



Message from the  
**Editor**

In the Autumn edition of the Legal Check-Up we bring you a special COVID-19 issue, discussing how you can assist your patients with their claims during this pandemic.

Legal services are temporarily being delivered differently and at Adviceline Injury Lawyers, we are committed to the health and safety of our staff and our clients.

We will ensure that we maintain our appointments for all clients using phone and video conferencing until further notice. Lawyers will continue to answer our free legal advice telephone service and assist new clients and enquiries.

If you would like further information about any of the topics discussed in this edition of the Legal Check-Up, or wish to confidentially discuss any patient concerns, call a lawyer for free legal advice on (03) 9321 9988.

*Bree Knoester, Partner*

## Contracting COVID-19 at work

**Victorian employers have a duty to provide a working environment that is safe and without risks to the health of their employees. These include measures that protect workers from potential exposure to coronavirus (COVID-19).**

For patients that work in industries considered "essential" like healthcare and education, in particular early childhood education, working remotely or closing is not an option. They are more likely to contract COVID-19 through contact with people every day as part of their duties.

### What should my patient do if they think they have been infected with COVID-19 at work?

When your patient begins to feel unwell, they should seek immediate medical attention. As their doctor, you should be informed of any potential exposure to COVID-19 and this should be documented.

Your patient should also inform their workplace, especially if they believe they have contracted COVID-19 as a result of their employment. Under WorkCover legislation, if your patient has contracted a compensable disease like COVID-19 due to their employment, they are required to notify their employer. This should be done as soon as they are diagnosed or within 30 days.

### Can my patient claim WorkCover compensation if they contract COVID-19 at work?

If your patient is a Victorian employee, they can lodge a WorkCover claim if they believe they have contracted COVID-19 through their employment.

Each claim will be different based on the individual. To have a successful claim, your patient will need to demonstrate that their employment has significantly

contributed in some way to the development of the virus.

For example, if your patient is a childcare worker and they contract the virus after caring for a child who is subsequently diagnosed with COVID-19, it is likely that their employment was a significant contributing factor. This would similarly apply to a healthcare worker who becomes unwell after they were required to treat a COVID-19-infected patient.

### How can my patient get a Certificate of Capacity if they are required to self-isolate or not able to attend an appointment because of COVID-19?

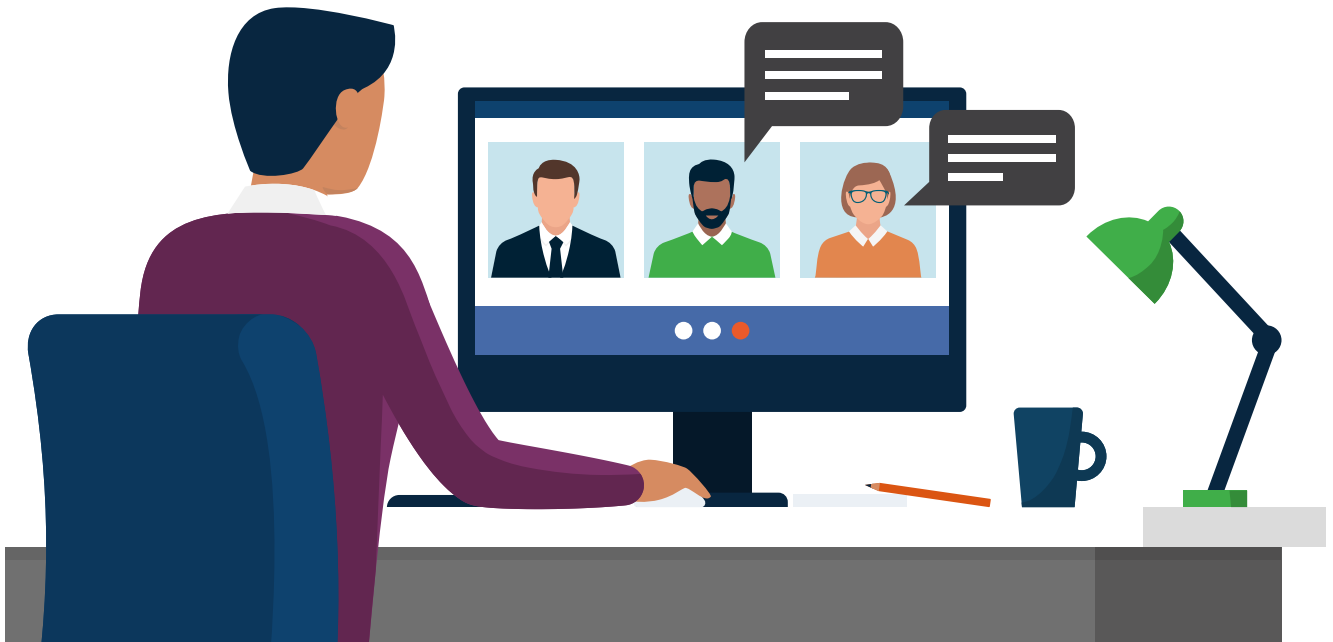
Your patient can request an appointment with you via telehealth services to obtain a valid Certificate of Capacity. In many cases, you will be able to send this to them electronically.

