

# General Practitioners Newsletter

Summer 2011

Maurice  
Blackburn  
Lawyers

Since 1919

## This edition:

- Cyclists can claim compensation too
- Protect injured workers' safety net

## Cyclists can claim compensation too

Cycling popularity is on the rise and unfortunately, so too is the number of cycling-related accidents.

### Increase in cyclist injuries

According to a report from the Monash University Accident Research Centre in 2009, a study of cycling injuries found that over the 10 year period 1999 to 2008, there were 7,823 hospital admissions and at least a further 12,357 non-admitted presentations to emergency departments in Victoria (totalling 20,180 cases) due to cycling accidents occurring on the road and bike paths. These figures represent an average annual increase of nine per cent per year across the 10 year period.

*'...over the 10 year period 1999 to 2008, there were 20,180 cycling accidents on the road and bike paths'*

Around a third of these cases were attributable to cyclists being injured in collisions with motor vehicles, a third were as a result of cyclists being thrown from or falling off their bike, and the remaining third were attributable to collisions with fixed or stationary objects or other cyclists. Males accounted for 81 per cent of adult admissions overall.

The most frequent injuries sustained were fractures, at just over half the cases (51%). Other injuries included open wounds (13%), intracranial head injuries (10%), dislocations, sprains and strains (6%) and superficial injuries such as bruising or abrasions (6%).

### The law in Victoria - Do I have a claim for compensation?

Two Victorian laws cover most cycling related accidents in Victoria – the *Transport Accident Act 1986* and the *Wrongs Act 1958*. Many cyclists are members of Bicycle Network Victoria and have personal injury and public liability insurance as part of their membership.

The Transport Accident Commission (TAC) scheme covers people injured in accidents where a motor vehicle is involved. This means that *cyclists* involved in an accident with a motor vehicle are also covered under the *Transport Accident Act 1986*.

*The Act* includes an incident involving a collision between a bicycle and an open or opening door of a motor vehicle.

However, if a cyclist is injured in circumstances which do not involve a motor vehicle, they may be able to make a public liability claim under the *Wrongs Act 1958* (as amended) provided they are able to show negligence against another party which caused or contributed to the accident. If negligence cannot be established, then there is no basis for a claim for pain and suffering compensation.

### Circumstances of accidents covered by public liability

Examples of cases where a cyclist may have a public liability claim include:

- where the designated bike path or surface is hazardous because of faulty design and/or construction, materials used, or lack of maintenance leading to unsafe conditions
- where there is no or insufficient signage on the bike path or a roadway commonly used by cyclists to warn of a hazard
- where there are obstacles on the bike path, adjacent to the path, or overhead objects such as tree branches and structures, which the cyclist could not reasonably be expected to avoid despite taking due care where the entity responsible for the bike path knew or ought to have known of such obstacles, but failed to remove them
- where bollards are placed in paths without reflective markers which cannot be observed at night



- country bridges with vertical running boards with gaps between them wide enough for a bike wheel to become stuck, and
- injuries caused by the bicycle itself because of a defective design, construction or a fault in its manufacture.

### Threshold requirements for public liability claims

As with all public liability claims in Victoria, besides proving negligence against another party, an injured person must also satisfy the impairment thresholds of greater than 5 per cent permanent impairment of their body in order to bring a claim for pain and suffering. Such impairment is usually assessed after the injured person has had medical treatment and is considered by their doctor to have stabilised.

*‘...an injured person must also satisfy the impairment thresholds of greater than 5% permanent impairment...’*

Types of injuries likely to satisfy the threshold requirements include:

- bone injuries which require surgical intervention for internal fixation
- head injuries leading to an acquired brain injury
- spinal injuries with or without surgical intervention
- shoulder injuries involving tears to tendons resulting in a restriction of movement
- eye injuries with a partial or complete loss of vision in one or both eyes
- restriction of movement and/or function of a limb including loss of sensation

- joint injuries requiring replacement or partial replacement, and
- elbow, hip, and pelvic injuries involving ligaments/tendon damage.

### Time limits for public liability claims

For an adult, the time limit to bring on a claim for pain and suffering compensation is three years from the date of the accident. People under 18 years of age or a person with a disability have six years.

### How a General Practitioner can help

As a General Practitioner, you may encounter patients who have been injured in a cycling accident. In such circumstances, you can assist your patient by:

1. obtaining a detailed history of the circumstances of the accident, the precise nature of all injuries sustained
2. discussing with the patient the impact the injuries have on their day-to-day life
3. providing a medical report (if required) for the purposes of legal proceedings. Having accurate information about the accident and injuries is important in the legal process
4. making your patient aware that they may have legal entitlements as a result of their accident.

### Bicycle rider's insurance

All members of Bicycle Network Victoria have insurance as part of their membership. This insurance covers them for:

- non-Medicare medical expenses
- loss of Income
- overseas riding (including emergency overseas and repatriation expenses)
- rehabilitation costs
- home help and other support related costs
- permanent injury/disability and death lump sum payments

## Protect injured workers' safety net

The safety net that protects Victorian workers is being threatened in a move to save money at the expense of injured workers.



The Victorian Government plans to remove \$471.5m over four years from the Victorian WorkCover Authority, known as WorkSafe. This will require a change to the *Accident Compensation Act 1985*, which is likely to occur during the first sitting of State Parliament this year.

Over the past decade WorkSafe has invested in public

awareness campaigns to reduce the number of workers injured on the job and it has conducted more proactive and reactive site inspections than any other state.

There are more than 2.5 million people working in Victoria. Each year about eight workers in every thousand are injured at work to a level requiring at least a week off work, medical treatment and compensation. That's at least 20,000 Victorian workers injured each year.

Businesses contribute to WorkCover on the basis that it is an insurance fund for injured workers, and they expect that premiums will be invested securely to compensate injured workers. It is a short-sighted plan that leaves little buffer to keep premiums at an affordable level for business.

Click here to read more and see what you can do to stop this happening.

