Role of Impairment Assessment in Australian & NZ Injury Compensation Schemes

Andrew Fronsko and David Swift
Agenda

• Scheme Overview and Definitions
• Role of impairment assessment in Australian & NZ Compensation Schemes
• Concluding remarks
Scheme Overview: Product

CTP

- Common Law
- No-Fault
- Hybrid (No-Fault, restricted Common Law)

1. NSW has No-Fault Benefits for Catastrophic Care

Workers’ Compensation

- Common Law
- No-Fault
- Hybrid (No-Fault, restricted Common Law)

2. Limits on Statutory Benefits for Income Replacement
Definitions

- **Impairment**: an alteration of an individual’s health status; a deviation from normal in a body or part or organ system and its functioning.

- **Disability**: An alteration of an individual’s capacity to meet personal, social or occupational demands because of an impairment.
Definitions (continued)

**disability** of a worker means—
(a) any physical or mental injury including—
   (i) loss, deterioration or impairment of a limb, organ or part of the body, or of a physical, mental or sensory faculty; or
   (ii) a disease; or
   (iii) disfigurement; or
(b) where the context admits—the death of the worker,

**secondary disability** means a disability that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior disability

S43A
“scheme for assessing the *degree of impairment* that applies to a compensable disability that results in *permanent impairment*”

South Australia, *Workers Rehabilitation and Compensation Act 1986*
Key Compensation Benefits

**Medical and Like & Rehabilitation**
- Generally based on a “reasonable” costs
- implies disability perspective in assessment

**Loss of Income/Earnings**
- Evidence based, based on prior earnings
- Generally based in past earnings, subject to caps

**Loss of Earning Capacity**
- Compensation for loss of earning potential capacity
- Capital payment (loss of human capital) of future
- May be subject to thresholds and caps, and re-assessment

**Lump Sum**
- No-Fault Permanent Impairment
- Pain and Suffering Damages (C/Law)
- Whole Person Impairment rating may be used as gateway or to determine quantum
Impairment Assessment

Two Key Roles in Compensation Schemes

1. Gateway threshold for some compensation benefits:
   - Lump-Sum: common law (pain and suffering)
   - Lump-Sum: no-fault permanent impairment
   - Continuance of certain no-fault benefits

2. Determination of Quantum of Lump Sum benefit
NF Benefit Assessment Frameworks

Impairment rating applicable to certain benefits only…

Impairment based assessment

Disability based assessment
- reasonable costs
## Typical Impairment Scores by Injury Type

### Illustrative Scores of possible 100% of whole person (based on AMA-4)

<table>
<thead>
<tr>
<th>Injury Type</th>
<th>Score Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quadriplegia</td>
<td>95 - 100%</td>
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<tr>
<td>Total loss of sight:</td>
<td>85%</td>
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<tr>
<td>Paraplegia</td>
<td>75 - 85%</td>
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<td>Loss both upper limb:</td>
<td>84%</td>
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<td>Loss of both lower limbs</td>
<td>64%</td>
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<td>Loss of single upper limb</td>
<td>60%</td>
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<td>Severe ABI</td>
<td>&gt;50%</td>
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<td>Loss of single lower limb</td>
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<tr>
<td>Moderate Brain Injury</td>
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<tr>
<td>Total loss hearing</td>
<td>35%</td>
</tr>
<tr>
<td>Loss of sight one eye</td>
<td>24%</td>
</tr>
<tr>
<td>Mild Brain Injury</td>
<td>15 - 30%</td>
</tr>
<tr>
<td>Mild mental and behavioural disorder*</td>
<td>15 - 20%</td>
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<tr>
<td>Shoulder replacement</td>
<td>18 - 30%</td>
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<tr>
<td>Knee/hip replacement</td>
<td>15 - 30%</td>
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<tr>
<td>back injury: radiculopathy</td>
<td>10 - 15%</td>
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<tr>
<td>Mild hearing loss</td>
<td>10 - 12%</td>
</tr>
<tr>
<td>Back strain</td>
<td>5%</td>
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</table>