The first Certificate of Capacity you issue is valid for up to 14 days. Any subsequent Certificate is valid for a maximum of 28 days, unless the WorkCover Insurer is satisfied there are special reasons for the Certificate to cover a longer period.

### What benefits is my patient entitled to if they contract COVID-19 at work?

If your patient's claim is accepted, they are entitled to weekly wages while they are absent from work or required to self-isolate, medical expenses and a potential lump sum payment.

**Ursula McBride**, Senior Associate



# Injured while **working** **from home?**

**The number of infected individuals in the declared COVID-19 pandemic has grown at a considerable rate in Australia. To minimise the spread within the community, the State of Victoria declared a State of Emergency on 16 March 2020. This declaration has led to an unprecedented increase in the number of employees working from home.**

Whilst workers are busy sorting out technological difficulties in their adjustment to this new style of working, it is also important that they are aware of their rights if they are injured while working from home.

**Is my patient covered if they are injured while working from home?**

***“Your patient’s employer is responsible for providing the worker with a safe workplace even while they are working from home.”***

WorkCover law states that if a person suffers an injury “arising out of or in the course of any employment”, they are entitled to compensation. They do not need to show that anyone is at fault to claim entitlements. This entitlement also covers when a worker is on an authorised break at work.

However, the lines regarding whether a person was acting in the course of their employment whilst they are working at home can be slightly blurred.

For example, difficulties will likely arise about whether a work day has ended – especially given that many individuals often work past their scheduled work times. Due to this, each claim must be dealt with on a case-by-case basis so it can be taken into consideration whether:

- the injury occurred during normal working hours;
- the worker was still logged on to the work system when the incident occurred;
- the worker had intended to return to work when the incident occurred.

## Case study

These issues were highlighted in the case of *Hargreaves v Telstra Corporation Limited* [2011] AATA 417 where a worker sustained injuries after two instances of falling down the stairs in her home while working from home.

The first fall occurred after standard business hours when the worker went down the stairs to retrieve cough medicine. The Tribunal determined that this fall occurred during the course of her employment as she regularly worked late and this was a necessary break that she had to take to relieve her coughing – similar to a bathroom break.

The second fall occurred when the worker was going down the stairs to lock her security door. Her employer had previously instructed her to ensure that the door was locked while she was working from home. As such, the Tribunal determined that this action was the worker following a reasonable direction from her employer and fell within the scope of her employment.

The worker was thereby entitled to claim compensation for her injuries.

**What should my patient do if they are injured while working from home?**

If your patient has been injured at home “in the course of employment”, it is important they notify their employer of the injury, seek medical assistance and lodge a WorkCover claim as soon possible.

**Shyla Sivanas**, Lawyer

# Comcare claims during the pandemic

**While businesses are forced to close to protect their workers from COVID-19, many Commonwealth government employees are required to work as their services are considered “essential”.**

This means that patients employed by Government services such as Centrelink and the Department of Human Services may have a higher chance of contracting COVID-19 through increased contact with people over the coming months.

## **My patient is a Commonwealth employee. What happens if I they contract COVID-19 at work?**

In short, they can lodge a Comcare claim.

Comcare is the no-fault compensation scheme that covers workers who have sustained injuries (including diseases) as a result of their employment with the Commonwealth government or a prescribed large business. Under Comcare legislation, COVID-19 is likely to be considered a disease.

In order for your patient to successfully claim compensation for contracting a disease like COVID-19, their employment must have significantly contributed to the development of the disease.

This means each person's claim will be different based on the exact nature of their job. For example, if a worker subsequently becomes unwell after they were required to engage in activities that included interacting with people who have COVID-19, it will likely be found that their employment was a significant contributing factor.

Similarly, a worker who is required to travel to an area with a known outbreak

will also likely have a successful claim.

By contrast, a worker who has not been exposed to people who have the virus, or lives in an area where the illness is prominent, may struggle to show how their work significantly contributed to them contracting COVID-19.

It is important to remember that the same test applies to Commonwealth government employees based overseas, for example those working overseas at Australian embassies or consulates.

