

**Submission
No 289**

**INQUIRY INTO NSW WORKERS COMPENSATION
SCHEME**

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Submission to the Legislative Council Joint Select Committee on the NSW Workers Compensation Scheme.

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The present inquiry into the NSW Workers Compensation scheme provides the opportunity to address a number of problems within the scheme that both affect its acceptability to the electorate and its financial viability.

As a psychiatrist I will draw to your attention areas generally within my own area of expertise and experience but these also have some relevance to the general area of illness and injury. Of these the first can be acted on immediately and provide substantial savings to the scheme but the second is not open to immediate rectification because further information and research will be required.

1. Adverse outcomes resulting from insurer maladministration.

While over the years injured workers who have become my patients have from time to time complained of problems with insurance payments while off work my clear impression, and that of some of my colleagues, is that this is becoming more frequent. Approvals for treatment are also often delayed.

This is not simply a financial issue but one which profoundly affects patient's mental health and attitude to rehabilitation. A number of studies have demonstrated that both depression and adversarial attitudes toward the employer and insurer lead to poorer outcomes and I am aware of situations where poor protocols and delays for approval of appropriate treatment have cost of the order of one hundred thousand dollars.

It needs to be understood that many injured workers are in a financially precarious situation and that any delay in payment may have catastrophic results such as default on a mortgage leading to extra penalty payments and loss of a house. Clearly this leads to depression and anger and substantially adds to the problems involved in recovery and rehabilitation and to the costs.

Insurers should be required, in their own interest, to provide payments promptly. If further incentive is required insurers could be made liable for exacerbations of illness resulting from their failure to meet their duty of care. This would remove the burden of additional cost from employers. An additional step would be for the insurer to provide immediate financial counselling and advice together with support for the injured workers in dealing with outstanding loans.

Such steps could be taken within weeks and would have an immediate impact on cost. I am currently in the process of planning a research project to examine this problem in more detail.

2. Permanent Impairment Assessment.

This has been an area in which I have been conducting unique research for several years since the introduction of the present use of the Psychiatric Impairment Rating Scale (PIRS).

The essence of the problem is that the PIRS was introduced in haste and without any attempt to examine its validity and reliability. My own research has indicated that it provides an ordinal measure of severity. This means that the scores generally are higher as a person's condition becomes more severe. However it does not provide a valid interval or ratio measure. This means that it cannot be said that someone with a ten percent impairment rating is twice as impaired as someone with a five percent rating.

This problem is compounded by a lack of demonstrated reliability. I have conducted a survey of trained examiners which indicates that while on average the five impairment classes are in order many individuals do not rate

the descriptors of classes in the proper order. This means that both claimants and insurers are likely to be disadvantaged.

My understanding is that the Workcover Authority did set out to undertake a study of reliability but never published it due to the poor results. I have been seeking access to the data held by some insurers to examine the correlations between the ratings of different assessors but have so far been unable to do so.

It should be also understood that this is not a problem unique to New South Wales. Psychiatric assessment using the AMA Guides is beset by the same problems and research has been minimal. This also applies to many other areas of medical assessment.

Apart from the issues of the validity and reliability of assessments there is also a problem with the general quantum of the assessments. As stated in the handbook the aim was to minimise compensation by providing low estimates of impairment. However the low percentage estimate of impairment obtained using the PIRS leads people, quite reasonably, to feel that their assessment is unfair. This is particularly so when an assessment of a comparative group of patients at the time of referral for treatment using the PIRS criteria indicates that most have minimal impairment ratings.

I would suggest that the answer is to revise the PIRS based on further research and provide more realistic ratings reflective of people's real function and distress. So that this does not lead to greater expense the thresholds and payment levels would need to be concurrently raised. There is evidence to suggest that people do not look at illness in a linear manner and would accept that levels of compensation should be proportionately greater for the most severe cases at the expense of lesser compensation for those that have mild, even if significant disability.

Summary of submission by Associate Professor Gordon Davies:

This submission deals with two issues:

First that insurers be required to meet higher standards of administration in regard to timely payment of victims and approval of medical treatment.

Recommendation 1: That the Select Committee recommend that insurers meet a higher standard of care to injured workers and take all steps possible to help injured workers obtain timely and appropriate payments and treatment. Insurers should also be required to provide financial counselling and support to injured workers dealing with financial institutions.

Second that the assessment of permanent impairment is not evidence based and has questionable reliability and validity.

Recommendation 2: That the Select Committee recommend further research in this area and suggest that amendment of the guidelines be undertaken when the results are available. This may require an alteration in both threshold and levels of compensation for a given degree of impairment so that it is cost neutral.

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