

Lawyer Use in Road Traffic Injury Compensation Claims

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Background: Legal Needs Research Context

- **A large body of socio-legal research focuses on the experience of legal problems**

To provide legal services, an understanding of the legal problems that people experience, their responses to these problems, and the outcomes they achieve is needed (*Coumarelos et al., 2012*)

- **One of the most common legal problems faced in Australia is personal injury**

The 2012 *Legal Australia Wide* survey found that 1.3 million (or seven percent of) Australians aged 15 and above experienced a personal injury legal problem within a 12 month period (*Coumarelos et al., 2012*)

- **A fifth of people with personal injury legal problems sustain these in road traffic crashes**

Road traffic crash injuries have been linked to negative outcomes such as income loss and financial strain, stress-related illness, relationship breakdown, and moving house (*Coumarelos et al., 2012*)

- **People with personal injury legal problems often seek legal assistance**

People with road traffic crash injuries are more likely to seek legal assistance than those with other injuries (*Michelson, 2007; Pleasance & Balmer, 2012; Kritzer, Bogart & Vidmar, 1991; Dunbar & Sabry, 2007*)



Background: Compensation Context

- **Compensation for road traffic injuries is provided by state and territory schemes**

There is variation in the nature and extent of benefits provided by these schemes. Some are provided on a no-fault basis and others on a fault basis (*Grant & Studdert, 2009; Luntz et al., 2017*)

- **Legal services play a different role for no-fault or fault-based benefits**

For no-fault benefits, legal services are used to navigate compensation schemes, resolve disputes and access restricted benefits. For fault-based benefits, legal services are used to establish fault (*Allsop, Dalal & McCarthy, 2009; Murgatroyd, Cameron & Harris, 2011; Victoria Law Foundation, 2014; Elbers et al., 2016*)

- **Studies have linked legal service use in compensation systems to negative outcomes**

Methodological limitations have made the findings of these studies difficult to interpret and apply (*Grant & Studdert, 2009; Spearing, Connelly, Nghiem & Pobereskin, 2012; Casey, Feyer & Cameron, 2015*)

- **Legal service use in compensation systems has also been linked to other outcomes**

Legal service use has been linked to claimant experiences and the long-term financial viability of schemes (*Bryant, Mayou, & Lloyd-Bostock, 1997; Auditor General Victoria, 2001; Coumarelos et al., 2012*)



Thesis Goals and Objectives

Goal: investigate the prevalence, profile, and predictors of claimant legal service use in injury compensation systems

1

OBJECTIVE ONE

Determine how claimant legal service use and the legal services market have changed over time

3

OBJECTIVE THREE

Identify the individual-level demographic and claim factors associated with claimant legal service use

OBJECTIVE TWO

Ascertain the current prevalence of claimant legal service use

2

OBJECTIVE FOUR

Construct a conceptual model of claimant legal service use that incorporates individual, legal service provider, compensation scheme, and societal level factors

4

Importance of Addressing the Goals and Objectives

Demonstrate which injured persons are most likely to make the decision to use legal services, the factors that influence this decision, and the paths that claims take once legal services have been engaged



Understand the types of justice that claimants are able to achieve through compensation schemes, and aspects of scheme design that facilitate or inhibit access to justice

