

Accident Compensation in NZ: Insurance vs Social Welfare, Private vs Public Delivery?

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Introduction

- Compulsory no-fault accident compensation based on actual losses – a distinctively NZ scheme.
- But, 5 reviews since Woodhouse (1967)
- Social welfare with benefits related to income rather than minimum standards of living, or compulsory insurance?
 - Why does it matter? Why not private delivery?
- Paper based on ACC Stocktake report (2010)

Accident Compensation c 1967

- Common law action supported no-fault scheme with subsistence-level benefits.
- Private insurers had a central role (but State Insurance monopoly 1949 – 1951).
- Heavily criticised in the Woodhouse report – common law action “a form of lottery” and a “fragmented and capricious response to a social problem”.

Woodhouse “Principles”

- Community responsibility
- Comprehensive entitlement
- Complete rehabilitation
- Real compensation (linked to income)
- Administrative efficiency – benefits “without contention”

Insurance

- Insured parties can be identified, and a premium paid
- Specific contingencies are insured against, and a specific schedule of benefits is payable
- Contingencies more predictable in a large sample of the population than for any individual
- Incentives provided by the policy drive the frequency and value of claims

ACC in the Wider Market for Insurance

- ACC = 42% of wider general and income protection insurance market.
- Drives a separation of income replacement, automobile and other insurance between accidental vs non-accidental causes and personal loss vs loss of assets.
- Separation of accidents not just a matter of primary cause: Harm from accidents and harm from other causes are closely related.

Government Monopoly Provision

- Monopoly provision reduces dynamic efficiency – that is the benefits arising from competitively-driven investment in different approaches to the provision of cover and service delivery.
- ACC recognises the benefits of private participation in delivery in some areas (contracting out service delivery and rehabilitation), but probably many more opportunities.

Social Welfare vs Insurance

- Ex ante vs ex post redistribution.
- Compulsory vs voluntary participation
- Choice of cover vs compulsion
- Funding – taxation vs premiums
- Incentive design – less important in social welfare than insurance
- Minimum standard of living vs Compensation for losses

Woodhouse on ACC as Insurance

- Woodhouse Report both recognises that it is a form of insurance and denies that it is a form of insurance.
- 1960s: a social insurance scheme which only by “a legislative accident had [private insurers] attempting to act as society’s agents for collecting disguised taxes in the form of premiums”. (Law Commission 1988)
- Simply one component of the social welfare system.

Why not Insurance?

- Woodhouse Principles appear to be consistent with private insurance delivery with two exceptions.
- Private Insurers will contest claims.
 - But in the contemporary context, is any other approach realistic?
- Private Insurers would use experience rating, not the Woodhouse concept of “social responsibility” which is claimed to be inconsistent with experience rating.

Social Welfare vs Insurance

- *Private insurers can have no claim to handle a fund such as the compulsory fund in New Zealand which has arisen not because employers have been persuaded to provide the business, but because Parliament has ordained that employers must do so. (Law Commission 1988)*

Social Welfare vs Insurance

- *Statutory removal of tort liability for any party causing through negligence the injury sustained is inconsistent with the adversarial approach of insurers and their focus on insuring against tort liabilities before the ACC Scheme was introduced: “If this is an insurance scheme, what is it that the payers are insuring against? They no longer have civil liability for personal injury”. (Law Commission 1988)*

Social Welfare vs Insurance

- *“The insurance system in itself can offer no central impetus in the important areas of accident prevention and rehabilitation”.*
- *The ...insurance industry “wishes to be able to negotiate the terms of its obligations and to decide whether to insure a particular person or not”.*

(Law Commission 1988)

Social Welfare vs Insurance

- *The insurance industry would not “contemplate taking a responsibility for earnings related compensation which would extend over more than a year or two”. (Law Commission 1988)*

Conclusions

- The Woodhouse Report and the Law Commission provide no convincing rationale against private delivery in general.
- While there may be areas in which a public sector entity is needed (or the relevant cover would more efficiently be incorporated into the general social welfare system), there is no reason to doubt the capability of the private sector to deliver much of the cover provided by ACC.

Conclusions

- The real issue of debate when private delivery is being debated is not social welfare vs insurance, but contention of claims vs claims as a matter of right.
- The last decade demonstrates that the “holy grail” of ACC - claims as a matter of right - are not sustainable even with monopoly public deliver,.