* WorkSafe Victoria Guidelines
Permanent Impairment – Maximum ($,000)

- **CTP Workers' Compensation**
  - Common Law: $400
  - No-Fault: $259
  - Hybrid (No-Fault, restricted Common Law): $303
  - capped: $304
  - uncapped: $432

- **Workers' Compensation**
  - Common Law: $400
  - No-Fault: $259
  - Hybrid (No-Fault, restricted Common Law): $303
  - capped: $304
  - uncapped: $437
  - $220* (No-Fault, restricted Common Law)
  - $273 (capped)
  - $528* (uncapped)
  - $289 (uncapped)
Scheme Comparison (Overview)

Impairment Lump Sum

% maximum payable

Approximate WPI %

WVS  MAA NSW  QLD ISV  TAC
Nuances that affect use of the AMA Guides

Legislative framework
  – Weightings on benefits for different benefit types
  – Statutory Thresholds
  – Age (recently removed on WA hearing loss) and time limits

Guides are not perfect/infallible
  – AMA 5
    • high rating for spinal surgery with good outcome pain
    • Subjective rating assessment in certain circumstances
    • contradictory assessment methods (eg Chronic Regional Pain Syndrome)

  – AMA 4
    • no values given for rating psychiatric impairment
    • no values given for rating chronic pain

  – “Guides to the Guides” (NSW, SA, New Zealand)

  – Legislative additions or subtractions (eg infectious diseases, pain)
Case Study – TAC (Vic)

Date of Accident
- Except medical excess
- Except the first five working days

MEDICAL SERVICES

HOSPITAL AND LIKE EXPENSES

REHABILITATION
- 18 Months
- Loss of Earnings

DISABILITY SERVICES
- 3 Years
- Loss of Earning Capacity
- if 50% or more impaired

Retirement Age
- Loss of Earning Capacity

3 Months
- Impairment Lump Sum

COMMON LAW DAMAGES:
- Pain & Suffering
- Economic Loss

someone to sue and
30% impaired or “serious injury”
TAC provides for interim payments.

- **Common Law**
  - Loss of Earnings
  - Impairment Lump Sum
  - Common Law Damages: Pain & Suffering, Economic Loss
  - Someone to sue and 30% impaired or “serious injury”

- **No-Fault**
  - Except medical excess
  - Medical Services
  - Hospital and Like Expenses
  - Rehabilitation
  - Disability Services
  - 18 Months
  - 3 Years (if 50% or more impaired)
  - Retirement Age

Date of Accident
- Except the first five working days

ISCRR 1st Australian Compensation Health Research Forum
October 2011
Case Study – TAC (Vic)

Payment and Liability profile

 Liability as at 30 June 2011 and Annual Payments

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<tr>
<th>Liability ($m)</th>
<th>Payments ($m)</th>
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</thead>
<tbody>
<tr>
<td>Liability June 2011</td>
<td>Payments 10/11 (right axis)</td>
</tr>
</tbody>
</table>

Legend:
- Orange bar: Liability June 2011
- Blue bar: Payments 10/11 (right axis)
Civil Liability Act 2003

- Civil Liability Act 2003 (CLA) applies to accidents occurring on or after 2 Dec 2002
- Legislation operates in conjunction with the Motor Accident Insurance Act 1994

Assessing General Damages

- The Civil Liability Regulation 2003 contains Injury Scale Values (ISV) used for calculating general damages
- The objectives of the ISV include promoting:
  1. Consistency between assessments of general damages awarded by courts for similar injuries; and
  2. Similar assessments of general damages awarded by courts for different types of injury that have a similar level of adverse impact on an injured person.
- Under the CLA, injuries are assigned a point value between 1 and 100
  - “0” relates to an injury not severe enough to justify any award of general damages
  - “100” is an injury of the gravest conceivable kind.
Case Study: WorkSafe Victoria

