

# legal

# check-up

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Spring Edition 2016



## Message from the editor

Welcome to the Spring edition of the Legal Check-Up!

Sometimes the correct avenue to seek compensation for medical treatment, lost wages, and/or lump sum compensation for the loss of enjoyment of life following an injury is not clear cut.

In this edition we provide some answers on who compensates a patient when there is an overlap between two or more compensation schemes.

We are also inviting healthcare practitioners to join us for lunch! Your local legal team are hosting free tailored 'Legal In-Service' sessions. These are sessions designed to assist practitioners in understanding their role in the compensation system and minimise their exposure to it.

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

- Bree Knoester, Partner

## When Compensation Schemes Overlap

In Victoria, there are three compensation schemes available to people who have been injured through the negligence of another. These are WorkCover, TAC and the Common Law. Patient access to these schemes is dependant on the type of injury sustained - but what happens if there is overlap?

Is it WorkCover or TAC that pays for medical treatment when somebody is injured in a transport accident in the course of their employment?

Can a WorkCover claim be lodged if someone's injury happens away from the workplace during a lunch break?

If someone was exposed to asbestos in the workplace many years ago and now suffers an illness, can medical treatment be paid for up-front?

When someone is injured as a result of a criminal act in the course of employment, should they lodge a compensation claim to WorkCover or make an application to the Victims of Crime Tribunal?

The correct avenue is not always the logical avenue and it is preferable that your patient obtains early legal advice about their entitlements if they have been seriously injured in these kinds of circumstances.

The inside of this edition of the Legal Check-Up considers these overlaps.

-Lauren Freeman, Senior Associate

## Join us for 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?

Adviceline Injury Lawyers offer a 'Legal In-Service' - a lunch time Q&A session hosted at your clinic.

This is free of charge, and we'll even bring lunch!

Our office is local and our service is personal.

**Contact us on 03 9321 9925  
to book a session with your local Adviceline office.**



## Is it a work injury, or not?

Injuries often occur during the course of the work day but away from the workplace. Even where an injury has no connection with actual work duties, your patient may still have an entitlement to weekly payments and medical expenses under WorkCover.

Eligibility to compensation is dependant on the injury satisfying the test of 'arising out of or in the course of employment'. Some examples of when an injury might meet this test are where it occurs:

1. During an authorised break (for example, where a patient suffers an injury on their lunch break);
2. Whilst travelling from one worksite to another during the course of the work day; or
3. During the course of a work trip.

There are exceptions to these examples and there are also other circumstances where a WorkCover claim cannot be submitted. For example, there is no WorkCover entitlement for injuries sustained whilst travelling to or from the workplace at the start or end of the work day.

We can advise patients about whether the circumstances of their injury entitle them to WorkCover and assist them with lodging their claim. If they are not entitled to WorkCover, we can advise and assist them in relation to recovering the costs associated with their injury through other compensation avenues.

*- Lauren Freeman, Senior Associate & Deidre Petrakis, Lawyer*



## The VOCAT overlap

The Victims of Crime Assistance Tribunal (also known as VOCAT) provides monetary assistance to victims injured by acts of violence in Victoria.

The assistance is not very generous and is not proper compensation for the loss or injury suffered. VOCAT provides assistance as recognition that a wrong has been committed and some help should be provided.

Assistance is available to victims if:

- The offence would be punishable by imprisonment;
- They have sought treatment for an injury caused by that crime (whether physical or psychological, including distress); and
- They reported the violence to the police within a reasonable time.

The application should be made within two years of the crime. The Tribunal will consider the victim's attitude, criminal past and involvement in the crime when deciding whether to make an award.

If help is being provided to the victim through another scheme, or the victim is suing for compensation, the Tribunal considers itself to be a payer of last resort. If a victim receives assistance from the Tribunal and later receives similar assistance for the same injuries, it is likely the Tribunal will seek repayment of assistance provided.

# Asbestos exposure

Is your patient suffering from respiratory issues and has a history of exposure to asbestos or other toxic chemicals? They may be entitled to compensation.

There is often overlap with the WorkCover system depending on the period of exposure. If all or part of your patient's exposure occurred in the workplace after 31 August 1985, they will need to submit a WorkCover claim to recover potential entitlements for medical and like expenses.

In Victoria, a person may be entitled to compensation if they are diagnosed with asbestosis; asbestos-related pleural disease; asbestos induced carcinoma (lung cancer); or mesothelioma.

If your patient reports a history of exposure to asbestos, you should note when, where and how the patient was exposed to asbestos and the type of asbestos products they were exposed to. This information is vital in a potential claim for compensation, particularly if your patient becomes incapacitated or their memory deteriorates with the passage of time.

If a patient is diagnosed with one of the above asbestos-related conditions, it is important they obtain legal advice as soon as possible. One of our lawyers can attend your patient at their home or in hospital to ensure they obtain urgent legal advice regarding their rights. Due to the nature of these conditions, we are often required to take urgent steps to protect our client's legal rights.

