

PART 6—PROPOSALS FOR A COMPREHENSIVE SCHEME

275. It is now necessary to set down our proposals for the future. The scheme which will be outlined involves several far reaching changes. Some of them have been indicated in earlier parts of the Report. Others need more specific attention.

276. We make no attempt to answer in advance every query which might be raised concerning the proposals. Nor is it possible to define every aspect of the administrative arrangements which might be required. But certainly the scheme must be described in sufficient detail to enable decisions to be taken that theory can, in fact, be translated into practice.

277. However, the detail ought not to be allowed to submerge the structure. The proposals should be examined within the framework of a discernible and coherent system. Accordingly in this part of the Report we provide an outline of the whole scheme in the form of a running summary. Where it can be done conveniently explanations and reasons are provided for the suggestions made: otherwise they will be found associated with earlier parts of the Report, or in Parts 7 and 8 which follow.

XVI—GENERAL

278. OBJECTIVE

- (a) The overall purpose is to provide a unified and comprehensive scheme of accident prevention, rehabilitation, and compensation which will avoid the disadvantages of the present processes and will itself operate on a basis of consistent principle.
- (b) The scheme must meet the requirements of the five principles outlined in paragraph 55: community responsibility, comprehensive entitlement, complete rehabilitation, real compensation, and administrative efficiency.
- (c) It must meet the requirement of cost.

279. APPROACH

- (a) The compensation purpose of the scheme is not to provide merely for need but to shift a fair share of the burden suddenly falling upon individuals as a result of personal injury.
- (b) This is a form of social insurance—not a form of social assistance. Once this general target is recognised and kept in mind apparent difficulties in subsidiary areas will tend to disappear.

- (c) Since the object is compensation for all injuries, irrespective of fault and regardless of cause, the level of compensation must be entirely adequate and it must be assessed fairly as between groups and as between individuals within those groups.
- (d) If economic reasons require preference to be given then the more serious incapacities must always have priority over short-term or minor cases.
- (e) The compensation process must not be allowed to impede rehabilitation: on the contrary it should be developed in ways which will support the important objectives of rehabilitation.

280. METHOD

- (a) Given a suitably generous scheme on the foregoing basis it follows automatically that previous ways of seeking to achieve the same or a similar purpose become irrelevant.
- (b) Thus the common law rights in respect of personal injuries should be abolished and the Workers' Compensation Act repealed.
- (c) Wherever relevant, existing benefits under the Social Security Act would be merged with the compensation payable under the new scheme.
- (d) In the absence of personal liability and with the disappearance of any element of voluntary contribution there will be no place for the insurance companies. Their purpose is to seek business from individuals who might wish to cover themselves at their own choice in respect of personal contingencies of their own definition.¹⁰⁵
- (e) The scheme involves the acceptance of community-wide responsibility in respect of every injured citizen, and as such it clearly must be handled as a social service by an agency of the Government.¹⁰⁶
- (f) The procedures and techniques of private litigation should be replaced by non-contentious processes of assessment and review with recourse to the Courts only upon a point of law.¹⁰⁷

281. SCOPE

This involves defining—

- (a) The classes of people to be protected; and
- (b) The contingencies to be covered; and
- (c) The compensation to be paid.

¹⁰⁵ See paras. 209 to 216 *supra*.

¹⁰⁶ See paras. 306 and 307 *infra*.

¹⁰⁷ See paras. 308 and 309 *infra*.

XVII-PERSONS TO BE PROTECTED

282. COMPREHENSIVE ENTITLEMENT

- (a) There must be comprehensive entitlement and an acceptance of the second principle outlined in paragraphs 55 and 57. The reasons are repeated briefly in the following subparagraph.
- (b) There could not be unequal community treatment of identical losses simply because one man was injured at work and a second on the road. Nor could the system provide for the second man and ignore his injured wife or child. What is more each one of these persons is the chance victim of a necessary or an acceptable social activity. Nor could a fund maintained by the whole community provide for the road injury victims and fail other groups in the community so helping to maintain that fund such as the housewife, or her husband injured in some domestic accident. And clearly the self-employed must be included. Once the essential principle of community responsibility is recognised in respect of any one of these groups it must be accepted for all.
- (c) The elderly and the young must be included on a basis which recognises their past or potential contribution to the productive effort of the nation: and the housewife because of her direct and continuing contribution to that effort.

283. AGE LIMITS

- (a) All this gives rise to the question as to whether compensation should be restricted to those within defined age limits. There is a case for age limits at each end of the working population, and differing opinions may be held upon it.
- (b) However, an upper age limit would disregard the element of lost physical capacity in the case of periodical payments of compensation; it would be difficult to provide adequately for those injured outside the age limit; and it would cost relatively little to go beyond the normal span of working life in favour of lifetime payment. Accordingly no upper age limit is recommended.
- (c) There should be a lower age limit entitling those who reach it to commence receiving compensation for past injuries and to qualify them for compensation in the ordinary way in respect of any future injury.

