Submission No 40

FIRST REVIEW OF THE WORKERS COMPENSATION SCHEME

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SUBMISSION TO THE STANDING COMMITTEE ON LAW AND JUSTICE

NEW SOUTH WALES LEGISLATIVE COUNCIL

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This report is a submission made to the review of the workers' compensation scheme by the Standing Committee on Law and Justice of the New South Wales Legislative Council.

The terms of the review are:

> 1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
> (a) Workers' Compensation Scheme
> (b) Workers' Compensation (Dust Diseases) Scheme
> (c) Motor Accidents Scheme
> (d) Motor Accidents (Lifetime Care and Support) Scheme.
> 2. In exercising the supervisory function outlined in paragraph 1, the committee:
> (a) does not have the authority to investigate a particular compensation claim, and
> (b) must report to the House at least once every two years in relation to each scheme.
> (see also Legislative Council, Media Release, *Review into Workers Compensation Scheme*, 15 August 2016).

The purpose of this report is to summarise (a) the clinical experiences from a medico-legal practice that has been devoted to vocational assessment and (b) to indicate some of my research findings on personal injury that may be relevant to the deliberations of the Committee. No claim is made that this report is comprehensive in its coverage of the issues.

The Submission is independent of any interest group. My professional background is summarised in Appendix A.

The author is not affiliated with any employer or employee organisation, any insurer, legal, rehabilitation or other relevant compensation group. No conflict of interest is declared. No financial support has been or will be received in relation to this submission.

For the record, my attention to the Review was drawn by an email from Unions NSW. The text of this email (19th September 2016) is set out in Appendix B.

The opinions expressed are those of the author and not necessarily those of the University of Sydney. I shall try to be brief and I apologise for any errors or omissions in this submission.

I shall commence with some subjective impressions.

Subjective impressions of workers' compensation cases

There are various general observations that one might make from assessing many patients over several decades. These inferences are largely subjective Some are not remarkable statements. Seventeen observations that I have noted are:

(a) The overwhelming majority of cases that I assess are genuine in their complaint. The disability is attested by admittance to hospital, undergoing surgery and detailed medical reports from treating doctors including medical assessment centre findings. By and large the patients assessed had a whole person impairment greater than 10%.
(b) The burden of workplace accidents is not distributed evenly throughout the population (a) it falls heaviest on those who are least educated; (b) as expected there is greater propensity for injury in labouring jobs. Consequently, the population of injured workers is highly selective.
(c) Very few patients understand the compensation system or are aware of their legal rights.
(d) The needs of the individual are not paramount in the focus of most rehabilitation agencies. Their focus is on satisfying the insurer through a speedy return to work.
(e) The injured worker does not have a rehabilitation advocate.
(f) Examination of any patient file shows that there is a huge amount of duplication of information collection in the system. Patients are constantly being asked the same questions.

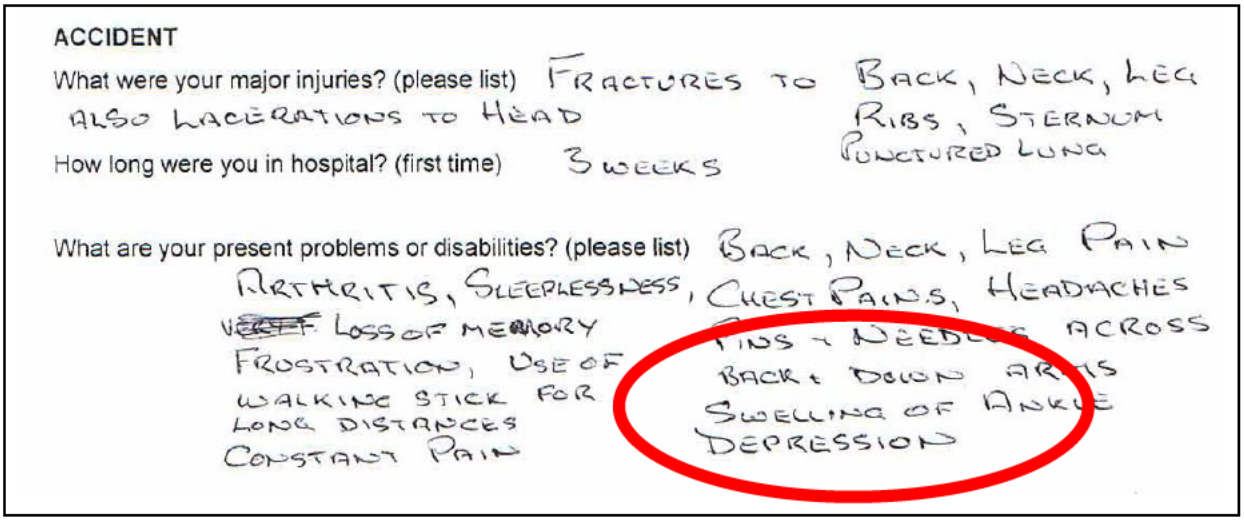
(g) With few exceptions, most employers are not sympathetic to someone who has incurred an injury. There is no sense of rehabilitation obligation.

