

(including diseases) suffered by persons in employment and the medical care, retraining, and rehabilitation of persons so incapacitated, and the administration of the said law, and to recommend such changes therein as the Commission considers desirable; and, in particular, to receive representations upon, inquire into, investigate, and report on the following matters:

1. Any need for change in the law relating to claims for compensation or damages in respect of persons incapacitated or killed in employment.

2. The institution and administration of a scheme for the payment of compensation or damages, in whole or in part, by periodic payments, in respect of persons incapacitated or killed in employment.

3. The desirability of adopting, in whole or in part or with suitable modifications, any scheme or system of compensation, medical care, retraining, and rehabilitation in operation in any other country which the Commission feels justified in investigating.

4. The relationship between money payable by way of compensation or allowances or damages in respect of persons incapacitated or killed in employment and money payable pursuant to legislation concerned with social security or welfare or pensions.

5. The desirability of amending the legislation to conform with the International Labour Convention (No. 121) Concerning Benefits in the Case of Employment Injury, and the international Labour Recommendation (No. 121) Concerning Benefits in the Case of Employment Injury.

6. The provision of facilities for medical examination of persons injured or incapacitated in employment, and their treatment, retraining, and rehabilitation.

7. Any amendment that should be made in the legislation to implement any changes recommended in respect of any of the above matters.

8. Any associated matters that the Commission may deem to be relevant to the objects of the inquiry.

And We hereby appoint you, the said

The Honourable Arthur Owen Woodhouse

to be Chairman of the said Commission:

BERNARD FERGUSSON,

Governor-General.

By His Excellency's Command—

J. R. MARSHALL, for the Prime Minister.

Approved in Council—

T. J. SHERRARD, Clerk of the Executive Council.

REPORT OF THE ROYAL COMMISSION ON COMPENSATION FOR PERSONAL INJURY

Conclusions and Recommendations

482. The following paragraphs repeat for ease of reference the more important conclusions and recommendations contained in the Report.

483. *Scope of Inquiry*

- (1) It is not possible to resolve the problem of industrial injuries in isolation from the many other hazards which face the work force throughout the 24 hours of each day.

- (2) This conclusion is reinforced by the findings and recommendations of the recent inquiry conducted by the Committee on Absolute Liability for road accidents. The inquiry supplements our own and the findings and recommendations are set out in paragraphs 137 to 141 of this Report.
- (3) Accordingly, it has been essential to examine the implications of a unified and comprehensive system for meeting the losses which arise from personal injury no matter where or how the injury might occur.

484. *Requirements of a Compensation Scheme*

There are five essential principles which should be accepted by any modern system of compensation as follows—

- (1) In the national interest, and as a matter of national obligation, the community must protect all citizens (including the self-employed) and the housewives who sustain them from the burden of sudden individual losses when their ability to contribute to the general welfare by their work has been interrupted by physical incapacity.
- (2) All injured persons should receive compensation from any community financed scheme on the same uniform method of assessment, regardless of the causes which gave rise to their injuries.
- (3) The scheme should be deliberately organised to urge forward their physical and vocational recovery while at the same time providing a real measure of money compensation for their losses.
- (4) Real compensation demands that income-related benefits should be paid for the whole period of incapacity and recognition of the plain fact that any permanent bodily impairment is a loss in itself regardless of its effect on earning capacity.
- (5) The achievement of the system must not be eroded by delays in compensation, inconsistencies in assessments, or waste in administration.

485. *The Action for Damages*

- (1) The adversary system hinders the rehabilitation of injured persons after accidents and can play no effective part beforehand in preventing them.
- (2) The fault principle cannot logically be used to justify the common law remedy and is erratic and capricious in operation.
- (3) The remedy itself produces a complete indemnity for a relatively tiny group of injured persons; something less (often greatly less) for a small group of injured persons; for all the rest it can do nothing.
- (4) As a system it is cumbersome and inefficient; and it is extravagant in operation to the point of absorbing for administration and other charges as much as \$40 for every \$60 paid over to successful claimants.
- (5) The common law remedy has performed a useful function in the past, but it has been increasingly unable to grapple with the present needs of society and something better should now be found.

486. *The Workers' Compensation Act*

- (1) The original legislation was put forward on a wrong principle and has since been dominated by a wrong outlook.
- (2) The position is due to the unfortunate compromises which mark the legislation.
- (3) It had been hoped that it would overcome the procedural problems of the common law, and yet it has adopted all the forms of litigation.
- (4) It was designed to provide a consistent and certain remedy, but offers no more than partial compensation.
- (5) It was put forward principally because of the difficulties which accompany serious injury, and yet its emphasis goes in favour of short-term or minor problems.
- (6) It is handled by private enterprise but it affects a social responsibility.
- (7) It is a costly process in administration and yet the system can do nothing effective in the field of prevention of accidents or the physical and vocational restoration of the injured.
- (8) In short, in its present form the Act works upon a limited principle, it is formal in procedure, it is meagre in its awards, and it is ineffective in two of the important areas which should be at the forefront of any general scheme of compensation.

