

Tackling concussion in contact sports head on

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Credit: Unsplash/Olga Guryanova

Over the years, the focus of injury from sporting contests has broadened from immediate physical health risks to include long-term and long-latency injuries caused by concussions and repeated head trauma.

These developments have been matched by increased interest and research into the causes, prevention and treatment of concussions and head trauma in sport. Comparatively, less interest and research has been

devoted to the manner with which players are insured and compensated for those injuries.

Dr. Eric Windholz, Senior Lecturer in the Faculty of Law at Monash University, has conducted extensive research in the area of sports law and, in particular, the application of regulatory theory to the world of professional sport.

"A successful sport injury management program should focus not only on prevention and rehabilitation, but also on how we insure and pay for that rehabilitation, and compensate and support injured players."

"Insurance and compensation arrangements for professional players vary according to the nature of the sport, the financial capacity of its governing bodies, and the player's bargaining power," said Dr. Windholz.

Dr. Windholz has made [a submission](#) to the Senate Community Affairs References Committee inquiry into concussions and repeated head trauma in contact sports. He will also be testifying at an upcoming public hearing.

Dr. Windholz's submission argues that the current [insurance](#) and compensation arrangements:

- are inadequate for long-term and long-latency injuries;
- are inequitable for players and taxpayers; and
- (in some cases) may operate in breach of workers' compensation legislation.

Inadequacy of insurance arrangements

"Contractual injury payment schemes compensating for lost income have maximum payment periods, and cease on contract expiry. They are

unlikely to cover long-term and long-latency injuries arising from concussions and repeated head trauma."

"Sporting organizations generally require players to take out top level [private health insurance](#), with the league or club paying any excess [medical costs](#) (after private health insurance and Medicare) associated with the treatment of injuries incurred training or playing in accordance with the contract," said Dr. Windholz.

"The contributions of sporting organizations towards insurance or any excess generally lapse either on contract expiry or some short period thereafter. As a result, employer supported private health insurance does not adequately support the treatment of long-term and long-latency injuries arising from concussions and repeated head trauma," added Dr. Windholz.

Inequitable for players

"That persons injured at work should be appropriately compensated and supported is today considered an essential tenet of a modern society. In other professions, workers' compensation plays a key role. Sport is an exception. Exemptions from State and Territory workers' compensation schemes exist for professional players."

"This stands in stark contrast to the situation under State and Territory work health and safety laws. When it comes to work health and safety law, professional sports enjoy no special privileges," said Dr. Windholz.

Inequitable for taxpayers

In the absence of workers' compensation insurance, the primary medical insurance obligation is transferred to Medicare which normally does not

cover medical expenses incurred by employees injured undertaking work-related activities.

"This is inequitable for taxpayers because it shifts the primary medical insurance obligation from the employer sporting organization (and state governments) to taxpayers (and the federal government)," said Dr. Windholz.

Illegally operating in breach of workers' compensation legislation

"The workers' compensation exemptions are ineffective to exclude professional players in New South Wales and Tasmania whose contracts remunerate them for activities other than participating in, training for, or traveling to, the competitive sporting activity (e.g., for engaging in promotional activities), and in the Northern Territory who earn more than 65% of average weekly earnings."

"Some sporting organizations in New South Wales, Tasmania and Northern Territory that have not taken out workers' compensation insurance policies covering their players may be operating in breach of their workers' compensation obligations," said Dr. Windholz.

Professional players and inquiry insurance: Re-thinking the norm

An important part of a successful sport [injury](#) management program is how players are insured and compensated for injuries they sustain while participating in their chosen sport; yet it attracts little attention.

"Insurance and compensation arrangements for professional players should be no less than that provided to other Australian workers," said

Dr. Windholz.

"The opportunity exists to construct a bespoke insurance and compensation scheme tailored to the unique circumstances of professional sport," added Dr. Windholz.

Dr. Windholz is a former General Counsel and General Manager with the Victorian WorkCover Authority and WorkSafe Victoria. He has researched and published on the application of workers' compensation and work health and safety law to professional sport.

Provided by Monash University

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