- (d) The lower age limit should be defined to include all those regularly engaged in full-time employment or whose injury occurred at a time when they were parties to a contract of employment at a wage of \$15 or more per week, or who have attained the age of 18 years.
- (e) Some discretion should be given to enable exceptional cases to be given special treatment, but monetary compensation during periods of temporary total incapacity would not be justified for most young people. And any permanent incapacity normally could be properly attended to at the time the qualifying age was reached.
- (f) However, all these cases should receive the same medical and hospital benefits available to other injured persons.

284. DEPENDANTS OF LIVING BENEFICIARIES

- (a) As the scheme is designed to shift losses and is not limited merely to deal with need, the level of compensation must be brought appropriately close to the level of income lost by the individual concerned.
- (b) If this is done there can be no case for supplementing compensation to take notice of dependants. The question would not arise if the compensation were fixed at 100 percent of tax-paid income, and once compensation is brought to the correct point in relation to this level the same argument applies.
- (c) Upon this principle no supplementary allowance can reasonably be required for dependants of living beneficiaries, and we recommend accordingly.

285. DEPENDANTS OF DECEASED PERSONS

- (a) On the other hand provision should be made for the dependants of a deceased person whose death resulted from injury by accident or from one of the industrial diseases.
- (b) Dependants should be defined to include such of the members of the family of the deceased or such of his relatives as were wholly or partly dependent upon him at the time of his death or who but for the incapacity due to the accident would have been so dependent.
- (c) The relatives of the deceased should be defined to include all the persons referred to under that definition in section 2 of the Workers' Compensation Act 1956.

- (d) In addition there should be provision during continuing dependency for a wholly or partially dependent—
- (i) Invalid widower;
 - (ii) Separated or divorced wife;
 - (iii) Common law wife who had occupied that *de facto* position for the entire period of two years preceding the death of the deceased.
- (e) There should be an irrebuttable presumption of total dependency in favour of the wife of the deceased during her widowhood and in favour of each child of the deceased (including step-children and illegitimate children) until 18 years of age, or until 21 years of age if engaged upon a full-time course of education or training without regular salary or wages, and regardless of age if an invalid.

286. NEW ZEALAND RESIDENTS INJURED OVERSEAS

- (a) New Zealand residents temporarily abroad for periods not exceeding 12 months should continue to enjoy the protection of the scheme.
- (b) In the case of New Zealand residents absent from the country for periods longer than 12 months, protection should be continued upon application to and at the discretion of the controlling authority.
- (c) The level of compensation for hospital and medical attention should be limited to equivalent charges for those services in New Zealand.
- (d) On the principle that a man should not be compensated twice for the same injury, compensation received by a New Zealand resident should be refunded out of any damages or compensation obtained abroad by him in respect of the same accident.
- (e) On the other hand we do not think it necessary that such New Zealand resident should be required to take action abroad for recovery of these amounts. The return to the fund would rarely justify the administrative problems or the cost.
- (f) In certain cases, at least, the assessment of permanent partial disability and payment of compensation in respect of such a disability would have to await return to the country.

287. VISITORS TO NEW ZEALAND

- (a) In general a visitor to a country always takes it as he finds it, and the absence of common law rights in respect of personal injury claims would not justify, in our opinion, an extension of the comprehensive insurance scheme to include visitors. New Zealanders abroad are obliged to accept risks of this sort and usually insure in respect of the contingency.
- (b) On the other hand persons employed by a New Zealand employer should be protected if injured at any time or place within New Zealand while the contract of service remains current. In such cases the employer concerned would qualify the employee by reason of the contribution to the fund based upon payments of wages.
- (c) Persons employed by employers domiciled outside New Zealand should be protected in terms of regulations designed to meet circumstances of this sort.
- (d) Visitors in general should be permitted and perhaps encouraged to obtain the protection of the scheme on a voluntary basis on terms approved by the controlling authority.

288. SPECIAL GROUPS

On the basis of the preceding paragraphs victims of criminal violence would automatically be included. In the same way those engaged on rescue work on a voluntary basis would be protected. The scheme is all-embracing and particular groups in the community need not be specially mentioned.

XVIII-CONTINGENCIES TO BE COVERED

289. GENERAL PRINCIPLE

- (a) The general basis for protection should be bodily injury by accident which is undesigned and unexpected so far as the person injured is concerned, but to the exclusion of incapacities arising from sickness or disease.
- (b) No system of compensation or damages is able to avoid all the "hard" cases. In defining the area of protection the aim should be clarity and certainty and the avoidance of future dispute or disappointment.
- (c) We recommend that, in general, protection should be afforded in respect of injury conditions which fall within the categories of external cause of injury classified as Numbers E800 to E999 in the International Classification of Diseases¹⁰⁸ with the exception of categories E970 to E979 (suicide) and E985 (judicial execution) and perhaps some categories of therapeutic misadventure or late complications of therapeutic procedures (E950-E959).
- (d) Incapacity arising from such injuries should be protected when the injury resulted from an unexpected or undesigned external cause, including exposure to the elements; or unusual and material physical strain or poisoning; or following upon some voluntary act in an emergency.
- (e) On the other hand incapacities should be excluded which resulted from a condition of disease or sickness; or a sudden physiological change in the course of disease or sickness; or a physiological event occurring during activity which itself was normal and uneventful.¹⁰⁹
- (f) Injury which has been deliberately self-inflicted should not be the subject of compensation.
- (g) The issue of drawing a line between injury by accident and sickness or disease is a mixed question of law and medicine. The recommended approach to the matter by means of the International Classification of Diseases is a new one which may enable both professions to work more certainly at the boundary. We make the further recommendation, therefore, that a small group of medical and legal experts be appointed to study the question.

