



LAW·COMMISSION

*Report No. 4*

*Personal Injury:  
Prevention and Recovery*

Report on the Accident Compensation Scheme

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Report No. 4

*PERSONAL INJURY:  
PREVENTION AND RECOVERY*

Report on the Accident Compensation Scheme

1988  
Wellington, New Zealand

The Law Commission was established by the Law Commission Act 1985 to promote the systematic review, reform and development of the law of New Zealand. It is also to advise on ways in which the law can be made as understandable and accessible as practicable.

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# ERRATUM

In paragraph 28 (4) p. xxiii  
 paragraph 35 p. 99 and  
 clause 43 p. 127

the figure \$1000 should read \$2000

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The Commission is very grateful for the advice and material provided by Mr I B Campbell, especially on safety and related issues, Mr L V Castle on underlying economic and public policy principles, and Mr J R Cumpston and Dr R C Madden on actuarial and policy matters.

9 May 1988

Dear Minister

A year ago the Law Commission was asked to review the Accident Compensation Corporation Act 1982 and the way in which the scheme it controls is operating.

In the course of the Inquiry we have had the advantage of a considerable volume of advice and comment in the form of 1698 written submissions and orally, during many discussions with interested organisations and individuals. We have received too, a great deal of assistance throughout the inquiry from officers of the Accident Compensation Corporation. On the 30 October 1987 you received our Interim Report. I now have the honour to submit the Final Report.

You will notice that the Final Report is accompanied by legislative proposals in the form of the first draft of a Bill for a new Safety, Rehabilitation and Compensation Act.

We hope that this document will explain certain details of our recommendations. At the same time it may be a useful basis for legislation should the Government decide that the proposals ought to be implemented.

Yours sincerely

Owen Woodhouse  
President

The Right Honourable Geoffrey Palmer, MP  
Deputy Prime Minister of New Zealand and Minister of Justice

## *TERMS OF REFERENCE*

The Law Commission is asked to examine and review that part of the Accident Compensation Act 1982 which recognises and is intended to promote the general principles of community responsibility, comprehensive entitlement, complete rehabilitation, real compensation and in particular administrative efficiency as propounded by the 1967 Royal Commission Report on Personal Injury in New Zealand. It maybe accepted that those principles are broadly acceptable and-deserve to be supported.

The basis upon which the Accident Compensation Corporation or its predecessor has made provision from time to time for the annual amounts needed by the accident compensation scheme for benefits, administration and contingency or other reserves together with the principles and methods applied in their allocation or distribution will form part of the overall inquiry.

## *SUMMARY OF REPORT*

### *1. Purpose of review*

The accident compensation scheme was brought to life on 1 April 1974. Fourteen years later it is clear from national surveys taken recently on a random basis and the 1698 submissions received by the Law Commission that its purposes and principles continue to have general public support. This opinion is shared by the 1988 Royal Commission on Social Policy.

However at the end of 1986 there were large and sudden demands upon employers for increased levy income. All this was associated with complaints about cost and administration. Other issues were raised as to some aspects of benefits and entitlement. In this situation the Law Commission was asked to examine and make recommendations concerning the system as it is operating.

### *2. Nature of the scheme*

The accident scheme protects the whole population against the consequences of personal injury. It depends upon an acceptance of community responsibility. Its purpose is to encourage safety and promote physical and economic rehabilitation. Its compensation aim is income maintenance in order to provide a fair measure of support for living standards.

The scheme replaced compulsory insurance schemes which had been underwriting the risk of claims in the Courts or under workers' compensation legislation. That fact, together with its use of funds collected from those who earlier had paid premiums to insurers for their

indemnity, has left behind for some people the misconception that it is simply a new means of obtaining cover against new risks.

It is wrong and a cause of confusion to think of it in this way. This scheme is not in any sense an insurance system. Its benefits are provided as of right without reference to cause and regardless of risk. It is simply one component of the general social welfare provisions of the country.

### 3. *Private insurers*

At one point we were urged to consider that the system be handed over to the private sector, with the legislative provision requiring individuals to purchase their own first party insurance. Immediate reasons against this proposal speak for themselves.

First there would be the problem of ensuring that those who could afford it actually would insure; and that there would be provision for those who could not. Second, there is the expense of such arrangements. Were private insurers to provide equivalent benefits either on a first party or third party basis, the added cost might be as much as \$400 million. Third, the extra cost would be quite unmanageable if the system were to be extended to sickness as it should be. Fourth is the fact that arguable claims would produce a return to the adversary environment it was designed to leave behind. And finally, there is the lack of interest of the insurance industry itself.

### 4. *Social compact*

As recently as 1974, following a broadly based understanding, proposals for the new scheme received bi-partisan acceptance. It happened because the scheme seemed likely to be able to deal in a balanced way and so fairly with all who might thereafter be affected. It was agreed that certain rights to have losses shifted or shared would be given away with the corresponding responsibilities thereby removed (such as those implicit in workers' compensation and the negligence action) in exchange for the universal benefits and different duties which were to arise under the new legislation.



## 5. *Prevention and recovery*

The legislation expressly speaks of the importance of safety and rehabilitation as the first and second purposes of the scheme. And the Act specifies a coordinating role for the Corporation in both these areas. Unfortunately, what seemed to it to be the more tangible and pressing issues concerning compensation have tended to submerge these priorities. As well there has continued to be a lack of statistical information. This can and should be gathered together in ways which would show where and how the most effective efforts are to be made.

There are no easy solutions and all is complicated by present divisions of responsibility between departments and local authorities and other organisations. That problem affects general policy as well as delivery and safety as well as rehabilitation.

Independent delivery of services to promote safety on the roads or in factories or at sea or in domestic environments is one matter. Similar considerations apply to primary health care at a first stage of rehabilitation and vocational retraining at another. But policy and its coordination must have a much wider perspective and be decided at a different and earlier level.

It would be difficult if not impossible for the Accident Compensation Corporation to discharge that kind of oversight. We think it needs the attention of a Minister charged with a policy responsibility. However the Corporation should be left with the task of promoting safety and rehabilitation objectives wherever it is able.

## 6. *Sickness*

For historical and pragmatic reasons sickness incapacities were not included in the new comprehensive scheme. The concept of earnings related benefits across the whole field of personal injury was itself a new one. Funds which already were supporting the compulsory work and road accident systems could be applied to the wider injury scheme. And there were questions about the additional and uncertain cost of extending cover to sickness.

So it seemed wise to take only one step, at least for the time being. But clearly the demarcation is anomalous. It is the kind of situation which gives hard emphasis to what has been called the inequality of luck. It ought to disappear. And sooner rather than later. But how?

Even if it were proper in the face of the compact so recently arrived at, can the way be opened only by taking an axe to the value of injury benefits? For reasons of free market theories in 1988 some will at once say that the 1974 consensus should be ignored. Some will assume that otherwise there would be insurmountable expense. As happened when claims were made against the injury proposals (sometimes with actuarial as well as lay confidence) that it would be impossible to afford such a comprehensive scheme.

### 7. *By stages*

It is too easy to be beaten in advance in matters such as this. In the present context we think it possible for sickness incapacities to be brought within the injury scheme without any wholesale retreat from principle. After the removal of lump sum compensation (as mentioned in paragraph 11) it could be done by stages: first by providing health services on an equal basis; then by accepting congenital incapacities already supported by the social welfare system or which become manifest by a defined age; later by taking in higher level disabilities; and finally others less serious.

A long-standing precedent for phasing sickness into an injury system is the acceptance of industrial disease by workers' compensation statutes. Indeed, this very situation already exists within the Accident Compensation Act.

A move to include sickness by stages is also thought possible by the Royal Commission on Social Policy. However the Royal Commission would cut back present accident benefits to an extent which we think is unnecessary and socially undesirable.

### 8. *Injury by accident*

So long as it is necessary to distinguish between injury and sickness the boundary needs to be defined with greater clarity. Problems have arisen for some who have alleged a work-related disease; for others who complain of lasting mental distress produced by sexual assault or other criminal attack. In some cases where medical treatment has gone wrong entitlement to benefit has been refused on grounds that the mishap was a known risk of the therapy, a reason which sits oddly beside the ready acceptance of the known risks of injury on the highway.

The general concept of "personal injury by accident" can be given precision by adding to it a detailed specification of injury causes as a schedule to the legislation. Such a tabulation exists within the "International Classification of Diseases" evolved by the World Health Organisation. The classes can be extended or reduced as appropriate. If used it would do much to remove administrative doubt and personal worry.

## 9. *Incentive*

If there is to be public confidence in the system it must not allow itself to be hijacked by all the minor injuries and every short-term problem. This approach is accepted because most people wish to do what they can for themselves. This kind of set-back does not require outside assistance. Similar considerations meant from the outset that the scheme would not provide a complete indemnity. A fair margin for personal initiative would be left to the individual. Thus earnings related compensation does not replace the whole of lost earnings but at a proportionate level of 80%.

## 10. *Targetting*

But individual initiative will not be promoted by offering the same flat-rate benefit to everybody or begrudging help for long-term incapacities or by means-testing entitlement at levels of subsistence. Those plain English concepts have been seeking new life recently under the euphemism "targetting".

Exclusionary devices which seemed essential fifty years ago in order to ensure that a new era of social security would be launched and kept on course have probably attracted some contemporary interest because it is thought they can be used to squeeze expense out of social welfare programmes and aid a drive to the free market economy. But pure economic efficiency is not an end in itself. Its value lies in easing the way to social objectives. For present purposes those screening devices do not have that kind of relevance.

They cannot stand beside the aims of income maintenance. In the case of work injuries the time barrier would be incompatible with International Labour Organisation Convention 121. In terms of equity they would penalise personal effort and providence, and the time barrier would treat most harshly the most seriously injured.

## 11. *Lump sum benefits*

A capital payment may be due to those who suffer permanent impairment or significant pain as the result of injury. At present the maxima are \$17,000 and \$10,000. Their origins lie in claims for common law damages.

Recently awards in less serious cases have tended to be disproportionately high because the ceilings have been kept at those modest levels. But this has not meant that their overall cost is modest. The figure of \$122.6 million for 1986/1987 may be compared with total periodic payments of \$61.08 million for all seriously handicapped people who were still receiving benefits after two years.

Against the income maintenance purposes of the injury system all this is illogical. And for sickness such capital payments would become incongruous. We think they should disappear from the accident scheme provided there is enlargement of the provisions for periodic benefits to enable an assessment to be made on a schedule basis of the extent to which there has been a loss of physical or mental capacity with discretion to commute to a capital amount all or part of periodic benefits in special cases.

The removal of lump sum awards will require some way of assessing periodic payments for non-earners. It should be done against a notional earnings base.

## 12. *Periodic payments*

In order to fix the level of periodic benefits the Act speaks inaccurately of assessing lost earning *capacity*. In fact it requires in each case a tailor-made assessment of actual lost earnings. For those who are totally disabled, whether temporarily or not, there is no special problem. But acute difficulty can be associated with others left with a permanent handicap which permits some activity. In the case of permanent partial disabilities much time and trouble has to be given to finding and checking the precise earnings loss. So there is delay, sometimes argument and no incentive for the individual to make the best of the problem by maximum effort and work.

### 13. *Schedule assessments*

The solution is to make assessments for permanent partial disabilities on a schedule basis which reflects average experience for the given level of impairment; and for this purpose the earnings base should be average weekly earnings in order to assist the manual worker and others on lower wages while avoiding unduly large benefits for those with higher incomes who usually are better able to make subsequent adjustments. There must, however, be a discretion to depart from the base of average weekly earnings where in a particular case its use would result in injustice because of under-compensation.

The schedule method is widely used in other countries to settle such problems. Used here it will permit fair and early answers to be given. Those who may wish to compare the value of a lump sum and periodic benefit under the old regime with these proposals should know that the capitalised value of the new periodic benefit will be entirely comparable with and often well exceed a present assessment. And if any subsequent review could be used only to increase the earlier assessment but never bring it down the aim of rehabilitation would be greatly assisted.

Taken together with removal of lump sums these proposals would initially reduce expenditure and only after several years involve any increase.

### 14. *Time limits*

To accommodate a subsequent move to sickness it is said by the Royal Commission on Social Policy that earnings related benefits would need to be replaced by a modest flat-rate payment after two years; and there should be a waiting period, not of one week as at present, but four weeks.

We are unable to agree, both for reasons of equity and the limited savings which could be achieved. It would not be right to curtail payments to those most seriously disabled in order to maintain a higher level of benefit for everybody during the first two years. Particularly as the proposed economy could be only about 2.5% of expenditures.

And the long waiting period of four weeks could create real hardship. Instead we have proposed two weeks instead of the present week,

subject to a statutory requirement that in the case of all work-connected injuries compensation would be met directly by the employer.

### 15. *Latent disease*

Recently it has become apparent that some industrial diseases have a latency period of 15 years and even longer. One is asbestosis.

Accident compensation is concerned with industrial diseases having origins in an employment which continued after 1 April 1974. Responsibility for earlier cases was left to those with an earlier liability. No attention was given to the risk of the insidious onset of disease already at work but which would not produce incapacity for a good many years. To-day the victims may be without a remedy, either because passage of time has removed possible defendants or given rise to a Limitation Act defence.

The time has arrived when latent effects of pre-1974 injury or industrial disease could be taken into the accident scheme without undue strain upon the fund. We so recommend.

There is a limitation period of one year in The Accident Compensation Act. It is not and ought not to be used in such a context as this. That view is reinforced by the problems which can surround latent disease. The present provision should disappear.

### 16. *The costs of the scheme*

There have been complaints of escalating and unexpected cost increases in the operation of the scheme. Indeed the Officials Committee Report of 1986 states bluntly that a "massive cost blow-out in compensation has occurred". That, we think, is misleading.

Certainly since 1983 there have been major increases in expenditure. Indeed there was evidence at the time that this was happening. Yet in that very year decisions were taken to reduce levy income by about 30%. Hence a drastic run-down in reserves.

Among several explanations for the increases is the particularly important fact that almost all of it (in constant dollar terms) is for claims *continuing from earlier years*. There is very little real change in the amounts paid in each year for *new* claims—as there would be if the cost blow-out description were justified. It is a clear pattern. And

it shows earlier claims accumulating in a still maturing scheme. For that reason spending had to increase. As would have been expected.

But the injury scheme is inexpensive. The expenditure for 1987/1988 was \$693 million or 1.2% of gross domestic product. For that outlay it provides 24 hour protection for the whole population. Considered in another way it costs only 60¢ per person per day for protection against every kind of accident.

The overall cost may be compared with national superannuation at \$3,860 million. Or the 1986 total in Australia for the direct premiums needed by the limited systems supported by compulsory Third Party motor vehicle insurance and Employers' Liability insurance. The respective amounts (\$1,461 million and \$2,399 million) when taken together are 1.7% of that country's gross domestic product and for more restricted purposes.

### 17. *Abuse*

Nonetheless it is essential to avoid unnecessary expense just as it is essential to meet any valid perception of abuse. There are complaints that medical and physiotherapy costs of treating numerous non-accident incapacities have been finding their way into the Accident Compensation Corporation accounts. It would be wrong to regard this as something wide-spread; and at worst the effect upon the expenditures of the Corporation could not be great because when general practitioner, specialist and paramedical fees and the cost of industrial clinics, pharmaceuticals and certain aids are all taken together those various charges are only about 11.8% of total costs.

But limited in extent or not it should be stopped if possible. One simple precaution (previously ignored) will require each patient to sign a brief form personally alleging an accident. However, a different and decisive step could be taken.

### 18. *Medical benefits*

Without doubt any problem of abuse will be removed completely if health and related services were provided for both sick and injured on the same footing. This we recommend, as eliminating at least one important distinction between the two groups. The change can and should be made at an early date.

The starting point for determining the level of benefits is the de facto decision of the Corporation that a payment of \$14.25 discharges its statutory duty to meet the “reasonable” fee for attendance by a general practitioner. The average charge is approximately \$22.00; yet the fractional payment has not produced any general complaint from injured patients, probably because it is felt to be a fair level.

#### 19. *Source of funds*

For historical reasons touched on in para 2 the scheme continues to be largely financed by levies on employers, the self-employed and owners of motor vehicles. A variable balance, about 14%, is directly supplied from the consolidated account. We think the last contribution should be kept at least to that quite modest level. Ideally the system should now be wholly supported by general taxation.

If, in the present economic climate, the levy sources must remain we would not accept the historical reasons as justifying further increased demands upon them. Future assessments can and should be kept relatively stable.

A considerable margin was added to the levy last year in order to quickly rebuild reserves. It is a cushion against the need for increases since the reserve target is now in sight with a supplement of significant income from reserve investments already flowing into the system. Further we recommend some additional income should be added from part of the excise duty collected on road transport fuel.

We are unable to support suggestions for levies upon sports bodies or those who engage in sporting activities on grounds that total income could not justify administrative problems of collection or the initial difficulty of defining accurately and fairly the groups and individuals to be levied.

#### 20. *System and method*

Proper functioning of the scheme demands systematic organisation. It is difficult to achieve where the Act itself requires departures from simple in favour of more complicated procedures.

Three individual accounts must still be used by the Corporation to collect income which is then disbursed for one common purpose. In itself this is pointless. At the same time it encourages argument about



responsibility for particular outgoings which in the absence of fault is irrelevant. And if present sources of income are to remain, at least the basis for obtaining the funds should be made more equitable and simplified.

## 21. *Employer levies*

Take the levies assessed and collected from employers. It is done by attempting to classify employment risks under no fewer than 103 separate heads with numerous sub-groupings. All this complication is then disregarded for every other purpose. Unlike individual experience rating which some think can be an incentive to safety at the work-place, this process does not even purport to be that. Yet a year ago the same approach was used for the first time to assess levies upon the self-employed.

From both employers and the self-employed there has been widespread complaint about the resultant demands and the injustice of particular classifications. Already supposed principle has given way to something a little fairer when on 1 April 1988 the levy fixed for the aerial top-dressing industry was cut from \$27.85 to \$11.00. That process needs to be followed through. In the United Kingdom income is provided on the same proportionate basis by all employers. There should be a single levy rate here and fixed by Parliament. Taken at about the average for the 1987/1988 year, \$2.50 or even a little less, it could then be left unaltered—at least for several years

## 22. *The self-employed*

In the case of the self-employed there are long and inevitable delays waiting for annual accounts in order to measure benefit against precise net income. This is unnecessary in the interests of the accident fund and a handicap for self-employed persons who suffer injury. It would be sensible and sufficient to permit a nominated income to be used both to determine the levy base and for purposes of benefit. It is not difficult to find a formula which would keep the chosen income within some broad but fair boundaries.

### 23. *Legislation*

The Accident Compensation Act 1982 is a complicated piece of legislation which occupies 145 pages of the Statute Book and already has been the subject of several amendments. For some time it has been a target for general revision. The present proposals for reform could not easily be accommodated within the structure of the Act as it stands.

Together with our Report we provide draft legislative proposals for its replacement. In doing so we acknowledge with gratitude the use we have been able to make of an exemplary model: a Bill for an Act to be cited as the National Compensation and Rehabilitation Act 1977, prepared by an eminent Australian draftsman, Mr J. Q. Ewens, C.M.G., C.B.E., Q.C., of Canberra. It was read a first time in the House of Representatives of the Australian Parliament on 24 February 1977.

### 24. *Transition*

Any change to entitlement or benefits could not be made in a way which would retrospectively deprive any person of accrued rights. The fair and clean-cut solution to transitional issues in the present context is to provide those who had acquired rights to choose by election whether to proceed under the earlier law or the new provisions.

## *PRINCIPAL RECOMMENDATIONS*

### *25. Safety and rehabilitation*

- (1) A Minister should be charged with a general policy responsibility for the promotion of safety and the prevention of accidents of all kinds. (Paragraph 128)
- (2) The same or another Minister should be charged with general policy responsibilities for the optimum rehabilitation of all persons who suffer physical or mental impairment, whatever the origin or cause. (Paragraph 160)
- (3) The Accident Compensation Corporation should keep and maintain the best statistical picture possible which bears upon the purposes of safety or rehabilitation; and energetically promote those purposes. (Paragraphs 5 and 282; clauses 6 and 8 of draft Bill)

### *26. Entitlement*

- (1) The present right to benefits depends upon injury. It should include sickness as soon as possible. (Paragraphs 6 and 176)
- (2) This can be done if it is tackled in stages. An immediate step would be to provide all health and related services on the same basis to the sick and injured. In particular general practitioner and para-medical benefits should be equated at about the two-thirds fractional level at present paid by the Accident Compensation Corporation for general practitioner fees. (Paragraphs 7, 58 and 176)
- (3) In passing this would be fair to all; and it would remove all reason for possible abuse. (Paragraph 179)

- (4) At the same time, or soon after, significant congenital incapacities which are manifest at an early age could be included by the simple method of “deeming” them to be injuries. (Paragraph 172)
- (5) Then would follow the more seriously disabled and later the less serious cases. (Paragraph 172)

## 27. *Accident and incapacity*

- (1) The general concept of “accident” creates problems. To avoid uncertainty, physical or mental injury should be related to the comprehensive list of external causes of injury formulated by the World Health Organisation. (Paragraph 165)
- (2) Medical mishap should not be excluded simply because in advance there was some recognised risk of the therapy any more than the risks of using the highway could sensibly disqualify victims of road accidents. (Paragraph 165)
- (3) There is a need for special provision in the case of victims of sexual assault or other criminal attack involving significant or lasting mental distress or other impairment. (Paragraph 211)
- (4) The delayed effects of such industry-related diseases as asbestosis or of latent injury (whether or not the origins may appear to pre-date 1 April 1974) should be accepted as compensable. (Paragraphs 168 and 169)
- (5) The present limit on the period within which an application for benefit must be made should be abolished. (Paragraph 171)

## 28. *Benefits*

- (1) Periodic benefits, in general, should be earnings-related, have no means test qualification, be payable during incapacity until age 65 (or dependency in the case of survivors), and be assessed at a level for total incapacity of 80% of earnings. (Paragraph 182 and Parts V and VI of draft Bill)
- (2) Incapacities suffered after age 60 should carry a benefit for a maximum of 5 years. (Parts V and VI of draft Bill)
- (3) There should be a waiting period of two rather than the present one week before commencement of earnings-related benefit; with a statutory obligation upon the employer to pay an

employee injured in a work-related accident an amount equivalent to the benefit to cover the waiting period. (Paragraph 185)

- (4) Maximum earnings-related benefit should be defined by reference to a weekly income of \$1000. No benefit for a totally incapacitated earner should be less than the minimum weekly wage. (Parts V and VI of draft Bill)
- (5) Housewives and other non-earners should have a periodic benefit assessed against notional earnings equal to average ordinary weekly earnings for "all sectors, all persons". Their work though directly unpaid has important economic benefits for the community as well as families. (Paragraphs 182, 213 and 214)
- (6) There should be provision for such personal assistance as some home help and counselling services. (Paragraph 177)
- (7) And payment of professional charges if properly incurred by an applicant in seeking a benefit. (Paragraph 277)

## 29. *Permanent disability*

- (1) Lump sums for permanent impairment or for pain and suffering should be abolished. (Paragraphs 194)
- (2) Instead, to encompass lost physical faculty and any economic consequences, any significant partial disability should be evaluated as a percentage of total disability by reference to the American Medical Association "Guides to the Evaluation of Permanent Impairment". (Paragraphs 194 and 195)
- (3) But to avoid over-compensation of higher paid and sedentary earners or under-compensation of manual and lower paid earners the base for everybody including non-earners should be average ordinary weekly earnings for all persons. (Paragraphs 195 and 203)
- (4) There should be a discretion to increase that earnings base in order to avoid injustice in the particular case. (Paragraph 203)
- (5) And in exceptional cases there should be a discretion to commute part of a periodic payment to a present capital sum where it would clearly be in the beneficiary's real interests to do so. (Paragraphs 198 and 211)

- (6) To qualify for a permanent partial benefit the impairment should be 5% or more of total; and 85% or higher should be assessed as 100%. (Paragraph 195)
- (7) On assessment of any application every decision should be based on the real merits and justice of the case. (Paragraph 275)

### 30. *Income*

- (1) No useful purpose is served by three separate compensation accounts for a scheme which provides benefits regardless of cause. (Paragraph 244)
- (2) The motor vehicle levy should be geared to changes in the Consumer Price Index. (Paragraph 241)
- (3) An appropriate part of the excise duty paid on petrol should be paid in support of the accident fund. (Paragraph 241)
- (4) Employers and the self-employed should no longer be levied by reference to classified business activities but at the same uniform rate for all. (Paragraph 265)
- (5) Parliament itself should fix the rate. If taken initially at \$2.50 per \$100 of payroll or income it is unlikely that change would be needed for at least several years. (Paragraphs 21, 244 and 250)
- (6) The contribution from the Consolidated Fund should be kept at or above the same proportionate level provided over several years immediately preceding 1987/1988—approximately 14%. (Paragraph 249)

### 31. *Transition*

- (1) If these recommendations are accepted new legislation will be needed to replace the present statute. (Paragraph 23 and appendix B)
- (2) Those with an accrued but pending entitlement under the 1982 Act should have the right to elect whether to obtain benefit under those or the substituted provisions. (Paragraph 24)

## INTRODUCTION

32. It will be seen from the terms of reference (set down on p.viii) that this inquiry has a double purpose. On the one hand the Law Commission is asked to review the accident compensation legislation against the five general principles which are the basis for the 1967 Royal Commission Report on Personal Injury in New Zealand. At the same time there is to be an examination of the practical operation of the scheme in terms of finance and administration.

33. It is mentioned in a discussion paper circulated in September 1987 that as many as 1203 replies had been received in answer to advertisements inviting submissions relevant to the inquiry. In response to the discussion paper itself a further 368 replies were received before the preparation of the Interim Report.

34. An essential part of the review must be a costs analysis to ensure that the assessed need for funds by the Corporation is justified by the purposes and operation of the system. This matter is obviously important. It is important in the interests of efficiency and the avoidance of waste. It is equally important for the maintenance of public confidence. As to all this we have had the good fortune to enlist the valuable professional assistance of two Australian actuaries who have had wide experience in this special field: Mr J R Cumpston of Melbourne and Dr R C Madden of Canberra. Their report (in answer to our terms of reference to them) is annexed as appendix C. (See also paras 184 and 196 et seq.)

### *An Interim Report*

35. However, before these matters could be given the detailed attention they required it seemed from the numerous earlier submissions

that it would be wise to provide some prompt recommendations concerning costing pressures which had befallen employers. They were facing major and unexpected increases in levies, with marked differences in the pro rata payments to be made by individual groups. Accordingly it was decided to produce an interim report. It was done so that decisions could be made as to whether the severe disparities in the levies should be evened out (as the Report then recommended) when assessing the payments to be made for the coming financial year. In the ordinary way the next assessments would be fixed and announced before the end of 1987—within six weeks. So time was very short.

36. The interim report was prepared and forwarded to the Minister on 30 October 1987. At the same time copies were sent to all who had expressed an interest together with advice that after allowing time for any additional comment steps would be taken to prepare a final report. There have been 127 submissions since then—an overall total of 1698; and as well we have had the advantage of meeting several groups with a particular interest in some aspect of the general subject-matter. So much wide-spread and valuable help is greatly appreciated.

### *Other processes*

37. We complete this report in the knowledge that other bodies have recently reported or are about to report in a range of related areas. We know that as a consequence the Government will be in a position to take a wider and more coordinated view than we can. But because of the inherent interrelationships and the stage that government decision making appears to have reached we do from time to time refer to some of those linkages. The official reviews include the *Review by Officials Committee of the Accident Compensation Scheme* (August 1986), the Report of the Health Benefits Review, *Choices for Health Care* (1986), the Report of the Taskforce on Hospitals and Related Services, *Unshackling the Hospitals* (1988), the *Working Papers on Income Maintenance and Taxation* (March 1988) of the Royal Commission on Social Policy and the work of some of the bodies set up under from Social Equity Committee of Cabinet. We have benefited from material prepared by, and discussions with some of them involved in, those reviews.



38. The connections between those inquiries and ours are mainly in terms of the substantive entitlements under the scheme—for instance in respect of health benefits and income support—but they extend as well of course to important questions of methods of delivery of those entitlements and of the organisation and machinery of government. That last matter means that some of our proposals are to be seen as relevant to some possible reorganisations of government, especially in the areas of safety and health promotion, and rehabilitation.

39. A further matter which has had some impact on the process of our inquiry is the litigation in which the Accident Compensation Corporation has been engaged. We mentioned in our interim report, in a summary way, some of the steps that could have been taken to meet the large shortfall in income had the proceedings about the applicable levy rate brought by the Meat Industry Association succeeded. In the event the Court of Appeal decided the case in favour of the Corporation and on 4 May 1988 the Industry's appeal to the Judicial Committee of the Privy Council was dismissed. However, problems of this kind can and should be resolved for the future by redrafted legislation. The other litigation concerns the amount that the corporation pays to various health professionals and to private hospitals. It is to be related to proposals which we make about the health benefits payable to those who are injured by accident. The issues arising there could be largely resolved by a different approach to the payment of health benefits.

### *Some wider issues*

40. The two earlier Law Commission papers list (in some cases with short comment) a number of central issues that would need attention. It is now necessary to deal with those various topics, taking account of submissions which have been received in respect of them.

41. — The need to give much more attention to safety has been emphasised in many submissions.
- And the importance of consistent effort in the area of rehabilitation.
- In addition attention is drawn to the anomolous position of physically disabled people who are barred from assistance because their problems lie not in injury by accident but in some congenital defect or in sickness.

- There are proposals for cost savings generally and also to enable a move to sickness  
perhaps by limiting some kinds of benefits;  
or by excluding certain others;  
or by limiting entitlement for some persons.
- And much has been said about the need for tighter, more efficient administration.
- Questions are raised about new sources of income.
- There are other claims that the scheme should be taken from the public sector in favour of different arrangements which could be made in the field of private enterprise.

### *Policy and objectives*

42. The Terms of Reference to the Law Commission speak explicitly of the general principles upon which the Accident Compensation scheme was put forward by the 1967 Royal Commission on Personal Injury in New Zealand; and it is stated that “those principles are broadly acceptable and deserve to be supported”. They aim at setting up a system which would embrace the whole population, both in terms of duties and of rights, which would promote by efficient means the physical and economic rehabilitation of those whose normal activities had been adversely affected by injury and which would concern itself with a realistic measure of compensation related to earnings in order to assist in the maintenance of living standards.

43. Those underlying principles of the accident scheme and its purposes have received wide-spread approval in submissions although one or two sweeping proposals for administrative change were made. At the same time specific aspects of the scheme in its present form have been given both criticism and support. In order to assess these various matters it is important to have in mind the nature of the system. Its overall objective and purposes. What it is. And what it is not.

44. For example, it is not in any conventional insurance sense a process which offers for a price a degree of cover against the risk of

future losses. To think of it in this way is to invite immediate confusion with the business purposes and economic goals of the private sector. Quite properly it can be regarded and its performance judged as a part of our arrangements for citizen-wide *social insurance*. But that convenient piece of short-hand cannot be cut in half and the adjective omitted in order to avoid the critical distinction it conveys.

45. The system is comprehensive. It provides assistance as of right. It is concerned with income maintenance and fair support for living standards. It is accepted by society on the broad basis of community responsibility. Like the compulsory private insurance systems which it has replaced it is concerned with the inevitable and regrettably random consequences of essential or accepted social activity. But those systems themselves bore the stamp of the social purpose which by a legislative accident had them attempting to act as society's agents for collecting disguised taxes in the form of premiums.

46. So it would be wrong to group the accident compensation scheme with insurance industry purposes. Moreover, the important economic interests and methods of the private insurers could hardly be aided by obliging them to receive back their old responsibilities, let alone the accident compensation responsibilities as they have been developed. It may be significant that no insurer has communicated with the Law Commission during the current inquiry indicating an interest in taking over all or part of the Accident Compensation Corporation's mission or duties.

47. There is a reference in the earlier discussion paper (at para 126) which indicates the much greater sums which would need to be collected if such a thing were to happen—on present total outlay the additional cost would rise well beyond \$400 million.

### *Targetting*

48. The principle of assisting living standards required abandonment of the unfairness and the disincentives to save and work brought about by such automatic exclusions as means tests, flat-rate benefits or payments strictly limited in duration. But if income maintenance is to be the genuine aim it is worth providing a short analysis of what is involved when these techniques are put to work.

49. In general terms basic flat rate benefits were designed to provide for subsistence. The means test was devised with similar objectives.

They are uncompromising screening mechanisms. Each aims at guarding access to funds. The same pragmatic purpose is said to justify measures which contemplate that the most seriously affected within some category of disadvantaged persons may properly be asked, quite regardless of continuing hardship, to face a grave diminution of benefit after the first one or two years.

50. Such a strategy may be necessary should national resources really be at full-stretch. There always must be a safety-net for those whose need is greatest. But what of those with pressing problems who find themselves quite disqualified from help because earlier they had managed a little providence? Or others left with the same flat-rate payment as less enterprising neighbours with far fewer responsibilities and commitments?

51. To settle an income maintenance programme by the needs of subsistence involves a contradiction in itself; and many deserving people could be left in serious hardship. Losses do not go away when they are ignored nor become easier to endure after the passage of some time barrier. And the basic aim of offering support for living standards will be subverted if passing money pressures are used to deal unequally with equal needs. If there must be hard choices for reasons of economy then the preference should go, not in favour of shorter term or minor cases but to the more seriously disabled.

52. So the means test, for example, is not an admirable device that can be applied with complete equity to sort out those in need from those who ought to be able to look after themselves. It is no such thing. And if it is to be used it should be recognised for what it is: as a humiliating and arbitrary method of discriminating, not between groups distinguished by their different problems, but between individuals with problems that are very much the same. In this way it aims at defining levels of need; and is likely to effect its economies at the expense of all but the neediest.

### *Time barriers*

53. Equally clumsy are the artificial barriers of time which it is sometimes suggested should limit the duration of periodic benefits. The six years' limitation in the case of the old Workers' Compensation Act understandably became a central target for criticism during the discussions which ended in its repeal. Furthermore, in the case of

work disabilities such a barrier ignores the International Labour Organisation Conventions 17 and 121 which stipulate that benefits shall be granted throughout the whole period of the contingency, subject only to some short waiting period.

54. It is explained in the Royal Commission Report on Personal Injury that there had been strong submissions that the time limitation should be removed “on grounds that it is quite out of line with international trends (leaving New Zealand as one of the few countries in the world with such a restriction), and also because it is unfair and indefensible.” In accepting these submissions the Commission remarked—

“... the practice of putting arbitrary limits upon the time during which payments of compensation may continue must be regarded as unjustified in principle and quite illogical in practice. It is wrong in principle, first because it affects only those whose needs and whose claims are greatest; and second, because it is a rejection of the theory that compensation should provide some adjustment for the whole of a man’s losses. If at the end of six years a gravely incapacitated workman is suddenly left to carry his burden without assistance, it can hardly be said to do this. Then, it is demonstrably wrong in practice because the saving it achieves is derisory when compared with the total amounts of compensation expended annually over the whole work force.”

55. There is the suggestion already mentioned that there be a time limit introduced into the accident scheme, in part to effect immediate savings for that system, in part to ease the wider cost burden if its principles were to be extended to incapacity arising from sickness. Those arguments do nothing to answer the issue of principle—that if savings must be made it surely ought not to be at the expense of those whose problems are worst. Nor will there be savings of appreciable significance, especially once the substituted flat-rate benefit is taken into account.

### *Illness and injury*

56. The terms of reference do not ask us to examine the question of illness. But the differences between the benefits available to those who are incapacitated by injury and those incapacitated by illness are

seen by many as anomalous and unfair : the needs of the person who becomes blind from diabetes are no less than those of a person blinded in a road accident. The responsibility of the community to take up some of the costs is the same in the one case as the other. Accordingly the personal injury scheme ought not to retain or to develop features which would impede decisions that its principles should be extended to illness.

57. The Royal Commission on Social Policy has similarly emphasised along with the principle of community responsibility the principle of equality of treatment : those with similar needs should be treated without regard to any differing, fortuitous causes of those needs.

58. In the later parts of this report and in the attached draft legislative proposals we make a number of recommendations which would remove some of the differences or reduce part of the impact arising from the division between illness and injury. Thus we propose some movement in the line between injury and illness—a line which has been moved in the past of course to include occupational disease and deafness. We suggest that entitlements to medical and related treatment and to rehabilitation should depend simply on the need and the extent of the incapacity, and not on its cause. And we recommend that lump sums, provided under the present system as a special kind of benefit for bodily pain or for the loss of bodily function, should be abolished.

59. An award of this kind is quite anomalous in the general social welfare field. It exists simply as a reflection of the continuing influence at the time the accident scheme came into being of damages concepts in respect of personal injury claims which until then could be brought in the Courts based upon allegations of negligence. In the case of sickness a call for extra social welfare benefits for discomfort would seem outlandish. If effort is to be made to treat injury and sickness disabilities alike it could hardly be sensible to call for general entitlement to this kind of payment.

60. But differences will remain, especially in the area of income support and other monetary benefits. It is not within our remit to propose that they also should disappear. And the Royal Commission on Social Policy does not consider that it can, on the basis of its understanding of the costs, propose at the moment a general extension of the income support aspects of the injury scheme to those who

are ill. Some are critical of the continuation of such differences, even to the point of suggesting that, if the division cannot be completely removed, no changes at all should be made in the direction of reducing them.

61. Such suggestions need to be put in their wider historical context. Thus the law from very early days gave greater rights to just some of those who suffered personal injury—as an example, if the injury was caused deliberately by assault. And later negligently caused injury and, in some cases, injury even without fault resulted in the liability of the wrongdoer. Last century, extensive defences to such liability became available to major groups of defendants, especially employers and manufacturers. The legislature however moved to widen compensation for injury, for instance by establishing employer liability for all work injuries whether there was fault or not, by establishing motor vehicle injury schemes, and by requiring insurance by those who might be liable. 1974 saw another and major movement of the line to include all personal injury by accident. Resistance to wider coverage on the basis that it is not comprehensive invites the response of the best being the enemy of the good. And it also assumes that a line which may appear illogical cannot be justified by combined effects of history, experience and community support.

62. Such criticisms of differing treatment must also be set in a wider context. Unintended personal incapacity can arise from causes other than injury and illness, it can arise just as randomly in those other cases, and it can give rise to the same income needs. But again the fact that it is not possible to deal on an equal footing in the one integrated policy with all those incapacities does not mean that there ought not to be improvements in particular areas; again those improvements should be made in such a way so as not to stand in the way of greater rationalisation.

63. Recently the Royal Commission issued a series of 6 Working Papers on the broad subject of income maintenance and taxation. Paper No. 5 addresses problems faced by the disabled including the extent to which there should be an acceptance of responsibility for them by the community generally and the rather uncoordinated way in which various kinds of assistance have been made available. In particular questions are asked about the disparate treatment of incapacities arising from sickness and injury.

64. Apart from the lump sum anomaly the thrust of the paper is to find ways of limiting benefits under the present accident scheme in order to constrain costs should it extend to sickness. There is a proposal which would impose a long waiting period of four weeks before earnings related benefit would replace flat social security-type payments. And another to remove the earnings benefit after two years in favour of a similar flat-rate payment.

65. Sometimes departures from general principle bring new and worrying problems in place of those intended to be left behind. So there are questions. To what extent can savings really be achieved by these time barriers? How far would the flat rate substitute have to be lifted above the basic subsistence level in order to avoid valid criticisms of the kind which led to abandonment of the old workers' compensation system in the 1960s? How justify down-grading the living standards or the status of those who are still left incapacitated after two years—the most afflicted of all?

66. If the need for economy is to be the imperative when the time arrives to go to sickness would it not be fairer and simpler to slightly adjust for everybody the share of earnings to be replaced? From 80% to 75%, for example. And could the move not be made by stages as circumstances permitted? There could be quite an early move to equate medical benefits. It then could be appropriate to make inclusions in the list of "deemed" injuries by reference to a category such as the congenitally disabled whose problems are serious and become manifest with a specified age.

### *Employer levies*

67. The problem for employers is explained in the two earlier papers. In 1983 reductions averaging about 30% had been made in the levies required from employers. It was an unwise move. It caused an alarming erosion of reserves. And within three years a need for suddenly announced increases of 300% to as much as 500% which would take effect only five months later. The serious budgetary implications for many employers became one of the specific reasons for the present inquiry.

68. The increase took the average of 77 cents per \$100 of pay-roll up to \$2.33, or \$2.47 if levies upon the self-employed are brought into the equation. But for numerous employers the charges were far



higher than the relatively manageable average. The new rates ranged up to the very high figure of \$27.85.

69. It was the outcome of a so-called system of classification of risk which required unequal contributions to the accident fund from individual categories of trade or industry. The idea was to relate levy to accident record in each particular case. But in truth there had never been precision or even much principle in calculations which were supposed to find true differences between as many as 103 classifications. Moreover, some encompassed more than 100 work categories and others no more than one or two.

70. Against this background the principal recommendation in the Interim Report was that the variable rates obtained by attempting to discover the cost of accidents in each work-place should cease in favour of assessing the same percentage levy against all employers and the self-employed, in other words the percentage which overall would produce whatever was properly to be regarded as a fair contribution by those two groups towards the costs of all accidents.

71. As indicated and developed later in paras 250–265 the reasons for the recommendation for an over-all flat levy rate turn upon—

- the inadequacy of the calculations
- the assessment of cost rather than occurrence
- the confusion of insurance concepts with social welfare purposes
- the extreme range in the demands upon various groups of employers
- the difficulty and even artificiality of pressing each activity into a neat little packet
- the waste of time and money in trying to do it
- and common fairness.

72. There are claims that the classification system encourages employers to promote safe conditions of work. Indeed there is a tendency to confuse this variable rate concept with the different implications associated with the idea of providing bonuses or imposing penalties in response to the performance at individual work-places. However, for reasons elaborated later we are unable to accept

these arguments in their various forms. Nor do we think there is any equitable or other justification for the recent extension of the system to embrace those who are self-employed.

73. So we are left in no doubt that we should adhere to our earlier recommendation for a flat-rate levy.

## *THE COMPENSATION SCHEME IN OPERATION*

### *Benefits*

74. The essence of the compensation part of the scheme is simple; those injured by accidents are compensated, as appropriate by their medical and related expenses being met, by earnings related compensation to help offset their financial losses, and by lump sum payments for the permanent loss or impairment of a bodily function and for the loss of enjoyment of life and pain and suffering. As a consequence each year, about 150,000 New Zealanders who are injured receive help through the Accident Compensation Corporation to recover their position in the life and work of the community and to meet part of the costs and financial losses caused by the injury. Others—we do not have the exact figures—also get part or all of their medical and related expenses met through general practitioners' services, public hospitals, and related health services. And others—impaired in earlier years and still incapacitated—continue to receive payments from the fund.

The average amount paid by the Corporation to a claimant is now, we understand, well over \$1000 and in the case of those who are very seriously injured a great deal more. (That average does not include those who receive only medical and related treatment.) That is to say the scheme does deal with a large number of major injuries. The assistance is given whatever the cause of the injury and regardless of where the injury occurs (for instance, at work, on the road or at home).

75. In the 1987/1988 year the Corporation estimates that it has paid about \$693 million. On the basis of recent years' experience, a little

under 50% is earnings related compensation paid on a periodic basis (and more than half of that figure is now paid to those injured in earlier years, some as long ago as 1974). About 20% constitutes lump sums for non-economic loss. Somewhat less is paid from the fund for medical, hospital and related expenses, and smaller amounts for rehabilitation benefits and generally for accident prevention and rehabilitation. The administration cost was anticipated to be 7%. The estimated income is \$926 million, allowing for a substantial contribution to badly depleted reserves. The spending amounts to about 60 cents each day for each New Zealander.

76. Comparisons are of course difficult since no two systems are the same and the New Zealand scheme is more comprehensive than the others with which it might be compared. But to take one point of comparison the administrative costs of other schemes, including those involving private insurance, are in every case we know of higher—often by a large margin—than the New Zealand costs. That is of course not surprising because, for example, the decisions and disputes involved in determining the coverage of less comprehensive and more complex schemes must involve costs. So too does the need to provide, on a funded basis, against future contingencies. As we have mentioned, the increase involved in the New Zealand scheme of reintroducing an insurance element would be of the order of another \$400 million.

77. A related comparison is of the amount that employers pay in similar jurisdictions for workers' compensation coverage. The New Zealand average is \$2.64 for each \$100 of payroll. That includes more than 50c to make up diminished reserves and 8c collected on behalf of the Department of Labour to fund its industrial health and safety programmes. It also covers non-work accidents (\$1.05 of the rate is for that purpose).

The Ontario workers' compensation average levy last year was \$2.88 for each \$100 of payroll and that for British Columbia \$2.04 (almost the lowest in Canada). Our interim report provides some relevant figures for workers' compensation or workcare levies or premiums from four Australian states. Most New Zealand rates were lower, in some cases by a wide margin, except in the safest work areas (where the flat non-work element included in the New Zealand rates has a greater consequence). And as we mentioned earlier the Australian motor vehicle and workers' compensation levies consume a greater

proportion of the Australian gross domestic product than does our more comprehensive scheme.

78. In the light of such benefits and costs it is not surprising that we are told in the reference to us that the principles underlying the scheme are broadly acceptable and deserve to be supported, or that an overwhelming number of those addressing the point in submissions to us expressly indicated that the general form of the scheme should be retained and almost all of the remainder took it for granted that there was no question of reverting to the old fragmented, unfair and costly systems, or that in a recent nationwide poll of a sample of 2500 people, 80% expressed support for the scheme, though many (like many making submissions to us) also responded positively to a series of questions suggesting a redistribution of some of its costs.