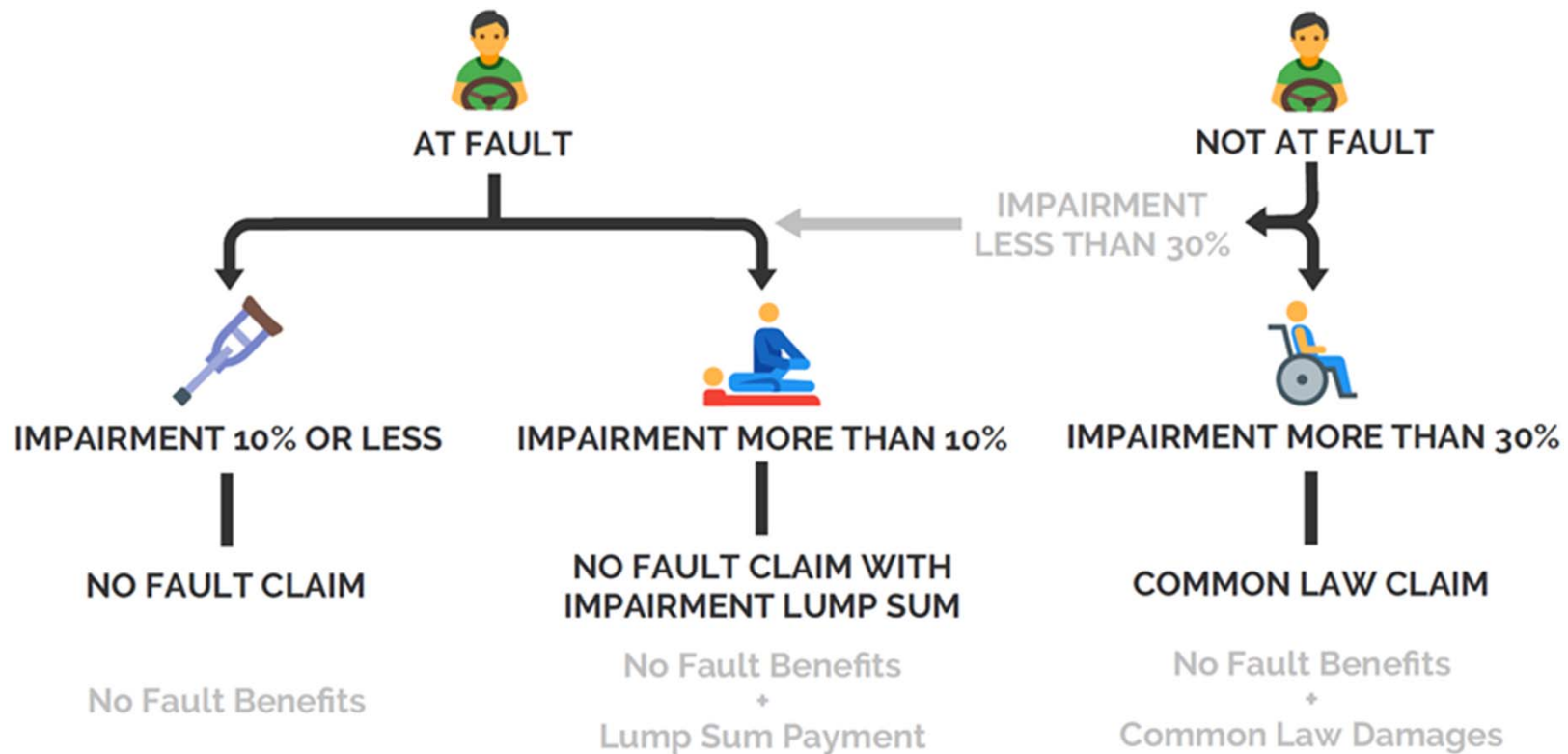


Inform the design of claims handling and litigation strategies that enable claimants to access the services they need to obtain the benefits they are entitled to, without causing them further harm or jeopardising the financial viability of the scheme



Compensation Scheme Design and Setting

- In Victoria, people are eligible for compensation if they are injured in a land-based transport crash that involves a car, motorcycle, bus, train or tram
- Compensation is provided by the state insurer, the Transport Accident Commission (TAC)



Data Sources and Methodologies



Study One: Aims

01

Determine the number and proportion of claims involving legal service use in the Victorian road crash compensation scheme

02

Determine whether this number and proportion changed over time

03

Determine whether any changes were due to variations in contextual factors

Study One: Key Findings

- **One fifth of claims in the Victorian scheme involved lawyer use by claimants**

Across the three groups, common law claims had the highest proportion of lawyer use, followed by no-fault claims with impairment lump sums, and then no-fault claims with no impairment lump sums



- **The proportion of claims with lawyer use approximately doubled from 2000 to 2013**

Across the three groups, the proportional increase in lawyer use was smallest in common law claims, followed by no-fault claims with no impairment lump sums, followed by no-fault claims with impairment lump sums

