &
Sharlene Prasad, Lawyer



Traffic Accident Law

New protocols were introduced in 2019, providing timely assistance to patients who have been injured in transport accidents.

What's changed?

Ordinarily, when a patient is injured in a transport accident, the assistance they can access from the Transport Accident Commission (TAC) is initially restricted to medical expenses and weekly payments for lost wages.

Sometimes, the TAC will only pay for part of a person's medical expenses, creating additional financial pressures for patients when they are already facing a reduced wage and an uncertain capacity for work in the future.

The introduction of these new protocols allows individuals with a clearly serious injury to apply for consideration much earlier in the process for access to lump sum compensation.

If the patient is successful in this application, they can seek payment for "damages" with the TAC at a later date, when their symptoms have sufficiently stabilised and their capacity for future employment can be considered in more depth.

What this means for the patients

The formalisation of this expedited process is a welcome addition to the arsenal of support that can be afforded to patients who have been injured in transport accidents, including collisions involving cars, trains, trams, buses and, occasionally, bicycles.

For patients who are seriously injured, expediting the serious injury process provides a patient with access to much needed financial respite, while at the same time, allowing them time to focus on their recovery and maximising their treatment opportunities at the earliest intervention.

Genna Angelowitsch, Special Counsel,
Head of TAC Claims





Workers' Compensation Law

The spotlight was once again shone on the questionable practices of WorkCover insurers in 2019 following a number of new complaints made to the Victorian Ombudsman, Deborah Glass. An investigation was conducted into the management of complex workers' compensation claims by reviewing WorkCover cases from all five insurance agents. The report was once again damning, finding that there was unreasonable decision making amongst the insurers, financial incentives to encourage insurers to focus on rejecting and terminating WorkCover entitlements, and deficiencies in WorkSafe's oversight of the insurers in managing the claims. As a result of the findings, Ms Glass made 17 recommendations for change which have all been accepted by WorkSafe.

In addition, some welcome changes to the WorkCover scheme in 2019 which included:

Immediate psychological assistance for first responders

A 12-month pilot program commenced in June 2019 which allows traumatised first responders to receive early assistance and psychological treatment while their formal WorkCover claims are being considered. This means that responders who are psychologically injured can receive necessary treatment while the insurer makes a decision on the claim. The pilot program will apply to police officers, ambulance officers, firefighters, CFA staff and volunteers, SES staff and volunteers, public sector nurses, public sector midwives, MFB, ESTA, child protection officers as well as corrections and youth justice staff.

Presumptive rights for firefighters

Due to the difficulties and delays associated with identifying the cause of a range of cancers, changes to laws relating to "presumptive rights" have arisen.

This will impact career and volunteer firefighters who have been diagnosed with one of 12 specified cancer types, presumed to have been contracted while they served as a firefighter, provided they meet the respective qualifying periods.

Irrespective of the qualifying period however, the presumption may still apply if they have attended an "exceptional exposure event".

Proposed workplace manslaughter laws

An unacceptable increase in the number of individuals killed at work during 2019 compared to the previous year has led to the introduction of new workplace manslaughter laws.

The proposed law, due to commence in July 2020, will see maximum penalties of a jail term of up to 20 years for individuals and fines of up to \$16.5 million for corporations.

Under these changes, it will be an offence for a person to engage in negligent conduct that causes the death of the other person. This move towards liability for workplace manslaughter reminds employers to have the right processes and controls in place to improve safety in the workplace, and ensure every worker comes home from work each day.

Shyla Sivanas, Lawyer & **Sharlene Prasad**, Lawyer



Our team

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



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