(h) The labour market treatment of those with injury is not particularly genteel.

(i) The difficulty of achieving a return to work following injury is underestimated. Quite often re-employment prospects are affected by a relative lack of transferable skills, limited English language proficiency, poor literacy skills, a prolonged absence from the workforce, restrictions in the local labour market and any negative employer perceptions of ability.

(j) Almost invariably, insurers fail to provide decent retraining for a new career. Where training is offered, often it is not meaningful or substantial. It tends to be focused on short, inexpensive courses through private providers.

(k) The impact of an injury goes beyond the physical aspects. It is common for patients (approximately 48%) to list "depression" or "anxiety" amongst the list of complaints for musculoskeletal injuries, burn injuries, vision impairment, hearing impairment and other conditions. See the excerpts below from pre-interview medical questionnaires.



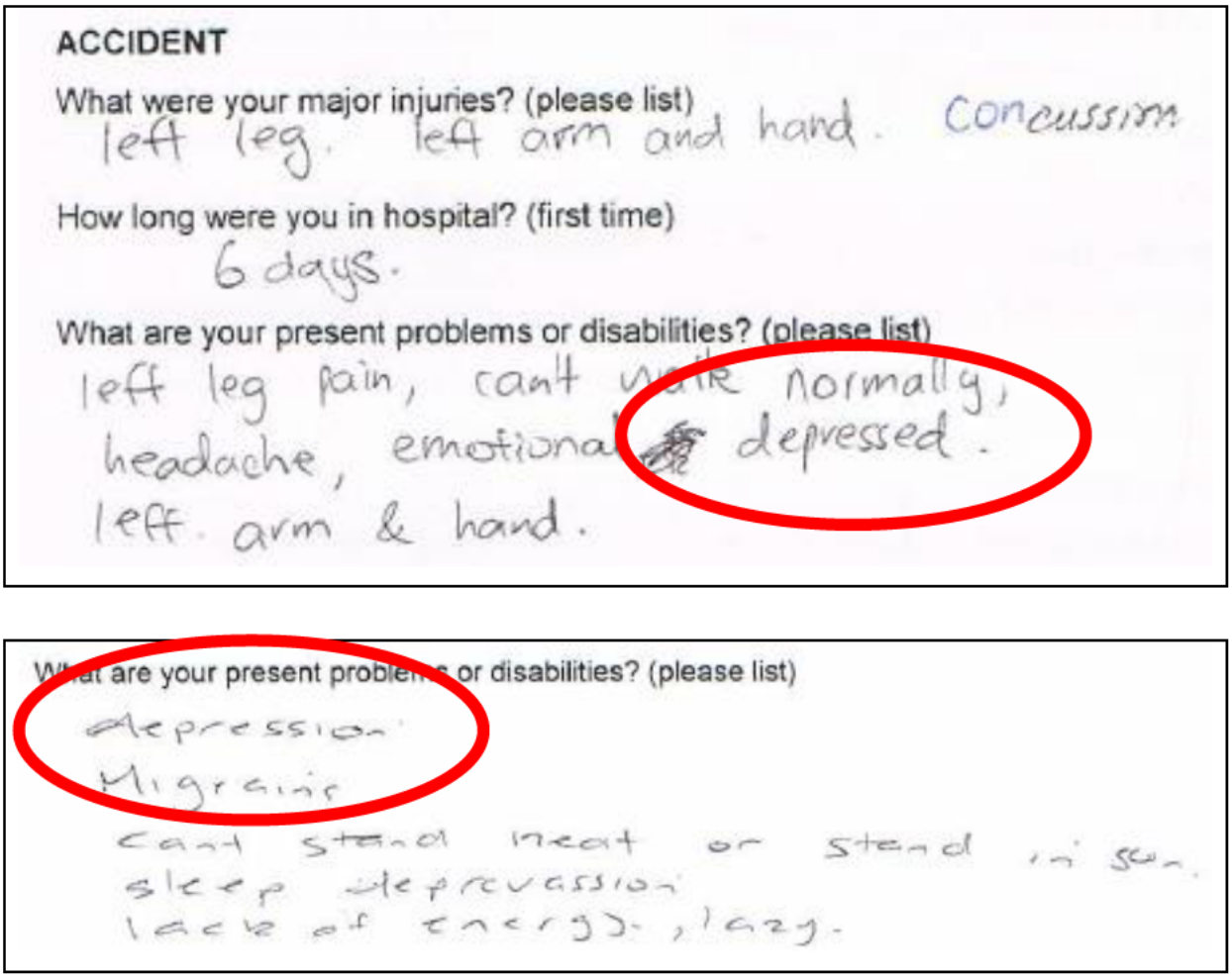
ACCIDENT

What were your major injuries? (please list) FRACTURES TO BACK, NECK, LEG ALSO LACERATIONS TO HEAD RIBS, STERNUM PUNCTURED LUNG

How long were you in hospital? (first time) 3 WEEKS

What are your present problems or disabilities? (please list) BACK, NECK, LEG PAIN ARTHRITIS, SLEEPLESSNESS, CHEST PAINS, HEADACHES ~~VERY~~ LOSS OF MEMORY FRUSTRATION, USE OF WALKING STICK FOR LONG DISTANCES CONSTANT PAIN PINS + NEEDLES ACROSS BACK + DOWN ARMS SWELLING OF ANKLE DEPRESSION

Excerpts from a pre-interview medical questionnaire



ACCIDENT

What were your major injuries? (please list)
left leg. left arm and hand. Concussion

How long were you in hospital? (first time)
6 days.

What are your present problems or disabilities? (please list)
left leg pain, can't walk normally, headache, emotional depressed.
left. arm & hand.

What are your present problems or disabilities? (please list)
depression
Migraine
can't stand heat or stand in sun.
sleep depression
lack of energy., lazy.

Excerpts from a pre-interview medical questionnaires

(l) There is a major issue in helping people with chronic pain.

(m) There are individual differences in tolerance for pain, that affect one's ability to return to work.

(n) The impact of an injury extends to one's family and personal relationships. Almost every aspect of life is disrupted.

(o) The focus of the workers' compensation system is on the short-term adjustment. The long-term effects of some injuries are not envisaged. While someone may return to their workplace, there is no guarantee that they will be able to continue working through to retirement.

