

Quality of Life Compensation

Juror survey

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Summary

A majority of jurors indicated that they would support a threshold based on Whole Person Impairment (WPI), with a further significant minority desiring a threshold based on some other measure.

However, when considering real examples of motor vehicle accidents, most jurors would compensate most injuries, including half of injuries at the most minor level of 0%-1% WPI and nine-tenths of injuries in the range 2-5% WPI.

Introduction

During the first weekend of the CTP citizens' jury, there was considerable interest in the large size of "general damages" or "damages for pain and suffering", which is the general term for damages not related to monetary loss. In other words, this is compensation for loss of quality of life, or for loss of life expectancy.

There were suggestions that the ACT could follow the lead of some other jurisdictions and limit general damages to certain types or severity of injury. However, there was a great deal of uncertainty as to what sorts of injuries might or might not be limited in such schemes.

I decided to conduct a survey - first of jurors, and then of the general Canberra public - to determine what people think is reasonable when it comes to compensation for injuries.

These are the results of the juror survey.

Findings

26 jurors completed the survey, out of a total of around 50. This represents a 52% participation rate.

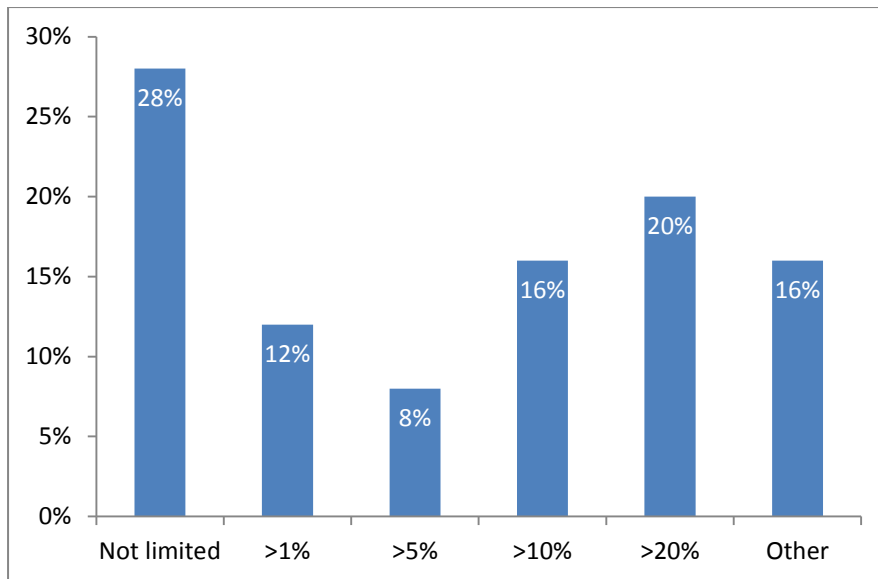
Threshold

There was majority support for setting a threshold below which injuries would not result in compensation for reduction in quality of life.

There was considerable variation as to where jurors thought the threshold should be set, and 16% said that there should be a limit but not based on WPI.

A consensus-blocking minority, 28%, said there should be no threshold for compensation for loss of quality of life (i.e. the status quo).

Figure 1: Choice of threshold



These answers, as well as serving as a barometer of jury sentiment, also allowed later answers to be assessed by cohort. The overall trend is that jurors who had chosen higher thresholds, like 10% or 20%, were less likely to say that injuries should be awarded quality of life compensation. This is not surprising.

It's worth noting that even those who chose high thresholds would often award compensation to injuries well below their threshold. The opposite is also true, although to a lesser extent: those who chose low thresholds sometimes did not award compensation to injuries above their threshold.

Another interesting result is that some of those who said quality of life compensation should not be limited went on to identify some injuries that they said should be excluded. This result is counterintuitive, but not necessarily hypocritical. The common law of negligence shifts according to the rulings of judges, and these people may have been saying that quality of life compensation should not be limited by legislation, but they still believed that judges had interpreted the law of negligence wrongly. Alternatively, they may have mistakenly believed that some of these cases would have already been excluded from compensation under the common law, and thought that they were merely enforcing the boundaries of the common law by saying that those cases should be excluded.

