

12th Accident Compensation Seminar 2009 Rising to the Challenge

Melbourne 22nd – 24th November 2009



Institute of Actuaries of Australia



Impairment Benefits – finding a better way of working

Paul O'Connor

12th Accident Compensation Seminar 2009

Rising to the Challenge

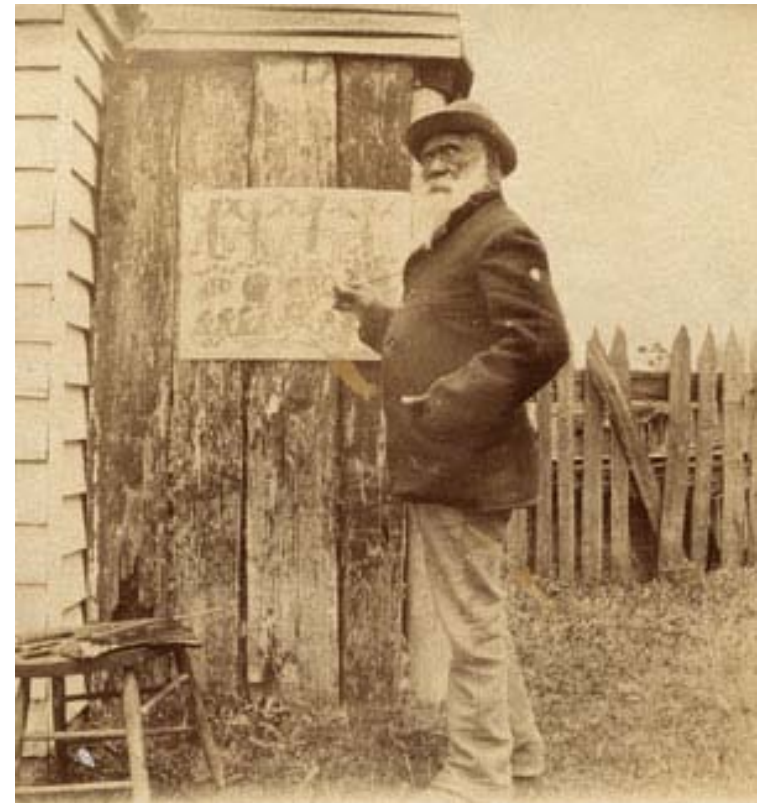
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Welcome





First principles



Injury from accident demands attack on three fronts. The most important is obviously prevention. Next is the obligation to rehabilitate the injured. Thirdly, there is the duty to compensate them for their losses.

Sir Owen Woodhouse 1967



Insight to the challenges...

“I was involved in many hundreds of different cases, mostly for workers in the manufacturing, construction and maritime sectors. Some had suffered horrific injuries, others were able to recover and return to work. Some were heart-rending stories of lives virtually destroyed. Crippling injury would be augmented by marriage breakdown, psychological deterioration and financial ruin.”

“One thing I learned very quickly was the fragmented, antiquated system of compensating injury sufferers produced very arbitrary results. The fact that these arrangements varied from state to state just made the whole thing even more complex and arbitrary.”



Insight to the challenges...



“It is unlikely that we will see any major reform in this area in the near future, as Australia’s various governments are grappling with the challenging task of building uniform national industrial relations and occupational health and safety systems.

