

Editorial

In this issue, I'm pleased to be able to present a guest editorial written by Dr Bert Biggs. Dr Biggs has recently returned from some northern hemisphere rehabilitation consultancy work which was based in Dublin, Ireland. I felt that it would be of interest to the primarily Australasian readership of the journal to get his perspective on aspects of the rehabilitation scene over there. You will note in this issue of the journal there is a predominance of papers on traumatic brain injury. This was not intentional in the sense of being a "special issue" of the journal but simply reflected the content of many of the submissions for publication in recent times and is perhaps a key theme in current rehabilitation research.

Ross Flett PhD, *Editor*

Guest Editorial

Possible Reforms to Rehabilitation Practice in Ireland

A recent period of residence in Ireland has given the author a contemporary oversight of challenges for rehabilitation professionals in the Irish context. But in the author's view, significant change may not be far away.

The most immediate difference between the Irish jurisdiction and those more familiar to readers in Australia, New Zealand and the United States, is that there is no automatic right for injured persons to access medical and rehabilitation services following a workplace accident or a vehicle injury. In the case of workplace accidents, the injured worker's usual route to services and compensation is through the courts system on proof of employer fault or cause, and where 5-year delays on settlement are not uncommon. A partial compensation advance is not available and this reduces opportunities for gains through early intervention and creates significant challenges for rehabilitation professionals. Access to purchase needed rehabilitation services to persons injured in motor vehicle accidents are similarly available only through court processes. In both cases lump sum payouts are typically the end result of successful litigation and such settlements come from one or more of a pool of private insurers who assume the risk for workers and motorists.

The consequences of such processes encourage poor rehabilitation gains, inasmuch as injured workers are encouraged to retain the full extent of physical and psychological damage incurred at accident throughout the process of litigation in order to maximise any eventual financial settlement. Settlements are also variable in nature where the extent of damage is determined judicially without the benefit of any standardised process for calculation of loss. There is also limited recourse for any

publicly provided medical and rehabilitation services to recoup incurred costs at the final settlement for any services which may have been provided to the injured client. These services are often of an expensive and emergency nature and provided at taxpayer cost thus compounding the overall demands on public health service provision.

Whilst the present situation suits few parties, two developments are in train which give some cause for optimism.

The Motor Insurance Advisory Board (MIAB) was established in 1987 by the Minister for Enterprise Trade and Employment. In April 2002, the Board presented the Minister with a comprehensive report which outlined some of the challenges to reform. Some of these challenges include:

- Insurance companies in Ireland made almost nine times the total profits of their UK counterparts between 1983 and 1999 — despite operating in a much smaller market.
- Whilst insurance was compulsory for all drivers in Ireland, substantial numbers avoided such payments, compliance arrangements were poor, and this encouraged disproportionate premium loads (e.g., premiums for 18- to 23-year-old males can be in the region of \$AUD 6000 per annum).
- The Motor Insurance Bureau of Ireland is a body funded by insurance premiums which assesses and pays accident claims not covered by insurance. Current procedures allow unsubstantiated claims to be successfully awarded. An estimated 34% of the Bureau's budget in 2001 was expended on claims where police could not trace the alleged offending vehicle.

The MIAB has provided 67 recommendations for change which include remedies for the above examples and for reducing the current outlays on legal fees which account for an additional 40% for every Euro awarded to an injured person. Some of the more important from a rehabilitation perspective include:

- A system of pre-trial interim payments be introduced for wage replacement and medical treatment.
- Guaranteed annual payments incorporated into awards for seriously injured persons.
- Case management introduced into the Courts system.
- A Personal Injuries Assessment Board model be an alternative to adversarial litigation in undisputed cases of liability.
- Insurers to ensure a policy of seeking rehabilitation assistance to injured parties as appropriate.

A new government has been formed in Ireland since the report was produced and the Chairperson of the MIAB has recently reiterated the need for the present government to act on the 67 recommendations. It is this writer's view that enactment of the key recommendations from this report would prove a watershed in enabling legislation and structural change for persons injured in the workplace and on the roads. There are positive signs that the present government will favourably support these recommendations not least for the reason that adoption of these will conform more closely to legislation and processes of other member countries in the European Union.

The second important development is a campaign to raise awareness of the benefits of a case management approach by Irish employers. This campaign is being spearheaded by the WorkForce Plus Team of the REHAB Group supported by its patrons: the Chartered Institute for Personnel and Development, the Irish Trade Union Trust, and the Disability Management program staff of University College, Dublin. The development is proceeding as both an awareness and information exchange campaign and a provision of a range of services to employers and employees.

The campaign focuses on informing employers of the present costs structures in premiums, turnover of skilled staff due to injuries and their unattended sequelae, and the promotion of a positive corporate culture and consequent positive health and welfare workplace environment. Direct services to companies and their staff can include inter alia:

- occupational disability management audits
- occupational disability management system development
- health promotion programs
- risk assessment and management
- employee assistance programs
- functional capacity evaluations and functional job analyses
- transitional return to work programs
- individual case management.

The present situation in Ireland with the current adversarial based system for the award of benefits following injury, leaves employers and employees both at risk of arguably poor outcomes. Employers have no control over premium rises nor occupational injury claims by injured employees which, if successful, effect a higher rise in premiums and hence the cycle continues; employees, unless sick leave accruals are written in to their employment contract, have no automatic right to paid leave from their employer following occupational injury, and are often placed in a situation of commencing litigation against their employer to future proof their income whilst taking a State benefit until the case is resolved some years later. No encouragement is given to an early rectification of the injury as the gravity and permanency of the injury dictates the financial award at settlement. The data suggests, as in the case of motor vehicle accident victims, that legal fees are no less than 40% in addition to the quantum awarded to the plaintiff, so there appears a strong systems incentive for legal representation to support the current system.

It is the writer's view that the current system is unsustainable and that pressures from employers who are bearing the load through insurance premiums, and early anticipated reforms in the motor accident insurance sector, will accelerate the move toward a less litigious set of solutions. Such solutions may include: early determination and compensation, the award of any damages related more directly to the needs of the injured person arising from the accident, less reliance on lump sums and more on regular income replacement and expenses payments, case management services, experience-based premium structures with rebates for employer adoption of quality risk management processes, and all party agreements to early intervention rehabilitation and return to work processes.

Ireland currently is not able to provide internally the skilled rehabilitation counselling services that such radical change would require. Opportunities could well arise for society members to exercise their skills in this jurisdiction. Certainly any reforms undertaken in Ireland would provide a welcome step forward in rehabilitation practice and the MIAB report recommendations could well provide the impetus for this change. Such developments with the potential for all party gains would, in the writer's mind, be warmly welcomed by the majority in Eire and enthusiastically received by rehabilitation professionals.

Herbert Biggs PhD