Finally, two jurors said that none of the 31 injuries should receive compensation for loss of quality of life. Presumably, these jurors would like quality of life compensation abolished (which was not an option on the survey).

Table 1: I would like to see compensation for lost quality of life/life expectancy

Answer	Share of respondents
Not limited	28%
Limited to people permanently impaired by more than 1% of their "whole person"	12%
Limited to people permanently impaired by more than 5% of their "whole person"	8%
Limited to people permanently impaired by more than 10% of their "whole person"	16%
Limited, but using a test other than "whole person impairment"	20%

Injuries

Although there is majority support for limiting injuries by WPI, that was not necessarily reflected in which injuries jurors nominated that they would and would not compensate. On average, jurors would compensate half of injuries in the 0%-1% WPI range, and a majority of injuries in the 2%-5%, 6%-10% and 11%-20% WPI ranges.

Jurors would only compensate half of injuries in the above 20% WPI range, but there were only two injuries in that category and one was quite unusual.

In the table and figure below, "mean approval" is the average compensation rate of all injuries in that category. "Share of injuries with more than 50%" is the share of injuries in that category that have a compensation rate of above 50%.

Table 2: Compensation of injuries by WPI

Categories	Mean approval	Share of injuries with more than 50%
1% WPI and below	47%	50%
2%-5% WPI	66%	89%
6%-10% WPI	62%	71%
11%-20% WPI	77%	100%
Above 20% WPI	46%	50%

Figure 2: Injuries by category, mean approvals and rate of injuries approved by more than half of jurors

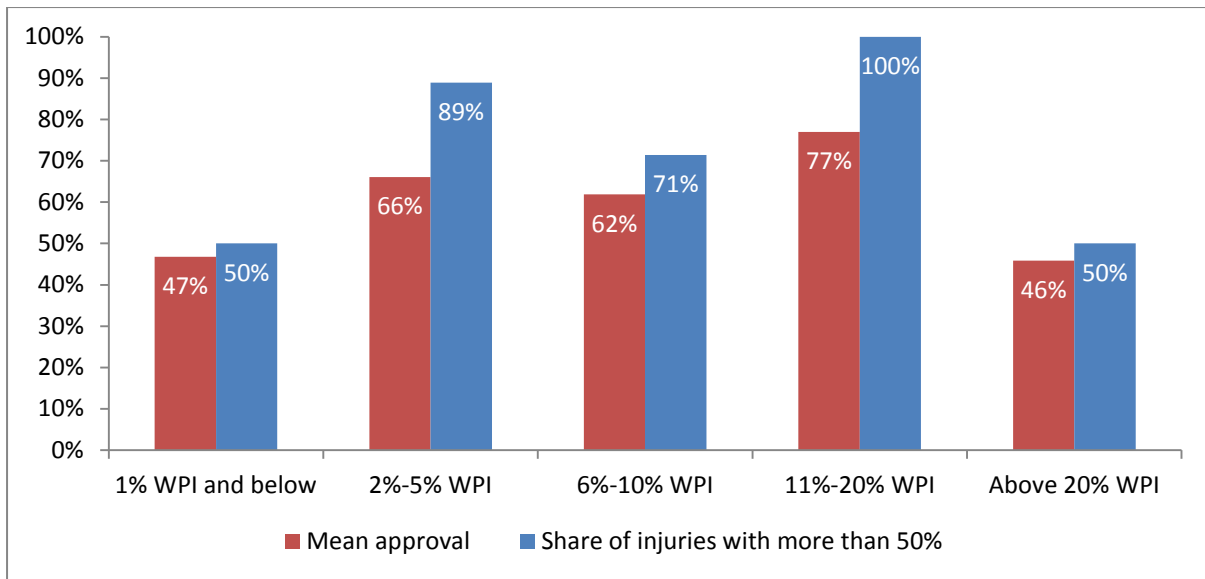
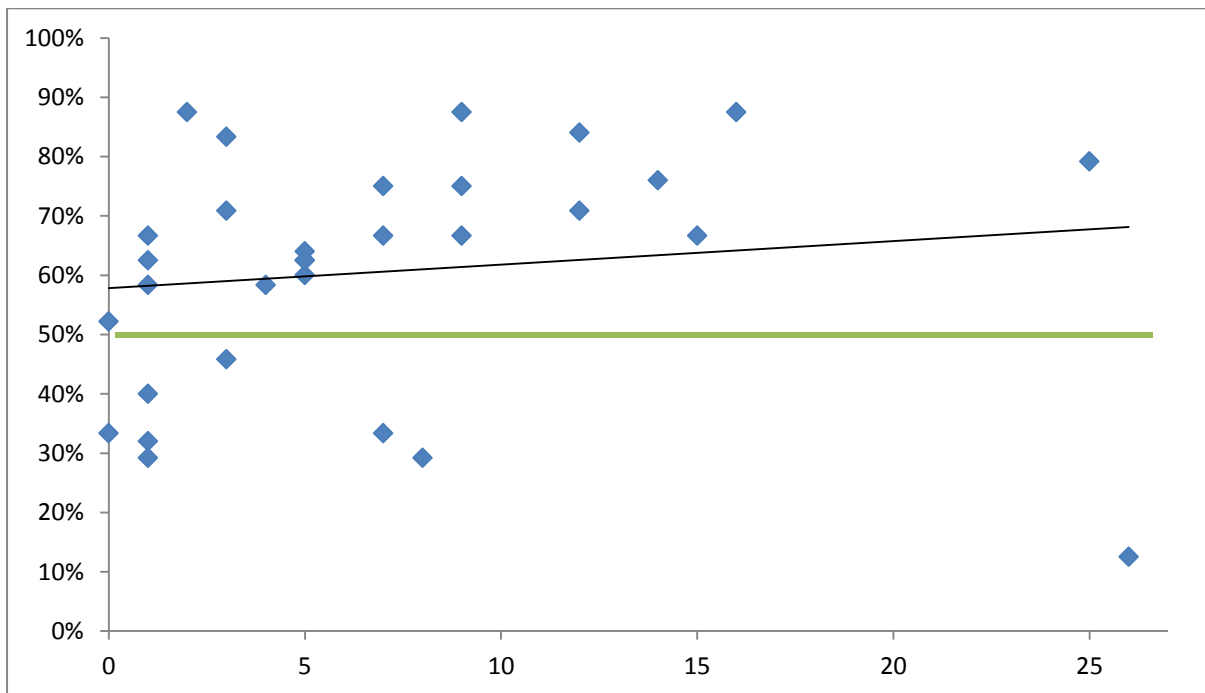


