

*Compensating
Crime Victims
within New
Zealand's No
Fault Accident
Compensation
Scheme: The
Advantages and
Disadvantages*

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The compensation of crime victims in New Zealand differs from other countries in that crime victims are treated in the same way as other accident victims. All are compensated as part of the no fault 24-hour cover accident compensation scheme.

The scheme provides compensation for those who suffer personal injury and it does not matter whether the injury was caused by a careless motorist or doctor, by the victim's own fault in skiing too fast or by a criminal in a deliberate assault. All that has to be shown is that the victim suffered a personal injury that has cover under the Act. Personal injury is defined as physical injury and includes any mental injury which is an outcome of the physical injuries.

Benefits available to injured persons include: weekly compensation; an independence allowance; cover for medical costs; and, rehabilitation assistance. Whilst the benefits available in fatal claims include: surviving spouse weekly compensation; and, compensation for each child under 18 (or 21 if studying). Other payments include a survivor's grant and a funeral grant.

The scheme is funded from premiums paid by motorists, employers and earners. The Government also makes a contribution for injuries which cannot be attributed to the above categories (for example non earners).

As the scheme has replaced workers compensation and the common law action for damages, employers, motorists and others no longer have to take out insurance against being sued in court for damages for personal injury. Thus in effect the scheme is mainly funded by transferring the insurance premiums that were previously being paid to various insurance companies into one central organisation: the Accident Compensation Corporation (ACC).

The ACC is the only organisation involved in distributing compensation. There is no need for lawyers; nor are there the other expensive trappings of a compensation system based on showing fault or negligence in the courts.

How did New Zealand obtain such a scheme? The Accident Compensation system came into force in 1974. Prior to that New Zealand had a capricious fragmented system similar to that still operating in Australia, the United Kingdom and elsewhere. There were various responses to an accident victim depending on how and where a person was injured. The four main systems were: the workers compensation system; the common law system of suing the defendant for damages through the courts; the criminal injuries compensation scheme; and, the Social Security flat rate benefit system as a safety net for those who did not succeed in obtaining compensation elsewhere.

Dissatisfaction with the workers compensation system led in 1966 to the appointment of a Royal Commission under a High Court Judge, Sir Owen Woodhouse. He reported back in 1967 with a startling report which went far beyond simply recommending changes to the workers compensation legislation. Instead, his report proposed a revolutionary no fault accident compensation scheme which would give 24-hour cover against accidents for everyone in New Zealand. It was to replace completely the common law system for accident victims and the other schemes.

The *Woodhouse Report* based its proposals on five guiding principles for a modern compensation system. Briefly, they were: community responsibility; comprehensive entitlement; complete rehabilitation; real compensation; and, administrative efficiency.

The *Woodhouse Report* also indicated that the comprehensive compensation scheme could be funded by abolishing the common law right to sue for damages for personal injury and by, in effect, diverting to one organisation all the insurance premiums currently being paid by motorists and employers to insure themselves against being sued. That one organisation later to be named the Accident Compensation Corporation would then be able to pay compensation to everyone injured in New Zealand from the existing funds going into the existing system.

This bold proposal was completely unexpected and the Government skilfully avoided making any decision on it by calling for a further report from their own officials. Over the years numerous other reports into compensation schemes have been conducted. Despite amendments and various recommendations, the principle of 'no fault' advanced in the *Woodhouse Report* has remained.

Experience has shown that the New Zealand Compensation scheme has both advantages and disadvantages for crime victims. The advantages which are most often spoken about include speedy settlement of claims and the 'no fault'

provision. The disadvantages for crime victims, although like those shared with all other accident victims, are worthy of mention.

Most benefits are now paid under rigid regulation which do not provide any ambit of discretion. Lump sum payments have been abolished and replaced with independence allowances of up to \$40 per week for a 100 per cent disability. (A Committee of Inquiry is also understood to have recommended that the independence allowances be able to be capitalised into lump sums.) There are limits on claims for mental injury which essentially exclude such claims unless the mental injury is an outcome of physical injuries to that person. Consequently, it has been necessary for the Act to be amended to provide specific remedies for victims of sexual crimes. Victims of other crimes, however, who suffer mental trauma but not physical injuries (for example the bank teller in an armed hold-up) are ordinarily not compensated.

The problem with exclusion of mental trauma also applies to secondary victims such as the families of murder victims. These people generally do not suffer physical injuries but only mental trauma from witnessing or hearing about the event. They too are uncompensated by the present legislation.

As the main compensation available under the scheme is earnings related compensation at 80 per cent of previous earnings, non earners are limited to an independence allowance, medical and rehabilitation costs.

Should crime victims be treated differently to other accident victims? This question is fundamental to any jurisdiction considering establishing a victims of crime compensation scheme. Various answers have been offered but experience in New Zealand shows that there is nothing which justifies a separate scheme for crime victims over the many other victims of accidental injury that inevitably arise from participating in a modern industrial society. Having said that, however, it is clear that there is a view in New Zealand that victims of crime have lost out through the cut backs in the 1992 Act. Indeed, returning to the comments above about damages for mental trauma, the exclusion from the 1992 Act of any mental trauma claims means that it is now necessary to sue for such damage. Again, the prospects against the usual run of criminals make it an unusual claim. However, claims against third parties are likely such as where a bank teller may sue his employer for lack of security precautions leading to the mental trauma suffered in a bank raid.

Before concluding this paper, it is opportune to describe two other victim initiatives currently topical in New Zealand. Firstly, a Criminal Justice Assistance Reimbursement Scheme has been introduced by the Government to provide some compensation for those who have been victimised and suffer loss of property or earnings because of:

- (a) testimony or help as a witness for the prosecution or the defence in a criminal case that is punishable by imprisonment,
- (b) assistance in the administration of justice, for example, reporting a crime or giving information to the police without being called as a witness before the Court.

- (c) being in a close relationship with a witness or a person who assisted in the administration of justice, and as a result of assisting and caring for that person the relation was also victimised, and suffered loss of property or earnings.

Secondly, a scheme was announced in the 1994 budget to provide counselling for secondary victims such as the families of murder victims.

Given these new features and the New Zealand accident compensation scheme, it is submitted that in comparison with other persons injured in accidents, the victims of crime are in a more favourable position. It is true there are no large lump sums payable as in other countries, but if the victim is an earner who receives earnings related compensation at 80 per cent of previous earnings, that sum plus medical and rehabilitation costs can amount to a significant award if the incapacity continues for many years.