Reflections on the Woodhouse legacy for the 21st century

The 2019 Sir Owen Woodhouse Memorial Lecture
22nd October 2019
Auckland
Susan St John
“This beautifully crafted Report is the work of a man with a deep-rooted social conscience fully aware of the needs and aspirations of the common man and woman.” High Court Judge Ted Thomas 1969
NZ’s incoherent income maintenance system

- ACC 1967
- New Zealand Superannuation 1976
- Welfare and Working for Families 1991
Total expenditure of $33 billion
Pre ACC “The Forensic Lottery”

- **Workers compensation.** Very limited no fault earnings-related payments.
  If fault proven claimant may or not hit the jackpot.

- **Non-work accidents:** compensation only if fault proven under common law.

- **Backstop of miserable welfare benefits.**
The paradigm shift: ACC was to meet five principles

- Community responsibility
- Comprehensive entitlement
- Complete rehabilitation
- Real compensation
- Administrative efficiency
It should not matter if the accident:
• is work-related
• if the injured is employed
• if there is fault,
• when it happens

ACC as Social insurance:
• Flat rate levies
• Fund as a buffer
• Safety separate issue
• Admin efficiency
• Chance to evolve
Onslaughts to the new paradigm

- Language
- Corporate structure
- Differential levies based on risk
- Experience rating
- Full funding
The freezing industry late 1970s

Study of how the proposed rebate and penalty system could apply

If it didn’t make sense in the freezing industry then it did not make sense anywhere
Experience rating follows from the insurance/neoliberal paradigm

Marginal cost

Marginal benefit

injury frequency reduction

MB/MC
Experience rating statistical basis

- Accidents are random - approximate to a Poisson distribution
### Rebates and Penalties for Firms in the Freezing Industry

**Using Two Frequencies Bases \( F_1 \) and \( F_2 \) for the Year March 1976 to March 1977**

<table>
<thead>
<tr>
<th>Works No.</th>
<th>Estimated Levy Paid</th>
<th>Adjusted Levy</th>
<th>Rebate (+) or Penalty (-) ( F_1 ) Data²</th>
<th>Rebate (+) or Penalty (-) ( F_2 ) Data³</th>
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<td>34,000</td>
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<td>- 34,000*</td>
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</table>

**Notes:**

- \( F_1 \) and \( F_2 \) denote different frequency bases used for calculating rebates and penalties.
- The data reflects calculations for the year March 1976 to March 1977.
- The table entries indicate the estimated levy paid, adjusted levy, rebate or penalty (positive or negative), and the corresponding data for \( F_1 \) and \( F_2 \) for each works number.
Contradictory results dependent on which measure of accident frequency used.

Were these companies comparable?

Was experience rating more about wrong classification?
The 1980s bonus scheme

- Timid experiment November 1980
- $1 million paid in bonuses
- flat 12.5% work levy rebate
- Statistical basis was ACC claims record for 1 April 1976- 31 March 1979.
- Reward was well-divorced from experience.
- Air New Zealand rewarded in spite of the worst aviation disaster in New Zealand’s history in November 1979
536 classification units
130 risk groups

The ACC Classification Unit for Sam’s business is 42440 Painting and decorating services.

For example, in Sam’s group you will find:
Plastering and ceiling services

CU:42440  SAM’S PAINTING
CU:42430  TONY’S TILES
CU:42412  PETE’S PLASTERING
CU:42450  GRAHAM’S GLAZING
Three key objectives for experience rating:

• provide employers with financial incentives to prevent injuries

• encourage appropriate return-to-work programmes

• make levies fairer for businesses
How could it be done in practice?

weighting is the result of—

5% × \sqrt{\text{liable earnings} / 2,000,000};

(b) if the liable earnings of the levy payer in the experience period are over $2,000,000 and equal to or under $5,000,000, the weighting is the result of—

5% + \{5% × \sqrt{\text{liable earnings} / 2,000,000} / 3,000,000\};

(c) if the liable earnings of the levy payer in the experience period are over $5,000,000 and equal to or under $10,000,000, the weighting is the result of—

10% + \{5% × \sqrt{\text{liable earnings} / 5,000,000} / 5,000,000\};

(d) if the liable earnings of the levy payer in the experience period are over $10,000,000 and equal to or under $20,000,000, the weighting is the result of—

15% + \{5% × \sqrt{\text{liable earnings} / 10,000,000} / 10,000,000\};

(e) if the liable earnings of the levy payer in the experience period are over $20,000,000 and equal to or under $50,000,000, the weighting is the result of—

20% + \{10% × \sqrt{\text{liable earnings} / 20,000,000} / 30,000,000\};

