

## *Vocational Rehabilitation and Long-term Claims*

HAZEL ARMSTRONG\*

*The current accident compensation scheme must manage long-term claimants with partial incapacity more effectively if it is to achieve the Woodhouse principle of "complete rehabilitation". Most injured workers require little assistance from the ACC scheme prior to returning to employment. However, a small but costly number suffer reduced earnings upon return to work, or are unable to return to work at all. The author proposes a focus that centres more upon the claimant achieving complete rehabilitation, and submits that extensive reshaping of the vocational rehabilitation process is needed to maximize claimant outcomes by retraining and/or matching claimant skills with labour market realities.*

### **Introduction**

The ACC scheme's present rehabilitation and vocational independence processes are letting long-term claimants down. Legislative amendment is required to achieve maximum rehabilitation for claimants and align the purpose of the Injury Prevention, Rehabilitation, and Compensation Act 2001 ("the 2001 Act") with practical outcomes. Currently, claimants can lose their entitlement to weekly compensation through the vocational independence process before they are completely rehabilitated. Assessments can be divorced from reality because there is no requirement for a claimant's skills to be verified, or for ACC assessors to consider the availability of jobs in the marketplace. The consequence of this is that long-term claimants who are no longer entitled to weekly compensation may become unemployed and suffer income loss. Reform of the rehabilitation and vocational independence processes is needed.

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\*Employment and Personal Injury Litigator, Hazel Armstrong Law.

### Who is Being Injured?

In 2006, there were 235,200 claims under the ACC scheme for work-related injury.<sup>1</sup> The agricultural, forestry, and fishing industries have the highest incidence rate, followed by mining, manufacturing, and construction. Males represent over 70 per cent of all work-related injury claims, and those aged over 65 have the highest work-related injury rate. Eighty-nine per cent of injured workers spent no time away from work, and a further four per cent returned within one month. However, a small but costly number of injured workers remain in the ACC scheme.

### Vocational Rehabilitation

The 2001 Act requires the Accident Compensation Commission (now Corporation) ("the ACC") to provide rehabilitation with the goal of achieving an appropriate quality of life by restoring a claimant's health, independence, and participation to the maximum extent practicable.<sup>2</sup> However, the principle of maximum rehabilitation is undermined by s 87(1)(b) of the 2001 Act which requires any vocational rehabilitation to result directly in a reduction in entitlements.

This has led to a minimalist approach regarding the provision of retraining to claimants under the ACC scheme. Many long-term claimants, particularly ageing manual workers, are unable to return to their previous occupations because of their injuries, and they have limited employment options because they lack experience in other areas. This group of people need targeted retraining in order to return successfully to the workforce. Yet currently there is no statutory requirement for retraining, and the ACC can decline training on the grounds of cost.

The current focus on reducing short-term costs does not consider broader governmental economic objectives and the desirability of long-term sustainable outcomes for claimants. In particular, the focus on short-term objectives fails to recognize that retraining claimants under the ACC scheme could contribute to alleviating skill shortages. Skill shortages remain high, thus employers have to recruit from a shrinking pool of available labour. The Labour Market Reports produced by the Department of Labour reveal that in the March 2007 quarter, 41 per cent of firms had difficulty finding skilled staff, with a further 19 per cent finding it difficult to obtain unskilled staff.<sup>3</sup>

1 Department of Labour, *Work Related Injury Claims* — November 2007 (6 November 2007).

2 Injury Prevention, Rehabilitation, and Compensation Act 2001, s 3(c).

3 Department of Labour, *Labour Market Reports: Skills in the Labour Market* — May 2007

Claimants under the ACC scheme have so far been largely overlooked as a resource to resolve these skill shortages.

### Vocational Independence

Flaws in the vocational independence process allow claimants to be removed from the ACC scheme before they are fully rehabilitated and with no guarantee of employment. The vocational independence process is used by the ACC to determine whether claimants can work for 35 hours per week. If so, weekly compensation ceases after three months. This process is not required to take account of labour market realities and there is no requirement for practical assessment. It is also inadequate in matching claimants to jobs because assessors are entitled to identify a job as suitable for a claimant although it is beneath his or her current levels of qualification, experience, and income.

As the law stands, assessors are entitled to draw conclusions based on interviews and medical assessments done in a consultation room. Vocational assessors rely on generic "work type detail sheets" to describe the tasks and environment required of a particular job, and there is no requirement that a job of the type suggested actually exist in the current marketplace. Furthermore, no verification is required through work-trials or testing of foundational skills such as literacy, numeracy, and computer skills.

These problems were explored in 19 interviews conducted by Armstrong and Laurs with claimants under the ACC scheme.<sup>4</sup> Respondents reported assessment experiences that ranged from the unrealistic to the absurd. This is exemplified by a recently publicized case where a claimant with a reading age of seven was assessed as being able to work as a university lecturer or a receptionist.<sup>5</sup> Other claimants felt that assessors were "trying to dumb them down" by suggesting occupations far beneath their qualifications, experience, and pre-injury income levels.<sup>6</sup> Claimants believed that the assessors' priority was to get them out of the ACC scheme, rather than helping them to achieve

(<http://www.dol.govt.nz/publications/lmr/archive/skills-may-07/lmr-skills-summary.asp>) (last accessed 30 March 2008). For information on skill shortages in the December 2007 quarter, see *Labour Market Reports: Skills in the Labour Market* — February 2008 (<http://www.dol.govt.nz/publications/lmr/lmr-skills.asp>) (last accessed 30 March 2008).