- **There were no changes in crashes or hospitalisations from crashes that explained this**

Descriptive statistics showed that there were no increases in the rates of crashes or hospitalisations from crashes that accounted for the increase in lawyer use between 2000 and 2013

- **This increase was also not due to changes in crash, injury or person factors over time**

Regression analyses showed that the increase in lawyer use over time was statistically significant and was not fully explained by changes in crash (type), injury (severity) or person (gender, age, SES, remoteness) factors

Study Two: Aims

Aim: to explore factors that could explain the changing profile of legal service use in the Victorian road traffic injury compensation scheme, using a literature review methodology



Study Two: Key Findings

COMPENSATION SYSTEM FACTORS



Existence of an Established Path for Claiming



Compensation Scheme Design



Length and Complexity of the Claims Process



Medico-Legal Examinations



Relationship Between Insurer and Claimant

LEGAL PRACTITIONER FACTORS



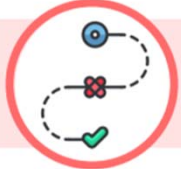
Costs (and Perceived Costs) of Legal Services



Client Screening (Gatekeeping) and Client Selection Practices



Law Firm and Lawyer Characteristics



Transformation of Complaints into Legal Issues



Ongoing Management of Claims and Client Empowerment

Study Two: Key Findings

LEGAL SERVICES MARKET FACTORS



Changes in the Availability of Legal Services



Advertising and Other Client Acquisition Practices



Unbundling of Legal Services



Development of New Technology

KEY INFLUENCES OVERALL



Compensation System Factors:

- Introduction of protocols



Legal Practitioner Factors:

- Introduction of CFAs



Legal Services Market Factors:

- Advertising
- Number of legal practitioners
- Competitiveness of market
- Unbundling of services
- New technologies

Study Three: Aims

01

Determine how much claimant legal service use is explained by injury severity

02

Identify additional individual-level factors associated with claimant legal service use

03

Determine how much claimant legal service use is explained by recovery outcomes

Study Three: Key Findings

- **Injury severity had a (small) influence on claimant decisions to use legal services**

Claimants were more likely to seek access to legal services, and lawyers were more likely to grant access to legal services, when claimants had more severe injuries

- **Sociodemographic, crash, and injury factors also affected claimant legal service use**

Claimants who were young, socio-economically advantaged, and had transient injuries (such as abrasions, contusions, and lacerations) tended not to use legal services, whereas claimants who had prior claims, were passengers or pedestrians, and had less transient injuries (such as dislocations) tended to use legal services

- **Recovery factors had the strongest influence on claimant decisions to use legal services**

Claimants who were experiencing work disability, mental health, and/or pain issues three or twelve months after their crash were more likely to turn to lawyers for assistance (and to receive that assistance)



- **The factors that predicted claimant legal service use differed across cohorts**

Not all claimants in the scheme were homogenous in terms of their decisions to engage legal services

Conclusions to Date and Future Directions



At present, one in five claimants in compensation schemes are using legal services

Legal services are used to navigate the complex and unfamiliar compensation process, resolve disputes with insurers, access permanent impairment and common law benefits, and establish negligence (if required)

The proportion of claimants using legal services has doubled over the past 15 years



This is not because of changes in the number of crashes or hospitalisations from crashes, or in other crash (type), injury (severity), or person (age, gender, socioeconomic status, remoteness) factors over time



This could be due to changes in compensation schemes and legal service markets

These have reduced barriers and increased access to legal services (and alternatives to legal services), giving claimants more choices about how they resolve the legal problems that arise during their claim journeys

Directions for future research: understand how these changes affect claimant decisions about legal service use in practice

Individual-level factors also affect claimant decisions about using legal services



Although injury severity and other individual-level sociodemographic, crash, and injury factors affect claimant decisions to engage legal services, recovery factors have by far the greatest impact

Directions for future research: construct a model of claimant legal service use that incorporates the individual, compensation scheme, and legal service market factors identified to date, as well as societal and regulatory influences

THANK YOU