79. The almost universal reluctance to go back and to reintroduce elements of the old law is consistent with what we assess to be the prevailing view of leading commentators on civil liability for personal injury. Thus much recent American writing addresses the “torts crisis”, “the failure of the law of tort” and the related “insurance crisis”. And Professor Andre Tunc, the great French legal scholar in the principal contribution on the law of torts in the highly authoritative *International Encyclopedia of Comparative Law* (Vol 11, ch 1 (1983) and supplement (1986)) flatly rejects fault as the basis for determining compensation in the case of unintentional personal injury. He proposes two answers: civil liability should give way to loss spreading techniques, and, to the extent that tort law is not replaced by social insurance, to no fault compensation (feasible he says when imposed on large enterprises or backed by insurance). This general writing is in significant measure based on the conclusions (already acted on in New Zealand) that tort liability for unintentional injury does not serve the deterrent function of the law of tort and poorly, if at all, serves the compensation one. Professor Tunc’s opinion about deterrence can be tested for New Zealand in relation to one set of statistics—those relating to traffic accidents. One very careful study concludes that

the removal of tort liability for personal injury in New Zealand has apparently had no adverse effect on driving habits. In fact, statistics show a decline in accident and fatality rates. ... [T]he removal of tort rights for personal injury cases did not produce the increase in accident—producing behaviour predicted by

the traditional theory of tort deterrence. (Craig Brown, "Deterrence in Tort and No-Fault: The New Zealand Experience" (1985) 73 California Law Review 976. The article considers the statistics up to 1980. Subsequent statistics do not appear to put his analysis in doubt: Ministry of Transport, *Motor Accidents in New Zealand—Statistical Statement—calendar year 1986* Table 2; the addendum to that document suggests that the improvement in the safety record may be even greater than previously thought.)

80. Unfortunately, comparable statistics for other unintentional injuries are not available. (We return to that matter later.) A recent OECD publication does however provide a basis for some comparisons of New Zealand figures over time (and with other countries). Thus it shows that days lost from work due to ill health have been between 2.3 and 2.9 between 1973 and 1983 (with 2.3 being the figure in 1973 and 1983). Almost certainly the figures should be much higher, but our concern is with any significant change and the figures show none. And the rates of fatal injuries in industry show only small changes over the last 20 years (OECD, *Measuring Health Care 1960–1983, Expenditure, Costs and Performance* (1985) Tables F.3 (see also p124) and F.5(B)).

81. We must not give the impression that we see deterrence as unimportant. The promotion of safety is a very important matter. We accordingly consider in some detail, in the next part of this report, the ways in which unintentional injuries can be avoided or their impact lessened. We do not however see the alleged deterrent role of tort liability for such injuries as a significant factor.

82. The Law Commission accordingly agrees with the very widely expressed view that the fundamental principles of the scheme are sound and should be retained. Indeed they should be built on. We do however consider that there are a number of important changes that should be made to the rights under the scheme of persons injured, to the sources of funding of the scheme, and to its administration. We consider these in later parts of this report.

### *Costs*

83. We first however return to an important aspect of the operation of the scheme: the matter of costs. We have already explained that big

increases in the cost of the scheme formed a major part of the context in which we were asked to undertake this inquiry. As we said in October, we must give close and careful attention to the increases, to their real extent, to the reasons for them and to action, if any, which should be taken to deal with them. A proper understanding of these matters is significant for the scheme's public acceptability and, more importantly, the costs must be such and be seen to be such that they can properly continue to be borne.

84. The Accident Compensation Commission in its first report before the scheme began predicted that it would have to handle about 500 claims a working day—or say somewhat over 100,000 a year. That was an accurate prediction. The annual reports of the Accident Compensation Corporation record increases in the numbers of claims in recent years:

1981	129,000
1982	131,000
1983	144,000
1984	153,000
1985	158,000
1986	151,000
1987	151,000

Over the last 6 years the increase is about 17% although in the last 3 years there has been a small fall. In that period claims by earners stayed roughly constant while motor vehicle claims increased (from 12,000 to 18,000) and those on the supplementary account dropped (from 25,000 to 20,000). Consistent with that are injury statistics which in major areas show only limited change. So for each year from 1974 to 1986 the numbers of deaths on the roads have been between 550 and 770 and injuries between 14,000 and 21,000. Those figures may however require closer attention. The last after all contains a 50% increase occurring in years between 1979 and 1986. During the same period claims on the motor vehicle fund which are on average more expensive than others have increased by a similar amount.

85. But it is to the money costs of the accident compensation scheme that we should be giving major attention at the moment. Over the 4 year period from 1978 to 1982 the expenditure remained fairly constant when inflation is taken into account. But the next 4 years saw a real increase of 49% or about 12% per year, and 40% over just the past 3 years with almost half of that occurring between 1985

and 1986. The rate of increase between 1987 and 1988 is 10%. While a little lower than some earlier figures, it is still a high figure which must be carefully examined. What are the areas of increase? Can they be explained? Can they be justified? If not how are they to be dealt with?

86. The examination of cost increases has identified several areas of increase. By far the largest is *the increases in the amounts payable to those who claimed in earlier years and who in the next or later years are still in receipt of payments from the Corporation*. Such payments will be mainly periodic earnings related compensation (payable in some cases to dependants). Certainly it is that cumulative effect which is our main concern.

In 1975 of course all the payments would have been made to current year claimants, but over time earlier years' claimants who have been seriously incapacitated and who have continuing entitlements will continue to be paid compensation. By the early 1980s that group were receiving increasing amounts and proportions of the Corporation's expenditure. The following table indicates the growth of the proportion of payments to earlier year claims up to 1987:

Proportion of payments for old claims compared with total

	Percent
1981	46.5
1982	50.3
1983	48.9
1984	50.5
1985	53.2
1986	55.7
1987	58.9

87. The growth in the amounts actually paid for current and old claims (as opposed to the proportions) is perhaps more striking. The amounts in 1981 dollars for each year are as follows:

	For current year \$ million	For earlier years \$ million
1981	68	59
1982	72	73
1983	89	85
1984	95	97
1985	95	108
1986	106	134
1987	106	153



88. Recall the earlier figures about the recent rate of increases—over the past 3 years an increase of 40%. The current year increase in that time is a little over 10% (or 3% each year), the earlier year increase by contrast is well over 50%. In some of those years indeed the only real increase has been in payments for earlier claims. So in 1987 the *whole* of the real increase in spending was for earlier year cases. The current year payment did not change at all.

89. What are we to make of this? Two main conclusions occur to us. *The first and more important is that the scheme is doing one of the very important things that it was set up to do—to provide real compensation for those seriously incapacitated by major injury without a limit of time (so long as they are incapacitated).* It was always to be expected that the numbers of those who would be receiving such compensation would build up over a period of 18 to 20 years with the greatest annual increases in the first 12 years or so. Exactly that is happening. The recent increase in costs is almost solely in the build up of payments for all earlier cases.

90. Our second conclusion qualifies the first and is best put in the form of a question. Should the build up be of the size that it is? Are the increased payments made to those who are more seriously injured being paid over a longer period than they ought to be? There are some worrying figures that suggest they are: thus over the last three years there have been large increases in the numbers of people who are still receiving payments after three years. We do not however know whether some of the increases can properly be related to the maturing of the scheme or whether the major explanation is that people in a similar situation are now staying on earnings related compensation for longer periods. We see later that there is some support for the second explanation but we do not know its relative significance. We also do not know what weight to give to the relative increase in recent years of motor vehicle injuries (with their higher average cost). We now look at more particular explanations of cost increase.

91. Studies undertaken by and for the Corporation have identified several. The increases are sometimes referred to collectively as “cost creep”, and are causing concern in other schemes (for instance in Australia) as well.

92. Recent increases in major areas of expenditure in particular areas are as follows. (The figures have been corrected by deducting increases in average weekly earnings.)

Type of expenditure	1984/85	1985/86	1986/87
	%	%	%
Weekly benefits to injured	13	14	11
Death benefits	6	-1	-5
Section 78 (lump sums: impairment)	50	44	12
Section 79 (lump sums: lost enjoyment of life)	22	36	20
Medical	14	25	-5
Hospital	18	17	11

93. The substantial increases in *weekly benefits*, above inflation or average wage increases, have been explained in a number of ways. We have already indicated one—a build up of the entitlements of those with long term incapacity. Another which similarly has not been precisely quantified is an increase in the time individuals are staying on earnings related compensation. Thus one survey of a district comparing 1984 and 1987 suggests a near doubling of the proportion of persons receiving earnings related compensation for 44 weeks (from 3.3% to 6.1%); and other calculations and projections suggest an increase in the average number of days on earnings related compensation from 23.9 in 1982/83 to 32.1 in 1986/87. The process of making medical assessments may be a significant factor.

94. One partial explanation of the increase in weekly benefits in 1986/87 is the 1985 amendment to s.59(2) of the Act. One consequence of that change is that those who are fit for light duties but who cannot find work no longer have their earnings related compensation reduced by a notional amount of earnings. Various suggestions have been made of the cost of this change to the Corporation—costs which might be increased with growing difficulties of getting employment. While no final calculation has been made, the change must have had some quite large consequences for spending on earnings related compensation.

95. The very large increases in 2 of the last 3 years in *lump sums* might be explained in three ways—higher awards being made, an increase in the number of claims, and a catch up on the backlog of claims. With effect from 1983 the maximum s.78 amount for permanent loss or impairment of bodily function increased from \$7,000 to

\$17,000. The increase between the 1983 and 1984 payments under s.78 was only 3% (with no allowance for inflation). The statutory increase must provide much of the explanation for the very big increases in the next 2 years, but the rate of increase has fallen greatly since. Given the schedule element in many s. 78 calculations there should be limited room for further major increases. There has also been an increase in the number of s. 78 awards.

96. The s.79 maximum figure has been fixed at \$10,000 throughout almost the life of the scheme. In this case the increases in levels of payments have been the result of judicial decisions rather than legislative change. In recent years the increases in total payments result principally from increases in the level of the individual payment. Some suggest that the statutory limit means that the average cannot go much higher.

97. The changes in medical payments in the earlier period reflect, first, considerable increases in the numbers of some treatments (the trend has since been reversed in the case of general practitioner visits and physiotherapy services where there is now in practice a surcharge paid by the injured person). They also reflect the decisions of the Corporation (some challenged in court proceedings) not to increase some fees in recent years. When there is no such limit—as with specialists' fees—the increase is more rapid. (In that case, too, there is no surcharge to be paid by the injured person.)

98. The increases in private hospital costs appear to result from an increase in volume of the services so provided.

99. Much of the above discussion is tentative. That is so for two reasons. In many cases precise information—particularly about the reasons for the changes in cost (and the differing rates of change)—is just not available. We mention later the need for better statistics—a need that is widely recognised.

The second reason is that in some of the areas the changes which we propose will either remove the particular problem or lessen it. Thus we propose that the determination of permanent partial disability be made earlier than is commonly the case. The consequence should be some saving against earnings related compensation. Next we propose that lump sums be abolished (but we recognise that their proposed replacement by a partial disability benefit will introduce new cost issues). And in the area of medical and related benefits we propose

that distinctions between the treatment of injury and illness victims be removed (with the opportunities for the abuse of the distinctions also being removed), that the incentive for individuals be increased by requiring them to bear part of the cost of medical treatment, and that the injury claimant sign a claim form.

100. Major questions about costs still remain. There are unexplained increases which may well continue even if our proposals are adopted. The Corporation is undertaking investigations into possible fraud and abuse. A formal programme is being considered. We commend that initiative. It is important that the scheme not be abused. It is important as well that it be seen not to be abused. The scheme does appear to have more than its share of bad publicity.

101. The other point is that careful attention must be given to monitoring the areas of major expenditure. We have already made the point that more needs to be known about the spending on earlier year claims. To what extent have there been increases in the period on earnings related compensation which cannot be justified? Is there in some cases too long a period before permanent partial incapacity is assessed with the consequence of a delayed return to the work force and unnecessary payment during that time of the full earnings related benefit?

102. We repeat our main conclusion on costs. The substantial reason for the recent increases in compensation spending is to meet the costs of those who have made claims in earlier years—that is for the more seriously incapacitated. The cost of claims in the first year has increased by only small amounts.

## *SAFETY AND REHABILITATION*

103. The name of the Accident Compensation Corporation, the short title of the Act, the work and spending of the Corporation and most of the public debate and the submissions made to us emphasise *compensation*. And yet it is only one of three ways of dealing with personal injury. The most important is prevention. Next in importance is rehabilitation—the obligation to help those injured to recover from or at least to deal with the incapacity. And third is the duty to compensate those injured for their losses.

104. In this early part of the report we attempt to redress the balance by stressing the promotion of safety and the importance of rehabilitation. In particular we make proposals in response to the widely held opinion that those two vital matters are not adequately handled in our system of government.

### SAFETY

105. The Accident Compensation Act 1982 places great emphasis on the promotion of safety and occupational health. Indeed, according to s.35 of the Act, it is

a matter of prime importance for the Corporation to take an active and coordinating role in the promotion of safety.

106. Parliament underlines its judgment of that importance by giving two reasons for safety promotion, one humanitarian, the other economic or efficient (with a humanitarian element as well). Safety is to be promoted

to avoid human suffering, and

to prevent wastage of manpower and so assist efficiency and productivity.

### *Responsibility of government*

107. The Corporation is not of course the only public body with heavy responsibilities in this area. So one major general function of the Department of Labour is to promote and maintain safe and healthy working conditions. Accordingly that Department is bound by law to make inspections and take other necessary action for the purpose of ensuring that employment obligations are met. These obligations include those laid down in many safety statutes. A principal function of the Department of Health is to administer Acts so far as their purpose is the promotion or consideration of health. Others are to prevent, limit and suppress infections and other diseases, and to inspect factories with the purpose of promoting public health and preventing disease.

The Ministry for the Environment has statutory functions in respect of environmental impacts, pollution control, reduction of the effects of national hazards and the control of hazardous substances.

And although their general departmental statutes do not specifically indicate it, the Ministry of Transport and Ministry of Energy have major safety responsibilities, in part under specific legislation. In addition in 1973 Parliament established the Road Traffic Safety Research Council with the function of advising the Minister of Transport on road traffic safety research.

108. Those are responsibilities of central government arising from general provisions in the statute book. Its responsibilities are of course far wider than that—in part because particular legislation (for example relating to machinery, such as boilers, lifts and cranes, or substances, such as asbestos) may add to those functions, and because wider functions may be exercised as a matter of policy.

One measure of the extent and balance of the activities is provided by some staffing and expenditure figures in the occupational area—the industrial safety, health and welfare staff in the Department of Labour number 318 and have a budget of \$22 million (most of it gathered through the Accident Compensation levies); occupational health, chemical safety and assessment staff in the Department of

Health are about 134 with a budget of \$9 million; the Marine Division survey staff of 150 have a budget of \$7 million (the total Division budget, covering additional matters such as the lighthouse service, the nautical advisory service (including search and rescue) and marine examinations is \$18 million); the Mines, Quarries and Tunnels inspectors of the Ministry of Energy number 43 and have a budget of \$3.5 million; and the Accident Compensation Corporation Accident Prevention Branch has a staff of 40 (out of an establishment of 63) at a budget of \$5.5 million (\$2 million of which is for financial grants and educational campaigns). (The Corporation's publication, *Unintentional Injury* (1987) 68–69, provides relevant information about this area.) To that should also be added part of the road and civil aviation responsibilities of the Ministry of Transport and relevant work of the Ministry for the Environment.

109. Responsibilities and functions belong as well to local government, for instance in respect of the placing of hazardous industrial activities in a district, building standards, fire prevention in private buildings, in factories and generally, safety in factories, pure water, roading, and public health in general.

110. Many of these responsibilities of government are to be seen against New Zealand's treaty obligations, often undertaken within bodies such as the International Labour Organisation, the International Maritime Organisation and the International Civil Aviation Organisation. We have as well the experience, legislation and practices of other countries to measure our efforts against.

### *Individual responsibility*

111. We must move from the responsibilities of government agencies, stressed in the strong statutory statement of the duties of the Accident Compensation Corporation itself, to individual responsibility. The primary responsibilities in respect of safety are of course with the individuals most immediately involved—with the factory owner and the factory worker, the driver and the pedestrian, the manufacturer of a product and the consumer, the pilot and the airline, the rugby player and the rugby club.

112. The law and other social norms and forces emphasise and support those responsibilities in a great variety of ways with the aim of reducing injuries or at least moderating their severity. The whole

area of safety promotion and preventing and reducing injury is a large one. We are not in this reference concerned with precisely how the responsibilities should be stated and satisfied in their totality. We should however make proposals about those matters given the major emphasis in the 1982 Act on the promotion of safety and the very great importance of that objective.

### *Occupational safety and health*

113. We begin with the broad area of occupational safety and health and then move beyond it. Our task is made the easier in the occupational area by the work done by others, for instance by other countries (as in the provinces of Canada, the states of Australia and the United Kingdom), by the International Labour Organisation, and in New Zealand, by the Department of Labour and other agencies. Some of the work in New Zealand has been done for the Advisory Council on Occupational Safety and Health (ACOSH). Much of this experience has been brought together in a New Zealand context in Ian Campbell's valuable book, *Legislating for Workplace Hazards in New Zealand : Overseas Experience and our Present and Future Needs* (1987); and we express our appreciation to him for much direct assistance he has given us during our enquiry. The wider picture of unintentional injury has been surveyed from the point of view of research in a recent interesting report for the Medical Research Council and the Accident Compensation Corporation by Elizabeth McLoughlin and John Langley, *A Review of Research on Unintentional Injury* (1987).

114. This body of law and practice recognises the responsibilities and corresponding rights of employers and of workers, but not of them alone. It extends as well to others, such as constructors, owners, supervisors, manufacturers, suppliers and members of the public. The responsibilities can be met in a variety of ways—for instance in the work place by the employer establishing safe plants and safe systems of work, with good equipment well maintained, with good supervision, information and training, and with necessary safety equipment and clothing; and by the worker complying with the relevant law, using and wearing required equipment and protective devices and clothing, reporting breaches of the law and hazards, and not using any methods of work in a way that may endanger that worker or any other worker or, indeed, a passer-by.



## *The characteristics of the responsibilities for occupational safety and health*

115. The responsibilities just listed have several characteristics. First, some apply *before* the possible point of injury—a safe plant, instruction, the provision of safety clothing, and the notification of hazards for instance, while others apply *at* that point—the worker not using an unsafe method of work for instance. And a further important set of obligations (not illustrated above) may operate *after* an injury, for instance by way of establishing an occupational health service and monitoring the health of workers exposed to hazard.

116. Second, some of the responsibilities are stated in particular terms prescribed for the employment in question while others are more general—for example the promotion of the health and safety of workers on a construction site, or the maintenance in good condition of equipment and protection devices. The inclusion of the more general standard recognises that the precise industry or occupational regulation may not adequately cover the ground.

117. A third characteristic of the responsibilities relates to the way they are established. They might be written in the Act by Parliament, prescribed in regulations made by the central government or in bylaws made by local government, established by codes of practice, included in industrial agreements and awards, or established in less formal ways. (The Standards Association also issues standards and the Occupational Health Technical Advisory Committee is involved in the development of occupational health standards.) Such codes, which are increasing in number, set out recommended practices in particular areas of work (for instance with machinery or electrical equipment). In general, notice is to be given of the intention to prepare a code, and the relevant Minister is to consult with those affected by the proposed code and to consider their comments. In some cases the code is given somewhat greater legal force than that of a mere recommendation: compliance is rebuttable evidence of lawful practice while breach is rebuttable evidence of unlawful practice. Such a code might later be given the full force of law by being made a regulation.

118. The fourth characteristic relates to the legally prescribed methods of seeking compliance or enforcement. Workers may have (in addition to the duty mentioned earlier to report breaches, defects and hazards) the right to refuse to work when they have reason to believe

that the equipment or work place is likely to endanger them. This right appears to exist at common law as well as being recognised in some statutes. It may also be accompanied by a right not to be penalised for making complaints and refusing to work. Other possible forms of worker participation include employer consultation with them about safety, access to the enforcement authorities, the election of worker health and safety representatives and the formation of joint management/worker health and safety committees. Some of these matters are the subject of the present voluntary code of practice promoted by ACOSH last year. (See its Report for the year ended 31 March 1987, AJHR G 41, p3.)

119. So far as the law is concerned, other methods of ensuring compliance and promoting safety are largely in the hands of government officials—local as well as central. They have general functions of monitoring developments and proposing means of handling new and recurring hazards. In more particular contexts they have powers of inspection and enforcement. Inspection is provided for in the ILO Labour Inspection Convention 1947. The functions of inspection are to

- (a) secure the enforcement of the law relating to conditions of work and the protection of workers;
- (b) supply technical information and advice to employers and workers about the most effective means of complying with the law; and
- (c) bring to the notice of the competent authority defects or abuses not specifically covered by existing law.

Among the inspector's powers is the power to order alterations in a plant to secure compliance with the law and to order immediate measures in the event of imminent danger to workers' health or safety.

120. Enforcement may also be by way of administrative penalty, criminal prosecution involving the regular penalties of the criminal law, and court orders to alter methods of work so that they comply with the law. In some circumstances civil litigation will be initiated (usually now in New Zealand only in respect of damage to property) and the government has a wide power to initiate inquiries into accidents. Some safety legislation limits the right to prosecute to the relevant government officials thereby departing from the usual more

liberal practice that where Parliament creates an offence anyone at all may initiate prosecutions. We mention some other methods of enforcement of safety standards later (paras 136, 148, 149).

121. A final characteristic of the responsibilities for occupational safety and health is that they indicate at least four different injury prevention strategies. (These relate in part to the temporal characteristics considered in para 115 above.) One is education: suppliers, employers, workers and others being better informed by one another, or by public agencies, or by their trade associations or unions of work place hazards and of the ways of removing or avoiding them. The education can be carried on much more widely, at all levels of education and training, including higher technical, medical and professional education. A second is design. Design removes or substantially reduces the risk by physical measures or complete prohibitions (such as median dividers on highways or bans on the use of asbestos). Such measures do not require any action by those immediately involved in the enterprise. The danger is removed from them. A third strategy is legislation (which might of course also underly the first and second strategies), setting standards and responsibilities for those involved and providing for enforcement—matters already considered. A fourth strategy, also mentioned earlier and perhaps the least obvious, is the involvement or cooperation of those affected in safety promotion. One manufacturing company told us of a very successful safety programme which it has introduced over the past 7 years, reducing its accident frequency rate and breaches of codes enforced by the Department of Labour by about 90%. That company has the following passage in its safety and health policy:

The success of the safety programme depends on the willingness of all employees to work together as a team with a genuine concern for the well being of themselves and their fellow employees.

### *An International Labour standard*

122. The International Labour Convention concerning Occupational Safety and Health and the Working Environment (No. 155 of 1981) helps bring the above matters together and indicates possible future directions. (ACOSH has indicated that it is taking this convention into account in its study of comprehensive legislation relating to

occupational health, 1987 Report p4.) The Convention requires the States which have ratified it

in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, [to] formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

123. National policy is to take account of

- (a) the material elements of work (such as the work place, equipment, substances, and work processes);
- (b) relationships between those elements and those who carry out or supervise the work;
- (c) training;
- (d) communication and cooperation at all levels of the working group and the undertaking;
- (e) protection of the workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the national policy.

124. The emphasis on the involvement of organisations of employers and workers in the government's formulation of a national policy is carried through to the plant level, in respect of which the Convention provides for various specific measures of cooperation between employers and workers (and workers' representatives) for instance in relation to information and training. It also provides quite generally that

cooperation between management and workers and/or their representatives within the undertaking shall be an essential element of organisational and other measures taken in pursuance of Articles 16 to 19 of this Convention [the specific provisions about safety in the undertaking].

## *"One Act—One Authority"*

125. Proposals for "one Act—one Authority" for occupational safety and health are to be seen against the above background and against the fact that such arrangements are now common in countries with similar traditions and employment patterns to those in New Zealand. That position has been strongly urged for instance by the Department of Labour and by an expert in this area, Mr Ian Campbell (para 113 above). It is mentioned in the *Review of Department of Labour Activities* (March 1988) 5.5.7 and 9.4.16, and is being considered within ACOSH. It is seen as providing many advantages, first, in bringing together relevant information, expertise and experience in one body with appropriate tripartite composition and, second, in establishing in a single statute the general responsibilities for safety along the lines indicated in paras 113–121 above. Just one particular matter evidences the first broad set of advantages. ACOSH in its 1987 annual report recognises, as do many others (eg Langley *op cit*), that we do not have the accident data that will help us identify priorities for occupational safety and health policy and monitor the effectiveness of accident prevention programmes.

126. To quote ACOSH, the *Report of the Review Committee on New Zealand Statistics of Accidents Involving Injury* noted the deficiencies in Accident Compensation Corporation statistics "because the most pressing requirements [for the Corporation] were the receipt of claims and the prompt payment of compensation—statistics were produced as a byproduct. Since 1984 the Corporation has developed an Integrated Information System which became fully operational in December 1986. The Council's statistics committee is now examining the new system to determine whether it can provide adequate statistical information to meet the needs of other organisations, in particular, Government departments, unions, and employers' organisations." We can confirm from our own experience that adequate statistics in several areas do not appear to exist.

### *The wider safety area*

127. It is not for us to express a final view on the "one Authority—one Act" idea except by taking it one step further and putting it into wider context. Our discussion of safety has mainly related to work place safety and health. It should now, given the scope of the accident scheme, extend to include all accidents. We can,

we think, come quickly to the point. Notwithstanding the strong statutory language quoted in paras 105 and 106 above, we do not have a single Minister and supporting agency with responsibility for safety promotion in New Zealand.

128. The fragmentation which others have identified in the employment context is even more apparent in the wider safety area. Thus there is no central body of information about safety promotion, no central set of officials to advise Ministers on a coordinated programme of research, prevention and evaluation, and accordingly no overall governmental view of the allocation of public resources for those very important purposes. These matters of course are not solely for the central government. We have tried to stress throughout this section the responsibility of individuals, especially as workers, employers, and manufacturers and we shall consider that further. But insofar as the central government is concerned (and should be concerned) we agree that there is a gap in our system of government. We accordingly propose that a Minister be charged with responsibility for the promotion of safety and the prevention of accidents across the whole field.

That central function would be greatly aided by, and could indeed contribute to, the development of more comprehensive legislation in the safety area (as with the proposal for an industrial safety, health and welfare bill). The actual administration of safety standards would of course continue to be with particular, specialised units of government, both central and local. We mention this matter again when we have considered rehabilitation (where there is a similar lack and similar need). But first we should give further attention to the question of forces for safety in relation to individuals. What is it that makes individuals behave in a safe manner?

#### *Financial incentives in the accident compensation scheme?*

129. We have two particular reasons relating to the present accident compensation scheme itself for asking that question. Some people see two features of the present scheme as promoting safe behaviour and penalising unsafe practices. The first is the industry rating scheme under which an industry with a higher personal injury cost (such as meat works) pays a proportionately higher levy than an industry with a low personal injury cost (such as banks). The second is the power of the Corporation to impose a penalty (of up to the full cost of the

annual levy) or confer a bonus (of up to half of the levy) by reference to the accident experience of a particular employer. These powers are quite distinct—the first concerns the general scene, the second the particular employer; the first attempts to measure whole industries against other different groups, the second measures a particular employer against others within that industry group. Can the exercise of those powers promote safety? Do they provide a financial incentive in that direction?

130. These questions should not be answered in isolation from the major forces for safety and for compliance with the relevant law. We again discuss those forces briefly and then consider the two powers in turn. This will involve some repetition, but our experience is that some repetition is needed if the points are to be grasped.

### *Safety incentives in general*

131. What persuades people at risk of injury or able to inflict it on others to take care to avoid it? The question is a very big one. It has many answers. We have considered some of those applying in employment. We give now an indication of their range, in part to show why we do not accept that our proposed changes to the levy scheme would discourage any effort made by an employer to reduce workplace hazards.

132. As we explain elsewhere the present accident compensation scheme already places financial incentives in favour of safety and minimising injury on employers and workers—the employer or the worker has to meet the cost of the first week and the worker does not receive full earnings related compensation. The proposal we make to extend the waiting period for a second week would further enhance that incentive. The total amounts of money involved are already large and would be increased by at least a further \$20 million. That is to say the direct financial incentive to safety contained within the accident scheme is already large, and would be made larger.

133. The incentives outside the scheme are probably even more significant. The first of them must be self interest—of the employee, the driver, the “do-it-yourselfer”, the tramper and especially in the present context the employer. The employer as a result of accident may lose the services of a skilled experienced employee. Whether the loss of human resources is significant for the employer or not (for

some but not all employees can be quickly replaced), other direct costs may be—in damaged and destroyed property, plant, machinery, buildings, spoilage of material, interruption of production, loss of sales and profits and other consequential losses. Many of those property losses are of course covered by insurance taken out in very large amounts. (The total of fire and accident premiums in New Zealand is considerably in excess of Accident Compensation levies.) Accordingly such incentives as an insurance policy may provide through experience rating, accident prevention (by increasing premiums if safety measures are not taken), no claims bonuses, and the like are already relevant to many accidents that may also cause personal injury.

134. The prospects of such losses have led some businesses (see for example para 121), in some cases with the support of the Corporation, to introduce sophisticated safety audit programmes (International Safety Rating). In addition to a substantial drop in recorded accidents such programmes can produce other benefits—in one case, big increases in production, improved communication between the company and the employees, employees' increased awareness that they are part of a team, decreased fuel consumption, increased employee respect for equipment, and improved control over production.

135. A related development also mentioned earlier is the growing acceptance of the need for methods for the promotion of workplace safety involving cooperation between all involved. Over recent years legislation relating to railways, construction, electricity, factories and commercial premises has provided for the drawing up of codes of safety practice by departments in consultation with those affected. These codes are not necessarily directly and legally binding, but they can have legal significance. They are also part of a world-wide movement towards greater worker participation in occupational health and safety.

136. The law provides at least four other incentives towards safety, again touched on earlier. Unsafe methods of work or products which cause damage to property outside the work place can be the subject of civil actions in the courts by those damaged. Again insurance may have a role.

Secondly, professional and occupational disciplinary processes will be significant in some situations. That prospect and the next two



cannot be the subject of insurance and accordingly individual responsibility is greater in these areas.

Thirdly, much safety legislation imposes standards and rules which can be supervised and enforced through inspection, courts and commissions of inquiry, and prosecution in the criminal courts. Sometimes the official remedies may include the stopping of unsafe activities, such as the closing down of a factory. The general emphasis in the administration of this law so far as it relates to factories and commercial activities, in New Zealand as elsewhere, is however on guidance and education rather than on coercive measures. Road safety law is seen differently, with large numbers of drivers being prosecuted and heavily penalised for unsafe driving.

Fourthly, the general criminal law may be invoked—manslaughter prosecutions for deaths caused in or by industry are not unknown, and some have urged that they should be more widely invoked.

*Variable industry classifications—a safety incentive?*

137. We later repeat the recommendation made in our interim report that all employers and the self-employed should pay a single levy rate which Parliament should fix at \$2.50 for each \$100 of payroll. That is to say the distinction made between different employers according to industry classification should no longer be made. We give our reasons for that recommendation later. Here we are concerned with the argument that the introduction of a flat rate would remove a safety incentive. According to one formulation, a single rate would discourage any effort made by an employer in any industry to reduce workplace hazards; facing no additional cost or benefit for taking such efforts, employers would have no motivation to act in the interests of their employers' safety. This formulation plainly is wrong. A great number of forces for safety—market place, efficiency, humanitarianism and the law—exist and operate quite independently in support of safety.

138. The bonus/penalty power relates directly to the accident record of each individual business. The general classification system by contrast requires, if it is to work as a safety incentive—

- that all or a significant number of the members of that whole industry adopt safer methods and adopt them because of that system (it is not enough that just one employer in that industry

improves its record, unless it is in a monopolistic position), and

- that, as a result, the reported accident record of the whole industry significantly improves, and
- that it also improves significantly against the overall accident record of all employment, and
- that the administration of the classification process is such that favourable adjustments can be made on a fair and proven basis—adjustments which will be made some years after the introduction of the improved safety practice directed at that possible reclassification to the advantage of the industry concerned.

139. In our interim report we said that we have been provided with no evidence that the classification system creates any such incentive. (The only specific response we have since had to that point referred to an American study concerning the effectiveness of *individual* experience rating. But that is of course not relevant to our proposal about *general* industry classification.) The proposition is one of theory, not of experience. Even if, considered on its own, the alleged incentive had some chance of operating, the other safety incentives which we have briefly sketched and which in whole or in part will also be present in every case appear to be much more important. To take just one, consider the immediate, tangible, calculable and significant impact of the cost of meeting the present first week and the proposed second week of the waiting period (on the employee as well as the employer). We accordingly conclude that the safety imperative does not stand in the way of our proposal for a single rate.

*Bonuses and penalties for individual employers—a safety incentive?*

140. We now turn to consider the quite different power of the Corporation to confer bonuses and to impose penalties on a *particular* employer by reference to that employer's accident experience compared with the general accident experience of others in the same class and such other factors as it considers relevant. (There is a parallel power, exercisable by way of regulation to impose penalty rates, within any levies fixed for drivers, on drivers whose accident rate is significantly worse than average. No levies on drivers have ever been fixed.) "Accident experience" is defined in the Act as (a)

the experience of the employer or self-employed person in relation to work accidents, (b) their frequency, and (c) their financial cost to the Corporation.

141. Such a power with its underlying purpose of promoting safety and with the equity that would appear to result from its exercise is on first impression attractive. Many submissions supported the exercise of such a power. Why is it then that the power has scarcely been used in New Zealand (and then only for a short period to grant bonuses, and not to penalise) and that there is professional opposition to or doubts about such powers? That opposition and those doubts are based on a general conclusion that experience rating in industry does not act as an incentive to reduce injuries. The Economic Council of Canada recently summarised some major reasons for that conclusion:

Neither experience rating nor penalty assessment as implemented in Ontario appear to represent effective devices for inducing employers to prevent accidents. ... The value of experience rating is limited not only by scale considerations, but also the time lag problem, general inflationary pressures and the inability of employers to predict with precision the costs, benefits and changes in the assessment rate that emanate from the introduction of safety programs. ... [T]he fragmentary evidence suggests that the imposition of penalty assessments is frequently unrelated to the most recent accident rate of the employer. Moreover, the effectiveness of the assessment system is further reduced by the cancellation of penalties, the number of workers affected and the trivial nature of financial repercussions which are imposed on employers who have a "poor" accident record.

142. We consider some of those points and one or two others. First, the scale point. Ninety-eight percent of New Zealand registered factories employ 100 or fewer workers. There are objections on statistical grounds and accordingly on equitable grounds as well to applying experience rating to such small plants. Two thousand five hundred employees is seen by some as a minimum base. If small factories are not included in the merit rating arrangement they may end up subsidising the particular larger factories which benefit from a bonus. The statistical problems arise because many accidents are just that—accidents especially so far as the employer is concerned. The operator of a hazardous factory may in fact be fortunate, while the

operator of a very safe plant may not be. The imposition of a penalty in the latter case (presumably for fault which is however not proved), by administrative means, is not fair. It is moreover a penalty imposed by reference to injuries *reported* to the appropriate body (and, leaving aside under-reporting, would not at the moment include accidents dealt with only by the public hospital system). The element of chance is enhanced if the merit experience rating is based (as under the Act it is required to be) on the cost as well as the frequency of reported injuries. The cost may be even more out of the employer's control.

143. The Canadian Council's second point was the time lag problem. The penalty might be imposed long after the poor safety practices have been abandoned, for instance because the consequence of the practice is occupational disease (with a latency period of 10–25 years) rather than an immediate injury, or because of the delay in making the final payments for injury—a delay that may occur for good reason under the most efficient schemes.

144. That time lag factor contributes to the difficulties for employers of making a judgment of the chances and the costs of accidents against the penalty. That set of considerations and others have led some to the opinion that the emphasis should be directly on the conditions creating the risk rather than on the injuries and disease that might or might not happen at some time in the future. We come back to that.

145. Some also fear that experience rating may even be counter-productive in some circumstances. Employers' efforts may be aimed at reducing claims rather than reducing injuries. This can lead to employers failing to report job injuries and illnesses. An American company was recently fined \$US600,000 for under-reporting 121 instances. This can of course have bad effects for the treatment and rehabilitation of those affected. And, in any event, even if a penalty is imposed it might be passed on in the pricing of products and in wage rates.

146. One recent careful study of experience rating in the State of Washington first reviewed the literature on experience rating (including the paper mentioned in para 139 above) and concluded that

it is certainly not known whether experience rating has an important effect on employer behaviour.

It then summarised its study of the Washington experiment of giving bonuses to small manufacturers with good safety records:

The study involved several tests, and none suggested that injury rates among Washington's small firms were lower than elsewhere; indeed, the evidence uniformly suggested that (a) injury rates were higher almost across-the-board in Washington, and (b) the greatest differentials between injury rates in Washington and other states were found among the smallest firms.

We conclude, therefore, that there is no evidence in this study to support the notion that the experience-rating of workers' compensation premiums serves the goal of reducing injury rates.

(James Chelius and Robert F Smith *The Impact of Experience Rating on Employer Behaviour : The Case of Washington State*, Seventh Annual Seminar on Economic Issues in Workers' Compensation sponsored by the National Council on Compensation Insurance at The Wharton School, University of Pennsylvania, November 1987. See also the principal reason given in the *Officials Committee Report* (1986) p56 for ending the New Zealand practice of giving bonuses: no link could be found between bonuses and improved accident prevention performance.)

147. Their speculation about the reasons for the lack of proved connection is consistent with the reasons given by the Economic Council of Canada—the delay between the safety measures and the bonus (especially if managers do not have long planning horizons); the great difficulty in measuring the possible bonus against the cost of the safety programme; and the small amount of the possible bonus. (The average bonus given in New Zealand by the Accident Compensation Corporation amounted to less than 0.1% of payroll.)

148. Because the power does not appear to be capable of effective use and because any use might well be unfair, we propose the deletion of the power to confer bonuses and impose penalties on employers and the self-employed by reference to accident experience as defined in the Act. We propose that instead consideration be given to creating a power to impose penalties by reference to observed conditions. Thus the Ontario Workers' Compensation Board has the power to

increase an employer's contribution to the accident fund by an amount which it thinks just if in its opinion

sufficient precautions have not been taken for the prevention of accidents to employees or where the working conditions are not safe ... or where the employer has not complied with the regulations respecting first aid ... (Workers' Compensation Act RSO 1980, S.91(4))

Whether this power should be vested in the Accident Compensation Corporation or another body depends on the further development of the proposals mentioned earlier relating to "one Act—one Authority".

149. The exercise of such a power would have an immediate effect. It should lead at once to the removal of the offending condition. It should prevent injury rather than penalising after the event. It would of course have to be accompanied by appropriate rights of the employer to challenge the penalty. Such a power would appear to be a useful addition to all the other forces which we have mentioned in this part of the report for promoting safety and which should be reviewed in a systematic way by the proposed Ministry as well as within the occupational context.

## REHABILITATION

150. We recall that the 1982 Act lists the promotion of the rehabilitation of injured persons as the second of its three purposes. It goes on to require the Corporation to

place great stress upon rehabilitation and [to] take all practicable steps to promote a well coordinated and vigorous programme for the medical and vocational rehabilitation of persons ... incapacitated [by] personal injury ... .

151. That heavy responsibility has important objectives. The rehabilitation programme for incapacitated people is to have as its objectives

- (a) their restoration as speedily as possible to the fullest physical, mental, and social fitness of which they are capable, having regard to their incapacity; and

- (b) where applicable, their restoration to the fullest vocational and economic usefulness of which they are capable; and
- (c) where applicable, their reinstatement or replacement in employment.

152. The Act confers wide functions on the Corporation in support of those objectives, first at the more general level, including relations with government departments, health and hospital boards, professional bodies, and private and voluntary bodies, concerned with rehabilitation or providing rehabilitation services, and, second at the particular level of helping rehabilitate those who are incapacitated. In practice the second, particular function involves the work of about 50 Accident Compensation Corporation rehabilitation coordinators and the expenditure of \$3.4 million to help individuals by housing and workplace alterations, vehicle adaptation, home help, wheelchairs, financial grants and in other ways and by training. When an amount is added for staff salaries and related expenditure rehabilitative expenditure is about 1% of total Accident Compensation Corporation spending.

153. The Accident Compensation Corporation is concerned with only a small proportion of the disabled and in particular of those people requiring rehabilitation of the kind referred to in the Act. One recent estimate of those who have been disabled for a month or more is 416,000 of whom about half are thought to have a substantial loss of functional ability that markedly restricts everyday living. About 100,000 or one quarter of the total number is disabled by accident. A recent Accident Compensation Corporation figure by contrast put its rehabilitation number at that time at 6000.

154. Statutory definitions of disabled persons indicate that the cause will once again generally be irrelevant to the need. The categories run far beyond those seriously affected by injury. A 1960 definition does mention cause:

“Disabled person” means a person who, by reason of injury or disease or congenital deformity or old age or other physical or mental incapacity, is substantially handicapped in obtaining or keeping employment of a kind which, apart from that injury or disease or congenital deformity or old age or incapacity, would be suited to his experience and qualifications.

The provision is also reasonably precise about the effect of disability: the definition appears in the Disabled Persons Employment Promotion Act 1960 administered by the Department of Labour. The second definition is more general:

“Disabled person” means any person who suffers from physical or mental disablement to such a degree that he is seriously limited in the extent to which he can engage in the activities, pursuits, and processes of everyday life.

155. That definition appears in the Disabled Persons Community Welfare Act 1975 which is administered by the Department of Social Welfare. The composition of the Advisory Council for the Community Welfare of Disabled Persons, set up by the 1975 Act indicates the wide range of departmental responsibility and interests—the Departments of Social Welfare, Health, Labour and Education and the Accident Compensation Corporation are represented along with 6 other members. The relative roles of those involved are also indicated by some of the expenditure. Thus Social Welfare expenditure on assistance to community services for the disabled in the 1986 year was \$24 million (most for the NZ Society for the Intellectually Handicapped) and on assistance to disabled individuals exceeded \$22 million.

156. The first annual report of the new Accident Compensation Corporation in 1981 recognised the critical importance of rehabilitation. It stated it was determined

to develop its rehabilitation objectives and to ensure the speedy restoration to independent living and to reinstatement or placement (where appropriate) in employment of all injured persons. This emphasis on rehabilitation is second only to that on accident prevention in the objectives of the Corporation.

157. But 6 years later the Corporation recognised the lack of national policies and of programmes which could most effectively achieve those objectives—

The Corporation is concerned at the lack of coordination of rehabilitation services and considers there is a need for a national rehabilitation initiative that will eliminate both gaps in and duplication of services. The creation of such an initiative is a primary objective of the Corporation.



In part because of the Corporation's reliance on outside and often inadequate services, vocational rehabilitation has not been particularly successful. There is also a lack of incentives within the scheme itself for employers to provide retraining and so forth. The Corporation aims to work actively with other agencies to help them close the gaps particularly in those localities where services are inadequate.

While the provision of financial assistance will remain the cornerstone of the Corporation's rehabilitation efforts, the Corporation is conscious of the inherent conflict within the compensation structure. There needs to be certainty of compensation, to minimise any neurosis barrier to rehabilitation, while yet having a compensation structure that provides financial incentives to get well and back to productive work. A repositioning in the public mind of compensation as an aid to rehabilitation must accompany any structural changes.

158. That perception of a lack of overall policy development and of coordination of services is, so far as we can judge, widely shared. It is brought to a head in the employment context (quite apart from the wider one) by the failure of the government to the present to develop a position on ratifying the International Labour Convention No 159 of 1983 concerning Vocational Rehabilitation and Employment (Disabled Persons). That Convention requires each State party to it,

in accordance with national conditions, practice and possibilities, [to] formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons.

For the purpose of this Convention a disabled person is one whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment. Vocational rehabilitation has the purpose of enabling that person to secure, retain and advance in suitable employment and thereby to further the person's integration or reintegration with society. In 1984 Parliament was informed that relevant organisations including the Rehabilitation Coordinating Council, the Disabled Persons Assembly and the Voluntary Welfare Agency Training Board, and departments had been sent copies of the Convention and a related recommendation; and a detailed study was being carried out by the Advisory Council to ascertain the extent of

New Zealand's compliance and the action, if any, that might be necessary to achieve compliance. That process has not, we understand, yet produced a result. (AJHR 1984–1985 A7 p75)

159. In the meantime the Australian Parliament has provided an attractive model in a statute which deals in a more comprehensive, flexible and responsive way with the needs and aspirations of persons with disabilities. Among the objects of the Disability Services Act 1986 are

- to ensure that persons with disabilities receive the services necessary to enable them to achieve their maximum potential as members of the community
- to ensure that services provided to persons with disabilities—
  - (i) further the integration of persons with disabilities in the community
  - (ii) enable persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community; and
  - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;
- to ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services;
- to encourage innovation in the provision of services for persons with disabilities; and
- to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community, for persons with disabilities who are of working age by the provision of comprehensive rehabilitation services.

(That Act also contains interesting definitions of disabilities.)

160. New Zealand does not have a national policy on rehabilitation. A national policy is needed. So is the coordination of the provision of rehabilitation services. As with safety, part of the need is to be met in our view by Parliament placing overall responsibility for rehabilitation policy on a Minister. The actual means of delivery of services

will of course continue to be through many persons and bodies with the relevant skills and qualities. And to return to a point made by the Accident Compensation Corporation in the passage quoted above it is important that rehabilitation programmes and compensation payments work together in an effective constructive way. They should give every proper incentive to the incapacitated to take their appropriate place in the community. We accordingly recommend that a Minister be charged with responsibility for rehabilitation of people with disabilities. (We realise that a Minister in charge of Rehabilitation already exists with responsibility for some needs of returned servicemen.) It may be that that responsibility could be combined with the function of promoting safety in the one Minister and Ministry. We repeat that in both areas we contemplate a small policy Ministry. It would not have direct operational functions. Thus the Ministry of Transport in respect of road accidents would continue to have particular responsibility for safety on the highway and the specialist centres at Auckland and Christchurch would continue to provide for the rehabilitation of those suffering from spinal injuries.