Evolution of assessment/benefits to ensure relevance

1990s  Table of Maims’, AMA2 Spine and NAL (hearing loss)
1997   AMA-4 used for physical impairment
1999   Reintroduction of Common Law: adjustment to processes
2003   Increased benefits & deeming 10% for certain spinal injuries
2003   Clarification of rounding of scores
2004   Hearing loss claims extended for further hearing loss
2006   Infectious Industrial Disease and Asthma assessment added
2009   Max payment increased and accessible if >80% WPI
2009   10% increase in impairment benefits for spinal injuries
Case Study: WorkSafe Victoria

Permanent Impairment Compensation tables

The amount of compensation for impairment benefits is calculated by applying the assessed percentage of impairment to a mathematical formula.

*Impairment benefit compensation tables*

- 12.13.1.1 - Compensation table for physical impairment
- 12.13.2.2 - Compensation table for modified Chapter 3 impairment
- 12.13.2.3 - Compensation table for Chapter 3 SPINE impairment
- 12.13.1.3 - Compensation table for hearing loss
- 12.13.1.2 - Compensation table for psychiatric impairment
- 12.13.3 - S98E no disadvantage compensation table
- 12.13.1.4 - Maximum amounts for more than one injury

The maximum impairment benefit payable for injuries sustained on the same occasion is $527,610 (indexed annually).
1. Worker lodges impairment benefit claim
2. Agent checks claim validity
3. Collection of all treating practitioner reports
4. Liability determination
5. Liability rejected: worker appeals decision
6. Suspension of impairment process
7. Independent impairment assessment
8. Agent reviews IIA report
9. Agent determines and calculates impairment benefit entitlement
10. Agent creates notice of entitlement
11. Worker responds to notice of entitlement
12. Agent pays worker impairment benefit
Challenges in Impairment Assessment

- Modification/exclusions of AMA Guides for specific conditions
  - Pain
  - Vision impairment
  - Psychological /Psychiatric/Mental injury

- Scoring for addition of multiple injuries
  - addition of psychological to physical injury
  - functional overlay

- Scaling of lump-sum compensation relative to injury severity

- Time from DOA → stabilisation → assessment → payment

- Medico Legal costs & use of medical panels
  - Dispute Resolution mechanism – medical or legal matter?
Concluding remarks: Permanent Impairment

**Performs vital role in many accident comp schemes**

(a) Gateway threshold for some compensation benefits:
   - Lump-Sum under common law
   - Lump-Sum under no-fault (generally non-economic loss)
   - Continuance of no-fault benefits

(b) Quantum of Lump Sum payments

**Key role is NF lump-sum compensation**

- Thresholds for physical impairment applied in several schemes
- Max lump sum payments range from $125-500k (avg $250k)
- For mild impairment (~ 25%) compensation typically around $50K

**No standard assessment guidelines**

- AMA-4/5 predominantly used
- Most schemes adopt exclusions and modifications to tailor the Guides to local conditions and client circumstances
Concluding remarks: Permanent Impairment

Themes

1900s
Common Law
• General Damages pain & suffering

1970-1980s
Impairment Lump-sum
• NF alternative to suing, AMA-2

1990s
Payment for Capital Loss
• Capital Loss though loss of function (bodily asset)

2000s
Elements of Disability
• Components of assessment disability based (eg PIRS)
• AMA takes into account ADL. AMA-6 introduces self-reporting of impact

FUTURE?
• Harmonised approach in compensation schemes
• Eligibility criteria & needs assessment for NDIS/NIIS
Harmonization ??

Impairment Assessment Tool Kit

Growing Interest

- Interest from some Regulators and Professional Associations
- Key motive is to simply and enable portability across jurisdictions

Ideal Assessment Tool(s) should satisfy key criteria...

