

Solar Exposure in the Workplace

Compensation available to workers



Message from the Editor

Welcome to the Spring edition of Legal Check-Up! Spring is a great time to begin a new project and we are getting closer to opening our Epping office and working with our clients in the Northern suburbs. This past month we have had an eminent plastic surgeon join us for a Q&A session and soon we will hear from a pain management specialist. Afternoon tea Q&A sessions are a great way to get to know the doctors that help our clients and to better understand the nature of the medical treatment. This month I am also working in the Gippsland area regularly and I hope to meet more of you in the weeks to come!

Bree Knoester, Partner

It is well known that Australia has the highest incidence of skin cancer in the world with more than 380,000 people treated for the disease every year. At least one out of every two Australians will require treatment in their lifetime for various forms of skin cancer. But it is less well known that sufferers of work related melanoma and skin cancer can access no-fault compensation.

Melanoma is a malignant tumour of the melanocytes which are cells that produce the dark pigment, melanin, in our skin. Melanoma is often caused by UV sun exposure. Melanoma disease can take many years to develop after sun exposure. Sometimes it can take up 40 years to develop melanoma disease.

Outdoor workers in Australia receive five to 10 times more sun exposure than indoor workers, placing them at an increased risk of skin damage and skin cancer. Construction workers have a higher risk of skin cancer and melanoma than many other workers due to long periods exposed to ultraviolet (UV) radiation from direct sunlight and UV rays reflected from nearby surfaces such as concrete.

According to the International Agency for Research on Cancer, UV radiation falls into the same category of cancer-causing agents as tobacco and asbestos.

In Australia it is estimated that approximately 200 melanomas and 34,000 non-melanoma skin cancers per year are due to occupational exposure to UV.



Between 2000 and 2009, a total of 1360 workers' compensation claims for sun related injury/disease were made in Australia, at a total cost of \$38.4 million.

What do I need to know?

Workers are able to lodge claims for lump sum compensation for residual scarring or a permanent impairment as a result of the skin cancer or melanoma disease. Such claims are part of a no-fault compensation scheme can be straight-forward to pursue.

The Victorian County Court (CC) has recognised UV radiation as a workplace hazard and skin cancer as a serious occupational injury.

Bree Knoester looks after these claims for her clients and is happy to discuss any patient inquiries you may have on (03) 9321 9745.

Compensation for Industrial Diseases - Case note



In a recent County Court decision, Judge Dyer found that it is the nature of the employment, rather than an actual causal relationship relevant to a worker, that determines the compensability of industrial diseases in Victoria.

This interpretation of the legislation allows for an injury to be compensable even when, on the balance of probabilities, it is unlikely that employment actually caused the particular worker's condition.

In *Tran v Victorian WorkCover Authority* ('*Tran*'), Judge Dyer provided a detailed analysis of section 86 of the *Accident Compensation Act* which deals with compensation for industrial diseases.

Mr Tran worked as a welder between 1993 and 1996. In 2001, he was diagnosed with adenocarcinoma in the lung. In 2012, he lodged a WorkCover claim, which was rejected. Mr Tran was a heavy smoker.

The WorkCover Authority fought the claim on the grounds of causation. They tendered expert medical evidence saying it was highly unlikely that employment had caused Mr Tran's condition.

Preference was made to the relatively short period of industrial exposure, the short latency period of the disease and the greater likelihood that smoking was the cause.

While acknowledging that this expert evidence might well be correct, Judge Dyer nonetheless found for Mr Tran.

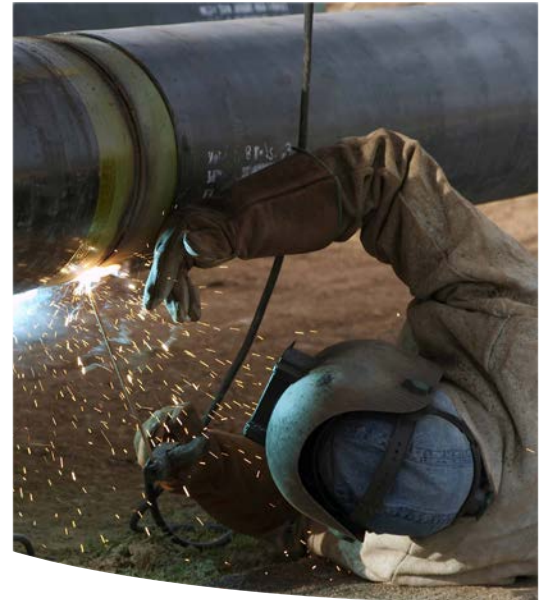
No evidence was tendered on behalf of Mr Tran to suggest an actual causal link between his employment and his condition. Mr Tran's case rested on epidemiological studies which showed that welders are 23% more likely to develop adenocarcinoma than non-welders in the general population.

