

AMA Guides to Impairment

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The American Medical Association's (AMA) *Guides to the Evaluation of Permanent Impairment* have been incorporated into many of Australia's compensation statutes to provide an objective way of assessing injuries and to reduce litigation.

Plaintiff lawyers need to understand the guides and the process of assessment in order to ensure that appropriate compensation is paid to their clients.

The guides have been brought into compensation systems in their unadulterated form (the Victorian WorkCover and Transport Accident schemes for example) and in modified forms (The Commcare and Veterans' Affairs Legislation).

The guides

The guides were developed in America in the mid 50's in an attempt to produce a set of standards to rate physical impairments. There were a number of separate guides prepared by committees of the AMA in various areas of medicine. These separate guides coalesced into a single guide in 1971. The second edition of the guides emerged from reviews that took place a decade later and it is this guide that has found widespread favour and use in Australia. The guides have gone on to a third and fourth edition.

One of the virtues of the original guide was said to be its statement of medicine at its most up to date. The second edition is based on medical states that are now sixteen or seventeen years old. You have only to reflect on some of the advances in imaging technology over that period to realise one of the major deficiencies of the guides presently being used.

What is it?

The book is a practical guide to rating physical impairment objectively. It is a system of measurement just like the British imperial weights and measures system. If everybody uses

the same system we all know how long 2 feet 6 inches is. Similarly, the guides "provide for standardised communications of medical information about the impact of a medical impairment on an individual's activities of daily living". (Page VII Preface to the Second Edition). It is not designed to set levels of compensation. "Each administrative or legal system that uses permanent impairment as a basis for disability rating should define its own process for translating the rating into an estimate of the degree to which the individual's capacity to meet personal, social, or occupational demands, or to meet statutory or regulatory requirements, is limited by the impairment." (Page IX in the Preface).

How the guides are used

Contrary to the statements in the preface above, the guides are most commonly used in compensation statutes to set objective thresholds. In the Victorian Transport Accident and WorkCover legislation, access to Common Law is set at a level of 30% impairment. If a person is assessed as having a 30% or greater impairment under the Guidelines then they will be deemed to have a "serious injury" and be able to commence Common Law proceedings.

Under the Transport Accident legislation loss of earnings benefits will not continue beyond three years unless a person is assessed as having a 50% or greater whole person impairment under the guides. No fault impairment benefits under the Commonwealth legislation are payable for impairment assessments of greater than 10%.

In reaching these thresholds no regard is had for the way the injuries affect the individual. They are measured on objective criteria set out in the guides.

Where the guides set thresholds it is therefore vital to maximise the impairment assessment for the individual concerned.

What should lawyers do to maximise assessments?

Robin Gorton QC in an address to an APLA seminar on the impairment guides expressed the view that because the guides have been incorporated into the legislation they should be treated as if they were a part of the legislation and read strictly. The general principle in interpreting compensation legislation is to take a beneficial approach. Therefore if the guides say that a particular symptom, disability or restriction can be counted then lawyers must ensure that it is included in the final assessment.

Two of the most obvious examples of this approach are in relation to psychiatric consequences of physical injury and reactions to medication taken to control pain or other symptoms. An injured worker may sustain a relatively simple injury, such as the amputation of a finger. The assessment of such a disability is also relatively straightforward following the guides. However, people vary greatly in their reaction to such an injury and some may develop a significant psychological reaction. Chapter 12 of the guides can measure such a psychological reaction and this ought to be evaluated and added to the physical assessments. Similarly, if a worker has a significant back injury which requires the prescription of pain killing medication it is possible that the ingestion of that pain killing medication may lead to development of ulcers or other reaction. These secondary effects are assessable and also ought to be added to the physical assessment of the back.

Another illustration is that the guides for spinal impairment contain tables which display percentages relating to certain restrictions of movement. In addition, there are also amounts given for non-operated, clinically established disc derangement with residuals at 5%. For impairment of the hip there are

percentages given for loss of motion of the hip but there is also a 20% impairment for surgical replacement of the hip joint in good position. It is important to realise that all these various percentages could arguably be added together. Strong arguments ought to be made by plaintiffs' solicitors that all percentages given in the guides should be added.