¹⁰⁸ "Manual of the International Statistical Classification of Diseases, Injuries and Causes of Death", World Health Organisation, Geneva, (1957), p. 243.

¹⁰⁹ Cf., Articles by H. Luntz, 1966, 40 Aust.L.Jo., p. 179; and K. J. Jenkinson, 1967, 41 Aust.L.Jo., p. 112.

290. SICKNESS AND DISEASE

- (a) It is possible to argue that if incapacity arising from accidental injury is to be the subject of comprehensive community insurance then interruption of work for reasons of sickness or unemployment, or other causes which cannot be guarded against should equally be included.
- (b) We are able to understand the logic of the argument, but the proposal we now put forward is far-reaching and is designed to remedy a situation which at present is the subject of attention by unrelated processes which produce inconsistent and inadequate results. Moreover, there is a need for more statistical information in the area of sickness and disease before firm decisions could be taken as to the cost of a scheme which would embrace incapacities arising from these causes.
- (c) Nevertheless certain industrial diseases are included within the scope of the present Workers' Compensation Act. For this practical reason we think they should remain within the protection to be afforded under the new scheme, but for work-connected injuries only, and upon the conditions at present laid down by the Workers' Compensation Act.
- (d) In the past difficulties have arisen concerning damage to hearing as the result of repetitious noise.¹¹⁰ There is a good case for the inclusion of deafness within the scheme where the condition has resulted from noise. We recommend that deaf persons should have the advantage of a rebuttable presumption to the effect that the condition resulted from that cause. In the absence of evidence to the contrary the condition should then be regarded as an injury arising by accident.

¹¹⁰ See, for example, *Beasley v Attorney-General* (1966), N.Z.L.R., p. 1089. Cf., Report of Commission of Inquiry, Workmen's Compensation Act, British Columbia, 1966, pp. 233-240; see also Mr. Justice McGillivray, *op. cit.*, pp. 128-130.

XIX—SCOPE OF COMPENSATION

291. BASIS OF BENEFITS

- (a) The incapacity of a productive worker usually results in a loss of income. Thus compensation in a real sense must be assessed on an income-related rather than a flat-rate basis. Reference to the matter generally is contained in paragraphs 248, 250, and 253 *et seq.*
- (b) Moreover, there are incapacities which involve permanent physical disability. We use the expression in the sense that there is "a fixed persistent pathological change resulting in a loss of effectiveness of one or more parts or systems of the body".¹¹¹
- (c) Whether or not such a loss of physical faculty has economic consequences, it is nonetheless a loss to the individual concerned, and in a greater or a lesser degree may adversely affect him thereafter. If this element is significant it should accordingly be included.
- (d) It can be included by accepting the principle that loss of bodily function should be the test rather than actual loss of earnings. This test will indirectly reflect the general effect of the faculty loss on all normal activities.

292. PROPORTION OF LOSS COVERED

- (a) Opinions may differ about the proportion of loss which should be left with an injured person, but certainty of compensation and the need to leave some margin of effort to personal initiative are just and practical reasons why such a scheme as this should not attempt to provide complete indemnities. The matter is mentioned briefly in paragraphs 218 and 219.
- (b) It is our opinion that automatic compensation equivalent to 80 percent of lost income for periods of total incapacity would adequately take account of the matters to which we have referred.
- (c) It should be laid down, however, that assessments must give all reasonable doubts in favour of the applicant; that they must be based on the real merits and justice of the case; and that suitable discretion should be available to deal with unusual circumstances. On such a basis the proposed level of compensation should be accepted by all.¹¹²

¹¹¹ See *Occupational Disability and Public Policy* (1963) (Ed. E. F. Cheit and M. S. Gordon); Earl C. Steele, p. 273.

¹¹² See paras. 206 and 309.

- (d) Compensation should be paid as from the day following incapacity on the principle that there is rarely a wage loss for the day of the injury. Otherwise it should be paid in respect of the whole period of incapacity.
- (e) Compensation for housewives and others without direct earning losses should be paid in respect of periods of temporary total incapacity as from the fifteenth day after the day of injury, but compensation in such cases should be paid as from the day after incapacity commences whenever it lasts for eight weeks or longer.