(p) The time required for a return to work is often greatly under-estimated (by the individual as well as others). Indicative times for recovery are

available.[1] Although a speedy return to work is beneficial, in some instances a considerable period of adjustment is required.

(q) There is an overwhelming impact on quality of life of a successful return to work. Those who attempted a return to work but were now not working had an even lower quality of life than those who had never worked.

Furthermore, three cases were selected from my files. [2] These illustrate that for any one of a number of valid reasons, the system needs to be continually fine-tuned.

Case A – additional family issues over and above an accident

A 39-year-old female suffered a lower extremity injury injured in a work-related accident when she was aged around 28 years. She had been employed as a production assistant by a labour hire company for some seven years. She told me that she continued to work on light duties. She underwent a minor operation and on her return was transferred to office duties. Her position was terminated formally some 9 years ago. She has tried several jobs since that time. This included voluntary work. She has not received training support from the insurance company but has completed a number of TAFE courses on her own initiative. She undertook some unpaid work experience. At the present time she receives a workers' compensation benefit. She has looked for work elsewhere. She applies every week for jobs. She last applied for work as an inquiry clerk. Her stated problems or disabilities include, amongst others: present problems and disabilities included, amongst others, "constant pain, family issues…".

Case B – lack of retraining support

A 44-year-old male store manager was injured in a cumulative series of work-related accidents that extended over a 14-year period. He has undergone two arthroscopies, followed by bi-lateral knee replacements. At

[1] Talmage, J. B., & Melhorn, J. M. (Eds.) (2005). *A physician's guide to return to work*. American Medical Association: AMA Press.

[2] Demographic and identifying details have been altered randomly to preserve confidentiality and anonymity

the present time he continues in receipt of a workers' compensation benefit of around $1300 per fortnight. He has not looked for work elsewhere. His own estimates of his ability to continue working were stated to me as: "I don't think so". It has been six years since he last worked – he has not received retraining support. Medical opinions indicated that he is "…unable to do the pushing, pulling, lifting and carrying of heavy objects, climb ladders, squat or kneel or do prolonged standing necessary for the duties of a store manager…".

