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A D D R E S S

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TO

MARITIME LAW ASSOCIATION OF AUSTRALIA AND NEW ZEALAND

AT WELLINGTON

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Most of you in this audience are Australians and, particularly for you, I am glad of the opportunity of attempting to remove some of the misconceptions that exist concerning the New Zealand Accident Compensation Scheme. Indeed across the Tasman from here, there are not only misconceptions, but now and then quite clear misrepresentations. The point is that, in Australia, there are very powerful interests opposed to any developments along the New Zealand lines, and I would like to offer you some opinions to help you in appraising that opposition.

The fact is that, from New Zealand's point of view, we believe a comprehensive compensation scheme, coupled with new activity in the fields of rehabilitation and accident prevention, is a great improvement on the legal and social systems that previously existed. There would now be only a few die-hards, a mere handful, who would still sigh for the profits and prejudices of the old system.

That old system was one that enabled some interests to profit from it but which, while ostensibly benefiting the injured person, in reality treated him unfeelingly, expensively and very slowly.

It is no use arguing on philosophical grounds that you do not like and won't have, a no-fault system. The fact is that most westernised countries have had exactly that for scores of years in the field of industrial injuries - that is in the form of workers' compensation.

Further, over the last twenty years an increasing number of countries or states have extended the no-fault principle into the motor accident area, and your Northern Territory is the latest to have embraced that principle.

What is left ? Only the accident that happens to a person away from work and away from the motor vehicle. In New Zealand we have bridged this gap, believing that an injury to a citizen has the same social and economic consequences whether it is caused at work, on the roads, or at home. Why should they be treated differently ?

It is idle for you to say that, in Australia, you reject the philosophy that no-fault compensation should extend into the leisure-time area. For you have begun to do precisely that: in N.S.W. - by virtue of the Sporting Injuries Insurance Act 1978. As from 1 July this year NSW will pay no-fault compensation to persons suffering certain kinds of injuries from participating in certain sports. It is not comprehensive, but it is a beginning. Therefore, to those of you, here or in NSW, who express heated opposition to the introduction of no-fault compensation in the area of home accidents, or sports accidents, we in New Zealand can point out - perhaps with a gentle "told you so" smile - that you have already started on the trail.

I do not think you will regret it. We have not regretted it in New Zealand.

The principal fear that was expressed about the New Zealand scheme, and is still the subject of misrepresentation, is that, with comprehensive benefits on a generous scale, the cost would be enormous. In the early days, it was

very understandable that people should ask themselves: "How can it be possible for benefits at approximately common law levels, to be paid to everyone injured in the country, except at enormous cost?" The appeal of the accident compensation system is that it can be done, at almost the same cost as before, whereas the benefits are so much greater and more wide-spread. Let me illustrate in the field of industrial injuries.

Previously, in New Zealand, employers paid premiums to insurance companies to give themselves protection against workers' compensation claims. This same premium protected them not only against the cost of ordinary workers' compensation injuries, but also against damages claims from employees based on negligence. The premium varied according to the hazard of the industry, but the national average premium was \$1 for every \$100 of payroll. In addition, the employer had to take out public liability insurance to protect himself against negligence claims from members of the public who may be injured by his operations.

What has happened in New Zealand over the past five years is that the scheme for injured employees has operated at exactly the same average premium of \$1. But that money has paid not only for accidents at work, and accidents to and from work, but also for accidents to those employees at home, in sport, or otherwise in leisure-time - and at much higher levels of benefit than were previously available.

To complete this picture, three additional factors must be mentioned.

- (a) In addition to the average premium of \$1 paid by the employer, he has personally to pay compensation for the first week of incapacity following a work accident. This costs him 10 cents. But the advantage of this provision is that, when an employer finds himself paying out first week compensation

- (b) The \$1 collected by the Commission not only pays compensation, but is also used to finance programmes in accident prevention and rehabilitation of an intensity that we have not previously experienced in New Zealand. Further, a substantial portion of it is held in long-term investments to provide for the costs of long-running claims, some of which will still be drawing compensation forty years from now.
- (c) The \$1 average rate that has sufficed for the past five years has in the last few months been increased to \$1.07. This is because of the need to create sufficient reserves for the future, with all the uncertainties due to inflation, and to meet the costs of covering non-work accidents.

You may well ask - how has this been financially possible ? The answer will not please the ardent capitalist, nor he who believes that private enterprise is necessarily the most efficient. The answer is, whether you like the thought or not, that the premium dollar contributed by the New Zealand employer is no longer eroded by the profits of a host of insurance companies, and no longer expended in the duplication of administrative costs of those same scores of companies. The answer lies in elimination of profit, and administration by one central organisation.

That is no criticism of insurance companies, who exist for profit, and whose finances make a great contribution to the economy and development of a nation. But the view taken in New Zealand was that injuries to our citizens, however caused, are a matter for the community to be concerned with, and are not properly the concern of private business.