Plaintiff lawyers must become very familiar with the content of the guides. The writer acted for a worker who suffered from a severe case of rheumatoid arthritis which caused very significant joint pain, loss of energy and loss of concentration, such that it precluded her from undertaking her normal duties as a lawyer. The assessing rheumatologists found a 0% impairment because although the condition produced extreme joint pain all the joints had a full range of movement, therefore not recording any disability or impairment under the various tables in the guide. The client made a painstaking search through the guides and noted that a haemoglobin reading of the magnitude that she possessed gave her a 30% impairment. The lesson is that no stone should be left unturned in assessing whole person impairment; many unexpected impairment categories can be found.

It is vital for plaintiffs' solicitors to take a statement and obtain a very thorough and comprehensive history. Obviously all the impacts of the injury on the person need to be explored. In Workers' Compensation setting it should also be noted that Victorian Courts have said that any compensable injury can be added when assessing impairment for compensation purposes. A solicitor therefore needs to take a good history of all the injuries and disabilities that have affected a person in the course of their employment, whether that be a loss of hearing or other injuries of a type different to the one currently under examination.

It is also vital that solicitors engage appropriate medical examiners and educate those examiners as to the nature of the guide and what can and can't be included. Many examiners are quite understandably focused more on the nature of the current disability requiring treatment than they are on the overall impairment assess-

ment of the individual. They may concentrate on a neck injury because it requires immediate treatment when lower back also has some discomfort from the accident. They may also treat numbness and pain in the leg secondary to nerve involvement from the spinal injury as part of that spinal injury and not make a separate assessment for the disability in the leg.

Is assessment under the guides fair?

Plaintiffs' solicitors need to point out to their clients and to the legislators that the guides although providing objective assessment are not a fair method of assessment. Compensation systems whether Common Law or statutory have always looked at the effect on the individual and have tried to compensate the individual for the effect the injuries have on them. The guides attempt to do no such thing. They assess the impairment for the loss of an index finger identically for the lawyer as for the concert pianist. They assess it the same for a one-armed man as a two-armed man. The same for a 21 year old as for a 64 year old.

Under the Second Edition of the guides, restriction by pain is under evaluated. Higher levels of impairment are given to fused vertebra than for a highly mobile but highly painful disc. In a paper delivered on 8th July 1986 and in part republished in the Law Institute Journal of September 1986, Mr Tony Buzzard, then a lecturer in surgery at Monash University and a well known medico-legal expert wrote: "*In conclusion, I do not believe that this table, or indeed any other table presently in existence, is acceptable as a means of assessing disability. It does not pay significant attention to individual variation and the complexity of the human being. What to one person may be a trivial disability may be to another person major. Such considerations cannot be embodied in a regimented guide. I would anticipate that this guide will not be acceptable to the medical profession for the reasons that I have stated. I would anticipate that if this guide, or a similar one, is introduced legislatively then its application by the medical profession will produce*

anomalous results because of differences of interpretation produced by the table's complexity." He went on to say "*I do not think it will dispel or significantly reduce the need for judicial or legal settlement*".

Mr Tony Buzzard has been remarkably accurate in his predictions. The medical profession have not been happy with the use of the AMA Guides, there has been considerable litigation over its interpretation and use, and far from being objective, medical examiners frequently disagree about the assessment rating for a given individual.

Conclusion

The guide is outdated, complicated, disregards the individual concerned and under-estimates certain well known consequences of physical injury. Nevertheless, it is a fact of life and plaintiff lawyers must learn to live with the guide and maximise its effective use for their client. This involves taking thorough histories, learning to know the guide intimately, carefully choosing medico-legal assessors and training those assessors and generally making sure that every assessment done under the guides is as accurate (within the confines of the guide) as is possible.

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