

Joint Dynamics Pty Ltd

A Submission for
The icare and
State Insurance & Care
Governance Act 2015
Independent Review

Sydney Australia



**A Submission to Assist the NSW Government
Identify & Understand Key Weaknesses
in the Present Workers' Compensation System
and
Offer Possible Paths to Rectifying Them**

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Submission by:
Joint Dynamics Pty Ltd
Unit 1 14 Sheridan Close
Milperra NSW 2214
Phone 02 9792 1622
Contact: Richard Creswick
richardc@jointdynamics.com.au
Web: www.jointdynamics.com

The Review
Office of the Secretary
Department of Customer Service
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

Joint Dynamics welcomes the opportunity to provide a constructive submission to the review in relation to various aspects of our involvement and knowledge of SIRA and icare methods.

This submission has a number of important attachments to support the key issues of ways operations be enhanced to provide better managed, more cost-effective, more accurate and fairer outcomes. It is possible to aim to enhance the existing Workers' Compensation methods by aiming have the best quality system in the world.

Very important note:

This submission relates to rehabilitation and management using objective data for Musculoskeletal and Soft Tissue injuries only.

The attachments to this submission are:

- ❖ A document titled "Why" which provides a series of questions that require answering before an understanding can be attained in the shortfalls in the present systems.
- ❖ A document titled "The Clinical Framework Document Comments" which provides an analysis of a key foundation concept document used by most Workers' Compensation and CTP organisations in Australia. This document is purported to be a pivotal framework document upon which to base the various compensation steps.
- ❖ A document titled "Old&NewJointAssessmentImportance" which provides a detailed comparison of presently used methods and those possible with the unique Joint Dynamics Technology.
- ❖ A document titled "SolutionsToKeyProblemsInGovernmentRunWCSystems" which identifies key problem areas and possible solutions.

History

The unique technology of being able to measure effort, has been the "Holy Grail" of being able to accurately and objectively assess joint and work function the world over. There are over 250 papers written in an attempt to measure "sincerity of effort", but all have scientifically failed. Basically, people do not measure strength or torque because it is unable to be ascertained if the subject was providing maximal voluntary effort.

After 14 years of development, we successfully proved, with an independent double blind Clinical Trail that we could reliably (100%) identify whether a person was providing one's Maximal Voluntary Effort when being tested for strength.

Joint Dynamics connection with workers' compensation began back in 2008, when Mr Greg McCarthy (ex-Chairman NSW WorkCover Authority) after looking at an early prototype in Milperra stated, "You may well have the new Gold Standard for joint function assessments".

Eventually, after millions of dollars of R & D, years of failing to get SIRA and / or icare support, we contacted the Minister's office. This resulted in a senior management meeting including Vivek Bhatia, John Nagle and Don Ferguson. This meeting ultimately resulted in a cost only, collaborative trial to independently, comprehensively and scientifically evaluate the benefits (if any) for the Workers' Compensation system in NSW. This Pilot Evaluation began in March 2016 and was terminated in 24th August 2016 by icare. One of the key reasons that icare terminated the trial was based on a lie that The Agency for Clinical Innovation (ACI) advised icare after assessing the technology in the quoted words below.

*"Research into new technology has its place but even if this was effective in achieving 'greater accuracy' in range of motion and addition of torque **it is unlikely to lead to better outcomes and it will add inconvenience and cost.** The move away from simple biomechanical measures towards (Quality of Life) self-management and other more holistic patient reported outcomes should continue"*

After contacting the CEO of the ACI, some two years later, he confirmed that they did not assess the Joint Dynamics technology in any way and no correspondence (including emails) could be found "after a forensic search" in the ACI archives.

Much research was carried out by Joint Dynamics to understand why many calculations of impairment using the AMA Guides MMI calculations and Return to Work Assessments had a minimal basis in accurate objective fact.

Numerous senior experienced experts in the world of musculoskeletal and soft tissue medicine including Professor Ian Harris, believed that the objective technology developed by Joint Dynamics was unique and thought that it would be of great benefit to the workers' compensation industry and specially to ensure fairer outcomes to the injured worker.

As a result of icare's lack of interest in the technology and statements that it had no application in the WC arena, further development has halted.

Why are so many of the workers' compensation assessments inaccurate?

Extract from the icare's response to the Dore Report

Qualitative assessment of **over six hundred IME reports** from 2013- 2015 confirmed that:

- ❖ *In 62% of cases, the IME report either supported the treatment proposed, or did not alter the case management approach*
- ❖ *17% of IME reports sampled resulted in a clear change in the claim outcome (e.g. through declinature of treatment)*

- ❖ *In all cases, referral to an IME delayed decision making by an average of 6 weeks*

(What happened to the other 21% is not quoted in the above figures?).

This information clearly shows that only 62% were defined as accurate so logically there must have been 38% that were not defined as accurate. An error rate of this magnitude would demonstrate that the existing methods were poorly managed or carried out with the resultant poor inaccurate outcomes to the innocent worker who hopes the system is fair.

Additional information about the comparison of the present methods to the new objective approaches with effort measurement now possible is detailed in the PDF file attached.

This file also quotes how poor (76% of 20,798 assessments were deemed to be incorrect by a panel of experts) using the present methods defined by the AMA Guides to calculating percentage of Whole of Person Impairment. This is a very detailed study but it clearly shows that the present highly subjective and poor quality methods of assessing joint function actually.