Case C – the system discriminates against those who are older and least able to defend themselves

A 59-year-old female underwent a laminectomy followed by spinal fusion. There is now a cauda equina syndrome[3], urinary incontinence and radiculopathy.[4] These arose from two work-related accidents. She returned to work after the first accident but was re-allocated to very heavy duties and suffered a second accident. She last worked in 2012. The special difficulties she would have in working now included: "lifting patients or lifting anything… could not lift oxygen cylinder; couldn't do sweeping, mopping, high dusting; standing for too long, walking for too long; can't clean toilet". At the present time she continues in receipt of a workers' compensation benefit of around $1300 per fortnight.

Three or even more case studies, however, are insufficient to prove a general point but they are more than adequate to show that there are manifold issues arising from an injury.

In terms of consequences for individuals, I analysed some recent data on well-being (health, energy for life, daily activities, satisfaction with self, satisfaction with personal relationships, money for one's needs and satisfaction with living conditions). When 166 workers' compensation patients were asked about their quality of life using the *World Health*

[3] Cauda equina syndrome - symptoms from the compression of lumbosacral nerve roots (includes low back pain, sciatica, sensory disturbances, bladder and bowel dysfunction, and lower extremity motor loss)
[4] Radiculopathy - caused by compression or irritation of a nerve as it exits the spinal column; pain radiates into the thigh, calf, or foot

Organisation's EUROHIS Quality of Life Scale, only 28% were satisfied or very satisfied with their overall quality of life. Only 24% had enough money to meet their needs. Again these findings are not put forward as conclusive but as indicative of personal needs within the system.

Workplace injuries in Australia

For the most part this section of the paper adopts the definition of the government statistician with respect to work-related injury or illness, namely: "any injury or illness or disease which first occurred in the last 12 months, where a person suffers either physically or mentally from a condition that has arisen out of, or in the course of, employment. The injury or illness was considered to be in scope if the respondent first became aware of it in the last 12 months, even though the cause of the injury or illness may have occurred outside the 12-month reference period. Included are injuries or illnesses that occurred while commuting to and from work, outside the place of work but while on work duty, or during work breaks" (Australian Bureau of Statistics, 2014, p. 46). [5]

Workplace injury is not identified as a separate causal category in national reports on disabilities. This is despite the fact that (a) its occurrence far exceeds that of disability conditions such as cancer, diabetes, heart disease, stroke or dementia[6] and (b) that occupational factors account for much of the prevailing musculoskeletal conditions, acquired hearing loss or respiratory diseases.

Certainly, workplace injury has been the subject of some studies in Australia but the effort has been fragmented. Generally, research on this topic has occurred through an administrative lens with one eye on managing the level of compensation claims. An example is the statistical bulletin published by regulatory authorities such as WorkCover New South Wales (2012/13). For example, in 2012-13 there were a total of 105,009

[5] Australian Bureau of Statistics (2014). *Work-related injuries, Australia, July 2013-June 2014*, Catalogue No. 6324.0. Canberra: Author.
[6] Australian Bureau of Statistics (2013). *Disability, ageing and carers, Australia*. Catalogue No. 44300DO001_2012. Canberra: Author.

employment injuries in New South Wales with 33,579 injuries incurring at least one week of weekly benefit entitlement as well as 103 fatalities. Data from the 1995 Australian Workplace Industrial Relations Survey and indicated that some 17 per cent of the 9908 employees who participated in the study had reported a workplace injury.[7]

Probably the number of workplace accidents is under-reported and fatalities may be a *de facto* indicator of the seriousness of the problems associated with workplace injury.

An early report on occupational fatalities showed that Australia had a fatality rate well above that of established market economy nations and five times that of the UK.[8]

By 2005, the comparison of Australia with other nations had improved. At that time the accident rate for non-fatal accidents was below the overall average for all nations but still four times that of the UK. There were around 210,000 non-fatal accidents with less than or equal to three day's absence for an estimated working population of 8,617,000 in Australia.[9]

Time lost from work has been another aspect that has been investigated. In 1998–1999, compensated injuries in Australia resulted in an average of 2 months' lost work and the estimated cost at that time was around $7,000 (National Occupational Health and Safety Commission, 2000).[10] Over the period 1995-2008, a total of 448,868 claims were reported in Victoria. Around 30 per cent were recurrent claims that accounted for some 104,556 years of time lost from work.[11]

The results for this report were derived from the seventh national survey of *Work-Related Injuries* by the Australian Bureau of Statistics, (2014). This is