Table 3: Scatter graph of injuries by WPI and mean approval



Includes a linear trend line that demonstrates an increase in mean approval rate as WPI increases.

Categories of injuries

Jurors were also less likely to assess an injury as worthy of compensation if it involved a skin condition or scarification, even if the injury involved pain or discomfort, interfered with normal activities like walking, or dramatically affected the person's appearance.

All injuries in the “skin” category were compensated less often than the average for their WPI range.

Jurors may also have been less likely to assess an injury as worthy of compensation if it involved mental illness. However, the trend is less clear than it is for skin conditions.

The injury that would be compensated by the lowest share of jurors was actually the one with the highest WPI, at 26%. It involved a person who was not in the car accident themselves, but who was affected by the death of a sibling in a car accident. Only 13% of jurors would compensate this person, which is lower than all other injuries.

Table 4: "Gap" between an injury and the average for its WPI category

Category	WPI	Comp	Mean	Gap
mental and behavioural	26	13%	46%	-34%
skin	8	29%	62%	-33%
mental and behavioural	7	33%	62%	-29%
endocrine	3	46%	66%	-20%
skin	1	29%	47%	-18%
skin	1	32%	47%	-15%
cardiovascular	0	33%	47%	-13%
skin	15	67%	77%	-10%
skin	4	58%	66%	-8%
ear, nose and throat	1	40%	47%	-7%
skin	12	71%	77%	-6%
mental and behavioural	5	60%	66%	-6%
digestive	5	63%	66%	-4%
urinary and reproductive	5	63%	66%	-4%
mental and behavioural	5	64%	66%	-2%
digestive	14	76%	77%	-1%
digestive	9	67%	62%	5%
haematopoietic system	7	67%	62%	5%
visual	3	71%	66%	5%
urinary and reproductive	0	52%	47%	5%
visual	12	84%	77%	7%
ear, nose and throat	16	88%	77%	11%
visual	1	58%	47%	12%
urinary and reproductive	9	75%	62%	13%
visual	7	75%	62%	13%
mental and behavioural	1	63%	47%	16%
digestive	3	83%	66%	17%
ear, nose and throat	1	67%	47%	20%
ear, nose and throat	2	88%	66%	21%
cardiovascular	9	88%	62%	26%
respiratory	25	79%	46%	33%

