



## Message from the editor

In August we settled one of the biggest medical abuse cases in Australia against former neurologist Dr Andrew Churchyard.

It was a long and hard fought road, and I am proud that we were able to achieve an outcome for his victims and encourage a review into patient safety structures. In our leading article I have provided an overview of the case, the Medical Board of Australia and AHPRA's review, and the terms of settlement.

In this edition, we also discuss the increasing incidence of occupational suicide and how the *Workplace Injury Rehabilitation and Compensation Act 2013* supports the dependants of a deceased worker.

Partner Michael Lombard also provides an overview of the recent appeal in the High Court in relation to the 'serious injury test' - specifically the definition of 'severe long-term mental or severe long-term behavioural disturbance or disorder.'

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

## Abuse case against deceased doctor settled

We are pleased to announce that a confidential settlement has been achieved with the Estate of Andrew Churchyard on behalf of 52 of his former patients.

The case of sexual abuse allegedly perpetrated against scores of patients by senior Melbourne neurologist, Dr Andrew Churchyard, has made national headlines.

After being charged by police with two counts of indecent assault in 2015, Dr Churchyard was immediately suspended from practice at Monash Health. A different approach was employed at Cabrini Health, where the doctor was instead allocated a chaperone who was responsible for monitoring his interaction with patients. Despite the implementation of a chaperone, however, the regulating body were notified in early 2016 of a further alleged offence.

After a Magistrate found that there was enough evidence for a jury to find him guilty, Dr Churchyard took his own life.

### Patient safety structures

Following significant media coverage and public outrage, the Medical Board of Australia (MBA) and the Australian Health Practitioner Regulation Agency (AHPRA) commissioned an independent review into the effectiveness of chaperoning restrictions. The report was delivered in February 2017 and gave rise to 28 recommendations which were accepted by the MBA.

In August 2017, AHPRA and the MBA issued a media release reporting on their progress in implementing the recommendations.

The media release stated that:

- no new chaperone conditions had been imposed on practitioners;
- the MBA has established a committee to deal with all matters about sexual misconduct and AHPRA investigators received specialist training to manage complaints and/or concerns about sexual misconduct;
- all practitioners subject to a chaperone requirement are being audited;
- the MBA was working to establish clear inter-agency protocols with police departments across Australia;
- new practice monitor restrictions and related protocols are now in place

### Plight for justice

Following the news breaking of allegations against the deceased doctor, Adviceline was contacted by more than 100 former patients. From the outset, there were clear recurring and worrying themes in the interactions between the doctor and his patients.

We commenced Supreme Court proceedings in late 2016 on behalf of a group of patients, and in August successfully obtained a settlement with the Estate of Dr Churchyard.

It is hoped that the settlement – confidential and made with a denial of liability – brings some closure and peace to our clients.

- Bree Knoester, Partner



## 'Serious Injury' test: *TAC v Katanas*

For the first time in the history of the Transport Accident Commission (TAC) scheme, the High Court has considered an appeal in relation to the 'serious injury' test.

This test is an integral part of the gateway to common law entitlements for transport accident victims.

The appeal specifically concerned the serious injury definition of 'severe long-term mental or severe long-term behavioural disturbance or disorder'.

### Background

Ms. Katanas was involved in a transport accident on 10 July 2010 at the intersection of Princes Highway and Springvale Road. Her car was struck on the driver's side by another vehicle and she was trapped inside her car. She suffered various physical and psychological injuries.

### Grounds of Appeal

Ms Katanas applied for leave to commence common law proceedings for a serious injury in the County Court.

The County Court rejected the claim because Ms Katanas was on the lower end of a 'spectrum' of disorders and treatments. It followed from the original Judge's reasoning that for a mental disorder to be 'severe' it must have the "most extreme symptoms and consequences, requiring extensive treatment and medication."

This was appealed to the Supreme Court of Appeal by Ms Katanas.

The majority of the Supreme Court of Appeal held that the County Court had erred in focusing only on the treatment that Ms Katanas received in deciding whether she had a serious injury. The amount of treatment a person receives is just one factor. The Court should also look at the severity and frequency of symptoms and consequences of the injury as well as inhibitions upon daily activities. This was appealed to the High Court by the TAC.

### High Court's decision

In a decision that was handed down on 17 August 2017, the High Court unanimously held that the Supreme Court of Appeal had decided correctly.

