

Thriving on Change

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**General
Insurance
Seminar**



9-12th Nov 2008
Hyatt Regency Coolum



Fault versus No Fault for Personal Injury

Reviewing the International Evidence

Kirsten Armstrong & Daniel Tess
PricewaterhouseCoopers



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Who Cares?

- Accident Comp insurance is General Insurance
- Very much a live debate today
- Recent ACC review was a real eye-opener for us

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Country	Workplace Injuries	Road and Transport Injuries	Treatment Injuries	Other Injuries	Sickness & congenital disability
Australia	Predominantly no fault workers' compensation	Mix of fault and no-fault schemes [†]	Tort liability & mandatory medical indemnity cover	Mix of tort liability, optional private liability insurance, social welfare, public health system or no cover at all	Social welfare, public health system and/or private insurance
New Zealand	No fault compensation	No fault compensation	No fault compensation	No fault compensation	Social welfare, public health system and/or private insurance
United States of America	Predominantly no fault workers' compensation	Mix of fault and no-fault schemes	Tort liability & mandatory medical indemnity cover	Mix of tort liability, optional private liability insurance, social welfare, public health system(partial) or no cover at all	Social welfare, public health system(partial) and/or private insurance
Canada	Predominantly no fault workers' compensation	Mix of fault and no-fault schemes	Tort liability & mandatory medical indemnity cover	Mix of tort liability, optional private liability insurance, social welfare, public health system or no cover at all	Social welfare, public health system and/or private insurance
European countries	Predominantly no fault workers' compensation (often linked to social welfare)	Third party liability schemes	Tort liability & mandatory medical indemnity cover ^{††}	Mix of tort liability, optional private liability insurance, social welfare, public health system or no cover at all ^{†††}	Social welfare, public health system and/or private insurance ^{††††}



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Evaluation Dimensions

Dimension	Definition
A	Proportion of Injured parties receiving benefits
B	Proportion of scheme cost going to claimant
C	Benefit levels / replacement rates (include Equity discussion)
D	Other Claimant outcomes
E	Equity: Spread of scheme cost relative to risk / cause of injury
F	Prevention impact: Does the scheme help reduce the incidence of injury?
G	Total Scheme Cost, as measured by 'true' premium rates



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Dimension A: Injured Persons receiving benefits

Motor Injury systems:

Schemes	Proportion of motor injuries who receive insurance benefits
ACC NZ (includes both entitlement and non entitlement claims)	88%
Victoria TAC	78%
NSW	40%
Canada ³	50%
United States ³	40 to 50%



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Dimension A: Injured Persons receiving benefits

Treatment Injury systems:

Sub-Category	Coverage	Examples
Tort Law	Negligence-based	Australia and Most US states
Limited No-fault	Birth related neurological injuries Vaccination injuries	Florida, Virginia Taiwan, Italy
Pure No-fault	All medical injuries	NZ ACC, Sweden, Norway, Iceland, Finland and Denmark



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Dimension A: Injured Persons receiving benefits

Treatment Injury systems:

US - mostly fault-based

- Only 17-26% of medical injuries involve provider negligence
- Only 6-16% of the negligently injured obtain compensation through tort system

ACC – no fault

- 1 in 30 that are eligible get benefits

Why?

- injured unaware that they have suffered an adverse event
- injured receives needed treatment without filing a claim
- alternative avenues available (apologies, administrative action)



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Dimension A: Injured Persons receiving benefits

Work Injury systems:

US

Prior to the introduction of modified tort and no-fault workers' compensation schemes:

- only **6% to 30%** of industrial accident victims received compensation
- only **half** of the families of victims of fatal accidents received payment.



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Dimension B: % Scheme Cost for Claimant Benefits

Workers' Compensation Jurisdiction	Legal costs as a proportion of total costs (%)	Access to common law
ACT	22	Blended
NSW	13	Blended
Tasmania	12	Blended
Queensland	10	Blended
Western Australia	7	Blended
Victoria	6	Blended
South Australia	4	No common law
Comcare (for federal employees)	2	Very limited common law access

% of Costs for Legal & Admin:

- US Studies: 50-60% (tort liability systems)
- Ontario Workers Comp: 10%
- NZ ACC: 12%
- NSW, SA & QLD auto: legal costs are 15-20% of total costs



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Dimension B: % Scheme Cost for Claimant Benefits