487. *The Social Security System*

- (1) The social security fund frequently has supplemented awards of damages or compensation and those concerned have thus been assisted twice in respect of the same injury. It is a situation which should not continue.
- (2) The system itself provides uniform flat rate benefits and on this basis it cannot provide the framework for a comprehensive scheme of injury compensation. Flat rate benefits would be an unacceptable substitute for varied income losses or permanent physical impairment.
- (3) Nor could an income-related means test be retained as a qualification for fair recompense. It would interfere inequitably with the principle of compensation for losses; it would be a serious disincentive to rehabilitation and a return to work; and it has the other disadvantages set out in paragraph 260.

488. *A Unified Scheme*

- (1) There is a clear need for and we recommend a unified and comprehensive scheme of accident prevention, rehabilitation, and compensation. It must itself avoid the disadvantages of the present processes and operate on a basis of consistent principle.
- (2) The scheme must meet the requirements of the five principles outlined in paragraph 484: community responsibility, comprehensive entitlement, complete rehabilitation, real compensation, and administrative efficiency.
- (3) It must meet the requirement of cost.
- (4) The object must be compensation for all injuries, irrespective of fault and regardless of cause. Accordingly the level of compensation must be entirely adequate and it must be assessed fairly as between groups and as between individuals within those groups.

489. *Consequential Changes*

- (1) Given a suitably generous scheme on the foregoing basis it follows automatically that previous ways of seeking to achieve the same or a similar purpose become irrelevant.
- (2) Thus the common law rights in respect of personal injuries should be abolished and the Workers' Compensation Act repealed.
- (3) Wherever relevant, existing benefits under the Social Security Act would be merged with the compensation payable under the new scheme.
- (4) Such a scheme, involving the acceptance of community wide responsibility in respect of every injured citizen, must clearly be handled as a social service by an agency of the Government.
- (5) And the procedures and techniques of private litigation should be replaced by non-contentious processes of assessment and review with recourse to the Courts only upon a point of law.

490. *Scheme to be Compulsory*

- (1) The scheme which has been outlined involves comprehensive entitlement. It must be given comprehensive support.
- (2) Protection is not to be restricted to work accidents or to road accidents, or to any period of the day, or to any group in the community. Individual liability, moreover, will disappear in favour of national responsibility.
- (3) If the scheme is to be universal in scope it must be compulsory in application. Accordingly there will be no place for special arrangements or for "contracting out". And the enactment making provision for it should be made to bind the Crown.

491. *The Insurance Companies*

- (1) In the absence of personal liability and with the disappearance of any element of voluntary contribution there can be no place for the insurance companies. Their purpose is to seek business from individuals who might wish to cover themselves at their own choice in respect of personal contingencies of their own definition.
- (2) It is said that the State should hesitate before interfering with private enterprise in what is claimed to be a legitimate field of operation. There is much confusion of thought about this matter. Private enterprise cannot claim as of right to handle a fund such as the compulsory road injury fund or workers' compensation fund in New Zealand. Those funds have arisen not because owners of vehicles or employers have been persuaded to provide the business, but because Parliament has ordained that they must do so.
- (3) Moreover, the insurance system itself can offer no central impetus in the important areas of accident prevention and rehabilitation. It is operating in an area which ordinarily would be handled by the central Government as a social service. It cannot avoid adversary problems. In terms of administration it is very expensive.

492. *Basis of Compensation*

- (1) Certainty of compensation and the need to leave some margin of effort to personal initiative are just and practical reasons why such a scheme as that proposed should not attempt to provide complete indemnities.
- (2) Automatic compensation equivalent to 80 per cent of lost (tax paid) income for periods of total incapacity and appropriate portions for partial disabilities would adequately take account of all relevant considerations.
- (3) It should be laid down, however, that assessments must give all reasonable doubts in favour of the applicant; that they must be based on the real merits and justice of the case; and that suitable discretion should be available to deal with unusual circumstances. On such a basis the proposed level of compensation should be accepted by all.

