INTRODUCTION

Adviceline Injury Lawyers is the personal injury division of Holding Redlich.

Established in 1976, Holding Redlich is a leading industrial law firm with a strong social conscience. We have extensive experience representing individual workers, unions and union members.

In 2008 the firm determined that to emphasise our particular focus, experience and expertise in personal injury law, the division would operate under a new and separate brand - 'Adviceline Injury Lawyers'.

Our commitment to clients, their families and treating practitioners is demonstrated through the establishment of five offices throughout Victoria. Each office is staffed and managed by teams who have a strong understanding of the issues and diverse needs of the local area.

Our expert lawyers advise and assist in a wide range of personal injury matters including workers compensation and industrial accidents (including hearing loss and asbestos diseases), traffic accidents, medical negligence and injuries in public spaces.

OUR PARTNERS

BREE KNOESTER, MANAGING PARTNER
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Bree Knoester is the Managing Partner of Adviceline Injury Lawyers and is an expert in industrial injuries and asbestos/dust diseases. She also has significant experience in sexual abuse and catastrophic injury compensation claims.

Bree was recognised in the 2016/17 edition of Doyle's Guide as a leading practitioner in Asbestos & Dust Diseases Compensation, and recommended in the area of Work Injury and Accident Compensation.

LISA PAUL, PARTNER
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Lisa Paul is a Partner at Adviceline Injury Lawyers and predominantly assists people affected by work-related injuries. She also has significant experience in public liability and medical negligence claims.

Lisa is accredited by the Law Institute of Victoria as a Personal Injury Specialist and was the only personal injury solicitor in Victoria asked to be involved in the re-write of the Accident Compensation Act.

MICHAEL LOMBARD, PARTNER
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Michael Lombard is a Partner at Adviceline Injury Lawyers, and is the partner in charge of our traffic accident division. He is a Law Institute of Victoria Accredited Personal Injury Specialist and qualified mediator.

Michael has been recognised by Best Lawyers® as a leading practitioner in Personal Injury Litigation since 2014.
I have been injured at work – what should I do?
If you have been injured at work, you need to notify your employer within 30 days of you becoming aware of your work related injury. A good way to formally notify your employer is to fill out the Register of Injuries, which must be kept at each workplace.
You should seek any medical treatment necessary. It is helpful to tell your doctor or health provider the circumstances of your work-related injury from the first consultation.
If you incur medical expenses or need to take time off work, you will need to complete a Worker’s Injury claim form. Printed forms are available at the post office or one of our offices. You can also download a copy via this link.
Your employer may also be able to provide you with a copy.
In the claim form there is a section dedicated to when your injury/condition occurred and when you first noticed it. If your work injury or condition developed over a period of time, it is acceptable to write ‘injured over the course of employment’ on the claim form instead of a specific date and time of injury.
The claim form must be given to your employer either by hand or post. If you are claiming for time off work, you also need to have a WorkCover Certificate of Capacity from your treating General Practitioner (GP). An ordinary medical certificate will not be accepted. The initial WorkCover Certificate should cover a period of no more than 14 days and all subsequent certificates should be for a period of up to 28 days.
Your employer has 10 days from when it receives your claim to forward the claim to its authorised insurer (also known as claims agent). It is possible to lodge a copy of a claim yourself with the authorised insurer. This is recommended in circumstances where your employer is refusing to receive your claim, or where a claim is not forwarded to the authorised insurer.
Once the authorised insurer receives a claim it has 28 days to accept or reject the claim. If it rejects the claim it should provide written notice of the rejection. If it does not reject the claim within 28 days, then the claim is treated as accepted. Normally, before deciding whether to accept or reject the claim the authorised insurer or claims agent will arrange for you to be examined by one of their doctors.
How long do I have to make a WorkCover claim?
There is no strict time limit to bring a ‘no-fault’ WorkCover claim. You need to notify your employer within 30 days of you becoming aware of your work related injury. A good way to formally notify your employer is to fill out the Register of Injuries, which must be kept at each workplace.
You only have 6 years from your date of injury to bring a common law claim against your employer. This date may be extended in some circumstances, such as if you have only recently become aware of the seriousness of your injury.
Where do I get a WorkCover Claim form?
If you incur medical expenses or need to take time off work, you will need to complete a Worker’s Injury claim form.
Printed forms are available at the post office or one of our offices. You can also download a copy via this link.
Your employer may also be able to provide you with a copy.
What do I do if my injury/condition developed over a period of time?
If your injury or condition came on over a period of time, it is acceptable to write ‘injured over the course of employment’ instead of a specific date or time on your Workers Injury Claim Form.
What do I do after I have completed the claim form?
The claim form must be provided to your employer either by hand or post. If you are claiming for time off work, you need to also provide a WorkCover Certificate of Capacity from your General Practitioner (GP). An ordinary medical certificate is not good enough. The initial WorkCover Certificate should cover a period of no more than 14 days and all subsequent certificates should be for a period of up to 28 days.
The employer has 10 days from when it receives a claim to either accept it or reject it and then must forward the claim to its authorised insurer. It is possible to lodge a copy of a WorkCover claim with the authorised insurer yourself. This is recommended in circumstances where your employer is refusing to receive your claim, or where an employer cannot be located/found,
no longer operates or if there is doubt as to whether the claim form will be passed on to the authorised insurer within the required time. Penalties can be imposed on employers when claims are not forwarded to the authorised insurer.