293. PERIODIC PAYMENTS

- (a) Compensation should be paid on a periodic basis subject to the provision for commuting to lump sums in certain cases, as mentioned in paragraph 305 which follows. There is reference to the question generally in paragraphs 115 to 122 and 126 and 127.
- (b) International Labour Office Recommendation No. 121 provides that rates of permanent benefits "should be periodically adjusted, taking account of changes in the general level of earnings or the cost of living".¹¹³ The Convention itself provides that rates of these benefits "shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living".¹¹⁴ Already in New Zealand war pensions are reviewed every two years in relation to movements in the consumers' price index. Social security benefits are adjusted from time to time upon the same general basis. The principle is now accepted in many countries overseas.
- (c) We recommend that there should be automatic adjustment of periodic payments at two-yearly intervals in order to keep pace with changes in the cost of living. The adjustments should be made up or down on the basis of the consumers' price index for movements of 3 percent or more.¹¹⁵ The maximum and minimum rates of weekly compensation should be adjusted at the same time.
- (d) An advantage of periodic payments of compensation lies in the fact that they can be assessed and paid promptly and later adjusted following assessment if changed circumstances should indicate this to be necessary. Accordingly we recom-

¹¹³ Article 15.

¹¹⁴ Article 21.

¹¹⁵ Cf., Report of Mr Justice Tysoe, Commission of Inquiry into Workmen's Compensation Act, British Columbia (1966) at p. 51.

mend that a beneficiary should be entitled to have his case reviewed for the purpose of obtaining an increase in benefit should his condition deteriorate.

- (e) But the converse should not apply. A man should not be left with the thought that energetic attempts to overcome physical handicap might result in a reduced pension, and we think it in the national interest that there should be no uncertainty in this respect. The matter is mentioned in paragraphs 127, 305 (d), and 404.

294. HOSPITAL AND OTHER ALLOWANCES

- (a) We recommend that all hospital care should be provided by the national health service, together with medical fees within the limits at present prescribed. However, as part of compensation and for the promotion of rehabilitation all medical and specialist services should be provided free of charge.¹¹⁶
- (b) The compensation fund should therefore assume responsibility for the full amount of all these fees and obtain suitable refunds from the health service. These general questions are considered in more detail in Part 7 of the Report.
- (c) Provision should be made for reasonable travelling expenses to and from hospital or for the purpose of obtaining medical attention and for such related treatment as physiotherapy.
- (d) There should be provision for payment of a full-time attendant for totally and permanently incapacitated persons where such assistance is shown to be necessary.
- (e) Appropriate provision should be made to meet the reasonable expenses associated with the rehabilitation of injured persons, and for the supply and repair of prosthetic appliances.

295. AMOUNT OF COMPENSATION

This will involve defining—

- (a) The income to be used as the basis for assessment of compensation; and
- (b) The upper and lower limits which should be placed upon periodic payments; and
- (c) The benefits to be paid to dependent survivors; and
- (d) The method of assessing compensation for permanent disabilities.

These various matters are considered in the following paragraphs.

¹¹⁶ See para. 310.

XX-LEVEL OF BENEFITS

296. EFFECT OF TAXATION

- (a) Compensation should be assessed as a fraction of the tax-paid earned income of the individual concerned.
- (b) It may have been satisfactory in the past to take income before tax as the basis. The upper limit of compensation has been kept low and until recent years many incomes have not been greatly affected by the incidence of income tax.
- (c) The position today is different. Average incomes are subject to substantial taxation. Moreover, the scheme requires an upper limit of compensation at a level which will have meaning over a wide range of incomes; and certainly at the higher levels compensation taken as a proportion of a man's gross income could exceed the whole of his take-home pay. Such a situation would be wrong unless the compensation were to be taxed.
- (d) To provide a percentage of gross earnings as compensation and then tax the result would be administratively cumbersome; it would not provide the correct share of the actual loss of the individual concerned; it would provide persons on higher incomes with a greater percentage of their real loss than persons on lower incomes owing to the increasing rate at which income tax is calculated; and it would be wrong to tax the part of compensation which represented lost physical capacity.
- (e) It might be said that a portion of gross earnings should be taken as the basis and compensation so assessed left tax-free in the hands of the individual concerned.
- (f) This alternative we reject. Such a system would prefer people on higher incomes for the reason mentioned in the preceding subparagraph (d): and it would provide for actual losses on a variable basis.

297. CALCULATION OF TAX

- (a) An administratively simple method should be adopted for the assessment of tax-paid incomes.
- (b) Accordingly we recommend that once the earned income has been ascertained the amount to be deducted for tax should be determined on the basis of the PAYE tables.
- (c) The personal exemption and the exemptions for wife and children only should be taken into account: family income and any other particular circumstances should be disregarded.