[7] Barling, J., Kelloway, E. K., & Iverson, R. D. (2003). Accidental outcomes: Attitudinal consequences of workplace injuries. *Journal of Occupational Health Psychology*, 8(1), 74-85.
[8] Takala, J. (1999). Global estimates of fatal occupational accidents *Epidemiology, 10*(5), 640-646.
[9] Hamalainen, P., Takala, J., & Saarela, K-L. (2006). Global estimates of occupational accidents. *Safety Science 44*, 137–156.
[10] National Occupational Health and Safety Commission. (2000). *Compendium of workers' compensation statistics, Australia, 1998–1999.* Canberra: Commonwealth of Australia.
[11] Ruseckaite, R. & Collie, A. (2013). The incidence and impact of recurrent workplace injury and disease: a cohort study of WorkSafe Victoria, Australia compensation claims. *BMJ Open*, 3.

a stratified, random, multiple household survey conducted as a supplement to the monthly labour force survey of 42,100 private dwellings. It includes urban and rural areas but excluded indigenous community collection districts located in very remote regions of Australia. The final sample comprised 27,300 persons.

Incidence and prevalence of workplace injury in Australia

In 2013-2014 work-related injury and illness was reported by 531,800 persons. The proportion of those who have suffered a workplace injury or illness in the last 12 months has decreased consistently over time. For males and females combined it has fallen from 6.3% in 2005-2006 to 4.2% in 2013-2014.

Demographic background of work-related injury

The rate of work-related injuries per thousand people is related to age and sex. It is far lower for females (35.6 per thousand persons) than for males (48.9 per thousand persons). The differences in the proportions are statistically significant.

Moreover, there are age differences and these operate differently within each sex. For males it is high in the younger groups and remains relatively constant until age 54 then declines. The pattern for females is affected by their age-related participation rate in the labour force. The rate of work-related injuries and illnesses declines for the age group 25-34 then increases to age 64 and subsequently declines markedly after age 64 (see Figure 1).

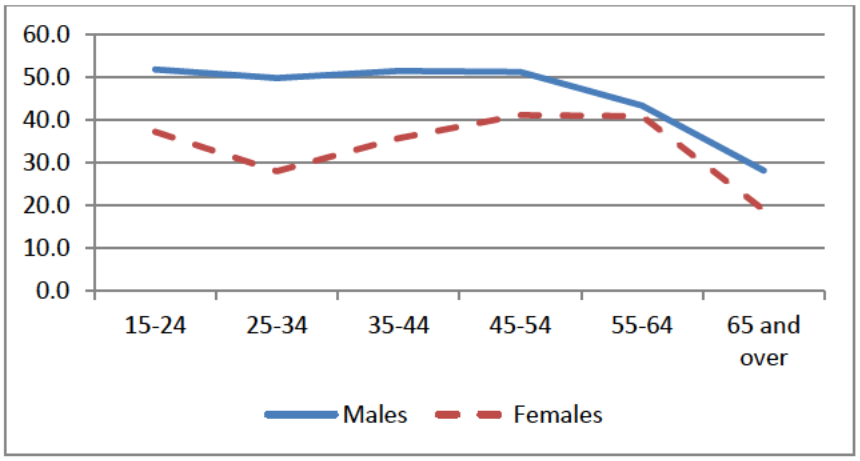


Figure 1. Age and sex difference in work-related injuries and illnesses per thousand employees.

Educational achievement is also related to workplace injury. In one sense education is a proxy for the type of work with higher level qualifications required typically for the "safer" forms of work. People with a bachelor's degree had a .23 probability of injury compared with .43 for those with no post-school qualification. The highest probability (.679) of a workplace injury was for those in labouring type jobs (Certificate I/II) and this was followed closely by .611 for those at around a trade level (Certificate III/IV). By any measure these are very high rates of injury compared to the remainder of the workforce.

Workplace factors related to injury

There are a number of work-related factors that impinge upon illness and injury. These include the fact that most injuries occur to employees (93%), to full-time employees (77.3%) but especially to the 48.4% of all those who worked more than 35-39 hours per week.

Shift-work arrangements made up 29.6% of all work injuries and illnesses.

Length of employment was a factor and 70.4% had worked more than two years but at the same time those who had worked less than six months made up around one-sixth of injuries.

The picture is complex and it appears that full-time workers who exceed the 35-39 hours are a high risk group, especially if they have been doing this for a number of years.

The logic behind this is simple if one takes into account the probability of an accident per hour multiplied by the increased number of working hours and multiplied again by the extended number of years.

Occupation and industry

Occupation and industry are also related to the extent of work injuries and illnesses. While the raw figures are of interest they can also be misleading as they disguise the probability of injury.

