1930.

NEW ZEALAND.

WORKERS' COMPENSATION COMMISSION.

REPORT OF COMMISSION TO INQUIRE INTO AND REPORT UPON THE STATUTES RELATING TO COMPENSATION FOR ACCIDENTS TO WORKERS.

Laid on the Table by Leave of the House.

COMMISSION

TO INQUIRE INTO AND REPORT UPON THE STATUTES RELATING TO COMPENSATION FOR ACCIDENTS TO WORKERS.

BLEDISLOE, Governor-General.

To all to whom these presents shall come, and to SYDNEY GEORGE SMITH, Esquire, of New Plymouth, M.P.; HUBERT THOMAS ARMSTRONG, Esquire, of Christchurch, M.P.; GEORGE ROBERT SYKES, Esquire, of Masterton, M.P.; JAMES THOMAS HOGAN, Esquire, of Wanganui, M.P.; JAMES HAVELOCK JERRAM, Esquire, of Wellington, State Fire Insurance General Manager; ARTHUR SEED, Esquire, of Wellington, Secretary; GEORGE JAMES AUGUSTUS KERRUISH, Esquire, of Wellington, Insurance Manager; THOMAS BLOODWORTH, Esquire, of Auckland, Secretary; and WALTER NEWTON, Esquire, of Wellington, Secretary of Labour: Greeting.

WHEREAS legislation has been proposed for the purpose of altering or amending the statutes relating to compensation for accidents to workers, and it is expedient that inquiry should be made into the necessity or expediency of any such legislation, and generally into the working of the Workers' Compensation Act, 1922, and the Workers' Compensation Amendment Act, 1926:

Now, therefore, I, Charles, Baron Bledisloe, Governor-General of the Dominion of New Zealand, in exercise of the powers conferred upon me by the Commissions of Inquiry Act, 1908, and of all other powers and authorities enabling me in this behalf, and acting by and with the advice and consent of the Executive Council of the said Dominion, do hereby constitute and appoint you, the said

SYDNEY GEORGE SMITH,
HUBERT THOMAS ARMSTRONG,
GEORGE ROBERT SYKES,
JAMES THOMAS HOGAN,
JAMES HAVELOCK JERRAM,
ARTHUR SEED,
GEORGE JAMES AUGUSTUS KERRUISH,
THOMAS BLOODWORTH, and
WALTER NEWTON,

to be a Commission to inquire into and report upon the working of the aforesaid statutes and the sufficiency and adequacy thereof, and into the necessity or expediency of legislation for the purpose of altering or amending the existing law,

and (if any alteration or amendment be recommended by you) the form and nature of any such alteration or amendment as may appear to you to be desirable, and into such matters arising out of the premises as may come under your notice in the course of your inquiries and which you consider should be investigated in connection therewith.

And with the like advice and consent I do further appoint you, the said

SYDNEY GEORGE SMITH,

to be the Chairman of the said Commission.

And you are hereby authorized to conduct any inquiry under these presents at such times and places as you deem expedient, with power to adjourn from time to time and place to place as you think fit, and to call before you and examine on oath or otherwise such persons as you think capable of affording you information as to the matters aforesaid, and to call for and examine all such books, papers, writings, documents, and records as you deem likely to afford you the fullest information on any such matters.

And, using all due diligence, you are required to report to me, under your hands and seals, not later than the thirty-first day of May, one thousand nine hundred and thirty, your opinion on the aforesaid matters.

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose, save to me in pursuance of these presents or by my direction, the contents or purport of any report so made or to be made by you.

And it is hereby declared that this Commission shall continue in full force and virtue although the inquiry be not regularly continued from time to time or from place to place by adjournment.

And, further, that the powers hereby conferred shall be exercisable notwithstanding the absence at any time of any one or more of the members of the Commission hereby appointed, so long as the Chairman and at least four other members be present and concur in the exercise of such powers.

And, lastly, it is hereby further declared that these presents are issued under and subject to the provisions of the Commissions of Inquiry Act, 1908.

Given under the hand of His Excellency the Governor-General of the Dominion of New Zealand, and issued under the Seal of that Dominion, this 26th day of April, 1930.

JOHN G. COBBE,
For Minister of Labour.

Approved in Council.
F. D. THOMSON,
Clerk of the Executive Council.

REPORT

OF COMMISSION TO INQUIRE INTO AND REPORT UPON THE STATUTES RELATING TO COMPENSATION FOR ACCIDENTS TO WORKERS.

To His Excellency the Governor-General of the Dominion of New Zealand.

MAY IT PLEASE YOUR EXCELLENCY,—

The Warrant of Your Excellency dated the 26th April, 1930, accorded the status of a Commission under the Commissions of Inquiry Act, 1908, to a Committee of which were were members, appointed by Government to inquire into the statute law of New Zealand relating to compensation for accidents to workers.

