Statutory review of the NSW Motor Accident Injuries Act 2017

Submission by OSTEOPATHY AUSTRALIA to:

Clayton Utz & Deloitte representing NSW SIRA Motor Accidents

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Contact

For questions about this submission, please contact Peter Lalli (Senior Policy Officer – Clinical Excellence) at:

Osteopathy Australia

Ph: (02) 9410 0099

Email: clinicalpolicy@osteopathy.org.au

Recommendations

Osteopathy Australia thanks Clayton Utz & Deloitte for the opportunity to lodge a submission addressing the consultation paper *Statutory review of the NSW Motor Accident Injuries Act 2017* ("the Act").

We acknowledge the importance of the Act for determining entitlements and benefits for people injured in a motor accident or incidental to a motor accident. As such, the Act and its review has significant importance for Osteopathy Australia and our NSW members, as well as for clients of osteopathy services present and future.

Our feedback aims to optimise the Act so that it can meet its main object, being to "encourage early and appropriate treatment and care to achieve optimum recovery of persons from injuries sustained in motor accidents and to maximise their return to work or other activities" [i]; accordingly, our recommendations are that:

Recommendation 1: the Act be expanded to provide appropriate benefits to clients with spinal nerve root injuries (excluding radiculopathy) having gradual onset up to six months.

Recommendation 2: the Act limit its definition of 'minor spinal nerve root injury' specifically to injuries with low level localised pain and no or limited impact for daily living activities.

Recommendation 3: the Act better differentiate spinal nerve root injury severity, moving away from the simplistic 'radicular and non-radicular' distinction. We suggest a new category be created for 'moderate injury'--- covering spinal nerve root injuries (excluding radiculopathy) that contribute to loss of movement, altered sensation, or changes in reflexes.

Recommendation 4: that the Act better differentiate soft tissue injuries and move away from a blanket categorisation of these injuries as minor. We suggest a new category be created for 'moderate injury'--- covering soft tissue injuries that fail to improve or become progressively worse despite initial skilled clinical management.

Recommendation 5: the Act should not base psychological injury severity on whether a diagnostic label can be associated with symptoms. It should instead require psychological injuries be graded by qualified mental health professionals based upon their impact on client affect, attitude and function, diagnostic label notwithstanding. This change would support the growing number of clients with pain conditions and psychological symptoms that may not be able to be clearly fitted into a diagnostic box but are crucial to manage in recovery.

About the osteopathic profession

Osteopaths in Australia are government regulated allied health professionals having inbound and outbound referral relationships with other health professionals.

Osteopaths complete a dual Bachelor or Bachelor/ Masters qualification covering functional anatomy, biomechanics, human movement, the musculoskeletal and neurological systems as well as clinical intervention approaches. Significant commonalities exist between the health science units undertaken by osteopaths and

those undertaken by peers of other allied health professions, including physiotherapy.

As a defining characteristic, the osteopathic profession emphasises the neuromusculoskeletal system as integral to client function and uses biopsychosocial and client-centred approaches in managing functional limitations from motor vehicle injuries. The *Capabilities for Osteopathic Practice*[ii] outline the required capabilities for professional skill, knowledge, and attributes; osteopaths are required to possess many professional skills common across allied health and health professions.

Clients of compulsory third-party accident schemes present to osteopaths with a range of musculoskeletal functional conditions and impairments.

Osteopaths conduct comprehensive functional examinations. Evidence informed reasoning is fundamental to case management and clinical intervention. Osteopaths prescribe skilled clinical exercise, including general and specific exercise programming aimed at enhancing functional capabilities. [iii] Many clients consult an osteopath for advice on physical activity, positioning, posture, and movement. Self-management is a key objective in the clinical services provided by osteopaths, consistent with the nationally endorsed *Clinical Framework for the Delivery of Health Services* to which Osteopathy Australia is a key signatory under our previous entity name, the Australian Osteopathic Association.

Osteopathy Australia

Osteopathy Australia is the national peak body representing the interests of osteopaths, osteopathy as a profession, and consumers' rights to access osteopathic services. We promote standards of professional behaviour over and above the requirements of AHPRA registration. A vast majority of registered osteopaths are members of Osteopathy Australia.

Our core work is liaising with state and federal government, and all other statutory agencies, professional bodies, and private industry regarding professional, educational, legislative, and regulatory issues. As such, we have close working relationships with the Osteopathy Board of Australia (the national registration board), the Australian Health Practitioner Regulation Agency (AHPRA), the Australasian Osteopathic Accreditation Council (the university accreditor and assessor of overseas osteopaths), compensable injury schemes in each jurisdiction, and other professional health bodies through our collaborative work with Allied Health Professions Australia (AHPA). In our capacity, we welcome the opportunity to offer feedback for the *Statutory review of the NSW Motor Accident Injuries Act 2017.*

Injury criteria for benefits

The Act has limited flexibility for clinical complexity and may lead to inappropriate under servicing of clients

Section 1.6 of the Act defines as 'minor injuries' certain presentations expected to resolve within a six-month timeframe or have limited occupational impact. These 'minor injuries' attract a limited scope of statutory benefits. These injuries are as follows:

- A soft tissue injury, being an injury to tissue that connects, supports or surrounds other structures or organs of the body (such as muscles, tendons, ligaments, menisci, cartilage, fascia, fibrous tissues, fat, blood vessels and synovial membranes), but not an injury to nerves or a complete or partial rupture of tendons, ligaments, menisci or cartilage.