For example, 73,900 professional reported a work related injury or illnesses in the last 12 months compared with 68,500 labourers. This overlooks the fact that there are far more professionals (2,627,700) compared with labourers (1,032,700) in the Australian labour force.

The proportion of injuries per employee for professionals is 2.81% compared with 6.63% for labourers.

Machinery operators and drivers have the highest rate of injury and as most likely expected, clerical workers have the lowest rate of injury.

The results are summarised for both occupation and industry in Table 1. Three industries dominate workplace injuries and these are manufacturing (8.19%), transport (7.63%) and agriculture, forestry mining with 7.23%.

Table 1a. Injury rate per employee – occupational level (N= 11,435,200)

Occupational group	Injuries per employees
Managers	3.98%
Professionals	2.81%
Technicians and trades workers	7.23%
Community and personal service workers	7.29%
Clerical and administrative workers	2.18%
Sales workers	2.90%
Machinery operators and drivers	8.75%
Labourers	6.63%

Table 1b. Injury rate per employee – industry level (N= 11,435,200)

Industry group	Injuries per employees
Agriculture, forestry and fishing	7.23%
Mining	4.16%
Manufacturing	8.19%
Electricity, gas, water and waste services	6.85%
Construction	5.48%
Wholesale trade	5.39%
Retail trade	3.09%
Accommodation and food services	5.86%
Transport, postal and warehousing	7.63%
Information, media and telecommunications	2.28%
Financial and insurance services	1.80%
Rental, hiring and real estate services	2.06%
Professional, scientific and technical services	1.86%
Administrative and support services	2.77%
Public administration and safety	4.87%
Education and training	3.36%
Health care and social assistance	5.31%
Arts and recreation services	3.60%
Other services	4.93%

Outcomes associated with work-related injury or illness

Work-related injuries in Australia are dominated overwhelmingly by chronic joint or muscle conditions and sprain/strain injuries. They account for more than half of all injuries (see Figure 2). In the same way that work-related injuries are dominated by two conditions, the same level of domination also occurs in relation to their origin or causes (see Figure 3). Lifting, pushing, pulling or bending accounted for 34% of all injuries. This was followed by 20.0% for being hit or cut by an object or vehicle. Falls on the same level (i.e., slips or falls) accounted for one-eighth of injuries.

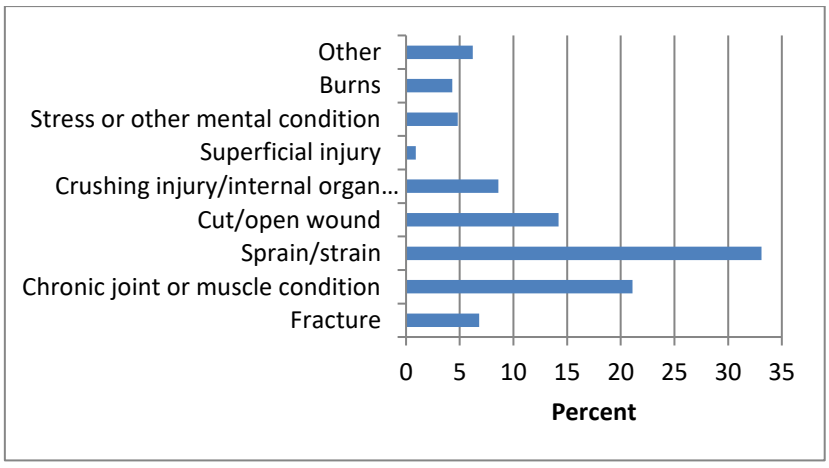


Figure 2. Type of work-related injury or illness.

