



Message from the Editor

This edition discusses the legislative changes that occurred during 2015, highlights some of the great results we were able to achieve for our clients, and talks about what we have been up to in the community.

There has been a steady increase in demand for local expert advice in the communities in which we live and work. Understanding the need to meet with this demand, we have expanded our office in Springvale for the second time since opening in 2011. We are also currently finalising arrangements to move into larger premises in Melton.

We are committed to our clients in the outer suburbs and regional areas of Victoria and have established ourselves in these communities. We are proud to be local and look forward to continuing to grow the business and our relationships with client treaters.

- Bree Knoester, Partner

Personal Injury Year in Review

Adviceline Injury Lawyers have achieved outstanding results for clients throughout 2015, always with the help of our clients' treaters. A great legal result allows clients to focus on their recovery or enjoy the time they have left with their family.

Some of our most satisfying WorkCover outcomes involved:

- a worker who sustained a severe knee injury after he was struck by a reversing vehicle at his workplace received \$200,000 for pain and suffering, as well as \$350,000 for past income lost, and a further \$350,000 for future income lost
- a nurse who was injured when a light fell and struck her on the shoulder received \$120,000 to help her deal with permanent pain and restricted movement in her shoulder.

Some of our successful TAC negotiations included:

- a truck driver was psychologically injured when the driver of another vehicle crossed onto his side of the road and was subsequently killed. The impact of the accident affected the truck driver's personal relationships and his ability to work. He received a settlement of \$287,000 and should receive ongoing payments from the TAC for medical treatment
- a grandfather visiting from India was struck on a pedestrian crossing after walking his grandchildren to school. He suffered injuries to his shoulder and ear and continues to live with his children who provide him with assistance. He settled his claim for \$200,000.

Helping asbestos sufferers

Adviceline Injury Lawyers always works fast for clients affected by asbestosis and mesothelioma.

In 2015 the team, led by Partner Bree Knoester, achieved substantial settlements, including amounts of over \$1 million, for clients across Victoria and Australia.

When a client came to us for advice, but without a diagnosis of mesothelioma, Bree personally delivered a sample to a pathologist and organised for that sample to be expertly tested. The results demonstrated that our client did have mesothelioma and a settlement of \$425,000 was achieved within two weeks of meeting the client.

In another case, we achieved a substantial settlement for a 92 year old lady who contracted asbestosis when she was washing her husband's clothes. They had become contaminated following his use of asbestos products to build their chicken shed. Upon discovering who had supplied asbestos based products to the area, the team were able to bring a claim on behalf of their client.

We were also shocked to read about products being imported from Asia which still contain asbestos, including children's crayons and thousands of bogus brake pads that suit HiLux utes and Hiace vans.

- Sarah Thorn, Lawyer



Workers Compensation Law

New legislation

The *Workplace Injury Rehabilitation and Compensation 2013* (WIRC Act) commenced on 1 July 2014. It consolidated the *Accident Compensation Act 1985* and the *Accident Compensation (WorkCover Insurance) Act 1993* into a single Act that is intended to be simpler and easier to use. While the WIRC Act is new, workers compensation remains the same, including benefits for injured worker, how claims are lodged and the way premiums are calculated.

Certificates of Capacity

The VWA Certificate of Capacity was redesigned and the new certificate has been compulsory since 1 March 2015. The new certificate focuses on what an injured worker *can do*, as well as what work duties they need to modify and what they can't do. The certificate provides information about the effect of the injury/condition on the injured worker's current physical and mental capacity.

Speedy Serious Injury applications

Ordinarily, clients have to wait 12-18 months before having their common law proceeding listed in the County Court of Victoria. A new initiative from the Court will allow cases that are ready to proceed to trial, to be fast tracked and determined expeditiously. This pleasing initiative became effective as of January 2016.

Key case – *Mathews v Winslow Constructors*

On 17 December 2015, a Victorian Supreme Court Judge awarded a female worker \$1.3 million in damages. The Judge found that she suffered considerable psychiatric injuries as a direct consequence of the bullying, abuse and sexual harassment levelled at her by employees and subcontractors of the employer. This sets an important precedent for workers bullied in the course of their employment and we will rely upon it to ensure our client's maximise their entitlements to damages.

- Deidre Petrakis, Lawyer



Traffic Accident Law

Transport accidents change thousands of lives every year and 2015 was no exception. There were 257 fatalities in Victoria and countless more injuries and affected friends and family members. In an attempt to provide the best scheme for everyone affected, a few small changes were made to transport accident law.

Mental injury change

In 2015 the Victorian Parliament amended the *Transport Accident Act* so people who have sustained a mental injury because of a transport accident are more likely to be able to access compensation. An injured person now needs to show that their mental injury has a "very considerable" and "more than significant" impact on their life. Previously, they had to also show they had been treated for a mental illness continuously for three years.

The threshold is now lower for all applications, regardless of when the injury was sustained or the application was lodged. This is welcome news for road accident victims who suffer mental injury and for relatives of people who have died in road accidents and suffered nervous shock.

Key cases in 2015

- The Victorian Supreme Court held that drivers do not always need to slow down in the presence of adult pedestrians. The standard of care is that of a reasonable driver and should not be judged with the benefit of hindsight.
- The Victorian County Court found that if a person has two or more accidents and the combined effect is that they suffer a serious injury, they will not be entitled to compensation unless they can show they have a serious injury caused by one of those accidents alone.
- The Victorian Court of Appeal decided a 51 year old man with a 15cm scar on his arm had a serious injury and could bring a claim for compensation accordingly. This provides practitioners with an idea of what may be considered a serious injury.