298. ASSESSMENT OF EARNINGS

- (a) Differing considerations affect those whose earnings fluctuate on a seasonal basis or from year to year; or those whose income is likely to be increased following a period of training; or those who are unemployed or incapacitated at the time of injury.
- (b) In our view short-term incapacities should be compensated on the basis of current personal earnings; and long-term incapacities on the basis of income averaged out over a period of 12 months, or by some other method in the discretion of the controlling authority. In neither case should amounts earned at overtime rates be excluded.
- (c) Apprentices, trainees, students, and others whose earnings but for the accident would probably increase should be entitled to a review of compensation on one or more occasions following the original assessment.
- (d) The controlling authority should be given some margin of discretion to deal equitably with all cases at the time of assessment. And the applicable regulations should be used "as a guide, not as a strait jacket".¹¹⁷

299. EARNINGS OF SELF EMPLOYED

- (a) The assessment of earnings of the self-employed presents administrative and practical difficulties. For this reason we recommend that every self-employed person should be obliged to declare an income for premium purposes which would become the basis for the assessment of benefit.
- (b) The income so declared should be earned income for the previous financial year, subject to a minimum of \$500.
- (c) Subject to this minimum there should, however, be a provision enabling the average of earned income taken over several years to be declared in suitable cases, or alternatively the income expected to be earned in the current year.

300. LIMITS OF COMPENSATION

- (a) There should be a lower limit of compensation fixed to accord with the existing sickness benefit for a single person provided under the social security system (at present \$11.75 per week).
- (b) This would be the rate of compensation during periods of temporary total incapacity for persons without incomes or whose earnings were low.

¹¹⁷ Ison, *op. cit.*, 60.

- (c) For the purpose of assessing permanent partial disabilities the minimum rate for total incapacity should be fixed at a notional level of \$20 which also should be the actual rate of minimum compensation paid to injured persons left totally and permanently incapacitated.
- (d) In no case should the payment for compensation fall below the amount currently available in the circumstances as a benefit under the social security system.
- (e) The upper limit of compensation must be defined at a point at which nearly every injured person could feel that his real losses were being fairly met on the proportionate basis outlined. The overall cost to the fund of taking this ceiling from \$80 per week (which we consider to be the lowest acceptable limit) to \$120 per week (which would include practically the whole working population) is statistically so insignificant that the higher figure clearly should be accepted.

301. MINOR INCAPACITIES

- (a) The real drain upon any compensation fund results from the very many payments for short-term and quite minor injuries. Accordingly it is extremely important that the level of compensation for these injuries should not be allowed to rise to a point where the majority with lesser troubles are satisfied at the expense of those whose problems are great.¹¹⁸
- (b) In the past the total amount absorbed for short-term cases has kept the level of compensation payable under the Workers' Compensation Act for all injured workers down to virtually the same level; and the duration of payments to only six years. This distribution of funds is inequitable.
- (c) No man facing some short-term incapacity would wish such a situation to continue: moreover for short periods he is able to carry some strain himself. Nor would it be possible to deal adequately with more serious cases of incapacity if the same approach were to be followed under the new scheme.
- (d) Real compensation must be available wherever it is needed, and in order that funds can be distributed upon this principle we recommend that compensation for the first four weeks should not exceed \$25 per week.
- (e) At the expiration of four weeks the limit should be removed for those still incapacitated. In the case of persons incapacitated for periods of eight weeks or longer compensation should be reassessed at the full rate for the whole period of incapacity.

¹¹⁸ Cf., E. C. Steele, *op. cit.*, p. 276.

302. DEPENDENT SURVIVORS

- (a) Compensation for a widow should be assessed at one-half of the amount which would have been received by her deceased husband if totally incapacitated; together with a lump sum of \$300.
- (b) The periodic payments of compensation should cease on remarriage; but in lieu of these payments we recommend that a lump sum equal to the payments for two years should be paid to the widow concerned within one month after the day of her marriage.¹¹⁹
- (c) An amount not exceeding \$200 should be payable to the widow or the personal representative of the deceased in respect of funeral expenses.
- (d) Compensation should be assessed for each dependent child of the deceased at one-sixth of the compensation which would have been paid to the deceased had he survived and been totally incapacitated.
- (e) Common law wives qualifying for compensation, and separated and divorced wives of deceased persons should receive amounts related to and during dependency and within the limits specified for a legal wife.
- (f) Other dependent relatives of the deceased should be compensated within the limits specified for a widow, subject to the extent of dependency in each case.
- (g) The compensation payable to a child who is a full orphan should be double the rate which would be payable for a dependent child with a living parent.
- (h) Clearly the legal wife or the children of a deceased person should take priority over any other dependants.
- (i) Invalid widowers should be compensated on the same basis as a widow.
- (j) In no case should the total amounts of compensation payable in respect of a deceased person exceed the amount which would be payable in respect of total incapacity had he survived.

303. PERMANENT DISABILITIES

- (a) There are great advantages in using a broad schedule method of assessment for these cases. They are mentioned briefly in paragraph 200.

¹¹⁹ Cf., Sec. 38 (1) Workmen's Compensation Act 1960 (Ontario).