**How long does the authorised insurer have to accept or reject my claim?**
Once the authorised insurer receives a WorkCover claim it has 28 days in which to accept or reject the claim. If it rejects the claim, it should provide you with written notice of the rejection. If the authorised insurer does not provide written notice of its decision within 28 days, the claim is deemed to have been accepted. Normally, before deciding whether to accept or reject the claim, the authorised insurer will arrange for you to be examined by one of their doctors.

**Who is covered under WorkCover?**
In order to be covered by WorkCover, the following criteria must be met:

- you must be a worker; and
- the injury must be a work-related injury. That is, the injury arose out of or in the course of your employment or your employment is a significant contributing factor to the development of the injury/condition.

WorkCover is a workers' compensation 'no fault' scheme established by law to compensate Victorian workers who are injured at work or who suffer from a work-related illness. Workers are covered by the scheme regardless of who was at fault.

In certain circumstances, independent contractors may be eligible for workers compensation under the WorkCover scheme. For instance, a contractor who works regular hours with one employer over a period of time may be eligible, even though tax is not deducted from their pay. Clothing outworkers and local councillors as well as others are also considered 'deemed workers' under workers' compensation law.

**What type of work injury claims could I make?**
If you are injured at work, you may be entitled to four different types of claims/benefits:

- a. Weekly payments;
- b. Reasonable medical and like expenses;
- c. Impairment Benefit for permanent injury (also referred to as 'lump sum compensation'); and
- d. Common Law claim - this can include compensation for 'pain and suffering' as well as loss of earnings.

**What am I entitled to if my WorkCover Claim is accepted?**
If you have an accepted WorkCover claim, you are entitled to claim the following:

- Weekly payments of compensation if your work-related injury or illness has left you fully or partially incapacitated for work; and
- Reasonable medical and like expenses.

You may also have an entitlement to lump sum compensation (also called an 'impairment benefit') if you have sustained a permanent impairment as a result of your work related injury.

**Am I entitled to weekly payments? If so, what weekly payments?**
You may have an entitlement to weekly payments of compensation if you have an accepted WorkCover claim and you have an incapacity for work due to your work-related injury.

For the first 13 weeks in which you are incapacitated for work, weekly payments are made at 95% of your pre-injury average weekly earnings (PIAWE) (subject to a maximum).

The calculation of your PIAWE is normally your average weekly earnings over the 12-month period before your injury occurring. This calculation can be complicated at times. If you were regularly paid overtime or shift allowances during this 12-month period, your average overtime and shift allowances will be included in the calculation of your PIAWE for the first 52 weeks of incapacity only and not thereafter.

After 13 weeks and up to 130 weeks of incapacity for work, weekly payments are reduced to 80% of your PIAWE, and continue at that level. If you are able to do some work on a limited basis, you are entitled to 80% of the difference between what you are earning and your PIAWE. In these circumstances, the authorised insurer will ‘top up’ your pay to 80% of your PIAWE.