493. *Levels of Compensation*

- (1) Compensation should be paid as from the day following incapacity on the principle that there is rarely a wage loss for the day of the injury. Otherwise it should be paid in respect of the whole period of incapacity.
- (2) The upper limit of compensation must be defined at a point at which nearly every injured person could feel that his real losses were being fairly met on the proportionate basis outlined. The overall cost to the fund of taking this ceiling from \$80 per week (which we consider to be the lowest acceptable limit) to \$120 per week (which would include practically the whole working population) is statistically so insignificant that the higher figure clearly should be accepted.
- (3) Real compensation must be available wherever it is needed, and in order that funds can be distributed upon this principle we recommend that compensation for the first four weeks should not exceed \$25 per week.
- (4) At the expiration of four weeks the limit should be removed for those still incapacitated. In the case of persons incapacitated for periods of eight weeks or longer compensation should be reassessed at the full rate for the whole period of incapacity.
- (5) In no case should the payment for compensation fall below the amount currently available in the circumstances as a benefit under the social security system.
- (6) We have provided examples in Appendix 11 of severity ratings which we think should be given to certain classes of injury. But we have not designed a new scale. The matter is complex and we recommend that a small committee of medical and legal experts should be set up to prepare a new schedule having regard to the principles outlined in the Report.
- (7) Compensation for housewives and others without direct earning losses should be paid in respect of periods of temporary total incapacity as from the fifteenth day after the day of injury, but compensation in such cases should be paid as from the day after incapacity commences whenever it lasts for eight weeks or longer.

494. *Periodic Payments*

- (1) Compensation for permanent disabilities should be paid on a periodic basis for the life of the injured person, subject to the provision for commuting to lump sums in certain cases.
- (2) There should be automatic adjustment of periodic payments and of the minimum and maximum rates of benefit at two-yearly intervals in order to keep pace with changes in the cost of living. The adjustments should be made on the basis of the consumers' price index for movements of 3 per cent or more.
- (3) An advantage of periodic payments of compensation lies in the fact that they can be adjusted following assessment if changed circumstances should indicate this to be necessary. Accordingly we recommend that a beneficiary should be entitled to have his case reviewed for the purpose of obtaining an increase in benefit should his condition deteriorate.
- (4) But the converse should not apply. A man should not be left with the thought that energetic attempts to overcome physical handicap might result in a reduced pension, and we think it in the national interest that there should be no uncertainty in this respect.
- (5) Minor permanent partial disabilities should be compensated in the form of a lump sum. There should be a discretion in other cases to commute all or part of the periodic payments to a present capital sum where the interest or pressing need of the person concerned clearly would warrant this. Such a discretion would, in our opinion, be sufficient to provide for the commutation of periodic payments in all suitable cases.

495. *An Independent Authority*

- (1) The scheme outlined involves a partial merger with some aspects of the present social security system.
- (2) However, it should be brought to life and set upon its course by an independent authority whose whole responsibility it would be to ensure the successful application in every respect of the principles and philosophy upon which it is based.
- (3) Nevertheless the scheme must be provided with all necessary administrative arrangements. Accordingly, we recommend that an independent authority be set up by the Government which should operate within the general responsibility of the Minister of Social Security and be attached to his Department for administrative purposes.
- (4) The authority should be under the control of a Board of three Commissioners to be appointed by the Governor-General in Council, for specified terms of at least six years.
- (5) The Chairman should be a barrister of at least seven years practical experience.
- (6) It is important that no member of the Board should be appointed as representative of any particular group in the community.

496. *Procedure*

- (1) The pattern of assessment should be application, inquiry, investigation, and decision at the first level; review by a review committee at the request of the claimant; an appeal to an appeal tribunal (of three members including a doctor and a lawyer)

which should hold *viva voce* hearings at which the claimant could be represented if he so desires; and a final appeal to the members of the Board itself.

- (2) We recommend that on a point of law there should be an appeal to the Supreme Court.
- (3) Informal and simple procedure should be the key to all proceedings within the jurisdiction of the Board.
- (4) There should be a discretion to deal with any unusual circumstances and every decision should be based on the real merits and justice of the case.
- (5) Under such a scheme as this there should be no reason for strictly limited periods of time within which claims could be made. We recommend that for all cases the limitation period should be six years, with a wide discretion to the Board to extend the time for any reasonable cause.

497. *Safety*

- (1) There should be a department set up within the new authority charged with the promotion of safety wherever accidents are likely to occur.
- (2) An annual sum of \$400,000 should be set aside for the promotion of safety.
- (3) The best statistical use should be made of the unique records which will become so readily available to the new compensation authority.
- (4) Annual grants should at present continue to be made to the National Safety Association of New Zealand (Inc.) to replace those being made by the Workers' Compensation Board.
- (5) There should be no reluctance to use penal sections of the various Acts and regulations affecting industrial safety when (in more serious cases at least) threats and persuasion have clearly failed.
- (6) The system of merit rating or experience rating is ineffective as a means of promoting safety.
- (7) The elimination of personal liability should be used to encourage increased co-operation between the trade unions and the employers in matters affecting safety in industry.
- (8) The introduction and provision of a comprehensive system of compensation should be regarded as an unusual opportunity for making compulsory the general use of safeguards likely to minimise injury or avoid death such as safety belts for motor vehicles and safety frames for tractors.

