ACC Basic Overview

BACKGROUND

The present Accident Compensation Act is called the Injury Prevention Rehabilitation and Compensation Act 2001 Act is the fifth major Act in 28 years dealing with our "No Fault " Accident Compensation Scheme.
To understand many of the provisions of this Act some background knowledge is needed into what preceded the no fault system in New Zealand and also how the scheme has developed since its commencement on 1/4/74.

ACCIDENT COMPENSATION BEFORE 1/4/74

Before the Accident Compensation scheme was introduced New Zealand had a variety of methods for compensating accident victims.
There were:

1. The common law action for damages

(Also known as the Negligence action or Tort law action).
Those who could prove fault (an intent to harm or negligence) on the part of the wrongdoer could sue for damages in the Courts.

Those who succeeded often received significant amounts in lump sum awards of damages.

The problem was that for a variety of reasons, including the difficulty of proving fault, only a limited number succeeded.

Research in the United Kingdom by the Pearson Commission in 1978(Royal Commission on Civil Liability Cmnd 7054-1 Vol. 1 page 24) revealed that only 6.5% of accident victims received any compensation at common law. Nevertheless the cases that did come to court clogged the courts. Even though only 1% of cases actually reached the courts over 75% of cases in the Queens Bench Division of the High Court were personal injury cases (Royal Commission on Civil Liability Cmnd 7054-1 Vol. 1 page 25)

It was also an expensive process involving lawyers and insurance companies whose costs accounted for nearly 40% of the funds available (Woodhouse Report, 1967 p59).

It was also time consuming. Delays of 2 years before any damages were obtained were not uncommon Woodhouse Report, 1967 p57).

The common law system was in effect a "forensic lottery." (Woodhouse Report. 1967 p53)

2. Worker's Compensation Schemes

Because injured workers found it difficult to sue at common law for injuries received at work, a "no fault" Worker's Compensation scheme was introduced as early as 1900.
It had started in Germany in the late 19th century, spread to Britain and then to New Zealand.

This provided automatic compensation for those workers who suffered “personal injury by accident arising out of and in the course of their employment”

Unfortunately those few words led to enormous litigation in what was supposed to be a simple compensation scheme. Other problems were that the amount of compensation had a low maximum and was only payable for 6 years. Therefore a 20 year old worker rendered a tetraplgic, and likely to be off work for the next 45 years would only have 6 years compensation.

3. Social Welfare

For those unable to prove fault or those not injured at work their only recourse was to qualify for a social welfare benefit. However these were means tested and were not related to previous earnings but paid out at a flat rate.

4. Other provisions

There were some other provisions for injured citizens such as the Criminal Injuries Compensation Scheme.

- If a criminal injured the victim there were moderate payments available under this scheme.
- New Zealand was the first country in the common law world to introduce this 1963.
- Unfortunately it was still not widely known in the late 60’s and there were few applications.

THE WOODHOUSE REPORT

Dissatisfaction with the low amounts of compensation and the limited 6-year payment period for the Worker’s Compensation scheme led to the appointment in 1966 of a Royal Commission chaired by a High court Judge Sir Owen Woodhouse.

The Report of the Royal Commission commonly referred to as The Woodhouse Report after its Chairman was presented in 1967 and was something of a “bombshell” as it went far beyond simply recommending changes to Worker’s compensation alone.

24 HOUR NO FAULT COVER

The Woodhouse Report recommended replacing the existing “fragmented and capricious “ response to compensating accident victims with 24 hour a day no fault compensation scheme for all injured New Zealanders wherever they were injured at work, at home on the roads, in hospital or at leisure.

NO FAULT

Accident victims were to be compensated without the need to prove fault (intention or negligence) in the courts hence the term No fault accident compensation.

The fact that the victim was injured was sufficient to provide compensation.

WOODHOUSE PRINCIPLES

The General Policy statement in the present Bill states that the Bill reaffirms the Woodhouse Principles.

These 5 guiding principles are contained in the Woodhouse Report 1967 at pages 39-41

1. Community responsibility

First, in the national interest, and as a matter of national obligation, the community must protect all citizens (including the self employed) and the housewives who sustain them from the burden of sudden individual losses when their ability to contribute to the general welfare by their work has been interrupted by physical incapacity.

In other words as we all reap the benefits of a modern fast paced industrial society we should be prepared to pay for the detriments and not leave those who are inevitably injured to struggle on alone.

2. Comprehensive entitlement

Second, all injured persons should receive compensation from any community financed scheme on the same uniform method of assessment, regardless of the causes which gave rise to their injuries; In other words it should not make any difference to the compensation available if a person is injured inside the factory gates or outside.

3. Complete rehabilitation;

Third, the scheme must be deliberately organised to urge forward the physical and vocational recovery of these citizens while at the same time providing a real measure of money compensation for their losses;

The Woodhouse Report had noted that the common law action for damages was actually a disincentive to rehabilitation because the more incapacitated the injured person was at trial (often 2-3 years away from the injury date) the more damages he or she would receive.

4. Real Compensation

Fourth, real compensation demands for the whole period of incapacity the provision of income-related benefits for lost income and recognition of the plain fact that any permanent bodily impairment is a loss in itself regardless of its effect on earning capacity;

The Woodhouse report recommended that weekly compensation be paid at 80% of previous earnings as long as the person was incapacitated from their injuries. The Report also recommended compensation for any permanent disability suffered. This was to be in the form of a permanent weekly pension whether or not there had been income loss through that disability.