## *COMPENSATION ENTITLEMENTS*

161. So far as entitlements are concerned, the compensation scheme provides answers to a three part question:

- who is entitled
- in respect of which disabilities
- to what benefits?

The attached draft legislative proposals indicate our detailed answers to that question. In this part of the report we address some of the underlying matters of philosophy and indicate our reasons for the recommendations we make.

162. The principles of comprehensive entitlement, complete rehabilitation and real compensation are obviously important. So too is administrative efficiency. In its interim report the Law Commission emphasised another principle—that of individual responsibility, the responsibility of individuals to take care in respect of actions that might injure themselves or others, their responsibility if injured to bear an appropriate share of the cost, and their responsibility as providers of health care under the scheme—in all cases a responsibility not to abuse the system and not to make unjustified claims on it. This matter is of course reflected in a number of ways in the present Act and its administration. Thus the safety effort under the Act is directed at individuals—as employers, as workers, on the road, on the sports field, and at home; injured persons are responsible for their own financial support in the first week unless the injury was caused by a work accident in which case the employer takes part of the responsibility; the earnings related payment does not replace the injured person's full employment income; and those providing health

care under the Act are entitled to be paid an amount reasonable by New Zealand standards—no more nor less.

163. We have already given considerable emphasis to individual responsibility in the discussion of safety. It was also of course prominent in the many references to incentives in the 1967 Report of the Royal Commission. And it is one of the principles guiding the work of the Royal Commission on Social Policy. We make further proposals in this part of the report based on that principle, for instance in recommending the extension of the waiting period before weekly payments begin.

164. Principles by their very nature call for judgment in themselves and in relation to other principles and values. They are not precise rules dictating preordained results. It will be a matter of judgment for example about just how much support the principle of real compensation requires. What should be the waiting period before periodic payments begin? What is the appropriate proportion of income to be paid in periodic benefits? And how is that principle (once its content is determined) to be related to the overall demands of the economy and to fiscal constraints—to mention another of the matters which must be relevant? Another principle, also referred to earlier, is equality, especially the equality of treatment of those incapacitated by injury or by illness. As the introduction indicates, we consider that it is possible to give some but not full effect to that principle at this stage. Much of the relevant detail appears in this part of the report.

#### *Personal injury—a schedule approach*

165. Long experience shows the difficulty of using a general formula to try to capture the conditions which are to be covered by a personal injury compensation scheme. Additions have had to be made to the general words “personal injury by accident”—for instance to cover occupational disease and deafness. So too our law for a time provided quite separately on a broad discretionary basis for those who had suffered from criminal attacks. And there have been problems about the coverage of medical misadventure. We propose that the task of determining coverage be simplified for the great majority of cases by using a detailed schedule based on part of the International Classification of Diseases developed by the World Health Organisation. That schedule would for instance help with the medical misadventure

cases by specifically including specified consequences of medical procedures within the scope of the scheme. One consequence will be that the concepts of recognised risk and informed consent will no longer be relevant; they are not after all relevant to the use of the highway. And in the area of medical misadventure the schedule would adjust and state more precisely the line between injury and illness.

166. Such a schedule also has the advantage that it can in the future be adjusted in specific ways to cover those matters which ought or ought not to be included. We have not however completely abandoned the general approach. Rather as draft clauses 12–16 of the proposed Bill and the First Schedule indicate we have used a mixture of the particular and general. In these clauses we have also moved away from references to accident, but that word and its variants do appear at times in the schedule. Good reasons of policy point towards clear thinking as well as emphasising the injury rather than its cause and avoiding the implication, sometimes drawn from the word “accident”, that the injury could not be prevented and no one was responsible for it. The schedule should also have advantages for the gathering of statistics about the causes of injury. That after all is its original function.

### *Temporal scope*

167. One matter which has been raised with us in a number of contexts is the temporal scope of the scheme. The present law in general terms applies if “the accident” which caused the injury “occurred” on or after 1 April 1974. Consider three situations:

- (1) an accident earlier than 1 April 1974 has no apparent effect until after that date: this can be so of some spinal injuries;
- (2) emotional harm arising from sexual abuse of a child occurring before 1 April 1974 does not appear until later;
- (3) an occupational disease (covered by the legislation as an extension of the injury concept) which has its origins before 1 April 1974 does not manifest itself until later.

168. The present Act does deal in part with the last of these cases. The date of the commencement of the incapacity arising from an occupational disease is taken as the date of the happening of the accident (1982 Act, s.28(2) and (3)). But the Act applies only if the

disease is due to the nature of any employment in which the person was employed on or after 1 April 1974. Accordingly it does not apply if the person afflicted with the illness left the relevant type of employment before 1 April 1974. We think that that condition draws an unfair line which has nothing to do with the cause and development of the disease. The problem is particularly acute with a disease like asbestosis where the latency period is about 15 years and where the prospects of bringing a successful claim on the basis of the pre-1974 law are very remote. Accordingly we recommend that the requirement of relevant employment after 1 April 1974 be removed. It will be enough if the incapacity begins after that date.

169. That proposal can be seen as being based on a broader concept—that it is the incapacity which is at the heart of the scheme and that any provision determining the temporal scope of the scheme should apply to the first appearance of the incapacity rather than to the accident or other events which gave rise to the incapacity. That broader concept leads us to the conclusion that the scheme should apply to all incapacities (otherwise within the scope of the legislation) which began after 1 April 1974 and have not already been the subject of remedial attention.

170. There is a related matter. The Workers' Compensation Act 1956 is still technically in force stating rights for individuals injured at work before 1 April 1974. There appears to be no reason why any continuing entitlements under it—assuming there are some—should not now be brought within the accident compensation scheme and the 1956 Act repealed.

### *Limitation period*

171. The discussion so far has been about the substantive temporal scope of the scheme. A related but separate procedural matter is the limitation period. The Act at the moment requires claims to be made within one year from the date of the accident. The Corporation is bound to waive the period in certain circumstances (s.98). (The application of the provision to occupational diseases is not clear.) We do not consider that there should be such a limitation period (which we understand has little effect in practice in any event). No doubt in the large proportion of cases the injured person will make the application much earlier than one year anyway. Accordingly we have not included such a provision in the draft legislative proposals.

## *Congenital defects*

172. A recurring matter of importance in this report is the extension of the scheme's coverage to sickness and we make various proposals to that effect. We have already noted for instance, that the schedule would have the effect of including some medical conditions not previously covered. Another larger step would be to include congenital defects within the scope of the scheme. The Australian Bill which is the base for the attached legislative proposals would have included within the scope of personal injury

a physical or mental defect, including a disease, in a person existing at or shortly before birth, being a defect or disease that becomes evident before that person attains the age of 3 years.

Were the scheme to extend to such persons the main entitlement would be in respect of personal attention and medical and related treatment (clauses 53 and 54 of the draft). Much of that is of course already provided by the State through the health and related schemes. Because the change is a major one with significant consequences for other areas of policy and administration and because we have not costed it, we have not expressly included that group of people within the scope of the draft legislative proposals. We have no hesitation, however, in recommending that it be considered as a further step towards the equal treatment of the injured and the sick. A following step could be in respect of those suffering major illness.

173. There is a related point about the exact scope of the present law. It should be made clear that, already, pre-natal injuries are covered.

## *Medical and related expenses*

174. The present Act provides that those injured by an accident are entitled to medical, hospital and other related treatment and assistance (such as conveyance for treatment) within the limits it lays down. In the usual case the extent of the entitlement (including references to para-medical treatment and the use of private hospitals) is determined by the injured persons and their medical advisers. The Corporation may however determine whether the use of the private hospital (for which it pays) is justified, and it exercises some control over the use of non-medical treatment. It also is to determine the



amount to be paid—it is to be “reasonable by New Zealand standards”. The application of that standard by the Corporation has given rise to controversy and, as mentioned earlier, to litigation. In practice the payments actually made by the Corporation have fallen below the usual fees, notably in the case of visits to general practitioners, by about one-third (\$14.25 (including the GMS) compared with about \$22).

175. The relevant spending in 1987 was	
medical treatment	\$80 million
hospital treatment	\$21 million
dental treatment	\$5 million
conveyance for treatment	\$7 million

The total is about 20 percent of all compensation spending. These figures have been growing rapidly in recent years. For example the total increased by 17% from 1984 to 1985 and by 36% from 1985 to 1986. Numbers of services have also been growing. But the increases since then have been smaller; indeed in the medical area between 1986 and 1987 there was a fall in real spending of 5%. There has also been a fall in general practitioner visits, perhaps reflecting the impact of the difference between the standard fee and that paid by the Corporation.

176. That last point relates to the matter of incentives and individual responsibility to which we have already referred in this Part. That principle does suggest that, as with the pause period before periodic benefits are payable and with the fractional amount of the benefits actually paid, injured persons should meet a fair share of the medical costs. So far as we can judge, the present proportion of about one-third is acceptable (and it appears as well to be exercising some control over services and costs). We return to the principle of equality—that those incapacitated by injury and those incapacitated by illness should have the same entitlements whatever the cause of the incapacity. This is one area where that principle does appear to be capable of immediate application. Health benefits should be available without reference to the illness/injury distinction. We have essentially provided for that in draft clauses 53 and 54 of the appended legislative proposals. They provide for medical and related entitlements for those incapacitated by personal injury by reference to the general entitlements under part II of the Social Security Act 1964.

177. This proposal must therefore be related to the current process of reform of the health system. But we cannot leave it at that. Equality can be an empty concept if the substance of what is being compared has no defined content. We have already indicated something of the content in this case by our view that the proportion of actual costs met at the moment by accident victims for the services of general practitioners provides a broad guide for some parts of the health services. And a very rough calculation taking account of the total of general medical services, laboratory, pharmaceutical and accident scheme payments suggests that an application of that proportion across that range of health services might be sustainable without any extra overall costs either to the patient or to the government. (See e.g. L.A. Malcolm, Professor of Community Health, Wellington School of Medicine, (August 1987) 4 (*The Journal of General Practice* 14.) The other part of the content—the actual attention to be given to the injured person—appears in draft clause 53. For convenience we set that provision out here.

“Personal attention” means—

- (a) first aid;
- (b) medical, dental, hospital, outpatients, physiotherapy, chiropractic, or radiological treatment or services;
- (c) ambulance or laboratory services;
- (d) services in relation to the administration of anaesthetics;
- (e) the services of specialists or consultants;
- (f) home-nursing services or domestic assistance;
- (g) pharmaceutical requirements;
- (h) treatment by the provision of any artificial limb or aid or prosthetic appliance and its normal repair or renewal;
- (i) psychiatric or counselling services;
- (j) any other paramedical treatment or service  
and includes
- (k) travel undertaken for the purpose of receiving personal attention.

178. We make two qualifications to our broad recommendation. The first is that those whose injury is work related should continue to

be entitled to full payment of the medical and related expenses from their employers to the extent that those expenses are not met from public funds. That is required by our obligations under the relevant International Labour conventions. The second is that in respect of the proportion to be met by the injured person there will have to be a ceiling and some back up provision for those unable to meet even that residual amount.

179. The adjustment we propose would provide an important incentive to those using the services (and those who provide them as well), it would treat equally those whose incapacities are equal, and it would remove one incentive for abuse. So long, however, as the distinction between injury and illness does continue in respect of medical benefits, we propose that those making an injury claim should sign a claim form describing briefly the circumstances of the injury.

### *Monetary benefits*

180. The present Act provides for 3 main categories of monetary entitlements—

- periodic payments for those who are incapacitated by injury and suffer a loss of earnings
- lump sum payments for the same group, for permanent loss or impairment of bodily function, and for loss of amenities of life and pain and mental suffering
- periodic and lump-sum benefits for the dependants of those who die from an accident (including funeral expenses).

(There is also provision for meeting the costs of certain other losses unrelated to earnings, and we have already referred to rehabilitation in para 152.) Periodic payments under the first heading are available only to those in the workforce. Those who are not earning in that way are equally entitled to the medical and related personal services which we have earlier discussed, and may also of course receive rehabilitation assistance. If the injury is of a sufficiently serious character they might also qualify for the lump sum payments.

181. These monetary benefits take up the bulk—about 70%—of the compensation spending. They are very important to the individuals affected in helping their physical and economic rehabilitation. We

propose a number of changes, balancing, as we make those proposals, the principles of community responsibility, real compensation, comprehensive entitlement and individual responsibility.

182. The major changes we propose are—

- the extension of the waiting period before the periodic benefit is payable from one week to two weeks; and
- the extension of the periodic benefit to all who are totally disabled; and
- the removal, in general, of the power to award lump sums and its replacement for those with significant permanent disabilities by a continuing periodic payment.

The detail of the full set of proposals for periodic benefits appears in Parts V and VI of the draft Bill, and is further explained in paras 19–37 of the Explanatory Note to that draft. In this Part of the report we give our principal attention to the above matters.

#### *The waiting period for periodic benefits*

183. At this moment, earnings related compensation becomes payable under the scheme only after one week of incapacity. If the injury is work connected the employer is responsible for that first week, but, if it is not, the injured persons bear the loss unless they have some other provision, such as sick leave, available to them. The contribution that employers and workers make in such ways to the loss arising from the injury is significant, equalling perhaps 15% or more of the total accident compensation scheme expenditure. Those contributions to accident costs and the possibility of incurring them must also, for many employers and workers, provide a substantial incentive towards safety. The incentive can take effect after the event, as well as before, in encouraging rehabilitation and a speedy return to work. It is an important manifestation of individual responsibility. It reflects as well a recurring theme in the 1967 Report that more serious incapacities must always have priority over short term or minor ailments, especially if economic reasons require preference to be given.

184. A longer waiting period would accordingly further enhance individual responsibility—of the employer as well as of those at risk of injury or actually injured; it would give a greater incentive to

safety for both; both would have an incentive to deal quickly and efficiently with the consequences of an injury once it has occurred; and it could be an immediate form of experience rating for the employer. It would remove a large number of minor injuries from the scheme, removing some financial pressure from the funding, and enabling the Corporation to concentrate on major disabilities and simplifying administration of the scheme. In some cases the injured individual would be covered for the extra week by sick leave; but if the injury is work related the employer should meet the cost. On the other hand, the injured individual could face greater financial burdens; and sick leave in many industries is only one week. The matter in the end is one of judgment—of balancing individual responsibility and community responsibility, of ensuring that the real needs of injured persons are met, of providing safety incentives, of dealing with serious disabilities ahead of minor ailments. The amount of money to be saved is not great as a proportion of total costs. The saving for the scheme of a second week of waiting, so we are advised by our actuaries (see para 196), would be about \$26 million. The administrative saving should also be substantial; about one quarter of all earnings related compensation claims are for just one week. And the incentive so provided is very important. The saving we propose of \$26 million should be compared with the proposal of the Royal Commission on Social Policy in their *Working Papers on Income Maintenance and Taxation* (March 1988), Paper No. 5, for the much longer waiting period of four weeks. In recognition of the hardship that might cause they suggested a more generous flat rate benefit for that same period. In the result, we are advised, only \$18 million of the gross \$60 million saving would be retained.

185. We recommend that the waiting period should be extended by a further week to two weeks. The employer's statutory responsibility to pay compensation from the date of the accident would be similarly extended in respect of work accidents.

186. There is also a proposal about the termination of entitlements which we should consider. The Royal Commission on Social Policy proposed that periodic payments under the accident scheme should end after two years. They based this proposal in part on the more equal treatment of the ill and the injured. In recognition of the needs of people still incapacitated after that lengthy period they proposed a

more generous rate than the present sickness benefit. As a consequence, the net saving from the proposal, we are advised, appears to be reduced to about \$26 million in 1987-88 terms.

187. The group that this proposal affects are of course those most seriously injured. They constitute only about 2 or 3 percent of those who receive earnings related compensation (on 1984 figures). In our view they should not be singled out in this way. Many would see their needs as the greatest. And our International Labour Organisation obligations may not in any event allow such a cut in the entitlement for those with work related injuries. If when the time comes savings really must be made in the area of periodic payments we would propose that consideration be given to applying an even reduction to all. A 5% reduction would save an amount at least of the same order as that contemplated by the Royal Commission.

*Lump sums for permanent disability and pain and suffering*

188. The Act provides for the payment of lump sums to persons incapacitated by injury under two headings. The first is in respect of permanent physical disability. The maximum amount is \$17,000 and the Act provides a schedule determining the percentages of that figure payable in respect of certain specified disabilities (s.78). (The maximum was originally \$5,000 and was increased to \$7,000 on 1 October 1974 and to its current figure in the 1982 Act.) The second heading is in respect of loss of amenities or capacity for enjoying life (including loss from disfigurement) and pain and mental suffering (including nervous shock and neurosis). The maximum amount is \$10,000 (s.79). (The maximum was \$7,500 until 1 October 1974.) The Corporation is not to make an award under this heading unless the loss, pain or suffering is of a sufficient degree to justify payment. The person's knowledge of the injury and loss is a relevant factor. The determination is in general to be made within 2 years, or earlier if the condition has stabilised. As we have indicated, these payments are made whether the claimant is an earner or not.

189. The entitlements, the purposes, and the very wording of the provisions reflect the earlier law which was replaced in 1974 and the broad understanding that underlay the 1972 and 1973 statutes. The common law had long provided for lump-sum damages under the headings of pain and suffering, loss of amenity, and loss of enjoyment

of life, and the scheduled handling of permanent incapacity or physical impairment had long been a feature of workers' compensation legislation (and also of war pensions). The law both before and after 1974 recognised that a substantial and permanent disability or physical loss should, so far as money can achieve it, be compensated.

190. These awards or payments are often said to be for non-pecuniary loss. It is not a matter of directly meeting a proved loss in money terms. It is an attempt to deal with something which is real but not quantifiable as against specific calculable financial loss. Consistently with that, the two provisions in the 1982 Act are said to be concerned with "non-economic loss", and a third provision (s.60) emphasises that characterisation by making separate provision for a periodic payment in respect of a permanent loss of earning capacity. However payments under this broad heading, if not aimed backwards at some identifiable money loss, plainly can and do serve an economic purpose in the future. The seriously disabled person will often meet greater costs in various areas than the able and the monetary awards can help with those costs.

191. The lump-sum provisions were included in 1974 in part in recognition of the imperative to continue to meet such needs. But the main monetary provision under the scheme is of course intended to be made by way of periodic payments, whether temporary or permanent. Periodic payments have several widely recognised advantages over lump-sums. As the legislation in its present form recognises, they can much more accurately match the loss of income or an appropriate part of it. In the past, fixing lump sums for that purpose involved the impossible task of forecasting the future, especially in inflationary times. The process provided a capital sum and could threaten hardship arising from the present use of future income. The finality of the process and the (often consequential) delay in fixing the amount impeded rehabilitation.

192. By contrast a periodic payment for loss of earning capacity (as well as for other than pecuniary loss) can be fixed early, possibly conservatively, on the basis that it can later be adjusted upwards. That process could be an incentive to rehabilitation. And payments are available as the needs and problems arising from the incapacity continue.

193. For such reasons, many urged on us the view that lump sums should be abolished. There are other reasons which relate to the

particular features of the present scheme. As appears from the history of the provisions, the maximum amounts have not increased in line with inflation and no government has shown any inclination to maintain the original relativities on a regular basis. This means, on the one side, that the entitlements are of less value than originally intended, and, on the other, that very serious loss can no longer be clearly distinguished by way of lump-sum amount because of the increased payments being made in the average pain and suffering case. There is also some suggestion that a perception of unfairness arising from this creates further distortions in the operation of the impairment provisions. More significant for us is the barrier that lump-sums place in the way of extending the principles of the accident scheme to sickness. A lump-sum for pain and suffering for illness could not be justified.

194. We have accordingly come to the conclusion that the scheme should not provide in general for lump-sum payments for permanent impairment or for pain and suffering. But there are, we think, still important needs remaining to be met in respect of serious lost physical capacity, distinct from the need to compensate for income loss. Our law has long recognised that. We consider that provision should still be made for serious lost physical capacity and any economic loss. We think, for the reasons indicated, that a permanent periodic payment is the best way to meet that need.

195. The assessment of that loss of physical capacity is in substantial part a medical one. Therefore we propose that it be evaluated as a percentage of total incapacity by reference to the American Medical Association *Guides to the Evaluation of Permanent Impairment* (2d ed 1984, 245 pp) (see draft clauses 26–28). That document is seen as having great authority. It has been developed over the past 30 years by many experts. In our context it is to be used to estimate the degree to which an individual's capacity to meet personal, social or occupational demands, or to meet statutory or regulatory requirements is limited by the permanent impairment (p.ix of the *Guides*). Careful processes for applying it for that purpose would have to be developed in practice. The percentage of permanent disability obtained in that way would, if it was 5% or more, then be applied against a base figure set at 80% of the average weekly wage. (Separate provision is made for young persons; and the benefit would in general be payable (as with other periodic payments) until age 65.)



196. We had the great advantage in the development of this part of our proposals of the assistance of two leading Australian actuaries, Mr J R Cumpston of Melbourne and Dr R C Madden of Canberra. With the generous assistance as well of medical and other officers of the Accident Compensation Corporation, they were able to provide us with a report which included an assessment based on the AMA Guides of a randomly chosen group of 168 people who had been assessed for lump sum payments for physical impairment within the last year.

197. This investigation showed several important things. First, the schedule could be used for the purpose that we propose; the medical officers, we understand, found it a very good point of reference. Second, the assessments under the Guides were sometimes higher in more serious cases but on the whole they were to a degree lower than those made under s. 78. Thus the average assessment of partial impairment under the Guides for the 168 test cases was 10.5% compared with 16.2% under s. 78. We will return to that later, in explaining our choice of 5% impairment as the minimum to qualify for the periodic payment. Third, the main discrepancies were in respect of the assessment of hearing loss, with the Guides sometimes producing a much lower figure than that under s. 78. With that exception, the bulk of the assessments are in the range of 1:1 and 1:2 with a few of the AMA assessments being higher. A fourth point is that the Guides do enable a detailed and systematic calculation in particular cases. It appears likely that assessments made on such a basis would be more consistent than those made by specialists in various parts of the country without that kind of detailed guidance. (The s. 78 schedule does not cover many of the situations which arise in practice and it is not to be compared with the careful detail and explanation to be found in the very lengthy Guides.)

198. The last point and various others can be illustrated by three of the 168 cases. An older woman fractured her thigh in a fall. She had her hip joint replaced and 18 months later still had aching after prolonged sitting and sharp pain when she tried to get up. She still preferred to use two sticks for walking. She had persistent discomfort. The specialist's summary mentioned those matters and proposed physiotherapy and other medical attention, and without any specific reasoning concluded "I think she has a permanent disability under s. 78 of 15% of total"—meaning a lump sum of \$2,550. The specialist

also thought that she deserved consideration under s.79. The assessment by reference to the AMA Guides involved detailed calculations about the four specific areas of loss and a final figure of 8%. That would produce a weekly periodic payment of about \$34 for the next 5 years (since the claimant is over 65) or a total of about \$8,800. In such a case the amount might be commuted and paid in a lump sum.

199. The second most serious case in the whole group was an outdoor worker who had shattered his left leg in a motor cycle accident in the course of his work. Much difficult surgery followed. Three years after the accident the specialist was inclined to think that amputation below the knee might be the answer and assessed the permanent disability at 60% (the schedule figure for loss of the lower leg) and recommended a \$10,000 lump sum under s.79—a total of \$20,200. The AMA Guide (again with much more specific calculations) resulted in a 53% figure. Under our proposals, the weekly payment would be about \$190. That is to say, in this most serious case, in just over 2 years, the accident victim would receive more than the lump sums would provide, and he would continue to receive those payments for a further 34 years.

200. The third case is of a pottery foreman who ruptured a thigh muscle while tramping. After 18 months he was examined. He was not significantly disabled, he still went tramping and climbing (but walked rather than jogged), and he had no difficulty in walking around his factory. The summary and conclusion of the specialist's report included the following:

The claimant continues to complain of discomforts and disabilities. He is also conscious of a cosmetic defect. When examined the positive findings are a retracted proximal part of the rectus femoris [a major thigh muscle] with a little weakness in the thigh extensors. ... in terms of s. 78 ... his disability is 10% of the whole leg or 7.5% of the total.

That finding would mean a s.78 lump sum payment of \$1,275; the specialist also suggested a payment under s.79, mentioning the cosmetic element. The assessment done for us by reference to the AMA Guides includes particular calculations relating to the two specified losses (and no reference to the cosmetic element) leading to a percentage loss of the leg which was then applied to the whole person. The result was a 2% assessment which would not produce any payment under our proposals.

201. The second and third cases help make the point that the proposal we make is concerned with the serious case. Minor injuries are not covered. The second also gives a fair indication of the upper limits of the periodic payment. Only one out of the 168 would have received more—\$238 per week to a driver with multiple injuries assessed at 67%. That case illustrates another point. Earlier assessments in those cases would bring a saving in temporary *total* disability payments. The permanent partial assessment could be made, periodic payment begin and the person be encouraged to return to employment (if that is the appropriate course).

202. The second case helps to indicate why we chose 5% as the threshold rather than 10%. The 168 cases appear to include a significant number of people who are seriously and permanently disabled with degrees of AMA assessment of between 5% and 9%.

203. The cases also show why we preferred in this area to take as the base average weekly earnings rather than the individual's historic earnings (which is the usual base for earnings related compensation). What is involved is not an assessment of the loss of the injured person's earnings capacity, at least in the usual case. It involves a judgment of the effect of a particular impairment against the general experience of mankind and when turned into a monetary figure is best related to a general figure which we have taken as the average wage. There will however from time to time be injustices which result from that approach—had the pottery foreman been a ballet dancer, for example, with the same kind of injury. To deal with those cases, which we would expect to be exceptional, we have provided for individual determination taking account of the effect on the person's former earning capacity (draft clauses 25(2) and 48).

204. We must also be concerned with the costing of these proposed new periodic payments. They would not build up to full maturity for about 18 or 20 years (although approaching that final cost in 10 or 12 years) while the need to pay lump-sums would cease immediately. But savings to the overall scheme for 10 or 12 years is not of course a fair way of presenting the issues. The calculation which Mr Cumpston has done for us assumes that the proposal has got to the final mature stage—the plateau of payments has been reached. On that basis in 1987–88 terms the annual payments (taking account of some earnings related savings) would be \$403 million for the scheme with a

5% threshold and \$307 million with a 10% threshold. As mentioned, there is to be deducted from those final figures almost from the outset the \$145.5 million paid in lump sums. And to repeat, the full level of payment would not accumulate for the lengthy period mentioned. There will also be savings from the impact of the earlier assessment of permanent partial incapacity against payments for temporary total incapacity.

205. Those cost estimates and the various qualifications for the benefit we have suggested (such as the provision for those over 65, the 5% threshold, and the income base) raise the possibility of other combinations which have to be assessed against the purpose of the benefit, the overall costs of the scheme, and its relationship to other relevant parts of our social welfare provision. A consideration of such combinations would, we think, have further careful regard to the likely operation in practice of assessments made by reference to the AMA Guides.

*Personal injury arising from sexual and other serious assaults*

206. One difficult and important aspect of the operation of the present scheme is the way it deals with serious assaults, particularly sexual assaults including rape and incest. Our proposal in respect of lump sums has to be carefully considered by reference to that aspect of the scheme. The present law expressly applies to (1) injury including the mental consequences of an injury or an accident, and (2) actual bodily harm (including pregnancy and mental or nervous shock) arising from 3 specified crimes—rape, sexual intercourse with a girl under 12, and infecting with disease. It follows that in many cases sexual assault victims (as well as the victims of other assaults coming within the more general reference to injury set out above) have entitlements under the Act. And there appears to have been a growing public realisation of the application of the scheme to such cases. The application of the scheme to such assaults would be clearer under our proposals (see draft clauses 12 and 13 and paragraphs E960—E968 of the First Schedule).

207. In one sense the incapacity arising from such an injury falls well within the regular range of entitlements under the scheme. This is so for instance in respect of personal attention including medical treatment and counselling. These matters can obviously be very important. It is so as well for earnings related compensation if the

injury leads to time off work. At the moment, in addition, the assault victim can also claim a lump sum under either or both of sections 78 and 79, particularly by reference to pain and mental suffering, including nervous shock and neurosis.

208. Under the proposals as outlined above such lump sums would not be available. On the face of it payment for non economic loss would be available only if severe emotional harm, assessed by reference to the Guides, were established. We consider that in the context of criminal assault, especially sexual assault, entitlement should not in general be equated precisely with other cases of personal injury. They have special characteristics requiring distinct treatment. (We notice that the Royal Commission on Social Policy somewhat similarly considers that “cash compensation” in such cases should be “provided on a different basis outside the accident compensation scheme” but they do not indicate what that basis might be.)

209. The cause of the incapacity is a serious intentional breach of our criminal law. The breach itself engages the immediate responsibility of the State, and so, is not merely a private matter. But it may have—and often does have—serious emotional consequences for the victim. Parliament has for a long time recognised in particular ways the special nature of the hurt to the victims of assault. Thus it has empowered the court sentencing the offender to order the payment to the victim, by way of compensation, of part of any fine. That provision was amended in 1987 (when the Victims of Offences Act was passed) to make it explicit that the payment could be made for emotional harm as well as for physical harm and to allow the whole (and not just up to half) of the fine to be so paid (Criminal Justice Act 1985, s.28).

210. That last mentioned power does have a slightly paradoxical limit in that it will in general apply only to less important offences, where the defendant is fined rather than imprisoned and where very often the impact of the offence on the victim will be less. Such a limit, but even more the broad responsibility of the State to make special provision for compensating the victims of crime, was recognised as well by the enactment with broad support of the Criminal Injuries Compensation Act in 1963. That provided for compensation by way of lump sum payment to the victims of breaches of provisions of the Crimes Act about crimes against the person. The compensation could

include payment for pain and suffering. The tribunal set up to administer the legislation was given a broad power within certain monetary limits to award such amount as it thought fit. (The scheme was absorbed into the accident compensation scheme in 1974 with adjustments being made to the definition of personal injury.)

211. Carefully prepared submissions on this matter also persuade us that the need which Parliament has recognised down the years is a real and serious one. We conclude that the need does in part require separate and special treatment. Accordingly we propose that special provision should be made for victims of sexual assault or other criminal attack involving significant or lasting mental distress or other impairment. A possible form of such provision is indicated in draft clause 27 in which we also carry forward the provisions for disfigurement. One matter which arises in settling such a provision and administering it is whether a lump sum payment may in some cases be a better way of recognising the intentional, criminal, violent action and its emotional consequences. The provision for commutation of periodical benefits to a lump-sum payment in draft clause 52 would apply, but something more explicit may be needed.

#### *Total incapacity—periodic benefits*

212. The present Act provides in general for the payment of a weekly benefit (after the first week), to those who are totally incapacitated of 80% of the incapacitated person's earnings. Apart from the proposal to extend the waiting period to 2 weeks (considered in paras 183–185) the entitlements of earners included in Parts V and VI of the draft are essentially the same as those in the present law. They are however expressed in terms closer to those of the terms of the Australian Bill.

213. The other principal change which is suggested is that those who are not in the work force and who are totally disabled should receive a periodic benefit. The reason for that proposal is partly to be seen in the proposals made about permanent disability. All those who are permanently disabled in a serious way by personal injury should, we have recommended, receive a benefit reflecting the degree of the impairment or disability. That benefit recognises the loss of physical capacity and the major needs (including financial ones) that arise from it. It recognises the impact of the serious injury on the individual's ability to contribute effectively to the life of the community, and

to the part that a limited payment can play in restoring that contribution. The payment is not in general to be related in a direct way to particular quantifiable pecuniary loss. If that benefit is to be available to non-earners for permanent *partial* disability it must also of course be available to them for permanent *total* disability. (We might note that none of those 168 injured people included in the sample discussed earlier was assessed as totally disabled either under the present s.78 or by reference to the AMA Guides; that fact might however mislead since some of those who have been receiving full earnings related compensation over a long period (and who have not yet been assessed under s.78) might in fact be permanently totally incapacitated.)

214. The next question is whether before the permanent assessment is made a non-earner who is temporarily totally incapacitated should be entitled to a periodic payment. Our draft legislative proposals do so provide, in part on the basis that if a person is entitled to such a benefit once the permanent assessment is made it is unfair for that entitlement to be delayed until that date. One way of handling that matter might be to provide for a retrospective payment if and when a permanent assessment is made. The other reason for the proposal is the extent of the needs to be met during that temporary period of total incapacity. Such people are completely unable during that time to continue to make their contribution within the community and the economy.

#### *A final comment on costs and benefits*

215. Early in this part, we refer to the principles relevant to the entitlements under the scheme, to their character, and to the need to balance them one against the other and against other relevant values. Just what should be the content of the principle of real compensation in a particular context? Thus is 80% of historic earnings or, as the case may be, average weekly income the right measure? How is that principle to be weighed in the context of the timing and the level of benefits against the principle of equality of treatment of those similarly incapacitated by illness? And how is the overall range of benefits to be assessed against the various demands within the wider economy?

216. What we have tried to do is to state the principles and then to propose their application in the concrete contexts of the benefits

which are at the heart of the compensation part of the scheme. The principles underlying the accident scheme are very important. They are widely supported. Their detailed application from time to time is a matter of judgment to be made against a wide range of political, economic, and social factors.



## *THE FUNDING OF THE SCHEME*

217. The varying contributions over the years by the four sources to the funding of the scheme—the earners and self-employed levy, the motor vehicle owners levy, investment income on the balances of those levies, and general taxation—appear in tables 1 and 2 in appendix A. Those tables also indicate the total amounts gathered and spent under the scheme.

218. The tables do not in a direct way indicate the reserve situation. It will be recalled that the reserves were very badly depleted following the reduction in the levy for earners and the self-employed a few years ago. One important purpose of the greatly increased levies was to restore those reserves. The effort to do this quickly may have been over-ambitious by putting unnecessary sudden strains on those who must pay.

219. During the year ended 31 March 1988, the total reserves had already grown from \$89.2 million to \$352.2 million (or about 6 months of the 1987/88 expenditure). It is intended by the Corporation that they will increase by a further \$196 million this year to then total \$485 million. To achieve this the amount that is actually being *collected* for the 1988/89 year will exceed *last year's* expenditure by the very large amount of \$480 million against estimated spending, put at \$264 million over that of last year. But this last estimate itself appears to be too high. Accordingly it can be anticipated that the reserves are likely to be higher than the projected \$485 million and a much higher proportion of the annual spending. One thing that is happening is that about 20% or more of the earners levy is continuing to be collected towards the build up of substantial reserves.

220. From a situation just 2 years ago when the earners and self-employed levy plus the income on its balance met only about 40% of the costs of the scheme, we have moved to a situation where that sum in the current year might equal the total payout for the whole scheme. These matters are very relevant to our proposal that the levy rates should be fixed by statute and changed only by Parliament.

221. We return to the questions which we considered in our Interim Report about the funding of the scheme.

- Do the sources continue to be appropriate? Should others be added or, more radically, should a quite different approach be used? (Paras 227–241)
- Is the balance *between* the sources fair, especially given recent increases in the costs of the scheme? (Paras 242–249)
- Are the payments *within* each source fair? In particular should there be a single rate for employers and the self-employed? (Paras 250–266)

For convenience, we have incorporated passages from the Interim Report in the following discussion of those questions. We have also attempted to meet some of the arguments made about it since it was published.

222. A little history is helpful as a background to a consideration of the questions. The 1967 Report recognised that a comprehensive system in the field of social security involves community responsibilities which should be accepted by the State and supported by contributions from citizens generally. Although as a matter of immediate impression it could be said that the scheme should be financed directly from the Consolidated Fund the report stated that a different recommendation would be made. This was done for two reasons which were explained in the following way:

462. First, the comprehensive scheme is intended to embrace two compulsory insurance schemes already operating. To the extent that the necessary insurance premiums can be built into the costs of industry or transport this has long since been done. If these premiums were wholly rebated in favour of a general system of taxation there would be a continuing advantage to

industry at the expense of the general taxpayer. A logical argument is an insufficient reason for shifting these costs in such a fashion.

463. Second, to the extent that the amount of these premiums has been passed on by industry their cost is already being shared by the whole community, even though indirectly. Accordingly the broad principle of community responsibility is in this way being satisfied already.

223. The Royal Commission therefore recommended that subject to appropriate adjustments the amounts then flowing into the compulsory workers' compensation and third-party insurance schemes should be made available for the purposes of the proposed comprehensive scheme. The employers' contribution would be equivalent to 1% of payroll. Self-employed persons, also, should contribute an amount equal to 1% of net relevant income. In a broad way it was thought that the amounts so to be applied would cover the expenditure. However as there might be a balance, that should be financed directly from general taxation.

224. During the gestation period leading to the enactment of legislation the Government decided to exclude non-earners from the scheme except in the case of motor vehicle injuries. And the 1972 Act then spoke of two individual accident schemes supported individually on the basis mentioned. By 1973 before the scheme came into effect a new Government produced a change for those who had been left outside the scheme. They were brought into the system which thus became comprehensive. But to avoid delay in preparing a new bill which would have enabled the now unnecessary distinctions between the circumstances of different accidents to be removed a supplementary scheme was set up. Its needs were met from general taxation.

225. Thus, by an historical accident, the system began and continues to operate on a basis which has often prompted misconceptions that inevitably each of the three schemes has to be self-supporting and independent in an insurance sense. There is or seems to be no economic or practical reason for continuing to maintain individual sets of accounts for a system which essentially draws no distinction between beneficiaries once entitlement to compensation is established and in which the rights are not based on showing fault or particular cause. And as shown by a 1983 change which was made

in order to move work related traffic accidents from the earners to the motor vehicle account without any alteration to the vehicle levy rate, the present separation can create problems which cause a false impression of the true nature of the scheme.

226. Some accident costs are not borne by the accident compensation scheme. They add up to a large amount, perhaps equalling half of the money paid out by the Accident Compensation Corporation. The direct costs include those carried by—

- public hospital and other health costs met through the Health vote
- employers paying the first week of earnings related compensation if the accident is a work accident
- employers under the relevant conditions of employment paying the difference between that compensation and the regular weekly income or paying such leave in respect of non-work accidents
- employees meeting the difference between the compensation and their regular income and in the case of non-work accidents the costs of the first week

(The report of the Review by Officials Committee of the Accident Compensation Scheme (August 1986) vol.1, p.83, put the total of such amounts at \$280 million against a total Accident Compensation Corporation payment at the relevant time of \$550 million.)

### *The sources of the funding*

227. We have already indicated that many submissions argued for adjustments to or changes within the present system of funding. Thus some proposed that sports bodies or employees or the suppliers of alcohol or overseas visitors should contribute, or that the employers and self-employed fund should be responsible only for work accidents, or that the differentiations in the employers rate should be replaced by a single rate. The present Act too contemplates that the drivers of motor vehicles (and not just owners) can be levied—something that has not happened. We consider some of those issues later.

228. Before we do that, we consider two more radical possible changes. The first has already been mentioned. It is that the scheme should be supported by general taxation or some form of central taxation—a matter briefly referred to by the Royal Commission on Social Policy in its working papers. We are persuaded that ideally, having regard to the principles underlying the scheme and to their continued general acceptance, that is the right answer. But it does not appear to be a practical answer at the present time. There seems to be no real prospect of the transfer of such significant amounts into the general taxation system.

229. Another radical change urged on us would be to replace the present system with insurance offered by the private sector perhaps in competition with the Accident Compensation Corporation. The proposal is for a compulsory first party scheme: all New Zealanders would be obliged to buy a minimum level of accident insurance. One reason for compulsion, it is argued, is to prevent those who can afford to buy insurance from “free riding” on social security. (Those who cannot afford insurance would have the support of social security.) This proposal must overcome major practical and philosophical hurdles.

230. The issue of philosophy takes us back to the basics of the scheme and to the principles that underlie it. The present scheme has two essential elements—rights conferred directly by law on those who are injured, supported by taxes exacted by authority of law. Parliament has created public rights and duties based in part on the principle of community responsibility. It is not an insurance scheme, the essence of which is that the seller and buyer of insurance settle by voluntary agreement (perhaps within broad limits fixed by public law) their rights and duties as reflected in the benefits and premiums. The accident compensation scheme by contrast is about rights recognised in or conferred by the general law of the land. And to emphasise the taxation point the scheme is supported by levies and not by premiums.

231. The Accident Compensation Act does not refer to “premiums”, and the word “insurance” is not used either. In that it is in clear contrast to the legislation relating to workers’ compensation and motor vehicle (third party risk) insurance which it replaced. “Levy” is a word with a long history in our political and constitutional life

and in that history it is always used as a compulsory exaction made by or under the authority of the State for public purposes.

232. Accordingly, the State requires payments at certain levels by employers, the self-employed and the owners of motor vehicles and also contributes by way of parliamentary appropriation from the consolidated account. The system in its present conception is not an insurance scheme any more than other parts of our social welfare system. Now we do not deny that accident costs could be met by private insurance—that, after all, already happens at the moment in respect of property damage and supplementary personal injury schemes. But a wholesale move to a system of private insurance would involve a rejection of the underlying principles and essence of the scheme. The great bulk of the submissions to the Royal Commission on Social Policy as well as to us, the opinion poll and the terms of reference are at one in denying that.

233. Critics of the reasoning that we have just repeated argue that it confuses form with substance, and go on to contend that the present scheme is essentially an insurance scheme. But how can that be so? So far as payments from the fund are concerned the Act has severed the connection between the injured person's right to compensation and any responsibility in respect of that compensation of the person who causes the injury. On the one hand are rights, stated in the public law of the land and taken up by over 140,000 New Zealanders each year, and, on the other, are exactions by the state of levies to provide the money to meet those costs. If this is an insurance scheme, what is it that the payers are insuring against? They no longer have civil liability for personal injury.

234. There are powerful reasons for rejecting the proposal which are practical as well as philosophical. First, it has been made clear to us that the insurance industry is not interested in compulsory insurance. It is understandable that it wishes to be able to negotiate the terms of its obligations and to decide whether to insure a particular person or not. Second are questions of cost, especially for the administration of high volume, small claims—another matter which has led some insurers to reject suggested insurance options. The present Accident Compensation Corporation administration cost is 7% of total expenditure. That figure is to be compared with the 30% or more of premium income absorbed by private enterprise insurance companies for administration, legal expenses and profit under the old workers'

compensation insurance and the 40%–50% under the motor vehicle compulsory third party insurance scheme. Extrapolating from these figures, we calculated in the discussion paper (para 126) that if the Accident Compensation Corporation had operated on the same basis the cost of cover would by now have risen by something between \$189 million and \$398 million. For the current year those figures would be significantly larger. And the additional cost would have to be met within the economy. We appreciate that a private insurance scheme might be quite different from those which preceded the accident compensation scheme, but we are impressed with the very significant extra costs which appear inevitably to be involved.

235. We have not had a concrete proposal which indicates comparative costs, we have no suggestion that the insurance industry would contemplate taking a responsibility for earnings related compensation which would extend over more than a year or two, and to repeat not one insurer has come forward and said that it would be willing to provide the kind of cover which the scheme provides. They can, and they do, insure for hospital treatment (usually with considerable individual contribution), for lump sums for major injuries, and for some short term income support. And such policies can be and are taken out to supplement the coverage provided by the scheme. But that is a very different matter from providing the basic elements of the scheme itself. And in its essence, so far as we can judge, New Zealanders want that scheme.

236. We now turn to some more modest proposals. A frequently made suggestion has been to collect additional revenue for the scheme by direct or indirect levies on those who take part in sporting activities and thereby accept the risk of injury. It was said, for example, that there should be a levy on sports organisations, or on individuals taking part in organised sport, or that a tax should be imposed on takings at the gate or on sports equipment.

237. These suggestions should be evaluated bearing in mind the rather modest costs of sports injuries in relation to injuries as a whole. They account, as best we can estimate, for about 5% or 6% of total expenditure. Other estimates put the figure rather higher.

238. The practical difficulties in introducing and administering such levies in an equitable way appear to us to stand in the way of the proposal. (Accordingly we do not address the arguments of principle which it raises.) How would the balance be struck between organised

sport and other recreational activity (some of which such as climbing and swimming can give rise to large accident costs), or between the clubs, their members, their supporters and the interested public (who benefit in various ways—some not calculable—from sporting activity). How would the levy take account of the great emphasis that many sporting organisations place on the promotion of safety (to the immediate advantage of the general public when for example yachting and climbing clubs use those skills in search and rescue operations)? How would the difficulties and costs of gathering the levy weigh against the modest amounts to be collected? How would a tax on equipment operate fairly and efficiently? No one has, we think, provided adequate answers to these questions.

239. Motor vehicle owners, we have already noted, contribute to the funds of the accident compensation scheme. Their share in the 1987 year was about 12% although it has been as high as 26% in the past. This levy reflects both the historical origins of the scheme and the fact that motor vehicle accidents are a substantial cause of injury by accident, especially serious injury. The legislation has also always empowered the imposition of levies on drivers—a power which has not however been exercised and which, we understand, with the introduction of life long licences can not now be used in practice. That power does however recognise a general responsibility on the drivers of motor vehicles as well as on their owners.

240. The present practice presents two difficulties. The first is that the levy is fixed in dollar terms and does not increase with inflation in the way that the income linked earners levy does. Thus the contribution of the motor vehicle levy between 1975 and 1984 dropped from about 26% to about 8% because there was no change in the levy. Such an alteration appears unfair to the other providers of funds. If on the other hand, as has happened over the last two years, the levy is increased by a substantial amount that can also be seen to be unfair to those who make limited use of their vehicles and who produce little risk of injury. There is in existence a tax which is related more closely to vehicle use—the duty payable on petrol, CNG and LPG. A share of this (estimated to be well over \$200 million this year) is paid to the National Roads Board for it to meet its responsibility in respect of the country's roading system (it also receives the road user tax collected from heavy motor vehicles). The remainder (over \$600 million last year) is absorbed into the consolidated account. Given that this particular tax is directed at road users and in particular has



some regard to the extent of their use and their exposure to the risk of accident, it does appear to us to be an equitable and efficient means of providing funds for the accident scheme.