498. *Rehabilitation*

- (1) The process of rehabilitation should be developed and encouraged by every means possible as it has very much to offer New Zealand both in human and economic terms.
- (2) There is a pressing need for a well co-ordinated and vigorous programme which will embrace all who might be assisted by rehabilitation and the responsibility for this financially and in all other ways should be accepted by the State through the Health Department.

- (3) In order to provide adequate coverage throughout the country we recommend that a specialist in physical medicine should be appointed by the boards of all the more important hospital districts; that the scheme at present in operation at the Queen Elizabeth Hospital at Rotorua be duplicated wherever possible; and the type of rehabilitation ward being established at Palmerston North should be extended.
- (4) The proposed Rehabilitation and Compensation Board should set up a medical branch under the leadership of a doctor of high calibre and wide experience. The Board itself should be given sufficient authority to enable it to exercise some reasonable supervision within the field of medical administration. We recommend that the medical director should set up a small medical committee comprising a few senior members of the profession in active practice to act in a part-time capacity and provide him with assistance and advice concerning his general responsibilities.
- (5) The new authority should undertake to pay the medical fees in full for all compensation cases subject to the provision of a suitable scale of medical fees to be prepared by the Medical Association of New Zealand and agreed with the Board. There should be discretion within the scale to provide adequate payment for unusual or special cases and the scale itself should be the subject of automatic review at intervals of approximately three years.
- (6) Wherever the rehabilitation process might be speeded up by the use of private hospitals then we think these hospitals should be used and whenever such use has been authorised by the medical director of the Board then the cost of the beds should be met by the Health Department.
- (7) For the general purposes of rehabilitation the Board should set aside an annual sum of \$200,000. This amount should not be in substitution for any Health Department responsibility but should be used to urge forward the rehabilitation concept.
- (8) The industrial clinics are performing an extremely valuable function and should be encouraged. We recommend that as an experiment the new authority should provide a mobile physiotherapy van at the Penrose clinic which would enable individual physiotherapists to offer treatment to their patients at the work site in this industrial area.
- (9) A rehabilitation unit of the Otago type should be set up in the Christchurch district and consideration given to a similar establishment in the near future in the Wellington area.
- (10) There is a pressing need for specialised teams of assessors able to make prompt and continuous assessments of patients requiring rehabilitation. We believe that ten of these teams should be located in the North Island and five in the South Island.
- (11) There should be much more direct and effective liaison between hospitals and other agencies concerned with rehabilitation and the employment of disabled persons and we believe the new Board has much to offer in this connection. We recommend that the Director of Medical Services of the Board should be invited to join the National Civilian Rehabilitation Committee.

- (12) Being of the opinion that this Royal Commission should not attempt to resolve the basic question of the validity of chiropractic treatment we have no recommendation concerning the submissions made by the Chiropractors Association.
- (13) A special rehabilitation benefit should be defined and provided under the Social Security Act which would promote and provide incentives for rehabilitation.

499. *International Labour Convention*

The International Labour Convention (No.121) provides guidelines to Governments concerning benefits in the case of employment injury. The standards are desirable and should be accepted in New Zealand. The adoption of the standards for the various benefits outlined in this Report would meet and in many areas exceed the standards of the Convention.

500. *Source of Funds*

- (1) The amounts at present contributed to the compulsory road accident and workers' compensation schemes should be applied to support the new comprehensive scheme.
- (2) We recommend, however, that the classification of risks in industry should now give way to a uniform levy based upon salary or wages.
- (3) At present the aggregate amount collected in the form of workers' compensation insurance premiums is a little more than 1 per cent of all wages. We recommend that in future an amount equal to 1 per cent on wages should be paid by way of levy to the fund by all employers, including Government.
- (4) The effect of a graduated income tax is to alter the ratio of levy (assessed upon gross income) to compensation (based on tax-paid income) as incomes increase. It works in favour of the fund as they increase. For simplicity in administration we recommend a uniform rate despite the changing ratio; but as a matter of equity it should not be assessed against the portion of any single income which exceeds \$8,000.
- (5) It is recommended that Government, through the Health Department, should assume responsibility for all hospital treatment, both public and private, and in addition make contributions at existing levels to the compensation fund towards the cost of medical benefits.
- (6) At present the self-employed are not protected by a compensation fund. On the principle outlined they should contribute an amount equal to 1 per cent of net income, subject to an annual minimum levy of \$5 and a maximum of \$80.
- (7) Unlike employees the self-employed must meet the levy themselves. Unlike employers they are unable to pass on the cost to the community. Moreover, employers are able to claim the item as a deductible charge in assessing income for tax purposes.
- (8) In the circumstances this levy could not justly be made upon self-employed persons unless they could deduct the item from assessable income for tax purposes. We recommend accordingly, and add that clearly such a deduction must not be regarded as part of the exemption at present permitted for life insurance or superannuation contributions.