In most instances, weekly payments will cease at 130 weeks. However some workers can have their weekly payments continue after 130 weeks in circumstances where they have no current work capacity which is likely to continue indefinitely.

If after 130 weeks you are working at least 15 hours per week and are likely to continue being incapable of undertaking further/additional employment or work indefinitely, you may be entitled to additional compensation by way of a 'top-up' payment. Furthermore, in very limited circumstances, you may also be entitled to weekly payments if your undergo surgery after 130 weeks.

**Am I entitled to superannuation?**
If you are eligible, superannuation contributions will be paid by the authorised insurer after the first 52 weeks of weekly payments. A 9% superannuation payment is payable on top of weekly payments only if:

- you were injured on or after 5 April 2010;
- you have already received weekly payments for 52 weeks; and
- upon receiving written notification from the WorkCover insurer regarding entitlement and requesting information, you provide that information to the insurer within three months.

Many superannuation funds contain insurance policies that may allow you to claim disability benefits for Total and Permanent Disablement (TPD) or Temporary Disablement. Claimable benefits from your superannuation fund are in addition to workers compensation entitlements.

**What medical expenses and like expenses can I claim?**
If you have been injured at work you are entitled to payment of reasonable medical and like expenses. This includes costs such as ambulance and hospital expenses, doctors and other medical attendances, medications and aids such as crutches. You may also entitled to personal and household expenses and rehabilitation costs.

Personal and household services that can be claimed include counselling, modification to a home or car, household help, gardening, transportation and rehabilitation services. Rehabilitation services are designed to either return you to your pre-injury job, to re-educate or re-train you, or otherwise assist in obtaining other employment.

You are also entitled to claim for travel expenses to appointments for medical treatment (e.g. to see your General Practitioner (GP), surgeon, physiotherapist) and also medical examinations by WorkCover doctors. We suggest you keep a record of:

- when and who you saw;
- purpose of appointment;
- where the appointment was; and
- distance travelled.

It is recommended that you regularly send these details to the authorised insurer and seek reimbursement as you are entitled to 30 cents per kilometre travelled.

**Can I make a WorkCover claim for stress?**
You can make a WorkCover claim for stress or a mental health issue that requires you to obtain medical treatment or take time off work, if your condition is established to be related to your work.

An exception to this is that you cannot make a claim if your work-related psychiatric injury is wholly or predominantly caused by a reasonable
A lawyer can only act for you if the insurer and your employer agree. A lawyer can provide you with advice about the conciliation process and your options. Whilst a lawyer cannot accompany you at the conciliation conference, they can resolve the dispute between you and the insurer. This might be done by email.

Disputes must be referred to Conciliation within 60 days of receiving the authorised insurer’s decision notice.

In order to refer a dispute for Conciliation, a Request for Conciliation form needs to be filled out and sent to the ACCS together with a copy of the notice you are disputing. It is possible to lodge a request outside the 60 day time frame and request an extension of time, however you must provide reasons for the late lodgement of the conciliation request and there is no guarantee that the extension of time will be granted by the Conciliation Service.

The aim of Conciliation is to try to resolve disputes without the need for court proceedings. All disputes must be referred to the ACCS as the first step before any dispute court proceedings can be pursued.

Conciliation

The ACCS arranges a meeting between you and the WorkCover authorised insurer (your employer can also be present) with a view to seeing whether the dispute can be resolved.

The ACCS will allocate your dispute to a conciliator whose job is to try and resolve the dispute between you and the insurer. This might be done by email or telephone but is more often at a meeting called a conciliation conference. The meeting is informal and nothing to be nervous about.

Whilst a lawyer cannot accompany you at the conciliation conference, they can provide you with advice about the conciliation process and your options. A lawyer can only act for you if the insurer and your employer agree.

Two representation agencies, Union Assist and WorkCover Assist can represent you at the conciliation conference. You can bring a support person such as a friend or family member, as well as a representative such as a union delegate. At the conciliation conference the conciliator will typically ask each party to explain their case with regards to the dispute in question. The authorised insurer will also be required to explain their position. It is then not uncommon for the conciliator to talk to the parties separately with a view to reaching an agreement. Approximately 70% of disputes are resolved as a result of Conciliation.