- (b) The schedule at present contained in the Workers' Compensation Act is distorted in favour of minor incapacities for the reasons outlined in paragraph 193 and following paragraphs. Moreover it is based on medical opinion and statistical experience now more than 70 years old. In the circumstances an entirely new scale is required.
- (c) In designing the new schedule the emphasis should go in favour of the more serious cases.
- (d) We have provided examples in Appendix 11 of severity ratings which we think should be given to certain classes of injury. But we have not designed a new scale. The matter is complex and after there has been opportunity for consideration of our general proposals the assistance of the medical and legal professions should be obtained in order to ensure that the principles we have outlined are fairly applied in a detached way to many specific and varied disabilities. We recommend that a committee be set up at some suitable time to deal with this matter.
- (e) It is necessary to provide assessments that are consistent and reasonably meet the need for uniformity. Nevertheless the schedule should be used as a general guide as in Ontario rather than an inflexible measure.¹²⁰ In addition there must be some area for discretion to deal with the unusual case.
- (f) Past attempts to define percentage disabilities almost to decimal places should be abandoned in favour of gradations on the scale separated by 5 percent for each step. Such an approach will leave a somewhat wider discretion to the medical profession, particularly in the case of non-schedule injuries, and this we think is desirable.
- (g) There will always be anomalies associated with guide lines such as this. The anomalies should be accepted for the great advantage provided by the system as a whole and on the basis that the system will always be operated to avoid under-compensation or the ungenerous treatment of any individual claimant.

304. SEVERITY RATINGS

- (a) Some relatively minor injuries have no significant effect upon a man's future life or upon his earning capacity.

¹²⁰*Workmen's Compensation in Ontario, A Study in Medical Administration* (1965), p. 85.

- (b) Subject to the discretion needed to deal with special cases this type of injury should be removed from the schedule. Instead such injuries should be listed for lump sum payments of compensation ranging from \$100 to \$1,200 according to injury. Examples are set out in Appendix 11.
- (c) Non-schedule injuries of comparable significance should be compensated upon the same basis.
- (d) Apart altogether from cases of this type all the less serious injuries should be brought much lower on the scale than the level outlined in the present schedule to the Workers' Compensation Act. This can be done with justice to those concerned because under the proposed scheme payments of compensation will not terminate at the expiration of six years as under the Workers' Compensation Act at present.
- (e) For the purpose of assessment the minimum weekly payment to be taken as a base for permanent total disability should be \$20.
- (f) Some persons entitled to compensation for temporary total incapacity at rates higher than \$80 weekly would be adequately compensated for permanent partial disabilities if the appropriate percentage were applied against that amount as a notional maximum. We recommend accordingly. However, the notional limit of \$80 should be removed whenever in the particular circumstances of the case this should seem necessary and fair.

305. LUMP SUM PAYMENTS

- (a) The disadvantages of lump-sum awards of compensation are discussed in paragraph 115 and following paragraphs.¹²¹ Generally payments should be provided on a periodic basis.
- (b) This principle is accepted by the International Labour Office Convention (No. 121) concerning benefits in the case of employment injury.¹²²
- (c) It is a principle which in 1962 was endorsed at the annual conference of the New Zealand Federation of Labour in respect of totally incapacitated workers and in respect of the survivors of deceased workers: and at the conference in 1964 in respect of workers generally.¹²³

¹²¹ See also A. F. Young, *op. cit.*, p. 76; and Somers and Somers, *op. cit.*, p. 160.

¹²² Article 14.

¹²³ Remit 112, 1962; Remit 70, 1964.

- (d) Periodic payments can maintain their real value if kept in line with the consumers' price index, as we recommend in paragraph 293 (c). And if it is laid down that they should never be reduced because of a man's successful efforts on his own behalf (as we recommend in paragraph 293 (e)) then the periodic method of compensation would stimulate rather than retard the rehabilitation of those concerned.¹²⁴
- (e) However, the minor permanent partial disabilities referred to in paragraph 304 (b) should be compensated in the form of a lump sum.
- (f) There should be a discretion in other cases to commute all or part of the periodic payments to a present capital sum where the interests or pressing need of the person concerned clearly would warrant this.¹²⁵ Such a discretion would, in our opinion, be sufficient to provide for the commutation of periodic payments in all suitable cases.

¹²⁴ See Earl C. Steele, *op. cit.*, p. 277. See also paras. 127, 293 (d), and 404.

¹²⁵ Cf., Workmen's Compensation Act 1960 (Ontario), sec. 27 (4).

XXI—ADMINISTRATION

306. GENERAL

- (a) Decisions as to the scope and nature of the scheme will determine the type of organisation which should handle it and the processes which should be used for the assessment of compensation.
- (b) The proposal is for a comprehensive, universal, and compulsory system of social insurance. It involves extinguishing present common law rights in respect of personal injuries and a departure from the principle of employer liability under the Workers' Compensation Act. For the reasons which have been mentioned private enterprise could have no part in such a scheme.
- (c) Against this general background there could be no point in retaining any form of adversary system in regard to the assessment of compensation.

