Accident Compensation: Forty years on – a celebration of the Woodhouse Report

Current Issues
Chair: Susan St John

13th December 2007
University of Auckland Law School
The ACC Symposium
Vocational Rehabilitation and long term claims

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Who are being injured

- Agriculture, forestry and fishing has the highest incident rate
- Males represent 73% of all work injury claims
- Those over 65 have the highest work injury rate and highest work fatality rate

Source: DOL website 7.12.07
Who requires vocational rehabilitation?

- 235,200 work injury claims in 2006
- 89% of injured people spent no time away from work
- 4% returned within a month
- 1% did not return within six months
- A small number but costly number of injured workers remain in the scheme

Source: DOL website 7 December 2007
LEED study – Main Results

- Individuals who receive 3 or more months of earnings compensation, experience lower employment rates and average earnings after compensation ends.

- The magnitude of these effects increases with compensation duration.

- Some injured workers who return to work experience earning loss.

- Some of those not employed receive MSD benefits while others do not (some will be ineligible).

- Injured worker who receive 10-12 months compensation have a 12-17% relative decrease in their employment rates and a 14-22% relative decrease in average total income.

- The effects of longer duration on compensation has a greater impact on women, older workers, workers with lower earning or less employment immediately prior to injury.
Armstrong and Laurs research

- follow-up interviews with 160 claimants who have undergone the VI/WRAP/WCAP processes (First time for follow up to our knowledge)

- Of the sample-set:
  - 25% were in full-time work
  - 28% were in part-time work
  - 28% were on W&I benefits
  - 10% were not working and not on a benefit
  - 9% remained on weekly compensation
Outcomes

- 59% of the 160 claimants experienced an income loss (94 out of 160) – consistent with LEED data.
  That is, following a determination of VI these claimants went on to a benefit, lesser-paying jobs, reduced hours or stopped working.
  WC and super were not considered to be indicators of income loss.
Vocational Rehabilitation

- IPRC Act requires ACC to restore a claimant’s health, independence and participation to the maximum extent practicable
- ACC required to provide vocational rehabilitation to those who are receiving weekly compensation
- s 87(1)(b) requires any vocational rehabilitation to directly result in a reduction in entitlements
- Incentive to provide vocational rehabilitation undermined by vocational independence process
Vocational Independence

- ACC uses the vocational independence process to end an injured workers access to weekly compensation (ie claimants are assessed to be fit to work 35 hours or more a week)
- Vocational independence process required to ignore labour market realities
- Exit from the scheme is not the same as returning to work
- Research undertaken shows the assessment process is flawed (*Armstrong and Laurs and AUT*)
Vocational Independence assessments

- Claimant interviews show the assessments range from unrealistic to degrading
- No verification required through testing of foundation skills e.g. literacy, numeracy, technological literacy, self confidence, resilience, ability to work with others, communication skills
- Assessors can identify jobs that are beneath current levels of qualification, experience and income levels
Assessments

- As the law stands assessors can draw conclusions based on interviews and medical assessments done in consultation rooms.
- The assessments rely on generic work detail sheets to describe the tasks and environment required of a particular job.
- No verification required through work trials, or workplace observation.
Assessments

- Courts reluctant to overturn VI assessors findings *Ramsay decision HC 2002*
- Even though legislation is prescriptive, Courts will uphold an assessors findings in the face of minor breaches of the process
Claimant centred

- S 77 emphasises claimant’s centrality within the rehabilitation process
- However, claimant’s opinion are not given weight compared to the assessor (claimant opinion only has to be considered)
- Claimant’s not motivated by this process as it is regarded as a means for ACC to get them off weekly compensation
- Does not add value to the claimant’s rehabilitation outcome
Vocational Retraining

- IPRC Act does not require ACC to consider:
  - Broader Government economic objectives
  - The long term sustainable outcome for the claimant
  - Cost implications to Government of shifting workers from weekly compensation to W & I benefits
A new approach

Claimant centred – intensive upfront interview

- verification of abilities through work trials
- Assessment of foundation skills
- Personalised pathway to maximise earnings given the injury - where can you get to?
- Best fit with labour market
- Ensure basic level of skills and build them up
- Interagency co-operation
- Consider training options
What does the labour market look like?

- Low unemployment
- Increase in number of ageing workers
- Increase in length of working life
- Growth in service sector
- Greater demand of technical skills
Increase in working age

- Employment growth for older workers is extremely high
- 41.4% of older people participate in work (55 years plus)
- Between 2007 and 2011 older workers between 45-64 will rise from 640,000 to 830,000
- Source: DOL website
Trends in employment

- Services account for two thirds of employment in developed economies
- Strong growth in knowledge intensive services including education, health, community services, property and business services, leisure and entertainment
- Shift to white collar work
- Share of manual work is declining
Change in work organisation

- New technology increases the demand for highly skilled labour
- Reduced demand for low skilled labour
- Demand for multi skilled employees
- Life long learning is required to meet the demands of new employment patterns
Skills shortage

- Skills shortage remains high
- Immigration is not matching skills shortage
- Employers have to recruit from a shrinking pool of available labour
- 41% of firms had difficulty finding skilled staff
- 19% of firms had difficulty finding unskilled staff
- Short supply of skilled labour is ongoing
Benefits of a new ACC policy towards vocational rehabilitation

- Successful reintegration of injured workers into sustainable employment reduces cost to community, the individual and W & I
- Potential to help to alleviate skill shortages
- Will foster self respect and independence
- Possible flow on effects with lower health costs
- Consistent with Government policy of life long learning
- Consistent with Woodhouse principle of “complete rehabilitation”
Where to from here?

- Changes to vocational rehabilitation requires legislative change – more than those proposed in the latest IPRC Amendment Bill
- Reintroduction of permanent pensions will provide the incentive on ACC to offer vocational rehabilitation
- Repeal requirement that vocational rehabilitation must directly result in a reduction in entitlements
- Extensive reshaping of any VI process
- Vocational rehabilitation must take into account labour market realities
- Realign focus on claimant outcome in the short and long term
- Requires a legislative and Ministerial direction to ACC that training for foundation skills must be made available to claimants
Conclusion

- Complete rehabilitation has not yet been achieved in practice.
- However, privatisation is not the answer.
- To achieve improvements in vocational rehabilitation ACC will need to refocus its policy and the law will need to change.