- A psychological or psychiatric injury that is not a recognised psychiatric illness.

- An injury to a spinal nerve root that manifests in neurological signs (other than radiculopathy).[iv]

We contend that the Act glosses over complexities presented by these injury classifications.

Spinal nerve root injuries

Firstly, not all spinal nerve root injuries manifest within three months of a motor accident injury. Some of spinal nerve root injuries will only become known or felt some time after an injury, accident, or during the performance of a task or activity. Numbness, weakness, or pain can come on immediately post injury or gradually over time.

In its present form, the Act would fail to provide for appropriate clinical care where spinal nerve root injury symptom onset occurs between the third and six month, or beyond. Clients facing a late symptom onset scenario would struggle to merely have their injury defined as 'minor' under the Act. However, care and intervention would be indicated for these clients on symptom onset in order to limit severity of complications and optimise recovery.

Recommendation 1: that the Act be expanded to provide appropriate benefits to clients with spinal nerve root injuries (excluding radiculopathy) having gradual onset up to six months post injury.

Another criticism to be made of the Act's treatment of spinal nerve root injuries is its embodied assumption that such injuries, other than those causing radiculopathy, are minor.

Where an injury has occurred to a spinal nerve root, pain is localised and activities of daily living are of no or limited challenge, we support such presentations being classified as 'minor injuries'.

Yet, some spinal nerve root injuries presenting with an absence of radicular pain may associate with a range of other symptoms, like loss of movement, loss of or altered sensation, changes in reflex activities or spasms over the short, medium or long term.[v] We would hardly call any of these symptoms minor, no matter what point in the injury resolution continuum they manifest.

Recommendation 2: that the Act limit its definition of 'minor spinal nerve root injury' specifically to injuries with low level localised pain and no or limited impact for daily living activities.

Recommendation 3: that the Act better differentiate spinal nerve root injury severity, moving away from the simplistic 'radicular and non-radicular' distinction. We suggest a new category be created for 'moderate injury'--- covering spinal nerve root injuries (excluding radiculopathy) that contribute to loss of movement, altered sensation, or changes in reflexes.

Soft tissue injuries

Not all soft tissue injuries are alike, and the Act now deals with them as a single grouping deserving of a limited level of benefits.

While some soft tissue injuries will resolve within six months, others will not. Indeed, it is our view that a soft tissue injury which fails to improve despite skilled clinical management could indicate a presentation beyond a 'minor injury'.

Recommendation 4: that the Act better differentiate soft tissue injuries and move away from a blanket categorisation of these injuries as minor. We suggest a new category be created for 'moderate injury'--- covering soft tissue injuries that fail to improve or become progressively worse despite initial skilled clinical management.

Psychological injuries

Whether a psychological injury can be diagnosed and/or labelled appears to be a key factor in its classification as 'minor' or not under the Act. The Act would therefore see increased benefits allocated to clients with phobia or trauma disorders able to be clearly labelled as a direct consequence of witnessing or being in a motor vehicle accident.

Contemporary neuroscience however recognises that mental health impacts secondary to or comorbid with injury pain can be experienced by people.[vi] Some mental health impacts cannot necessarily be 'neatly fitted' into a diagnostic label, but nevertheless have similar limiting impacts to mental health conditions that can be clearly diagnosed and labelled. We wish to avoid a situation where clients fall through the gaps and dramatically increase costs for other NSW Government funded services, including the public hospital system.

We do not believe that the capacity of an appropriate mental health professional to attach a label to psychological symptoms should be the factor that distinguishes a minor psychological injury from more severe forms; instead, the mental health professional assessed impact of a psychological injury on affect, attitude, and function should be the decider irrespective of diagnostic labelling.

Recommendation 5: the Act should not base psychological injury severity on whether a diagnostic label can be associated with symptoms. It should instead require psychological injuries be graded by qualified mental health professionals based upon their impact on client affect, attitude and function, diagnostic label notwithstanding. This change would support the growing number of clients with pain conditions and psychological symptoms that may not be able to be clearly fitted into a diagnostic box but are crucial to manage in recovery.

References

[i] *NSW Motor Accident Injuries Act 2017* (NSW), Section 1.3 (2) a https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2017-010

[ii] Osteopathy Board of Australia (2019), Capabilities for osteopathic practice [online] https://www.osteopathyboard.gov.au/Codes-Guidelines/Capabilities-for-osteopathic-practice.aspx

[iii] Adams et al (2018), 'A workforce survey of Australian osteopathy: analysis of a nationally-representative sample of osteopaths from the Osteopathy Research and Innovation Network (ORION) project', BMC Health Services Research December 2018, 18:352

[iv] Clayton Utz (2021), Statutory Review of the Motor Accident Injuries Act 2017- discussion paper, page 9

[v] Mayo Clinic 'spinal cord Injury' [online] https://www.painaustralia.org.au/media-document/blog-1/blog-2020/blog-2019/what-you-need-to-know-about-pain-and-mental-health-in-australia

[vi] Pain Australia 'What you need to know about pain and mental health' [online] https://www.painaustralia.org.au/media-document/blog-1/blog-2020/blog-2019/what-you-need-to-know-about-pain-and-mental-health-in-australia