307. AN INDEPENDENT AUTHORITY

- (a) The scheme outlined involves a partial merger with some aspects of the present social security system. There are important differences in principle, however, and the general philosophy of the scheme has no exact parallel elsewhere.
- (b) We think, therefore, it should be brought to life and set upon its course by an independent authority whose whole responsibility it would be to ensure the successful application in every respect of that general philosophy.
- (c) It must be provided with all necessary administrative arrangements, nonetheless. With all these considerations in mind we recommend that an independent authority be set up by the Government which should operate within the general responsibility of the Minister of Social Security and be attached to his Department for administrative purposes.
- (d) We recommend that the authority should be under the control of a Board of three Commissioners to be appointed by the Governor-General in Council, for specified terms of at least six years and secure in office except for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General. The appointments should alternate in a manner which will ensure continuity of experience on the Board.
- (e) The Chairman should be a barrister of at least seven years practical experience.

- (f) It is important that no member of the Board should be appointed as representative of any particular group in the community:^{125a} and we think that "upon the good judgment and ability of the men who have charge of the organisation and conduct of this system of compensation . . . will depend very largely its ultimate success".¹²⁶
- (g) In regard to these matters generally we were impressed by the admirable arrangements made in Ontario for the organisation of the Workmen's Compensation Board there.¹²⁷
- (h) In the important areas of accident prevention and rehabilitation there would be much advantage in the stimulus which could be provided by central direction. In Ontario these matters, and indeed all aspects of administration, are tightly controlled from Toronto by the three members of the Board there. The benefits can be seen at a glance by any interested observer, and we recommend that this type of administration be used as a general model.

308. ASSESSMENT OF COMPENSATION AND REVIEW

- (a) The structure for assessment, review, and appeal has been developed in Canada on lines which, broadly speaking, would work well in New Zealand. The public confidence which supports this general process in Canada depends upon a liberal and enlightened attitude on the part of all concerned with the decisions and upon centralised control by the members of the various boards concerned.¹²⁸
- (b) In Ontario the pattern is application, inquiry, investigation, and decision at the first level; review by a review committee at the request of the claimant; an appeal to an appeal tribunal which may hold *viva voce* hearings at which the claimant may be represented if he so desires; and a final appeal to the members of the Board itself. There is no hearing at the first two levels, and nearly all cases are dealt with in this way.
- (c) We recommend that a somewhat similar approach be adopted in New Zealand except that on a point of law there should be an appeal to the Supreme Court.

309. PROCEDURE

- (a) The appeal tribunal should comprise three persons including a doctor and a lawyer. The members of the Board themselves should deal with final appeals.

^{125a} See Report of the Royal Commission, Ontario (1967), *op. cit.*, p. 77.

¹²⁶ Report of British Columbia Committee of Investigation (1916), p. 16.

¹²⁷ See paras 206-208 *supra*.

¹²⁸ See para. 206.

- (b) Informal and simple procedure should be the key to all proceedings within the jurisdiction of the Board. Applications should not be made to depend upon any formal type of claim, adversary techniques should not be used, and a drift to legalism avoided.¹²⁹
- (c) On such a basis the whole process of assessment will become one of inquiry and investigation. There should be discretion to deal with any unusual circumstances and every decision should be based on the real merits and justice of the case.¹³⁰
- (d) Under such a scheme as this there should be no reason for strictly limited periods of time within which claims could be made. We recommend that for all cases the limitation period should be six years, with a wide discretion to the Board to extend the time for any reasonable cause.

310. REHABILITATION AND SAFETY

- (a) These matters are dealt with in Part 7 of the Report.
- (b) Success in both fields will be achieved by central control, direction, and drive, supported by funds provided by the scheme itself. This approach would best supplement, in our view, the existing efforts being made in these fields.
- (c) The object of rehabilitation demands efficient medical attention at all levels. To attempt economies in this area would be to fail the man himself and would, we think, be an extravagance in itself.
- (d) Accordingly, we recommend that all medical fees should be paid in full by the fund on the basis of a scale prepared by the Medical Association of New Zealand and agreed to with the Board. There should be provision for automatic review of this scale at regular intervals.
- (e) The Board should set up a medical branch under the leadership of an experienced doctor of high quality to act as Director of Rehabilitation and principal Medical Assessor. Under him it should engage the services of an appropriate number of experienced doctors whose function would include the active promotion of rehabilitation.

¹²⁹ See Report of Mr Justice Tysoe, British Columbia Commission of Inquiry (1966), pp. 353-355; Briefs of the Workmen's Compensation Board, Ontario, before the Royal Commission (October 1966), pp. 1-8; Report of the Royal Commission, Ontario (1967), op. cit., p. 63; Earl C. Steele, op. cit., 260.

¹³⁰ See paras. 206 and 292 (c).

- (f) For the general reasons mentioned in subparagraph (c) above the use of private hospitals should be encouraged if this would avoid delays in treatment and promote the general purpose of rehabilitation.
- (g) The head of the medical branch should be given authority to exercise control of the use to be made of private hospitals, but subject to this we think, where used, the cost should be met in full by the Health Department. It is clear from submissions made to us that most private hospital beds involve no greater outlay per day than the beds in many of the public hospitals.
- (h) Steps should be taken to encourage the vocational rehabilitation and retraining of all those likely to be assisted.
- (i) We recommend that initially an annual sum of approximately 600,000 dollars should be set aside out of the compensation funds for the promotion of rehabilitation and safety.

