



How to measure pain

For the uninitiated, this article provides a brief introduction to the AMA Guides.

How to measure pain

Lawyers have dealt with this question for hundreds of years. The solution required an assessment of the consequences to the individual of an injury. It produced a Latin maxim, "restitutio integrum" - to try and put the injured person back in the position they were in prior to injury, in so far as money can do so.

Notions of parity, equity and appropriateness guided the Courts' decisions on compensation. Compensation related to the needs of the victim and the tortfeasor had to take their victim as they found them.

The AMA Guides to impairment

The use of the AMA Guides as a way of assessing loss and awarding compensation is spreading through the Australian statutory compensation schemes.

Victoria pioneered the use of the Guides and still leads the way as the jurisdiction of greatest use. In the *Transport Accident Act* an AMA assessment determines whether a motor vehicle accident victim can sue, receives weekly compensation, is paid after three years, and whether a lump sum will be paid for their

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permanent impairment. The *Accident Compensation Act* similarly prescribes the use of the Guides in determining payment of no-fault benefits for permanent impairment and gaining access to Common Law rights.

Assessments are also used for various purposes in South Australia, New South Wales and in National Schemes. Even in jurisdictions where it is not mandated, medical reports often refer to The Guides and make assessments using them. In the USA, where the Guides originated, they are used in about 75% of the States and Territories.

What Are The Guides

In 1956 the AMA Board of Trustees created an ad hoc committee on medical rating, the idea being to develop an objective method of evaluating impairment. The aim was to devise a method where "...reports from different observers are more likely to be comparable in content and completeness." (1/5 AMA Guides 4th Edition).

The Guides on various body systems were brought into one volume in 1971. The second edition followed in 1984, the third in 1988 and the fourth in 1990. Work is currently being done to update the medicine underpinning the Guides and to produce the fifth edition.

The authors aim to have the Guides represent the best available medical information at the time of writing. However, the 4th edition is at least 10 years out of date. To combat this obvious deficiency, an AMA Guides Newsletter is published dealing with emerging trends, controversies and developments. Legislation, however, does not incorporate these valuable additions. Some jurisdictions don't even use the current edition despite the AMA's urging that only the most current be used.

But wait there's more!

In many of the jurisdictions where the Guides are in use, the legislature has excluded or modified the Guides. In Victoria we exclude Chapter 15 "Pain" from the Guides. Given that one of the major criticisms of the Guides is that it mainly disregards pain in the assessment under the other chapters, the exclusion of Chapter 15 greatly distorts assessments and has little justification except to artificially reduce the overall assessment.

Also excluded or modified in many of the compensation schemes is the use of Chapter 14 "Mental and Behavioural Disorders". In Victoria, so-called secondary psychiatric conditions are excluded, so that conditions that arise directly from the accident such as PTSD are included, but depression arising from anxiety about your future or family frictions are excluded. Again this has no logical basis and exists only as a means of reducing assessments.

Of concern is the use of the Guides and the assessments derived from them to directly assess compensation. In the introduction to the Guides the editors state, "It must be emphasised and clearly understood that impairment percentages

derived according to the Guides criteria should not be used to make direct estimates of disabilities." (1/5 4th Edition).

The reason for not using the Guides to directly assess disabilities is obvious. In any fair system of compensation you want to compensate the individual for their individual disability. The guides themselves say that they aim to provide an objective assessment. The Guides also contrast the two concepts of disability and impairment. It has often been pointed out that the loss of a finger provides the same level of impairment for a concert pianist and labourer but vastly different consequences.

Then why are they used so widely?

The guiding principle for compensation systems under our present Governments is cost, not equity. State Governments are competing to attract business. They pay large sums to



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corporations to move their business from one State to another or to prevent them from relocating. They offer discounts on infrastructure and utility costs. They provide special tax concessions and reduce state taxes and charges. They have also been bidding against each other to reduce compensation premiums. Unfortunately it's been a race to the bottom as far as benefits to injured workers has been concerned.

Actuaries have grabbed hold of the wheel and they like nothing better than the predictability offered by the Guides. They know statistically how many of one type of injury is likely to occur and, with objective assessments, they also know how much they will have to pay. Governments like it too because they can trumpet a big sounding maximum compensation figure like \$100,000 while knowing that most assessments will be quite low. They can also call it fair because everyone is treated the same. They can't control the Courts but they can easily fiddle with the maximum payments and the Guides.

Conclusion

The Guides present a superficially fair assessment of injury (everybody is treated the same). Governments and compensation authorities using it to directly assess compensation are in fact grossly unfair. For this reason it is tremendously unpopular with injured people. It is a classic case of Governments reducing the individual to nothing but a number. It is a very dangerous thing for a Government to do. APLA should be the organisation to bring this to their attention. PL