In very limited circumstances a conciliator can order that the worker be paid the compensation he or she is seeking even if the authorised insurer does not agree. However, in most situations where agreement cannot be reached, the conciliator can do either of the following:

- refer a medical question to a Medical Panel, if the dispute is about a medical issue; or
- declare a genuine dispute and issue a certificate of genuine dispute that will enable you to take your dispute to the Magistrates’ or County Court.

Medical Panel

Where there is a disagreement or uncertainty about an aspect of your injury or condition, professional opinion can be sought from a Medical Panel. If a conciliation officer refers a medical question to a Medical Panel, the Medical Panel is required to provide an answer to the medical question(s) within 60 days.

As part of this process, a Panel of two to three doctors will examine and talk to you about your condition. The Medical Panel consists of doctors who have been selected by the Convenor of Medical Panels, from an approved list of medical experts appointed by the Governor in Council.

The decision of the Medical Panel is final and binding. Other than in exceptional circumstances, there is no appeal from a Medical Panel decision to a Court. The Medical Panel will issue a final written Opinion, which answers the medical questions asked and provides the reasons for the decision.

Court Proceedings

If the dispute cannot be resolved at the conciliation conference between the parties and the matter has not or cannot be referred to a Medical Panel to make a decision, a certificate of Genuine Dispute will be issued by the conciliator.

Should you wish pursue the matter further, this certificate will enable you take your dispute to the Magistrates’ or County Court. Your lawyer will determine which court proceedings will be issued in. Even if court proceedings have commenced, either party can seek leave of the court to have a matter referred to the Medical Panel, if it is a medical dispute.

What are my return to work obligations?

If you are on WorkCover and have an incapacity for work, you have a number of responsibilities under the WorkCover legislation.

Your obligations include making reasonable efforts to return to work in suitable employment or pre-injury employment, making reasonable effort to participate in an rehabilitation program or a return to work plan, participating in an assessment of your work capacity (amongst other things).

The authorised insurer will normally engage a vocational/rehabilitation provider to assist you with the return to work plan. Failing to cooperate or failing to make reasonable attempts to return to work may result in your WorkCover weekly payments being suspended and/or terminated.

Your employer also has a legal obligation to provide pre-injury employment or suitable employment for a period of 52 weeks of incapacity.
PERMANENT IMPAIRMENT CLAIMS

What is a permanent impairment benefit?
A permanent impairment benefit is a once-off lump sum payment. Injured workers who are left with a permanent impairment following a work related injury may be eligible.

This is a ‘no fault’ benefit, meaning you do not need to establish that your employer is at fault, or has been negligent.

An independent doctor would need to examine you in accordance with a guide published by the American Medical Association. The Guide provides specific instructions on how to measure the extent of an injury.

There are minimum levels of impairment that you must meet before you are entitled to a benefit, depending on when you were injured and what injury you suffer.

The impairment benefit (also referred to as ‘lump sum compensation’) is calculated using a specific formula and takes into account the level of impairment you are assessed as having.

This benefit does not impact your entitlement to weekly payments, medical and like expenses, or a common law claim. You do not need to pay tax on this benefit.

What are the minimum levels of impairment required to qualify for compensation?
Your level of impairment must be assessed at the following minimum levels in order to qualify for compensation:

- 5% for musculoskeletal injuries;
- 10% for non-musculoskeletal injuries; and
- 30% for psychiatric injuries.

How much will I receive for an impairment benefit?
Impairment benefit compensation (also referred to as ‘lump sum compensation’) is determined in accordance with a formula set out by law, dependent of the level of impairment you are assessed as having.

Once the level of impairment is accepted, you cannot negotiate on the amount of compensation that you are entitled to.

The amount that a person is entitled to increases by approximately $2,000 - $2,500 for each additional 1% impairment up to 30%.

When can I make an impairment benefit claim?
You may only bring a lump sum claim once your injury has stabilised (that is, it has reached a point where it is not getting any better or worse).

At a minimum, you need to wait at least 12 months from your date of injury.

How do I have to make an impairment benefit claim?
There is no time limit to make an impairment benefit/lump sum claim.

If you are an injured worker, and were not 18 years of age at the time of your work-related injury, the assessment of the impairment benefit claim cannot be made until you attain the age of 18 years.

You must bear in mind that if you have any common law rights, you only have 6 years from the date of injury to make a claim.

