



## Message from the editor

In our annual 'Year in Review' edition, we discuss changes in the law, highlight some of the great results achieved for clients, and talk about what Adviceline have been up to in the community.

With the expansion of our Springvale office and the establishment of permanent premises in Melton, we are excited about the opportunities to better collaborate with client treaters and achieve greater results for our clients.

We continue to invest in developing relationships with local client treaters through our free 'Legal In-Service' offering. If you have not yet taken up the opportunity to have a free lunch and a chat with your local Adviceline team, we invite you to contact us!

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

- Bree Knoester, Partner

## Personal Injury Year in Review

With the help of our client treaters, we were able to achieve outstanding results for clients throughout 2016.

A great legal result allows clients to focus on their recovery or enjoy the time they have left with their family.

### A most satisfying WorkCover outcome:

- a client's weekly payments were terminated in 2013 on the basis that they did not suffer from complex regional pain syndrome. We issued proceedings in the Magistrates' Court and prepared lengthy and detailed submissions to the Medical Panel. This resulted in our client obtaining approximately four years of back pay, as well as reinstating her ongoing entitlement to weekly payments.

### Some of our successful TAC negotiations included:

- a middle-aged woman who injured her wrist in a car accident was unable to return to her full nursing duties because of her injury. We were able to recover \$380,000 to assist her in the future. We did this without issuing Court proceedings, which meant there was very little stress involved in the process and the claim was resolved quickly.
- a client was injured when he was the passenger in a golf cart which tipped over. He was thrown into the steering wheel and injured his knee. Members of golf clubs have sports insurance which covers situations where they negligently cause injury. We were able to sue the insurance company for compensation and as a result our client recovered compensation for his medical expenses, losses, pain and suffering.

### A historical sexual abuse case was successfully settled:

- three people who were sexually abused as minors in the late 1950's successfully recovered \$250,000 as compensation for their pain and suffering. Thankfully judgement was obtained for our brave clients within two weeks of the perpetrator being sentenced.

### A great result in a public liability matter:

- a woman who fell at a nursery sustained an injury to her right ankle causing permanent ongoing instability. As she was not working at the time of her injury, she asked the nursery to pay her medical expenses. This was refused and Court proceedings were issued on her behalf. Within two months of issuing proceedings, the nursery agreed to pay her \$110,000 for her pain and suffering, avoiding the formalities of a Court appearance.

In addition to these great outcomes, Adviceline also achieved outstanding results for our clients affected by asbestosis and mesothelioma.

For details, see page three of this edition.



## Workers Compensation Law

### Changes to WorkCover law

Several important legislative changes affecting Victorian workers are likely to take place in 2017, including:

- Increasing weekly payments for injured workers to the age of retirement. Following the pension qualifying age increase as of 1 January 2017, this change will ensure that a gap will not open between the age at which an injured worker ceases to be entitled to weekly payments and the age at which they qualify for the aged pension.
- Confirming Parliament's intention that a worker has 6 years from their date of injury to commence a claim for common law lump sum compensation.
- Establishing the Accident Compensation Conciliation Service (ACCS) as a separate body to safeguard its independence from WorkSafe and ensure transparency for workers who lodge disputes through the ACCS.

### Ombudsman Report

The Victorian Ombudsman released their *Investigation into the management of complex workers compensation claims and WorkSafe oversight* in September 2016.

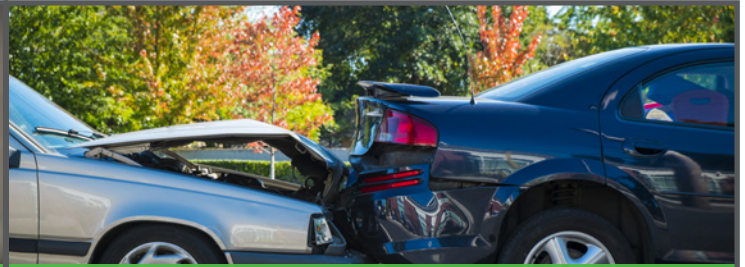
The Ombudsman selected and reviewed 65 anonymous claims at random, across the five WorkCover Insurers. The Report revealed that Insurers' decision making is largely driven by performance indicators, leading to claims being unreasonably denied or terminated and that the system was failing some particularly vulnerable workers. The report made several key recommendations which are being addressed by WorkSafe.