XXII - FUNDS REQUIRED

311. COST OF SCHEME

- (a) The present cost of such a comprehensive scheme would be approximately \$38 million.
- (b) An amount equal to 11 percent of estimated costs has been allocated for administration and for safety education and rehabilitation. On the Ontario experience this is more than sufficient. The matter is discussed in paragraphs 448 to 457.
- (c) The overall figure mentioned includes a contingent sum of \$6 million which should amply provide for any error in the detailed estimates. The calculations have been made difficult by the need to use broad categories of statistical information, particularly in the area of home accidents.
- (d) All this can be compared with the present costs of maintaining the compulsory motor vehicle injury scheme and the workers' compensation scheme. Including amounts met by the Government through the social security and health services the overall charges at present total approximately \$36.6 million.

312. SOURCE OF FUNDS

- (a) Industry at present provides amounts totalling \$15 million in the form of premiums under the compulsory scheme of workers' compensation.
- (b) The estimated cost to self-insurers, and the Government (in respect of the State Services) amounts to a further \$4.1 million.
- (c) Owners of motor vehicles provide \$9 million for the compulsory third-party insurance scheme. A similar amount should, in future, be paid by way of levy to the Post Office at the time of relicensing the vehicle concerned.
- (d) Additional costs to the Government which are borne by the Social Security Fund and the Health Department total \$8.5 million.
- (e) It is proposed that \$36.3 million of these total amounts (as shown in Appendix 9) should be supplemented by contributions from the self-employed (who at present are not included in any scheme) and by the drivers rather than the owners of motor vehicles. These additional amounts will bring the total estimated income to \$41.8 million.

- (f) The Inland Revenue Department should be used for the purpose of collecting the levies from both employers and self-employed persons. A separate section of the income return could be used for the purpose of the comprehensive insurance fund levy. The proposal has the advantage of avoiding the need for assessments, and it will enable the appropriate levy to be calculated and checked by processes already being used.
- (g) The proposed income is in excess of estimated costs by \$3.8 million. This arises from our belief that at the initial stage of this comprehensive proposal which affects many different groups in the community it is more important to balance the equities than to achieve an exact and final balance of accounts; and the margin is on the side of income as it should be.

313. DRIVERS OF VEHICLES

- (a) In the past drivers have not been obliged to insure against the results of their own negligence on the highway. Probably it was thought that it would be difficult to identify the driver and easier to identify the vehicle.
- (b) The problem disappears, however, with a comprehensive scheme which embraces all accidents. And we think that rather than impose a further levy upon the owners of motor vehicles the time has arrived to require individual drivers to make some direct contribution to a fund which will provide them with considerable personal advantage.
- (c) We recommend that a small annual levy of \$1.50 be charged in respect of all driving licences, and that this sum should be collected by local authorities on behalf of the compensation fund.

314. CLASSIFICATION OF RISKS

- (a) In the past premiums paid by employers in respect of their employees have been classified in terms of the degree of risk supposed to be inherent in the industry concerned.
- (b) It is a complicated process. At present it involves as many as 137 separate classifications. Yet it is a system which fails to recognise that all industrial activity is interdependent.
- (c) Twenty years ago classifications were discarded for these reasons in the United Kingdom, and clearly there is even more reason for abandoning the system in New Zealand under a scheme which will ignore individual liability in favour of community responsibility.

- (d) We recommend therefore that the method of classification should now give way to a uniform levy based upon salaries and wages paid.
- (e) At present the aggregate amount collected in the form of insurance premiums is a little more than 1 percent of all wages. We recommend that in future an amount equal to 1 percent on wages should be paid by way of levy to the fund by all employers.
- (f) The effect of a graduated income tax is to alter the ratio of levy (assessed upon gross earnings) to compensation (based on tax-paid earnings) as earnings increase. It works in favour of the fund as they so increase. For simplicity in administration we recommend a uniform rate on gross earnings despite the changing ratio: but as a matter of equity it should not be assessed against the portion of any single salary or wage which exceeds \$8,000.

315. THE SELF EMPLOYED

- (a) At present the self-employed are not protected by a compensation fund. On the principle outlined they should contribute an amount equal to 1 percent of net earned income, subject to an annual minimum levy of \$5 and a maximum of \$80.
- (b) Unlike employees the self-employed must meet the levy themselves. Unlike employers they are unable to pass on the cost to the community. Moreover, employers are able to claim the item as a deductible charge in assessing income for tax purposes.
- (c) In the circumstances a levy could not justly be made upon self-employed persons at all unless they could deduct the item from assessable income for tax purposes. We recommend accordingly, and add that clearly such a deduction should not be regarded as part of the exemption at present permitted for life insurance or superannuation contributions.

316. SCHEME TO BE COMPULSORY

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