COMMON LAW CLAIMS

What is a common law claim?
Some work related injuries are caused due to someone’s fault or negligence. A claim seeking compensation for an injury where negligence is involved is called a common law claim.

A common law claim is a ‘fault’ or ‘negligence’ claim that can be pursued against your employer and/or a third party.

This type of claim can be sought where you have been injured because of an employer’s failure to provide a safe workplace, or through the acts of another party with no connection to your employer. For instance, an occupier of premises.

The compensation sought in a common law claim is called damages. In a common law claim, you may be entitled to claim for both loss of earnings as well as ‘pain and suffering’ damages.

A common law claim is separate and in addition to your entitlements under the WorkCover system.

Damages
There are two main categories of damages sought in a common law claim:

1. ‘Pain and suffering’, or general damages — this is compensation for the ‘pain and suffering’ you have endured and will continue to endure, and your loss of enjoyment of life;

2. Past loss of earnings and future loss of earning capacity — compensation for wages lost because you have been unable to work, and/or are unable to work into the future.

Even where your injury was caused by your employer or another person’s fault, you do not automatically have the right to sue for damages. You must first establish that you have suffered a ‘serious injury’.
When can I bring a common law claim?

Even where your injury was caused by your employer or another person’s fault, you do not automatically have the right to sue for damages. You must first establish that you have suffered a ‘serious injury’, which requires your lawyers to prepare and lodge a detailed application referred to as a serious injury application.

A common law claim must be commenced within 6 years of the date of injury by lodging a serious injury application with the Victorian WorkCover Authority (WorkSafe) or the self-insurer.

What is a ‘serious injury’?

You must have a ‘serious injury’ to be able to bring a common law claim. This means either receiving an impairment assessment of 30% or greater in a lump sum application or qualifying under one of the definitions of ‘serious injury’ set out by law. These are:

- Permanent serious impairment or loss of a body function;
- Permanent serious disfigurement;
- Permanent severe mental or permanent severe behavioural disturbance or disorder; and
- Loss of a foetus.

Whether you meet any of these definitions involves an assessment of the injury and its consequences on your lifestyle and earning capacity to determine if the consequences are ‘more than significant’ and at least ‘very considerable’ when compared with other cases.

The Victorian WorkCover Authority (WorkSafe) or a self-insurer through its lawyers may issue a certificate confirming you have suffered a ‘serious injury’. If your application is denied, then a case can be issued in the County Court of Victoria seeking a certificate. If WorkSafe or a self-insurer denies your application for a serious injury certificate, you have a strict 30 day time limit from the date of the rejection, to issue proceedings in the County Court.

Does the serious injury certificate entitle me to sue for both types of damages?

A serious injury certificate can either be granted to allow you to sue for both ‘pain and suffering’ and loss of earnings, or just ‘pain and suffering’.

Claiming damages for economic loss is only permitted in some cases. Unless you have a deemed ‘serious injury’, you can only claim for lost earnings if you can prove that your present and future earning capacity and earnings have reduced by at least 40%, and that this reduction will be permanent.

To determine whether you establish this loss, a detailed analysis of your earnings and the medical reports is required. It is a particularly difficult constraint because the analysis of your future earnings/earning capacity does not consider whether you are actually working or can get a job, but whether your medical condition allows you to work, and if so, how much money you could theoretically earn.

What happens when I get the serious injury certificate?

If a serious injury certificate is granted, you then have the right to sue for damages. That is, you have a right to bring a common law claim. You then must prove ‘fault’ or ‘negligence’ by your employer and/or a third party.

Strict time frames apply following a grant of a serious injury certificate. There are also important steps that must be completed before you can issue your court case.

These steps include a settlement conference and written offers made by each party in an attempt to settle the case. If your case does not settle during this negotiation stage, a legal proceeding known as a Writ would then be issued in the County Court or the Supreme Court. A judge and jury of six members usually determine the final outcome of your case.

How can I prove it was their fault?

