

PART 5 – THE SOCIAL SECURITY LEGISLATION

241. When the Workers' Compensation Act was introduced into New Zealand in 1900 there was no system of social security. Old age pensions which had just been introduced were the only pensions available from general taxation, and there was no medical care. Gradually the pensions scheme was enlarged, and then in 1938 the Social Security Act introduced what has been described as a new concept.⁹⁶ The principle was accepted—

“that every citizen had a right to a reasonable standard of living and that it was a community responsibility to ensure that its members were safeguarded against the economic ills from which they could not protect themselves. The inspiration of the Social Security Act was the determination to end poverty in New Zealand. A comprehensive system of benefits was thus established covering all the main economic hazards which in the past had been the cause of poverty.”⁹⁷

242. The preamble to the Social Security Act 1938 indicates the wide purpose of the legislation. It declares that this is—

“An Act to provide for the Payment of Superannuation Benefits and of other Benefits designed to safeguard the People of New Zealand from Disabilities arising from Age, Sickness, Widowhood, Orphanhood, Unemployment, or other Exceptional Conditions; . . . and, further to provide such other Benefits as may be necessary to maintain and promote the Health and General Welfare of the Community.”

The principle upon which the Act has operated has been universal coverage for all who might need or deserve assistance from the State.

243. The social security system is not a scheme of social insurance in the sense that benefits should be balanced against contributions or that the benefits should be related to the varied income losses of individual beneficiaries. Instead, its first purpose has always been to provide basic assistance at a level which would enable every person to maintain himself against need without undue strain.

⁹⁶ *An Encyclopaedia of New Zealand*, 1966, Vol. III, p. 270.

⁹⁷ *Ibid.*

244. The social security scheme and the health service are financed by grants from general taxation. There is a direct tax amounting to $7\frac{1}{2}$ percent on wages, salaries, and other income which forms part of income tax. This is paid into the Consolidated Revenue Account which provides for all the charges upon the health and social security services. There is therefore no separate fund for these purposes.

245. Benefits are not related to past earnings but are provided on a uniform flat rate basis. There are supplementary allowances for dependants, and supplementary allowances where economic circumstances justify the exercise of a discretion in this respect. There is, however, a means test. These methods of assessing benefits are administrative devices applied to diminish the size of the aggregate amount to be expended.

246. Until 1960 the means test took into account capital assets, as well as income. Since that year it has been related to income alone. However, there is no means test in the case of the benefits payable under the scheme of universal superannuation or the general family benefit payable in respect of all dependent children. Examples of various benefits and allowances at current rates are contained in Appendix 8.

DOUBLE COMPENSATION

247. As the preamble to the Act suggests, it is not merely consistent with its philosophy that protection should be afforded to those who might suffer personal injury; this is one of its objectives. Many injured persons, or the dependants of those who have been killed, have been aided by the social security scheme when they have failed to obtain assistance elsewhere. In numerous other cases it has taken over where the Workers' Compensation Act has left off: or where a lump sum has been provided either under that Act or in the form of damages at common law. Thus (in respect of the same accident) it has supplemented the amounts received through the one process or the other.

248. In the circumstances it may seem surprising that the other systems have not been merged with it. That efforts have not been made to achieve this in the past cannot be ascribed merely to loyalty to the other systems or the tug of tradition. It is due also to the fact that a system of flat rate payments, whether increased by special allowances or not, is regarded as an unacceptable substitute for processes which attempt (even if in stumbling fashion) to match lost income and make some provision for damaged or lost limbs.

CONDITIONS FOR MERGER

249. There would be great advantage in the integration of a comprehensive scheme of accident compensation into the present social security framework. An organic structure and unity would be given to the whole process. It would be possible to exclude entirely the whole out-moded conception of personal liability which has left with the Courts and the law what is no more than an "administrative system with a social purpose". There would be a great saving in expense and effort. Compensation could be provided speedily and in terms of consistent principle. There would be no double payment for the same injury. Instead there is discordant treatment of people with equal losses; there is an absence of central direction in the two vital areas of accident prevention and of rehabilitation; and there is a serious diversion of effort from productive work caused by a costly and duplicated series of administrative arrangements.