- Sarah Thorn, Lawyer



Asbestos Law

In 2015, the decision of *Multari v Seltsam* was reversed by legislation which meant that asbestos sufferers did not need to demonstrate that they had a greater than 5% whole person impairment to have an entitlement to compensation for pain and suffering.

The *Multari* decision was worrisome for lawyers and clients alike as many clients were not in a position health-wise to undergo an AMA assessment and the legislation then allowed the Defendants to refer any assessment to a Medical Panel which could take in excess of two months.

For those clients with terminal conditions, it became a real concern that they would not live to see the outcome of a Medical Panel decision and would die without an entitlement to pain and suffering damages. Whilst there was a provision in the *Wrongs Act* to allow for terminal cases to be expedited, this would not assist sufferers of non-malignant conditions who may not meet the terminal criteria.

Thankfully, the Attorney General proposed legislative amendments to reverse the decision of *Multari* to the relief of sufferers, support groups and our clients.

More recently, further amendments to the *Wrongs Act* have created an entitlement for asbestos sufferers to claim compensation for the loss of their ability to care for others.

In a High Court decision of *CSR v Eddy [2005] HCA 64*, the High Court of Australia had said that the law did not recognise such an entitlement. In some states, legislation was quickly enacted to reverse the effect of this decision but it was only until these recent amendments, that asbestos sufferers will be able to make such a claim. These Amendments will also have retrospective effect.

This is good news for asbestos disease sufferers.

- Bree Knoester, Partner



Medical Negligence/ Public Liability Law

Lower thresholds for *Wrongs Act* claims

In November 2015, the Andrews Government passed amendments to the *Wrongs Act* which had the effect of lowering the threshold which injured people must meet in order to be able to claim pain and suffering damages for public liability and medical negligence cases. This was done by amending the definition of "significant injury" to make it an easier hurdle to get over.

Under these new laws, "significant injury" is defined as:

- 5% or more impairment if it involves a spinal injury (this is the new, lower threshold);
- more than 5% impairment for all non-spinal physical injuries;
- 10% or more psychiatric impairment (this is a new, lower threshold);
- loss of a breast;
- loss of a foetus.

These new 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.

We have already seen the benefits of this for clients who had previously been assessed as suffering 5% impairment for a lower back injury. Such clients are now able to bring a claim for pain and suffering damages. So too are a handful of our clients who had previously been assessed as suffering 10% psychiatric impairment. Such clients are now also entitled to proceed with a claim for pain and suffering.

These thresholds do not apply to work injuries and transport accidents, both of which require the injured person to suffer a serious injury before being able to claim pain and suffering damages. For asbestos claims there is no threshold to be met.

In addition to the lower significant injury threshold, the amendments also bring the damages for pain and suffering in line with the maximum sum that can be awarded under the *Workplace Injury Rehabilitation and Compensation Act*.

- Andrea Tsalamandris, Partner

Our news

Springvale expansion

In response to increasing demands for legal advice in Melbourne's South East, we have just completed the second expansion of our Springvale office since opening in 2011. Partner Bree Knoester, Senior Associate Naomi Riggs, Lawyer Marie Pham and four support staff now work in the office. The expansion has seen three offices, two workspaces and a boardroom added.

Head Partner of the Springvale office, Bree Knoester said: "Being based in Melbourne's south eastern suburbs means that our clients do not have to travel into the city to access expert legal advice if they have been injured at work, in a public place or in a traffic accident – or if they suffer from an asbestos related disease.

"This new extension has seen the installation of offices for additional staff and larger meeting facilities which means we are able to meet with more clients and offer a greater range of legal services."

Our Melton office is also moving premises! For more details, see the next edition.

A new website!

During December 2015 we launched a brand new website which includes lots of great new content and resources for medical professionals. Take a look: www.advicelineinjurylawyers.com.au

Lisa Paul appointed Partner

Congratulations to Lisa Paul who was appointed Partner on 1 January 2016.

Lisa has been with the firm for 14 years and manages our Melton office. Living in the Melton area, and being an active participant in the community, means that Lisa understands the need for local expert advice.

Accredited by the Law Institute of Victoria as a Personal Injury Specialist, Lisa predominantly assists people affected by work-related injuries. She also has significant experience in public liability.

In a highlight of her career, Lisa proudly represented the Plaintiff whose winning case still sets the bar for injured worker entitlements to a serious injury certificate for their pain and suffering.



Above: 369C Springvale Road, Springvale



LOCATIONS

Epping

Shop 110B,
Pacific Epping
Epping VIC 3076

Melbourne

Ground Floor
555 Bourke Street
Melbourne VIC 3000

Melton

83-85 Unitt Street
Melton VIC 3337

Moe

Level 1, 18-20 Kirk Street
Moe VIC 3825

Springvale

369C Springvale Road
Springvale VIC 3171

Community News: Melton Djerriwarrh Festival

On Saturday 7 November 2015 we were proud to be once again sponsor, and participate in, the Djerriwarrh Festival in Melton. The community festival involves a street parade, main stage, community information stalls and carnival. This year the festival attracted record crowds of approximately 40,000 people due to the warm, sunny day. Our Melton team were on site at our bright green marquee to introduce ourselves and provide free legal advice. We also gave out Adviceline Injury Lawyers bottles of water which were gratefully received, as well as helium balloons, pens, bags and lollies.

We are proud to be involved in community events in the areas where we live and work. Once again we will be sponsoring and participating in the Springvale Lunar New Year Festival on Sunday 7 February 2016; the Whittlesea Festival on Sunday 20 March 2016; and the Melton Djerriwarrh Festival in November 2016.

Right: Genna Angelowitsch, Lisa Paul and Linda Hanley handing out balloons at the Djerriwarrh Festival



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