241. Accordingly, we recommend that in the motor vehicle area there be in effect a two part levy—

- a flat rate as at present, and
- an appropriate part of the excise duty collected on road transport fuel.

The flat rate levy should be geared to changes in the Consumer Price Index. (See clauses 109 and 110 and also clause 80 of the appended legislative proposals.) The flat rate element would continue to recognise that all owners of motor vehicles have a general shared interest in the benefits of the scheme. The comment has been made that the fuel levy proposal recognises a user pays argument. As we have said, a full application of the community responsibility principle to the costs of personal injury would see them fully supported by general taxation funds. But if that does not happen, the range of relevant groups in the community—employers, earners and the self-employed, motor vehicle owners and users, and the general taxpayer together take up the responsibility. The fuel levy proposed is one reflection in this context of the principle of community responsibility.

#### *Allocation of funding between sources*

242. The foregoing discussion is about the possible sources of the funds to be used in meeting the costs of accidents: general taxation or insurance, employers and persons injured, motor vehicle levies. It does not address the question of the balance *between* the various sources. How much should be gathered from employers and the self-employed, or from owners and users of motor vehicles, or from general taxation? Many employers contend for example that the levies on employers and the self-employed ought not be used to meet the cost of non-work accidents of earners.

243. Before considering that contention, we wish to address again the character of the levies and in particular the responsibility for fixing them. To repeat, the income which the scheme draws on is derived from taxes—directly from the consolidated account, as a

payroll tax from employers, as a form of income tax from the self-employed and as a lump sum tax in the form of an annual charge on the owners of motor vehicles. That public finance character of the funding is to be expected given that the rights established in the legislation are rights against the State which must be met by the State. To reiterate, the rights to compensation exist quite separately from the obligation to pay the levies.

244. Therefore we propose that as with other taxes Parliament should directly exercise its constitutional function of determining from time to time the rate of the particular levies. That is the case for instance with the duty on motor fuels, with motor vehicle registration, and with income tax the rates for which have indeed to be struck each year in the annual taxing Act. We do not expect that Parliament would often make changes to the rate. Indeed, as we have already indicated, we think that the earners' fund levy at its present level will continue to contribute to a large (and possibly growing) reserve. The proposal would also establish clearer ministerial responsibility. The government would have the general opportunity each year to make an overall assessment, against the Corporation's estimates of its needs, of the amount to be gathered from the three or four sources and the balance that should be struck between them. That balance, we propose, should take account of the historical record, and of anticipated changes in the patterns and costs of accidents. It follows from what we have said that the historical accident that led to the creation of the present three funds should now be recognised as just that. We recommend that all the funds, from the various sources, should be available to meet all the claims properly made on the scheme.

245. We have mentioned the recurring employer's argument that the money gathered from employers and the self-employed should not be used to meet non-work accidents. It is unfair, they say, that employers (and the self-employed) should have any responsibility for the costs of accidents over which they have no possible control. The claim of earners on that fund in respect of non-work accidents is of course part of the original scheme of the legislation. The claim of unfairness is to be seen against the relevant history, matters of principle, and in comparative terms.

246. The first historical point is that the employers are no longer responsible, as they once were, for the cost of public hospital treatment arising from work accidents. A second is that they no longer have common law liability towards their employees, a liability which would now in some cases produce large awards of damages and associated expenses. Another is that they no longer have to meet through compulsory payments the much higher administrative and related costs of the earlier schemes—or of their own associated legal and administrative costs. Yet another is that they no longer have to meet their former liabilities to those who suffer personal injury through the actions of their employees, or the qualities of their products or services. The amounts involved in these areas could also now be very substantial ones. We earlier mentioned the additional administrative and legal costs of a scheme supported by insurance (para 234). And third party liability insurance for some United States doctors of well in excess of US\$100,000 a year might be compared with a levy for an individual self-employed doctor here of no more than \$3,000 or \$4,000.

247. Some of these matters—especially the last—are relevant to the argument of principle that it is unfair for the employer to meet the costs of non-work accidents, since those costs could arise directly out of the fault of a business or damage done by its product or service. Next, employers have a real interest in having a fit and active workforce. They are equally disadvantaged by the absence of skilled and experienced workers whether the absence is caused by an injury at work or at home.

248. We also consider that comparisons with costs in similar jurisdictions are part of the answer to the argument. We realise that the comparisons are not exact. But they do bear immediately on the argument that New Zealand employers are disadvantaged in commercial terms by the size of the levy. We set out below 1987 levy rates per \$100 of payroll for four Australian States and New Zealand.

Effective date	N.S.W. 1/7/87	Vict. 1/9/87	Qld. 1/7/87	W.A. 1986/87	N.Z. 1/4/87
	\$	\$	\$	\$	\$
engineering					
—heavy	8.40	3.80	6.32	26.84	4.55
—other	6.60			9.48	
clothing manufacturing	6.60	3.80	1.51	6.58	1.65

Effective date	N.S.W. 1/7/87	Vict. 1/9/87	Qld. 1/7/87	W.A. 1986/87	N.Z. 1/4/87
	\$	\$	\$	\$	\$
building					
—residential	8.40	3.23	6.65	12.39	4.05
—non-residential		3.80			
clerical	0.60	0.57	i) 25c ii) 64c	0.87	1.20

(In Victoria \$3.80 is the highest rate.) The Western Australian and Queensland schemes are traditional workers' compensation schemes, while those in the other states are workcare.

249. We see no reason then within the present overall system of funding for recognising whether in historical terms, in principle, or on a comparative basis, that employers and the self-employed should bear no responsibility for non-work accidents. Their responsibility and interest runs beyond the work place—and not just in respect of their own workers. Under the proposals we have already made, the extent of that responsibility and contribution would be a matter for the Government and Parliament to assess from time to time in determining the relative contributions of employers and other sources including general taxation. For instance if there were no other means of meeting the legitimate concerns of employers Parliament could alter the balance. We have already indicated that we do not think any change in the earners levy would be needed for some time, and the contribution from the consolidated fund should not fall below the quite modest level of 14%.

*Allocation within particular sources—a single rate for employers and the self-employed?*

250. The previous section considered the relative contributions of employers and the self-employed, of owners and users of motor vehicles, and of general taxation. We now turn to the relative contributions to be made within the group of employers and the self-employed. The Law Commission proposed in its preliminary paper that there should be a single rate levy on payroll payable by all employers and a levy at the same rate on taxable income payable by

the self-employed. The rate of that levy would depend on three decisions:

- the total amount required for the scheme in the following year,
- the amount to be collected from employers and the self-employed, and
- the estimate of the anticipated payroll of employees and the income of the self-employed.

Those decisions would be made by the Government, with the endorsement of Parliament in the event that the rate had to be changed. On the basis of the calculation made this year about the first and second of the matters listed, the figure would be about \$2.64 for each \$100 of payroll or of income. That figure we have already noted includes about 50 cents—perhaps more—to supplement reserves and 8 cents collected effectively on behalf of the Department of Labour.

251. We have already suggested that with that levy the reserves will very quickly build up to a substantial amount, and conceivably at more than the 50 cents proportion. We understand that questions have been asked about the propriety (and perhaps too the legality) of the collection of the 8 cents on behalf of the Department of Labour. We agree that the payment appears to be improper. The rates of levies are prescribed by the Governor-General in Council in terms of the Act. The resulting funds are to be used by the Corporation mainly to meet compensation claims and associated payments. That is not exhaustive—the Corporation also has such powers in financial matters as are reasonably necessary for the effective performance of its functions, and it can contribute to the expenses of government departments which assist the Corporation in the discharge of its functions. And of course the Corporation does have broad responsibilities and functions in respect of safety. We have emphasised that already. But the financial powers relate to the *Corporation's* functions, to the performance of *its* functions, and to others helping with *its* functions. They do not relate to other bodies whose objectives may be the same or approximately so, but who are pursuing them under their own responsibility. There is a further element in the Corporation's accounts that raises a question. Provision is made for the payment of Goods and Services Tax. Given that the payments to the

Corporation are effectively a tax in support of social welfare provision no service appears to be involved. On what principle is the Goods and Services Tax collected?

252. The proposal for a single rate, we stress, is quite distinct from the question whether a particular employer's levy should be altered—either by a bonus or penalty—because of that employer's own good or bad safety record. A power to make specific levy alterations on that individualised basis is included in the Accident Compensation Act 1982. The one can exist without the other. We have of course already proposed that that power, based on the *claims record* of employers, should be removed from the Act. Instead consideration should be given to creating a penalty power in respect of *unsafe conditions*.

253. The proposal for a single rate levy, as anticipated, provoked much comment before and after the issue of the Interim Report. Most submissions which considered the proposal opposed it. Almost all were from employers and employer groups, many of them from employers of clerical workers who would of course be disadvantaged by the change. On the other hand, some employers (mainly at the higher end of the present scales) supported the change—some had indeed originally proposed it—and unions and other bodies with no or a more limited special interest supported it. Thus on the one side were the New Zealand Employers Federation, the Treasury, the New Zealand Business Roundtable, and a number of accident-free businesses, and, on the other, the Institute of Directors (which wanted as well a reduction in the single rate), the New Zealand Nurses' Association, the Federated Farmers of New Zealand, the Federation of Labour and the Combined State Unions.

254. The opponents of the change give two principal grounds of objection. The first was that the flat rate involved, they said, a harmful subsidy: it would shift injury costs generated by more accident prone industries on to those with lower injury costs. This would be counter to current attempts to ensure that business decisions take into account the full cost of the resources and processes used. The second reason—sometimes linked with the first—relates to safety incentives. We have already considered and rejected that second argument. We have stressed that safety and accident prevention are critical features of the legislation. We would certainly not wish to make a proposal which would reduce safety incentives. We conclude

however that the proposal will not in any way affect incentives to safety.

255. We return to the argument that a single rate would involve a harmful subsidy from less dangerous occupations to more dangerous ones. This argument goes to the underlying principles of, and reasons for, the scheme and especially to the relevance and application of the principle of community responsibility. The idea of subsidy assumes that the beneficiary of the subsidy already has a direct responsibility, perhaps a legal responsibility, for the costs of the accident on the basis of fault or cause or benefit. But the scheme in its essence, for reasons of efficiency and equity, rejected individual liability (and the associated ideas of fault and cause) as the basis for compensation. Compensation is available quite independently of such liability. (The law, we must emphasise, did not and does not reject ideas of fault or of individual liability and responsibility in any other respect: see for instance the discussion of the waiting period in paras 183–185 and of safety incentives eg in paras 131–136). Its basis is community responsibility, a responsibility which it was thought could be adequately reflected on the funding side by continuing to draw in general on the sources which were already helping meet the costs of accident (para 222). The range of sources reflects the idea that, in addition to the community at large, groups within the community with particular shared interests and individuals as well should continue to have a direct responsibility to meet some of the costs of injuries caused by accidents. Those individuals and groups can be seen as meeting aspects of their community responsibility in that separate way.

256. Just as responsibility and liability in respect of compensation are not any longer specifically assigned to a particular individual, so too the benefit of an activity which can cause injury is not as a general proposition seen as being gained by just one identifiable individual. The “user” of the activity is not solely the particular employer or the employer’s customer. Many throughout the community can and do benefit from the activity, and from restoring so far as possible the health and incomes of those in the work force and elsewhere who suffer from the activity. Consider accidents caused by the use of transport (including commercial transport) delivering people and goods around the country. Some injury is an inevitable cost of transport. The manufacturer of the vehicles, the private or commercial driver, the oil companies and garage owners, the passenger, the

manufacturer, wholesaler, retailer and consumer of the goods carried ... all benefit in individual and particular ways from the activity. In a more general way the whole community is greatly advantaged by transport. In the case of injury arising in the course of it (perhaps through faulty manufacture or repairs, or bad road construction, or negligent driving of one or more vehicles, or some combination, or through an accident for which no one can be blamed) who is "the user" who is to pay for the cost of the injury? Society has long rejected as a general answer the proposition that the injured person alone is to pay. If not that person, who?

257. Do we as a society accept that each enterprise must meet all its costs including the costs of the injuries it causes? Both private and public decisions have for long shown that we do not. Private insurance is a means of pooling the risks and averaging out costs, usually (but not always) on a voluntary basis among individuals or businesses facing similar risks which they are not willing to face alone. The individual user does not pay for all its particular costs. Rather the group as a whole meets the aggregated costs. And public decision making has long proceeded on the basis that some public facilities—including roads and streets, to return to the transport example—are to be provided through general community funds sometimes supplemented by those who make major use of the facility (as with road user and motor spirits duties and road tolls). No doubt a balance is to be struck between individual responsibility, the responsibility of a wider group (such as heavy road users), and community responsibility. As we have stressed, the costs to manufacturers of injuries can be very high (in terms of lost production for instance). But it is far too simple to say that those who produce particular goods must always meet all the costs involved in that production, including the costs resulting from the use of the goods. Some after all are met by the consumer or the wider community. In a broader sense too the proposition is just not sustainable. It is not possible to isolate every cost and to attribute it to a particular activity. In part this is so for reasons of time. We inherit and temporarily use the human and physical capital built up over many generations. We have access to the great natural resources of this land. We have and use these opportunities in accordance with the law, designed in some cases to protect that inheritance and those resources. (We remember the tragedy of the commons.) The use we make of these opportunities within the framework of law can never be fully reflected in the pricing system. But, to repeat, some costs (sometimes very high costs) will be borne by those



causing injury. The costs are not solely to be seen in the context of compensating personal injury.

258. Then there is another side of community responsibility: "since we all persist in following community activities, which year by year exact a predictable and inevitable price in bodily injury, so should we all share in sustaining those who become the random but statistically necessary victims" (1967 Report para 56).

259. The interdependence of industrial and business enterprise, as noted in para 109 of our discussion paper, means that goods and services reach the ultimate consumer through a combination of activities carrying varying degrees of risk. Whether the cost of the levy can be passed on as part of the price depends on factors having nothing to do with the degree of risk. We do not think it equitable that big levy increases (like those announced for some employers for 1987/88) must be passed back by just some employers in terms of either reduced employment and lower wages or of lower profit. The increase, while equal in a relative sense, is not at all equal in an absolute one: for the 1987/88 year the employer of clerical staff had to find another 80 cents for each \$100 of payroll while the employer of aerial top dressers had to find a further \$18.40. We are not persuaded by the argument that in that case the market is working efficiently and moving resources to activities which are less accident prone. If there are good policy reasons, say, for having fewer timber workers that should be addressed directly. That should not be a function of the hazards of the operation and effect of a levy gathering mechanism. (Those hazards have been graphically recognised by the big cuts made from 1 April 1988 in the levies for aerial topdressers, changes which create distortions against other providers of agricultural services.) We say this, we stress, on the basis that we do not in any event consider it appropriate in the first place to talk of responsibilities and benefits which are particular to an employer; accordingly in our view "subsidies" are not in issue. In legal terms the cost is now being met by the community, there is no longer particular liability for compensation, and in practical terms a direct beneficiary cannot be identified.

260. For us then the principle of community responsibility gives strong support to the single rate. Employers should contribute by reference to the extent of the economic activity of those who have rights under the scheme. The principle has of course been accepted

for the self-employed (until this year) and in a sense for motor vehicle owners.

261. The single rate set until this year for the self-employed points to one of the arbitrary elements in the practical operation of the scheme. The self-employed lawyer and the self-employed aerial top dresser paid the same amount while the rates last year for their employees were \$1.20 and \$27.85 respectively for each \$100 of payroll.

262. The top dressing example points as well to the time lag problem with classifications: a declining industry can be faced with meeting the costs of accidents in earlier more buoyant times and this might be so even if the industry is now much safer. On the other hand, a new industry with an expanding payroll will not be carrying what might be seen as an appropriate share of the cost of past accidents. Some have suggested that these problems would disappear with an actuarially fair private insurance scheme. But would they? Is it possible to make predictions of that type? Just how long a commitment (say in terms of earnings related compensation) would insurance companies be prepared to make in such a case? Is there any evidence that they would be willing to insure earnings related compensation for the remainder of the working life of a 20-year old meat worker? We have already indicated the negative answer. Controlled rates, the insurance industry says, are usually insufficient when long term claims continue and proliferate in an inflationary economic environment.

263. There must also be very serious difficulties with the present classification system arising from the absence of a sufficient statistical base. Many of the 103 classifications have numerous industries within them. The numbers employed in particular industries in New Zealand are so relatively small that one or two serious accidents could produce a disproportionate result. It is certainly not difficult to find contrasts in the tables which seem unusual. There is one class for retailers generally but a separate class for a few retailers, for example, wine and spirit merchants. The rates fixed for particular classes may also be compared. Those who are engaged in the manufacture of explosives, for example, now pay a levy of \$2.95 per \$100 of wages which is also the rate for the bumbling beekeeper. At the same time the manufacturers of rubber mattresses including the most careful,

must pay \$8.65. The rate for detective agencies is \$1.30 and for religious organisations \$1.45.

264. Such practical problems were in part predicted at the outset. The Select Committee which reported on the original proposal recommended a classification system on the basis of the substantial reduction of the then existing premium classifications. That Committee, the Gair Committee, added:

If further efforts to develop a satisfactory system of differential premium rates do not succeed, or if the cost of collecting premiums becomes excessive then the Royal Commission's proposal for a flat rate levy can be revived. (1970 App. JHR I 15,32)

265. *We accordingly repeat our recommendation that for reasons of equity and as a matter of principle as well as practicality a single rate levy for employers and the self-employed be introduced.* As we see it equity requires equality in this case. The rate, for reasons discussed elsewhere (para 244), would be fixed by Parliament and would apply evenly to the payroll of employees (in the case of employers) and to the income of the self-employed.

266. The imposition of the levy on charitable bodies presents a particular problem which we propose should be sympathetically considered in the context of the wider review of their taxation position which is being undertaken. Many have high salary bills in relation to their overall spending and most at the moment have levies below the average level.

#### *Payment by instalments*

267. Many of those who made submissions on the point saw the advantage of payment of the annual levy by instalments. The obligation to meet the levy could be met more easily if it were spread, as are other such obligations, more evenly through the year. This is particularly so if the levies are increased by significant amounts and there is only a few months notice of the change. In addition the payment would relate to actual payroll, and therefore be a fairer levy. In administrative terms the payments could be made along with PAYE returns or with provisional tax. We would not however see this as allowing changes in the rate during the year: the levy is an annual

one, and the amount, as well, should be reasonably predictable. As we have said, we do not anticipate frequent changes in the levy.

268. There are disadvantages. The administrative cost would increase, but the administration of a single rate levy associated with PAYE on the employees' payroll or with provisional tax payments by the self-employed appears to be a much less significant matter. The Corporation would lose investment income, but the employer would of course have the use of the relevant money for that much longer: should the employer not be able to make the decision about how to use that money before it is required by the scheme?

269. Accordingly we recommend that levies be paid by instalments.

## *ADMINISTRATION*

270. A guiding principle in this area is administrative efficiency. One aspect is the day to day operation of the scheme. As the Royal Commission put it in 1967 the principle speaks for itself. "It looks to evenness and method in every aspect of assessment, adjudication, and administration. The collection of funds and their distribution as benefits should be handled speedily, consistently, economically, and without contention" (para 62).

271. We have already made a number of proposals which affect the overall administration of the legislation. In part the proposals look to a greater involvement of central government in the development of policy. Ministers would be charged with policy responsibility in respect of the promotion of safety and the prevention of injury, and in respect of rehabilitation and the coordination of its delivery. They would also have greater responsibility on the funding side of the scheme since they would have the carriage in the House of Representatives of any proposals to change the rates of the levies for earners, motor vehicle owners, and motor vehicle fuel. In the preparation of any such amendments and in proposing the supplementary appropriation for the annual contribution from the consolidated account, they would, in terms of the proposals made in the Interim Report and included in draft clause 101, have before them the estimates of the Corporation about the amount of likely expenditure and of the funds from the various levy sources. No doubt they would also have departmental advice for that purpose.

272. The proposals that we make for health and related benefits, involving as they do the application of the general benefits system to those incapacitated by injury along with those who are ill, would

appear substantially to remove the Accident Compensation Corporation from that area of administration. That might also be increasingly so—depending on the development of policies and of methods of delivery—in the area of rehabilitation.

273. Several of the matters discussed in this report affecting the machinery of government relate to other possible changes which are before the government and which are to be dealt with in a coordinated way. We accordingly do not take the above matters further, but we do realise that such changes in policy and administration could have major consequences for the present institutional and administrative arrangements. We note for instance that the Accident Compensation Corporation itself, in its submission to the Royal Commission on Social Policy, contemplated that major changes in the benefit system might mean that the Corporation would not survive.

274. We do comment on five administrative matters:

- (1) decision-making on claims
- (2) appeals from decisions
- (3) the role of an independent corporation
- (4) the problem of fraud and abuse, and
- (5) statistics

#### *Decision-making on claims*

275. Several features of the decision-making process should be emphasised. The decisions are of course to be taken independently, according to law. There can be no political influence in that process. Draft clause 73(2) would require that the applicant be informed in advance of a proposed adverse decision and given a chance to respond. Draft clause 74, drawing on the language of Sir William Meredith, the architect of the Ontario Workers' Compensation Scheme back in 1913, requires consideration to be given to the real merits and justness of the claim. Over the years the reports of the Ombudsmen have also pointed to administrative changes which would facilitate the fair and prompt handling of claims.

276. The discussion in the previous part emphasised the importance for rehabilitation, as well as for the wise and effective use of the

funds, of early determination of the degree of permanent disability. In some situations an early conservative assessment might facilitate rehabilitation and be followed where appropriate by an increased assessment (see draft clause 49).

277. Most claims will be resolved quickly and simply, without contention. But some will be more complex. They will require professional advice and assistance if they are to be adequately presented and properly decided. In such cases the Corporation should have power to meet such costs, and it should be encouraged to do so where appropriate.

### *Appeals from decisions*

278. The draft proposes an administrative review (clause 76), instead of the present procedure which can be a much more formal process involving a hearing (s.102). It assumes the retention of the present provisions for the Appeal Authority. Such a right of appeal is essential. The legislation is about rights under the law. It is not a matter of administrative discretion, solely for decision within government. There are wider questions about the use of specialised tribunals instead of the courts, about their organisation, and about appeals from them. These matters call for more detailed examination than we have given them. They are being taken up in the review by the Legislation Advisory Committee of administrative tribunals, and are relevant as well to aspects of the Commission's examination of court structure.

### *The role of an independent corporation*

279. Decisions on individual claims must of course be made independently. We have already stressed that. Accordingly the power of the Minister in the 1982 Act to give directions to the Corporation should not be read as applying to those independent powers of decision. Such powers of independent decision are to be found conferred on officers in several government departments. There is no need to establish a separate statutory corporation for that purpose. (The appeal to an independent tribunal is also a factor.) Moreover the principal rules about benefits and about funding are fixed by Parliament, and the independent corporation accordingly has no separate power of decision (but only an ability to give advice) in those critical

areas of its functioning. Finally, the provision of services and the administration of benefits does not require an independent corporation.

### *The problem of fraud and abuse*

280. We have already recorded the concern that there is serious fraud and abuse, and have mentioned steps being taken by the Corporation to identify and deal with it. Some of the proposals made in this report for changes in benefits would remove some opportunities for abuse. Others would lessen them. The difficulty is however that in major areas not enough precise information is available to those responsible for the scheme (or to those reviewing it), for them to be able to assess just where the increases are occurring, the reasons for the increases, and the steps that might be taken to control the abuse that such reviews uncover. The information needs relate as well to the handling through rehabilitation services of particular problems, to the effective provision of compensation, and to the design of effective safety programmes. They go to the heart of the implementation of the important purposes of the whole scheme. Those needs appear to require greater actuarial and statistical capacity within the Corporation. We agree with the suggestion that has already been made to the Corporation that its staffing needs strengthening in those areas. This relates to our final point.

### *Statistics; information about the operation of the scheme*

281. Effective arrangements for the recording and processing of information have been emphasised from the outset of the scheme. Thus the Royal Commission in 1967 proposed that the best statistical use should be made of the unique records that will become so readily available to the new compensation authority (para 497(3)). But, as the 1984 review report on the statistics of injuries, the work of the Advisory Council on Occupational Safety and Health, and the Langley McLoughlin report to the Medical Research Council all indicate (paras 113 and 126), a great deal has still to be done to produce effective statistics. To apply the words used 20 years ago by the Royal Commission, the statistical record for injuries is still incomplete and even misleading (para 320). We see our proposal for a Minister with policy responsibilities for safety promotion and accident prevention as important in helping facilitate an improvement in that area. So too



would be the use of the World Health Organisation E Code which in adapted form is appended to the draft legislative proposals. That Code, while subject to further development in the wider medical and statistical community, provides the most authoritative base for gathering useful injury information.

282. The need includes more precise information about the day by day operation of the compensation scheme itself. We have already indicated that need in important areas, especially relating to the recent increases in spending, which no one, including us, has been able fully to explore and explain. Good information is essential to good administration and informed decision making. The question must be asked whether cuts in the earners levy would ever have been contemplated had there been better information about indications of future significant increases in spending, especially when taken with the general expectation that such increases would happen about 10 to 12 years into the life of the scheme. Similarly, the large differences between expected and actual expenditure in recent years and the very rapid build up of reserves last year and this suggests that the best information is not available. The need for better information relates to all the three purposes—safety, rehabilitation and compensation.

# APPENDIX A

## TABLE 1

*Source of ACC receipts (1974-1989) (\$million)*

Year ended 31 March	Levies		Govern- ment Contribu- tion	Investment Income		Total	Total ad- justed for Inflation <sup>1</sup>
	Employer	Motor Vehicle		Employer	Motor Vehicle		
1975	54.515	21.208	2.920	1.923	0.750	81.316	81.3
1976	62.071	20.415	5.036	4.737	1.551	93.810	80.0
1977	71.897	21.530	7.505	5.677	3.776	110.385	82.8
1978	79.458	22.248	10.902	9.068	6.113	127.789	83.7
1979	88.500	22.986	12.780	10.419	7.245	141.930	84.0
1980	111.426	23.985	13.531	15.450	9.695	174.087	87.2
1981	124.131	24.841	16.714	23.497	12.369	201.552	87.5
1982	149.319	25.650	22.785	28.189	16.447	242.390	90.9
1983	171.177	25.760	32.166	38.923	15.560	283.586	94.4
1984	202.929	26.111	35.219	42.547	18.531	325.337	104.7
1985	155.286	40.668	42.922	44.667	16.706	300.249	85.3
1986	173.132	41.415	60.117	50.529	17.295	342.488	86.0
1987	201.327	103.645	73.861	29.617	17.379	425.829	90.3
1988	659.724	118.577	78.933	62.034	7.239	926.507	180.7
1989 (est)	803.000	208.025	99.529	52.000	11.315	1173.869	n.a.

<sup>1</sup>Adjusted to 1975 dollars, using March quarter Consumer Price Index.

n.a. = not available

## TABLE 2

*Source of receipts 1974-1989 (percentages)*

Year ended 31 March	Levies		Government Con- tribution	Investment Income		Total
	Employer	Motor Vehicle		Employer	Motor Vehicle	
	%	%	%	%	%	%
1975	67.0	26.1	3.6	2.4	0.9	100.0
1976	66.2	21.8	5.4	5.1	1.7	100.0
1977	65.1	19.5	7.0	5.1	3.4	100.0
1978	62.2	17.4	8.5	7.1	4.8	100.0
1979	62.4	16.2	9.0	7.3	5.1	100.0
1980	64.0	13.8	7.8	8.9	5.6	100.0
1981	61.6	12.3	8.3	11.7	6.1	100.0
1982	61.6	10.6	9.4	11.6	6.8	100.0
1983	60.4	9.1	11.3	13.7	5.5	100.0
1984	62.4	8.0	10.8	13.1	5.7	100.0
1985	51.7	13.5	14.3	14.9	5.6	100.0
1986	50.6	12.1	17.6	14.8	5.0	100.0
1987	47.3	24.3	17.4	6.9	4.1	100.0
1988	71.2	12.8	8.5	6.7	0.8	100.0
1989 (est)	68.4	17.7	8.5	4.4	1.0	100.0

TABLE 3

*ACC annual expenditure 1974-1989 (\$million)*

Year ended 31 March	Account				Total adjusted for inflation <sup>1</sup>
	Earners	Motor Vehicle	Supple- mentary	Total	
1975	25.266	4.562	2.920	32.748	32.7
1976	45.943	8.266	5.036	59.245	50.5
1977	61.833	12.004	7.505	81.342	61.0
1978	75.311	16.586	10.902	102.799	67.3
1979	82.334	19.021	12.780	114.135	67.6
1980	85.878	22.476	13.531	121.885	61.1
1981	107.403	25.292	16.714	149.409	64.8
1982	136.895	32.592	22.785	192.272	72.1
1983	180.439	40.322	32.166	252.927	84.2
1984	185.877	63.481	35.219	284.577	91.6
1985	222.943	74.242	42.922	340.107	96.6
1986	299.405	94.958	60.117	454.480	114.1
1987	387.778	119.094	71.405	578.277	122.6
1988	473.769	140.551	78.933	693.253	135.2
1989 (est)	699.390	178.893	99.529	977.812	n.a.

<sup>1</sup>Adjusted to 1975 dollars, using March quarter Consumer Price Index.

n.a. = not available

TABLE 4

*The Average Employer Levy (Rate per \$100 payroll)*

Year ended 31 March	For Work Accidents	For Non-work Accidents	Contribution to Labour Department <sup>1</sup>	Total Average Levy
	\$	\$	\$	\$
1975				1.00
1976				1.00
1977				1.00
1978				1.00
1979				1.00
1980	.57	.43		1.00
1981	.57	.43		1.00
1982	.57	.43		1.00
1983	.57	.43		1.00
1984	.64	.43		1.07
1985	.42	.32		.74
1986	.39	.32		.71
1987	.43	.34		.77
1988	1.26	.99	.08	2.33
1989	1.51	1.05	.08	2.64

<sup>1</sup>To meet a payment to the Industrial Safety, Health and Welfare Programme of the Department of Labour.

## *APPENDIX B*

### *OUTLINE OF LEGISLATIVE PROPOSALS*

#### *EXPLANATORY NOTE*

1 To show how legislative effect might be given to its proposals, the Law Commission has prepared a first draft of provisions for inclusion in a new Safety, Rehabilitation and Compensation Act. The model was the National Rehabilitation and Compensation Bill presented and read a first time in the House of Representatives of the Australian Parliament on 24 February 1977. We have adapted it to New Zealand circumstances.

2 The draft sets out the main substantive and procedural elements of a revised scheme. Many matters of detail in the present Act have been subsumed in a broader statement of principle but some should no doubt be included. Naturally, the final form of new legislation will require a great deal of further work. Provisions covering such matters as offences and the power to make regulations will need to be added. Consequential amendments to other legislation will also be required.

3 Some matters have been dealt with, for the moment, by a cross-reference to provisions of the Accident Compensation Act 1982. We have recommended, however, that that Act should be wholly replaced, subject only to the transitional arrangements proposed in Part XV.

4 The following notes comment on the structure of the draft and its main features.

## **PART I PRELIMINARY**

5 This Part sets out the purposes of the Act—to promote safety, rehabilitation and to provide benefits (cl. 4).

6 The definitions, customarily included in an early provision of a New Zealand Act, are to be found in Part XVI—Interpretation.

## **PART II SAFETY**

7 This Part gives to the Minister charged with the administration of the Act a policy responsibility for encouraging safety (cl. 5). The Corporation would retain its existing powers.

## **PART III REHABILITATION**

8 This Part gives the Minister a policy responsibility for encouraging the rehabilitation of incapacitated persons (cl. 7). It also places on the Corporation the duty of making available a rehabilitation programme tailored to the needs of each individual person incapacitated by personal injury (cl. 8).

## **PART IV BENEFITS IN RESPECT OF PERSONAL INJURY**

9 Division 1 of this Part defines personal injury for the purposes of the Act. Clause 9 relates the definition to the place and time of injury. The Act applies to all personal injury after 1 April 1989; but extends to the late effects of personal injury before 1 April 1974 (cl. 10). The purpose is primarily to make benefits available to those who may have contracted a latent occupational disease in employment before that date; but it is thought just to give the same opportunity to others who may not have been compensated for the late effects of a pre-1974 injury.

10 Under clause 9 (1) all injury in New Zealand is covered. “New Zealand” includes the continental shelf and superjacent waters and

airspace. Clause 11 therefore confines injury on or above the shelf to that affecting persons, ships or aircraft having a connection with New Zealand.

11 Under clause 9 (2) the Act applies to injury outside New Zealand to persons who retain a residential connection with New Zealand.

12 Clause 12 contains the basic definition of personal injury. It avoids the word “accident”, though that word appears frequently in the First Schedule where its meaning can be gauged from the context. The First Schedule itself is based on the classification of external causes of injury evolved for statistical purposes by the World Health Organisation. There is a directive to take the First Schedule into account in interpreting the other clauses of Division 1 defining personal injury. This should ensure that they are not given too narrow a meaning.

13 Clauses 13, 15 and 16 make it clear that the secondary consequences of injury, including lasting emotional harm and the contracting of a disease, are included. So too are occupational diseases, whether or not the disease is a recognised risk of a particular occupation. Deafness resulting from any noise is included, not just industrial deafness.

14 Medical misadventure is specifically referred to in clause 14, though the First Schedule sets out most if not all types of medical misadventure that are likely to occur. The concepts of recognised risk and informed consent are no longer relevant.

15 Division 2 defines incapacity as a lessened ability to lead a normal life, including, but not limited to, a lessened ability to work. A person is entitled to a benefit in respect of personal injury if he or she is for the time being incapacitated by the injury.

16 The term “benefit” includes both periodical benefits and the one or two lump-sum benefits that are payable—to meet, for example, funeral expenses and other incidental expenses and losses.

17 There is a waiting period of two weeks before periodical benefits are payable (cl. 19(1)). But, in the case of work-related injuries, benefit is payable during that fortnight by the employer (cl. 21).

18 Periodical benefits cease at age 65 unless the person was incapacitated after becoming 60. In that case the benefit continues for 5 years (cl. 19(2) and (3)).

**PART V**  
**PERIODICAL BENEFITS IN RESPECT OF INCAPACITY**

19 The words “benefits are payable ...” used in clause 20 and other clauses confer the right to a benefit. The rates of the applicable benefits are specified in Part VI.

20 Under clause 21, employers must pay the benefit for time lost in the first 2 weeks of incapacity arising out of and in the course of the employment. They may not count this time against the employee’s sick leave.

21 Those who suffer non-work injuries are not entitled to periodical benefits for the first 2 weeks.

22 After the first 2 weeks everyone is entitled to periodical benefits in respect of total incapacity (cl. 23). The rate of benefit may differ depending on whether the person is employed or self-employed, or is not in receipt of earnings.

23 Under clause 24 benefit is payable in respect of temporary partial incapacity only in respect of work injuries.

24 The benefit is payable in the first instance for up to 6 months. Then it ceases, unless the Corporation decides that it should continue for a further period, up to 1 year. This provision is intended to encourage the prompt determination of permanent partial incapacity.

25 Clause 25 deals with the benefit payable for permanent partial incapacity. It needs to be read with clause 26, and also clauses 47 and 48. The basic rule is that an incapacitated person is assessed by a medical practitioner to discover the percentage of permanent impairment. The effect of the impairment on the whole person is to be considered (cl. 26).

26 If the impairment is 5% or more, economic and non-economic loss are to be compensated for by a single periodic payment of 80% of the amount obtained by multiplying the percentage of the impairment by the average weekly wage (clauses 25 and 47). Under this rule there is no need to consider on a case by case basis the actual effect of a person’s permanent partial incapacity on his or her earnings.

27 A person may, however, consider that the rate of benefit ascertained under these provisions does not fairly represent the actual loss of earnings—perhaps because a low percentage of impairment has

had a disproportionate effect on the person's ability to continue his or her old occupation or to find other comparable work. Then the person may apply for a determination of the periodical benefit that would be payable, based on lost earning capacity. He or she is entitled to whichever benefit is the higher (clauses 25 and 48).

28 If a person's percentage of impairment increases after the first assessment, benefit is payable at a correspondingly higher rate (clauses 28 and 49).

29 Clause 27 makes special provision for the case where a person has suffered severe disfigurement, or severe mental or emotional harm as a result of criminal injury, including, for example, cases of sexual abuse. The percentage of impairment is required to be assessed not only on a medical basis but also taking into account the effect of the injury on the person's capacity to lead a normal life.

## PART VI RATES OF PERIODICAL BENEFITS

30 Division 1 sets out rules for determining a person's weekly income before the incapacity. There is an easily applied rule for determining the income of persons in employment for short-term purposes, as a base rate for periodical benefit during the first 6 weeks of total incapacity. Under clause 34 (1), the person's weekly income is the average of the amount earned in the preceding 4 weeks.

31 More elaborate rules govern the ascertainment of weekly income for long-term purposes (clauses 35, 40 and 41). The over-riding principle is that the amount arrived at should fairly represent pre-injury earnings. Under clause 36, there is provision for the adjustment of the weekly rate if there has been an increase in average earnings since a person's rate of remuneration was last fixed. Clause 37 sets a minimum weekly income for a person in employment, based on the requirements of International Labour conventions.

32 The provisions for ascertaining the weekly income of a self-employed person (clauses 34, 35, 40 and 41) must be read with clause 106. Instead of being required to take assessable business income as his or her earnings, the self-employed person may nominate an amount within specified limits, both for levy purposes and, in the event of incapacity, as the base for a periodical benefit.



33 Clause 42 attributes to a person who has no earnings a notional income. This is set at the amount of average weekly earnings (all sectors, all persons). The provision applies to all those who are not employed or self-employed. They will be entitled to a periodical benefit for total incapacity or permanent partial incapacity.

34 Clause 42 will also affect visitors to New Zealand. The definitions of “employee” and of “self-employed person” apply, in general, only to people who are working in New Zealand (cl. 115). This excludes the tourist. The attribution of a notional income to such a person means that the entitlement to benefit is not discriminatory. At present visitors are entitled to lump-sum compensation but not to a periodical benefit.

35 Clause 43 provides that the maximum weekly income for benefit purposes is \$1,000.

36 Under Division 2, the rate of benefit for total incapacity is 80% of previous weekly earnings, with a minimum of \$225 (cl. 45). The rate of benefit would increase if a person’s weekly income were adjusted upwards under clause 38—loss of potential earnings. For temporary partial incapacity the rate is the same as for total incapacity less 85% of the amount the partially incapacitated person could reasonably be expected to earn (cl. 46). The alternative bases for calculating the rate in respect of permanent partial incapacity (clauses 47 and 48) have been explained in paragraphs 25 to 27.

37 Division 3 contains a provision for the commutation of a benefit for permanent partial incapacity into a lump-sum benefit, where the beneficiary is not likely to become totally incapacitated and it is particularly advantageous and just that the benefit be paid by way of a lump-sum payment (cl. 52).

## PART VII

### BENEFITS IN RESPECT OF EXPENSES AND LOSSES

38 Under this Part the whole range of medical and paramedical treatment and services, including travel for the purpose of obtaining treatment, is brought within the definition of “personal attention” (cl. 53).

39 The basic provision is clause **54**, under which the cost of all such treatment and services will be met for personal injury and for sickness on the same basis. The proposal that payment be made under Part II of the Social Security Act 1964 and not by the Corporation assumes an alteration of the rate and perhaps the scope of the present health benefits to a level near to that at present applying in practice under the Accident Compensation scheme.

40 The Corporation has a residual duty to meet dental expenses (cl. **55**) and medical and paramedical costs incurred by non-residents (cl. **57**) or outside New Zealand (cl. **58**). These are expenses to which the Social Security Act does not in general apply.

41 In accordance with the relevant International Labour conventions, clause **56** requires the employer to meet the residual medical expenses of employees injured in the course of their employment over and above the amount available from public funds. This is not a requirement which would extend to medical treatment for sickness or disease, except to the extent that occupational disease is to be treated as personal injury.

## PART VIII DEATH BENEFITS

42 This Part is on the same general lines as the existing Act, except that there is no longer a lump-sum payment to a surviving spouse or child in the event of death resulting from personal injury. Instead, the spouse is entitled to periodical benefit (cl **64**) for one year, whether or not dependent on the deceased person. After that, if the spouse was dependent on the deceased person at the time of death, the benefit is to continue until the Corporation determines that there is no longer a need for it (cl. **66**).

43 Clause **62** sets out a number of criteria for determining dependency or need. There is no presumption that a surviving spouse who remarries will be supported by the new marriage partner.

## **PART IX CLAIMS FOR BENEFIT**

44 Clause 70 requires all claims for benefit to be made in writing by or on behalf of the applicant. It is the intention that this requirement should apply, whether or not there is any arrangement for bulk-billing for the reimbursement of medical expenses under the Social Security Act or any legislation that replaces it.

45 In deciding a claim the Corporation must give fore-warning of an adverse decision and afford the claimant the opportunity of being heard, and of furnishing further information (cl. 73). There is no time limit within which a claim must be made.

## **PART X REVIEWS AND APPEALS**

46 This Part provides for an administrative review by the Corporation of its own decisions, without formality (cl. 76). The right of appeal to the existing Appeal Authority and from the Authority to the Courts is for the time being retained (cl. 77).

## **PART XI VARIATION OF BENEFITS**

47 Any alteration of benefits in a way that affects their relative value is a matter for Parliament. To ensure that their present value is maintained, this Part provides for the automatic adjustment of periodical benefits in accordance with any increase in average earnings (cl. 79). Clause 80 provides that motor vehicle levy rates (which have no in-built mechanism for increasing with inflation) are to be adjusted by reference to any increase in the consumer price index.

## **PART XII PRIMACY OF BENEFITS**

48 Clause 82 repeats the existing rule that benefits under the scheme are in substitution for any claims that might have been made under the common law or under the Workers' Compensation Act before the introduction of the accident scheme in 1974. The existing

provisions retaining a limited right of access to the courts have been stated more clearly. Where a person who is entitled to a benefit has a right of action in the courts the Corporation may seek reimbursement or pursue the claim itself (cl. 83).

### **PART XIII**

#### **MISCELLANEOUS PROVISIONS IN RELATION TO BENEFITS**

49 This part contains a number of procedural provisions. Among them is the important rule in clause 95 that the benefit payable to a person who is incapacitated in the course of committing an offence for which the person is convicted and imprisoned is to be suspended during the imprisonment. With the abolition of lump-sum payments this means that when the sentence has been served the only benefit would be a periodical one for any continuing permanent incapacity. In the meantime, the Corporation has a discretion to pay all or part of the benefit to any dependants.

### **PART XIV**

#### **FUNDING**

50 Division 1 sets out as the sources of the Corporation's funds—

- levies by employers and the self-employed
- levies on motor vehicles
- a proportion of the excise duty on motor spirits
- investment income
- money appropriated by Parliament for the purpose.

These are to form a single pool (cl. 100).

51 The proportion to be collected from the first 3 sources is a matter for Parliament. The Corporation is to estimate the amount which will need to be provided each year from the Consolidated Account (cl. 101). It is to set aside an amount equal to at least half its estimated annual expenditure as a reserve fund (cl. 102).

52 The levy base for the employers levy is to be the amount in respect of which the employer must each month make and account for tax deductions under the PAYE system. The levy instalments are

to be paid at the same time. The levy rate is 2.5% (cl. 104). It is made clear that the levy is a tax which is permanently appropriated for the purposes of the scheme (cl. 107).

53 The levy base for a self-employed person (cl. 106) was explained in paragraph 32. The levy, again at the rate of 2.5%, is to be paid annually (cl. 105).

54 The existing levies on motor vehicles are retained at the current rate of \$100 for motorcars and \$35.30 for motorcycles (clauses 109 and 110 and Second Schedule). Again, any change in the levy rate (apart from the effect of inflation) must be made by Parliament.

55 A proportion of the excise duty on motor spirits is permanently appropriated for the purposes of the scheme (cl. 113). We have not proposed a specific amount.

## PART XV TRANSITIONAL

56 A person who has acquired a right to a benefit under the existing Accident Compensation scheme or the War Pensions Act but has not been fully paid out is given the option of choosing to remain under the existing scheme or to come under the new scheme, so far as applicable (cl. 114).

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# ***SAFETY, REHABILITATION AND COMPENSATION ACT***

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### **SAFETY, REHABILITATION AND COMPENSATION ACT**

#### **PART 1 PRELIMINARY**

##### **1 Short title**

This Act may be cited as the Safety, Rehabilitation and Compensation Act 1988.

##### **2 Commencement**

This Act comes into force on the 1st day of April 1989.

##### **3 Act to bind the Crown**

This Act binds the Crown.

##### **4 Purposes of Act**

The purposes of this Act are—

- (a) to promote safety, including occupational health;
- (b) to promote the rehabilitation of persons who suffer personal injury;

- (c) to provide benefits for persons who suffer personal injury and certain dependants of those persons where death results from the injury.

Cf. 1982, No.181, s.26(1)

## PART II SAFETY

### **5 Functions of Minister with respect to safety**

**(1) The Minister—**

- (a) shall take appropriate action to encourage safety;
  - (b) shall take appropriate action to encourage co-operation between persons concerned with safety;
  - (c) shall undertake, or arrange for the undertaking of, research with respect to safety;
  - (d) shall collect and disseminate, or arrange for the collection and dissemination of, information with respect to safety.
- (2) In performing the functions specified in subsection (1), the Minister shall have regard principally but not exclusively to the desirability of reducing the incidence and extent of personal injury in the community.

### **6 Functions of Corporation with respect to safety**

The Corporation has such functions and powers as are necessary to promote safety in accordance with such directions as may be given to it by the Minister under section 10 of the Accident Compensation Act 1982.