This 'special risk' associated with welding would appear to open the door for other welders diagnosed with non-small cell lung cancers to seek compensation.

Judge Dyer held that the industrial risk need not be a high risk, the only risk, or even the most obvious risk (it was noted that smokers are 550% more likely to develop adenocarcinoma).

Tran is a helpful development for workers attempting to establish the compensability of their conditions. While on-point epidemiological studies are not going to be available in all cases, focus upon the risks inherent to a type of employment – rather than upon the health particulars of the worker – closes down a potentially devastating avenue of attack against these claims.

David Schwartz, Senior Associate
(pictured above)



New Wrongs Act amendments

The Victorian Government has proposed changes to the *Wrongs Act*, which governs the claims of people injured in public places, by reason of medical negligence or who have lost a loved one in negligent circumstances.

In response to criticisms that aspects of this law were unfair, the Government announced it will make the following changes:

- Lower the threshold for psychiatric injuries;
- Allow high income earners with only a partial work capacity to claim some damages for lost wages;
- Increase the cap on pain and suffering damages; and
- Allow damages for the loss of an ability to care for others.

Andrea Tsalamandris, Partner

Insurers don't get the final word

Under the Victorian WorkCover system, a person is entitled to financial assistance if they suffer an injury at work. There is no need to prove that the injury is permanent or serious, or that the injury was caused by the employer's carelessness.

When a WorkCover claim is lodged by an injured worker, the employer's insurance company decides whether the claim meets the relevant tests. This sometimes means that a worker's claim will be rejected even where they have clearly been injured at work.

It is important to remember that a rejection by a WorkCover insurer is not the end of the road. Workers can challenge the decision through informal channels like Conciliation and, if that is unsuccessful, through Magistrates Court proceedings. Recently, Ursula Donovan and Genna Angelowitsch from Adviceline Injury Lawyers have assisted workers to issue Magistrates Court proceedings and overturn decisions by WorkCover insurers.

If you have any queries about how the WorkCover system operates, we invite you to contact us on (03) 9321 9988.

Genna Angelowitsch, Lawyer

Unwelcome Visitors



The TAC has an obligation to assist the injured back to work where appropriate, but not in an over-zealous and interfering way.

A trend for TAC contractors wanting to attend appointments with injured patients has recently arisen. Many of our clients have told us of vocational rehabilitation providers, appointed by the TAC, pushing their way into medical appointments. In some cases, clients have been told to make an appointment to see their GP so the vocational provider can attend. We believe this is completely inappropriate, as it intrudes upon the confidentiality of the doctor-patient relationship.

The TAC has an obligation to assist the injured back to work where appropriate, but not in an over-zealous and interfering way. As the injured are often unaware of the system, many are intimidated by some of these contractors, who wish to show the TAC that they can "Get people Working" and so continue to be engaged by the TAC.

Injured patients always fear that they will lose TAC entitlements and are often loathe to tell the contractor that they are in no



condition to do a job that is "chosen" for them. The injured rely upon the strength and integrity of their medical advisors to resist inappropriate suggestions of vocational contractors.

We have no hesitation in telling our clients that the patient-doctor relationship is a confidential one and that under no circumstances is it appropriate for this to be interfered with by the TAC contractor.

If the TAC or their contractors have suggestions or questions for medical advisors, the appropriate communication is in writing.

Michael Lombard, Partner (pictured above)

Avoiding a delay in diagnosis of melanoma



The Guidelines recommend that high risk individuals or their partners/carers be taught to self screen and may benefit from regular clinical surveillance which can be aided by total body photography, dermoscopy and short-term digital monitoring.



To avoid delay in treatment, general practitioners should be aware of guidelines in place to assist in diagnosis of melanoma. While delay in diagnosis of melanoma is not a major source of medico legal claims in Australia, claims can be significant given the life threatening nature of the condition.

The *Clinical Practice Guidelines for the Management of Melanoma in Australia and New Zealand* (2008) (the Guidelines) were developed to assist general practitioners and other medical specialists managing patients with melanoma. Reviewing the Guidelines may assist medical practitioners appropriately identify and treat melanoma.

Who is at high risk of developing melanoma?

The Guidelines recommend that high risk individuals or their partners/carers be taught to self screen and may benefit from regular clinical surveillance which can be aided by total body photography, dermoscopy and short-term digital monitoring.