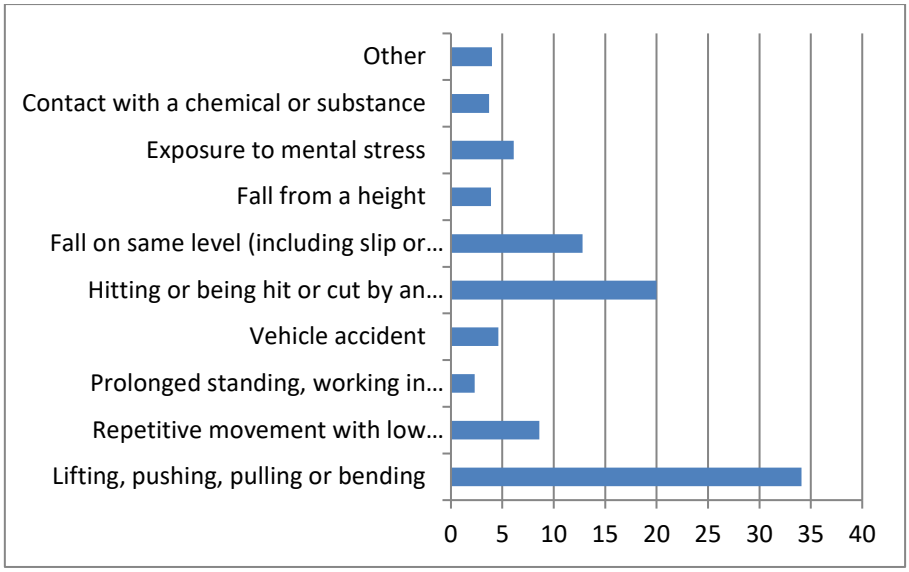


Figure 3. Origins of work-related injury or illness.

Employment implications following injury

There are lingering effects of injuries that affect a sizable proportion of people. More than four-fifths of the group who had suffered a workplace injury in the last 12 months rated their health as excellent, very good or good but a significant proportion (13.3%) rated their health as fair or poor.

The number of days absent from work is related to the extent of the injury. Many injuries do not result in substantial absence while others are more likely to entail 5 days or more of absence. In Figure 4 the modal absence for each type of injury is classified into none, mild (1-4 days' absence) and moderate-severe (5 days or more). Falls were more likely than not to bring about moderate-severe lengths of absence. Exposure to mental stress was also related to prolonged absence. Vehicle accidents were linked with mild to moderate levels of absence. Injuries that were not related to prolonged absence were: prolonged standing, working in cramped or unchanging positions; contact with chemicals, repetitive movement with low muscle loading; lifting, pushing, pulling or bending; and hitting or being hit by an object or vehicle.

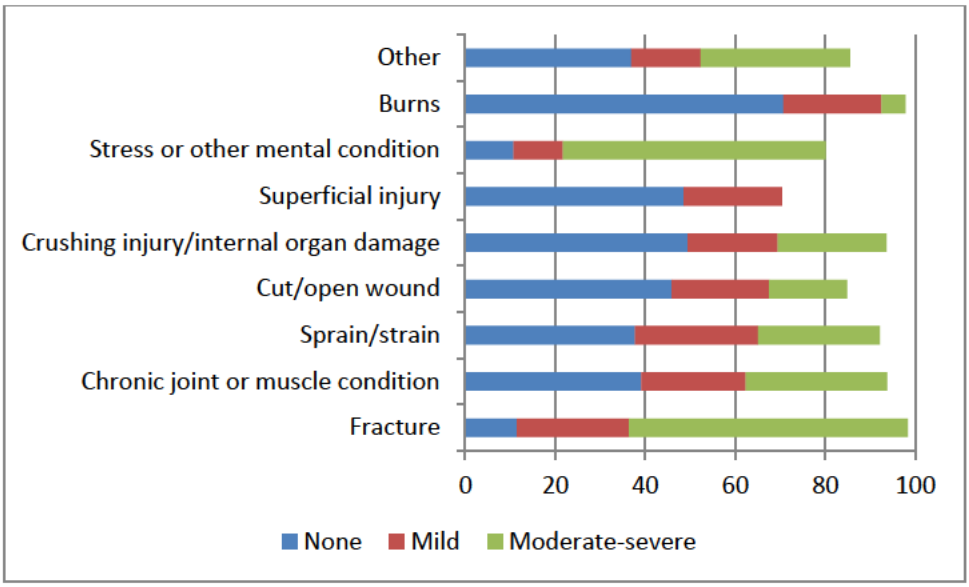


Figure 4. Days or shifts absent from work in the last 12 months due to type of most recent work-related injury or illness sustained.

Only a small proportion of employees failed to return to work following an injury. This is around 2% but amounts to 11,100 persons out of the 531,800 who suffered an injury or illness. For most injuries there is no loss of work (38.6%) but a substantial proportion (17.9%) involve a loss of 11 days or more from work.

The raw figures are summarised in Figure 5. A broader indicator of return to work is to consider the proportion that had suffered a workplace injury in the last 12 months and were employed in the week of the survey. This was 92% (percentage rounded).