### Key case

Mr Jarvis suffered a work-related injury whilst working for the Salvation Army. He was able to return to work on full time modified duties sometime after his injury. Subsequent to Mr Jarvis returning to work, he was terminated from his employment for 'serious misconduct'. Accordingly, Mr Jarvis sought a reinstatement of his weekly payments.

WorkCover Insurers have a discretion to cease or alter a workers weekly payments in certain circumstances. The Insurer chose to exercise this discretion in this case and Mr Jarvis' weekly payments were terminated due to the alleged misconduct. In *Jarvis* it was found that the Courts are not bound by the Insurer's decision and can consider information that the Insurer did not have in its possession when initially exercising its discretion not to pay weekly payments.

- Ursula McBride, Senior Associate



## Traffic Accident Law

### A year of change for those psychiatrically injured in transport accidents

In 2016:

- Parliament repealed controversial laws which had tightly restricted the right to sue for mental injury; and
- The Court found we do not owe a duty to others not to injure ourselves.

### Restrictions to sue for mental injury lifted

Under the TAC Scheme, only those who have suffered a 'serious injury' can sue the negligent party for compensation. This includes those who have suffered a 'severe long-term mental or behavioural disturbance or disorder'.

In 2013, Parliament further tightened this definition and required a person to be treated for a recognised mental illness or disorder continuously for three years without any substantial improvement.

The Andrews Labor Government has now repealed the restrictive mental injury provisions. There will not be a 'black hole' – no-one will be caught by the previous restrictions.

A person with a 'severe long-term mental or behavioural disturbance or disorder' can now sue the negligent person for compensation.

### We do not owe others a duty not to injure ourselves

Family members and loved ones of people injured or killed on Victorian roads are entitled to assistance from the TAC.

In certain circumstances, they are also able to sue for compensation.

During 2016, the Supreme Court had to determine whether a person should be entitled to compensation if their loved one negligently injured themselves.

In the key case of *Homsli v Homsli [2016] VSC 354*, the Court determined that a person should not be entitled to sue for compensation if their loved one negligently injured themselves.

- Sarah Thorn, Lawyer



## Asbestos Law

### Eradicating asbestos from Victorian public buildings

In 2016, we advised and acted for several new clients who were diagnosed with asbestos related diseases where the alleged exposure to asbestos dust and fibres occurred in Victorian public buildings.

Bree Knoester, Partner at Adviceline Injury Lawyers, listened with interest to Chris Keating, CEO of the Victorian School Building Authority, Department of Education and Training, as he presented at the 2016 Asbestos Awareness & Management International Conference in Adelaide in November 2016.

Mr Keating outlined the Victorian Government's ongoing investment in eradicating asbestos containing materials from Victorian public schools. The Victorian Government has a goal of eradicating public schools of asbestos containing materials by 2020 and has committed \$100 million to achieve this.

In addition to the school eradication program, on 21 March 2016, the Victorian Government announced the establishment of the Victorian Asbestos Eradication Agency (VAEA) which will work with the government to remove asbestos from all government buildings.

Based on anecdotes from our clients in 2016 and in the years prior, we believe the establishment of the VAEA is an important step to reduce the risk of exposure for current and future employees and visitors at public hospitals and public administration buildings.

### Key cases

1. We acted for a 61 year old lady who was diagnosed with mesothelioma. We argued the cause of her mesothelioma was exposure to asbestos during building works that were undertaken around her whilst she was working in an administration position at a Victorian public hospital. We were successful in obtaining approximately \$480,000 for pain and suffering damages.
2. We acted for a 69 year old man who was also diagnosed with mesothelioma. We argued the cause of his mesothelioma was exposure to asbestos whilst working as a tradesman at Victorian public schools, hospitals and prisons from the 1960's to the 1970's. We were successful in obtaining over \$550,000 in compensation for our client.

We commend the Victorian Government for their proactive steps in reducing the risk of future generations suffering the same outcomes of the above two clients.