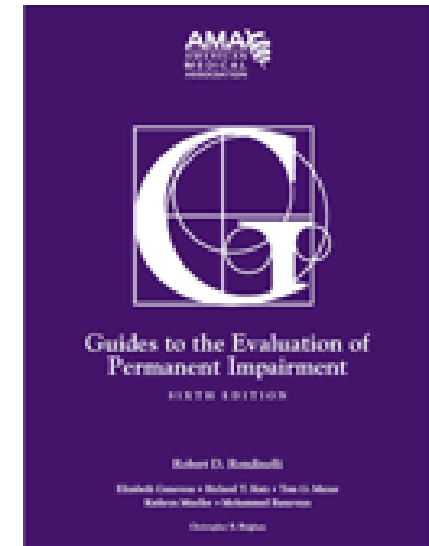
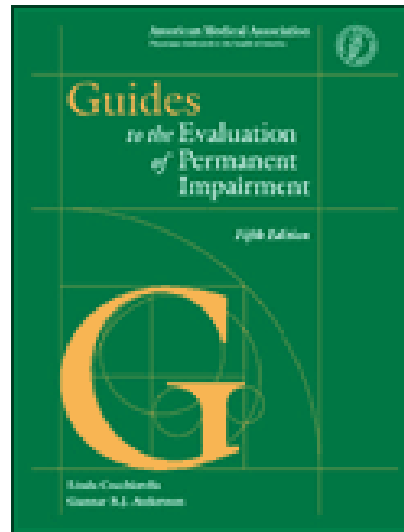
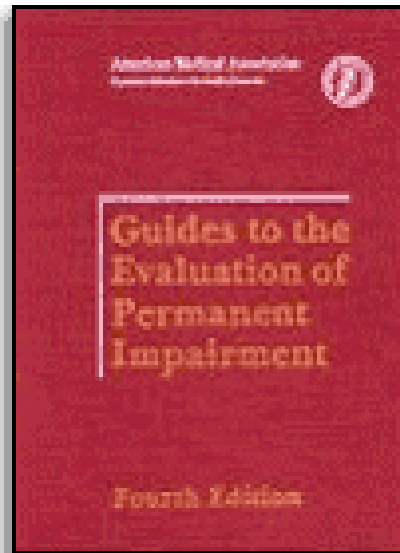
Nevertheless, the current campaign for a national catastrophic injury compensation scheme should trigger a wider debate about injury compensation in our society generally.

The present system is fragmented, inequitable, inefficient and arbitrary. Reform could be some time coming but it’s certainly long overdue.”

Lindsay Tanner, 25 August 2009



Impairment benefits



In a 12 month period...

- 46,873 injured people received impairment benefits
- \$1.712 billion was paid out in impairment benefits.



Scheme objectives...

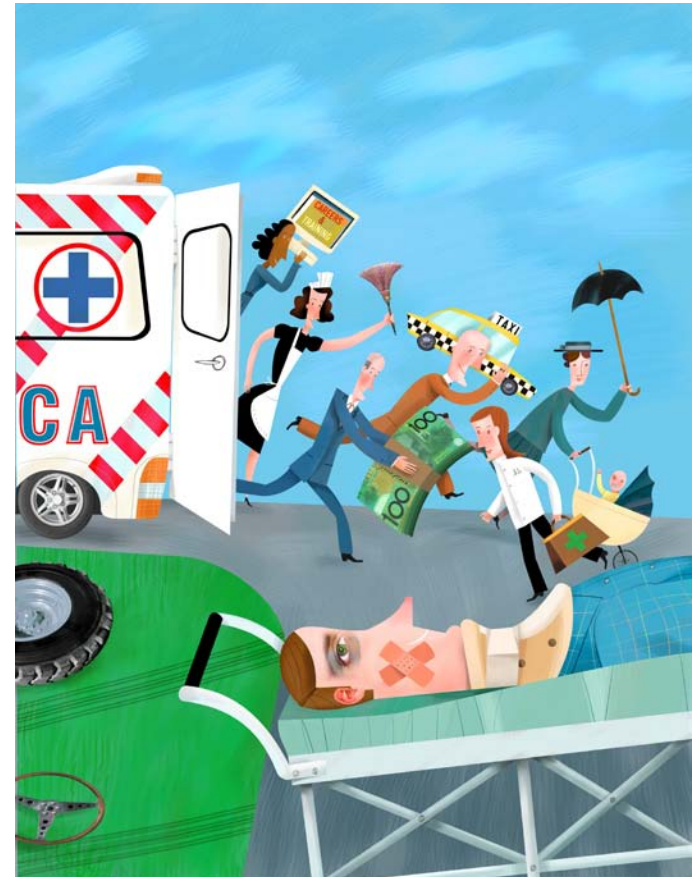
Actuaries have described what's needed:

1. **Equity**: affordability vs. availability
2. **Sustainability**: a durable, affordable program
3. **Clarity**: clearly stated rules
4. **Culture**: reinforcing desired behaviours
5. **Administrative efficiency**: an efficient delivery system.