5. Administrative efficiency

Fifth, the achievement of the system will be eroded to the extent that its benefits are delayed, or are inconsistently assessed, or the system itself is administered by methods that are economically wasteful;

The common law and worker's compensation systems for compensating accident victims had led to employers, motorists and others having to take out insurance against the possibility of being sued.

In some cases (Workers Compensation insurance and Motor Vehicle insurance it was made compulsory by legislation to take out such insurance). In other cases such as possible liability for damage caused by negligent employees or products most prudent employers took out insurance against such risks.

However the involvement of lawyers and the court system to obtain compensation meant that as much as 40% of insurance premium income was taken for administration costs.

In contrast the Woodhouse report considered a single agency dealing with no fault compensation (such as the ACC) could provide compensation at less than 10% of the premium income. There would also be other cost savings in that the courts would be freed of much time consuming expensive litigation. As noted above this accounted for 75% of the workload of the main division of the English High Court and would have been similar in New Zealand.

FUNDING

The Woodhouse report recommended that funding for the scheme could be achieved, in effect, taking the insurance premiums employers, motorists and other were already paying to insurance companies and transferring them to the ACC.

RIGHT TO SUE

However to do that right to sue for injury at common law and the Workers Compensation scheme would have to be abolished so that there was no longer any need for employers, motorists and others to take out liability insurance against being sued.

INJURY/SICKNESS DEMARCATION

The Woodhouse report recognised that there was no logical difference between a person incapacitated through losing a leg in an accident and one who loses a leg through cancer. However it noted that distinction had already been drawn by the previous law it was unusual for sickness claims to be compensated under the common law and the workers compensation only recognised certain disease conditions linked to workplace activity. As the Woodhouse report was an attempt to reform the existing compensation systems for accident victims the report suggested that the inclusion of sickness and diseases in a no fault compensation scheme would have to come later.

DELAY BETWEEN REPORT AND FIRST ACT

Because of the radical nature of the Woodhouse proposals it was not until 5 years later after many reports and two select committee hearings that the first Accident Compensation Act 1972 was passed and as noted above this did not come into force until 1/4/74.

THE ACCIDENT COMPENSATION ACT 1972

The Act provided cover for all “personal injury by accident “ part of a definition which ha been used in earlier Worker’s Compensation legislation.

Compensation was payable as recommended by the Woodhouse Report at 80% of previous earnings.

However the Act departed from the Woodhouse proposals in several ways but the main one was the provision of two lump sums for permanent disability instead of the weekly payments suggested by the Woodhouse report.

THE ACCIDENT COMPENSATION ACT 1982

The 1972 Act was replaced and updated by the Accident Compensation Act 1982 which came into force on 1/4/83

This continued with the two lump sums, which were eventually set at a maximum of $17000 for 100% permanent loss or impairment of a bodily function and $1000 for pain and suffering and loss of amenities.

The $17000 lump sum was assessed by medical specialists on the basis of a Schedule of Injuries set out in the Act so that for example the loss of hand was set at 70% of $17000 whereas the total loss of both arms was set at 100%

The other lump sum of $10000 was available for pain and suffering and loss of amenities such as the ability to play the piano, to see, smell, taste etc. Because of the subjective nature of the loss this lump sum was rather more difficult to assess and resulted in many appeals.

THE ACCIDENT REHABILITATION AND COMPENSATION INSURANCE ACT 1992

This Act repealed the 1982 Act and came into force on 1/7/92.

It was a significant change from the previous two Acts and was an Act which the Court of Appeal described in *Childs v Hillock* [1994] 2 NZLR 65,68 as a change from a more generous scheme to a less generous compensation scheme.

Many of the provisions in the Act were designed to counter specific court decisions on the interpretation of the meaning of the phrase personal injury by accident.

Apart from this major difference the 1998 Act was similar to the 1992 Act in what was provided as entitlements e.g. 80% previous earnings, no lump sums only an

independence allowance (now increased to $61.68 per week for a 100% disability) and the restricted definitions of personal injury, accident and medical misadventure remained.

The ACC was still the sole collector of premiums and provider of compensation for non-work injuries, motor vehicle injuries, and medical misadventure injuries and injuries to non-earners. The self-employed could also choose to stay with ACC or insure with a private company.

RETURN TO ACC -AMENDMENT TO 1998 ACCIDENT ISSUANCE ACT 1998

The election of a Labour /Alliance Government, whose election manifesto had promised a return to the ACC as the sole provider, brought forward an amendment to the 1998 Act.

This removed the Insurance companies from workplace insurance and reverted to the ACC being the sole collector of premiums and provider of entailments.

This amendment came into effect on 30/6/00 so that only the work injuries that occurred during the 12 months from 1/7/99 to 30 /6/00 were covered by the 7 insurance companies. Those 7 companies however will continue to have to deal with work injury claims made during those 12 months.

Such claims could be in existence for a very long time as for example if a 20-year-old has been rendered a tetraplegic by a work injury during hose 12 months. The Insurance Company will be responsible for that claim for the next 45 years.

THE INJURY PREVENTION AND REHABILITATION AND COMPENSATION ACT 2001

The present Act repeals the 1998 Act.

It continues with the ACC as being the sole provider and also brings back lump sum compensation in place of the independence allowance which was another of the Labour /Alliance commitments during the election.

It also makes some other ameliorating amendments to the range of injuries covered by the 1992/1998 Act.

In any no fault accident compensation scheme the areas to consider are.

What personal injuries are included/excluded?
What personal injuries are given cover under the Act?
What compensation and other entitlements are payable?