- Consistency (inter/intra rating reliability and replication in rating)
- Clarity and easy of interpretation
- Cost Effective
- Broadly applicable to a diverse range of injury/acquired-disability

Key Issues in the debate

- Scheme financial impact (Balance Sheet & BEP)
- Contagion impacts (other benefit eligibility thresholds/quantum)
- Transitional and frictional costs relative to current system
Impairment

- AMA Guides to Perm. Impairment
  later editions consider elements of disability
- Injury Severity Score (ISV) injury type
- Psychiatric Impairment Rating Scale (PIRS) – ADL, Social, Concentration, Adaptation
- Guide to Evaluation of Psychological Impairment for Clinicians (GEPIC) – based on AMA-2
- National Acoustics Laboratory (NAL) – level of hearing loss

vs Disability

- Functional Independence Measure (FIM, WeeFIM) physical and cognitive disability
- Functional Assessment Measure (FAM) per FIM + cognition, integration elements
- American Spinal Injury Association scale (ASIA) NSW-LTCSA, attendant care levels for spinal injury
- Disability, Support, Training Resource Tool (D-START) SA Disability Services
- Inventory of Client and Agency Planning (ICAP) Qld, ACT
- Instrument for Classification and Assessment of Support Needs (I-CAN) NSW
- Service Needs Assessment Profile (SNAP) NSW
End Note: Disability Assessment Directions

Four Generic Levels of Needs Assessment

Source: Adapted from Human Services, Tasmania Common Assessment Framework (Aug 2009)
End Note: Disability Assessment Directions

Key Elements of Needs Assessment

Source: Adapted from Human Services, Tasmania Common Assessment Framework (Aug 2009)
Role of Impairment Assessment in Australian & NZ Injury Compensation Schemes

Andrew Fronsko and David Swift, October 2011
## Scheme Comparison (Overview)

### Impairment Thresholds & Maximum Lump Sum Payment

<table>
<thead>
<tr>
<th>Scheme Jurisdiction</th>
<th>Physical Impairment threshold</th>
<th>Hearing Loss</th>
<th>Primary Psych/Pychol</th>
<th>Loss Finger/Toe</th>
<th>Maximum Award 1 July 2011 30 Sept 2010 $,000</th>
<th>Formulaic</th>
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<tr>
<td><strong>Worker's Compensation</strong></td>
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<tr>
<td>New South Wales</td>
<td>1%</td>
<td>6%</td>
<td>15%</td>
<td></td>
<td>$220 + 5% for PI of spine</td>
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<td>Victoria</td>
<td>5-10%</td>
<td>10%</td>
<td>30%</td>
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<td>5%</td>
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<td>10% + 5%</td>
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<td>&gt;0%</td>
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<td>$124 single, $185 mult</td>
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<tr>
<td>New South Wales</td>
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<td>&gt;10%</td>
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<td>432 (1 Jul 2011)</td>
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<td>&gt;10%</td>
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<td>$17.5k (about 5% WPI)</td>
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</table>

Note: some schemes do not have rating for pain as the Guides include a component for pain in the organ system ratings
## Scheme Comparison (Overview)

### Impairment Assessment Method

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Impairment Assessment Method</th>
<th>Exclusions</th>
<th>Substitution Hearing Loss</th>
<th>Substitution Psych &amp; Psychol</th>
<th>Substitution Vision</th>
<th>Substitution Other</th>
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<td>AMA-5</td>
<td>Pain</td>
<td>Yes (Mod NAL)</td>
<td>Yes</td>
<td>Yes (AMA-4)</td>
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<td>Victoria</td>
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<td>Pain</td>
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<td>Yes (GEPIC)</td>
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<td>Asthma, Infectious Diseases</td>
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<td>Queens Lanld</td>
<td>AMA-4</td>
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<td>Pain</td>
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<td>Yes (PIRS)</td>
<td>Yes (AMA-4)</td>
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<td>AMA-4</td>
<td>Pain</td>
<td>Yes (Mod NAL)</td>
<td>Yes (Mod PIRS)</td>
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