250. Nevertheless, integration is not feasible if compensation for injury would then have to take the form of the same flat rate payments for all. Few would accept such a scheme. Nor would it be just. And special provision for economic hardship or allowances for dependants would neither avoid the injustice nor gain general acceptance. The losses of individuals vary greatly and so do their continuing commitments. A fair part of their different losses and a fair part of their sudden problems will not be relieved by a system which ignores lost earnings in favour of a general average of assistance. The only way in which a comprehensive system of compensation could operate equitably is by linking benefits to earning capacity and by taking into account permanent physical disability.

THE DEPARTMENT'S PROPOSAL

251. Discovery of the ideal measure of compensation is central to our inquiry and the choice, in our view, is governed by the fourth principle outlined in paragraph 55 of this Report and discussed in paragraphs 59 to 61. It must be mentioned again at this point, however, because the Social Security Commission put forward two important submissions upon the whole subject. First, it was urged that we should recommend a unified system of compensation in place of the present processes. Second, concrete and specific proposals were advanced for a new scheme founded upon the principle of a basic and uniform level of compensation for all, supplemented by means-tested economic and dependants' allowances.

252. A unified system is essential, in our opinion, and because we are satisfied that a suitably generous scheme of compensation can

be devised, we have no hesitation in accepting the first of the two submissions. The second submission, however, we feel bound to reject for the reasons we have mentioned in paragraph 250, and more specifically in the paragraphs which follow.

253. Before we examine the proposal for a new scheme it is right to express our appreciation of the thought and industry which mark the extensive submissions presented to us by the Social Security Commission.

254. In essence the proposal is that a weekly basic flat rate payment of \$11.80 should be paid for total incapacity regardless of financial circumstances, and that there should be supplements in the form of economic and dependants' allowances paid at the rate and generally subject to the same conditions applicable to present social security benefits. The income-related means test in regard to these supplements would permit an exemption of income amounting to \$8 per week. For a single man the maximum economic supplement would be \$11.75, and for a married man \$10.75 together with an allowance for a wife dependent upon him, amounting to a further \$10.75. Certain cases of severe or multiple disablement would become entitled to an additional benefit amounting to \$7.

255. This proposal has the virtue that it is uncomplicated, it could be merged easily with the general social security system, and it would create no difficult administrative problems. It is, nevertheless, open to a number of criticisms which we regard as insuperable.

256. The first criticism to be made of the proposal is that it equates unequal losses and does this at an unacceptably low level. We have described the present weekly rate of compensation under the Workers' Compensation Act as a meagre form of recompense for a man who is incapacitated for any period beyond three or four weeks.⁹⁸ The proposed basic benefit in the Department's scheme would cut that present low maximum rate in half for men without dependent wives, and would fail to match that rate in other cases in the absence of the special economic supplement or the allowance for grave disability.

257. The second criticism is that the effect of the scheme is to give preference to all with lesser losses at the expense of those whose losses are great. The effect arises in two ways. First, a man with

⁹⁸See para. 175.

an income loss lasting two or three days would receive the same daily proportion of lost income as his neighbour on the same wage who is left to bear the difference for a year. Second, the payment would replace all the lost earnings of some, while others would receive but a small fraction of their normal income. And the two effects would be cumulative upon one another. The greatest happiness of the greatest number is not, in our view, a suitable foundation for a just system of injury compensation. The real purpose of such a scheme is "not to smooth out the routine ups and downs"⁹⁹ but to provide for the material strains and needs of incapacity. We firmly believe that if preference should be needed in the distribution of the available funds, then it should go in favour of the longer term incapacities and the more severe cases of permanent partial disability.

258. The third criticism is that although there is an allowance in respect of wives where the family income does not rise above the stated level the proposal ignores the other and often substantial commitments of large numbers of people whose standard of living has quite reasonably been geared to rising levels of income. The economic supplement could not take care of these commitments, nor would it be automatically available.

