SUMMARY

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A shift of thinking in social policy that arrives at a new paradigm is a rare event. Social insurance was one such shift in European countries, beginning with Bismarck in the late 1800s. Taking the concept one stage further, the Accident Compensation Commission (ACC) represented New Zealand's unique and exceptional contribution to the evolution of social insurance in the twentieth century. This was all the more remarkable for the fact that New Zealand had eschewed any adoption of conventional contributory social insurance before that.

Any new vision that involves a different way of thinking is understandably resisted. This conference has documented the tensions that have been present right from the beginnings of ACC in New Zealand. Yet, it is striking how the new vision for dealing with the personal and social consequences of accidents has survived despite the many controversies. It is equally striking that so few other countries have considered emulating the New Zealand approach, despite the advantages that it offers.

One of the major tensions played out in the debates of the past four decades has been the extent to which ACC should embody private insurance principles. The reason for adopting social insurance in the first place is to overcome the deficiencies of pure private insurance. Psychologically, the acceptability of any social insurance scheme turns, to a large extent, on whether people perceive their rights to be guaranteed free of political whim and interference. When a clear contributory basis provides entitlement to statutory, if not contractual, benefits, social insurance can appear to give the advantages of a private contract. Some may feel this certainty is further enhanced by aligning social insurance more closely with private insurance. For example contributions may be called "premiums", and concepts like experience rating introduced. But the prime advantage of social insurance is that it can embody broad and complex social objectives. This in turn becomes one of its vulnerabilities, because these objectives cannot be specified precisely, the purely actuarial calculations of private insurance are less relevant, and outcomes are not amenable to purely quantitative evaluation.

The capacity of social insurance to overcome many of the deficiencies of private insurance is indeed its raison d'etre. Social insurance can cover new and unanticipated risks. In a world of rapidly advancing technology, recognition of new hazards may emerge slowly. Their full

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ramifications are not well covered by private insurance, which must be based on only covering those events which have been priced into the insurance contract. The decision as to what should be covered under ACC is a social one, not one dependent on knowing precise costs and probabilities. Thus premiums can be set without the need for actuarial precision and may even be set to achieve redistributive goals if required. Social insurance overcomes the community risk versus age-band risk dilemma of health insurance by wide pooling. The possibility of default, ever present with private insurance, is removed. The public's security is enhanced, especially if all party support has been obtained at the inception, as was the case with ACC.

The compensation of accidents and their prevention fit neatly into the social insurance approach only once the right to sue for personal damages has been relinquished. As outlined in Richard Gaskins' paper, herein lies the stumbling block for other more litigious societies. This helps explain why overseas interest has been limited. It is true however in the New Zealand context that the unique nature of ACC is not widely appreciated by the public. It is neither well explained, promoted, nor even taught as part of an education for civil society, a gap which has perhaps allowed dissatisfactions to fester and some of the basic principles to be questioned and undermined.

While social insurance mimics private insurance by creating a right to coverage by the payment of contributions, Sir Geoffrey Palmer's paper on the 1970s implies that we cannot afford to dabble at all with the private insurance model. Inserting private insurance principles can too easily undermine social goals.

One of the initial departures from the Woodhouse recommendations[1] was the adoption of differential levies based on the idea of group risks, rather than a flat rate levy. This was a carry over of the traditional workers' compensation funding, but resulted in the impression that costs could be precisely allocated to different activities. The idea of community interdependence and responsibility was easily replaced by market-based concepts of individual responsibility. Perhaps it has been too hard to get understanding of the case for flat rate levies and their logic, but the current levy system, with its emphasis on adjustment of premiums to reflect safety behaviour and provide incentives, needs to be revisited as we look forward to new designs for the future.

Further confusion has arisen between the legitimate need to establish fault in order to enforce safety messages and to discover the best ways of prevention, and the desire to make the guilty party pay the victim's compensation. Some of these conflicts are reflected in Ailsa Duffy's paper, which discusses the re-emergence of litigation not just for those cases outside the margins of ACC but also for exemplary damages in cases of negligence.

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1 New Zealand Royal Commission of Inquiry into Compensation for Personal Injury *Compensation for Personal Injury in New Zealand: Report of the Royal Commission of Inquiry* (Government Printer, Wellington, 1967) para 4 (commonly known as the *Woodhouse Report*).

Another tension is that between the ideal of full-funding and pay-as-you-go (PAYG). Private insurance must be based on the full-funding principle while social insurance, in theory, can be PAYG or have partial reserves only. This tension became apparent in the 1980s when the fund was run down by reducing levies and a PAYG basis adopted, as Don Rennie's paper outlines. Being unclear on the purpose of funding, and departing from the original vision of Woodhouse – or perhaps misunderstanding the original vision — has been the problem. The Woodhouse approach to funding was not actuarial but pragmatic. Actuarial full-funding was impossible in a social insurance scheme whose future obligations were not fully knowable. But an immature scheme was clearly going to face rising costs for many years and it was only fair and sensible that a significant degree of prefunding was adopted. The run down of the fund in the 1980s led inevitably to dramatic and unpopular levy rises, and paved the way for privatisation demands to take hold.

