

SUMMER 2018



Message from the Editor

In this edition of the Legal Check-Up, we discuss changes to the law in 2017, highlight some of the great results achieved for clients, and share the significant career milestones achieved by our team.

While we acknowledge the challenge of the WorkCover scheme for patients with a stress-related injury, we maintain that patients should make a claim for compensation. Patients may be entitled to benefits even if the injury is not 'severe'.

This year we have been involved in many cases attributable to workplace stress and have achieved some great outcomes. Read more in our feature article.

Our team are pleased to continue to offer a free 'Legal In-Service' at your clinic. For more information, please call (03) 9321 9925.

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

Personal injury Year in Review

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

Rewarding **psychiatric injury** cases:

- A primary school teacher suffered a severe psychological reaction after being bullied relentlessly by her school principal. Although our serious injury application was initially denied, the defendant conceded during litigation, and awarded our client over half a million dollars.
- A woman with a severe psychiatric injury made allegations of overwork, lack of appropriate support and bullying and harassment against her employer. While other solicitors advised she had no further claim, we took a different view and successfully obtained significant additional compensation on her behalf. Due to the nature of her condition, obtaining this further financial assistance at an early stage meant she avoided the stress and risks of litigation.
- In 2001 a justice centre worker, previously employed by the State of Victoria, sustained a severe psychiatric injury causing her a complete incapacity for employment. As the claim was considered to be "out of time", our client struggled to find legal representation. In November 2017, we successfully settled a common law claim on her behalf for pain and suffering damages. This payment meant that the client was able to retain the benefit of the weekly payments paid to her since 2001 and receive ongoing weekly payments to the age of 67.

Outstanding **road accident** results:

- A cyclist involved in a hit and run incident by an ice-affected driver had to undergo more than 10 surgeries as a result of the driver's actions. We convinced the TAC to reach an early settlement of his claim for pain and suffering for the maximum amount of compensation that the statute allows. No court proceedings were required. The driver has appealed her sentence of six years in jail claiming it was too harsh! We disagree.
- Our client was injured in a car accident whilst living in Western Australia, however because the car in which she was a passenger was registered in Victoria, her entitlements fell under the TAC scheme. In just 3 months after she first came to see us, we were able to negotiate a quick settlement with TAC for her claim based on Western Australia's law.

In addition to these great outcomes, Adviceline also achieved outstanding results for our clients affected by asbestos-related diseases, sexual assault and hearing loss.

Bree Knoester, Partner



Workers Compensation Law

A year in review

Several amendments took place in 2017 to the legislation governing WorkCover compensation in Victoria.

These changes included:

- **Changing the phrasing around retirement:** the legislation previously mandated that weekly payments of compensation would cease at age 65. This has been changed to “retirement age”, to reflect the gradually increasing age thresholds under the *Social Security Act* that determine eligibility for the aged pension.
- **Convictions for serious road offences:** a person can now lose all entitlements under the WorkCover system if the circumstances of their injury lead to a conviction of a “serious road offence”. The governing Minister can determine what constitutes a serious road offence for the purpose of this provision.
- New regulations surrounding the management of the Accident Compensation Conciliation Service.

Case study

Mr Sayer was the subject of extensive bullying and harassment whilst at work, and as a result developed a serious psychiatric injury. His condition is so severe that it is unlikely he will ever return to the workforce.

In June 2017, a jury found that his employer had breached their duty of care by not protecting him from the bullying and addressing the complaints he had made about his treatment. He is case settled for in excess of \$1 million, the majority of which represented income he will be unable to earn into the future by reason of his psychiatric condition.

Looking forward to 2018

The Victorian Government is currently reviewing submissions on the efficacy of the current common law system, and potential adjustments to improve the delivery of benefits.

We anticipate any proposed changes will be outlined in the course of the coming year.

Genna Angelowitsch, Senior Associate



Traffic Accident Law

A sensible change in 2018!

In February 2018, there was a major change to the TAC scheme with the abolishing of the ‘medical excess’ requirement for each claim.

Previously, the TAC would pay ambulance and hospital expenses for each person injured in a transport accident. Further medical benefits were not paid or re-imbursed by the TAC unless the injured person was admitted to the hospital as an inpatient for one night. Where a family was injured, only one member needed to be admitted as an inpatient for the TAC to continue paying for medical expenses.

If an injured person did not spend one night in hospital, the TAC did not have to pay for medical expenses until there had been \$651 of medical expenses incurred. The medical cost could be paid by Medicare or private health insurance or personally, but the TAC would not need to pay for medical expenses until that “excess” was reached. This was a huge administrative task for the TAC as well as the injured person.

Now that legislation has passed that abolishes the “excess”, life will be a lot easier for those recovering from bad accidents. It may even save the TAC money!

Case study

Mr Vergilles was one of our clients subject to this medical excess rule.

Mr Vergilles enjoyed walking down to the newsagent each morning and around his neighbourhood for an hour. Whilst walking along the footpath, a nearby car drove over the footpath trapping Mr Vergilles against a wall. He injured his shoulder and back in the accident, and also suffered severe psychological difficulties as he feared that a similar incident could happen to his family. He was unable to continue walking around his neighbourhood due to his fears and would instead walk around his backyard.