No evidence of compassion fatigue

I was concerned that given the number of questions that survey respondents would have to answer, they would experience "compassion fatigue" and be less affected by later injuries than earlier ones. However, there is no apparent trend of that nature, with the last 15 questions in the test actually

being more likely to receive a “Yes” response than the first 15 questions, even though the mean WPI for the first 15 questions is slightly higher.

Appendix: Table of Injuries

Table of injuries

Description	Class	WPI	Would comp
nightHeartAbnormal	cardiovascular	0	33%
rupturedTesticle	urinary and reproductive	0	52%
hearingLoss	ear, nose and throat	1	67%
scarsIrritation	skin	1	32%
singleMotherAnxiety	mental and behavioural	1	63%
15cmScar	skin	1	29%
cobwebEyes	visual	1	58%
5cmHeadScar	ear, nose and throat	1	40%
deafnessDegloving-child	ear, nose and throat	2	88%
visionConvergence	visual	3	71%
herniaPain	digestive	3	83%
diabetesWorsened	endocrine	3	46%
scarNumbPatch	skin	4	58%
paranoidStoppedMusic	mental and behavioural	5	60%
leakingBladder	urinary and reproductive	5	63%
depressionHobbies	mental and behavioural	5	64%
stiffShoulder	digestive	5	63%
depression-mental	mental and behavioural	7	33%
astigmatismExistingBlindness	visual	7	75%
thrombosis	haematopoietic system	7	67%
psoriasisWorsened	skin	8	29%
heartTear	cardiovascular	9	88%
invertedVagina	urinary and reproductive	9	75%
acidRefluxSpine	digestive	9	67%
visionLoss	visual	12	84%
worsenedEczema	skin	12	71%
inflamedIntestine-child	digestive	14	76%
baldPatch	skin	15	67%
fracturedFaceSevere	ear, nose and throat	16	88%
lungCapacity	respiratory	25	79%
siblingDead	mental and behavioural	26	13%

Appendix: Methodology

The NSW regulator has dozens of case studies of motor vehicle injuries on its website. I went through each category and summarised the case studies in order until all were completed or I felt they were starting to repeat themselves. There is a good range of different severities across 31 injuries.

I wrote up draft copy for the survey, which I posted on the citizens' jury Basecamp discussion forum for consultation. I made some changes as a result of the feedback I received.

I then randomised the order of questions and placed them into popular survey service Wufoo.

I added (as discussed on Basecamp) a question about where jurors would place the threshold below which quality of life compensation would not be awarded. This used the NSW scheme of Whole Person Impairment (WPI), to allow easy comparison with the NSW regulator's case studies. In almost all cases, these had a level of WPI specified. In a few cases, the case study simply said that WPI was below 10% (the threshold in NSW). In those instances I coded the injury as "WPI 9%".

In some cases, a pre-existing condition was worsened or aggravated by an accident. In those cases, I coded the injury as having a WPI that was the gap between the old and the new WPI, consistent with NSW law.

Jurors were given just over seven days to complete the survey, in the fortnight between the first two jury weekends.

Excluding duplicates

There were two instances where a single IP address recorded multiple form submissions (other than the first three entries, which were tests, and some blanks).

- Entries 18, 24 and 25. All three skipped multiple questions. 18 and 24 gave the same answer for a "limit". 25 only answered the question on a "limit". I merged 18 and 24 and deleted 25.
- Entries 9 and 21. The two entries were similar, but differed on some questions, including the "limit", so I left both in.