- Seamus Herrick, Lawyer

## Medical Negligence/ Public Liability Law

### Reassessment of cases following changes to the *Wrongs Act*

In November 2015, the *Wrongs Act* was amended to make it easier for injured people to claim damages for pain and suffering in public liability and medical negligence cases. This was done through lowering the thresholds applicable to spinal and psychiatric impairments. The new thresholds are 5% or more and 10% or more respectively, where they were previously required to be greater than 5% and greater than 10%.

These lower thresholds apply to all cases from 18 November 2015, irrespective of when the injury was suffered and whether the case has been issued or not.

In 2016, the Courts had to consider whether people whose impairments had been assessed as not meeting the relevant threshold by the Medical Panel could have their impairment re-assessed under the new thresholds.

### Key case

The case of *Mitchell v Latrobe Regional Hospital [2016] VSCA 342* raised the question before the County Court and was referred to the Supreme Court for a definitive answer.

The Plaintiff in that case alleged to have suffered psychiatric impairment which, prior to the amendments to the *Wrongs Act*, had been assessed as falling below the then applicable threshold of greater than 10%.

The Defendant argued that the Medical Panel's certificate stating the Plaintiff did not meet the threshold necessary to claim pain and suffering damages prevented the Plaintiff from making such a claim after the changes to the Act, and prevented the Plaintiff from getting a new certificate.

The Supreme Court disagreed – it said that the Medical Panel's certificate only addressed whether the Plaintiff's impairment met the threshold 'at that time'. Accordingly, it was open to the Plaintiff to undergo a new assessment applying the new threshold.

This decision has now opened the door for people whose spinal or psychiatric impairments have previously been found to be under threshold to have a new assessment.

- Naty Guerrero-Diaz, Senior Associate



# Our news

## New premises for our Melton team!

The establishment of new and permanent premises in Melton reflects the firm's commitment to providing quality legal services to our clients in the local community.

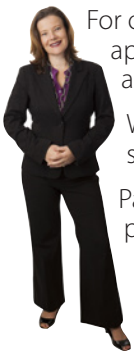
Partner, Lisa Paul manages the office with the assistance of Lawyer, Genna Angelowitsch. The team regularly assist injured people in a wide range of personal injury matters, including WorkCover, TAC and injuries in public spaces.



Permanent premises for the Melton team! Located at 43 Wallace Square, Melton

## One of us became a Judge!

Former Adviceline Injury Lawyers Partner, Andrea Tsalamandris, became a Judge of the County Court of Victoria in February 2016.



For only the second time in the 150 year history of Victoria's County Court, a solicitor was appointed a Judge. This is testament to Andrea's knowledge, experience, skills, reputation and passion for justice.

We are glad that Andrea's excellence, and in turn all that we at Adviceline Injury Lawyers stand for, has been recognised in such a significant way.

Partner and head of the firm's asbestos practice, Bree Knoester, now heads up the personal injuries division, together with Partners Michael Lombard and Lisa Paul.

Her Honour,  
Judge Tsalamandris

## 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

## Community festivals

### Melton Djerriwarrh Festival

Adviceline Injury Lawyers were proud to once again support the Djerriwarrh Festival in Melton on Saturday 5th November 2016.

In it's 37th year, the Djerriwarrh Festival offered a full program of activities including a street parade, market stalls, carnival rides, cultural events and a big firework finale.

Our stall was popular with adults and kids alike, and our (now) famous balloon tree was a hit!

With an increasing amount of our clients located in the western suburbs, we were excited to be part of the event and spend quality time with our local community members.



Partner, Lisa Paul and Marketing Executive, Niki Scott preparing the stall at the Melton Djerriwarrh Festival



From left: Law Clerk, Lucia Nguyen, Lawyer, Sarah Thom and Lawyer Cate Sim at the Springvale Lunar New Year Festival

### Springvale Lunar New Year

On Sunday 22 January 2017 we proudly participated in the Springvale Lunar New Year Festival.

Presented by the City of Greater Dandenong, and in partnership with the Springvale Asian Business Association, this popular event features lion dancers, fire crackers, multicultural food stalls, and amusement rides and attractions.

Celebrating the Year of the Rooster, our Springvale team hosted a very popular information stall and gave out bottles of water, balloons, lollies and show bags.