(f) if the liable earnings of the levy payer in the experience period are over $50,000,000 and equal to or under $100,000,000, the weighting is the result of—

30% + \{10% × \sqrt{\text{liable earnings} / 50,000,000} / 50,000,000\};

(g) if the liable earnings of the levy payer in the experience period are over $100,000,000 and equal to or under $200,000,000, the weighting is the result of—

40% + \{10% × \sqrt{\text{liable earnings} / 100,000,000} / 100,000,000\};

(h) if the liable earnings of the levy payer in the experience period are over $200,000,000 and equal to or under $1,350,000,000, the weighting is the result of—

50% + \{50% × \sqrt{\text{liable earnings} / 200,000,000} / 1,150,000,000\};

(i) if the liable earnings of the levy payer in the experience period are over $1,350,000,000, the weighting is 100%.

Rehabilitation component

(4) The Corporation must calculate the rehabilitation component using the following formula:

(payer's rate - payers' rate) / payers' rate × weighting

(5) In the formula in subclause (4),—

(a) payer's rate means the experience rate of the levy payer for the applicable levy risk group calculated using the formula in subclauses (6) and (7):

(b) payer's rate means the experience rate of the levy payers in the applicable industry peer group calculated using the formula in subclauses (8) and (9):

(c) weighting means the weighting provided by subclause (3).

(6) The Corporation must calculate the experience rate of the levy payer for the applicable levy risk group using the following formula:

compensation days / earnings.
2019 Here we go again

Any changes a company makes to its health and safety which result in a discount will show up in their 2022 levy, and subsequent levies. So there’s plenty of time to take positive action on your workplace health and safety.

Accident Compensation (Experience Rating) Regulations 2019- 89 pages
Actuarial Funding - another insurance concept?

- 1% levy to replace worker’s compensation premiums
- Scheme’s income would be greater than outgoings for first years
- Surplus invested
  - Useful contingency reserve
  - Beneficial side effect
- Never to be on a fully-funded actuarial basis
“Any move to introduce competition would almost certainly require full funding for future claim liability.” (Bolger 1997)
Labour 2000

- Injury Prevention, Rehabilitation, Compensation Act 2001
  - “to reinforce the social contract represented by the first accident compensation scheme.”

Reversed privatisation experiment

BUT Retained full actuarial funding
Today the fund is huge

Reserves in months of expenditure

Fund $42 billion

Annual Expenditure $4.6 billion
Now the curious implications of plenty of money.... but never enough

ECONOMY

ACC levies likely to rise as fund hits deficit

Although ACC ran a $570 million operating surplus this year, the future is murky as interest rates push its liability to $53 billion, leaving a record-high accounting deficit. Marc Daalder reports.
“[Actuarial projections] as a scientific exercise almost as pointless as the debate in mediaeval scholasticisms as to the number of angels that can dance on the end of a pin.”

Alan Clayton, 2003
Has ACC lost its way?

The client must have a continuous maxillary and mandibular dentition, with no other un-filled edentulous spaces from first molar to first molar (an existing fixed bridge; missing 7’s and 8’s; teeth extracted as part of comprehensive orthodontic treatment; or congenitally missing teeth are acceptable). If the client does have a pre-existing edentulous space but the rest of their mouth meets this criterion, they can choose to have an implant before seeking an ACC-funded implant. Please note that ACC will only consider funding an implant for a 7s if all other second molars are present and in good condition.

The review process is stacked against the individual ACC usually wins.
ACC or welfare?  It *really, really* matters

Annual net maximums

<table>
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<tr>
<th>rate</th>
<th>ACC</th>
<th>NZS</th>
<th>SLP</th>
<th>JS</th>
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<td>single living alone</td>
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<td>21,380</td>
<td>14,232</td>
<td>11,387</td>
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<td>single sharing</td>
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<td>19,735</td>
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<td>married person</td>
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<td>16,446</td>
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<td>married person</td>
<td>100%</td>
<td>21%</td>
<td>15%</td>
<td>12%</td>
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</table>
And what of unconscious bias in ACC?