Over the years, courts have broken down negligence into various elements. Some of these are:

- The Defendant must have owed you a duty of care.
- It is important to note that for work injuries, employers have a duty to provide a safe place of work, and therefore it is almost always the case that a duty of care was owed.
- The Defendant must have breached their duty of care.
- In work injury cases this involves looking at whether a reasonable employer in the Defendant’s position should have foreseen that their conduct or inaction involved a risk of injury to you or a class of persons including you.
- The Defendant’s breach must have caused your injury.
- This relies on medical opinion to confirm that you have suffered an injury and your injury is related to the Defendant’s negligent conduct.

How long does a common law claim take?

It is very difficult to estimate how long a common law claim will take. The claim may only be brought after the injury is stabilised (at a minimum, you need to wait at least 12 months from your date of injury), and the medical evidence is gathered.

From this time, the duration varies and is dependent on factors including whether the Victorian WorkCover Authority (WorkSafe) rejects or accepts the serious injury application, the complexity of the case, and whether the case settles prior to litigation.

As a rough guide, from the date of the serious injury application (the first step) common law claims can take between 6 - 24 months. Some common law claims may take longer.

How long do I have to make a common law claim?

A common law claim must be commenced within 6 years of the date of injury. Injuries that arise over time, such as psychiatric injuries, should ideally be commenced within 6 years of the onset of your symptoms.

However, you should seek advice well before the 6 years expires as preparing a case takes some time. Even if you do not think your injury is serious, you should still obtain legal advice regarding your possible right to claim while the circumstances of your injury are fresh in your mind.

In some limited circumstances, you can make a claim more than 6 years after your date of injury, for example if you only recently became aware of the seriousness of your injury or sought legal advice after the 6 years. If this is the case, it is important that you seek legal advice as soon as possible.

Would I have to go to Court?

In a common law claim, there are two stages in the process that could involve going to court – the serious injury application, and the trial regarding negligence.

Any application must be brought bearing in mind that you may have to go to court to establish your claim. As a matter of practice, the majority of cases we act in reach negotiated settlements, particularly after a serious injury certificate is deemed or granted. Adviceline Injury Lawyers will advise you fully on your case and any risks involved prior to any litigation being commenced.

What compensation could I receive?

If you are granted a serious injury certificate, you can bring a claim for ‘pain and suffering’ damages only or for both, ‘pain and suffering’ and economic loss damages.

The amount of ‘pain and suffering’ damages you can claim depends on your circumstances and the impact of your injury.
If the matter goes to court, the assessment of ‘pain and suffering’ damages will ultimately be determined by a jury. As a guide, the minimum amount of ‘pain and suffering’ damages allowed by law is presently $58,960 and the maximum is $598,360 (these figures are as at 1 July 2017). The amount awarded for ‘pain and suffering’ damages varies according to the severity of the injury and the effect that it has and will continue to have on your life.

If you have already received a lump sum payment, this is deducted from any ‘pain and suffering’ damages that you receive.

If you are able to bring a claim for loss of earnings, you can claim for your past and future economic loss. The amount of damages that this includes depends entirely on the amount you can prove that you were earning prior to your injury and your earning capacity into the future. It can therefore only be determined on a case-by-case basis. Furthermore, at law, there is an automatic discount of approximately 15% of economic loss damages which takes into account the vicissitudes of life, which refer to the chance that a risk/loss may occur into the future other than the work related injury. For instance, the development of an unrelated illness or condition.

If you receive damages for economic loss, you are required to pay back any WorkCover weekly payments of compensation that you have already received in relation to the claimed injury. You are also not permitted to receive any further WorkCover weekly payments in relation to the claimed injury into the future. Your medical and like expenses would continue to be paid in accordance with the WorkCover legislation and as long as they are reasonable and necessary.

**What will it cost me to bring a claim?**

Call us on (03) 9321 9988 or visit one of our offices to book your free appointment for preliminary advice about your rights and possible entitlements. If you need urgent legal advice, we can arrange for you to meet with a solicitor within 48 hours.

We are committed to maximising the compensation to be received by injured workers. We only charge for the work we do and in most cases we cap our costs so that you receive the majority of your compensation.

We offer a **No Win, No Fee** arrangement, meaning that if we proceed with a claim you will only have to pay legal costs (solicitor/costs) if we are successful in getting you compensation. If your case is lost, you will not be required to pay for our services.

**LOCATIONS**

**Epping**
Shop 110B, Epping Plaza  
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**

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