4 Armstrong & Laurs, "When the Going Gets Tough: What Happens to Worn-Out Workers?," The Social Policy, Research, and Evaluation Conference 2007 (Wellington Convention Centre, 4 April 2007) 31.

5 *Ibid* at 35.

6 This problem may be remedied to an extent by the Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 2), which proposes requiring occupational assessors to consider a claimant's pre-injury income when identifying work options.

vocational independence in a practical sense. The consequence of this is that claimants were not motivated by the process and felt that their interests and opinions were marginalized. These problems are compounded by the courts' reluctance to overturn the decisions of vocational assessors.<sup>7</sup> Even though the legislation is prescriptive, the courts will uphold an assessor's findings in the face of minor breaches of the process.

### Consequences for Long-Term Claimants and the State

Individuals who are made vocationally independent and have been on weekly compensation for more than three months experience lower employment rates than non-injured workers and, if they do achieve a return to work, their average earnings are reduced.<sup>8</sup> The magnitude of these effects increases with compensation duration. For example, injured workers who receive 12 months of compensation are 16 per cent less likely to achieve employment than non-injured workers, and their average earnings are 24 per cent lower.

This problem is exemplified by the results of the interviews conducted by Armstrong and Laurs with ACC claimants.<sup>9</sup> One hundred and sixty claimants who had undergone a vocational independence process (or the "work-ready" or "work-capacity" assessment processes) were interviewed. Of the sample set, 32 per cent were in full-time work and 21 per cent were in part-time work, while 22.5 per cent were on "Work and Income" benefits, 10 per cent were not working and not on a benefit, and nine per cent remained on weekly compensation.<sup>10</sup> Fifty-nine per cent of the 160 claimants experienced an income loss, meaning that they either went on to a benefit, worked in a job that was more poorly paid or had reduced hours, or did not work at all. These figures demonstrate a point made by Purse, Meredith, and Guthrie that "high exit rates are not the same as high return to work rates".<sup>11</sup> This has cost implications for the State because many workers put through the process do not return to work but are simply shifted from weekly compensation to "Work and Income" benefits.

7 See *Ramsay v Accident Compensation Corporation* [2004] NZAR 1.

8 Crichton, Stillman & Hyslop, "Returning to Work from Injury: Longitudinal Evidence on Employment and Earnings (Update)", Statistics New Zealand (July 2005) 12.

9 Armstrong & Laurs, "Vocational Independence: Outcomes for ACC Claimants" (February 2007) (<http://www.aclaimotago.org/articles/DOLCaseReviewFinal.pdf>) (last accessed 30 March 2008).

10 *Ibid* at 54.

11 Purse, Meredith & Guthrie, "Neoliberalism, Workers' Compensation, and the Productivity Commission" (2004) 54 *Journal of Australian Political Economy* 45, 53.

### A New Approach

The vocational rehabilitation process needs to be refocused on the claimant. Section 77 of the 2001 Act emphasizes the central position of the claimant within the rehabilitation process. However, a claimant's opinion is less important than the opinion of the assessor because assessors are only required to *consider* claimant comments, not to give them weight.<sup>12</sup> This could be rectified by an intensive upfront interview and a focus on working in collaboration with the claimant to develop personalized pathways to maximize earnings.

In addition, claimants should be routinely offered retraining. This is the approach taken in Germany where the pension agencies, the *Berufshilfsstellen-schaffens*, provide workers with initial retraining to enable them to return to their existing positions and further retraining if this is not viable.<sup>13</sup> New Zealand should adopt a similarly comprehensive system that is tailored to an individual claimant's needs and aspirations.

The vocational independence system also needs to be amended to better reflect claimant abilities and marketplace realities. It is essential that foundation skills are assessed and abilities are verified through work-trials. Assessors must also be required to make sensible decisions that reflect the availability of jobs in the marketplace. If this does not occur, the transfer of claimants from the ACC scheme to benefits will remain.

### Benefits of a New ACC Policy towards Vocational Rehabilitation

Successful reintegration of injured workers into sustainable employment reduces the cost to the community, the individual, and the State. It has the potential to alleviate skill shortages and may have flow-on effects in terms of lower health costs. Perhaps even more importantly, it will foster self-respect and independence in injured workers. Many of the injured workers in the Armstrong and Laurs study experienced a sense of loss because they were no longer physically able to work in the jobs they used to enjoy, and they felt that they had little prospect of successful employment. For example, one claimant said, "I am getting old, and who will employ me now? I am resigned now to not working." Supporting injured workers into employment that matches their abilities and ambitions by providing retraining and paying real attention to claimant opinions is consistent with the Woodhouse principle of "complete rehabilitation" and the governmental policy of lifelong learning.

12 See Injury Prevention, Rehabilitation, and Compensation Act 2001, s 1, cl 25(1)(d).

13 Armstrong & Laurs, "When the Going Gets Tough: What Happens to Worn-Out Workers?" The Social Policy, Research, and Evaluation Conference 2007 (Wellington Convention Centre, 4 April 2007) 85.

**Where to from Here?**

Implementing any meaningful changes to vocational rehabilitation will require legislative change. The Injury Prevention, Rehabilitation, and Compensation Amendment Bill (No 2) 2007 is a recent tentative step in the right direction, but more change is required. Extensive reshaping of the vocational independence process is needed. It must take into account labour market realities and be realigned to focus on claimant outcome in both the short and long term.

**Conclusion**

Complete rehabilitation has not yet been achieved in practice, resulting in an inconsistency between the purpose of the 2001 Act and actual claimant experience. To achieve improved vocational rehabilitation the ACC will need to refocus its policy and the law will need to change.