

Acquired brain injury v traumatic brain injury: the impact of nomenclature

The term 'acquired brain injury' (ABI) is used throughout Australia, primarily by government departments, such as the Victorian Department of Human Services,¹ and the medical profession. The terminology lumps all victims together in a 'one size fits all' category, and effectively diminishes the seriousness and trauma of the injury by redirecting blame back to the victim.

'Acquired brain injury' refers to any type of brain damage that occurs after birth. It can include damage sustained by infection, disease, lack of oxygen or a blow to the head.²

An example of ABI could be a person who has a stroke and suffers minor brain injury. The stroke may have resulted from undue work stress and other pressures. However, the term ABI diminishes the employer's responsibility and the importance of any external influences (such as work practices and conditions) that



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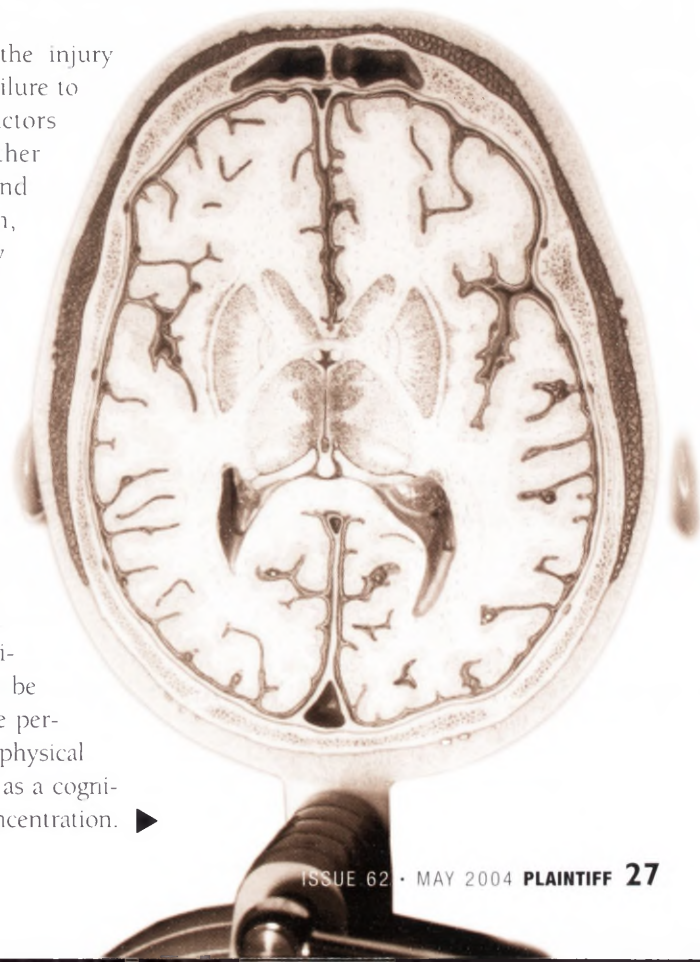
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may have contributed to the injury that caused the ABI. This failure to connect environmental factors and injury generates further frustration, anxiety and depression for the victim, and reduces acceptance by the broader community of their condition.

A person with an acquired brain injury has an injury. They did not 'acquire' it. We don't acquire a broken leg, so why do we acquire a brain injury?

'Traumatic brain injury' (TBI) can result from a car accident, fall or industrial accident. The injury may be resolved in time or it can be permanent. Regardless of the physical injuries, TBI can be as mild as a cognitive loss of memory or concentration. ►



However, the mind is also injured. Disassociation from reality, a sense of loss of original self, identity and purpose, paranoia, agoraphobia, loss of confidence and panic attacks are among the symptoms.

Despite the estimated 160,000³ head-injured people in Australia (and this is probably an underestimate), there is no public profile for these people, who must live with their injuries and fears without the physical, economic or social support of the community long after the legal process is over.

Economic compensation can never replace the thought patterns of the changed mind, a trauma that is compounded by the stigma attached to the condition (as is also the case for people with a mental illness). However, it is important to understand that head injuries are diverse and individual and cannot be judged under a single definition.

In Australia in 2001, 5% of ABI sufferers had a long-term mental or behav-

ioural problem.⁴ In the United States, over 400,000 people are diagnosed with moderate head injuries each year.

US specialist personal injury lawyer, Richard Alexander, describes head injury as a lifetime disability.⁵

'The most challenging aspect of representing TBI survivors is that many times they suffer minimal outward physical manifestations of injury. These patients are told they will recover. As a result, many do not receive appropriate care and treatment for the disabilities that follow, including physical, cognitive, psychological, and social impairments.

'Maximising damages for these plaintiffs requires a thorough understanding of TBI. Since the medical community, generally speaking, is not well trained in neuro-behaviour, physicians often fail to diagnose the short-term and potentially chronic aspects of closed head injuries in the regular office visit.

'Outside of the regional head injury treatment centres, neurologists on a day-to-day basis do not treat trauma victims. Neurosurgeons see only the

most severe cases of acute disorders and coma.'

As Alexander suggests, in order to maximise a claim, lawyers should consider services such as rehabilitation case managers who could oversee and evaluate a best practice model for the individual. This includes assisting the client to take positive steps to reintegrate back into the community. The individual may not have the confidence to make life-changing decisions alone. The investment in the client's life should not end when the settlement cheque is handed over.

Lawyers need to understand that TBI is a specific area under the umbrella of ABI, and to ensure that the requests they make to the medical services are relevant to the client's case. Will the client suffer from degenerative symptoms in the future? Are they more or less likely to be diagnosed with Alzheimers as they age? Will the head injury repair itself if they do not exercise their brain? What solutions can be found for the client to return to the workforce? Will they be able to take courses in a different area of study?

In many cases those with a brain injury may be unaware of the many specialised forms of assistance available to them. Plaintiff lawyers can play an important role in making these known to their clients and in ensuring that there are sufficient funds available to meet the cost of such services into the future.

In short, plaintiff lawyers should ensure that they seek more than just a decent settlement cheque for their clients. After settlement, the client should be catered for with the best available and most appropriate services for the rest of their lives, if that is what is necessary. ■

Endnotes: 1 Victorian Department of Human Services, Acquired Brain Injury Strategic Plan, 2001. 2 www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Acquired_brain_injury?OpenDocument. 3 www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Acquired_brain_injury?OpenDocument. 4 Australian Bureau of Statistics, 4384.0 National Health Survey: Injuries, Australia, 19 November 2003. 5 <http://consumerlawpage.com/article/trabrain.shtml>.

"We don't acquire a broken leg, so why do we acquire a brain injury?"



People with mild brain injury have an absolute understanding of the person they were before the injury. Knowing that they will never be that person again is something that may haunt them for the rest of their lives, consciously or subconsciously. This realisation alters family and work relationships and diminishes society's confidence in the person.

I am far from convinced that plaintiff lawyers who represent victims of brain damage are accurately and proportionately addressing the seriousness of claims while they continue to use the term 'ABI' to represent all closed head injuries. Different levels of injury and their consequences for individuals should be carefully defined, rather than the current practice of grouping together serious injuries that put victims into a vegetative state with those that result in moderate, short-term working memory loss. Such broad categorisation does nothing for either victim, inaccurately suggesting that both extremes can be treated as one issue, which clearly they are not.