



Message from the  
**Editor**

In the Winter edition of the Legal Check-Up, we focus on occupational diseases in the workplace and provide you with advice on how you can help your patients if they have been affected.

The re-emergence of silicosis in the trades industry has led to changes in compliance for businesses working with silica, and a nation-wide plan has been implemented for early prevention and management of such deadly dust diseases.

In addition, WorkSafe has cracked down on illegally stored waste chemicals and substances that put employees at risk of workplace injury. You can read more on the inside pages of this edition.

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*

## 'Silicosis' – the new asbestos

**'Silicosis', a disease commonly found between the 1940's and 1960's, has recently re-emerged in tradies in the stone benchtop manufacturing, finishing and installation industries. There is no cure and no treatments available.**

The element 'silica' is the most common element found in the earth's crust. The element is dangerous in the crystalline form of 'free silica' found in quartz, tridymite and cristobalite.

Contracting silicosis is dependent on a number of factors, being:

- the level and kind of dust inhaled (i.e. the percentage of free silica present in the dust)
- the form and size of silica (the smaller particles are the most dangerous)
- length of exposure
- presence or absence of complicating factors (i.e. infection).

As with other industrial diseases, such as mesothelioma, the disease may not produce symptoms until a significant period of time has passed. In the case of chronic silicosis, this could be ten to twenty years after exposure. Less commonly diagnosed, 'acute silicosis' may develop three to five years after a heavy dust exposure, particularly from being in enclosed spaces.

### What is silicosis?

A form of pneumoconiosis, silicosis is a serious lung condition characterised by the formation of fibrous tissue around the dust particle causing a breathing obstruction. Often, this presents as breathlessness, coughing, chest discomfort and fatigue. These symptoms can develop over time.

Most commonly silicosis is found to be chronic, and occurs as a result of prolonged exposure to low concentrations of dust.

### Making a claim

Individuals suffering from an occupational lung disease may be entitled to make a claim for compensation. Claims are commonly made against the manufacturer of the products or a negligent employer.

If your patient is entitled to compensation, Adviceline can seek damages on their behalf for 'pain and suffering', past and future economic loss and any medical and similar expenses incurred due to the illness.

Given the complex nature of lung diseases such as silicosis and mesothelioma, the Victorian Government and the Courts have implemented specific legislation and procedures to deal with compensation claims for injuries caused by 'dust diseases'.

These procedures ensure that terminally ill people can receive compensation quickly.

If any of your patients have been exposed to silica dust or asbestos and have developed an industrial dust disease, we encourage you to refer them for legal advice as soon as possible.

**Bree Knoester**, Partner

# Protection from deadly silica dust for all Australians

**Following the workplace audits conducted by Queensland Government last year, 300 high-risk Victorian workplaces are soon to be investigated in a blitz focused on preventing deadly lung disease, silicosis.**

The “unprecedented compliance and enforcement blitz” undertaken by the Andrew’s Government will include placing a state-wide ban on uncontrolled dry cutting of materials that contain crystalline silica dust, free health screening for Victoria’s 1,400 stonemasons, implementation of a tough new compliance code for businesses working with silica, and the launch of an awareness campaign to highlight the risks of working with engineered stone.

Silicosis, a long forgotten industrial disease, has resurfaced as an outcome of the increased use of artificial stone in kitchen builds and renovations. When any material containing silica is dry cut, small particles of dust are released, and when inhaled can have devastating health consequences.

During 2011, approximately 587,000 people were exposed to silica dust in their workplaces. The Cancer Council of Australia believes that of those 5,758 will develop lung cancer.

44 silicosis claims were lodged with WorkSafe Victoria between July 2017 and March 2019. Of these, 35 were employed as stonemasons.

## **How will the Government intervene?**

In a joint statement by Premier Daniel Andrews and Workplace Safety Minister Jill Hennessy, the Victorian State Government has directed WorkSafe Victoria to consider improvements to compensation access for workers with silicosis.

On a national scale the Morrison Government seeks to develop a national approach for the prevention, early identification, control and management of dust diseases in Australia, with plans to establish a new national dust diseases taskforce and dust diseases register.

**Bree Knoester**, Partner

## Hazardous waste and substances

### **A WorkSafe-led taskforce is cracking down on workplaces that illegally store waste chemicals.**

In late December 2018, eight sites in Epping and Campbellfield were found to have stored large quantities of waste chemicals illegally. In March 2019, the WorkSafe-led taskforce uncovered a further three sites in Craigieburn and one site in Campbellfield that were also illegally storing waste chemicals. The sites were discovered after information was received from WorkSafe and the Environment Protection Authority (EPA).

Under Victorian law, workplaces are required to store and handle dangerous goods strictly in accordance with Victoria’s *Dangerous Goods Act* and Regulations and *Occupational Health and Safety Act* and Regulations.