The above-confirmed poor quality of assessments is a direct reflection of what the Workers' Compensation industry perceives to be acceptable. There appears to be no desire in any form to enhance it by innovation. It appears that the status quo is acceptable and as there are many parties in the industry gain from grey inaccurate information, as opposed to verified accurate objective data. Many in the industry confuse subjective information with measured objective data.

Until the Joint Dynamics Joint Function Assessment with its unique effort measurement, there has been no way to confirm that the results of torque measurements are measured at maximum voluntary effort (MVE) levels. If it was thought to be beneficial by many highly experienced and competent participants in the medical world doesn't organisations such as icare have a duty to evaluate it?

Culture

There appears to be a "laissez-faire" attitude from virtually all parties with which Joint Dynamics have been involved. One clear exception was Carmel Donnelly who at initial meetings said that the concept of objective accurate measurement was "potentially a good idea".

Many parties interviewed at the early stages, claimed that there would be no way that they would send an injured person for an assessment that gave comprehensive objective data about joint function, unless it was dictated by SIRA or icare.

Virtually all parties involved in the Workers' Compensation have a financial benefit by having less than more accountability. The only parties who would gain by having more accountability accuracy or structure are the Government, the employer, the taxpayer and most importantly, the injured worker.

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The Result of Presently used Non-Objective and Inaccurate Methods

The key aspects causing inaccurate and unfair outcomes are:

- Little or non-existent transparency for all party's performance monitoring
- Proven inaccurate measurements from handheld devices (such as the Universal Goniometer) with no defined accuracy or confidence level provided.
- Not knowing whether a force or torque measurement was the result of a maximal or sub-maximal effort – this is why force or torque is not usually measured in capacity assessments.
- Virtually impossible to effectively audit processes carried out during and after rehabilitation.
- Functional Capacity Assessments stating functional performance to be objective when no measurements are made.
- Referencing the AMA Guides as being the best method of quantifying joint function in musculoskeletal & soft tissue injuries when no measurement of torque (strength) is included.
- Excessive reliance on information provided by the subject – some even suggesting that survey information is objective and quantitative.
- The perception that a visual estimation has high accuracy comparable to a machine.
- The inability to detect small changes in rehabilitation/treatment progress – saves costs.
- Lack of objective knowledge of the status of the rehabilitation to make quality decisions by all involved including the Case Manager.
- Virtually no feedback to the injured person
- Non- scientific method of timely and accurate identification of attaining the Maximum Medical Improvement Milestone (MMI).
- Return to Work Capability Assessments having virtually no quantitative measurements.
- No structured scientifically measured dynamic functional assessments are carried out.

There are very few studies of the degree of accuracy found in physical function assessments of injured patients by medical professionals. This could be readily achieved by having 10 professionals independently assess the same subject and statistically evaluate the consistency of each of the assessments.

In many cases, the old adage of “If you can’t measure it you cannot manage it” is very applicable in the icare environment.

Five Simple Very Basic Measurement Questions that should be addressed:

Is a higher quality musculoskeletal or soft tissue injury outcome more likely to be achieved with quantitative, objective & accurate measurements of functional parameters **OR** by using someone's perception of the magnitude of that parameter?

Is it important that a measured force or torque measurement that is known to be provided under maximal effort conditions?

Should there be a truly auditable, transparent and accountable structured system in place that has indications of fraud or poor management?

Is physical assessment accuracy perceived by the medical and medicolegal world, to be critical to achieving high quality, accurate and the fairest outcomes?

If all issues hinge on the status and functional performance of a joint, does icare have a duty to use the best available objective evidence-based structured methods in practice?

Icare Quality Enhancements

By introducing accurate objective assessment & structure allows for the following previously unattainable issues to occur:

- ❖ Unbiased accurate assessments based on factual functional measurements.
- ❖ More effective and accurate claims management decisions by the case manager.
- ❖ More effective rehabilitation regimes based on factual physical functions.
- ❖ More accurate Maximum Medical Improvement identification – when rehabilitation stops and any impairment is calculated.
- ❖ More efficient rehabilitation regimes with more meaningful objective data to base subjective interpretations.
- ❖ Greater transparency with accurate progress feedback to the worker.
- ❖ Identification and Reduction of over-servicing by all parties involved.
- ❖ More accurate Return to Work Capability assessments built on measured objective functional parameters - not subjective interpretations from the injured party or the treating Doctor.
- ❖ Less time spent arguing in court because those arguments would be based on factual and verifiable objective data and not on a series of subjective opinions
- ❖ Meaningful comparisons with population normative data would be possible.
- ❖ Greatly increased chance that the fairness of the outcome to the injured person will be maximised.

Summary

It is hoped that this document will assist in providing a detailed understanding of the key present problems within the icare organisation for musculoskeletal and soft tissue injuries. The numerous issues defined and the detailed provided solutions are offered so that icare can turn around many issues that are failing in the present form.

It is the fact that the Joint Dynamics technology is unique, that there is the opportunity for many of the proposed solutions to be applied to rectify the stated shortfalls.

Icare should be aiming for the world's best, most accurate and most cost-effective systems to be implemented to ensure the Workers' Compensation in NSW is viable and beneficial for the community.

I look forward to improved positive outcomes.

Richard Creswick
Technical Director
Joint Dynamics Pty Ltd

02 9792 1622