Letters

A no-fault compensation system for medical injury is long overdue

To the Editor: Weisbrot and Breen's proposal[1] for a no-fault compensation system for medical injuries should extend to all injuries in Australia, including those from motor vehicle accidents and in the workplace. It should also apply to recreational injuries that may lead to common law compensation cases. After 40 years of clinical experience in the rehabilitation of patients with severe neurological injury, I argue that such change is long overdue.

Those of us who work in the treatment and rehabilitation of patients with spinal cord injury and brain injury from motor accidents know that gross inequities exist between those who receive compensation and those who do not. Common law schemes inevitably result in delays and variable compensation amounts being awarded, often dependent on the skill of individual lawyers.

> "It is seen as easier to just lie on your timesheet than to battle with the bureaucracy"
>
> McDougall

The mishmash and variable efficiency of compensation schemes between states and territories does not help, especially for motor accidents. No-fault motor accident personal injury schemes of varying types have long been established in Victoria, Tasmania and the Northern Territory, and in New South Wales since 2006.[2] Elsewhere, common law compensation schemes remain. However, some no-fault schemes for accident compensation have become progressively adversarial — partly through being hijacked by lawyers, particularly in Tasmania — and are, consequently, less supportive of disabled claimants.

Compensation is a vital part of the whole treatment and rehabilitation process for patients with severe injuries, particularly for their ongoing community support following hospital discharge. Public health systems do not provide the required support for rehabilitation and disability, since these areas are well down the hospital and health funding "food chain".

Unfortunately, governments ignored the 1974 report of the New Zealand Woodhouse Committee and, more recently, the Productivity Commission report published in July 2011.[3] But perhaps this issue is alive again in view of the federal government's proposals to establish a jointly funded national disability compensation system. It would seem logical to also include funding from motor accidents insurance, workers compensation insurance and medical indemnity insurance, as these already effectively fund the inefficient tort system.

Opposition will come from vested interests in the legal profession, the unions and the insurance industry, who prefer the status quo. But perhaps it is time for Australia to give up its obsession with "compo" and "cure", and consider how compensation can assist disabled

people to return to a meaningful and independent life.

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1 Weisbrot D, Breen KJ. A no fault compensation system for medical injury is long overdue. *Med J Aust* 2012; 197: 296-298.
2 NSW Government Lifetime Care and Support Authority. What is the lifetime care and support scheme? (Information Sheet A01.) http://www.lifetimecare.nsw.gov.au/Information_Sheets.aspx (accessed Nov 2012).
3 Productivity Commission. Disability care and support. Report No. 54. Canberra: Commonwealth of Australia, 2011. ❑