Cf. 1982, No. 181, s. 35

## PART III REHABILITATION

### **7 Functions of Minister with respect to rehabilitation**

**(1) The Minister—**

- (a) shall take appropriate action to encourage the rehabilitation of incapacitated persons;
  - (b) shall take appropriate action to encourage co-operation between persons providing facilities for the rehabilitation of incapacitated persons;
  - (c) shall undertake, or arrange for the undertaking of, research with respect to the rehabilitation of incapacitated persons;
  - (d) shall collect and disseminate, or arrange for the collection and dissemination of, information with respect to the rehabilitation of incapacitated persons.
- (2) In performing the functions specified in subsection (1), the Minister shall have regard principally but not exclusively to the desirability of reducing the extent of disablement in the community.

## **8 Functions of the Corporation with respect to rehabilitation**

- (1) The Corporation has such functions and powers as are necessary to promote rehabilitation in accordance with such directions as may be given to it by the Minister under section 10 of the Accident Compensation Act 1982.
- (2) The Corporation shall so far as practicable make available to every person incapacitated by personal injury a rehabilitation programme having as its objectives—
  - (a) the restoration of that person as speedily as possible to the fullest physical, mental and social fitness of which that person is capable, having regard to any continuing incapacity;
  - (b) where applicable, the restoration of that person's ability to undertake the fullest possible range of activities in the home, the workplace and the community;

- (c) where applicable, that person's reinstatement or placement in employment or other gainful occupation.

Cf. 1982, No. 181, s. 36

## PART IV BENEFITS IN RESPECT OF PERSONAL INJURY

### *Division 1* *Personal Injury*

#### **9 Personal injury to which Act applies**

- (1) This Act applies to and in relation to personal injury suffered by a person in New Zealand on or after 1 April 1989.
- (2) This Act also applies to and in relation to personal injury suffered outside New Zealand on or after 1 April 1989 by—
  - (a) a member of the Armed Forces of New Zealand while outside New Zealand in connection with the duties of that member's service; or
  - (b) a person who was formerly resident in New Zealand but was not at the time when the personal injury occurred resident in New Zealand, being a person who ceased to be resident in New Zealand for the reason only that he or she left New Zealand—
    - (i) in connection with the duties of that person's employment; or
    - (ii) for the purpose of receiving education or undertaking research, if, immediately before the personal injury occurred, the person intended to return to, and reside in, New Zealand within a reasonable time after those duties ceased or that education or research was completed; or

- (c) the spouse or a child of a person in relation to whom this Act may have effect by reason of paragraph (a) or (b); or
  - (d) a member of the family of a person in relation to whom this Act may have effect by reason of paragraph (a) or (b), if that member was residing with the person at the time when the injury occurred.
- (3) This Act also extends to and in relation to personal injury suffered outside New Zealand on or after 1 April 1989 by a person in relation to whom this Act may have effect by reason of subsection (2) but who ceases to be such a person, if the injury occurred within 1 year after he or she so ceased.
  - (4) This Act also extends to and in relation to personal injury suffered outside New Zealand on or after 1 April 1989 by a person whose usual place of residence was, at the time when the personal injury occurred, in New Zealand (not being a person specified in subsection (3)), if the injury occurred within 1 year after he or she last left New Zealand.

Cf. 1982, No. 181, ss. 26(2), 30, 31 and 32

## **10 Late effects of personal injury before 1 April 1974**

- (1) This Act also extends to and in relation to the late effects of any personal injury suffered by a person in or outside New Zealand before 1 April 1974 if—
  - (a) that personal injury would have been personal injury to which this Act applies had it occurred on or after 1 April 1989; and
  - (b) the incapacity of the person as the result of the personal injury became evident on or after 1 April 1974.
- (2) Nothing in subsection (1) entitles any person to receive any benefit in respect of any incapacity or death resulting from any personal injury if compensation or damages has already been paid under any rule of law or enactment in New Zealand or elsewhere in respect of that incapacity or death.

## **11 Application to ships, etc.**

- (1) This Act does not apply to or in relation to personal injury occurring on a ship, boat or aircraft on or in the water or airspace above the continental shelf of New Zealand unless the ship, boat or aircraft is registered in New Zealand or the operations of the ship, boat or aircraft are based on a place in New Zealand.
- (2) Subsection (1) does not affect the application of this Act to or in relation to a person whose usual place of residence is in New Zealand or is a person in relation to whom this Act applies by reason of section 9(2) or (3).

Cf. 1982 No.181 s.2(1) definition of “New Zealand”, and s. 31

## **12 Meaning of personal injury**

- (1) For the purposes of this Act, “personal injury” is a physical or mental injury or other physical or mental damage or adverse effect that—
  - (a) is specified in the First Schedule; or
  - (b) is caused by an occurrence specified in the First Schedule; or
  - (c) is caused in circumstances specified in the First Schedule.
- (2) Subsection (1) shall be taken into account in applying sections 13, 14, 15 and 16; and nothing in those sections shall have effect so as to exclude any injury, damage or effect from the operation of subsection (1).
- (3) Subsection (1) has effect subject to section 16.
- (4) A late effect of anything that is personal injury by reason of the operation of this section or of sections 13, 14, 15 or 16 is also personal injury.

## **13 Nervous shock, psychiatric illness, occupational disease etc.**

For the purposes of this Act, the following are also personal injury:—

- (a) nervous shock or lasting emotional harm caused by an occurrence specified in, or caused in circumstances specified in the First Schedule;
- (b) a psychiatric illness or condition caused by an occurrence specified in, or caused in circumstances specified in the First Schedule;
- (c) a disease that is contracted by a person in the course of his or her employment, whether at or away from the place of employment, being a disease to which the employment contributed;
- (d) deafness resulting from noise.

Cf. 1982, No. 181, s. 2(1) definition of "personal injury by accident", ss. 28, 29 and 79(1)(b).

#### **14 Misadventures**

For the purposes of this Act, a misadventure in connection with medical, paramedical, surgical, dental or first-aid treatment, care or attention of a person is also personal injury.

Cf. 1982 No. 181, s. 2(1) definition of "personal injury by accident", paragraph (a)(ii)

#### **15 Contracting, etc. of diseases**

For the purposes of this Act, the contracting, acceleration, aggravation or exacerbation of a disease or illness or the deterioration of a condition as the result of personal injury is also personal injury.

Cf. 1982 No. 181, s.28(5)

#### **16 Work-related malignant neoplasms and heart diseases**

- (1) For the purposes of this Act, a malignant neoplasm or a heart disease is also personal injury if it was sustained or contracted by the person concerned in the course of his or her employment, whether at or away from his or her place of employment, and the employment contributed to it, but otherwise is not personal injury.



- (2) For the purposes of this Act, the acceleration, aggravation, exacerbation or deterioration of a malignant neoplasm or of a heart disease, being such an acceleration, aggravation, exacerbation or deterioration—
  - (a) that was due to or arose in the course of employment of the person concerned, whether at or away from his or her place of employment; and
  - (b) to which his or her employment contributed,

is also personal injury, but otherwise is not personal injury.

Cf. 1982 No. 181, s. 2(1) definition of “personal injury by accident”, paragraph (b)

## *Division 2*

### *Incapacity*

## **17 Incapacity**

- (1) For the purposes of this Act, a person is “incapacitated” by personal injury if as the result of personal injury that person’s ability to lead a normal life (including the ability to engage in useful or gainful work) is, for the time being, lessened; and “incapacity” has a corresponding meaning.
- (2) For the purposes of this Act—
  - (a) “total incapacity” is incapacity that the Corporation has determined to be total incapacity or incapacity that is to be taken to be total incapacity by reason of the operation of a provision of this Act;
  - (b) “permanent total incapacity” is total incapacity that the Corporation has determined to be permanent or incapacity that is to be taken to be permanent total incapacity by reason of the operation of a provision of this Act;
  - (c) “partial incapacity” is incapacity other than total incapacity;

- (d) “permanent partial incapacity” is partial incapacity that the Corporation has determined to be permanent.

Cf. 1982, No. 181, s. 2(1), definition of “incapacitated”; s. 60

*Division 3*  
*Benefits*

**18 Benefits in respect of personal injury**

Where a person is incapacitated by personal injury, benefits are payable as provided by this Act.

Cf. 1982, No. 181, s.68

**19 Commencement and termination of benefits**

- (1) A periodical benefit in respect of incapacity is payable from and including the fourteenth day after the day on which the incapacity commenced and continues so long as the incapacity continues, except as otherwise provided in section 21 (**Benefit payable in respect of employment injuries in the first two weeks**).
- (2) Except as provided by subsection (3), benefit in respect of incapacity is not payable to a person after that person attains the age of 65 years.
- (3) Where a person becomes incapacitated after that person has attained the age of 60 years, benefit is, subject to this Act, payable to that person in respect of the incapacity but a periodical benefit is not payable after the expiration of 5 years after the day on which the person’s incapacity commenced.

Cf. 1982, No. 181 ss. 59 (1) and 66 (1)

**PART V**  
**PERIODICAL BENEFITS**  
**IN RESPECT OF INCAPACITY**

**20 Periodical benefits in respect of incapacity**

Periodical benefits are payable to incapacitated persons as provided by this Part.

**21 Benefit payable in respect of employment injuries in the first two weeks**

- (1) Benefit is payable under this section to an incapacitated person who immediately before his or her incapacity commenced was an employee, if the incapacity is a result of personal injury arising out of and in the course of that person's employment.
- (2) Benefit is payable under this section—
  - (a) by the employer of the incapacitated person, if the person had been in the employment of that employer during the 7 days before the day on which the incapacity commenced and the employment was not due to terminate on that day or within 6 days thereafter; or
  - (b) in any other case by the Corporation.
- (3) If, during the period beginning on the day on which the incapacity commenced and ending on the thirteenth day after the day on which the incapacity commenced, the employee loses any time from work as a result of the incapacity, the incapacity shall, to the extent of the time so lost, be taken to be total incapacity.
- (4) In the absence of proof to the contrary, it shall be presumed that the time the employee loses from work as a result of the incapacity is the difference between the time (inclusive of overtime) worked by the employee in the 14 days before the commencement of the incapacity and the time (if any) (inclusive of overtime) worked by the employee in the period referred to in subsection (3).

- (5) Benefit is payable under this section at the rate ascertained under section 45(1)(a) in respect of any total incapacity of the employee occurring in the period referred to in subsection (3).
- (6) The right to benefit under this section is without prejudice to any other right the employee may have to payment by any employer in respect of the time lost from work as a result of the incapacity; and no amount paid or payable to the employee pursuant to any such right shall be taken into account in ascertaining the amount of benefit payable under this section.

## **22 Payment by Corporation on employer's behalf**

- (1) Where an employer fails to pay any amount which that employer is required to pay to the employee under section 21, the Corporation may, if it thinks fit, pay the amount to the employee.
- (2) Section 58 of the Accident Compensation Act 1982 applies to any sum payable under this section as if it were a sum payable under section 57 of that Act.

## **23 Benefit after the first two weeks in respect of total incapacity**

From and including the fourteenth day after the day on which the incapacity commenced, benefit is payable to an incapacitated person—

- (a) in respect of each of the next 4 weeks of total incapacity at the rate ascertained under section 45(1)(a); and
- (b) thereafter, so long as the total incapacity continues, at the rate per week ascertained under section 45(1)(b).

Cf. 1982, No. 181, ss. 59, 60

## **24 Benefit after the first two weeks in respect of temporary partial incapacity**

- (1) Benefit is payable in respect of partial incapacity that is not permanent partial incapacity from and including the fourteenth day after the day on which the incapacity commenced at the rate ascertained under section 46.

- (2) After benefit has been paid at a rate ascertained as provided by section 46 for a continuous period of 26 weeks, the benefit ceases to be payable, unless the Corporation decides that, in the circumstances, the benefit should continue to be paid for such further period, not exceeding 1 year, as the Corporation determines, in which case the benefit continues to be so payable.
- (3) Benefit in respect of partial incapacity that is not permanent partial incapacity is not payable to a person who, immediately before the incapacity commenced, was not an employee or a self-employed person.

Cf. 1982, No. 181, s. 59

## **25 Benefit in respect of permanent partial incapacity**

- (1) Subject to subsections (2) and (3), benefit is payable to a person in respect of permanent partial incapacity at the weekly rate (if any) ascertained under section 47.
- (2) A person who considers that the benefit (if any) payable under subsection (1) does not fairly represent that person's loss of earning capacity as a result of the permanent partial incapacity may apply to the Corporation for a determination of the weekly rate of benefit that would be payable to him or her under section 48.
- (3) If the weekly rate of benefit ascertained in respect of a person under section 48 is higher than the rate (if any) ascertained in respect of that person under section 47, benefit is payable to that person at the rate ascertained under section 48.

Cf. 1982, No. 181, ss. 60, 78

## **26 Ascertainment of degree of impairment**

- (1) For the purposes of this Part, the percentage of the impairment of a person is that percentage (being 0 or a multiple of 5) that a medical practitioner certifies to be the percentage of the impairment of the person's body (including mental) systems as a whole, that is to say, impairment called, in the Permanent Impairment Guide, "impairment of the whole person".

- (2) Where the percentage specified in the certificate is 85 or more, the incapacity of the person shall be taken to be total incapacity.
- (3) For the purpose of giving a certificate as to the percentage of the impairment of a person, a medical practitioner shall take into consideration—
  - (a) the Permanent Impairment Guide and the tables of relative impairment set out in that Guide; and
  - (b) section 27, so far as applicable.
- (4) Where a person has been paid a benefit under section 52 (**Commutation of benefits**), the percentage of the impairment of the person with respect to a subsequent permanent partial incapacity shall be ascertained without regard to the impairment of the person with respect to the incapacity by reason of which that benefit was paid.

Cf. 1982, No. 181, s. 78

## **27 Ascertainment of impairment in certain cases**

For the purpose of giving a certificate as to the percentage of the impairment of a person who has suffered—

- (a) severe facial or bodily disfigurement as a result of personal injury; or
- (b) severe nervous shock or lasting emotional harm or a psychiatric illness or condition caused by an occurrence specified in, or caused in circumstances specified in paragraphs E960 to E968 inclusive of the First Schedule (Homicide and injury purposely inflicted by other persons),

a medical practitioner shall take into consideration the extent to which the disfigurement or nervous shock or lasting emotional harm or psychiatric illness or condition has permanently lessened that person's ability to lead a normal life.

Cf. 1982, No. 181 s. 79(1)

## **28 Increase in degree of impairment**

Where a medical practitioner has certified that the percentage of the impairment of a beneficiary receiving benefit in respect

of permanent partial incapacity has increased, benefit is payable at the rate ascertained under section 49, from and including the date of the certificate of the medical practitioner.

Cf 1982, No.181, s.60 (4) and (5)

## **29 Selection of appropriate medical certificate**

Where, for the purposes of this Division, the Corporation has certificates by more than one medical practitioner as to the percentage of the impairment of a person, the Corporation may decide to accept and act upon whichever of those certificates it considers to be the most appropriate.

Cf. 1982, No. 181, s. 78 (10)

## **30 Benefit where young person incapacitated**

Where a young person is incapacitated and the Corporation determines that the incapacity is likely to be prolonged, benefit is payable to the young person at the rate ascertained under section 50 (2).

Cf. 1982, No. 181, s.63

## **31 Successive incapacities**

- (1) If a person is entitled to be paid 2 or more periodical benefits under this Part, the Corporation may, having regard to all the circumstances, determine to do one or both of the following:—
  - (a) suspend or cancel one or more of those benefits;
  - (b) increase or reduce the rate of one or more of those benefits.
- (2) The Corporation shall make no determination under subsection (1) so as to cause the rate of benefit or the total of the rates of benefit payable to the person to be less than whichever rate of a benefit referred to in subsection (1) is the higher or highest.

## **32 Change in nature of incapacity**

- (1) Where benefit is being paid in respect of partial incapacity and the Corporation determines that the incapacity has become total incapacity, the beneficiary is entitled to payment of benefit in respect of that total incapacity—

- (a) at the rate that would have been applicable if benefit in respect of that total incapacity had been payable to the beneficiary from and including the day after the day on which the incapacity commenced; or
- (b) at the rate ascertained as if the day on which benefit in respect of that total incapacity becomes payable to the beneficiary were the day on which the person's incapacity commenced,

whichever rate is the higher.

- (2) Where benefit is being paid in respect of total incapacity (not being permanent total incapacity) and the Corporation decides that the incapacity of the beneficiary has become partial incapacity, the beneficiary is entitled to payment of benefit, from and including the date when the Corporation so decides, at the rate applicable in respect of permanent partial incapacity or partial incapacity that is not permanent partial incapacity, as the case may be.

## PART VI RATES OF PERIODICAL BENEFITS

### *Division I Weekly Income*

#### **33 Ascertainment of weekly income**

The weekly income of a person for the purposes of this Part is as provided by or ascertained under this Division.

#### **34 Weekly income—short-term**

- (1) If, during the period of 4 weeks immediately before the day on which the incapacity commenced, a person derived earnings as an employee but did not derive earnings as a self-employed person, the weekly income (short-term) of that person is one-quarter of the amount of those earnings.
- (2) If, during the period of 4 weeks immediately before the day on which the incapacity commenced, a person derived earnings as a self-employed person but did not



derive earnings as an employee, the weekly income (short-term) of that person is the same amount as the amount of that person's weekly income (long-term).

- (3) If, during the period of 4 weeks immediately before the day on which the incapacity commenced, some of the earnings of a person were derived as an employee and some as a self-employed person, the weekly income (short-term) of that person is the aggregate of one-quarter of the amount of those earnings as an employee and the amount of that person's weekly income (long-term).

Cf. 1982 No. 181 s. 53(1) to (4)

### **35 Weekly income—long-term**

- (1) If, during the financial year last ending before the day on which the incapacity commenced, a person derived earnings as an employee but did not derive earnings as a self-employed person, the weekly income (long-term) of that person is one-fifty-second of the amount of those earnings.
- (2) If, during the financial year last ending before the day on which the incapacity commenced, a person derived earnings as a self-employed person but did not derive earnings as an employee, the weekly income (long-term) of that person is, subject to subsection (3), one-fifty-second of the amount of his or her earnings as a self-employed person during that period.
- (3) The Corporation may, of its own motion or on application by the person concerned, determine that one-one hundred and fifty-sixth of the amount of the earnings of a person as a self-employed person during the period of 3 years ending on the last day of the financial year last ending before the day on which the incapacity of the person commenced represents more fairly the earnings of the person per week and, in that case, the weekly income (long-term) of the person is that fraction of that amount.
- (4) If, during the financial year last ending before the day on which the incapacity commenced, some of the earnings of a person were derived as an employee and some as a self-employed person, the weekly income (long-term) of that person is, subject to subsection (5), one-fifty-second of the aggregate amount of that person's earnings as an

employee and of his or her earnings as a self-employed person derived during that period.

- (5) The Corporation may, of its own motion or on application by the person concerned, determine that one-one hundred and fifty-sixth of the aggregate amount of the earnings of a person as an employee and of his or her earnings as a self-employed person during the period of 3 years referred to in subsection (3) represents more fairly the earnings of the person per week and in that case the weekly income (long-term) of the person is that fraction of that aggregate amount.
- (6) If a person did not derive any earnings as an employee or self-employed person during the financial year referred to in subsections (1), (2) and (4) but derived earnings as an employee or self-employed person after the end of that year and before the day on which the incapacity commenced, the Corporation may determine the weekly income (long-term) of the person having regard to the amount of those earnings and to the length of the period during which those earnings were derived.

Cf. 1982 No. 181 s. 53(1) to (4)

### **36 Increase of weekly income in certain cases**

- (1) If, in respect of the quarter last preceding the day on which a person's incapacity commenced, not being a quarter ending on 31 March—
  - (a)  $a$  is greater than  $b$ —the amount of the weekly income of the person for the purposes of section 35 shall be increased by a percentage ascertained in accordance with the formula  $100 \frac{(a-b)}{b}$  or a percentage ascertained in accordance with the formula  $\frac{c}{4}$ , whichever is the greater; or
  - (b)  $a$  is not greater than  $b$ —the amount of the weekly income of the person for the purposes of section 35 shall be increased by a percentage ascertained in accordance with the formula  $\frac{c}{4}$ .

(2) In subsection (1)—

- a* is the average weekly earnings in respect of the quarter last preceding the day on which the person's incapacity commenced;
- b* is the average weekly earnings in respect of the quarter ending on 31 March last preceding the day on which the person's incapacity commenced;
- c* is the number of complete quarters between 31 March last preceding the day on which the person's incapacity commenced and the day on which that incapacity commenced.

- (3) This section does not apply to the weekly income of a person as determined under section 35(6), 37 or 41(1).

**37 Minimum weekly income of full-time employee**

- (1) For the purposes of this section, a full-time employee is an employee who, during the period of 4 weeks immediately before the day on which the incapacity commenced, was working in employment for an average of not less than 35 hours a week.
- (2) Notwithstanding anything in this Division, the weekly income of a full-time employee shall be not less than the total of—
  - (a) the amount of \$305 in respect of the employee; and
  - (b) the amount of \$24 in respect of the spouse of the employee, if the spouse was wholly dependent on the employee immediately before the commencement of the incapacity; and
  - (c) the amount of \$13 in respect of each child of the employee, if that child was wholly dependent on the employee immediately before the commencement of the incapacity.

Cf. 1982, No. 181, s. 61

**38 Weekly income—loss of potential earnings**

- (1) This section applies in relation to the weekly income, for the purposes of benefit in respect of total incapacity, of a

person who had not attained the age of 31 years on the day on which the total incapacity commenced.

- (2) The weekly income of such a person is, upon attaining the age of 18 years, upon attaining the age of 21 years, upon attaining the age of 26 years and upon attaining the age of 31 years, such amount as the Corporation determines as fairly representing the amount that the person's earnings per week would have been upon attaining that age if the person had not been incapacitated.
- (3) Subsection (2) does not authorize a reduction of a person's weekly income as ascertained otherwise than as provided by that subsection.

Cf. 1982, No. 181, ss. 62, 63

### **39 Value of living accommodation, etc.**

- (1) For the purpose of determining the weekly income (long-term) of an employee, the earnings of the employee include the value of living accommodation, board and lodging or food provided for him or her without charge in the capacity of employee.
- (2) For the purposes of this Division, where a person has entered into an agreement to provide a service to another party to the agreement and it is a term of the agreement that that other party shall provide that person, without charge, with living accommodation, board and lodging or food, the earnings of that person include the value of that living accommodation, board and lodging or food.

Cf. 1982, No. 181, s. 52 (2)(a)

### **40 Determination of earnings where amount not readily ascertainable**

If the amount of the earnings of a person in respect of a period referred to in this Part is not readily ascertainable, the amount is such amount as the Corporation determines fairly to represent the amount of those earnings.

Cf. 1982, No. 181, s. 53(1)

### **41 Determination of weekly income in special circumstances**

- (1) If, for any reason, the Corporation determines that the weekly income of a person as ascertained under section

34 or 35 does not fairly represent the earnings of that person during a particular period, the Corporation may determine the weekly income of the person for the purposes of section 34 or 35, having regard to such matters as it considers appropriate.

(2) Where there is an interval longer than 4 weeks between—

- (a) the day on which a person's incapacity commenced; and
- (b) the day on which the Corporation determines that the incapacity is total incapacity or the day from and including which the incapacity is to be taken to be total incapacity by reason of the operation of a provision of this Act,

the Corporation may determine that the weekly income of the person for the purposes of section 35 be ascertained by reference to the day mentioned in paragraph (b) and not by reference to the day on which the incapacity commenced.

- (3) Subsection (1) or (2) does not authorize a reduction of a person's weekly income as ascertained otherwise than under that subsection.

Cf. 1982, No. 181, s. 53(1), (9)

#### **42 Weekly income in other cases**

Where no provision is made with respect to the weekly income of a person by any of the preceding provisions of this Division, the weekly income of that person is the average weekly earnings in respect of the quarter last ended before the day on which the person's incapacity commenced.

#### **43 Maximum weekly income**

Notwithstanding any of the preceding provisions of this Division, the weekly income of a person shall not be greater than \$1,000.

Cf. 1982, No. 181, ss. 59 (10), 60 (8)

*Division 2*  
*Rates of Incapacity Benefits*

**44 Rate of benefit in respect of incapacity**

A reference in this Act to the rate of benefit that would be, or would have been, payable to a person in respect of total incapacity is a reference to the rate of benefit that would be payable, or would have been payable, to the person if he or she were, or had been, totally incapacitated and that benefit had been paid from and including the day after the day on which the incapacity commenced.

**45 Rate of benefit—total incapacity**

- (1) The rate of benefit payable to a person in respect of total incapacity—
  - (a) in respect of each week of the first 6 weeks of incapacity—is a rate equal to 80 percent of his or her weekly income (short-term); and
  - (b) after the expiration of those 6 weeks—is a rate per week equal to 80 percent of his or her weekly income (long-term).
- (2) Where benefit in respect of total incapacity first becomes payable to a person more than 3 months after the day on which the incapacity commenced, his or her weekly income (long-term) shall be taken to be increased, in the same manner as a periodical rate of benefit is increased as provided by section 79, from the end of the quarter during which the person's incapacity commenced to and including the end of the quarter last preceding the date as from which benefit in respect of total incapacity becomes payable to the person.
- (3) Notwithstanding anything in subsection (1), the rate of benefit payable to a person in respect of a week shall be not less than \$225.
- (4) Where benefit in respect of total incapacity is payable to a beneficiary intermittently in respect of the one incapacity, the rate of benefit shall, notwithstanding that the benefit is not payable continuously, be taken to be increased as provided by section 79.

- (5) If, on any occasion when payment of benefit in respect of total incapacity is resumed, the rate of benefit ascertained as if the day on which payment of benefit is resumed were the day on which the beneficiary's incapacity commenced is higher than the rate otherwise payable, the benefit is payable at that higher rate.

#### **46 Rate of benefit—temporary partial incapacity**

- (1) The weekly rate of benefit payable to a person in respect of partial incapacity that is not permanent partial incapacity, is, subject to subsection (2), the weekly rate of benefit that would be payable to the person for the time being in respect of total incapacity, less 85 percent of the highest amount (if any) that the person could reasonably be expected to earn in respect of that week.
- (2) If, in respect of a week, 85 percent of the highest amount that the person could reasonably be expected to earn in respect of that week is equal to or greater than the weekly rate of benefit that would be payable to the person in respect of that week in respect of total incapacity, the person is not entitled to benefit in respect of that week.
- (3) Section 79 does not apply to a rate of benefit ascertained as provided by this section.

#### **47 Rate of benefit—permanent partial incapacity—based on degree of impairment**

The weekly rate of benefit payable under this section in respect of permanent partial incapacity is 80 percent of the amount ascertained by multiplying the percentage of the impairment of the person—

- (a) in the case of a person whose incapacity commenced within 3 months before benefit at the rate applicable in respect of permanent partial incapacity becomes payable—by the amount of the average weekly earnings in respect of the quarter last ended before the day on which the person's incapacity commenced; or
- (b) in any other case—by the amount of the average weekly earnings in respect of the quarter last ended before the date as from which benefit at the rate

applicable in respect of permanent partial incapacity becomes payable to the person.

**48 Rate of benefit—permanent partial incapacity—based on loss of earnings**

The weekly rate of benefit payable under this section to a person in respect of permanent partial incapacity is the weekly rate of benefit that would be payable to the person, at the time when the Corporation determines that the partial incapacity is permanent, in respect of total incapacity, less 85 percent of the highest amount (if any) that that person would then be able to earn per week if he or she were to engage in suitable work.

**49 Rate of benefit—increase in degree of impairment**

Where a medical practitioner has certified that the percentage of the impairment of a beneficiary receiving benefit in respect of permanent partial incapacity has increased, the new rate of benefit applicable in respect of the beneficiary is the rate ascertained by multiplying the new percentage of the impairment of the beneficiary by the rate of benefit that was payable immediately before the date of the certificate and dividing the result by the former percentage of the impairment of the beneficiary.

**50 Rates of benefit—young persons**

- (1) Sections 44 to 49 do not apply in relation to a young person.
- (2) The weekly rate of benefit payable to a young person is—
  - (a) in the case of incapacity that is for the time being total incapacity—\$25 per week;
  - (b) in the case of incapacity that is for the time being partial incapacity—
    - (i) if the percentage of the impairment of the young person is not less than 15 and not greater than 50—\$13 per week; and
    - (ii) if the percentage of the impairment of the young person is not less than 55 and not greater than 80—\$20 per week.



*Division 3*  
*General*

**51 Determination that incapacity is permanent**

- (1) On the application of any person or of its own motion, the Corporation may determine that the partial incapacity of a person is permanent or that the total incapacity of a person is permanent.
- (2) The Corporation shall not determine that the incapacity, whether partial or total, of a person is permanent until the Corporation is satisfied that maximum medical rehabilitation of the person has been achieved.
- (3) If the Corporation determines that the partial incapacity or total incapacity of a person is permanent, a benefit payable to the person shall not be cancelled or reduced for any reason.
- (4) Subsection (3) does not prevent suspension or postponement of payment of a benefit in accordance with this Act or cancellation of the whole or a portion of payment of a benefit under section 31(1).

Cf. 1982, No. 181 s.60 (1) and (5)

**52 Commutation of benefits**

- (1) Subject to subsection (2), where benefit in respect of permanent partial incapacity is payable to a person, the Corporation may, on application by the beneficiary, determine that a benefit, by way of a lump-sum payment be paid in lieu of the first-mentioned benefit, equal to the present value of the first-mentioned benefit calculated—
  - (a) by reference to the prescribed rate of interest; and
  - (b) by reference to the prescribed life tables; and
  - (c) having regard to the fact that, if a lump-sum payment were not made under this section, the benefit would, if the beneficiary lived so long, cease upon the beneficiary attaining the age of 65 years or at the expiration of the period of 5 years referred to in section 19(3), as the case may be.

- (2) A benefit under this section is payable only where the Corporation determines that—
- (a) the beneficiary's incapacity is not likely to become total incapacity; and
  - (b) in all the circumstances it is particularly advantageous and just to the beneficiary that the benefit be paid by way of lump-sum payment.

Cf. 1982, No. 181 s.71

## PART VII BENEFITS IN RESPECT OF EXPENSES AND LOSSES

### **53 Personal attention**

For the purposes of this Act “personal attention” means—

- (a) first aid; or
- (b) medical, dental, hospital, outpatients', physiotherapy, chiropractic, or radiological treatment or services; or
- (c) ambulance or laboratory services; or
- (d) services in relation to the administration of anaesthetics; or
- (e) the services of specialists or consultants; or
- (f) home-nursing services or domestic assistance; or
- (g) pharmaceutical requirements; or
- (h) treatment by the provision of any artificial limb or aid or prosthetic appliance and its normal repair or renewal; or
- (i) psychiatric or counselling services; or
- (j) any other paramedical treatment or service;

and includes

- (k) travel undertaken for the purpose of receiving personal attention.

## **54 Medical and paramedical expenses**

Except as otherwise provided in sections 55, 56, 57 and 58, the cost of any personal attention needed by a person incapacitated as a result of personal injury is payable under Part II of the Social Security Act 1964 to the extent there provided, and is not payable by the Corporation.

## **55 Dental expenses**

Where, as a result of personal injury, a person suffers damage to his or her natural teeth (including the supporting associated oral tissues), the cost of repair or of replacement (as appropriate) and the cost of any normal continuing repair, renewal or replacement is payable by the Corporation, so far as—

- (a) the cost is not payable under Part II of the Social Security Act 1964; and
- (b) the Corporation considers that the amount to be paid by it is reasonable in all the circumstances.

## **56 Medical and paramedical expenses of incapacitated employees**

- (1) This section applies to an incapacitated person who immediately before his or her incapacity commenced was an employee, if the incapacity is a result of personal injury arising out of and in the course of that person's employment.
- (2) To the extent that the cost of any personal attention reasonably required by the person is not payable under Part II of the Social Security Act 1964 or under section 55, it is payable—
  - (a) by the employer of the incapacitated person if the person had been in the employment of that employer during the 7 days before the day on which the incapacity commenced and the employment was not due to terminate on that day or within 6 days thereafter; or
  - (b) in any other case by the Corporation.
- (3) Where an employer fails to pay any amount which that employer is required to pay to an employee under this

section, the Corporation may, if it thinks fit, pay the amount to the employee.

- (4) Section 58 of the Accident Compensation Act 1982 applies to any sum payable under this section as if it were a sum payable under section 57 of that Act.

#### **57 Medical and paramedical expenses of non-residents**

- (1) This section applies to a person who is incapacitated as the result of personal injury in New Zealand but is not—
  - (a) a person entitled or permitted under section 91 of the Social Security Act 1964 to claim the several benefits provided for by Part II of that Act; or
  - (b) a person to whom section 56 applies.
- (2) The cost of any personal attention needed by a person to whom this section applies is payable by the Corporation, to the extent that it would have been payable under Part II of the Social Security Act 1964 if the person had been entitled or permitted to claim benefits under that Part.

#### **58 Medical and paramedical expenses incurred outside New Zealand**

- (1) This section applies where—
  - (a) a person is incapacitated as the result of personal injury outside New Zealand; or
  - (b) a person is incapacitated as the result of personal injury in New Zealand but the Corporation considers that personal attention is required outside New Zealand in respect of that person.
- (2) In any case where this section applies, the Corporation may, at its discretion and subject to such terms and conditions as it thinks fit, pay all or part of the cost of any personal attention outside New Zealand reasonably required in respect of the person.

#### **59 Other expenses and losses**

- (1) Subject to this section, where a person is incapacitated as the result of personal injury, the Corporation shall pay to the person a benefit by way of a lump-sum payment of such amount as the Corporation determines, in respect of

reasonable expenses and losses necessarily resulting from the injury, including expenses reasonably incurred in making and pursuing a claim.

- (2) Subsection (1) does not apply to expenses and losses in respect of—
- (a) the cost of any personal attention needed by the person; or
  - (b) damage to property, other than any artificial limb or aid or clothing or spectacles being used or worn by the person at the time of the personal injury; or
  - (c) loss of opportunity to make a profit; or
  - (d) loss from inability to perform a business or professional contract; or
  - (e) any matter in respect of which benefit is otherwise payable under this Act.

## **60 Payment of benefit under this Part**

- (1) Subject to subsection (2), a benefit shall not be paid under this Part unless the expenses have been paid or the loss has occurred, whether the amount of the expenses or loss is known or ascertainable or not.
- (2) Where an expense has been incurred but has not been paid by the incapacitated person, or has been paid on the incapacitated person's behalf by some other person or body, the Corporation may, at the request of the person to whom a benefit in respect of that expense would otherwise be paid, pay or reimburse the amount of the expense, on behalf of that person, to the person or body to whom it is due.
- (3) Where a person incapacitated by personal injury has died (whether or not as the result of personal injury), the Corporation shall pay to the person's legal personal representative a benefit by way of a lump-sum payment of such amount as the Corporation determines would have been payable by the Corporation under this Part in respect of the person if he or she had not died.

## PART VIII DEATH BENEFITS

### *Division 1 Preliminary*

#### **61 Interpretation**

- (1) In this Part, “deceased person” means a person who died as the result of personal injury.
- (2) For the purposes of this Part, “spouse” means either of a man or a woman who—
  - (a) were married to each other; or
  - (b) not being married to each other, were cohabiting immediately preceding the date of death of the deceased person, and had entered into a settled relationship in the nature of marriage.
- (3) Payment of benefit under this Part is not affected by reason only that the beneficiary is entitled to another benefit under this Act.

#### **62 Dependency**

For the purposes of this Part, in considering questions relating to the dependency or need of a person who is a surviving spouse or child of the deceased person or was dependent on the deceased person, the Corporation shall, to the extent it considers it relevant and just, take into account all or any of the following matters:

- (a) the extent to which the person has suffered or has gained economically by reason of the death of the deceased person;
- (b) the state of health of the person;
- (c) the age of the person;
- (d) the question whether the person is maintaining a family home for a child;
- (e) the question whether the person is caring for an aged or infirm person;

- (f) the question whether the person has completed his or her education;
- (g) the ability of the person to engage in suitable gainful work;
- (h) the nature and extent of the income of the person;
- (i) the extent to which the person would, in the opinion of the Corporation, for the time being have been dependent on the deceased person if the deceased person were living;
- (j) circumstances that have arisen after the date of the death of the deceased person;
- (k) the total of the rates of benefit payable to one or more surviving spouses or children or persons who were wholly or partly dependent on a deceased person at the time of his or her death;
- (l) such other matters as the Corporation considers to be appropriate.

*Division 2*  
*Surviving spouses*

**63 Benefits payable to surviving spouses**

- (1) Subject to this Act, periodical benefits are payable as provided by this Division to the surviving spouses of deceased persons.
- (2) Subject to section 66(1) (**Period of payment of periodical benefits**), a periodical benefit is not payable under this Division to a surviving spouse after he or she has attained the age of 65 years.

**64 Rate of spouse's benefits**

- (1) Subject to section 66 (**Period of payment of periodical benefits**), there is payable to a surviving spouse a periodical benefit at a rate per week equal to three-fifths of the rate per week of the benefit—

- (a) that was payable to the deceased person immediately before his or her death in respect of total incapacity ascertained by reference to weekly income (long-term); or
  - (b) if the deceased person was not in receipt of benefit immediately before his or her death or was in receipt of benefit at a rate other than the rate in respect of total incapacity ascertained by reference to weekly income (long-term)—that would have been payable to the deceased person immediately before his or her death in respect of total incapacity ascertained by reference to weekly income (long-term).
- (2) If the rate of periodical benefit payable to a surviving spouse under subsection (1) is less than \$135 per week, the rate of benefit payable shall be \$135 per week.
  - (3) The Corporation may determine that the rate of a benefit continued under section 66(2) shall be such proportion of the rate of the benefit previously paid as the Corporation determines, having regard to any income of each spouse immediately before the death of one of them.

#### **65 Rate of benefit where more than one surviving spouse**

- (1) This section has effect where there is more than one surviving spouse to whom benefits are payable under this Division.
- (2) The rate of periodical benefit payable to each such surviving spouse is such rate per week as the Corporation determines, having regard to the extent to which the spouse was dependent on the deceased person immediately before that person's death.
- (4) Except for the purpose of giving effect to subsection (7), the sum of the rates of periodical benefit shall not exceed the rate of periodical benefit ascertained under section 64 (1) (b).
- (5) Upon a periodical benefit payable to a spouse at a rate ascertained under this section ceasing in accordance with section 66 (Period of payment of benefits), the Corporation shall make a fresh determination of the rates of periodical benefit (if any) payable to each other spouse



or, if there is then only 1 such spouse, of the rate of periodical benefit (if any) payable to that spouse.

- (6) For the purposes of subsection (5), the rate of periodical benefit ascertained in accordance with section **64 (l) (b)** shall be taken to have been increased as provided by section **79 (Variation of benefit)**.
- (7) The rate of periodical benefit payable to a spouse under this section shall not be less than \$135 per week.

#### **66 Period of payment of periodical benefits**

- (1) A periodical benefit under this Division (including a periodical benefit payable to a spouse who had attained the age of 64 years when the deceased person died) is payable until the expiration of 1 year after the date of death of that person.
- (2) If, at the time of the death of the deceased person, the surviving spouse was dependent on the deceased person the periodical benefit shall continue to be payable after the expiration of 1 year after the date of death of that person subject to section **63(2)**.
- (3) A periodical benefit continued under subsection (2) ceases to be payable if, at any time, the Corporation determines that there is no longer a need for payment of the benefit.

### *Division 3*

#### *Children and other dependent persons*

#### **67 Childrens benefit**

- (1) A benefit is payable to a child of a deceased person, at the rate of \$40 per week, or, if both parents of the child are dead, at the rate of \$80 per week.
- (2) A benefit is not payable to a child if the child was not dependent on the deceased person immediately before the death of that person.

#### **68 Other dependent persons benefit**

- (1) A benefit is payable to each other person (if any) who was dependent on the deceased person at the time of the deceased person's death.

- (2) A benefit is payable under this section to a person who at the time of the deceased person's death was a child of the deceased person but has since attained the age of 20 years or sooner completed his or her full-time education if, in the opinion of the Corporation, that person would for the time being have been dependent on the deceased person if the deceased person were living.
- (3) A benefit under this section may be a periodical benefit payable at such rate per week as the Corporation from time to time determines.
- (4) A periodical benefit under this section is payable—
  - (a) until the Corporation determines that there is no longer a need for payment of the benefit; or
  - (b) in the absence of such a determination—
    - (i) until the expiration of 1 year after the death of the deceased person; or
    - (ii) if the beneficiary has not attained the age of 65 years upon the expiration of 1 year after the death of the deceased person—until the beneficiary attains that age.

*Division 4*  
*Funeral Benefit*

**69 Funeral benefit**

- (1) There is payable, in respect of the cost of the funeral of a deceased person—
  - (a) to the person who paid the cost of the funeral; or
  - (b) if a person is liable to pay the cost of the funeral but has not paid the person who carried out the funeral—to the person who carried out the funeral,a benefit by way of a lump-sum payment of such amount, as the Corporation determines to be reasonable having regard to the charges customarily made for funerals in the place where the funeral was carried out and to any amount paid or payable from any other source in respect of the cost of the funeral.

- (2) An amount paid under subsection (1) to the person who carried out the funeral is, to the extent of the payment, a discharge of the liability of the person liable to pay the cost of the funeral.

Cf. 1982, No. 181, s. 181

## PART IX CLAIMS FOR BENEFIT

### **70 Claims for benefit to be lodged**

- (1) A benefit is not payable to a person unless a claim in writing is lodged, as prescribed, by or on behalf of that person.
- (2) A claim for payment of a benefit by the employer of the incapacitated person under either section 21 (**Benefit payable in respect of employment injuries in the first two weeks**) or section 56 (**Medical and paramedical expenses of incapacitated employees**) shall be lodged with the employer.
- (3) A claim for payment of a benefit by the Corporation shall be lodged with the Corporation.

### **71 Claim made by lodgement of medical certificate**

A claim for benefit in respect of incapacity shall be deemed to have been lodged if a certificate by a medical practitioner is lodged, as prescribed, specifying the name of the incapacitated person and particulars of the personal injury and incapacity.

### **72 Investigation of claims**

A claim shall be investigated as the Corporation thinks appropriate.

### **73 Decisions on claims**

- (1) The Corporation shall make a decision on a claim, application or other matter under this Act in accordance with the provisions of this Act and with the information in its possession.

- (2) Unless the decision that the Corporation proposes to make is wholly in favour of the applicant, the Corporation shall inform the applicant in writing of the proposed decision, and, if the applicant so requires, before making its decision, give to the applicant, or to a person acting on the applicant's behalf, an opportunity of being heard and of furnishing information to the Corporation.
- (3) The Corporation shall further consider the claim and shall make such decision on the claim as it thinks proper.
- (4) The Corporation shall forthwith inform the applicant in writing—
  - (a) of the decision; and
  - (b) if the decision is not wholly in favour of the applicant—
    - (i) the reasons for the decision; and
    - (ii) of the rights of the applicant with respect to a review of the decision by the Corporation or by the Appeal Authority.

#### **74 Claims to be dealt with expeditiously, etc.**

In dealing with a claim, application or other matter under this Act, the Corporation shall—

- (a) act expeditiously; and
- (b) act without formality or technicality; and
- (c) give proper consideration to the real merits and justness of the claim, application or matter.

#### **75 Request that claim be dealt with forthwith**

- (1) Where the Corporation has not, within 21 days after a claim is lodged, informed the applicant of its decision on the claim, the applicant may lodge, as prescribed, a request that the claim be dealt with forthwith.
- (2) Where such a request is so lodged, the Corporation shall, within 7 days, make a decision on the claim.
- (3) If the Corporation does not make a decision on the claim as required by subsection (2), it shall be deemed to have made a decision rejecting the claim.

- (4) Subsections (1), (2) and (3) apply to and in relation to an application in connection with a benefit as though the application were a claim.
- (5) This section does not apply where the applicant or beneficiary is in default in complying with a requirement to furnish information or a medical certificate or to submit himself or herself for examination by a medical practitioner.

## PART X REVIEWS AND APPEALS

### **76 Application for review**

- (1) A person affected by a decision of the Corporation made in the exercise of any power conferred by this Act may apply to the Corporation for a review of the decision.
- (2) On receiving any such application the Corporation shall review the decision.
- (3) Sections **72 (Investigation of claims)**, **73 (Decisions on claims)**, **74 (Claims to be dealt with expeditiously, etc.)** and **75 (Request that claim be dealt with forthwith)** apply to and in relation to the review of a decision as though the application for review were a claim.

### **77 Right of appeal to the Appeal Authority**

- (1) A person affected by—
  - (a) any decision of the Corporation on an application for review under section **76 (Application for review)**;  
or
  - (b) any decision which by reason of section **75 (3) (Request that claim be dealt with forthwith)** the Corporation is deemed to have made,

may appeal to the Appeal Authority against that decision.

- (2) In hearing and determining an appeal under this section the Appeal Authority shall follow the procedures set out in section 108 of the Accident Compensation Act 1982 (Procedure on appeal) and shall have and may exercise

the powers referred to in sections 109 (Hearing and determination of appeal) and 110 (Costs) of that Act.

- (3) Sections 111 (Appeal to High Court) and 112 (Appeal against decision of Administrative Division on question of law) of the Accident Compensation Act 1982 shall apply in relation to a decision of the Appeal Authority on any appeal under this section.

## PART XI VARIATION OF BENEFITS

### 78 Interpretation

In this Part, “consumer price index” means the all groups index number of the New Zealand Consumer Price Index published by the Government Statistician.

