

Key Messages: Claimant legal representation in personal injury claims: a rapid review of the evidence

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KEY MESSAGES

CLAIMANT LEGAL REPRESENTATION IN PERSONAL INJURY CLAIMS: A RAPID REVIEW OF THE EVIDENCE

July 2019

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Policy context

Injury compensation schemes are vital pathways for rehabilitation and recovery after road trauma or workplace accidents, particularly for injured people with complex needs. Across Australia, personal injury compensation schemes, including for workers' compensation and motor vehicle accident compensation, vary significantly in terms of entitlements and benefits. Furthermore, unfortunately the claims process can also be a health risk factor with current compensation research indicating that involvement in compensation claims processes is associated with poor physical and psychological health outcomes^{1,2,3}. The evidence base pinpointing explanations for this link is sketchy and under-developed. Essentially, it shows associations of multiple factors in claimant outcomes and no clear indication of causal relationships.

Key messages

- The current evidence on mechanisms that contribute to poor claimant experiences and outcomes is inconsistent and ambiguous. Latest research focuses on multiple intersecting factors, including scheme features, claims environment and claims management practices. However, research is impeded by methodological challenges.
- Claimant experiences and outcomes are systemically based. Irrespective of scheme and country, injured people's negative experiences are related to problems with the system. Where transparency and accountability are perceived to be lacking claimants are likely to be highly motivated to seek the assistance of lawyers. Indeed, lawyer assessments of claim viability may be the best predictor of claimant outcomes, both in terms of recovery and compensation.
- The interdependencies, actions and decisions of multiple actors are reflected in claimants' mixed experiences with both insurers and lawyers. As such, lawyer engagement might be better understood as an outcome of the claims environment and claims management practices, rather than focusing on its predictive influence on claimants' experiences and health outcomes.
- Improvements need to target multiple mechanisms within the environment and across the system that contribute to claimant stress and poor outcomes. The immediate opportunity for improving claimant experiences and outcomes is via stakeholder-led adaptations to the design and operational processes of injury compensation. This includes the aspects of the environment and scheme that contribute to the stressful and conflictual nature of seeking personal injury compensation.

¹ Collie et al., 2015

² Gabbet al., 2007

³ Grant & Studdert 2009