If your patient's claim is accepted, they will be entitled to weekly payments while they are absent from work, medical expenses and a potential lump sum payment.

## **What does my patient need to do if they believe they have been infected with COVID-19 at work?**

If your patient is unwell, and you believe this may be a result of their employment, it is important that your opinion is documented, noting their reported potential exposure.

Encourage your patient to inform their workplace. Under Comcare legislation a worker must notify their employer that they have sustained a compensable illness as soon as practical.

Finally, your patient should seek legal advice. Each case will need to be assessed on its merits, having regard to the individual circumstances and evidence. For this reason it is important they get legal advice early.

## **What if I your patient is currently in the process of their Comcare claim?**

### **Can they still access medical treatment?**

Yes, if your patient is compliant with the government's regulations, they will still be able to access medical treatment.

### **Do they have to attend medical examinations organised by Comcare?**

Depending on the stage of your patient's claim, failure to attend a medical appointment can delay proceedings or delay their payments. If they have concerns about an upcoming medical appointment, they may wish to seek legal advice and/or contact Comcare or their claims manager directly.

### **Does my patient need to continue to provide Certificates of Capacity?**

Yes, unless they have permission in writing from their claims manager.

### **What happens if your patient is stood down by their employer?**

In the event their employment is terminated or they are stood down, their weekly payments should continue. However, each case will be different and we recommend seeking legal advice immediately. During this period, your patient should continue to obtain their Certificates of Capacity.

**Grace Bowran-Burge**, Lawyer



# Legal services delivered differently

**The State and Federal Government restrictions on business operations during the COVID-19 pandemic have justifiably caused some concern regarding how legal services will be delivered to clients.**

At Adviceline Injury Lawyers, we are committed to ensuring that your patients', and our clients' claims continue to be managed efficiently and diligently, while protecting the health and welfare of our staff at the same time.

Our systems are fully capable of supporting our people to work wherever they need to be based.

## **Does my patient still have to attend medico-legal appointments?**

Some specialists may be closed during the quarantine period, while other specialists are continuing to offer consultations via technology such as Skype, Facetime and Zoom.

If an appointment has been arranged for your patient to see a medico-legal specialist, one of our lawyers will be in contact with them regarding whether their appointment is proceeding as scheduled, has been cancelled or will be facilitated through technology.

If they have any queries about their appointment, please encourage your patient to contact our office to discuss their concerns.

## **Will my patient's settlement conference go ahead?**

Many of the insurance companies and Defendant law firms have required their staff to work from home for the foreseeable future.

However, settlement conferences and mediations are still proceeding through telephone discussions and video conferencing.

Your patient's lawyer will be in contact with them to discuss how their settlement conference will be impacted by the current social distancing restrictions.

## **My patient's case was due to be heard in Court, what happens now?**

Many of the Courts have implemented restrictions on the types of cases that can currently be heard.

Matters that were going to be heard before a magistrate or a judge alone can still proceed, but there are restrictions on the length of the hearing that can take place.

The Supreme Court and County Court have both prohibited jury trials from occurring for the foreseeable future. If your patient's matter was scheduled to be heard as a jury trial, the parties will have the option of proceeding before a judge alone (within the time restrictions mentioned above) or adjourning the hearing until the quarantine is lifted and jury trials resume.

If your patient's hearing date is approaching, their lawyer will be in contact to provide advice regarding the best strategy to manage their claim.

## **Are your lawyers available?**

Adviceline Injury Lawyers is monitoring the COVID-19 situation closely and adjusting our response on a daily basis.

Regardless of whether we're in the office or working elsewhere, we are fully resourced to continue working on files and assisting clients.

If you have any queries regarding the current status of your patient's claim, please contact us for further assistance.

**Genna Angelowitsch**, Special Counsel

## **How COVID-19 changes to WorkCover policy and law affect your patients with current claims**

- Workers in receipt of weekly payments can now obtain Certificates of Capacity via [telehealth appointments](#).
- Where workers **cannot sign their Certificate of Capacity** due to COVID-19, Insurers may accept an unsigned copy if it is provided directly from their email address.
- If a worker is **unable to attend an appointment** to obtain their Certificate of Capacity, WorkCover Insurers can authorise a treating doctor to provide an amended Certificate which is valid for up to 3 months.
- If a worker has any concerns about attending an **independent medical examination** in person, they can speak to their WorkCover Insurer about making alternate arrangements.
- Long-term injured workers due to have their payments stopped after receiving at least 130 weeks of payments will now be **eligible to receive up to an additional 6 months of weekly payments**. This change has been backdated to apply to any workers whose payments were terminated as at 1 December 2019.

CONTACT US

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LOCATIONS

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