### 79 Variation of periodical rates of benefit and other amounts

- (1) This section applies to—
- (a) each periodical rate of benefit payable under this Act and not expressed as an amount of money; and
  - (b) each amount of money referred to in sections 37 (2) (Minimum weekly income of full-time employee), 45 (3) (Rate of benefit—total incapacity), 50 (Rates of benefit—young persons), 64 (2) (Rate of spouse’s benefit), 65 (7) (Rate of benefit where more than one surviving spouse), 67 (Childrens benefit), and 106 (3) (Earnings as a self-employed person).
- (2) If, in respect of a March quarter,  $a$  is greater than  $b$ , each rate and amount to which this section applies, as payable or fixed immediately before the end of that quarter, shall, as from 1 July next succeeding, be increased by the percentage ascertained in accordance with the formula  $100 \frac{(a-b)}{b}$ .
- (3) In the application of subsection (2) in relation to a March quarter—
- $a$  is the average weekly earnings in respect of that quarter; and

*b* is the average weekly earnings in respect of—

- (a) the last preceding March quarter in relation to which each rate and amount to which this section applies was increased in accordance with the formula set out in that subsection; or
- (b) if the rates and amounts to which this section applies have not been so increased—the quarter ending on 31 March 1989.

## **80 Variation of levies on motor vehicles**

- (1) This section applies with respect to each levy rate specified in the Second Schedule.
- (2) If, in respect of a March quarter, *c* is greater than *d*, a levy rate to which this section applies, as fixed immediately before the end of that quarter, shall, as from the first day of the second month following the end of that quarter, be increased by the percentage ascertained in accordance with the formula  $100 \frac{(c-d)}{d}$ .

- (3) In the application of subsection (2) in relation to a March quarter—

*c* is the consumer price index in respect of that quarter;  
and

*d* is the consumer price index in respect of—

- (a) the last preceding March quarter in relation to which the levy rates to which this section applies were increased under subsection (2); or
- (b) if those levy rates have not been increased under subsection (2)—the March quarter last preceding 1 April 1989.

**PART XII**  
**PRIMACY OF BENEFITS**

**81 Interpretation**

In this Part “damages” includes compensation, by whatever name called, but does not include punitive or exemplary damages.

**82 Benefits to be in substitution for other rights**

- (1) Where a benefit is payable under this Act in respect of the incapacity or death of any person as the result of personal injury, no proceedings for damages arising directly or indirectly out of the injury or death shall be brought in any Court in New Zealand independently of this Act, whether by that person or any other person, and whether under any rule of law or any enactment.
- (2) Nothing in this section shall apply to any proceedings relating to or arising from—
  - (a) any injury to property; or
  - (b) any contract of insurance; or
  - (c) any payment in respect of which contributions have been made; or
  - (d) salary or wages in respect of a period of leave of absence.
- (3) Nothing in this section shall prevent the bringing of any proceedings for damages in any Court in New Zealand in respect of the death or injury of any person, in New Zealand or elsewhere, if the cause of action is any liability for damages—
  - (a) under the law of New Zealand, pursuant to any treaty obligation of the Government of New Zealand; or
  - (b) under the law of any other country.
- (4) The reference in subsection (1) to the case where a benefit is payable in respect of the incapacity or death of any person includes a reference to the case where a benefit is



not being paid by reason only that a claim for it has not been lodged.

### **83 Recovery of certain amounts by Corporation**

- (1) Where a benefit is payable to a person in respect of incapacity or death as the result of personal injury and that person also,—

(a) has the right to bring proceedings for damages; or

(b) has received a sum of money by way of damages,

in New Zealand or elsewhere, in respect of that injury or death, the Corporation may, in its discretion, do all or any of the things specified in subsection (2).

- (2) In the circumstances specified in subsection (1) the Corporation may—

(a) deduct from the benefit the amount received by way of damages;

(b) recover from the person as a debt due to the Corporation any amount that is in excess of the benefit properly payable to the person, having regard to the provisions of this section;

(c) require as a condition precedent to the payment of a benefit that any person having a right to bring proceedings for damages in respect of the injury or death—

(i) should take all reasonable steps to pursue the right; or

(ii) should assign the right and do all other things necessary to enable the right to be pursued by the Corporation;

(d) meet the whole or such part as it thinks fit of the costs and expenses incurred in pursuing the right.

**PART XIII**  
**MISCELLANEOUS PROVISIONS**  
**IN RELATION TO BENEFITS**

**84 Payment of benefit**

Subject to section 85, periodical benefits are payable at such intervals (not exceeding 14 days) and on such days as the Corporation determines.

**85 Short periods**

Where a benefit is payable in respect of a period less than 7 days—

- (a) the benefit is payable in respect of each day in that period; and
- (b) the amount of the benefit payable in respect of each such day is one-fifth of the weekly rate of benefit but the amount paid in respect of that period shall not exceed the amount of the weekly rate of benefit.

**86 Statements to be furnished when required**

An applicant or a beneficiary shall, whenever so required by the Corporation, furnish to the Corporation, at such place as the Corporation specifies, a statement in writing, and, if the Corporation so requires, in accordance with a form furnished by the Corporation, with respect to such matters relating to the application of this Act to the applicant or the beneficiary as the Corporation specifies.

**87 Duty to submit medical certificates, etc.**

A person who applies for or is in receipt of a benefit in respect of incapacity shall not, when so required by the Corporation, refuse or fail—

- (a) to furnish to the Corporation the certificate of a medical practitioner as to such matters, and containing such information, as the Corporation requires; or

- (b) to submit himself or herself for examination by a medical practitioner, being 1 of 3 medical practitioners specified by the Corporation for the purpose; or
- (c) to take such action by way of rehabilitation as is reasonable and appropriate in order to terminate, or to reduce the extent of, the incapacity.

## **88 Suspension, etc. of benefits**

- (1) The Corporation may, in accordance with the provisions of this Act and with the information in its possession, decide that—
  - (a) payment of a benefit be suspended, postponed or cancelled; or
  - (b) the rate of a benefit be reduced or increased; or
  - (c) the amount of a benefit by way of a lump-sum payment be increased.
- (2) The Corporation may, by reason of the refusal or failure, without reasonable excuse, of the beneficiary to comply with a provision of this Act, decide that—
  - (a) payment of a benefit be suspended, postponed or cancelled; or
  - (b) the rate of a benefit be reduced.

## **89 Decisions on suspension, etc. of benefits**

Section 73 (**Decisions on claims**) applies to any decision of the Corporation under section 88 as though the decision were a decision on a claim.

## **90 Date of effect of certain decisions**

Where a decision under section 88 has been reviewed under section 76 (**Application for review**), and the Corporation has decided that a periodical benefit be paid, that the rate of a benefit be increased or that the suspension of a benefit be terminated, the Corporation may determine that the decision shall be deemed to have had effect from and including such date as is appropriate having regard to the reasons for the decision.

## **91 Recovery of over-payments**

Where, in consequence of a failure or omission by an applicant or a beneficiary or an employer to comply with a provision of this Act, an amount has been paid by way of benefit that would not otherwise have been paid, the amount so paid is recoverable in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Corporation.

## **92 Payment of benefits to other persons**

- (1) Where the Corporation considers that payment of the whole or a portion of a benefit should be paid to a person on behalf of the beneficiary, the Corporation may determine that payment shall be made accordingly.
- (2) Where the Corporation determines that the whole or a portion of a benefit payable to a young person or a child should be paid to another person, that other person shall apply the moneys so paid for the maintenance, training or advancement of the beneficiary.

## **93 Disqualification in respect of wilfully self-inflicted personal injury and suicide**

- (1) Subject to subsection (3), a benefit is not payable under this Act in respect of—
  - (a) incapacity resulting from personal injury that a person—
    - (i) wilfully inflicts; or
    - (ii) with the intention that injury should occur, causes to be inflicted—  
on himself or herself; or
  - (b) death resulting from any personal injury referred to in paragraph (a); or
  - (c) death due to suicide, not being suicide resulting from a state of mind that was itself personal injury.
- (2) In the absence of proof to the contrary, it shall be presumed that the death of any person was not due to suicide.

- (3) Where, by reason of the incapacity or death of a person in any of the circumstances referred to in subsection (1), a spouse or surviving spouse or a child or other dependant of the incapacitated or deceased person is in special need of assistance, the Corporation may in its discretion pay to that spouse or surviving spouse or child or other dependant the whole or such part as it thinks fit of any benefit that would otherwise have been payable in respect of the person's incapacity or death.

#### **94 Disqualification through conviction for murder**

A benefit is not payable under this Act to a person by reason of the death of another person if the first-mentioned person has been convicted of the murder of that other person.

#### **95 Payment of benefits where certain beneficiaries imprisoned**

- (1) Where a person suffered personal injury in the course of committing, or of attempting to commit, an offence and is imprisoned following upon his or her conviction for that offence, the Corporation may determine that the whole or a portion of a periodical benefit payable to that person in respect of incapacity as the result of that personal injury shall be paid to a person who is, or was at the time of the injury, dependent on the first-mentioned person.
- (2) In the absence of such a determination, or to the extent that such a determination does not extend to the whole of the benefit, payment of the benefit shall be suspended while the person is imprisoned.

#### **96 References to benefit being payable**

Where a reference is made in a provision of this Act to a benefit being payable to a person, the operation of that provision is not, unless the contrary intention appears, affected by suspension or postponement of payment of the benefit.

#### **97 Variation of suspended benefits**

A periodical rate of benefit shall, notwithstanding suspension or postponement of payment of the benefit, be taken to be increased as provided by section 79 (**Variation of periodical rate of benefit and other amounts**).

## **98 Payment of benefit on death of beneficiary**

- (1) An amount of benefit that has accrued and is unpaid at the date of death of a beneficiary, or would have been payable to a person if the person had not died and had made an application for benefit, may, on application made within 6 months after the date of death, or within such further period as the Corporation, whether before or after the expiration of the first-mentioned period, decides to allow, be paid to the person whom the Corporation determines to be best entitled to receive it.
- (2) The Corporation is not liable to make any further or other payment in respect of benefit so paid.

## **99 Benefits to be absolutely inalienable**

- (1) Subject to this Act, a benefit is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.
- (2) Nothing in subsection (1) affects sections 4 and 5 of the Maori Housing Act 1935, sections 27Y and 71 of the Social Security Act 1964, section 400 of the Income Tax Act 1976, and sections 105, 110, 118 and 121 of the Family Proceedings Act 1980.

## **PART XIV FUNDING**

### *Division 1 General*

## **100 Sources and application of funds**

- (1) In any financial year the income of the Corporation is the total of the amounts derived from—
  - (a) levies paid by employers and self-employed persons and appropriated for the purposes of this Act by section 107;
  - (b) levies paid in respect of motor vehicles and appropriated for the purposes of this Act by section 111;

- (c) excise duty on motor spirits credited to the Consolidated Account under section 188(2)(b) and (c) of the Transport Act 1962 and appropriated for the purposes of this Act by section 113;
  - (d) such income as may be derived from the investment of the reserve fund which the Corporation is required to set aside under section 102;
  - (e) such further money as may be appropriated by Parliament for the purposes of this Act.
- (2) The Corporation shall apply its income so derived in—
- (a) discharging its functions under this Act with respect to safety;
  - (b) discharging its functions under this Act with respect to rehabilitation;
  - (c) paying the benefits payable under this Act;
  - (d) meeting such other costs as it may incur in carrying out its functions and powers under this Act;
  - (e) meeting any costs incurred by the Corporation in carrying out any function or power which it continues to have under the Accident Compensation Act 1972 or the Accident Compensation Act 1982.

## **101 Estimates of income and expenditure**

- (1) Not later than 31 October in each year the Corporation shall provide the Minister with estimates of its income and expenditure for the next financial year, setting out the amounts expected to be received from the sources specified in section 100(1), paragraphs (a) to (d), and the amounts expected to be spent in discharging the functions and powers specified in section 100(2).
- (2) The estimates of income and expenditure shall state the services and purposes for which the expenditure is required, and shall include a statement of—
  - (a) the proportion of total income from levies expected to be received from such classes of levy payers; and

- (b) the proportion of total expenditure expected to be incurred in relation to such classes of personal injury and of benefits

as the Corporation thinks it proper to record for the purpose of making a detailed statistical analysis of the incidence and cost of personal injury.

- (3) Having regard to the estimates of its income from other sources and of its expenditure, and to the requirements of section **102 (Reserves)**, the Corporation shall estimate the amount required to be appropriated by Parliament in the next financial year for the purposes of this Act.

## **102 Reserves**

- (1) In estimating its income needs for any financial year, the Corporation shall set aside a sum amounting to not less than half its estimated expenditure for that financial year as a reserve fund.
- (2) The Corporation may draw on the reserve fund as a source of working capital and to meet any unforeseen contingency.

### *Division 2*

#### *Levies by employers and self-employed persons*

## **103 Interpretation**

For the purposes of this Division—

“Commissioner” means Commissioner of Inland Revenue appointed under the Inland Revenue Department Act 1974;

“employer” means an employer as defined in section **115 (1)** of this Act who is also an employer as defined in section 1 of the Income Tax Act 1976;

“employee” means employee as defined in section 1 of the Income Tax Act 1976;

“full-time self-employed person” means a person who has worked as a self-employed person an average of not less than 30 hours a week during any financial year;



“part-time self-employed person” means a self-employed person who is not a full-time self-employed person;

“source deduction payment” has the meaning assigned to that expression by section 6 of the Income Tax Act 1976;

“tax deduction” means a tax deduction as defined in section 1 of the Income Tax Act 1976.

#### **104 Employers levy**

- (1) A levy is payable by every employer who, under the Income Tax Act 1976, makes tax deductions from source deduction payments made to employees.
- (2) The levy is at the rate of two and one half percent of the amount of the source deduction payments made by the employer to employees in each month.
- (3) Every employer by whom a levy is payable under this section shall pay the amount of the levy to the Commissioner not later than the 20th day of the month next after the month in which the source deduction payments were made.

#### **105 Self-employed persons levy**

- (1) A levy is payable by every self-employed person who, under the Income Tax Act 1976, is required to furnish a return of the income derived by that person in his or her financial year.
- (2) The levy is at the rate of two and one half percent of the amount of the person’s earnings as a self-employed person as ascertained under section 106.
- (3) Every self-employed person by whom a levy is payable under this section shall pay the amount of the levy to the Commissioner not later than the 7th day of February next following the date by which he or she is required to furnish the return of income referred to in subsection (1).

#### **106 Earnings as a self-employed person**

- (1) Subject to subsection (4), “earnings as a self-employed person” for the purposes of this Act means—
  - (a) so much of the assessable income (as determined under and for the purposes of the Income Tax Act

1976) of a self-employed person as is beneficially derived by that person from the carrying on of a business in any financial year;

and includes—

- (b) in the case of a person to whom paragraph (b) of the definition of the expression “self-employed person” in section **115(1)** applies, any income referred to in that paragraph, to the extent of the person’s vested beneficial share or interest in that income in any financial year.
- (2) A self-employed person by whom a levy is payable under section **105 (Self-employed persons levy)** may, at the time of furnishing a return of income for any financial year, elect that, instead of being ascertained in accordance with subsection (1), the amount of his or her earnings as a self-employed person for that financial year shall be the amount nominated by the person within the limits specified in subsection (3).
- (3) For the purposes of this Act—
- (a) a full-time self-employed person may nominate an amount—
    - (i) not less than the amount of the average weekly earnings in respect of the quarter last ended before the last day of that person’s financial year; and
    - (ii) not more than \$100,000;
  - (b) a part-time self-employed person may nominate an amount—
    - (i) not less than \$2,600; and
    - (ii) not more than \$16,500.
- (4) Where any self-employed person has nominated an amount in accordance with subsections (2) and (3) in relation to a financial year, that amount shall be the amount of the person’s earnings as a self-employed person in relation to that financial year.

Cf. SR 1985/317, cl. 4; SR 1987/182, cl. 4

## **107 Collection and appropriation of employers and self-employed persons levies**

- (1) For the purposes of the Inland Revenue Department Act 1974, this Act shall be deemed to be one of the Inland Revenue Acts and the levy payable under this Division shall be deemed to be a tax.
- (2) All levies paid under this Division shall be credited to the Consolidated Account and shall be paid to the Corporation without further appropriation than this section.

### *Division 3* *Levies on motor vehicles*

## **108 Interpretation**

For the purposes of this Division—

“goods-service vehicle” has the same meaning as in section 2 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986;

“motorcar” has the same meaning as in section 2 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986;

“motor vehicle” has the same meaning as in section 2 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986;

“omnibus” has the same meaning as in the Passenger Service Vehicle Construction Regulations 1978;

“owner” in relation to a motor vehicle has the same meaning as in section 2 of the Transport Act 1962;

“service coach” has the same meaning as in the Passenger Service Vehicle Construction Regulations 1978;

“veteran or vintage motor vehicle” means any motor vehicle that was either—

- (a) manufactured before 1 January 1919; or
- (b) manufactured not less than 40 years before—

- (i) the commencement of the licensing period commencing on the 1st day of October 1987; or
- (ii) the commencement of any subsequent licensing period.

#### **109 Motor vehicle owners levy**

- (1) A levy at the annual rate specified in the Second Schedule is payable by the owner of every motor vehicle that is required to be registered and licensed under Part I of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 in respect of each licensing period.
- (2) The levy shall be paid to the Secretary of Transport at the time application is made under section 10 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 for a licence for the motor vehicle in respect of each licensing period.

#### **110 Trade licence holders levy**

- (1) A levy at the annual rate specified in the Second Schedule is payable in respect of every motor vehicle that may be used in accordance with section 35 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 by the person to whom a trade licence is issued under section 34 of that Act in respect of a specified licensing period.
- (2) The levy shall be paid to the Secretary of Transport at the time application is made under section 31 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986 for a trade licence in respect of any set of trade plates for use in a specified licensing period.

#### **111 Collection and appropriation of levies on motor vehicles**

All levies paid under this Division shall be credited to the Consolidated Account and shall be paid to the Corporation without further appropriation than this section.

*Division 4*  
*Excise duty on motor spirits*

**112 Interpretation**

“Excise duty” means excise duty as defined in section 187 of the Transport Act 1962.

**113 Appropriation of proportion of excise duty on motor spirits**

From the proportion of excise duty in respect of motor spirits required by section 188(2)(b) and (c) of the Transport Act 1962 to be credited to the Consolidated Account—

- (a) . . . . cents in respect of each litre of motor spirits with a Research Octane Number (RON) less than 92 (regular grade); and
- (b) . . . . cents in respect of each litre of all other motor spirits—

shall be paid to the Corporation without further appropriation than this section.

**PART XV**  
**TRANSITIONAL**

**114 Claims under Accident Compensation Act 1972, Accident Compensation Act 1982 or War Pensions Act 1954**

Where a person has acquired a right to any compensation in respect of personal injury by accident under the Accident Compensation Act 1972 or the Accident Compensation Act 1982 or to a pension, benefit or allowance under the War Pensions Act 1954, but has not received payment of that compensation, pension, benefit or allowance, the person may elect either—

- (a) to receive or continue to receive compensation or a pension, benefit or allowance under the applicable Act; or
- (b) to receive instead such benefits under this Act as would have applied in respect of that person if the

person had suffered personal injury to which this Act applies.

## PART XVI INTERPRETATION

### 115 Interpretation

(1) In this Act,

“Appeal Authority” means the Appeal Authority continued under section 103 of the Accident Compensation Act 1982;

“applicant” means a person who has lodged a claim or on whose behalf a claim has been lodged;

“average weekly earnings” means the average ordinary time weekly wage (all sectors, all persons), as disclosed by the quarterly employment survey of salaries and wages conducted by the Department of Labour;

“beneficiary” means a person in receipt of a benefit;

“benefit” means benefit under this Act;

“business” includes trade, employment, vocation or calling, but does not include occupation as an employee;

“child” means a child who has not attained the age of 20 years but does not include a child who has completed his or her full-time education;

“claim” means claim for benefit;

“Corporation” means the Accident Compensation Corporation continued under section 4 of the Accident Compensation Act 1982;

“decision” includes determination;

“dependent” means dependent for economic support, whether wholly or partly;

“earnings”,

- (a) in relation to an employee includes any of the following derived in the capacity of employee:—

- (i) wages, salaries, commissions and emoluments; and
- (ii) bonuses, gratuities and honoraria; and
- (iii) fees, including directors' fees; and
- (iv) allowances, not being allowances in respect of expenses; and
- (v) income from property, where that income is an emolument of employment or office,

but does not include—

- (vi) a lump-sum paid as an allowance, gratuity or compensation in consequence of retirement or retrenchment from, or the termination of, employment or office; or
  - (vii) a pension or an amount in respect of superannuation; or
  - (viii) except as provided by section **39 (Value of living accommodation, etc.)**, the value of anything provided otherwise than in the form of money; and
- (b) in relation to a self-employed person, means “earnings as a self-employed person” as defined in section **106**;

“education” includes training for an occupation;

“employee” means any person who has engaged to work or works in New Zealand under a contract of service or apprenticeship with an employer, and any person who has engaged to work or works outside New Zealand in any of the circumstances referred to in section **9(2)(a)** or **9(2)(b)(i)**; and also has the extended meaning assigned to it under section **116**;

“employer” means a person, within or outside New Zealand, who—

- (a) pays or is liable to pay to any employee; or

- (b) would be liable to pay to any employee, if that employee had commenced to work under any contract referred to in the definition in this subsection of the expression “employee”,

any earnings as an employee, whether on his or her own account, or as an agent, or as a trustee, or as an assignee within the meaning of the Insolvency Act 1967 of the estate of a bankrupt, or as the liquidator or receiver of a company that is in liquidation or receivership; and includes the administrator of a deceased employer; and also includes the Crown; and also has the extended meaning assigned to it under section 116;

“financial year”—

- (a) in relation to the Corporation, means the period of 12 months, or such other period as the Corporation may in special circumstances determine, fixed by the Corporation, with the approval of the Minister of Finance, as its financial year; and
- (b) in relation to an employee means the year ending on 31 March; and
- (c) in relation to a self-employed person, whether or not the person is also an employee, means the year or other period ending with the date of each annual balance of his or her accounts for the purpose of furnishing a return of income under the Income Tax Act 1976;

“medical practitioner” includes a dentist, in so far as any incapacitated person requires personal attention by a dentist;

“member of the Armed Forces of New Zealand” has the meaning assigned to that expression by section 2(1) of the Accident Compensation Act 1982;

“Minister” means the Minister for the time being charged with the administration of this Act;

“need” means economic need;

“New Zealand” includes the territorial sea of New Zealand and the airspace above the territorial sea, and the continental



shelf of New Zealand and the waters and airspace above the continental shelf;

“officer” means a person appointed as an officer or employee of the Corporation under section 13 of the Accident Compensation Act 1982;

“periodical benefit” means a benefit other than a benefit by way of a lump-sum payment;

“periodical rate of benefit” means the rate of a periodical benefit;

“Permanent Impairment Guide” means the work entitled “Guides to the Evaluation of Permanent Impairment”, 2nd edition (1984) prepared by the Council on Scientific Affairs of the American Medical Association;

“person”, in relation to an employer, includes a company or other body corporate, whether incorporated in New Zealand or elsewhere, and a public body; and also includes an unincorporated body of persons, a partnership, an association of persons carrying on a joint undertaking, and the Crown and a Government department;

“self-employed person”

- (a) means a person who, whether alone or as a partner with another person, practices a profession or carries on or engages in a business in New Zealand (whether or not that business is also carried on outside New Zealand); and
- (b) includes a person who has a vested beneficial share or interest in income arising from a business and applies his or her personal exertions, otherwise than as an employee, in the carrying on of that business in New Zealand;

“weekly income (long-term)”, in relation to a person, means the weekly income of the person as provided by or ascertained under section 35, 36, 37, 38, 41, 42 or 43;

“weekly income (short-term)”, in relation to a person, means the weekly income of the person as provided by or ascertained under section 34, 41, 42 or 43;

“young person” means a person who has not attained—

- (a) the age of 16 years; or
  - (b) if the person, when his or her incapacity commenced—
    - (i) was in employment in connection with training for an occupation; or
    - (ii) was in full-time employment; or
    - (iii) was in employment at a remuneration of not less than \$50 per week; or
    - (iv) was receiving earnings as a self-employed person at a rate of not less than \$50 per week,
- the age of 15 years.
- (2) For the purposes of this Act, a payment in respect of a period of leave of absence shall not be regarded as not being earnings by reason only that it is such a payment.
  - (3) For the purposes of this Act, a reference to the course of employment of a person includes a reference to travelling to or from his or her place of employment.

#### **116 Certain persons deemed to be in employment**

- (1) For the purposes of this Act, every person whose salary is paid under the Civil List Act 1979 and every Judge and every District Court Judge and the Solicitor-General, the Controller and Auditor-General, any Ombudsman and any Parliamentary Commissioner is, as such, an employee of the Crown.
- (2) For the purposes of this Act, every person who is a presiding officer or a member of a local authority or statutory or other board, commission, council or body to whom remuneration may be paid under any Act is, to the extent of services as such presiding officer or member rendered in New Zealand, or outside New Zealand in any of the circumstances referred to in section 9(2), deemed to be an employee of that authority, board, commission, council or body.
- (3) For the purposes of this Act, a director of a company is deemed to be an employee of that company.

- (4) For the purposes of this Act, the expression “employer” is deemed to include any authority, board, commission, council, company or other body, to the extent that, under subsections (2) or (3), any person is deemed to be an employee of that authority, board, commission, council, company or other body.

#### **117 Exercise of powers of Corporation by officers**

- (1) Subject to any directions of the Corporation an officer may exercise any of the powers of the Corporation under this Act.
- (2) Where the exercise of a power by the Corporation is dependent upon the opinion, belief or state of mind of the Corporation in respect of a matter and an officer is authorized under this section to exercise that power, the officer may exercise that power upon his or her opinion, belief or state of mind in respect of the matter.
- (3) Subsection (1) does not prevent the exercise of a power by the Corporation.
- (4) Subject to any directions of the Corporation, an officer has the same power in respect of a decision of another officer as in respect of a decision made by himself or herself.
- (5) The exercise or purported exercise of a power by an officer under this section is not invalid and shall not be called in question by reason only that it was not in accordance with a direction of the Corporation.

## FIRST SCHEDULE

### Section 12

## CAUSES OF PERSONAL INJURY

### CONVENTIONS USED IN FIRST SCHEDULE

The First Schedule makes use of certain abbreviations, punctuation, symbols, and other conventions which need to be clearly understood.

#### Abbreviations

- NEC      *Not elsewhere classifiable.* The category number for the term including NEC is to be used only when the information necessary to code the term to a more specific category is lacking.
- NOS      *Not otherwise specified.* This abbreviation is the equivalent of “unspecified.”

#### Punctuation

- [   ]      Brackets are used to enclose synonyms, alternative wordings, or explanatory phrases.
- (   )      Parentheses are used to enclose supplementary words which may be present or absent in the statement of an injury without affecting the code number to which it is assigned.
- :
- Colons are used in the First Schedule after an incomplete term which needs one or more of the modifiers which follow in order to make it assignable to a given category.
- }
- Braces are used to enclose a series of terms, each of which is modified by the statement appearing at the right of the brace.

## Other Conventions

### Type Face

**Bold:** Bold type face is used for all codes and titles in the First Schedule.

*Italics:* Italicized type face is used for all exclusion notes and to identify those rubrics which are not to be used for primary tabulations of injury.

### Instructional Notations

**Includes:** This note appears immediately under a three-digit code title to further define, or give example of, the contents of the category.

*Excludes:* Terms following the word *excludes* are included elsewhere as indicated in each case.

## RAILWAY ACCIDENTS (E800-E807)

*Excludes: accidents involving railway train and:  
aircraft (E840-E845)  
motor vehicle (E810-E825)  
watercraft (E830-E838)*

**E800 Railway accident involving collision with rolling stock**

**E801 Railway accident involving collision with other object**

*Excludes: collision with:  
aircraft (E840-E842)  
motor vehicle (E810, E820-E822)*

**E802 Railway accident involving derailment without antecedent collision**

**E803 Railway accident involving explosion, fire, or burning**

**E804 Fall in, on, or from railway train**

**E805 Hit by rolling stock**

**E806 Other specified railway accident**

*Excludes: railway accident due to cataclysm (E908-E909)*

**E807 Railway accident of unspecified nature**

**MOTOR VEHICLE TRAFFIC ACCIDENTS (E810-E819)**

*Excludes: accidents involving motor vehicle and aircraft  
(E840-E845)*

**E810 Motor vehicle traffic accident involving collision with train**

**E811 Motor vehicle traffic accident involving re-entrant collision with  
another motor vehicle**

**E812 Other motor vehicle traffic accident involving collision with  
motor vehicle**

**E813 Motor vehicle traffic accident involving collision with other  
vehicle**

**E814 Motor vehicle traffic accident involving collision with pedestrian**

**E815 Other motor vehicle traffic accident involving collision on the  
highway**

*Excludes: moving landslide (E909)*

**E816 Motor vehicle traffic accident due to loss of control, without  
collision on the highway**

**E817 Noncollision motor vehicle traffic accident while boarding or  
alighting**

**E818 Other noncollision motor vehicle traffic accident**

*Excludes: person overcome by carbon monoxide generated  
by stationary motor vehicle off the roadway with  
motor running (E868)*

**E819 Motor vehicle traffic accident of unspecified nature**

## **MOTOR VEHICLE NONTRAFFIC ACCIDENTS (E820-E825)**

**Includes:** accidents involving motor vehicles being used in recreational or sporting activities off the highway

collision and noncollision motor vehicle accidents occurring entirely off the highway

*Excludes: accidents, not on the public highway, involving agricultural and construction machinery but not involving another motor vehicle (E919)*

### **E820 Nontraffic accident involving motor-driven snow vehicle**

*Excludes: accident on the public highway involving motor-driven snow vehicle (E810-E819)*

### **E821 Nontraffic accident involving other off-road motor vehicle**

*Excludes: accident on public highway involving off-road motor vehicle (E810-E819)*  
*hovercraft accident on water (E830-E838)*

### **E822 Other motor vehicle nontraffic accident involving collision with moving object**

### **E823 Other motor vehicle nontraffic accident involving collision with stationary object**

### **E824 Other motor vehicle nontraffic accident while boarding and alighting**

### **E825 Other motor vehicle nontraffic accident of other and unspecified nature**

*Excludes: fall from or in stationary motor vehicle (E884, E885)*  
*overcome by carbon monoxide or exhaust gas generated by stationary motor vehicle off the roadway with motor running (E868)*  
*struck by falling object from or in stationary motor vehicle (E916)*

## **OTHER ROAD VEHICLE ACCIDENTS (E826-E829)**

**Note:** Other road vehicle accidents are transport accidents involving road vehicles other than motor vehicles

**Includes:** accidents involving other road vehicles being used in recreational or sporting activities

*Excludes: collision of other road vehicle [any] with:  
aircraft (E840-E845)  
motor vehicle (E813, E820-E822)  
railway train (E801)*

**E826 Pedal cycle accident**

**E827 Animal-drawn vehicle accident**

**E828 Accident involving animal being ridden**

**E829 Other road vehicle accidents**

## **WATER TRANSPORT ACCIDENTS (E830-E838)**

**Includes:** watercraft accidents in the course of recreational activities

*Excludes: accidents involving both aircraft, including objects set in motion by aircraft, and watercraft (E840-E845)*

**E830 Accident to watercraft causing submersion**

**E831 Accident to watercraft causing other injury**

**E832 Other accidental submersion or drowning in water transport accident**

*Excludes: submersion or drowning of swimmer or diver who voluntarily jumps from boat not involved in an accident (E910)*

**E833 Fall on stairs or ladders in water transport**

**E834 Other fall from one level to another in water transport**

**E835 Other and unspecified fall in water transport**



**E836 Machinery accident in water transport**

**E837 Explosion, fire, or burning in watercraft**

**E838 Other and unspecified water transport accident**

**AIR AND SPACE TRANSPORT ACCIDENTS (E840-E845)**

**E840 Accident to powered aircraft at takeoff or landing**

**E841 Accident to powered aircraft, other and unspecified**

**E842 Accident to unpowered aircraft**

**E843 Fall in, on, or from aircraft**

**E844 Other specified air transport accidents**

*Excludes: air sickness (E903)*

*effects of:*

*high altitude (E902.0-E902.1)*

*pressure change (E902.0-E902.1)*

**E845 Accident involving spacecraft**

*Excludes: effects of weightlessness in spacecraft (E928.0)*

**VEHICLE ACCIDENTS NOT ELSEWHERE CLASSIFIABLE  
(E846-E848)**

**E846 Accidents involving powered vehicles used solely within the  
buildings and premises of industrial or commercial  
establishment**

*Excludes: accidental poisoning by exhaust gas from vehicle  
not elsewhere classifiable (E868)*

*injury by crane, lift (fork), or elevator (E919)*

**E847 Accidents involving cable cars not running on rails**

**E848 Accidents involving other vehicles, not elsewhere classifiable**

## **ACCIDENTAL POISONING BY DRUGS, MEDICINAL SUBSTANCES, AND BIOLOGICALS (E850-E858)**

**Includes:** accidental overdose of drug, wrong drug given or taken in error, and drug taken inadvertently  
accidents in the use of drugs and biologicals in medical and surgical procedures

***Excludes:** administration with suicidal or homicidal intent or intent to harm (E962)  
correct drug properly administered in therapeutic or prophylactic dosage, as the cause of adverse effect (E930-E949)*

**E850 Accidental poisoning by analgesics, antipyretics, and antirheumatics**

**E851 Accidental poisoning by barbiturates**

**E852 Accidental poisoning by other sedatives and hypnotics**

**E853 Accidental poisoning by tranquilizers**

**E854 Accidental poisoning by other psychotropic agents**

**E855 Accidental poisoning by other drugs acting on central and autonomic nervous system**

**E856 Accidental poisoning by antibiotics**

**E857 Accidental poisoning by other anti-infectives**

**E858 Accidental poisoning by other drugs**

## **ACCIDENTAL POISONING BY OTHER SOLID AND LIQUID SUBSTANCES, GASES, AND VAPOURS (E860-E869)**

**Note:** Categories in this section are intended primarily to indicate the external cause of poisoning states. They may also be used to indicate external causes of localized effects.

**E860 Accidental poisoning by alcohol, not elsewhere classified**

**E861 Accidental poisoning by cleansing and polishing agents, disinfectants, paints, and varnishes**

**E862 Accidental poisoning by petroleum products, other solvents and their vapours, not elsewhere classified**

**E863 Accidental poisoning by agricultural and horticultural chemical and pharmaceutical preparations other than plant foods and fertilizers**

**E864 Accidental poisoning by corrosives and caustics, not elsewhere classified**

**E865 Accidental poisoning from foodstuffs and poisonous plants**

Includes: any meat, fish or shellfish  
plants, berries and fungi eaten as, or in mistake  
for, food, or by a child

*Excludes: food poisoning (bacterial)  
poisoning and toxic reactions to venomous plants  
(E905)*

**E866 Accidental poisoning by other and unspecified solid and liquid substances**

*Excludes: these substances as a component of:  
medicines (E850-E858)*

**E866.0 Lead and its compounds and fumes**

**E866.1 Mercury and its compounds and fumes**

**E866.2 Antimony and its compounds and fumes**

**E866.3 Arsenic and its compounds and fumes**

**E866.4 Other metals and their compounds and fumes**

Beryllium (compounds)	Iron (compounds)
Brass fumes	Manganese (compounds)
Cadmium (compounds)	Nickel (compounds)
Copper salts	Thallium (compounds)

**E866.5 Plant foods and fertilizers**

**E866.6 Glues and adhesives**

**E866.7 Cosmetics**

**E866.8 Other specified solid or liquid substances**

**E866.9 Unspecified solid or liquid substance**

**E867 Accidental poisoning by gas distributed by pipeline**

**E868 Accidental poisoning by other utility gas and other carbon monoxide**

*Excludes: poisoning by carbon monoxide from:  
aircraft while in transit (E844)  
motor vehicle while in transit (E818)  
watercraft whether or not in transit (E838)  
carbon monoxide from smoke and fumes due to  
conflagration (E890-E893)*

**E869 Accidental poisoning by other gases and vapours**

*Excludes: effects of gases used as anaesthetics (E855, E938)  
smoke and fumes due to conflagration or explosion (E890-E899)*

**MISADVENTURES TO PATIENTS DURING SURGICAL,  
MEDICAL AND PARAMEDICAL CARE (E870-E876)**

*Excludes: accidental overdose of drug and wrong drug given  
in error (E850-E858)  
surgical and medical procedures as the cause of  
abnormal reaction by the patient, without mention  
of misadventure at the time of procedure  
(E878.0-E879.9)*

**E870 Accidental cut, puncture, perforation, or haemorrhage during  
medical or paramedical care**

**E870.0 Surgical operation**

**E870.1 Infusion or transfusion**

**E870.2 Kidney dialysis or other perfusion**

**E870.3 Injection or vaccination**

**E870.4 Endoscopic examination**

**E870.5 Aspiration of fluid or tissue, puncture, and  
catheterization**

Abdominal paracentesis	Lumbar puncture
Aspirating needle biopsy	Thoracentesis
Blood sampling	

**E870.6 Heart catheterization**

**E870.7 Administration of enema**

**E870.8 Other specified medical care**

**E870.9 Unspecified medical care**

**E871 Foreign object left in body during procedure**

**E871.0 Surgical operation**

**E871.1 Infusion or transfusion**

**E871.2 Kidney dialysis or other perfusion**

**E871.3 Injection or vaccination**

**E871.4 Endoscopic examination**

**E871.5 Aspiration of fluid or tissue, puncture, and catheterization**

Abdominal paracentesis      Lumbar puncture

Aspiration needle biopsy      Thoracentesis

Blood sampling

**E871.6 Heart catheterization**

**E871.7 Removal of catheter or packing**

**E871.8 Other specified procedures**

**E871.9 Unspecified procedure**

**E872 Failure of sterile precautions during procedure**

**E872.0 Surgical operation**

**E872.1 Infusion or transfusion**

**E872.2 Kidney dialysis and other perfusion**

**E872.3 Injection or vaccination**

**E872.4 Endoscopic examination**

**E872.5 Aspiration of fluid or tissue, puncture, and catheterization**

Abdominal paracentesis      Lumbar puncture

Aspirating needle biopsy      Thoracentesis

Blood sampling

**E872.6 Heart catheterization**

**E872.8 Other specified procedures**

**E872.9 Unspecified procedure**

## **E873 Failure in dosage**

*Excludes: accidental overdose of drug, medicinal or biological substance (E850-E858)*

**E873.0 Excessive amount of blood or other fluid during transfusion or infusion**

**E873.1 Incorrect dilution of fluid during infusion**

**E873.2 Overdose of radiation in therapy**

**E873.3 Inadvertent exposure of patient to radiation during medical care**

**E873.4 Failure in dosage in electroshock or insulin-shock therapy**

**E873.5 Inappropriate [too hot or too cold] temperature in local application and packing**

**E873.6 Nonadministration of necessary drug or medicinal substance**

**E873.8 Other specified failure in dosage**

**E873.9 Unspecified failure in dosage**

## **E874 Mechanical failure of instrument or apparatus during procedure**

**E874.0 Surgical operation**

**E874.1 Infusion and transfusion**

Air in system

**E874.2 Kidney dialysis and other perfusion**

**E874.3 Endoscopic examination**

**E874.4 Aspiration of fluid or tissue, puncture, and catheterization**

Abdominal paracentesis      Lumbar puncture

Aspirating needle biopsy      Thoracentesis

Blood sampling

**E874.5 Heart Catheterization**

**E874.8 Other specified procedures**

**E874.9 Unspecified procedure**

**E875 Contaminated or infected blood, other fluid, drug, or biological substance**

Includes: presence of:  
bacterial pyrogens  
endotoxin-producing bacteria  
serum hepatitis-producing agent

**E875.0 Contaminated substance transfused or infused**

**E875.1 Contaminated substance injected or used for vaccination**

**E875.2 Contaminated drug or biological substance administered by other means**

**E875.8 Other**

**E875.9 Unspecified**

**E876 Other and unspecified misadventures during medical or paramedical care**

**E876.0 Mismatched blood in transfusion**

**E876.1 Wrong fluid in infusion**

**E876.2 Failure in suture and ligature during surgical operation**

**E876.3 Endotracheal tube wrongly placed during anaesthetic procedure**

**E876.4 Failure to introduce or to remove other tube or instrument**

**E876.5 Performance of inappropriate operation**

**E876.8 Other specified misadventures during medical or paramedical care**

Performance of inappropriate treatment NEC

**E876.9 Unspecified misadventure during medical or paramedical care**

**ABNORMAL REACTION OF PATIENT OR LATER  
COMPLICATION CAUSED BY SURGICAL, MEDICAL AND  
PARAMEDICAL PROCEDURES WITHOUT MENTION OF  
MISADVENTURE AT THE TIME OF PROCEDURE (E878-  
E879)**

Includes: Abnormal reaction caused by procedures, such  
as:  
displacement or malfunction of prosthetic  
device  
hepatorenal failure, postoperative  
malfunction of external stoma  
postoperative intestinal obstruction

*Excludes: abnormal effect caused by anaesthetic  
management properly carried out (E937-E938)  
infusion and transfusion, without mention of mis-  
adventure in the technique of procedure (E930-  
E949)  
rejection of transplanted organ*

**E878 Abnormal reaction of patient, or of later complication caused by  
surgical operation and other surgical procedures, without  
mention of misadventure at the time of operation**

**E878.0 Surgical operation with transplant of whole organ**

Transplantation of:  
heart  
kidney  
liver

**E878.1 Surgical operation with implant of artificial internal  
device**

Cardiac pacemaker  
Electrodes implanted in brain  
Heart valve prosthesis  
Internal orthopaedic device

**E878.2 Surgical operation with anastomosis, bypass, or graft,  
with natural or artificial tissues used as implant**

Anastomosis:	Graft of blood vessel, ten-
arteriovenous	don, or skin
gastrojejunal	



**E878.3 Surgical operation with formation of external stoma**

Colostomy	Gastrostomy
Cystostomy	Ureterostomy
Duodenostomy	

**E878.4 Other restorative surgery**

**E878.5 Amputation of limb(s)**

**E878.6 Removal of other organ (partial)(total)**

**E878.8 Other specified surgical operations and procedures**

**E878.9 Unspecified surgical operations and procedures**

**E879 Abnormal reaction of patient, or of later complication caused by other procedures, without mention of misadventure at the time of procedure**

**E879.0 Cardiac catheterization**

**E879.1 Kidney dialysis**

**E879.2 Radiological procedure and radiotherapy**

*Excludes: radio-opaque dyes for diagnostic x-ray procedures (E947)*

**E879.3 Shock therapy**

Electroshock therapy	Insulin-shock therapy
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**E879.4 Aspiration of fluid**

Lumbar puncture	Thoracentesis
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**E879.5 Insertion of gastric or duodenal sound**

**E879.6 Urinary catheterization**

**E879.7 Blood sampling**

**E879.8 Other specified procedures**

Blood transfusion

**E879.9 Unspecified procedure**

**ACCIDENTAL FALLS (E880-E888)**

*Excludes: falls (in or from):  
burning building (E890, E891)  
into fire (E890-E899)*

*into water (with submersion or drowning)  
(E910)  
machinery (in operation) (E919)  
on edged, pointed, or sharp object (E920)  
transport vehicle (E800-E845)  
vehicle not elsewhere classifiable (E846-E848)*

**E880 Fall on or from stairs, steps or escalator**

**E881 Fall on or from ladders or scaffolding**

**E882 Fall from, out of or through building or other structure**

*Excludes: collapse of a building or structure (E916)  
fall or jump from burning building (E890, E891)*

**E883 Fall into hole or other opening in surface**

*Excludes: fall into water NOS (E910)  
that resulting in drowning or submersion without  
mention of injury (E910)*

**E884 Other fall from one level to another**

**E885 Fall on same level from slipping, tripping, or stumbling**

**E886 Fall on same level from collision, pushing, or shoving, by or with  
other person**

*Excludes: crushed or pushed by a crowd or human stampede  
(E917.1)*

**E886.0 In sports**

Tackles in sports

*Excludes: kicked, stepped on, struck by object, in sports  
(E917.0)*

**E886.9 Other and unspecified**

**E887 Fracture, cause unspecified**

**E888 Other and unspecified fall**

**ACCIDENTS CAUSED BY FIRE AND FLAMES (E890-E899)**

Includes: asphyxia or poisoning due to conflagration or ignition  
burning by fire  
secondary fires resulting from explosion

*Excludes:* arson (E968)  
fire in or on:  
    *machinery (in operation) (E919)*  
    *transport vehicle other than stationary vehicle (E800-E845)*  
    *vehicle not elsewhere classifiable (E846-E848)*

**E890 Conflagration in private dwelling**

**E891 Conflagration in other and unspecified building or structure**

**E892 Conflagration not in building or structure**

Fire (uncontrolled)(in)(of):  
    forest  
    grass  
    hay  
    timber  
    mine  
    bush  
    transport vehicle [any], except while in transit  
    tunnel

**E893 Accident caused by ignition of clothing**

**E894 Ignition of highly inflammable material**

Ignition of:  
    benzine  
    gasoline  
    fat  
    kerosene  
    paraffin  
    petrol  
    } (with ignition of clothing)

*Excludes:* explosion (E923.0-E923.9)

**E895 Accident caused by controlled fire in private dwelling**

*Excludes: burning by hot objects not producing fire or flames  
(E924)*

*poisoning by carbon monoxide from incomplete  
combustion of fuel (E867-E868)*

**E896 Accident caused by controlled fire in other and unspecified building or structure**

*Excludes: burning by hot objects not producing fire or flames  
(E924)*

*poisoning by carbon monoxide from incomplete  
combustion of fuel (E867-E868)*

**E897 Accident caused by controlled fire not in building or structure**

Burns from flame of:  
bonfire (controlled)  
brazier fire (controlled), not in building or structure  
rubbish fire (controlled)