- Privileging of paid work as measure of value
- Privileging of injuries to earners
- 1960s view of women’s work

If ACC had evolved as social insurance instead of dressed up private insurance, inclusion to reflect new thinking about these things might have occurred.
The Superannuation paradigm shift

✓ Community responsibility
✓ Comprehensive entitlement
✓ Complete rehabilitation
✓ Real compensation
✓ Administrative efficiency
Spousal deduction for those married to people with overseas pensions

Nelson retiree takes overseas pension case to Human Rights Review Tribunal

- Years of protest
- 2015 Labour agrees it is a human rights abuse
- $2m pa to fix
- April 2018 Three superannuitants take a case to HRRT
- October 2019.. expect to wait another two years? 31
The welfare paradigm

The inspiration for the Social Security Act 1938 was the determination to end poverty in New Zealand. –MSD website

Social Security Act 1964

“An Act to provide for …Superannuation Benefits and of other Benefits designed to safeguard the People of New Zealand from Disabilities arising from Age, Sickness, Widowhood, Orphanhood, Unemployment, or other Exceptional Conditions; . . . and, further to provide such other Benefits as may be necessary to maintain and promote the Health and General Welfare of the Community
Undermining the welfare paradigm: Neoliberal and trickle-down theories: 1990s

1991 budget

- Benefit cuts
- User pays/low tax
- Welfare confined to the poor

Tightly targeted assistance for those in “genuine need”
Purpose and principles of the Social Security Act (2007)

- to help people to support themselves and their dependents while not in paid employment;
- to help people to find or retain paid employment;
- to help people for whom work may not currently be appropriate because of sickness, injury, disability, or caring responsibilities, to support themselves and their dependents.
• Work in paid employment offers the best opportunity for people to achieve social and economic well-being;

• the priority for people of working age should be to find and retain work;

• people for whom work may not currently be an appropriate outcome should be assisted to plan for work in the future and develop employment-focused skills; and

• people for whom work is not appropriate should be supported in accordance with this Act.
• to enable in certain circumstances the provision of financial support to people to help alleviate hardship:

• to ensure that the financial support takes into account— that where appropriate they should use the resources available to them before seeking financial support under this Act;

• to impose administrative and, where appropriate, work-related requirements on people seeking or receiving financial support under this Act.
2008-2017 No holds barred reforms

- Relentless focus on work
- Work work work work- any work so long as paid
- Tighter and tighter targeting of assistance
- Sanctions for non compliance
  - Poverty as a weapon
- **Ugly culture in WINZ**
  - Power to decide what is a relationship
  - To decide what is income
  - Appeals process stacked in MSD’s favour
  - Benefit fraud and disputed overpayments conflated
  - Incarceration of women with children
Indicators of social disaster

- Deprivation
- Child poverty
- Third world diseases
- Alienated youth
- Mental health crisis
- Suicide rates
- Homelessness
- Foodbanks normalized
- Private charities overwhelmed
2000s The enormity of the social deficit

- Growing property/wealth divide
- Growing household debt
- Growing homelessness
- Growing poverty
- Negative indicators
  - Suicide rates
  - Hospitalisations
  - Family violence
  - Incarceration
  - FOOD HUNGER
The Welfare Expert Advisory Group
2019- broken system

“we were shocked and saddened by the extent of the suffering and deprivation that is occurring.”
Can children look to the law to protect them?

UNCROC ratified 1993

Children have specific human rights that recognise their special need for protection.

1. Provision rights include the right to an adequate standard of living, free education, adequate health resources, and legal and social services
Ms F case
“Loans treated as income”

2005- dobbed in by vindictive ex partner

2008 $120,000 to repay

8+ years fighting in the courts

High Court 2017

2018 Decision

2019 partial resolution
Tribunal declares MSD's ACC law discriminatory

4 Feb, 2019 4:12pm

- Accident 2002 while a sole parent working part time
- 2010 accepted claim
- She only received $576 of her ACC $89,000 for eight years work.
- 2018 HRRT declaration of discrimination. MSD did not appeal
- What next?
Kathryn’s Story

How the Government spent well over $100,000 and 15 years pursuing a chronically-ill beneficiary mother for a debt she should not have.

By Catriona MacLennan

- 2001 convicted of “relationship fraud”
- Prison 6 months
  Debt $120,000
- 2001-2016 fights in the courts against this debt
- 2016 sent back to SSAA
- Appeal to Supreme court disallowed
- 2019 sick and old she awaited MSD’s pleasure

The full story here
The next paradigm shift.

It was the **simple coherence and attractiveness** of the Woodhouse concept which in the end muted the criticism of its opponents. The scheme which no one asked for had an impetus of its own. Peter McKenzie QC* 2003
Income Maintenance and Wellbeing Commission: Woodhouse for the 21st century

Goals: Prevention, Full Rehabilitation, and Adequacy of Income for all

- Look to the Australian National Disability scheme
- Challenge traditional thinking
  - Remove influence of insurance concepts and welfare economics.
  - Don’t use the courts to get changes in policy
- Move the three schemes of income maintenance closer together: challenge sacred cows:
  - Earnings related compensation
  - Paid work focus
  - Universality
  - Unconscious bias against women