Furthermore, Victorian workplaces are bound by strict workplace laws which requires that employers take all reasonable steps to prevent workers from being injured in the course of their employment and provide a safe system and place of work.

***“Failure to properly store and/or handle hazardous waste and substances has serious implications.”***

- Employers failing inspections during routine examinations by WorkSafe, the EPA and OHS officers can be disruptive to a company’s work, impact negatively on its reputation and lead to potential sanctions such as fines and shut downs.
- Significant expenses such as the costs involved in rectifying the identified issues, the payment of fines and increased insurance premiums should workers get injured.
- Risk to employees of spillages, fires, explosions and serious reactions/injuries to employees.
- Environmental hazards such as pollution and contamination.

Workplace injuries can occur if you are exposed to a hazardous waste/substance depending on the type of chemical, its’ concentration and the level/duration of exposure.

Commonly seen workplace injuries caused by hazardous waste/substance exposure include poisoning, skin conditions, chemical burns, birth defects, lung, kidney or liver disorders and nervous system disorders.

These injuries can be quite significant and may entitle injured workers to substantial compensation, including impairment benefits and common law damages.

**Linda Hanley**, Associate

# The value of a doctor's note

**A key hurdle in any personal injury claim is proving that there is a relationship between an injury and the circumstances of the incident.**

This is often due to the length of time it takes for an injury to reveal itself as being more serious than a passing problem. The best place to report an injury is to you, their doctor.

Having an accurate and comprehensive medical history is one of the strongest tools available to lawyers when preparing a personal injury case. If our advice is not based on the full picture, or medical evidence is gathered without considering important pre-existing matters, then the advice and evidence is compromised.

Adviceline has lodged WorkCover claims on behalf of a number of manual workers who thought their pain would go away on its own or that it was just normal muscle pain.

Any worker who notices that their injury is developing into a more long standing issue should speak with their treating practitioner, noting any events they think might be relevant, such as a busy period at work, certain tasks they have been doing in recent times or have inadvertently been exposed to toxic materials.

The recording of such information is particularly important in 'over the course of employment' injury claims, where injuries may take weeks or months to develop before they require medical attention.

## Dust and lung diseases

Along with the well-known respiratory diseases, including asbestosis and mesothelioma, silicosis is a 'proclaimed disease' – meaning it is deemed to be due to employment. Under section 51 of the *Workplace Injury Rehabilitation and Compensation Act 2013*, any worker involved in manufacturing or other processes involving exposure to the inhalation of silica dust will be entitled to claim worker's compensation, unless the employer or the Victorian WorkCover Authority can prove it is not related to the work process.

Pre-existing asthma aggravated or exacerbated by occupational activities can also be the subject of a successful WorkCover claim.

**Catherine Sim**, Senior Associate



**If your patient is diagnosed with an occupational disease from exposure to silica dust, asbestos or other chemicals or toxins, they need early legal advice about making a claim.**

Once your patient's legal team obtains a report from you confirming the diagnosis, we can advise your patient on whether they have a potential claim.

Adviceline Injury Lawyers will ensure your patient receives the highest standard of support and advice throughout the entire claims process.

We acknowledge seeking compensation is inherently stressful and our team are available to your patients to answer any questions which may arise.

# Meet Bree Knoester

**Bree Knoester is the Managing Partner of Adviceline Injury Lawyers and leads the firm's industrial diseases litigation practice.**

Bree is dedicated to ensuring that her clients are properly compensated for their injuries, and thrives on providing advice and support to her clients throughout their whole case.

Understanding that for clients, going to court can be an overwhelming and stressful experience, Bree is committed to ensuring that her clients understand what is happening with their case every step of the way.

Prior to joining the firm, Bree was at the Victorian Bar for eight years and regularly appeared in the County Court, Supreme Court and Court of Appeal.

Her experience as a barrister means Bree's clients know she is an expert at navigating the court system. Her advocacy skills are an important part of her skill-set, enabling her to successfully advocate for her clients and negotiate excellent outcomes.

## Experience

Over the course of her career, Bree has been involved in many of the largest cases and settlements in workers compensation.

She assists with all aspects of legal entitlements following a diagnosis of an occupational disease, particularly:

- Weekly payments of compensation and payment of medical and related treatment expenses
- Access to an award of common law damages
- Centrelink and/or superannuation entitlements.

## Awards

- Best Lawyers® in Australia: Lawyer of the Year in Personal Injury Litigation (2020)
- Best Lawyers® in Australia: Personal Injury Litigation (2019-2020)
- Doyle's Guide: Leading practitioner – Asbestos & Dust Diseases Compensation (2016)
- Doyle's Guide: Leading practitioner – Work Injury Compensation (2017)



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## 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.

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.

CONTACT US

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