If your patients reports a history of asbestos exposure but does not have an asbestos-related condition, it is still important they obtain legal advice promptly. In their first free appointment, we will obtain a detailed history of their exposure and then advise them of their rights in the unfortunate event they develop an asbestos-related condition. We will also monitor any regular chest scans or, if applicable, pulmonary function tests to determine if they impact on our advice.

- Seamus Herrick, Lawyer

**Clothing lost or damaged** because of the crime is recoverable from the Tribunal and not through most other schemes.

The Tribunal does not compensate applicants for property that is lost or damaged. In special circumstances, it may make an award for **security expenses or expenses incurred in assisting recovery**.

**Special financial assistance** may be repayable if a person receives an impairment benefit or sues for compensation for pain and suffering.

Requests for **counselling and medical expenses** should be made to WorkCover or the TAC before the Tribunal.

**Earnings lost** in the first two years after the accident are payable, to a maximum of \$20,000. In May 2016, the Court of Appeal decided the Tribunal will pay any gap in earnings left by other schemes.

The Tribunal has a lot of discretion when deciding whether to make an award. If another person, scheme, insurer or superannuation fund is already providing a victim with assistance, the amount awarded will be reduced to reflect this.

However, it is still worth enquiring whether an application to VOCAT could be beneficial for your patients.

- Sarah Thorn, Lawyer



# Traffic accidents whilst at work

When a patient is involved in a traffic accident and requires ongoing medical treatment for their injuries, your first reaction may be to encourage them to lodge a claim with the Transport Accident Commission (TAC). But what happens when that accident happens whilst the patient is at work?

The TAC and the Victorian WorkCover Authority (VWA) share the responsibility for attending to a patient's medical expenses and lost wages while they are injured. The organisation responsible is determined by the circumstances of the accident:

1. A claim with TAC should be lodged where:
  - a. The patient was injured in a traffic accident on their way to or from their usual place of work;
  - b. The patient is a cyclist who was injured after colliding with a stationary vehicle, provided they were travelling to or from work.
2. A claim with the VWA should be lodged where:
  - a. The patient drives a vehicle as part of their ordinary duties (for example, a truck driver, bus driver, tram or train driver);
  - b. The patient was travelling in a vehicle to/ from a destination other than their ordinary workplace (for example, if the accident occurred whilst the patient was travelling between clients or offices, or to attend an employer sanctioned conference or training session);
  - c. The patient was injured in a vehicle whilst on an employer sanctioned recess (for example, whilst on their lunch-break).

If a person dies as a result of a traffic accident at work, their loved ones are entitled to assistance from both the TAC and VWA.

Strict time limits can apply depending on the type of claim the patient needs to lodge. TAC claims should be lodged within 12 months of the date of the injury, even if the extent of the person's injury is not yet known. Although VWA claims do not have the same strict time limit, they should be lodged as soon as reasonably practicable.

- Genna Angelowitsch, Lawyer

# Doctor Q&A



## **How soon until WorkCover starts covering a patient's medical expenses? Is there an excess payable by the employer before WorkCover payments start?**

A patient is entitled to payment of reasonable and necessary medical expenses as soon as they have an accepted WorkCover claim. There is an excess that the employer must pay before the WorkCover insurer will commence covering a patient's medical expenses directly. This excess is indexed annually. It is currently \$682.

If a patient has incurred medical expenses prior to lodging their claim, they should lodge receipts with the claim form in order to be reimbursed by the insurer.

A medical practitioner must be registered with WorkSafe in order for the insurer to cover the cost of medical expenses. If the practitioner is not registered with WorkSafe, the patient will not be able to be reimbursed for the cost of the treatment with that practitioner.

Out of pocket medical expenses should be submitted to the insurer for reimbursement within six months of the treatment. The insurer has a discretion not to pay medical expenses submitted after this time.

## **My patient requires assistance with daily duties (i.e. cleaning at home) because of their injury. Does WorkCover pay this expense?**

The insurer will pay for services that the injured worker requires, provided they are reasonable. Requests for assistance services should be made in writing to the insurer by the patient's treating doctor. Generally, the insurer must give prior approval before these types of services are provided.

## **How quickly should the WorkCover insurer be paying medical bills on behalf of my patient? What options are available if bills are not being paid promptly?**

The insurer should pay medical bills within a reasonable time. If this does not occur, conciliation can be requested on the insurers failure to respond within a reasonable time.

## LOCATIONS

### **Epping**

Shop 110B, Pacific Epping  
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

T 03 9321 9988  
advice@alil.com.au



## Welcome to the team, Cate Sim!

Cate is a Lawyer at Adviceline Injury Lawyers and is an expert in personal injury law.

Cate Sim joined our Springvale team during November 2016. An experienced and empathetic lawyer, Cate is dedicated to assisting workers achieve a just and fair outcome when they have suffered injuries at work.

It is Cate's keen interest in social justice and providing equal access to legal services that moved her to make worker's rights and entitlements a priority in her practice. She will be assisting our South Eastern clients to resolve disputes with WorkCover insurers over payment of weekly payments and medical treatment, and to seek lump sum compensation where appropriate.