Therefore, whether you hold capitalistic or socialistic views, or somewhere in between, the fact is that comprehensive accident compensation is one area in which non-profit centralised administration can do it better and

This is further illustrated by the claim ratio that exists today compared with workers' compensation days. In those days, out of \$100 premium, \$70 was for claim payout, and \$30 was normally allowed to the insurance company for profit and administration. Under accident compensation that 70/30 ratio is now approximately 90/10. In this ratio lies the secret of accident compensation financing. The 90/10 ratio means that, with approximately the same premium-rate intake, there is now a huge pool of extra money available to pay higher benefits to a wider range of people.

A recent misrepresentation which annoyed me very much, and which was attributed to an Australian source, was that the New Zealand scheme was "in financial difficulties". It is not. After paying out over \$114M last financial year, the Commission has \$172M in reserves, 95% of this being in short-term or long-term investments. Current liabilities are less than \$4M, and therefore the remainder of the reserves are available to meet the future costs of claims.

This is not the picture of an organisation in any financial difficulty. How this canard started is quite obvious. The Commission must each year advise government whether the levies being received appear to be adequate to cover both the short-running and the long-running claims, some of which will (as said before) last forty years. The Commission simply reported its view, based on future estimates (of doubtful reliability) that the present reserves will not be sufficient to see out the longest of those claims. But that is a situation twenty years or more ahead. That is precisely the reason why the levies have just been increased by 7% so as to create reserves that will appear adequate.

There is considerable debate in New Zealand as to whether the Commission should be required to hold future reserves, or whether it should operate on a pay-as-you-go basis.

Another common misapprehension by overseas people is that a universal compensation scheme will be "ripped off". Undoubtedly any national welfare or insurance scheme contains this potential. The successful cheat is never discovered. But we find the detectable abuse factor to be very low. Such abuse consists, but only to a very small extent, in deliberate fraud, in the alteration of medical certificates, in falsification of other records etc; but principally in the exaggeration of symptoms and complaints of disability. In that area we have to rely greatly on the integrity and vigilance of doctors. As important citizens of this country it is in their interests to take a responsible part in checking attempted abuses. By and large they do so, and thereby have made a significant contribution to the success of the New Zealand scheme. But, in addition, the way in which a scheme like this is managed, contributes to the control of abuse. Our policy is not one of adopting an adversary stance, not one of opposing claims out of sheer penny-pinching, nor one of handing out money without scrutiny; but one of patient vigilance and efficiency so that a person who makes out his right to compensation receives fair and reasonable treatment.

Another misapprehension is that this scheme involves the creation of an administrative "empire". Naturally a nationwide scheme operated by a central authority, with its network of offices, requires a significant staff structure. How many staff are needed for it to be called an "empire" is a matter of opinion. We actually employ 550 people throughout the country, and there are also staff employed by the State Insurance Office in handling claims within their delegated jurisdiction. Of course our staff do not constitute only claims handlers. For an organisation handling an annual income of \$141M, a substantial administrative and financial team is required. Further, we have scores of officers stationed around the country carrying out our role in rehabilitation and accident prevention. When people call our staff of 550 an "empire" I think it is time they learnt

The truth is, gentlemen, that the New Zealand scheme has been deliberately staffed on tight lines, and it is part of our policy that administrative waste has to be avoided.

Finally, in an address which has dealt mainly with criticisms, I have little time to make claims to the advantages which we believe exist. But I will say just this :

Our doctors in New Zealand look with horror on reports of the million-dollar awards that are still made by juries in America for alleged medical malpractice - a risk which our doctors are now substantially freed from. Then we look with satisfaction on the tens of thousands of New Zealanders whose injuries would previously have left them with nothing more than social security, many literally thrown on the scrap-heap, with no one caring much about their recovery, and certainly no one caring much about their financial survival. We now protect our citizens and are proud to be able to do it.

We also look with appreciation on certain groups in our community who understandably feared the effect of accident compensation, but who with good grace have swallowed their objections and now accept the scheme as part of our legal and social structure. I refer particularly to lawyers, doctors, and insurance companies. Many of them offered opposition to the scheme before it became the law; a handful still protest. But by and large, these interests, who had legitimate fears, have come to see the greater advantages which the scheme has brought to New Zealand and have accepted their new roles.

We New Zealanders have our differences^s with Australia but, as against the rest of the world, you are our closest friends. We have proved that time and time again, in war and peace. It is of the nature of Australians to be outspoken. If, over the Tasman, you hear outspoken criticism of the New Zealand compensation scheme I ask you, as friends, to pause to think over what is said, to remember a few of the comments

should be treated, and to accept from us our opinion that we have made a notable legal and social advance, one which I think you will ultimately copy. When you do - welcome to the club.