Woodhouse after 40 years: Observations from an Australian Participant

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The 1967 Woodhouse Report in New Zealand gave birth seven years later to New Zealand’s ground breaking Accident Compensation System. The equity and efficiency gains that resulted are now well recognised in New Zealand, though far less understood in other countries, including Australia.

Mr Justice Woodhouse was brought to Australia in 1973 by then Prime Minister Gough Whitlam. He had recognised the potential of the New Zealand Woodhouse principles and proposals, and that the New Zealand accident compensation deficiencies existed in much the same way across Australia (Palmer 1979). Mr Justice Meares joined Woodhouse to produce an Australian Report in 1974 (National Committee of Inquiry, 1974).

Woodhouse assembled a research team to support the Australian work, led by Geoffrey Palmer who had written the 1969 commentary on the New Zealand Report. Other members were lawyers and statisticians. I was fortunate to be one of the latter, and to be able to work on the Australian proposals until their demise after the Whitlam dismissal of 1975.

Personally, this was the beginning of a career mixing statistics, policy development and implementation in the Australian health and community services sectors. Woodhouse and Palmer have been wonderful role models, mentors and friends over the ensuing years.

Failure in Australia

Why did Woodhouse not take hold of the Australian imagination. In New Zealand, his proposals had bi-partisan support. In Australia, by 1974 the political atmosphere was highly charged after Whitlam’s second election win, and continued to be up to and after the dismissal. As well, the policy agenda was crowded, notably with the ultimately successful but grimly fought battle to introduce Medibank, Australia’ universal health insurance system (Scotton and Macdonald, 1993).

Palmer (1979) has documented the combination of interest groups opposing Woodhouse in Australia, and the tortuous workings of the Senate Committee review of the legislation. The inclusion of sickness in the scheme added opponents concerned with social welfare priorities, but strenuous opposition
was going to confront the leaner injury scheme ready for introduction to parliament in November 1975. Finally, the workers compensation system was much more generous when Woodhouse was working in Australia than it had been in New Zealand, so there was no supporting current from that quarter to offset insurer and lawyer fierce opposition.

**Australia in 2007**

In 2007, accident compensation is not a national policy issue. Neither major party had any compensation policy in the 2007 elections. Other areas of State and Territory jurisdiction, notably health and education, figure largely in policies and actions of the Federal Government.

The Federal Government in recent years has had to deal with compensation crises in medical indemnity and public liability, and did work with States and Territories to amend common law arrangements to reduce the cost of claims. These disruptions had wide economic and social impacts on business and community activities. Public liability insurance was virtually unobtainable for many small businesses and for charities and community events. Doctors claimed to be unable to obtain medical indemnity insurance until an 11th hour rescue package was negotiated by governments. But these did not produce any call for, or consideration of, broader reform.

However, in the light of these events, the Commonwealth Government in 2002 sought a review by the Productivity Commission on National Workers Compensation arrangements. The Commission reported in 2002 (Productivity Commission, 2002). It supported moves towards national consistency and self insurance. Nothing seems to have come of these conclusions.

But it is interesting to read the conclusions relating to common law:

“The Commission recommends that common law should not be included in a national framework for workers’ compensation on the grounds that it:

- does not offer stronger incentives for accident reduction than a statutory, no fault scheme;
- can provide lump sum compensation which may prove inadequate to the longer term needs of seriously injured workers;
- may over-compensate less seriously injured workers who, in the normal course of events, could be expected to rehabilitate and return to work;
- delays rehabilitation and return to work (if there are psychological benefits to be derived from receiving a lump sum, these could be obtained through statutory benefits); and
- is a more expensive compensation mechanism than statutory workers’
compensation."

Woodhouse and his colleagues will recognize the findings. Surprisingly, the extensive list of references in the Report does not include mention of the Woodhouse Reports in New Zealand or Australia.

So Australia continues with separate workers compensation systems in its 9 jurisdictions, and each State and Territory has its own road injury compensation system. The role of common law has been reduced, and eliminated entirely in Commonwealth workers compensation and in both systems in the Northern Territory. Public funds operate many jurisdictions. But the expense of administration, of duplication for national businesses, and the inherent unfairness of common law based compensation so well described by Woodhouse, continue, as Harold Luntz has so fully demonstrated at this symposium.

For New Zealand, the Australian situation can provide useful information. For example, Australia has three workers compensation systems insured through single, public funders; one of these uses insurers to administer claims. The other jurisdictions rely on private insurers. The result is a wealth of comparative information to inform any debate in New Zealand about a switch from a single insurer to a market based system.

Other social insurance arrangements may also provide useful information for New Zealand. Australia’s universal health insurance system, Medicare, is operated by a single public provider, Medicare Australia, with administration costs around 3% of claims. The supplementary private health insurance system has administration costs around 11% of claims. The private system is heavily subsidised by Government and has to be highly regulated to achieve its perceived public purpose (there is a Private Health Insurance Ombudsman to protect clients and a Private Health Insurance Administration Council to regulate premium levels and solvency).

Some thoughts for New Zealand

i) Are NZ Injury Statistics Optimal?

New Zealand has unique assets for studying injury and its consequences. These include the ACC database, the NZ Health Information Service (NZHIS) database on injuries resulting in treatment as a hospital in-patient, the National Health Index which allows health services provided to New Zealanders to be linked together statistically and world class research capacity such as the University of Otago’s Injury Prevention Research Unit.
Linking together health data and accident compensation data on an injury would bring together data on the causes of the injury, the injuries themselves, health care and rehabilitation services provided, compensation paid and outcome. But to date, this opportunity does not appear to have been grasped. A 2004 study by Statistics New Zealand found that “that the pilot stage of the project has successfully demonstrated the:

(a) feasibility of producing an integrated injury database from the two prime sources of administrative injury data (ie ACC claims and hospital discharge records)

(b) manageability of associated data security, confidentiality and privacy issues

(c) potential of this data to produce new and useful official injury statistics and to provide a basis for public policy research.

An examination of the ACC and Statistics New Zealand websites does not reveal any further progress in the directions recommended by the feasibility study.

ii) The International Classification of Functioning, Disability and Health (ICF)

The ICF was endorsed and published by the World Health Organisation in 2001. As such, it is an international tool to assist in conceptualising, describing and measuring disability and its impact on people.

It provides a framework for a holistic view of disability resulting from a health condition, including the recognition that the impact of a disability depends on the environment in which that person lives. Environment is broadly defined to cover physical, legal and social factors. Each aspect of the environment may be a barrier or a facilitator.

ACC benefits have for many years been based on earnings loss and the degree of impairment. The ICF provides a broader framework for thinking about the impact of an injury on a person in the circumstances in which they lived before the accident and after. The ICF is unlikely to be a panacea for the very real problems in assessing compensation for an individual. However it can highlight areas of functioning that may otherwise be overlooked, and help to present a true picture of the impact of an injury reflecting the individual’s circumstances and living conditions.
In any review of New Zealand accident compensation arrangements, the ICF merits a close examination.

References


Palmer, GW, Compensation for Incapacity, Oxford University Press, Wellington, 1979

Productivity Commission, National Workers’ Compensation and Occupational Health and Safety Frameworks, Canberra, 2004

Scotton RB, Macdonald CR, The Making of Medibank, School of Health Services Management, University of NSW, 1993