The High Court confirmed that the narrative test for 'severe long-term mental or severe-long term behavioural disturbance or disorder' involved a two part process:

1. an assessment of whether the injury and its consequences are serious for the particular applicant; and
2. an assessment of whether the injury and its consequences are serious in the instant case as compared to the range of similar cases

This assessment should involve all the factors relevant to the claim, not just the amount of treatment that was received by the claimant.

*For more information about TAC common law entitlements, contact Michael Lombard, Partner; & Shyla Sivanas, Graduate on (03) 9321 9704*



# Occupational suicide

Suicide due to workplace bullying or workplace trauma has been on the increase over the last decade.

As awareness of mental health issues has grown, so too has the law developed and shifted to reflect community expectations about safety in the workplace.

Although psychiatric injury claims are common under WorkCover, workers who commit suicide due to their psychiatric injuries, or as a result of bullying, fall into a separate category.

Work-related suicide occurs across a multitude of industries. Research has shown that construction workers are six times more likely to die from suicide than a workplace accident.

The Victoria Police Mental Health Review in 2016 revealed that there is an increased risk of suicide for members of Victoria Police than the general public. Since 2000, there have been 23 completed suicides – differentiated from attempted suicides – of active Victoria Police members. Another report found that people working in protective or emergency services had higher rates of suicide than the general employed population.

Bullying and exposure to trauma are not the only causes of workplace suicide. A cultural phenomenon known as 'karoshi' in Japan is a death resulting from overwork and stress. In 2015, a 24 year old worker at a Japanese advertising agency committed suicide after being forced to work extremely long hours.

Unfortunately, the issue of suicide due to overwork is not one that is unique to Japan.

Junior doctors have also emerged recently as a cause for concern, with a 2013 survey showing one in ten doctors reporting thoughts of suicide in the preceding four weeks.

In 2011, Brodie's Law was introduced after the suicide of a young girl subjected to ongoing bullying by co-workers at her café job in Melbourne. The law introduced an extension of the stalking provisions and made serious bullying a crime.

If a patient or relative of your patient commits suicide or dies as a result of their workplace injuries, their dependants may have entitlements under the *Workplace Injury Rehabilitation and Compensation Act 2013*.

These entitlements include, but are not limited to:

- burial or cremation expenses
- counselling for family members
- lump sum payments to dependants, up to a total of \$598,360 to be shared amongst all dependants (as at 01/07/2017)
- pensions to dependant partners or children

Dependants may also have the right to sue for lump sum compensation.

*For more information about dependency claims, contact Catherine Sim, Associate on (03) 9321 9890*

# Sexual assault: What should a patient do?

If your patient is a survivor of sexual assault, you should encourage them to:

1. Report the incident to the police; and
2. Contact a lawyer.

## Reporting to police

Sexual abuse survivors should report the crime to a SOCIT unit of the Victoria Police. SOCIT stands for Sexual Offences and Child Abuse Investigation Teams and their locations can be found on the Victoria Police website.

Reporting a sexual assault to the police will usually involve making a written statement. The SOCIT can then investigate the incident and determine whether they will lay charges against the offender.

There may be some instances where a survivor is reluctant to make a police report. In these circumstances, you should recommend that they speak with a lawyer. A lawyer can provide advice about the compensation options below and explain how making a police report can assist in bringing a claim.

## How can a lawyer help?

A lawyer can assist survivors receive compensation for the physical, psychological and financial harm caused by the sexual assault by making one or more of the following claims:

Type of claim	What is it?	Police report required?	Time limits *	Who pays?
VOCAT claim	VOCAT stands for the Victims of Crime Assistance Tribunal.  A survivor can make an application to VOCAT for certain types of loss.  The Tribunal then has the discretion to make payments in response to the application.	No, but the process can be quicker and easier if a report has been made.	2 years from the date of the crime.	Government fund.
Sentencing Act Application	This type of claim is made under the <i>Sentencing Act 1991 (Vic)</i> . This claim can only be made if the offender has been charged and convicted of the crime.	Yes.	1 year from the date the offender is sentenced.	The offender.
Civil claim	This type of claim is where the survivor sues the offender personally.  In some circumstances an institution, such as a school or church, should have taken reasonable steps to prevent a sexual assault from occurring. In these circumstances, it is possible to sue the institution for negligence. **	No, but a police report may assist with the claim.	If the person was assaulted as a child, there is no time limit.  If the person was assaulted as an adult, 3 years from the date of the crime.	The offender or negligent institution.