**E898 Accident caused by other specified fire and flames**

**E899 Accident caused by unspecified fire**

Burning NOS

**ACCIDENTS DUE TO NATURAL AND ENVIRONMENTAL FACTORS (E900-E909)**

**E900 Excessive heat**

**E900.0 Due to weather conditions**

**E900.1 Of artificial origin**

**E900.9 Of unspecified origin**

**E901 Excessive cold**

**E901.0 Due to weather conditions**

**E901.1 Of artificial origin**

**E901.8 Other specified origin**

**E901.9 Of unspecified origin**

**E902 High and low air pressure and changes in air pressure**

**E902.0 Residence or prolonged visit at high altitude**

**E902.1 In aircraft**

**E902.2 Due to diving**

**E902.8 Due to other specified causes**

**E902.9 Unspecified cause**

**E903 Travel and motion**

**E904 Hunger, thirst, exposure, and neglect**

*Excludes: any condition resulting from homicidal or purposeful intent (E968)  
hunger, thirst, and exposure resulting from accidents connected with transport (E800-E848)  
dehydration due to acute fluid loss*

**E905 Venomous animals and plants as the cause of poisoning and toxic reactions**

*Includes: chemical released by animal  
insects  
release of venom through fangs, hairs, spines, tentacles, and other venom apparatus*

*Excludes: eating of poisonous animals or plants (E865)  
puncture wound NOS by plant thorns or spines (E920)*

**E906 Other injury caused by animals**

*Excludes: road vehicle accident involving animals (E827-E828)  
tripping or falling over an animal (E885)*

**E907 Lightning**

*Excludes: injury from:  
fall of tree or other object caused by lightning (E916)  
fire caused by lightning (E890-E892)*

**E908 Cataclysmic storms, and floods resulting from storms**

*Excludes: transport accident occurring after storm (E800-E848)*

## **E909 Cataclysmic earth surface movements and eruptions**

*Excludes: transport accident involving collision with avalanche or landslide not in motion (E800-E848)*

## **ACCIDENTS CAUSED BY SUBMERSION, SUFFOCATION, AND FOREIGN BODIES (E910-E915)**

### **E910 Accidental drowning and submersion**

**Includes:** immersion  
swimmers' cramp

*Excludes: diving accident (NOS) (resulting in injury except drowning) (E883)*  
*drowning and submersion due to:*  
*cataclysm (E908-E909)*  
*machinery accident (E919)*  
*transport accident (E800-E845)*  
*effect of high and low air pressure (E902.2)*  
*injury from striking against objects while in running water (E917.2)*

### **E911 Inhalation and ingestion of food causing obstruction of respiratory tract or suffocation**

### **E912 Inhalation and ingestion of other object causing obstruction of respiratory tract or suffocation**

### **E913 Accidental mechanical suffocation**

*Excludes: cataclysm (E908-E909)*  
*explosion (E921, E923.0-E923.9)*  
*machinery accident (E919)*

#### **E913.0 In bed or cradle**

#### **E913.1 By plastic bag**

#### **E913.2 Due to lack of air (in closed place)**

Accidentally closed up in refrigerator or other airtight enclosed space

Diving with insufficient air supply

### **E913.3 By falling earth or other substance**

Cave-in NOS

*Excludes: cave-in caused by cataclysmic earth surface movements and eruptions (E909)  
struck by cave-in without asphyxiation or suffocation (E916)*

### **E913.8 Other specified means**

Accidental hanging, except in bed or cradle

### **E913.9 Unspecified means**

Asphyxia, mechanical NOS

Strangulation NOS

Suffocation NOS

### **E914 Foreign body accidentally entering eye and adnexa**

*Excludes: corrosive liquid (E924)*

### **E915 Foreign body accidentally entering other orifice**

## **OTHER ACCIDENTS (E916-E928)**

### **E916 Struck accidentally by falling object**

Collapse of building, except on fire	Object falling from: machine, not in operation
Falling: rock	stationary vehicle
snowslide NOS	
stone	
tree	

*Excludes: collapse of building on fire (E890-E891)  
falling object in:  
cataclysm (E908-E909)  
machinery accidents (E919)  
transport accidents (E800-E845)  
vehicle accidents not elsewhere classifiable (E846-E848)  
object set in motion by:  
explosion (E921, E923.0-E923.9)  
firearm (E922)*

## **E917 Striking against or struck accidentally by objects or persons**

Includes: bumping into or  
          against  
          colliding with  
          kicking against  
          stepping on  
          struck by

} object (moving)  
      (projected)  
      (stationary)  
} pedestrian conveyance  
  person

*Excludes: fall from:*

*bumping into or against object (E888)*  
*collision with another person, except when*  
*caused by a crowd (E886.0-E886.9)*  
*stumbling over object (E885)*

*injury caused by:*

*assault (E960.0-E960.1, E967)*  
*cutting or piercing instrument (E920)*  
*explosion (E921, E923.0-E923.9)*  
*firearm (E922)*  
*machinery (E919)*  
*transport vehicle (E800-E845)*  
*vehicle not elsewhere classifiable (E846-E848)*

### **E917.0 In sports**

#### **E917.1 Caused by a crowd, by collective fear or panic**

#### **E917.2 In running water**

*Excludes: drowning or submersion (E910)*

#### **E917.9 Other**

## **E918 Caught accidentally in or between objects**

*Excludes: injury caused by:*

*cutting or piercing instrument (E920)*  
*machinery (E919)*  
*transport vehicle (E800-E845)*  
*vehicle not elsewhere classifiable (E846-E848)*

*struck accidentally by:*

*falling object (E916)*  
*object (moving)(projected) (E917.0-E917.9)*



## **E919 Accidents caused by machinery**

Includes: burned by

caught in (moving parts  
of)

collapse of

crushed by

cut or pierced by

drowning or submersion

caused by

explosion of, on, in

fall from or into moving  
part of

fire starting in or on  
mechanical suffocation

caused by

object falling from, on,  
in motion by

overturning of

pinned under

run over by

struck by

thrown from

caught between machinery

and other object

machinery accident NOS

} machinery  
(accident)

*Excludes: accidents involving machinery, not in operation  
(E884, E916-E918)*

*injury caused by:*

*electric current in connection with machinery  
(E925)*

*escalator (E880, E918)*

*explosion of pressure vessel in connection with  
machinery (E921)*

*moving sidewalk (E885)*

*powered hand tools, appliances and implements  
(E916-E918, E920-E921, E923.0-E926.9)*

*transport vehicle accidents involving machinery  
(E800-E848)*

*poisoning by carbon monoxide generated by  
machine (E868)*

**E920 Accidents caused by cutting and piercing instruments or objects**

Includes: accidental injury by fall on

	}	object:
		edged
		pointed
		sharp

*Excludes: animal spines or quills (E906)*

**E921 Accident caused by explosion of pressure vessel**

Includes: accidental explosion of pressure vessels, whether or not part of machinery

*Excludes: explosion of pressure vessel on transport vehicle (E800-E845)*

**E922 Accident caused by firearm missile**

**E923 Accident caused by explosive material**

Includes: flash burns and other injuries resulting from explosion of explosive material  
ignition of highly explosive material with explosion

*Excludes: explosion:*  
*in or on machinery (E919)*  
*on any transport vehicle, except stationary motor vehicle (E800-E848)*  
*with conflagration (E890, E891, E892)*  
*secondary fires resulting from explosion (E890-E899)*

**E923.0 Fireworks**

**E923.1 Blasting materials**

**E923.2 Explosive gases**

**E923.8 Other explosive materials**

**E923.9 Unspecified explosive material**

**E924 Accident caused by hot substance or object, caustic or corrosive material, and steam**

*Excludes: burning NOS (E899)*

*chemical burn resulting from swallowing a corrosive substance (E860-E864)*

*fire caused by these substances and objects (E890-E894)*

*radiation burns (E926.0-E926.9)*

*therapeutic misadventures (E870.0-E876.9)*

**E925 Accident caused by electric current**

**Includes:** electric current from exposed wire, faulty appliance, high voltage cable, live rail, or open electric socket as the cause of:

burn

cardiac fibrillation

convulsion

electric shock

electrocution

puncture wound

respiratory paralysis

*Excludes: lightning (E907)*

**E926 Exposure to radiation**

*Excludes: abnormal reaction to or complication of treatment without mention of misadventure (E879.2)*

*atomic power plant malfunction in water transport (E838)*

*misadventure to patient in surgical and medical procedures (E873.2-E873.3)*

*use of radiation in war operations (E996-E997)*

**E926.0 Radiofrequency radiation**

**E926.1 Infra-red heaters and lamps**

**E926.2 Visible and ultraviolet light sources**

*Excludes: excessive heat from these sources (E900.1-E900.9)*

**E926.3 X-rays and other electromagnetic ionizing radiation**

**E926.4 Lasers**

**E926.5 Radioactive isotopes**

**E926.8 Other specified radiation**

**E926.9 Unspecified radiation**

**E927 Overexertion and strenuous movements**

Excessive physical exercise	Strenuous movements in:
Overexertion (from):	recreational activities
lifting	other activities
pulling	
pushing	

**E928 Other and unspecified environmental and accidental causes**

**E928.0 Prolonged stay in weightless environment**

Weightlessness in spacecraft (simulator)

**E928.1 Exposure to noise**

Noise (pollution)	Supersonic waves
Sound waves	

**E928.2 Vibration**

**E928.8 Other**

**E928.9 Unspecified accident**

Accident NOS	
Blow NOS	
Casualty (not due to war)	
Decapitation	
Injury [any part of body, or unspecified]	
Killed	
Knocked down	
Mangled	
Wound	

} stated as accidentally inflicted, but not otherwise specified

*Excludes: fracture, cause unspecified (E887)*

**ABNORMAL EFFECT IN THERAPEUTIC USE CAUSED BY  
DRUGS, MEDICINAL AND BIOLOGICAL SUBSTANCES  
(E930-E949)**

**Includes:** abnormal effect caused by correct drug properly administered in therapeutic or prophylactic dosage

**Excludes:** *accidental overdose of drug and wrong drug given or taken in error (E850-E858)*  
*accidents in the technique of administration of drug or biological substance, such as accidental puncture during injection, or contamination of drug (E870.0-E876.9)*  
*administration with suicidal or homicidal intent or intent to harm (E950, E962)*

**E930 Antibiotics**

**E931 Other anti-infectives**

**E932 Hormones and synthetic substitutes**

*Excludes: adverse effect of insulin administered for shock therapy (E879.3)*

**E933 Primarily systemic agents**

**E934 Agents primarily affecting blood constituents**

**E935 Analgesics, antipyretics, and antirheumatics**

**E936 Anticonvulsants and anti-Parkinsonism drugs**

**E937 Sedatives and hypnotics**

**E938 Other central nervous system depressants and anaesthetics**

**E939 Psychotropic agents**

**E940 Central nervous system stimulants**

**E941 Drugs primarily affecting the autonomic nervous system**

**E942 Agents primarily affecting the cardiovascular system**

**E943 Agents primarily affecting gastrointestinal system**

**E944 Water, mineral, and uric acid metabolism drugs**

**E945 Agents primarily acting on the smooth and skeletal muscles and respiratory system**

**E946 Agents primarily affecting skin and mucous membrane, ophthalmological, otorhinolaryngological, and dental drugs**

**E947 Other and unspecified drugs and medicinal substances**

**E948 Bacterial vaccines**

**E949 Other vaccines and biological substances**

**HOMICIDE AND INJURY PURPOSELY INFLICTED BY  
OTHER PERSON (E960-E968)**

Includes: injuries inflicted by another person with intent to injure or kill, by any means

*Excludes: injuries due to:*

*legal intervention (E970-E977)*

*operations of war (E990-E998)*

**E960 Fight, brawl, sexual violation, incest, unlawful sexual or anal intercourse**

**E960.0 Unarmed fight or brawl**

Beatings NOS

Brawl or fight with hands, fists, feet

Injured or killed in fight NOS

**E960.1 Sexual violation, incest, unlawful sexual or anal intercourse**

**E961 Assault by corrosive or caustic substance, except poisoning**

Injury or death purposely caused by corrosive or caustic substance, such as:

acid [any]

corrosive substance

vitriol

**E962 Assault by poisoning**

**E963 Assault by hanging and strangulation**

Homicidal (attempt):  
garrotting or ligature  
hanging  
strangulation  
suffocation

**E964 Assault by submersion [drowning]**

**E965 Assault by firearms and explosives**

**E966 Assault by cutting and piercing instrument**

Assassination (attempt), homicide (attempt) by any  
instrument classifiable under E920

Homicidal:

cut	}	any part of body
puncture		
stab		
Stabbed		

**E967 Child battering and other maltreatment**

**E968 Assault by other and unspecified means**

**LEGAL INTERVENTION (E970-E976)**

Includes: injuries inflicted by the police or other law-enforcing agents, including military on duty, in the course of arresting or attempting to arrest lawbreakers, suppressing disturbances, maintaining order, and other legal action

*Excludes: injuries caused by civil insurrections (E990.0-E998)*

**E970 Injury due to legal intervention by firearms**

**E971 Injury due to legal intervention by explosives**

**E972 Injury due to legal intervention by gas**

**E973 Injury due to legal intervention by blunt object**

**E974 Injury due to legal intervention by cutting and piercing instrument**

**E975 Injury due to legal intervention by other specified means**

**E976 Injury due to legal intervention by unspecified means**

**INJURY RESULTING FROM OPERATIONS OF WAR (E990-E998)**

Includes: injuries to military personnel and civilians caused by war and civil insurrections and occurring during the time of war and insurrection

*Excludes: accidents during training of military personnel, manufacture of war material and transport, unless attributable to enemy action*

**E990 Injury due to war operations by fires and conflagrations**

Includes asphyxia, burns, or other injury originating from fire caused by a fire-producing device or indirectly by any conventional weapon

**E991 Injury due to war operations by bullets and fragments**

**E992 Injury due to war operations by explosion of marine weapons**

**E993 Injury due to war operations by other explosion**

**E994 Injury due to war operations by destruction of aircraft**

**E995 Injury due to war operations by other and unspecified forms of conventional warfare**

**E996 Injury due to war operations by nuclear weapons**

**E997 Injury due to war operations by other forms of unconventional warfare**

**E998 Injury due to war operations but occurring after cessation of hostilities**

Injuries due to operations of war but occurring after cessation of hostilities by any means classifiable under E990-E997

Injuries by explosion of bombs or mines placed in the course of operations of war, if the explosion occurred after cessation of hostilities



# SECOND SCHEDULE

Sections 109, 110

## MOTOR VEHICLE LEVY RATES

Column 1 No. of Class	Column 2 Description of Motor Vehicle	Column 3 Levy
		\$
1	Trailers	
	Trade plates	
	—for power cycles and motorcycles (not exceeding 60 c.c.)	
	—for trailers	
	Miscellaneous vehicles	Nil
	—Ambulances	
	—Fire Brigade vehicles	
	—Hearses	
2	Goods-service vehicles	
	Motorcars	
	Self-propelled caravans	
	Mobile cranes	
	Omnibuses	100
	Service coaches	
	Motorcycles exceeding 60 c.c.	
	Trade plates for all motor vehicles not elsewhere classified	
3	Motorcycles not exceeding 60 c.c.	
	Power cycles	
	Trade plates	
	—for motorcycles exceeding 60 c.c.	
	Tractors	
	Veteran or vintage motor vehicles	
	Motor vehicles (other than motorcycles exceeding 60 c.c.) that are not exempted from registration and licensing but are exempted from registration and licensing fees pursuant to section 6 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986	35.30
	All motor vehicles not elsewhere classified	

## *APPENDIX C*

# REPORT ON THE COSTS OF THE ACCIDENT COMPENSATION SCHEME

*by J R Cumpston and R C Madden*

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- A2 Occupations of 200 Long-Term ERC Recipients
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- B1 Nature of Survey
- B2 Occupations, Injuries and Impairment Ratings of 200 Persons Receiving s.78 Payments in 1987/88
- B3 Estimates for 200 Persons Receiving s.78 Payments in 1987/88
- B4 Estimates of Costs in 1987/88 of Replacing s.78 and s.79 Payments By Disability Pensions Based on AMA Impairment Ratings

#### Appendix C: Effects of Longer Waiting Times

#### Appendix D: Cost Increases

[The Appendices to the Report are not reproduced]

## 1. SUMMARY

1.1 This report has been written to help the Law Commission assess the effects of changes to the Accident Compensation Act.

1.2 In 1987/88 the Accident Compensation Corporation had income of about \$927 million, and expenditure of about \$693 million.

1.3 At 31 March 1988 the Corporation had assets equivalent to about 5.6 months of expenditure, compared with its target of seven months.

1.4 The reserves component of the employer/self-employed levy could be substantially reduced for 1989/90, perhaps by about two months of expenditure.

1.5 Earnings related compensation (ERC) in 1987/88 could have been reduced by about \$26 million if the waiting period had been increased from 1 to 2 weeks, and by about \$60 million if the waiting period had been increased from 1 to 4 weeks.

1.6 Benefits at the rates proposed by the Royal Commission on Social Policy for those incapacitated for two or more years would have saved about \$26 million in 1987/88.

1.7 Cost increases during the 13 years to 31 March 1988, not attributable to increased earnings and old claims, have averaged about 8% per year.

1.8 Possible reasons for recent cost increases are:

- increased unemployment, particularly in rural areas
- the 1 April 1985 replacement of s.59(2)
- the 1 April 1983 increase in the s.78 maximum
- near maximum s.79 amounts for relatively minor injuries
- increasing range and costs of medical and paramedical services
- increasing share of non-accident related treatment
- increasing use of privately owned hospitals.

1.9 The average impairment rating of 200 randomly chosen persons who received s.78 payments in 1987/88, using the American Medical

Association's *Guides to the Evaluation of Permanent Impairment*, was 10.5%.

1.10 Disability pensions based on these ratings, payable for life with a maximum of \$357 per week, to all persons with at least 10% impairment, would have cost about \$440 million in 1987/88.

1.11 Reducing the threshold from 10% to 5% would have increased the 1987/88 cost from about \$440 million to about \$570 million. Ceasing benefits at 65, with a minimum term of five years, would have reduced the cost from about \$440 million to about \$310 million.

## 2. TERMS OF REFERENCE

2.1 Questions put to us by Sir Owen Woodhouse, President of the Law Commission, were:

### *Central Money Questions*

2.2 What is the present cost of the scheme?

2.3 What proportion (and money sum) of that cost includes provision for reserves?

2.4 By what amount could the reserves component of the employer/self-employed levy be cut back without undue risk?

### *Past Increases in Costs*

2.5 What was the percentage increase in costs between 1975/76 and 1984/85, in actual dollars and in constant dollar terms?

2.6 What sort of qualification is needed to allow for the fact that this is still a maturing scheme and in the earlier year had hardly got on its feet?

2.7 Is it possible to bring into the figures the effect of belated assessments of such claims as lump-sums; and the increased maximum?

## *Changes to Waiting Periods and Short-Term Benefits*

2.8 What is the cost to the Accident Compensation Corporation of its first week ERC payments; and each of the next two weeks after that?

2.9 What would be saved by the Accident Compensation Corporation if the waiting period were extended by a further one, two or three weeks beyond the present week, and a basic flat rate benefit were paid to those still affected after two and three weeks?

## *Durations of Earnings Related Compensation (ERC)*

2.10 What percentage of disabled persons will remain after two years; and what percentage of ERC will be due to them in each year; and for the current year what amount would this involve?

2.11 Assume the group just mentioned moves after two years on to a basic flat rate pension of the size discussed as appropriate by the Royal Commission on Social Policy—what is the difference between the two amounts?

## *Cost Increases*

2.12 Putting aside the factor of inflation, and increased wages due to award successes or increased productivity:

- is it possible to isolate any causes?
- if so, what should be done?
- what is the adverse effect upon those who support the earners account in particular?
- is the same effect present for the motor vehicle account?
- has the contribution from the Government kept pace with the increases in general?

## *Replacement of Lump-Sums by Pensions Based on AMA Ratings*

2.13 What would have been the extra costs in 1987/88 from the replacement of s.78 and s.79 payments by pensions calculated as 80%

of New Zealand average weekly earnings per person, times impairment ratings determined using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (1984 edition)

- assuming pensions payable for life, or to age 65 with a minimum period of five years?
- assuming an impairment threshold of 5% or 10% before pensions are payable?

3. INTRODUCTION

3.1 This report has been written by two actuaries, R C Madden and J R Cumpston.

3.2 Dr R C Madden is First Assistant Secretary, Disability Programs Division, Australian Department of Community Services and Health, Canberra.

3.3 Mr J R Cumpston is a Principal, Mercer Campbell Cook & Knight Pty Ltd, Melbourne, and a part-time director of the Victorian Accident Compensation Commission.

3.4 The authors are very grateful for the help they have received from Sir Owen Woodhouse, Professor Ken Keith and Prue Oxley of the Law Commission, and from Pen Brown, Jeff Chapman, Ajay Dubey, Ellie Garden, Alan Howe, Subash Malik, Andrew Nicholls and Bill Ryan of the Accident Compensation Corporation.

4. CENTRAL MONEY QUESTIONS

*Present Cost of Scheme*

4.1 We understand that the Accident Compensation Corporation has provided to the Commission the following estimates of its 1987/88 income and expenditure:

	1987/88
	\$M
Income	
Earners levy	659.7
Motor vehicle levy	118.6
Supplementary	78.9



Investment income—earners account	62.1
Investment income—motor vehicle account	7.2
<b>TOTAL</b>	<b>926.5</b>
<b>Expenditure</b>	
Earners account	473.8
Motor vehicle account	140.6
Supplementary account	78.9
<b>TOTAL</b>	<b>693.3</b>

### *Assets*

4.2 At 31 March 1987 there was a balance of \$25 million in the earners account, and \$64.3 million in the motor vehicle account. These balances are based on book values, and thus ignore any differences between the book and market values on assets.

4.3 Allowing for the above estimated 1987/88 incomes and expenditures, the balance of the earners account at 31 March 1988 would have been about \$273 million, and that of the motor vehicle account about \$49.5 million.

4.4 The total balances in the accounts at 31 March 1988 would have been about \$322.5 million. By comparison with the total expenditure of \$693.3 million, this total balance represents about 5.6 months of expenditure.

4.5 In a report dated 12 November 1987 to the Corporation, titled *Report on Levies and Reserves*, J R Cumpston said:

“I estimate the assets needed by the Corporation each 31 March, if it is to operate on a pay-as-you-go basis with its present assets, as about 6 months of expenditure.”

4.6 In *A Guide to the 1988/89 ACC Levy Structure*, the Corporation said:

“To maintain its financial viability, and thus overcome the problems experienced in the past with major levy increases, the Corporation is of the opinion that reserves equivalent to 7 months of expenditure should be maintained.”

### *Levies to Correct Asset Deficiencies*

4.7 Any deviation from the desired ratio of assets to expenditure will require corrective action. It may however not be desirable to fully correct any deficiency or surplus within the next year. Such a policy could lead to large fluctuating increases and decreases in levy rates year by year.

4.8 For example, there were assets at 31 March 1988 equivalent to about 5.6 months of expenditure. If assets equivalent to seven months of expenditure are desired, then there is a shortfall of about 1.4 months of expenditure (ignoring any excess of market values over book values).

4.9 If the Corporation hoped to eliminate this shortfall in the coming year, it could have charged additional levies equivalent to 1.4 months of 1988/89 expenditure. If it thought correction of the deficiency in three years was appropriate, it could have charged additional levies of about 0.5 months of expenditure.

### *Levies to Maintain Assets*

4.10 In addition to any levies intended to correct asset shortfalls, the Corporation also needs to charge levies intended to maintain assets relative to expenditure. For example, in 1987/88 expenditure increased by 20% over 1986/87. If expenditure growth of 18% was expected in 1988/89, then assets equivalent to seven months of expenditure in 1987/88 would only be equivalent to about 5.9 months of expenditure in 1988/89. Additional levies of about 1.1 months of expenditure are thus needed to maintain assets of seven months of expenditure, if expenditure is increasing at about 18% pa.

4.11 If the Corporation was expecting 18% expenditure growth in 1988/89, and wanted to achieve its target of seven months by 31 March 1989, it should have charged additional levies of about 2.5 months of expenditure in 1988/89. If it wanted to achieve its target by 31 March 1991, additional levies of about 1.5 months of expenditure would have been appropriate.

4.12 For comparison, the excess of income over expenditure in 1987/88 was equivalent to about 4.0 months of expenditure.

## *Reserves Component of Employer/Self-Employed Levies*

4.13 Our term of reference 2.4 was:

“By what amount could the reserves component of the employer/self-employed levy be cut back without undue risk?”

4.14 *A Guide to the 1988/89 ACC Levy Structure* says:

“The overall levy increase for the 1988/89 year for the Earners Account is 6% above the current year’s levy.”

4.15 Levy rates are set as percentages of leviable earnings. Levies thus automatically increase in line with total community earnings. The overall 6% increase referred to above may thus increase total levies on earners and the self-employed by about 14% (assuming 8% increase in leviable earnings).

4.16 We do not know what motor vehicle levy increases, if any, are proposed in 1988/89. Given the employer/self-employed levy rate increases, however, it seems likely that the Corporation’s target of assets equivalent to seven months of expenditure will be achieved by 31 March 1989.

4.17 It seems likely that the reserves component of the employer/self-employed levy could be substantially reduced for 1989/90, perhaps by about two months of expenditure.

## 5. PAST INCREASES IN COSTS

5.1 Total expenditure by the Corporation was \$59.245 million in 1975/76 and \$340.107 million in 1984/85. This was an increase of 474% in actual dollars.

5.2 Average total weekly earnings of all employees were about \$111.05 in 1975/76, and about \$311.08 in 1984/85 (from page 52 of J R Cumpston’s report dated 12 November 1987 to the Corporation).

5.3 The Corporation’s expenditure thus increased from 1975/76 to 1984/85 by about 105%, after allowing for changes in average weekly earnings.

5.4 Page 28 of J R Cumpston’s report dated 12 November 1987 gives estimates of the cost increases arising solely from the existence

of one more active claim year each year. These estimates together account for 37% growth from 1975/76 to 1984/85.

5.5 The unexplained expenditure growth from 1975/76 to 1984/85, after allowing for changes in average total weekly earnings and the oldest claims, is thus about

$$100 \times (205/137 - 1) \quad \text{ie, about 50\%}$$

5.6 Cost growth of 50% in nine years is equivalent to a growth rate of about 4.6% per year. This is similar to or lower than the average rates of unexplained cost increases observed by many Australian workers compensation and compulsory third party schemes in the same period.

5.7 The estimates for the Corporation assume that lump-sums and earnings related compensation have kept pace with increases in average weekly earnings. During the period lump-sums were increased only on 1 April 1983, but not by enough to match past average weekly earnings increases. Earnings related compensation was increased frequently but at irregular intervals.

5.8 It is not possible to readily adjust the figures to allow for these irregular increases. If such adjustment were made, the unexplained cost increase from 1975/76 to 1984/85 would probably be higher than the 50% estimated above.

## 6. CHANGES TO WAITING PERIODS AND SHORT TERM BENEFITS

6.1 A separate calculation derives the following estimates of the reductions in earnings related compensation paid in 1987/88 if the waiting period had been increased from the present one week:

	\$M
Savings with one week extra wait	26
Savings with two weeks extra wait	45
Savings with three weeks extra wait	60

6.2 The average compensation paid in the second, third and fourth weeks of incapacity may be of the order of \$380 per week (based on a recent analysis by the Corporation which shows the average dropping from about \$400 in the first week to about \$270 by the 26th week).

6.3 If compensation during the first weeks of incapacity were at the flat rates proposed by the Royal Commission on Social Policy, i.e., \$244 plus \$19 for each dependent spouse and \$10 for each dependent child, the average might be about \$263 per week.

6.4 Comparing \$263 with \$380 suggests a saving of about 31% of the above estimates might result from the implementation of the Royal Commission's suggestion.

6.5 For example, payment of flat rate rather than earnings related benefits for the second, third and fourth weeks of incapacity in 1987/88 might have saved about 31% of \$60 million, i.e., about \$18 million.

6.6 The above estimates are based on data from the Palmerston North region for 1984 injuries. More recent data provided to us by the Corporation suggest that they are still a reasonable guide to current short-term ERC claims for New Zealand.

## 7. SAVINGS FROM PAYING FLAT RATE ERC BENEFITS AFTER TWO YEARS

7.1 Terms of reference 2.10 and 2.11 were:

“What percentage of disabled persons will remain after two years; and what percentage of ERC will be due to them in each year; and for the current year what amount would this involve?”

“Assume the group just mentioned moves after two years onto a basic flat rate pension of the size discussed as appropriate by the Royal Commission on Social Policy—what is the difference between the two amounts?”

7.2 ERC paid to persons incapacitated for two years or more was about \$61 million in 1986/87. This was about 25% of the total ERC payments in 1986/87 of \$247 million.

7.3 In 1986/87 \$21.088 million was paid in ERC to persons whose injuries were reported in 1984/85. The average ERC rate for long-term ERC recipients was about \$335 per week. The number of persons per year reaching two years of compensated incapacity may thus be about:

7.4 ERC paid in the second week of incapacity cost about \$26 million in 1987/88. At an average rate of about \$400 per week this may represent about 65,000 persons.

7.5 Very approximately, out of every 65,000 persons incapacitated for over a week, only about 1200 or about 2% will still be incapacitated after two years.

7.6 The Royal Commission on Social Policy proposed that after two years those unable to resume normal paid employment should receive, in proportion to the extent to which capacity to earn is reduced, \$244 per week, plus \$19 for a non-earning spouse and \$10 per week for each dependent child.

7.7 It is estimated that this proposal would reduce the average compensation rate for those incapacitated for two or more years from \$335 to \$226 per week, i.e., by 33%. This would have saved about \$26 million in 1987/88.

## 8. COST INCREASES

8.1 Term of reference 2.12 was:

“Putting aside the factor of inflation, and increased wages due to award successes or increased productivity:

- is it possible to isolate any causes?
- if so what should be done?
- what is the adverse effect upon those who support the earners account in particular?
- is the same effect present for the motor vehicle account?
- has the contribution from the Government kept pace with the increases in general?”

8.2 Appendix D2 shows that in the 13 years to 31 March 1988, total expenditure by the Corporation has increased at an average rate of about 23% per year.

8.3 Increases in average weekly earnings during these 13 years have averaged about 12% per year. Cost increases arising from the existence of one more active claim each year have averaged about 3% per year.

8.4 Cost increases from all other sources during the 13 years to 31 March 1988 have thus averaged about 8% per year. This unexplained inflation is sometimes described as “cost creep”, or “superimposed inflation”.

### *Recent Increases*

8.5 Recent increases in each type of expenditure, in excess of increases in average weekly earnings, have been:

Type of Expenditure	1984/85	1985/86	1986/87
	%	%	%
Weekly benefits to injured	13	14	16
Death benefits	6	-1	-1
S.78 (permanent impairment)	50	44	17
S.79 (loss of enjoyment of life)	22	36	26
Medical	14	24	-5
Hospital	18	17	11
Other	-3	14	5
Operating expenditure	5	23	6
TOTAL	13	19	11

### *Causes*

8.6 Recent increases in weekly benefits to the injured may largely have resulted from increased unemployment, particularly in rural areas, and from the 1 April 1985 replacement of s.59(2) of the Accident Compensation Act 1982 by a section with a different purpose.

8.7 Increases in s.78 payments may largely have resulted from the increase in the maximum from \$7000 to \$17,000 for persons injured from 1 April 1983.

8.8 Increases in s.79 payments may reflect the increased tendency to award maximum or near maximum amounts for relatively minor impairments.

8.9 Increases in medical payments may reflect the increasing range and costs of medical and paramedical services provided to accident victims, as well as some continuing tendency to charge the Corporation for non-accident related treatment.

8.10 Increases in hospital payments may be partly associated with the increases in medical payments, and partly reflect the increased use of privately owned hospitals.

#### *Cost Increases in Each Account*

8.11 Cost increases in the 13 years to 31 March 1988 averaged 22% per year in the earners account, 27% in the motor vehicle account and 27% in the supplementary account. All these figures are close to the average of 23% per year for the three accounts together.

8.12 On 1 April 1983 responsibility for earners injured in motor vehicle accidents while working was transferred from the earners account to the motor vehicle account. Allowing for this transfer the earners and motor vehicle accounts appear to have had very similar average cost increases.

### 9. EXTRA COSTS OF REPLACING LUMP-SUMS BY DISABILITY PENSIONS

9.1 Term of reference 2.13 was:

“What would have been the extra costs in 1987/88 from the replacement of section 78 and 79 payments by pensions calculated as 80% of New Zealand average weekly total earnings per person, times impairment ratings determined using the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (1984 edition)

- assuming pensions payable for life, or to age 65 with a minimum period of 5 years
- assuming an impairment threshold of 5% or 10% before pensions are payable?”

9.2 Appendix B (not reproduced) sets out the results of a survey of 200 randomly chosen persons who had received s.78 benefits in 1987/88.



9.3 Of these 200 persons, only 100 had ever received any earnings related compensation, and only 23 were still receiving such compensation.

### *Impairment Ratings*

9.4 Each district office supplied copies of the medical assessments used when determining the s.78 awards. Working from these assessments, three doctors on the staff of the Corporation estimated impairment ratings, using the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (1984 edition).

9.5 Because the time available was limited, impairment ratings were estimated for only 168 of the 200 persons. We do not think the other 32 were atypical.

9.6 The average impairment estimated using the AMA Guides was 10.5%. While making their estimates, the doctors noted the impairment percentages recorded in the medical assessments. These averaged 16.2%, i.e., about 54% higher than the average AMA rating.

9.7 One reason for the difference between AMA and s.78 average ratings was the much lower AMA ratings for the 29 persons with hearing losses. The AMA rating for total hearing loss is 35%, compared with 100% under s.78.

### *Disability Pensions*

9.8 Estimates were made for disability pensions based on AMA impairment percentages, with a pension for 100% impairment of 80% of average weekly total earnings.

9.9 In August 1987 average total weekly earnings were about \$446. The pension for 100% impairment was thus assumed to be \$357 in 1987/88.

9.10 Pensions were assumed to be payable for life. Alternatively, pensions were assumed to cease at age 65, with a minimum period of five years. For example, a disability pension granted at 63 would continue to 68, and one granted at 75 would continue to 80.

9.11 A threshold impairment of 10% was assumed before a pension was payable. Alternatively, a threshold of 5% was assumed.

9.12 Pensions were assumed to be indexed in line with average weekly earnings.

9.13 The present values of pensions granted in 1987/88 were estimated assuming investment earnings 3% pa higher than average weekly earnings increases, and allowing for 1985 population mortality rates (as shown on page 146 of *New Zealand Official Yearbook 1987-88*).

9.14 Section 78 payments in 1987/88 were assumed to be \$50 million, and s.79 payments \$125 million.

9.15 It was assumed that any ERC paid to a person who had been granted a disability pension would be reduced by the amount of the disability pension.

9.16 The estimated present value of disability pensions granted in 1987/88, less ERC offsets, were

	\$M
Benefits for life, with 10% threshold	443
Benefits for life, with 5% threshold	573
Benefits to 65, with 5 year minimum and 10% threshold	307
Benefits to 65, with 5 year minimum and 5% threshold	403

9.17 The above estimates assume a pension of \$357 per week for total permanent impairment. Cost estimates for any lower maximum pension are in proportion.

9.18 For example, the present value of disability pensions granted in 1987/88, assuming \$100 per week for total permanent impairment, pensions for life and a 10% threshold, would be about

443 x 100/357

ie, about \$124 million

## APPENDIX D

Submissions were received from the following:

				Submission number		
				1st sub	2nd sub	3rd sub
A A Edwards & Sons Ltd	..	..	..	997		
A C L	..	..	..	385		
A C Martian Industries Ltd	..	..	..	569		
A D Charteris & Co	..	..	..		2026	
A Foster & Co Ltd	..	..	..	998		
A W A Computers	..	..	..	421		
A.S.E.A. Electric (NZ) Ltd	..	..	..	278		
AHI—Alex Harvey Industries	..	..	..		2233	
AHI—Metal Containers (Petone)	..	..	..		2286	
AMP	..	..	..		2250	
ASB Bank	..	..	..		2080	
Aakronite New Zealand	..	..	..	272		
Aarque Systems NZ Ltd	..	..	..	999		
Abattoirs Association of NZ	..	..	..	1088	2243	3043
Abernethy Pringle Insulation Co Ltd	..	..	..	796		
Able Personnel	..	..	..	564		
Abode Design & Build Ltd	..	..	..	424		
Aburns Glass Industries Ltd	..	..	..		2174	
Accident Compensation Corporation	..	..	..	1247		3023
Acco International (NZ) Ltd	..	..	..	862		
Accord Group	..	..	..	1273		
Ackmead Holdings Ltd	..	..	..	797		
Acrow-Carpenter Ltd	..	..	..	222		
Action Against ACC Increase	..	..	..	596		
Adams, D M	..	..	..	105		
Addax Developments Ltd	..	..	..	1000		
Adlite Aluminium Ltd	..	..	..	1001		
Advanced Management Systems Ltd	..	..	..	307		
Advanced Parts & Spares Ltd	..	..	..	664		
Adventure Travel Shop	..	..	..	516		
Advisory Council for Occupational Safety & Health	..	..	..	1125		3022
Agfa-Gevaert	..	..	..	356		
Agrex Export & Marketing Ltd	..	..	..	799		
Agricultural Pests Destruction Council	..	..	..	594		
Ahuriri Pest Destruction Board	..	..	..	1110		
Air Consortium NZ (1982) Ltd	..	..	..	174	2159	
Air Transport (NZ) Ltd	..	..	..	1192		
Airwork (NZ) 1984 Ltd	..	..	..		2063	
Alcan NZ Ltd	..	..	..	1193		

Alco Ladders NZ Ltd	..	..	..	2268
Alexander Building Contractors 1985 Ltd	..	..	767	
All-Kotes (NZ) Ltd	..	..	1003	
Allan Roberts Ltd	..	..	..	2044
Allan, P G	..	..	800	
Allen Calendars	..	..	..	2230
Allens Office Products Ltd	..	..	979	
Allied Mortgage Guarantee Co Ltd	..	..	863	
Almec Industries	..	..	371	
Aloette	..	..	314	
Alpha Customs Services	..	..	..	2039
Alpha Secretarial and Taxation	..	..	425	
Aluminium Surface Finishers (1987) Ltd	..	..	539	
Ampro Sales Ltd	..	..	503	
Amputees Federation of NZ Inc	..	..	756	
Ancell/Care	..	..	..	3122
Anchor Fence Ltd	..	..	669	2210
Anchorage Bay View Motel	..	..	1004	
Anglican Diocese of Waikato	..	..	..	2033
Anglo Engineering Ltd	..	..	864	
Anthony Marquet Ltd	..	..	993	
Anton's Seafoods Ltd	..	..	305	
Anvil Jewellery Ltd	..	..	994	
Anzdec Ltd	..	..	1194	
Apex Engineering Ltd	..	..	276	
Appeal Furniture Co Ltd	..	..	1147	
Applied Power	..	..	386	
Aquaheat Industries Ltd	..	..	514	
Aquatic Park	..	..	1005	
Arborfold Industries Ltd	..	..	741	
Architectural Joinery Components	..	..	..	2154
Arco Engineers Ltd	..	..	94	3125
Ardmore Commission Knitters	..	..	509	
Argus Distributors (NZ) Ltd	..	..	865	
Argus Fire Sprinkler Systems (NZ) Ltd	..	..	801	
Ariki Industries Ltd	..	..	910	
Aristocrat Lights	..	..	823	
Armocup Shipping & Chartering	..	..	995	
Arnold & Wright Ltd	..	..	..	2194
Arthur Gibbs Ltd	..	..	579	
Arthur Webster (NZ) Pty Ltd	..	..	1141	
Ashburton County Council	..	..	..	2186
Ashfield Engineering Ltd	..	..	395	
Ashley-Waikari Pest Destruction Board	..	..	607	
Ashman's Roofing Services Ltd	..	..	147	
Aspak Industries Ltd	..	..	1270	
Associated Northern Ltd	..	..	913	
Atlantic & Pacific Travel International Ltd	..	..	600	
Auckland & Tomoana Freezing Workers Union	..	..	2	3009
Auckland Agricultural Pastoral & Industrial Shows Board	..	..	286	
Auckland City Council	..	..	650	2322
Auckland Electrical Services Ltd	..	..	287	
Auckland Farmers' Freezing Cooperative Ltd	..	..	85	
Auckland Gas Co Ltd	..	..	739	
Auckland Hospital Board Advisory Committee on Geriatric Services	..	..	345	
Auckland Knitting Mills Ltd	..	..	223	
Auckland Mailing Service Ltd	..	..	914	
Auckland Master Builders Association (Inc)	..	..	592	
Auckland Packaging Co Ltd	..	..	290	

Auckland Regional Authority	..	..	..	2206	
Auckland Regional Chamber of Commerce	..	..	130	2293	
Auckland Sewing and Knitting Machine Specialists Ltd			1215		
Australian Mutual Provident Society	..	..			3089
Autex Industries Ltd	..	..	..	2135	
Auto Utilities & Hardware Ltd	..	..	188		
Automatic Transmissions Ltd	..	..	440		
Automobile Association (Auckland) Inc	..	..	1238		
Avery Leuschke Architects Ltd	..	..	547		
Avery-Wood Ltd	..	..	802		
Aviation & Industrial Distributors Ltd	..	..	915		
Aviation Industry Association of NZ (Inc)	..	..	657		
Avis	..	..	..	2045	
Avon Electric Ltd	..	..	..	2289	
Axent Audio Products Ltd	..	..	441		
B & M Hieatt Ltd	..	..	131		
B D M Ltd	..	..	916		
B L M Engineering Co Ltd	..	..	602		
B W Herbert Ltd	..	..	230		
B W Palmer Ltd	..	..	1160		
Bailey Design and Drafting Ltd	..	..	187		
Banner International	..	..	563		
Barnardo's New Zealand	..	..	..	2106	3025
Bay Marquee Hire Ltd	..	..	..	2075	
Bay Mowers & Machinery Ltd	..	..	1206		
Bay of Islands County Council	..	..	712		
Bay of Islands Veterinary Service	..	..	1165		
Bay of Plenty Asphalt Ltd	..	..	982		
Bay of Plenty Harbour Board	..	..	585		
Bay of Plenty Weed Control	..	..	983		
Bayline Group Ltd	..	..	866		
Beacon	..	..	..	380	
Beacroft Bros. Export Ltd	..	..	233		
Bedlam Brass Beds Ltd	..	..	48		
Belfast Wool Co Ltd	..	..	219		
Belsham, D S	..	..	..	2022	
Bendon Industries	..	..	696	2099	
Benefield & Lamb Ltd	..	..	150	2300	
Bennett, D S	..	..	426		
Bennett, Mackay, Mullany & Robinson	..	..	917		
Berkeley Services	..	..	506		
Best Western	..	..	1102		
Better Living (Peter Ferris) Ltd	..	..	867		
Betts Engineering Ltd	..	..	265		
Bissett, Hodge & Rainey	..	..	119	2155	
Blake, Grant W	..	..	..		3110
Blenheim Electric House (1985) Ltd	..	..	661		
Blenheim Food Products Ltd	..	..	215		
Blighs Road Service Station	..	..	587		
Blow Moulders Ltd	..	..	183		
Blue Grass Products Ltd	..	..	297	2272	
Blyth, M	..	..	116		3079
Blyth, M C	..	..	..	2312	
Bonds (NZ) Ltd	..	..	605	2115	3053
Bonito Industries Ltd	..	..	1159		
Booksellers Association of NZ Inc	..	..	1080		
Booth, G	..	..	100		
Border Construction Ltd	..	..	918		
Borg-Warner Sales & Services Ltd	..	..	..	2037	

Bourneville Furniture Co Ltd	..	..	..	442		
Bowen Hospital Trust	..	..	..		2024	
Bowing Burgess Marsh & McLennan Group	..	..	..	485		3108
Bradmill Industries (NZ) Ltd	..	..	..	868		
Bradshaw Builders Ltd	..	..	..	120		
Braithwaite, G H	..	..	..	653		
Brew, M	..	..	..			3124
Briscoes (NZ) Ltd	..	..	..	919		
Brittains Pharmacy (1980) Ltd	..	..	..	920		
Brosco Ltd	..	..	..	224		
Brown, Woolley & Graham	..	..	..	217		
Brownings Secretarial Services Ltd	..	..	..	443		
Bryce Francis Ltd	..	..	..	984		
Building Societies Association (NZ) Inc	..	..	..		2373	
Bull, J	..	..	..	427		
Buller County Council	..	..	..			3034
Bumper Replacements (NZ) Ltd	..	..	..	720		
Burlton, A B	..	..	..	186		3007
Burnard Bull & Co	..	..	..	1249		
Burns Hart and O'Shea	..	..	..	25		
Burwood Hospital Spinal Injuries Unit	..	..	..	524		
Bushells Ltd	..	..	..	803		
Business Machines Ltd	..	..	..	570		
Butland Industries Ltd	..	..	..	267		
Butterfields	..	..	..		2327	
Buttle Wilson	..	..	..		2093	
Byers Hayward Weber	..	..	..	347		
Byron Manufacturing Co Ltd	..	..	..	984		
C B S Engineering Ltd	..	..	..	921		
C Gibbons Holdings Ltd	..	..	..		2138	
C.P.I.	..	..	..		361	
CDL Character Developments (NZ) Ltd	..	..	..		2108	
Cable-Price Steel	..	..	..		2124	
Caltex Oil (NZ) Ltd	..	..	..		2030	3020
Cambridge Clothing Co Ltd	..	..	..	626		
Campbell Engineering Ltd	..	..	..	616		
Campbell Tube Products Ltd	..	..	..	623		
Campbell-Renton Hardware Ltd	..	..	..	630		
Canadian Pacific Air Lines	..	..	..	1191		
Canterbury Dairy Farmers Ltd	..	..	..		2127	
Canterbury Furniture Trade Industrial Union of Employers	..	..	..	697		
Canterbury Rubber Workers Industrial Union of Workers	..	..	..	153		
Canterbury Sheepskin Accessories Ltd	..	..	..	171		
Capistrano Restaurant	..	..	..	695		
Capper, Macdonald & King	..	..	..		2129	
Caravan Repairs (Auckland) Ltd	..	..	..	1226		
Carbines & Smith Ltd	..	..	..	986		
Carborundum Abrasives Ltd	..	..	..		2062	
Career Centre Ltd	..	..	..	489		
Carlin International Ltd	..	..	..	221		
Carlton Cranes	..	..	..	370		
Carlton Mill Lodge	..	..	..		2087	
Carlton Publishing Ltd	..	..	..	246		
Carousel Turntables	..	..	..	1006		
Carparts	..	..	..	869		
Carpet & Furniture Warehouse	..	..	..	139		
Carpetland	..	..	..	445		
Carran Miller & Partners	..	..	..			3120
Carrick Sheetmetals Ltd	..	..	..	804		