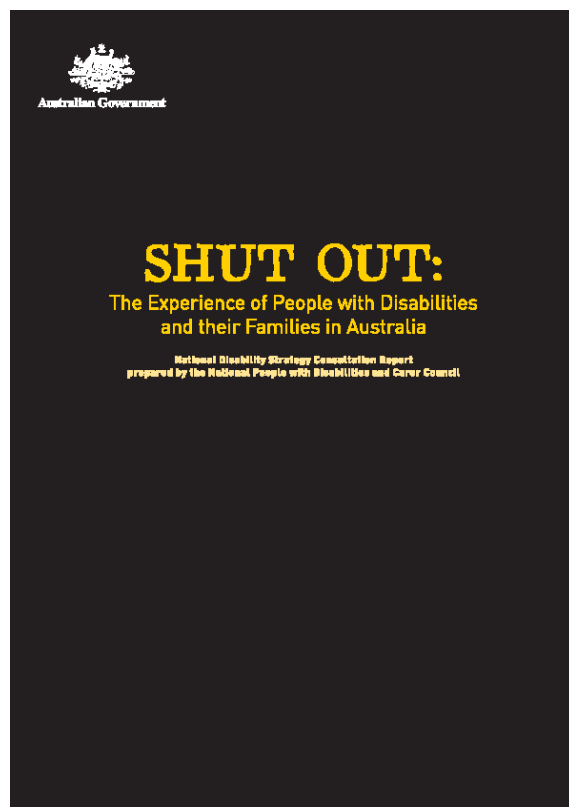
Injured people report...

- There is a lot of 'clutter'
- There is a lack of trust
- Confusion about the process
- They are uninformed
- They do not feel involved
- They expect an adversarial system
- They lack proper information about case outcomes.





Disabled people report...



- **‘Excluded and ignored’** – the experience of exclusion and discrimination
- **‘Broke and broken’** – the struggles of the service system
- **‘Can’t get a job’** – the employment experience of people with disabilities
- **‘Can’t get there, can’t get in, can’t get it’** – negotiating the built environment
- **‘The wasted years’** – the education experience of people with disabilities
- **‘Isolated and alone’**- the social experience of disability.



Just how complex?

- Multiple, non-aligned impairment processes:
 - Three federal systems
 - Eight state workers' compensation schemes
 - Several state CTP schemes
 - Public liability, medical indemnity and disability systems.
- Inconsistent use of controls
 - Thresholds and gateways – affect behaviours
 - Excluded injuries or diseases – policy issues
 - Multipliers and modifiers – recognise limitations.



Highly variable approaches

- Thresholds and caps
- Used as gateways
- Coverage of non-economic and economic losses
- Variable use of AMA editions, modifiers, guides and interpretations
- Contrasting assessment processes and methodology
- High differentials in compensation paid for similar injuries.
- Treatment of pre-existing and multiple injuries
- Treatment of specific injury types (e.g. psychological injury)
- Payment of interim benefits and remittance to payees
- Dispute resolution systems



What we do not know...

- What does it cost to deliver benefits?
- How long after the injury is payment made?
- How many decisions are disputed?
- What are the costs of disputation?
- Who pays them?
- What is the experience of consumers?



Original reform principles



“That approach [table of maims] has been abandoned and the level of payments in future will be determined using a ‘whole person’ approach...”

The ‘whole person’ approach allows the degree of impairment to be assessed on a more accurate basis and expressed as a percentage loss of the use of the ability of the person to undertake normal living activities.”