Risk factors for developing melanoma include:

- Increasing age;
- Previous melanoma or other skin cancer;
- Multiple naevi or multiple dysplastic atypical naevi;
- Fair skin and hair, blue/green eyes, heavily freckled skin and skin that burns easily, and
- Family history of melanoma.



Examining for melanoma

Examining for melanoma detection requires examination of the whole skin surface under good lighting. Dermoscopy can provide increased accuracy. Features of melanoma have been summarised by the ABCDE acronym:

- **A**symmetry
- **B**order irregularity
- **C**olour variation
- **D**iameter that is large (usually greater than 6mm)
- **E**volving (size, shape, symptoms, surface or colour changes)

Nodular melanoma

Nodular melanomas make up about 15% of melanomas and are often misdiagnosed as non melanoma skin cancer. They are symmetric nodules with a single colour that is often pink or red. They are generally rapidly growing and require urgent excision.

A copy of the Guidelines can be accessed from the Australian Government National Health and Medical Research website. This article cannot address the extensive information contained in the Guidelines and practitioners are encouraged to review the Guidelines in full.

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Alice O'Connell, Senior Associate (pictured above)

Adviceline celebrates three years in Springvale



“Member for Lyndhurst, Martin Pakula formally opened the extended office”

Adviceline Injury Lawyers (ALIL) has marked three years in Springvale with an event held at their newly refurbished and extended offices.

The event, attended by members of the local community, also marked the arrival of new staff member, lawyer Marie Pham. Marie Pham will work with the other members of the Springvale team: partner Penny Flint, graduate lawyer Daryl de Penha, and legal assistants Lucia Nguyen and Tran Ong.

Member for Lyndhurst, Martin Pakula formally opened the extended office.

Penny Flint said she was very excited to celebrate the milestone, saying it was important that the firm’s services were accessible to the community.

“I think it’s really important that we have an office that is in a local area and is close to our clients,” Penny Flint said.

“We know for a lot of our clients it could be difficult to travel far distances. Going to the city could be troublesome for them, especially if they just want to drop off some paper work or come in to sign something quickly.”

Penny Flint said that over the past three years, the ALIL team has been made to feel very welcome in the Springvale community.

“We have been given a warm welcome by the community and have made many friends including medical practitioners, psychologists, physiotherapists, optometrists, lawyers and many others.

“These are all people who work hard to provide an excellent local service and all people who have a great and positive impact on the lives of so many people in the community.”



Penny Flint said the team are proud to offer an accessible no win-no fee service to those in need.

“We know that often when an injured person calls our Springvale office for the first time, they don’t know what to ask.

They have just been injured at work and they just want to speak to someone to tell them what to do and what they are entitled to. We are proud to offer that service.”

Adviceline Recruits Star, Mark Worthington

Adviceline is proud to announce its sponsorship of Melbourne United superstar Mark Worthington. In 2005-6, Mark won the NBL Rookie of the Year. He has been a standout player in the NBL and has played in Europe and the United States. He is a two-time Olympian and in 2011 won Gold at the FIBA Oceania Championship.

In July 2013, Mark signed on with the Melbourne Tigers after a period of time playing in Serbia. In May 2014, the Tigers changed their name to Melbourne United. Mark truly represents the Adviceline values – a great team player, dedicated and committed – it is great to partner with Mark and to support this new Melbourne team!

Bree Knoester, Partner



Restrictions on Mental Health in TAC

The definition of "Serious Injury" for patients with mental or behavioural disturbances from transport accidents has been severely tightened amid changes to the Transport Accident laws.

The new law provides that a person can sue for compensation only if they have a severe long term mental or behavioural disorder which has been there for 3 years and has been treated by a health professional for 3 years without substantial improvement.

A further requirement is that there is evidence of severe impairment in their relationships and social and vocational functioning.

These requirements do not apply to physical injuries and it is staggering that those with psychiatric injuries are being treated this way.

Country people will be disadvantaged as they can't always access registered health professionals over extended periods.



Mental illness is also episodic and the continuous treatment will be a difficult test to meet.

Emergency workers will be especially affected as they are often traumatised by their life-saving work but will now be subject to much more stringent barriers to receiving compensation.

The Labor opposition has indicated it would wind back this change if elected to Government in November.

Michael Lombard, Partner

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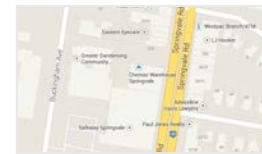
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