Carswell, J F	..	..	..	..	125		
Carter House	..	..	..	..		2203	
Carter, J	..	..	..	..	3	2168	3006
Carter, T C	..	..	..	..	103	2282	3024
Cashmore Bros Ltd	..	..	..	..	1207		
Castle Furniture Sales & Marketing Ltd	..	..	..	..	1210		
Cedar Lodge Nurseries	..	..	..	..	154		
Celestial Hair Design	..	..	..	..	1007		
Central Bay of Plenty Pest Destruction Board	..	..	..	..	666		
Centrepont Jewellers	..	..	..	..	870		
Centron Corporation	..	..	..	..	1149		
Century Hutchinson NZ Ltd	..	..	..	..	1008		
Cerebos Gregg's Ltd	..	..	..	..	768		
Certified Welding Ltd	..	..	..	..	164		
Chadwick Road Jewellers	..	..	..	..	816		
Chadwick Road Super Discounter	..	..	..	..	818		
Chamber of Commerce & Industry of Northland Inc	..	..	..	..	36		
Charles Donoghue & Associates	..	..	..	..	805		
Charley Browns Restaurant	..	..	..	..	1195		
Charles Boutique	..	..	..	..		2187	
Chatwin Group	..	..	..	..	922		
Chaytor Fences	..	..	..	..	923		
Cherry Island Ltd	..	..	..	..	871		
Cherry Island Travel	..	..	..	..	872		
Cheviot Pacific Ltd	..	..	..	..		2095	
Children's World	..	..	..	..		2073	
Chilton Ross & Co	..	..	..	..	751	2326	3046
Christchurch Drainage Board	..	..	..	..		2143	
Christchurch Motel Association (Inc)	..	..	..	..		2368	
Christchurch School of Medicine	..	..	..	..	76		
Christian Aviation	..	..	..	..	336		
Christian Science Committee on Publication for NZ	..	..	..	..	107		
Chronos Extrusions Ltd	..	..	..	..	1049		
City of Birkenhead	..	..	..	..		2038	
City of East Coast Bays	..	..	..	..		2126	
Civray Ltd	..	..	..	..	354		
Clark Signs Ltd	..	..	..	..	1228		
Clark and Matheson Ltd	..	..	..	..	327		
Clarks Shoes Ltd	..	..	..	..	157		
Classic Waterbeds	..	..	..	..	332		
Clearwater Signs	..	..	..	..		2007	
Clephane, David & Lewis, Neil	..	..	..	..		2355	
Clutha County Council	..	..	..	..			3014
Clyde Fruitgrowers Association	..	..	..	..	27		
Coachwork Int'l Ltd (Palm Nth)	..	..	..	..		2059	
Coachwork International Ltd	..	..	..	..	330	2017	
Coates Brothers (NZ) Ltd	..	..	..	..	264		
Colchester Engineering Ltd	..	..	..	..	1261		
Cole, Dr D S	..	..	..	..	29		
Colin Davis Panelbeaters	..	..	..	..	924		
Colortron Carpets	..	..	..	..		2242	
Comanco	..	..	..	..	184		
Combined State Services Union	..	..	..	..	763	2296	
Comesky, G P	..	..	..	..	749	2252	
Commercial Furniture	..	..	..	..	418		
Committee on Brucellosis	..	..	..	..	50		
Commodore Computer (NZ) Ltd	..	..	..	..	806		
Communication House (NZ) Ltd	..	..	..	..	1257		
CompAir	..	..	..	..		2201	
Company Catering Co	..	..	..	..	321	2072	

Complete Home Appliance Services	..	..	820		
Composite Developments (NZ) Ltd	..	..	446		
Computer Transport Services (NZ) Ltd	..	..	1211		
Conform NZ Ltd	..	..	312		
Connor, B J	..	..	634		
Conspan Industries Ltd	..	..	807		
Construction & Maintenance Engineering Ltd	..	..	873	2273	
Construction Machinery Ltd	..	..	1244		
Container Terminals Ltd	..	..	987		
Continental Engineering Ltd	..	..	355	2255	3061
Contract Connections Ltd	..	..	508		
Cook County Council	..	..	..	2200	
Cooke Howlison	..	..	1010	2306	3019
Cookes	..	..	..	403	
Cookie Time Ltd	..	..	225		
Cooper, G B	..	..	74		
Cork Supplies (NZ) Ltd	..	..	383		
Corporate Resources Group	..	..	925		
Cosmopolitan Agencies Ltd	..	..	1196		
Cospac Industries Ltd	..	..	926		
Cost Services Ltd	..	..	927		
Counterstroke NZ Inc	..	..	19		
Court Hobday Spraying	..	..	698		
Craig, L	..	..	78		
Craighead Diocesan School Trust Bd	..	..	..	2325	
Crane Accessories Ltd	..	..	928		
Cranwell Publishing Group	..	..	929		
Crisps Agencies & Exports Ltd	..	..	401		
Croda Polymers (NZ) Ltd	..	..	988		
Crown Watching & Commercial Security Services (NZ) Ltd	..	..	640		
Cullimore, K	..	..	7		
Cunningham, A B	..	..	55		
Cut Above Hairdressing Salons Ltd	..	..	447		
Cyclone-Cmi Industries Ltd	..	..	..	2079	
D & C Avey Ltd	..	..	1012		
D Haynes Engineering Ltd	..	..	122		
D M Palmer Ltd	..	..	808		
D S L Group	..	..	158		
D.Y.C. Demolition Ltd	..	..	1199		
Dannevirke District Council	..	..	..	2184	
Dargaville Concrete Products	..	..	216		
David Lloyd Group of Companies	..	..	333		
Davis Building and Masks Ltd	..	..	163		
Davis Gelatine (NZ) Ltd	..	..	1171		
Davis, Dr P	..	..	75		3004
DeNeefe Signing Systems Ltd	..	..	1197		
Decal Harvison Ltd	..	..	..	2125	
Delphi Industries Ltd	..	..	277		
Deltic NZ Ltd	..	..	..	2259	
Dennis Hall Decorators Ltd	..	..	1248		
Deoor Furniture Ltd	..	..	..	2077	
Department of Health	..	..	..		3013
Department of Justice	..	..	..		3032
Dependable Engineering Ltd	..	..	394		
Derek Batts Ltd	..	..	629	2025	
Desborough Management Services Ltd	..	..	..	2101	
Desiree Hairstyles	..	..	..	2277	
Detection Alarm Systems Ltd	..	..	740		
Dickson Display Co Ltd	..	..	279		



Dickson, A M	..	..	..	..	428		
Diners Club International	..	..	..	..	930		
Disabled Persons Assembly (NZ) Inc	..	..	..	..	659	2254	3074
Divine Design	..	..	..	..		2251	
Domett Fruehauf Trailers (BOP) Ltd	..	..	..	..	874		
Dominion Containers Ltd	..	..	..	..	448		
Dominion Paper Products Ltd	..	..	..	..	1269		
Dominion TV Rentals Ltd	..	..	..	..	324		
Doocey, N F	..	..	..	..		2263	
Dulmison (NZ) Ltd	..	..	..	..	449		
Duncan Blaikie Ltd	..	..	..	..	315		
Duncans Canvas Supply Co	..	..	..	..		2078	
Dunlop, B T	..	..	..	..		2162	
E Astley & Sons Ltd	..	..	..	..	989		
E C C	..	..	..	..	352		
E L K Forklifts & Hydraulics Ltd	..	..	..	..	369		
E Lichtenstein & Co Ltd	..	..	..	..	457		
E M Cook Ltd	..	..	..	..	1278		
E Silestean & Son Ltd	..	..	..	..	555		
E.M.C Electronics Ltd	..	..	..	..	1237		
Eade Engineering Ltd	..	..	..	..	769		
Eagle & Globe Steel (NZ) Ltd	..	..	..	..	73		
Eamar Plastics Ltd	..	..	..	..	1267		
Earnsclough Fruitgrowers Association Inc	..	..	..	..	209		
East Otago Pest Destruction Board	..	..	..	..	715		
Eastern Bay Traders (1979) Ltd	..	..	..	..	1085	2218	
Eastwood, Dr J G	..	..	..	..	45		
Economic Development Commission	..	..	..	..		2370	3068
Eddy's Pharmacy	..	..	..	..	399		
Educational Distributors Ltd	..	..	..	..	238		
Edward Dickson Ltd	..	..	..	..	551		
El-Jay (NZ) Ltd	..	..	..	..	689		
Elders Pastoral Ltd	..	..	..	..	770		
Electric Construction Co of NZ Ltd	..	..	..	..	352		
Electric Furnace Co Ltd	..	..	..	..		2157	
Electric Measurement and Control Ltd	..	..	..	..	226		
Electrical Supply Authorities Association of NZ	..	..	..	..		2371	
Electricorp	..	..	..	..			3016
Elite Engineering Ltd	..	..	..	..	557		
Elm Decorators Ltd	..	..	..	..	990		
Eloise Products Ltd	..	..	..	..	308		
Elsworth, A	..	..	..	..	487		
Emms Building Centre	..	..	..	..	528	2060	
Emoleum (NZ) Ltd	..	..	..	..	180		
Engine Rebuilders Ltd	..	..	..	..	725		
Engineeering Plastics Ltd	..	..	..	..	931		
Enterprise MFG Co Ltd	..	..	..	..	932		
Enzed Technology International Ltd	..	..	..	..	809		
Equiticorp	..	..	..	..		2189	
Eric Diggelmann & Sons Ltd	..	..	..	..	810		
Eric Paton Ltd	..	..	..	..	140	2047	
Erni, Mrs Pam & Eaton Mr Roy	..	..	..	..		2244	
Ernst & Whinney	..	..	..	..	203	2314	
Essar (NZ) Ltd	..	..	..	..	571		
Ettrick Fruitgrowers Association Inc	..	..	..	..	101		3105
Eurographic Arts Ltd	..	..	..	..	1200		
Eurolab Laboratories Ltd	..	..	..	..	1013		
European Motor Distributors Ltd	..	..	..	..	1014		
Europian Industries Ltd	..	..	..	..	377		

Euroway Industries Ltd	..	..	..	..	2253	
Evans, M W	..	..	..	..	617	
Executive Electrical Ltd	..	..	..	..	365	
Exotic Logs Supply	..	..	..	..	492	
Exxtel Communications Ltd	..	..	..	..	273	
F Hayes & Co Ltd	..	..	..	..	260	
F R Galantai Mnfg Co Ltd	..	..	..	..	234	
F S Design Ltd	..	..	..	..	992	
FML (Franklin Machinery Ltd)	..	..	..	..		2027
Fabric Printers	..	..	..	..	583	
Factory and Plant Maintenance Ltd	..	..	..	..	670	
Fan and Light Company	..	..	..	..	245	
Farm Products Co-operative (Hawkes Bay) Ltd	..	..	..	..		2161
Farquhar, I M	..	..	..	..	205	
Federated Farmers of NZ (Inc)	..	..	..	..	764	2366 3071
Federated Farmers of NZ (Inc) Kakepuku	..	..	..	..	93	
Federated Farmers of NZ (Inc), Women's Division	..	..	..	..	191	2375 3101
Federated Farmers of NZ (Mid-Canterbury Provincial District Inc)	..	..	..	..	668	2114 3063
Federated Farmers of NZ (Waikato Provincial District) Inc	..	..	..	..	766	
Federated Farmers of NZ Inc (Southland Provincial District)	..	..	..	..	580	
Federated Farmers of NZ South Canterbury Provincial District (Inc)	..	..	..	..	598	2169
Federated Farmers, Manawatu and Rangitikei Provinces	..	..	..	..	57	
Federated Mountain Clubs of NZ (Inc)	..	..	..	..		3047
Fermentation Industries (NZ) Ltd	..	..	..	..	510	2096
Ferrocast Machine Tools Ltd	..	..	..	..	271	
Fidelity Printing Co Ltd	..	..	..	..	66	
Field International Ltd	..	..	..	..	812	
Field Rubber Ltd	..	..	..	..		2197
Field, B D	..	..	..	..	1198	
Fielden Smith Builders	..	..	..	..	875	
Financial Systems Ltd	..	..	..	..	813	
Finewood Furniture Ltd	..	..	..	..	413	
Finnemore Refrigeration Ltd	..	..	..	..	933	
Firestone	..	..	..	..	737	
Firth Certified Concrete	..	..	..	..		2313
Fisher & Paykel Ind Ltd	..	..	..	..		2166
Fisher Catering Services	..	..	..	..		2128
Fleete Engineering Ltd	..	..	..	..	450	
Fleming, F	..	..	..	..	581	2337 3080
Fletcher Construction Co Ltd	..	..	..	..		3062
Fletcher Fishing Ltd	..	..	..	..	934	
Fletcher Fishing Ltd, Overseas Division	..	..	..	..		3031
Fli Cargo (NZ) Ltd	..	..	..	..	1212	
Flight & Field Services Ltd	..	..	..	..	814	
Flooring Enterprises Ltd	..	..	..	..	935	
Foodstuffs (Auckland) Ltd	..	..	..	..	936	2271
Foodstuffs (Wellington) Co-op Socy Ltd	..	..	..	..		2056
Foodtech Ingredients Ltd	..	..	..	..	1256	
Foote, D K	..	..	..	..	748	
Forbes & Co	..	..	..	..	1169	
Ford Motor Company of NZ Ltd	..	..	..	..		2320
Forgan Jones Co Ltd	..	..	..	..	1016	
Foundation Techniques Ltd	..	..	..	..	429	
Fowler Industries Ltd	..	..	..	..		2100
Fox & Gunn Ltd	..	..	..	..	938	
Franklin County Council	..	..	..	..	665	
Franklin Electric Power Board	..	..	..	..	716	

Fraser, Venning & Crerar	..	..	..	690	
Freight & Bulk Transport Holdings Ltd	..	..	..	746	
Fryco Products Ltd	..	..	..	367	
Fuelquip	..	..	..	175	
Furniture and Fitments	..	..	..	1201	
G & J Martin Ltd	..	..	..		2086
G & M Ballentyne Ltd	..	..	..	980	
G Buchan Water Treatment Co Ltd	..	..	..	378	
G D Searle (NZ) Ltd	..	..	..	1143	
G H Lander Ltd	..	..	..	779	
G M P Holdings Ltd	..	..	..	635	
G Pezaro & Son Ltd	..	..	..	463	
G R Leech & Co	..	..	..	185	
GAP Imports Ltd	..	..	..	877	
GEC (NZ) Ltd	..	..	..	493	2053
Gabites, Sinclair & Partners	..	..	..		2103
Gainsborough Printing Co Ltd	..	..	..	876	
Gallagher Group of Companies	..	..	..	156	2287
Gang-Nail NZ Ltd	..	..	..	381	2057
Garry Aspinall Signs	..	..	..	318	
Gartner Engineering Ltd	..	..	..	878	
Gawith Cunningham & Co	..	..	..		2367
Gearbulk Shipping (NZ) Ltd	..	..	..	451	
Geary, E C	..	..	..	62	
Gelco Ltd	..	..	..	250	
General Accident	..	..	..		2241
General Equipment Company Ltd	..	..	..	970	
General Motors N Z Ltd	..	..	..		2146
Geoffrey M. Shortt Ltd	..	..	..	368	2258
Geordie Food Services Ltd	..	..	..	452	
George, F	..	..	..	662	3066
Geraldine Licensing Trust	..	..	..	114	
Giant Auto Products Ltd	..	..	..	879	
Giles People	..	..	..	519	
Gillespie, John	..	..	..		2323
Gilligan & Co	..	..	..	374	
Glenfield Plumbing Services Ltd	..	..	..	86	
Globe Hotel	..	..	..	398	
Goble, R A	..	..	..	632	
Golden Coast Poultry Industries Ltd	..	..	..		2054
Golden Harvest Licensed Restaurant	..	..	..	1259	
Gooder Electrical Ltd	..	..	..	309	
Goodman, O	..	..	..	430	
Goods Saddlery	..	..	..	584	
Gordon, G D	..	..	..	102	
Grant Blake Builders Ltd	..	..	..	939	
Grant, J	..	..	..		2004
Graphic Arts Platemakers Federation of NZ	..	..	..	733	
Greatlake Motor Co Ltd	..	..	..	541	
Green Island Print Ltd	..	..	..	67	
Greenwood, R	..	..	..	1250	
Greerton Books and Toys	..	..	..	825	
Greerton Flower Haven	..	..	..	821	
Greerton Hardware Ltd	..	..	..	817	
Greerton Menswear	..	..	..	824	
Greerton Pharmacy Ltd	..	..	..	815	
Greerton Sewing Centre	..	..	..	828	
Greymouth Book Exchange Society (Inc)	..	..	..	1236	2178
Griffin & Sons	..	..	..	544	

Griffin Savage Co Ltd	..	..	..	568	
Griffiths, G.	..	..	..	554	
Group Trade Ltd	..	..	..	263	
Grout Seal Ltd	..	..	..	407	
Gulf Manufacturing Ltd	..	..	..	1017	
Guthrie's Jewellers Ltd	..	..	..	911	
Guy Engineering Ltd	..	..	..		2262
H B Fuller Co (NZ) Ltd	..	..	..	704	
H Leighton Hill Ltd	..	..	..	1018	
H McCarthy Engineering Ltd	..	..	..		3049
H P Hanna & Co	..	..	..	200	3045
H T C Import Service	..	..	..	545	
H U B Furniture Warehouse Ltd	..	..	..	296	
Hair Flair Salon	..	..	..		2283
Hair Now	..	..	..		2228
Hair World	..	..	..	829	
Hairfashions Epsom	..	..	..	405	
Hairlucination	..	..	..		2205
Hakataramea Valley Pest Destruction Board	..	..	..	1111	
Hall Shopfitting	..	..	..	529	
Hall, N C	..	..	..	1153	
Hamilton City Council	..	..	..	1113	2145
Hansen & Berry Ltd	..	..	..	392	
Happy Days Co Ltd	..	..	..		2110
Harbours Association of NZ	..	..	..	229	2264
Harbro Trading Co Ltd	..	..	..	1019	
Harkin Roofing Ltd	..	..	..	1020	
Harmony Furniture Ltd	..	..	..	393	
Harris & Taylor	..	..	..		2043
Harris Electrical	..	..	..	177	
Harrod, R J	..	..	..	415	
Harry Liddle Ltd	..	..	..	567	
Hart's Printing Co Ltd	..	..	..	771	
Harvey Furnishings Ltd	..	..	..	479	
Havelock Village Restaurant	..	..	..		3117
Hawera Engineering Co Ltd	..	..	..	912	
Hawkes Bay Fibrous Plaster Ltd	..	..	..	173	
Hawkes Bay Fruitgrowers Association Inc	..	..	..	70	
Hawkes Bay Rape Crisis Centre	..	..	..	755	2240
Hawkes, M	..	..	..	141	
Hayes Metal Refineries Ltd	..	..	..	248	
Hazlewood Transport Ltd	..	..	..	499	2183
Headway Salon	..	..	..	819	
Headway Wellington (Inc Pend) Soc	..	..	..		3050
Healing Industries Ltd	..	..	..	300	
Health Equality for All	..	..	..	211	
Heat and Control Ltd—Greer Division	..	..	..	416	
Heatons Transport Ltd	..	..	..	548	
Help Foundation	..	..	..	210	
Henderson Productions (1982) Ltd	..	..	..	780	
Henderson, Borough of	..	..	..		2092
Henke, W F	..	..	..		2156
Hennessy Grading Systems Ltd	..	..	..	781	
Hermeck Aluminium Ltd	..	..	..	981	
Hermes Manufacturing Ltd	..	..	..	316	
Hervey Motors Ltd	..	..	..	193	
Highflo Company Ltd	..	..	..	1170	2182
Hill, J	..	..	..	199	
Hillock, Dr J	..	..	..	687	

Hills Floorings Ltd	..	..	..	326		3035
Hiremaster	..	..	..	159		
Hobo, K	..	..	..		2042	
Hokianga County Council	..	..	..	621		
Holiday Clothing Co Ltd	..	..	..	880		
Holmden Horrocks & Co	..	..	..	1021		
Holmes Aluminium Ltd	..	..	..		2348	
Home Improvements (Tga) Ltd	..	..	..	772		
Honey Village	..	..	..	1022		
Honomiro Spinners Ltd	..	..	..	366		
Horizon Aluminium Products Ltd	..	..	..	832		
Horizon Shore Sails	..	..	..		2172	
Horowhenua County Council	..	..	..	1162		3112
Horrocks, J B	..	..	..	765		
Horsburgh, R B	..	..	..	49	2104	3044
Hosking Nurseries Ltd	..	..	..	95		
Hospital Boards Association of NZ	..	..	..	1130		
Hotel Association of NZ	..	..	..		2332	
Howse, N W	..	..	..	53		3042
Hoyle Industries Ltd	..	..	..	1082		
Hubbard & Blue Ltd	..	..	..	940		
Hughes & Cossar Holdings Ltd	..	..	..	362		
Hughes & Cossar Machinery Ltd	..	..	..	941		
Hughes, Jim	..	..	..	655	2345	3030
Hutchinsons (Wholesale) Ltd	..	..	..	402		
Hutt Valley Chamber of Commerce	..	..	..		2304	
Hutt Valley Industrial Electricians Ltd	..	..	..	782		
Hutt Valley Veterinary Svces Ltd	..	..	..		2051	
Hy-Craft Sheetmetals Ltd	..	..	..	736		
I G & D A Spark Ltd	..	..	..	1131		
Ian Morrow Industries Ltd	..	..	..	235		
Ian Roebuck Crane Hire	..	..	..	146		
Ideal Constructions (Auck) Ltd	..	..	..	835		
Ideal Garages	..	..	..	834		
Impact Windows Ltd	..	..	..	773		
Independent Newspapers Ltd	..	..	..	507		
Industrial Clutches Ltd	..	..	..	881		
Industrial Plant & Technics Ltd	..	..	..	1023		
Industrial Technology (INTEC) Ltd	..	..	..	942		
Industrial Tooling Ltd	..	..	..	302		
Inglewood Engineering Ltd	..	..	..	172		
Inglis, I A	..	..	..	13		
Ingram, B C	..	..	..	699		
Inland Revenue	..	..	..		2364	
Inmetals Trading (Auckland) Ltd	..	..	..	420		
Innes-Owens Pty Ltd	..	..	..		2372	
Insapine Industries Ltd	..	..	..	943		
Instant Freeline	..	..	..	311		
Institute of Directors NZ Division	..	..	..	1078	2334	3076
Insurance Council of NZ	..	..	..	110	2340	
Insurance Employers Association	..	..	..		2105	
Ipsco	..	..	..	417		
Ison, Professor T G	..	..	..	1274		
Ivon Watkins-Dow Ltd	..	..	..	342	2324	
J & R Strevens Ltd	..	..	..		2365	3056
J B Klue Ltd	..	..	..	1024		
J B Mouldings Ltd	..	..	..		2191	
J E Dennis Ltd	..	..	..	837	2012	

J I F	..	..	..	261	
J P Morgan Real Estate	..	..	..	1025	
Jackson Appliance Services	..	..	..	500	
Jackson, Allison Medical & Surgical Ltd	..	..	..	376	
Jacobs, Florentine & Partners	..	..	..	1164	
Jaeco Industries Ltd	..	..	..	375	
Jakaar Plastics Engineering Industries Ltd	..	..	..	404	
James Miers Associates Ltd	..	..	..	836	
James Nilsson Ltd	..	..	..	142	2120
Janome Sewing Maching Co (NZ) Ltd	..	..	..	1026	
Janssens Industries Ltd	..	..	..	406	
Janus Cleaning & Consultancy Ltd	..	..	..	160	
Japan Line	..	..	..	454	
Jenny's Childrenswear	..	..	..	826	
John Bockett Pharmacy Ltd	..	..	..	400	
John Goodman & Co Ltd	..	..	..	944	
John Henderson Ltd	..	..	..	106	
John M Fraser & Co Ltd	..	..	..	176	
John McGlashan College	..	..	..	639	
John P Young & Associates (NZ) Ltd	..	..	..	882	
John Vaughan & Co Ltd	..	..	..	883	
John W Shackelford & Son Ltd	..	..	..	291	
Johns Kitchenmakers Ltd	..	..	..	884	
Johnson & Johnson Ltd	..	..	..	1250	
Johnson Matthey Ltd	..	..	..	387	
Joinery Developments & Investments Ltd	..	..	..	945	
Jonathan Enterprises Ltd	..	..	..	1027	
Jonel Corporation Ltd	..	..	..	178	
Jones & Sandford Ltd	..	..	..	152	
Just Joinery Ltd	..	..	..	1094	
K T Lawson & Son Ltd	..	..	..		2112
KBT General Carriers	..	..	..	1251	
KRTA Ltd	..	..	..	303	
Kagans	..	..	..	353	
Kaikoura Pest Destruction Board	..	..	..	1099	
Kaingaroa Logging Contractors Association (Inc)	..	..	..	1104	
Kaipara Excavators Ltd	..	..	..	455	
Kaitaia Chamber of Commerce	..	..	..	1097	2195
Kakanui Range Pest Destruction Board	..	..	..	1112	
Kays The Wool Specialists	..	..	..	822	
Keilaws Investments Ltd	..	..	..		2109
Keith Hay Group	..	..	..		2085
Kel Aiken Printing Co Ltd	..	..	..	1028	
Kelly & Bryant	..	..	..	52	2217
Kendons	..	..	..		2130
Kenner Parker (NZ) Ltd	..	..	..	838	
Kennick Trading (International) Ltd	..	..	..	996	
Kerikeri Fruitgrowers Society (Inc)	..	..	..	84	
Kernohan Engineering Ltd	..	..	..		2116
Kerridge-Odean Corp Ltd	..	..	..		2082
Keruse & Gairdner	..	..	..	1186	
Keywin Sports Ltd	..	..	..		2040
Kidd Garrett Holdings Ltd	..	..	..	298	
Kindercare Learning Centres Ltd	..	..	..	531	2139
King Country Electric Power Board	..	..	..	611	2118
King's College	..	..	..		2032
King, N W	..	..	..	206	
Kingston & Partners	..	..	..	240	
Kingston Catering and Providoring Co Ltd	..	..	..	194	

Kingsway Outfitters Ltd	..	..	..	335		
Kirk Barclay, Auckland	..	..	..	885		
Kirk Barclay, Rotorua	..	..	..	26		
Kiss Cola	..	..	..	627		
Kitt Associates Ltd	..	..	..	946		
Kitt Personnel Consultancy Ltd	..	..	..		2299	
Kiwi Co-op Dairies Ltd	..	..	..		2238	
Knight, B	..	..	..	10		
Knitwit Fabrics (NZ) Ltd	..	..	..	1029		
Koller & Hassall	..	..	..		2011	
Konditorei Aida	..	..	..	518		
Kovacs Design Furniture Ltd	..	..	..	11		
Koves Buttons Ltd	..	..	..	937		
Kurow Pest Destruction Board	..	..	..	1107		
L L Wright Ltd	..	..	..	520		
L R Allen & Co Ltd	..	..	..	694		
L T Hayman Ltd	..	..	..	947		
La Trobe Hall Joinery Ltd	..	..	..	247		
Labour Department	..	..	..	1105		
Ladbrook Hardware Ltd	..	..	..	1030		
Lambswool Corporation Ltd	..	..	..	410		
Lane Neave Ronaldson	..	..	..		2291	
Laser Lab	..	..	..	1156		
Lawler Bros	..	..	..	1031		
Lawrence Anderson Buddle	..	..	..	752	2091	
Legge Pacific Ltd	..	..	..	948		
Leigh Motel	..	..	..	949		
Leonard & Dingley Ltd	..	..	..	244		
Les Bamford Motors Ltd	..	..	..		2260	
Les Cheveux	..	..	..	456		
Les Mills Corporation Ltd	..	..	..	839		
Letraset Systems (NZ) Ltd	..	..	..	950		
Levene & Company Ltd	..	..	..	951		
Levingston Bros Ltd	..	..	..		2269	
Lichfield (NZ) Ltd	..	..	..	624	2122	
Life Offices' Association of NZ Inc	..	..	..			3113
Lilly, E	..	..	..	703		
Limited Express	..	..	..	717		
Line Seven (1986) Ltd	..	..	..	458		
Lines, H	..	..	..	486		
Lintex Fabrics	..	..	..	1242		
Littlejohn Machinery Ltd	..	..	..	731	2167	
Lobb & O'Connor Electrical Ltd	..	..	..	179		
Loburn Fruitgrowers Association	..	..	..	38		
Local Authorities' Officers' Association	..	..	..	1146		
Logan Office Furniture Ltd	..	..	..	322		
Longstaff, M D	..	..	..	338		
Lotus Yachts	..	..	..	391		
Lowe, R P	..	..	..			3036
Lucas Ford	..	..	..		2065	3021
Lucas Industries NZ Ltd	..	..	..	952	2207	3075
Lundon Seal Ltd	..	..	..		2151	
Lynch, H	..	..	..	575	2298	3088
Lyon Ford	..	..	..	364		
M & L Brown Ltd	..	..	..	1154		
M F Hunter Holdings Ltd	..	..	..		2148	
M L Jerard & Co Ltd	..	..	..	1152		
M McCarthy Engineering Ltd	..	..	..	532		

M R J Thompson Construction Ltd	..	..	474		
M W Marketing Ltd	..	..	890		
MSAS Cargo International	..	..	535		
MacEwans Machinery Ltd	..	..	337		
Macdonald, A	..	..	1123		
Macgregor Plumbing	..	..	431		
Mackenzie Basin Pest Destruction Board	..	..	89		
Maessen, J	..	..	671		
Magazine Publishers' Association of NZ Inc	..	..	1032		
Mahana Fruitgrowers Association	..	..	34	3018	
Maidstone Veterinary Clinic Ltd	..	..		2036	
Mainland Seafoods (1972) Ltd	..	..	559		
Mainly Cane	..	..		2188	
Maison Monique	..	..	549		
Malcolm Fowler Motors Ltd	..	..	783		
Manaia Engineering Ltd	..	..	1101		
Manawatu Catchment Board	..	..	23		
Manawatu Co-operative Dairy Co Ltd	..	..	1175		
Manawatu Pest Destruction Board	..	..	693		
Mangere Health Centre	..	..	56		
Mangere Law Centre	..	..		2181	
Mangonui County Council	..	..	214		
Manning-Voyce & Associates Ltd	..	..	840		
Mansion House	..	..	242		
Manuels Beach Resort	..	..	841		
Mark Petch (NZ) Ltd	..	..	842		
Markcom Print	..	..	249		
Marlborough Electric Power Board	..	..	618		
Marlborough Express	..	..	574	3017	
Marlborough Fruitgrowers Association	..	..	109		
Marlborough Pest Destruction Board	..	..	1096		
Marlborough Regional Pest Authority	..	..	1098		
Marlborough Textiles	..	..	488		
Marleen of Cherrywood	..	..	1166		
Martin Harwood Ltd	..	..	325		
Martin Roberts Motors Ltd	..	..	686	2190	3048
Marton Borough Council	..	..		2076	
Mason King	..	..		2137	
Massey Heights Veterinary Hospital	..	..		2247	
Massey University	..	..		2070	
Master Builders' Federation (Inc)	..	..			3102
Masterton Employers	..	..		2305	
Masterton Plumbing Services	..	..	728	2235	
Matthews Masonry Ltd	..	..	213		
Matthews, E M	..	..	685		
Mavlin Industries Ltd	..	..	620		
Maxwell Purdy & Partners Ltd	..	..	843		
McDonald's System of NZ Ltd	..	..	886		
McHugh, McKenzie & Sherwin	..	..	887		
McKay's Radio & Electrical House	..	..	61		
McKinstry, B A	..	..	104	2171	
McLaughlan, L	..	..	1252		
Meadows Freight NZ Ltd	..	..		2049	
Meale Engineering Co Ltd	..	..	170		
Meatex (NZ) Ltd	..	..	237		
Mechanical and Welding Services	..	..	774		
Medical Council of NZ	..	..	1239		
Medical Laboratory	..	..	268		
Mental Health Foundation of NZ	..	..	132		
Mesco Liquid Air Ltd	..	..	953		



Mestrom, W H	..	..	..	..	432		
Metal Pressing & Forming Ltd	..	..	..	..	1208		
Metal Spinners Ltd	..	..	..	..	382		
Metro Ford	..	..	..	..	888		
Metrology Techniques	..	..	..	..	243		
Mid-Canterbury Industries Ltd	..	..	..	..	742	2117	
Middlemore Hospital Rehabilitation Committee	..	..	..	..	151		3093
Midland Transport Services Ltd	..	..	..	..	1033	2055	
Mike Vinsen Ltd	..	..	..	..	505		
Miles Nelson Manufacturing Co Ltd	..	..	..	..	718		
Milford Bathroom Court	..	..	..	..	262		
Miller Moyes Seacraft Ltd	..	..	..	..	498		
Miller, Professor R	..	..	..	..	117		
Mills Bakery Ltd	..	..	..	..	1214		
Milog Holdings NZ Ltd	..	..	..	..	232		
Mines, Q	..	..	..	..	1185	2031	
Ministry of Transport	..	..	..	..	759	2351	3052
Ministry of Works & Development	..	..	..	..	591		
Minogue, J F	..	..	..	..	1015		
Mirotone (NZ) Ltd	..	..	..	..		2046	
Mitsubishi Motors	..	..	..	..		2013	
Moa-nui Co-op Dairies Ltd	..	..	..	..		2081	3039
Models (NZ) Ltd	..	..	..	..	954		
Modern Bags Ltd	..	..	..	..	1034		
Moffat Appliances Ltd	..	..	..	..	688	2089	
Mold Makers Ltd	..	..	..	..	319		
Mollers Dunedin	..	..	..	..		2234	
Moon, M H	..	..	..	..	37		3082
Moore Business Forms & Systems Division	..	..	..	..	512		
Morley Engineering Ltd	..	..	..	..		2290	
Morrow Furniture Ltd	..	..	..	..	784		
Motor Rebores (U.H.) Ltd	..	..	..	..	730	2333	
Motor Trade Association (Inc)	..	..	..	..	577	2083	
Motueka Fruitgrowers Association	..	..	..	..	58		
Mount Cook Group Ltd	..	..	..	..		2113	
Moutere Hills Fruitgrowers	..	..	..	..	533		
Mr Chips Ltd	..	..	..	..	889		
Mt Roskill Borough Council	..	..	..	..	1105	2261	
Muir Crane Hire Ltd	..	..	..	..	483		
Multichem Laboratories Ltd	..	..	..	..	955		
Municipal Association of NZ Inc	..	..	..	..	1090	2224	3084
Munro, J C	..	..	..	..	573		
NCR	..	..	..	..		2094	
NDA NZ Ltd	..	..	..	..		2119	
NZ Alpine Club Inc	..	..	..	..	1144		
NZ Amalgamated Engineering and Related Trades Industrial Union Workers	..	..	..	..	1079	2360	3060
NZ Artificial Limb Board	..	..	..	..	706		
NZ Assembly for Sport (Inc)	..	..	..	..	1126		3086
NZ Association of Bakers Inc	..	..	..	..		2256	
NZ Automobile Association	..	..	..	..	754		
NZ Bankers Association	..	..	..	..	4	2357	3096
NZ Berryfruit Growers Federation (Inc)	..	..	..	..	645		
NZ Boxing Association Inc	..	..	..	..	1128		
NZ Business Roundtable	..	..	..	..	1240	2356	3069
NZ Business Speakers Bureau	..	..	..	..	534		
NZ Chambers of Commerce (Inc)	..	..	..	..	121	2330	3098
NZ Chiropractors Association Inc	..	..	..	..	77		
NZ Co-operative Dairy Coy Ltd	..	..	..	..		2310	

NZ Co-operative Wool Marketing Association Ltd	..	786		
NZ College of Community Medicine	..			3055
NZ Contractors Federation (Inc)	..	721	2295	3012
NZ Contractors Federation (Inc): Nelson-Marlborough Branch	..	738		
NZ Cosmetic Laboratories Ltd.	..	433	2133	
NZ Council of Trade Unions	..			3116
NZ Crippled Children Society (Inc) Tauranga Branch	..	628		
NZ Crippled Children's Society Inc	..	98		
NZ Dairy Factories' Industrial Union of Employers	..	133	2173	3085
NZ Defensive Driving Council Inc	..	65		
NZ Dental Association Inc	..	349	2352	3106
NZ Direct Marketing Association Inc	..	1035		
NZ Disabilities Resource Centre	..	16		
NZ Electrical Supply Authorities Industrial Union of Employers	..	1148		
NZ Electrical, Electronics and Related Trades Industrial Union of Workers	..	1118		
NZ Employers Federation	..	6	2358	3070
NZ Engineers Merchants' Association	..	167		
NZ Ergonomics Society	..	112		
NZ European Shipping Association	..	844		
NZ Family Planning Association	..		2220	
NZ Federated Hotel Trades Employees' Industrial Association of Workers	..	1119	2321	3104
NZ Federated Painting Contractors Industrial Association of Employers	..	97	2279	3091
NZ Federation Personnel Services (Inc)	..	69		
NZ Federation of Commercial Fishermen	..	201		
NZ Federation of Labour	..	763	2329	
NZ Federation of Master Cleaners	..		2052	
NZ Federation of Sports Medicine	..			3115
NZ Federation of Voluntary Welfare Organisations (Inc)	..	14		3083
NZ Federation of Young Farmers' Clubs (Inc)	..		2010	
NZ Financial Services Association (Inc)	..			3008
NZ Flax Hybridisers Ltd	..	787		
NZ Forest Products Ltd	..		2331	
NZ Forest Products Ltd, Kinleith Forest Region	..	610	2014	
NZ Fruitgrowers Federation	..	197	2020	
NZ Fruitgrowers Federation, Gisborne Fruit Advisory Committee	..	20	2222	
NZ Furniture Manufacturers Federation Inc	..	646	2199	
NZ German Business Association Inc	..	459		
NZ Haemophilia Society Inc	..		2019	
NZ Harbour Workers Union	..	1117		
NZ Institute of Safety Management Inc	..	481		
NZ Insulators Ltd	..	1155		
NZ Labour Party	..			3090
NZ Local Government Employers Association	..	1106		
NZ Loggers Association Inc	..	134		
NZ Manufacturers Federation Inc	..	1	2301	3094
NZ Manufacturing Engineers Federation	..	190		
NZ Masonry Trades Employers Federation Inc	..	92		
NZ Master Builders' Federation (Inc)	..	683	2294	3102
NZ Meat Industry Association Inc	..	81	2297	
NZ Medi-Care Society	..	1140		
NZ Medical Association	..	123		3114
NZ Medical Association (Auckland Div)	..			3026
NZ Medical Association (Wellington Div)	..			3121
NZ Motel Federation	..	1232		

NZ Motor Body Builders' Association Inc	..	..	1036		
NZ Motor Vehicle Assembly Industry	..	..	743		
NZ Nurserymans Association Inc	..	..	135	2020	
NZ Nurses Union	..	..	760		
NZ Nurses' Association Inc	..	..	..	2275	
NZ Offshore Services Ltd	..	..	126		
NZ Optical Ltd	..	..	891		
NZ Orthopaedic Association	..	..	22		3054
NZ Pain Society	..	..	1129		
NZ Paraplegic & Physically Disabled Fed Inc	..	..	..	2180	
NZ Planning Council	..	..	127		
NZ Private Hospitals Association Inc	..	..	60		3118
NZ Private Hospitals Association Inc Canterbury Branch	..	..	1231		
NZ Private Hospitals Industrial Union of Employers	..	..	734		
NZ Public Service Association (Inc)	..	..	684		
NZ Red Cross Society	..	..	54		
NZ Refining Co Ltd	..	..	434	2134	
NZ Register of Osteopaths Inc	..	..	189		3087
NZ Resident Medical Officers Association	..	..	606		
NZ Retail Meat & Allied Trades Federation Inc	..	..	96	2341	
NZ Retailers Federation	..	..	484		
NZ Ribbon Manufacturers	..	..	956		
NZ Road Transport Association Inc	..	..	341		
NZ Rugby Football Union	..	..	1127		
NZ Salmon Co Ltd	..	..	149		
NZ Seamen's Union	..	..	1117		
NZ Shearing Contractors	..	..	710		
NZ Shipping Agencies International Ltd	..	..	515		
NZ Society of Accountants	..	..	648		3010
NZ Society of Accountants: Northland Branch	..	..	63		
NZ Society of Physiotherapists Inc	..	..	5	2302	3095
NZ Speech Language Therapists Association Inc	..	..	757		
NZ Sugar Company Ltd	..	..	707		
NZ Taxi Proprietors' Federation Inc	..	..	..	2147	
NZ Timber Industry Employees Industrial Union of Workers	..	..	1220	2374	
NZ Timber Industry Industrial Union of Employers	..	..	136		
NZ Timberlands Ltd	..	..	..	2335	
NZ Trampoline Association	..	..	727		
NZ Waterside Workers' Federation Industrial Association of Workers	..	..	1117	2216	3100
NZ Wholesale Wine & Spirit Merchants' Federation	..	..	957	2350	
NZ Wood Creations Ltd	..	..	1037		
NZ Workers Union	..	..	1103		
National Association of Retail Grocers & Supermarkets of NZ (Inc)	..	..	633	2285	3067
National Collective of Independent Women's Refuges Inc	..	..	637	2176	3057
National Collective of Rape Crisis & Related Groups of Aotearoa Inc	..	..	1124		
National Combined Health Employees' Committee	..	..	..		3107
National Council of Women of NZ Inc	..	..	348		3064
National Mutual Life Association of Australasia Ltd (Inc)	..	..	..	2192	3078
National Old People's Welfare Council of NZ Inc	..	..	..	2001	
National Union of Railwaymen	..	..	1117		
Naughton, J B	..	..	..	2328	
Neilson Properties Ltd	..	..	1203		
Nelmar Plastics Ltd	..	..	785		
Nelson City Council	..	..	1225		3099
Nelson Fruitgrower's Association Inc	..	..	1115		3072
Nelson Suburban Club	..	..	1091		
Nelson, Office of the Mayor	..	..	..		3103

Newman, R	..	..	..	..	18		
Nicholas Kiwi (NZ) Ltd	..	..	..	..	289		
Nicholson, O R	..	..	..	..	21		
Niepold, D A	..	..	..	..	1233		
Noble Lowndes (NZ) Ltd	..	..	..	..	1038	2245	
Noel Drake Ltd	..	..	..	..		2016	
North Taranaki District Council	..	..	..	..		2141	
Northern Fire Brigades' Employees' Industrial Union of Workers	..	..	..	..		2361	
Northern Foods Ltd	..	..	..	..	182	2307	
Northland Cooperative Dairy Co Ltd	..	..	..	..	672		
Nu-Look Windows Wellington Ltd	..	..	..	..	1227	2319	
Nurses Society of NZ	..	..	..	..	673		
O'Flaherty, P	..	..	..	..	64		
O'Neill, Mr B J	..	..	..	..		2041	3005
OAS	..	..	..	..	521		
Oasis Industries Ltd	..	..	..	..	1039		
Ockleford, L	..	..	..	..	24		3001
Ohai Railway Board	..	..	..	..	658		
Olex Cables	..	..	..	..			3037
Omarama Pest Destruction Board	..	..	..	..	1108		
Onehunga Borough Council	..	..	..	..	652		
Onehunga Glass	..	..	..	..	292		
Order of St John	..	..	..	..	46		
Oregon Paint Co Ltd	..	..	..	..	788	2160	
Orewa Business Association	..	..	..	..	1209		
Osflo Spreading Industries	..	..	..	..	745		
Otago Hospital Board: Physiotherapy Dept	..	..	..	..	30		
Otago University School of Dentistry	..	..	..	..	138		
Otago University, University Extension	..	..	..	..	228		
Otahuhu Trading Co (1979) Ltd	..	..	..	..	502		
Otorohanga District Council	..	..	..	..		2315	
Otumoetai Health Centre	..	..	..	..	31		
Owen Young	..	..	..	..		2136	
Pablo Industries	..	..	..	..	511		
Pace Control Ltd	..	..	..	..	435		
Pacer Car Clean Products (NZ) Ltd	..	..	..	..	460		
Pacific Plumbing Appliances Ltd	..	..	..	..	1040		
Pacific Steel Ltd	..	..	..	..	723	2221	
Pacific Tooling (1983) Ltd	..	..	..	..	1268		
Packaging House Ltd	..	..	..	..	236		
Packaging Recyclers Ltd	..	..	..	..	1041		
Pain Action in NZ	..	..	..	..	711		
Palmers	..	..	..	..		2061	
Palmerston North Hospital Medical Rehabilitation Unit	..	..	..	..	674		
Panel Brick Veneer (NZ) Ltd	..	..	..	..	958		
Papanui Farms	..	..	..	..	453		
Paparua County Council	..	..	..	..		2246	3073
Paper Moon Graphics Ltd	..	..	..	..	461		
Paramount Trading Co Ltd	..	..	..	..	845		
Parkin Glass & Mirror Co Ltd	..	..	..	..	462		
Parkinson & Bouskill Ltd	..	..	..	..	1272		
Parr & Co Ltd	..	..	..	..	166		3028
Partridge Construction Ltd	..	..	..	..	959		
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