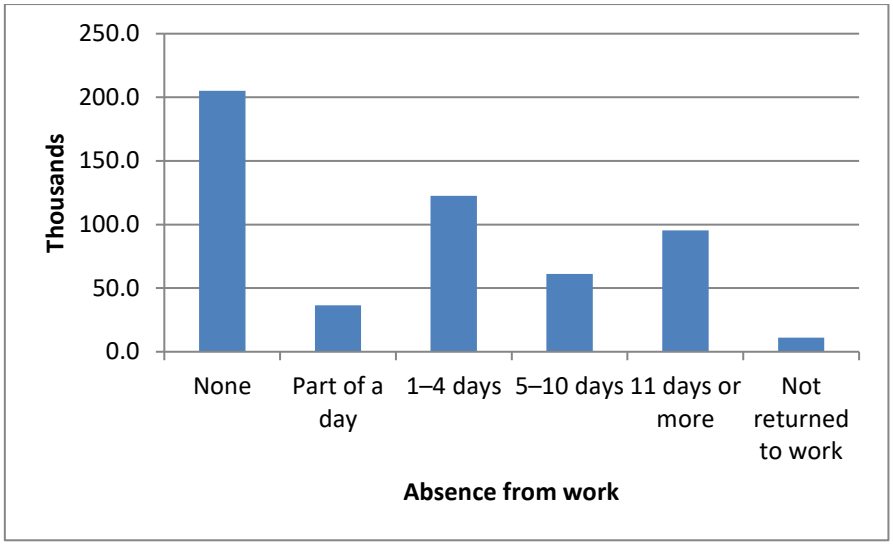


Figure 5. Absence from work following an injury.

It indicates that return to work is overwhelmingly possible but that a substantial proportion – some 8 per cent – did not return to work. Of course, this is affected by the 12-month survey-timeframe but some 3% were unemployed and just over 5% were not in the labour force.

The combined figure of 8 per cent is higher than the 2.1% who had not returned to work since the injury occurred. This a better estimate because it includes those who returned to work then resigned or those whose position was terminated as a result of injury. The major source of financial assistance to those injured at work was some form of workers' compensation (34.5%) or sick leave (19.8%). Just under two fifths did not receive any financial assistance (38.7%).

Discussion

Work-related injury and illness has affected around half a million Australians who worked in the last 12 months.

It is amongst the largest of all the causes of disability. The dimensions of the topic of workplace injury are deeper than appear at first glance, especially since around 500,000 cases from minor through very severe to fatalities are added year-in and year-out in Australia.

Summary: - In brief, work-related injury affected 4.3 per cent of those who had worked at some time in the last 12 months (around 531,800 Australians). It was far lower for females (35.6 per thousand persons) than for males (48.9 per thousand persons). The highest probability (.679) of a workplace injury was for those in labouring type jobs. Full-time workers who exceeded 35-39 hours per week were are a high risk group. Injuries are dominated by chronic joint or muscle conditions and sprain/strain injuries. They accounted for more than half of all injuries. The two main causes were: (a) lifting, pushing, pulling or bending and (b) being struck by an object or vehicle. Mental stress was also related to prolonged absence from work. For most injuries there is no loss of work but for some 18% there was a loss of 11 days or more from work. There has been a reduction in work related injuries from 2005 to 2014 but this is likely to be an underestimate as it excludes (a) fatalities and (b) those persons who had longstanding injuries or illnesses and who had not worked in the last 12 months.

There are a number of implications from these findings. First there is clearly a restriction in the range of clientele encountered in rehabilitation. The incidence of work-related injury was not distributed randomly throughout the population. It is a statistically biased cohort weighted heavily in terms of one's age, sex and education. In summary the modal client is likely to be male, aged 15-45 years and engaged in labouring work. The overall influence of these factors means that workers compensation deals with a socio-economically constrained caseload.

A second implication for workers' compensation arises from the type of injury. Work-related injuries in Australia are dominated overwhelmingly by chronic joint or muscle conditions and sprain/strain injuries. This poses a test to any personal injury management that overlooks the dominance of these conditions.

The third implications from the descriptive analysis of the official data relates to the outliers in the health effects of work-related injury and illness in terms of absence and return to work. If more than 10 days' absence is

taken as a criterion for a severe injury, then around one-fifth of all those who were injured fell into this category.

By any standard this means that there are large numbers of people who will be requiring decent vocational rehabilitation services. While the results of this national survey indicated that return to work is overwhelmingly possible, a substantial proportion – some 8 per cent – did not return to work (i.e., unemployed or not in the labour force). Of course, this is affected by the injury-return to work and survey-timeframes but it presents a chronic, persistent and real-life challenge for those engaged in workers' compensation on a daily basis.

Submitted for consideration.

James A Athanasou

James A Athanasou

20th September 2016