259. The fourth criticism concerns the awards which would be made in respect of permanent partial disabilities. Assessments would be related to the basic injury benefit of \$11.75 only. Accordingly, all with similar disabilities would receive the same amount regardless of age and effect upon earning capacity; and the amount would be a proportion of this small weekly sum. It is an approach to the problem which involves an abandonment of the compensation principle.

THE MEANS TEST

260. The final criticism relates to the means test which has been proposed. Our comment falls under five heads. First, this is a device usually applied to promote economy in the distribution of limited funds at a level of basic subsistence. It could not properly be operated in the assessment of compensation merely to give subsidies, from adequate funds, to a segment of injured persons whose qualification for the subsidy bore no relation to the level of their losses. Second, fair recompense should not be denied to one man because he has been provident; nor over-compensation provided for another with minor injuries but massive debts. Third, income from savings

⁹⁹Ison, *op. cit.*, p. 60.

would be taken into account, and we think that a system "which penalises savings is not only inequitable but against [the country's] economic interests".¹⁰⁰ Fourth, the inquiry into means which would become necessary to establish entitlement seems to us an unnecessary intervention and quite irrelevant to any attempt to compensate a man for injury. Fifth, an income-related means test would be a serious disincentive to rehabilitation and a return to work. In the present context the principle must be compensation for losses, not assistance for need which already is the subject of generous attention in New Zealand.

INCOME-RELATED BENEFITS

261. In propounding the scheme of flat rate benefits the Social Security Commission invited us to consider features of income-related schemes which the Commission considered involved difficulties or anomalies. These matters should be mentioned briefly.

262. It was suggested that the need to apply maximum and minimum levels of compensation in wage-related schemes tended to provide the same uniform benefit for many people, and thus the advantages of such a system were more apparent than real. The force of the argument depends entirely upon the upper and lower limits of compensation. Under present conditions in New Zealand the margin can and should be a wide one, and we have made recommendations accordingly.

263. Then it was said that the value of wage-related benefits would gradually be exhausted by the effluxion of time: compensation which might seem attractive at the time of injury would be left behind by changes in the value of money. This is a difficulty which affects pension schemes of all types. It is not confined to those which are linked to past earnings. In many countries the difficulty is overcome by regular and automatic review designed to keep benefits in touch with current standards of living. In our judgment this sensible process should be adopted for the new scheme (as we recommend) and if it is, then the objection mentioned by the Social Security Commission disappears.

264. The next consideration put before us is the case of the young man with prospects whose career has barely commenced at the time of injury. The point was made that people in this situation would be left with inadequate compensation because there would be no account taken of potential earning capacity. This is a practical problem and it can be overcome by a provision that

¹⁰⁰Brian Abel-Smith, *The Reform of Social Security*, p. 13.

such cases should be reassessed after some suitable interval of time or by the exercise of discretion in favour of the applicant at the time of assessment.

265. It was suggested, too, that there would be difficulty in assessing on any equitable basis the real earning capacity of injured claimants in order to assess fair compensation on the wage-related basis. The example was given of seasonal workers whose wages might fluctuate considerably over a period of time. This is an administrative question which certainly is not incapable of solution. We consider that it can be handled by providing weekly compensation for short-term periods in relation to current levels of income; and calculated for long-term incapacity against average earnings over a suitable period of time.

266. Other questions were raised concerning the difficulty of making assessments of compensation for permanent partial disabilities as a percentage of past earnings. In our view only by those means can substantial justice be achieved generally and for particular cases. A flat rate level of compensation would produce an unreal answer in every case, and in addition would present most of the same difficulties in assessment. In any event administrative difficulties of this sort should never be used as a reason for departing from principle.