It is understandable that economists, who stress economic efficiency as the goal, find the idea of a state monopoly with multiple objectives unattractive. Too often however the nirvana of perfectly competitive insurance markets is contrasted with what is claimed to be a poorly performing state monopoly. The recent debacles of Enron, WorldCom and HIH serve to remind us that private markets can get things seriously wrong too, and that when they do go wrong ordinary people are highly vulnerable.

Richard Gaskins' paper highlights the rise of the economist's paradigm and its influence in the second half of last century. Welfare economics is a powerful framework which draws on the concepts of marginal costs and benefits and the need for full internalisation of costs. This is turn presupposes that there is a clear way to determine the costs of accidents to individuals and to society, but all too often the definition of cost is simply taken to be that which the scheme is prepared to pay.

There is also conflict between the no fault concept and this economic paradigm with its emphasis on costs and price signals. As explained by Bryce Wilkinsen, Lewis Evans and Neil Quigley, to economists, only incentives, and not a lot else, matter. Richard Gaskins provides a robust challenge to the uncritical acceptance of an economist's framework and explains how "the core definitions and distinctive principles" proposed by Woodhouse have been submerged in this rationalistic mode of thinking.

It is especially difficult for economists to challenge the market model framework as it is deeply ingrained in their training but the words of Sir Owen Woodhouse in a speech in 1996 should be heeded:[2]

> our social responsibilities are not to be tested by clever equations or the latest economic dogma. They depend upon decent fellow feeling and the ideas and ideals which support it. That I am sure is the

2 Sir Owen Woodhouse (1996).

continuing attitude of New Zealanders. It is something which ought to be applied to the future of the Accident Compensation scheme.

Robert Stephens' paper outlined the rise of the market model from 1984 when the concept of the level playing field took hold.[3] Reflecting this environment, as outlined in papers by David Caygill and Grant Duncan, ACC went nearly all the way to the market and back again in the 1990s. The insurance terminology was reinforced with the changing of the name of the Act to the Accident Rehabilitation and Compensation Insurance Act 1992. Many aspects of that Act were designed to facilitate the translation to private insurance of at least the employer's account. To achieve this there needed to be a clear distinction between work and non-work accidents and their respective funding also needed to be separated. Mechanisms to reinforce price signals to promote safety incentives also saw the establishment of experience rating. Thus the welfare economics framework became more entrenched and brought with it increased administrative complexities.

The final stage in the shift to the private sector when the employer account was put out to private insurers is outlined by Ross Wilson. But with the return of a new centre-left government in 1999 there was a deliberate rejection of market-based principles and ACC was renationalised. This dramatic reversal is viewed on the one side as a world saving pull-back from the brink of disaster, and by the other side as a ideological knee-jerk reaction with highly unfortunate and costly consequences. We need to stand back from the rhetoric and invest more attention in that period of experimentation with private insurers to find out what we can learn from it.

ACC remains the only social provision in New Zealand paid for by a separate payroll levy, with earnings-related benefits for loss of employment through accident. In traditional contributory social insurance of the United States or European kind, earnings-related payments are made for all kinds of social security, especially pensions. As Margaret McClure's paper discusses, ACC stands in stark contrast to the rest of the welfare state. Apart from universal New Zealand Superannuation, social welfare benefits are highly targeted and at safety net level only. Perhaps like Walt Whitman we have to live with this: "Do I contradict myself?/Very well then I contradict myself,/(I am large, I contain multitudes)".[4] Nevertheless, as Ruth Dyson discusses, the issue of the inequality between the treatment of the accident victim and the sickness victim with similar disability has become one of the major ACC challenges for the 21st century.

As outlined by Grant Duncan, further tension has emerged between the desire to contain costs by reducing the tail of long-term claimants, and one of the fundamental purposes of the Act which is, and should be, proper compensation. With the wider prevalence of unemployment in the 2000s it is doubtless important for earnings related compensation not to become a de facto, expensive

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3 Robert Stephens "The Economic and Social Context for the Changes in Accident Compensation (2003) 34 VUWLR 351.

4 Walt Whitman *Song of Myself* 51. 1324.

unemployment benefit. Yet there are vital equity issues for those who lose not the ability to work in some menial capacity, but the ability to engage meaningfully in their original profession.

In the Woodhouse scheme, lawyers had to relinquish one of the fundamental tenets of their profession, the right to sue under common law. One of the outstanding memories of this conference is the wide approval of that decision by the members of the legal profession who participated. This is even more astonishing given the pecuniary advantage that has been foregone. Ironically, it is the economists who now raise the flag for the return to the right to sue and the principles of the private market. Like the lawyers, economists may need to make a paradigm shift from their traditional ways of thinking.

There are many new challenges in front of us. For example, the impact of globalisation of economic activity and free trade agreements in goods and services have potentially large implications for the continuing independence of New Zealand's ACC policy. The visionary efforts of the original Woodhouse Commission need to be re-forged into a statement of shared principles that enables ACC to play a leading role in twenty-first century social policy thinking.