\* Extensions of time can be obtained in certain circumstances for all types of claims.

\*\* If the survivor was sexually assaulted in an institutional context, they may also be able to bring a claim for a reparation payments under a redress scheme.

For more information about sexual abuse compensation, contact Kirsty Osborne, Lawyer on (03) 9321 9780



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

Do you have trouble understanding what exactly your role is in your patients' WorkCover, TAC or other personal injury claim?

Do you often wonder whether a particular patient is receiving their full entitlements?

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](mailto: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.



We are pleased to announce that Tina Toutzaris-Sabo has joined our Springvale office!

Tina Toutzaris-Sabo is a Senior Associate at Adviceline Injury Lawyers and is an expert in personal injury law, with a strong focus on worker's compensation claims.

Tina is passionate about helping her clients navigate through the complex legal system and ensuring their rights are protected and defended.

Tina's attitude whilst professional can also be described as friendly, approachable, pragmatic and honest. She is highly motivated in achieving great outcomes for her clients and progressing their claims in a timely manner.

Tina understands that a personal injury can have a disastrous effect on a person's quality of life and significantly impact their loved ones. Tina considers herself honoured and privileged to be given the opportunity to represent her clients during these difficult and challenging times.

Tina is available to provide guidance and advice to medical professionals and/or their patients about any aspect of the WorkCover process.

We invite you to contact Tina on (03) 9321 9795 or 0439 642 962 for an obligation free discussion.

# Welcome

# Our news

## It's a frocking good cause!

Ovarian cancer has touched the lives of many family members and friends of our firm. As an outcome, each year we support 'Frocktober' - a month long awareness and fund raising campaign to find an effective early detection method for ovarian cancer.

Raising funds through raffle and silent auction, legal graduates in our Melbourne, Sydney and Brisbane offices acquired dress donations from Zimmerman, Marcs, Cue, Siss and co, Eco D, Kuwaii, 400 Co, Cooper Street, Lisa Barron, Kindling, Mela Purdie, Bul, Keegan, Sacha Drake, Maurie and Eve, We are Kindred, Thurley, Finders Keepers, and Venus & Mars.

Our Melbourne office further hosted a fundraiser morning tea each Friday to sell raffle tickets, held an evening event titled 'Frocktober Feast', and hosted a silent auction.

All staff were encouraged to get involved by wearing a frock, vibrant socks or tie throughout the month, donate directly through our Everyday Hero page, or win a bottle of champagne by snapping a selfie for our Instagram 'Holding Redlich Frockstars' page!

We are pleased that in 2017, we were able to raise over \$5,000 in support of this tremendous charity.



## Empowering young women

Adviceline Injury Lawyers is partnering with Soroptimist International to inspire and encourage at risk young women to continue their education.

At a fundraising lunch held in June entitled 'What Would I Tell My 15 Year Old Self', Partner Bree Knoester and a panel of women shared their life stories, with a view for the key messages to be shared at the beneficiary event in August.

At the 'Empowering Young Women Through Education' annual breakfast event held in August, we hosted 128 disengaged Year 9-11 students to help them understand how the education opportunities they have now will shape the lives they have in the future.

Adviceline Senior Associate Naty Guerrero-Diaz was a key speaker at this event and shared the many struggles she experienced along her journey to her successful career as a lawyer. From moving to Australia as a child refugee, having to learn a new language, a new culture, not enjoying school, having lots of jobs and constantly feeling like she didn't fit in, many girls felt a connection with her story. Naty was able to show how in the end education has made a significant difference to her life choices and those that she helps each day at work as a personal injury specialist.

At each table, students had a 'mentor' seated with them who facilitated discussion about the stories they heard, and asked them to consider how they could use the information they learned in their own lives. Contributing to this part of the program, were Associates Catherine Sim, Deidre Petrakis and Janet Tucci as well as Lawyer, Kirsty Osborne.



Senior Associate Naty Guerrero-Diaz joins the concluding panel at the 'Empowering Young Women Through Education' breakfast event in August.

## LOCATIONS

### Epping

Shop 110B, Epping Plaza  
Cnr of Cooper/High Street  
Epping VIC 3076

### Melbourne

Level 8, 555 Bourke Street  
Melbourne VIC 3000

### Melton

43 Wallace Square  
Melton VIC 3337

### Moe

Level 1, 18-20 Kirk Street  
Moe VIC 3825

### Springvale

369C Springvale Road  
Springvale VIC 3171

## CONTACT US

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