We convinced the TAC that he had a serious injury and negotiated settlement for the pain and suffering that he had to endure.

Michael Lombard, Partner & Shyla Sivanas, Graduate



Asbestos Law

Illegal imports remains a live threat

Despite the national ban on asbestos importation in 2003, an interim report released by the Senate Inquiry into non-conforming building products acknowledges the ongoing threat faced by Australians, particularly workers and home renovators.

The Asbestos Safety and Eradication Agency (ASEA) reports that Australia has the highest reported incidence per capita of asbestos-related disease in the world, including the highest incidence of mesothelioma.

Assumed to be an issue of the past which would eventually peter out, WorkSafe Victoria says that WorkSafe saw an increase in reports of asbestos exposure in 2017. Throughout 2017, asbestos importation remained prevalent in the media, most notably in instances of asbestos-containing building products imported from overseas and brake pads for quad bikes.

To date, the Senate Committee have recommended increased asbestos awareness training particularly in the construction industry, enhanced enforcement of and increased penalties for the illegal importation of asbestos products and the development of a national public asbestos register which lists products found to contain asbestos, suppliers and buildings where asbestos is located.

The final Committee Report with a full list of recommendations will be released in April 2018.

Case study

Mr Laurent was diagnosed with mesothelioma relating to asbestos exposure while working as a painter in a Unilever factory in Port Melbourne in 1961.

With his illness at an advanced stage and now residing overseas, partner Bree Knoester argued that his trial should be moved to Jersey in the Channel Islands. Unilever argued it was unnecessary, and that the Plaintiff could instead provide evidence via videolink. Given our client's poor health, Bree held her position, and Justice Forrest of the Supreme Court agreed that it was preferable for the Plaintiff's evidence to be taken in person. The case ultimately resolved without the need to travel to Jersey.

Giorgina McCormack, Lawyer



Public Liability

Supermarket slips and trips

Supermarkets have a duty to provide customers with a safe premises to reduce the risk of injuries. To discharge their duty, a supermarket must:

1. have a reasonable system of cleaning and inspection; and
2. demonstrate that this system is being complied with.

Most supermarkets have systems in place that would be considered reasonable at law. However, it is often difficult for supermarkets to establish these systems are being complied with at the time a person suffers an injury. In a recent New South Wales case (*Razzak v Coles Supermarkets Australia Pty Ltd [2017] NSWDC 183*), Coles achieved this through the evidence of their particularly "conscientious" floor staff.

Case study

In April 2015, Mrs Razzak was shopping at her local Coles in Hurtsville when she slipped and fell on a grape. As a result, Mrs Razzak aggravated some pre-existing neck and back injuries and suffered new injuries to her knees, elbows, right hip and ankle.

Mrs Razzak unsuccessfully sued Coles for compensation.

Coles proved they had a "Clean as You Go" system for cleaning their Hurtsville store. This system required staff to pick up vegetable matter on the ground as soon as they saw it. The Court considered this system reasonable.

To demonstrate that the system was being complied with, Coles relied on the evidence of the floor staff working at the time of Mrs Razzak's fall. On the basis of their evidence, the Court found that they were "all well trained and supervised, and personally conscientious". Accordingly, the Court concluded that it was unlikely the grape had been on the floor for more than 10 minutes before Mrs Razzak slipped. Consequently, Coles was found to have discharged its duty of care.

Mrs Razzak's case has caused supermarkets to rely more heavily on the evidence of their staff members when defending claims. It may also encourage supermarkets to increase training, as this case shows staff diligence can be the deciding factor in whether a supermarket ultimately has to open their wallets to injured customers.

Kirsty Osborne, Lawyer

Our news

In 2017 we proudly announced some significant career milestones for members of our team.

New Accredited Specialists:

Senior associates Genna Angelowitsch, Naomi Riggs and Naty Guerrero-Diaz are now recognised by the Law Institute of Victoria as accredited specialists in personal injury law.

To become an accredited specialist, applicants are required to undertake an intensive assessment process and demonstrate in-depth technical knowledge across all areas of personal injury law.

Our practice is complimented by the success of Genna, Naomi and Naty, bringing our number of LIV accredited personal injury law specialists to five.



From left: Genna Angelowitsch, Naomi Riggs and Naty Guerrero-Diaz

Promotions:

Several of our team members have been promoted to senior positions.

- Special counsel: Lauren Freeman
- Senior associate: Genna Angelowitsch
- Associates: Catherine Sim, Deidre Petrakis, Janet Tucci and Linda Hanley

New lawyers:

Graduate lawyers Kirsty Osborne, Isabelle McCombe and Giorgina McCormack were admitted to practise.

We are very privileged that they decided to continue their career with the personal injuries team.

For more about our team, visit www.alil.com.au/our-people

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.

They are also available to answer any questions that you or your team may have.

The information presented is up to you! Let us know what you would like to hear about, and we can tailor a session that will meet the specific needs of your clinic.

To schedule your free information session, please contact Niki Patterson on (03) 9321 9925 or email niki.patterson@alil.com.au.

Remember, you can access free legal assistance at any time during business hours on (03) 9321 9988.

When you call, you will speak directly to a lawyer - not a secretary or call centre.

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