

## **No Fault Compensation for Vaccine Injuries: International Experience.**

Overall there is no better summary of the world experience than that contained in Geoffrey Evans' excellent paper "Vaccine injury compensation programs world wide" *Vaccine* 17 (1999) 825-835. It is essential reading.

Only a dozen or so rich countries have embarked on compensation schemes but some of these have been going for decades – (West) Germany being the first in 1961.

Only **Japan, New Zealand, Taiwan** and **South Korea** from our region have schemes in place.

**Singapore** has a clause in their Infectious Diseases Act that provides immunity to the Government or agency with a section that states: "No suit or other legal proceedings shall lie against the Government, the Agency or any other person for anything which is in good faith done or omitted to be done in the exercise of any power or the performance of any duty or function under this Act."

Singapore has of course an impressive health insurance scheme that may well cover medical expenses resulting from vaccine injury.

In **Canada** the province of **Quebec** has a program which has been in place since 1985. This plan provides for any serious permanent damage stemming from a licensed vaccine, on a "no fault" basis, comparable to the provincial Automobile Insurance Act.

The Quebec Public Health Protection Act Division III.1 "Indemnities for Victims of Immunisation" defines "victim" as an immunised person, a person who contracts a disease from an immunised person, the foetus of one of those persons or, in case of death, a person who is entitled to a death benefit. "Personal damage" is defined as any serious damage, whether physical or mental, including death". The rules prescribed in the Automobile Insurance Act adapted as required apply to the computation of the indemnity provided.

The Canadian Paediatric Association calculates that with an annual birth cohort of about 400,000 the number of serious adverse reactions to immunisation is fewer than two dozen with major support being required for 5 or 6 of these. (Do we have figures for Australia?)

The Canadian Paediatric Association favours a NATIONAL plan that would have the following features:

1. "The Plan would include all active immunising agents (vaccines) licensed for use in Canada;
2. compensation would be given to those who suffer serious injuries, such as lengthy hospitalisation, prolonged or permanent injury, death;
3. compensation would be provided for costs and losses beyond the scope of existing health and education plans, including: special remedial costs (devices, therapy, transportation etc); caretaker's allowance (to recognise the extra costs of attending or caring for an injured person); disability pension or award proportionate to loss of capacity; death benefit."

The **Manitoba** Law Reform Commission put out a report in June 2000 recommending a discrete no-fault compensation funded by the provincial government, be established to cover past and future vaccine damaged children.

It recommends that the compensation payable be equivalent that paid under the Provincial Injury Protection Plan of Autopac to a child injured in a motor vehicle accident.

The Manitoba plan does not seem to have been enacted as yet.

Neither the Quebec nor Manitoba documents indicate how citizens from other provinces injured in these two are dealt with.

Two other federated countries **Germany** and **Switzerland** have their schemes implemented by the states and cantons but all states and cantons are covered and the plans are uniform throughout each country.

The biggest federation the **USA** has a truly national plan known as the National Vaccine Injury Compensation Program (VICP) established in 1986 under the National Childhood Vaccine Injury Act. This Act has recently been described by Barry Bloom, Dean of the Harvard School of Public Health, as “an extraordinarily enlightened piece of legislation”.

The VICP is a Federal ‘no-fault’ compensation system designed to compensate individuals or families of individuals who have been injured by covered ie CDC approved childhood vaccines whether administered in the private or public sector.

The VICP has a complicated Vaccine Injury Table (VIT) spelling out a wide range of possible complications of vaccination. The individual must be able to demonstrate that their injury matches one or more of the injuries listed in the table.

Currently awards run at \$250,000 plus attorney’s fees for vaccine related death, and an average of \$824,463 for an injury.

The VIT is modified from time to time the last being in August 2002.

Most countries provide up to four basic categories for compensation – medical costs, disability pensions, non-economic costs and death benefits.

The **UK** is an exception to this and simply provides a one off payment somewhere in the vicinity of L40,000 to L100,000.

**Japan** covers mandatory vaccines and its provisions include medical allowances, carer’s provision, disability pension and funeral grant.

**France** covers compulsory vaccines while **Denmark** covers specified vaccines.

Geoffrey Evans describes the **New Zealand** system, commenced in 1974, as “unique” as it comes under the Medical Misadventure program as part of the Accident Rehabilitation and Compensation Insurance Corporation (ACC). The ACC provides comprehensive no-fault insurance for accident-related injuries including medical malpractice.

**South Korea (Republic of Korea)** which has a population of about 50,000,000 has a most interesting and straightforward scheme which has led to compensation payments to some 54 claimants over the ten years since its introduction in 1994.

### **Conclusion and Recommendation:**

At this stage I can see us recommending something along the lines of the Quebec model using the NSW Motor Accident Authority’s proposed “Lifetime Care and Support” scheme.

If Australia goes state by state (yet again!) it will be necessary to spell out portability/mutual recognition provisions for out of state victims.

I really think this should be a **national** endeavour either now or later. NSW could pioneer it but then have it brought to the attention of the National Public Health Partnership so that all states and territories could adopt a uniform approach with identical levels of compensation.

Preferably the scheme should be national from the very beginning with a committee established under the Federal Health Department to assess claims for compensation. The number of claims is likely to be very small and it makes no sense for every state to do its own thing.

Of course if we get the Federal Government interested in taking on the whole issue then – as in the USA - the Federal Government will end up paying for it all. Something the states would appreciate!

However the Tito inquiry some years ago when Brian Howe was Federal Minister of Health didn't get anywhere and it might be better for NSW to lead the way this time!

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