Treatment Injury Systems

- Tort-based medical indemnity: 18-28% of costs to injured patients
- Sweden No-fault Patient Insurance scheme: 80% of costs to injured patients
- Additional societal costs: defensive medicine & over-servicing



Dimension C: Benefit Levels

Summary of research findings:

- Possibility for higher awards in tort schemes (for those who get one)
- But no evidence that average actual benefits are different
- Tort systems have comparatively wide variability in awards.
- Tort awards tend to over-compensate less serious injuries, and under-compensate more serious injuries (“flattening” of awards).
- In tort systems, lower socio-economic groups are likely to obtain poorer compensation outcomes than higher socio-economic groups.



Dimension D: Other Claimant Outcomes

Delays and adversarial processes: summary of research findings:

- Adversarial tort system can prolong symptoms in claimants.
- Statutory benefits much faster than common law (months v. years).
- Faster benefits associated with improved health outcomes.
- Involvement of a lawyer is associated with delayed claim closure.
- NSW Legal Services Commissioner:
“We hear horror stories of the destruction caused to relationships, the physical and mental health of the injured and to the community generally by the huge delays involved in compensating people for their injuries.”



Dimension D: Other Claimant Outcomes

Periodic v. Lump Sum benefits: summary of research findings:

- Tort-based systems typically deliver income benefits via lump sums.
- Lump sums: poorer health outcomes and worse return to work
- Possibility of lump sum may cause people may delay rehabilitation and prolong time away from work
- Single lump sum rarely lasts long enough:
 - A large majority of claimants become reliant on social security disability benefits as a source of income.
 - Example study: >90% of lump sums spent within 5 years
- Claimant satisfaction with lump sums decreases significantly over time.



Dimension E: Equity of spread of cost

- Traditional thinking: should only pay if you're at fault
- However, tort auto schemes are compulsory; costs spread to all drivers.
- Rating variables are typically restricted in both fault & no-fault
- Non-compulsory systems are also problematic:
 - Non-compulsory no-fault: low participation (Personal Accident)
 - Non-compulsory tort: tortfeasor unlikely to have sufficient resources
 - A compulsory "scheme" seems necessary where there is a compelling societal interest



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Dimension F: Prevention Incentive

Summary of research findings:

- Motor schemes: lots of research, marginally conflicting results, no substantial evidence that fault-based systems provide a safety incentive. However, experience rating may provide a small safety incentive.
- Work injury: little recent research (most OECD countries have no-fault work comp), but no evidence that fault-based systems provide a safety incentive.
- Medical indemnity: significant research, but no evidence of a safety incentive from fault-based systems



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Dimension G: Scheme Cost

Australasia Auto Premiums

State	As at July 2007
Northern Territory	\$426
Australian Capital Territory	\$397
South Australia	\$347
Victoria	\$333
New South Wales	\$317 [†]
Tasmania	\$302
Queensland	\$257 [†]
Western Australia	\$214
NZ ACC	\$100 [*]

No-fault auto schemes not seen to be more expensive



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Dimension G: Scheme Cost

- Treatment injury: various studies suggest that no-fault systems could have comparable costs to current tort systems
- Work injury: no evidence of systematic cost difference between tort, no-fault or blended schemes
- However, Australian experience is that access to lump sums has been the single most significant reason for past deterioration in claims costs.
- Tort-based systems cover only those injuries where someone else is at fault; this reduces the overall cost base.
- However, this seems to be typically offset by the high level of legal and admin costs required to administer a tort system.



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Dimension	Fault / Common Law	No-fault / Statutory
Injured persons receiving benefits	~30% of injured	~90% of injured
Proportion of premium going to claimant benefits	~50%	~80%
Benefit levels	<ul style="list-style-type: none"> • Higher top end awards • Less consistency of awards • “Flattening” of awards between less and more seriously injured 	Comparable overall average awards
Other claimant outcomes	Much slower access to benefits Inherently adversarial process Insufficient awards Fast spending of awards Many claimants revert to social security disability scheme Reducing satisfaction levels over time	Better return to work Better health outcomes
Equity of spread of costs	Comparable spread of costs in compulsory schemes (every pays insurance premiums, with restrictions on individual rating variables)	
Prevention incentives	No systematic evidence of differences in safety incentives	
Overall scheme cost	Comparable overall cost	

