

Time for a change

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A severely injured person in New Zealand is entitled to lump sum compensation under the Accident Compensation Act 2001; that compensation being legislatively linked to the level of 'Whole Person Impairment' (WPI) as assessed by a medical practitioner using the American Medical Association *Guides to the Evaluation of Permanent Impairment* (the AMA guide), currently employing the 4th Edition¹ first published in 1993.

In 2018, of 2,895 claims that were active 12 months after lodgement, none of those who were potentially disabled were assessed as reaching the 10% disability 'threshold'. Our opinion is that the Accident Compensation Corporation (ACC) is using an outdated edition of the AMA Guide and that this is disadvantaging claimants.

The Guides are not entirely evidence-based being described as "*not a scientific document based on demographic or epidemiological data, but rather is a 'Delphi' panel of informed experts who have formed a relative consensus*".² As in any other area of medicine, best practice is essential and each edition of the Guides, first published in 1958 and now in their 6th Edition (2007),³ corrects failings in the previous edition and modifies the mechanisms of assessment in light of modern medicine, particularly with respect to modern imaging techniques. Each edition is accepted as being notably superior to its predecessor,⁴ particularly with respect to Lumbar and upper limb impairment,⁵ the latter acknowledged by Accident Compensation Corporation (ACC)⁶ in their implementation handbook.

The use of the almost 30-year-old 4th edition in New Zealand benefits neither the assessor nor the injured. In particular, this edition inadequately accounts for a number of conditions such as low back injuries where it evaluates two factors: "*Loss of Motion Segment Integrity*" and "*Diagnosis Related Estimates*" (DRE). ACC has further restricted their application by not allowing WPI based on Loss of Motion

Segment Integrity. The 4th Edition DRE for lumbar injury requires clinical signs of radiculopathy (rather than symptoms and identification of appropriate pathology),⁷ a difficult and often clinically subjective barrier to achieve in most cases even where there is obvious impairment.

By contrast the 5th edition (published 2000), although still flawed, allows for a cautious assessment of the impact of lumbar disc injury on impairment and function. Most importantly, it refines the concept of DRE to include lumbar disc injury reducing the clinical subjectivity of that assessment.

To estimate this disadvantage to the claimant the authors carried out an Official Information Request of ACC of the READ⁸ codes associated with low back disorder excluding lumbar body vertebral fracture and spinal cord injury. These were stratified and classified as to chronicity and work-relationship. The number deemed eligible (WPI >10%) for lump sum compensation are shown in Table 1.

Over the six-year data collection period, the number of claimants with sufficiently severe low back injury to exceed a 10% WPI ranged from 0–10 cases per year. This finding appears implausible given the fact that there were 37,804–42,680 work-related low-back injury claims accepted per year during this period.

Our argument is that the use of the 4th edition does not take advantage of the increased utility that arises in the later 5th edition that incorporates of modern imaging techniques. This may reduce the ACC's outstanding claims liability and constrain levy growth but it does so at the expense of New Zealand workers and as such is iniquitous.

We have focused on work-related back injuries to illustrate the need for ACC to abandon an outdated and demonstrably flawed version of the AMA Guide, but our argument is that Low Back injury is not an isolated anomaly in the 4th edition.

Table 1: New Zealand Accident Compensation Corporation low back injury lump sum incidence.

Calendar year of claim lodgement ¹	2013	2014	2015	2016	2017	2018
Number of claims lodged with one or more of the specified READ codes	232,448	241,721	252,098	261,430	263,629	271,308
Number of lodged claims accepted	225,277	235,084	245,242	254,498	256,114	262,148
Number of accepted claims that are work-related	37,804	38,361	39,493	39,792	40,901	42,680
Number of accepted work-related claims that were active at any point 12 months after lodgement	2,979	2,979	3,075	3,114	3,557	2,895
Number of accepted work-related claims where a READ code contains “fracture” or “spinal cord injury”	78	94	115	88	113	109
Number of work accepted work-related claims secondary to soft tissue injury, possibly disc injury	2901	2885	2960	3026	3444	2786
Number of accepted work-related claims where a READ code does not contain “fracture” or “spinal cord injury” and were still active 12 months after lodgement where the claimant has received a lump sum payment	16	19	13	16	5	0
Percentage of claims receiving lump sum entitlement where WPI >10%	0.55%	0.65%	0.44%	0.53%	0.12%	0%

We acknowledge the ongoing use of the 4th edition in some states of America⁹ (seven states) but note the adoption of the 5th and 6th editions by the majority (31 states or districts). In New South Wales the 5th edition is used to determine WorkCover (the NSW equivalent of ACC) impairment assessments but the 4th Edition for the assessment of WPI arising from motor vehicle assessments

It is our opinion that if a guide is to be used to assess New Zealand workers, it needs to be the best available and not one that serves purposes other than the best interests of those workers.

Amending which edition is used is relatively simple and can be made by a recommendation of the Minister, by Order in Council, to make a change to the appropriate Regulations.

Competing interests:

Nil.

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