Minister Brian Howe, introducing lump sum impairment, 1988



“Unfair and in urgent need of repair”



“Australia's military compensation schemes have emerged as the new battle ground for veterans, defence personnel and their families.

Those who are able to navigate the red tape and the minefield of liability and exclusions are then subjected to inequalities and discrimination.”

Ben Mason, lawyer acting in latest High Court impairment disputation, 2009



“Unfair and in urgent need of repair”



"The compensation is not large but it is comforting to know that my knees will be looked after down the track.

I'm also glad that young soldiers coming through, who suffered similar injuries over this period, will also be looked after."

Lt Col Robyn Fellowes, injured soldier awarded lump sums for impairment, 2009



Triggers earlier debates...



“However, the process of assessment...is arbitrary, unstructured, litigious and focused on monetary compensation rather than facilitated recovery of function.

This process has been shown to be unstable and to require constant review. It is also, arguably, detrimental and inequitable to individuals who have sustained an injury.”

John Walsh, ICF Guide, the Australian Institute of Health and Welfare, 2003



Context of Comcare review

- Perceived shortcomings led to an extensive review
 - 15 issues identified in first issues paper (4/09)
 - Extensive responses received from stakeholders.
- Second issues paper released (6/09)
 - 17 submissions on key themes
 - Align maximum death and impairment lump sums
 - Thresholds not popular
 - Strong support for a national approach/guide
 - AMA 5 preferred over AMA 6
 - Divergent views on how to assess mental injury.
- Comcare is reviewing the inputs.



What are we looking at?

- Adequacy of current benefits
- Separate payments structures
- Gateway to common law
- Reasonableness of thresholds
- Multiple injury and pre-existing conditions
- Which guide? Do we modify/adapt/interpret?
- Slow onset conditions
- Psychiatric conditions
- How do we review and keep contemporary?



Catalyst for reform

- National workshop held 2 October 2009
 - Shared challenges and best practices
 - Identified the opportunities for a national approach.
- Principles
 - Finding a ‘scheduled’ way to pay for harm caused
 - Recognises the impact on people’s lives
 - Develop an equitable and efficient framework
 - Fair distribution of limited resources.
- Outcomes
 - Interest and goodwill to have a national approach
 - Research frictional costs of delivery and disputation
 - Draft a policy paper to identify opportunity and trade-offs.



What we need...

- A common approach in all schemes
- A harmonised assessment tool
- Consistent, reproducible assessments
- Nationally accredited assessors
- Strong stakeholder endorsement
- Fewer disputes, resolved quickly and fairly
- Reliable data and parameters of measurement
- A kind group of public-minded actuaries
- A willingness to pitch in and help.



NZ model is an ideal comparator

- An integrated federal system
- Covers all impairments, irrespective of cause
- Rigorous clinical approach to the model used
- Intensive investment in keeping the model 'right'
- Fast, efficient delivery system
- An early adopter of AMA 6
- Very little disputation.





Where to from here?

- Resolve an interim position for Comcare
- Define the compelling logic and case for change
- Work up detailed costing and analysis with IAA
- Resolve the convergence of impairment and disability
- Identify the ‘rice bowls’
- Secure jurisdictional support to ‘let go’
- Cooperate with Safe Work Australia
- Develop a national action plan
- Consult widely with all stakeholders
- Implement ‘a better way of working’.

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Keeping a dream alive...



*EG Whitlam and Sir Owen Woodhouse
29 July, 2009*

“35 years on, the pair are still as passionate as ever and are hoping to finish what started in 1974 – to provide a national, publicly funded, no-fault disability insurance scheme that would provide care and support for the disabled and ill.”

Justin Oh



It matters, so let's rise to the challenge



*Dr Rhonda Galbally AO
Chair, National People with
Disabilities and Carer Council*

Now is the time to plan and act. Australia wide, people see that we clearly cannot continue the way we are going.

To do so would be both socially and financially irresponsible, even scandalous.

This is clearly a socially responsible idea but what people don't understand is that it is also an economically responsible idea.

National Press Club 7 October 2009