267. A final issue was put on the basis of equity. We were asked to consider whether the community should "maintain a person at his pre-accident income if the income was well above what an average person would receive in full-time employment". Our answer is that if such a person should become the chance victim of socially acceptable activity it would be wrong to leave him to make drastic adjustments in his standard of living merely to pay lip service to egalitarian doctrines unneeded by any economic consideration. The community should accept responsibility for all victims of accident; and if that responsibility is to be fairly discharged every man should be provided with a fair measure of his actual losses. The calculations as to cost contained in the appendices to this Report make it clear that this can be done for all citizens without affecting the claims of any. Real compensation is the aim, and in our view injustice by discrimination must be avoided.

A UNIFIED SCHEME

268. Integration of any comprehensive scheme of compensation within the social security structure is an important objective for reasons which have been mentioned. Accordingly the Social Security

Commission asked that we should not overlook the present organisation of benefits provided by the social security system and the basis upon which they are assessed.

269. We recognise that, in the interest of unification, it would be undesirable for a new scheme to conflict with any fundamental principle which governed the general social security system. Nevertheless, for the reasons we have given, we are completely satisfied that if the common law process and the Workers' Compensation Act are to be replaced the substitution certainly cannot be achieved on a basis of flat rate payments.

270. Moreover we doubt whether a concept for social assistance which was developed in the 1930s should be applied to the compensation needs of the 1970s. That the social security experiment in New Zealand was founded upon a bold and imaginative concept has been proved by the intervening years, but there have been great economic and social changes since 1938. It would be a serious mistake to lose the advantage of achieving a comprehensive scheme of compensation now by trying to adapt it to a flat rate system of benefits which itself might be modified in the period ahead.

271. In most modern schemes of social insurance, "benefits vary among beneficiaries *in accordance with their prior earnings*".¹⁰¹ [Our italics.] The trend today seems to be clearly in the direction of such income-related benefits (sometimes provided as a supplement to a basic pension), and many important countries have been moving towards or enlarging pensions schemes in this way. Examples on the continent of Europe alone are to be found in the social insurance schemes of Austria, France, Germany (Federal Republic), Netherlands, Norway, and Sweden.

272. The United Kingdom also has undertaken a re-examination of the principle of universal flat rate pensions. Within 16 years of the Beveridge Report and only 12 years after legislative effect was given to it, the Conservative Government in the United Kingdom presented a White Paper concerned with the future development of the National Insurance scheme in which it was said:

"... Social and financial considerations alike point to the need for a new and bold step away from the universal flat-rate system. It is evident that a sound system which takes account of varying standards and capacity to pay requires that contributions and pensions should vary according to earnings."¹⁰²

¹⁰¹*Social Security Programs Throughout the World, 1967* (U.S. Department of Health, Education and Welfare), p. ix. See also Appendix 10.

¹⁰²Cmd. 538 (October 1958), para. 27.

273. Then in 1964 the view of the new Labour Government was expressed by the Chancellor of the Duchy of Lancaster (the Right Hon. Douglas Houghton). He remarked that "the modern concept of social security goes far beyond the sort of national minimum which the Webbs and Beveridge thought about".¹⁰³ Then he commented upon uniform flat rate pensions in the following way:

"In these days no scheme of social security can be satisfactory which fails, first, to provide benefits bearing some reasonable relationship to the actual amount of income lost by sickness, unemployment, and on retirement, and so on, and, secondly, which fails to keep those benefits abreast of changing values or standards. . . . Our concept for the 1970s is that all should pay according to their means and should receive in return an assurance of income-related social security."¹⁰⁴

CONCLUSION

274. It may happen that the next move in New Zealand would be an acceptance of the trend which we have outlined and that some form of income-related benefits will be introduced as a modification or supplement to the present social security system. This is something which we are unable to judge or anticipate. However, the possibility is there, and for this reason as well as for the compelling practical reasons which have been mentioned in preceding paragraphs, we believe that an income-related system of compensation for personal injury must be recognised as an essential part of our general proposals.

¹⁰³701 U.K. Parl. Deb. (Commons), p. 870: 10 November, 1964.

¹⁰⁴*Loc. cit.*, p. 872.