That Committee commenced its sittings on the 18th March, 1930, and its work is incorporated with that of this Commission.

At our first meeting the Minister of Labour, the Hon. Mr. Veitch, indicated that the Committee was not limited as to its line of investigation, and that the Government desired that all interests concerned should be afforded full opportunity of expressing their views. Your Excellency's Warrant gave to this Commission a like wide order of reference.

Twenty-five sittings of the Committee and this Commission have been held, all in Wellington.

The Hon. the Minister notified the Committee at its first meeting that he had, by public advertisement, invited all parties interested or affected to place their views before us.

Witnesses representative of the various interests and industries of the Dominion attended before the Commission and gave evidence, and others submitted their views in writing.

The Department of Labour compiled for us a statement of the requests for amendment of the Act made to Government since the statute was last consolidated. The Commission was also assisted by information received from the Departments of Labour, Land and Income Tax, Pensions, State Fire and Accident Insurance, Public Works, Public Trust Office, Crown Law Office, Law Draftsman, and the Court of Arbitration.

Mr. Jerram, General Manager of the State Fire Insurance Department, made available to the Commission full information respecting the working of the Ontario system, which he had gathered as a result of his special investigation.

We have also examined the compensation laws of other countries, and particularly those of Great Britain, Canada, and the Australian States.

The following brief history of the workers' compensation law in New Zealand will serve as an introduction to our recommendations:—

The history of the law and the development of the same in relation to compensation of workmen prior to the provision of special legislation is set out fairly fully in Part I of the report to the Secretary of State for the Home Department by the Departmental Committee in 1920. The first New Zealand Act was passed in 1900. It was practically an adoption of the corresponding Imperial Act of 1897. The 1900 Act was an initial attempt to deal with compensation of workers for injuries received by accident whilst at work. The Act itself was not brought into force until a date fixed by Order in Council. It applied to employees engaged in—

(1) Industrial, commercial, or manufacturing work:
(2) Mining, quarrying, engineering, building, or other hazardous work:
(3) Work carried on by the Crown or local authority which if carried on by a private employer would come under the Act.

There was provision also for contracting out if the employer and workers had entered into a scheme for compensation approved by the Board of Conciliation appointed under the Industrial Conciliation and Arbitration Act.

The scale of compensation was set out in the schedule to the Act, and it provided for compensation in case of death up to £400, or 156 times the average weekly earnings; the weekly payment for total incapacity was 50 per cent. of the average weekly earnings, not exceeding £2 per week, or a total of £300.

It will be seen that this Act did not cover all classes of workmen, and many difficult and illogical cases arose. As was to be expected, there were therefore several amendments to this Act. In 1902 the Act was applied to agricultural workers, and in 1903 to piecework contractors; also, Magistrates were given jurisdiction in claims under £200. The original Act contained a schedule of those who were dependants; by the 1903 Act illegitimate children were added to this list. In 1904 provision was made to bring wharf labourers within the Act. In 1905 the minimum compensation was fixed at £1, and provision was made for lump-sum settlements in all cases. These were some of the principal amendments made in an endeavour to bring the Act into general application for the benefit of workers.

In 1908 a new Act was drafted by the then Law Draftsman, Sir John Salmond, on the lines of the Imperial Act of 1906. In the 1908 Act an effort was made to include in the benefits of the Act workers engaged in any class of work who met with an accident whilst working for their employer. Under this Act the term "worker" included any person who had entered into or worked under a contract of service in any class of work whose average weekly earnings did not exceed £5. The Act was restricted to the employment of a worker in and for the purpose of the trade or business carried on by the employer or in any of the special occupations set out in the schedule to the Act. The compensation in case of death was increased to £500 and funeral and medical expenses up to £20. In the case of incapacity the rate of pay was one-half the average weekly earnings for a period not exceeding six years, with a maximum of £500.

Fuller provision was made for notice of injury and the bringing of a claim. The procedure was made as simple as possible in order to minimize the risk of a worker losing the benefit of the Act by reason of any formality. Notice had to be given as soon as possible, and action had to be taken within six months. The Court was given a wide power to deal with cases where the time-limit had been exceeded. A special effort was made to prevent an employer from contracting out of his liability, and also to overcome the difficulties experienced under the 1900 Act in the case of contractors and subcontractors, and compensation-moneys were protected. The doctrine of "common employment" was abolished, but limit of liability on a claim based on the negligence of a fellow-servant was that fixed under the Act as for an accident.

The amounts payable for compensation were increased from time to time. For example, in 1911 the maximum weekly payment in case of incapacity was fixed at £2 10s. per week. In 1913 the funeral and medical expenses were increased from £20 to £50, and in 1920 the maximum on death or on total incapacity was raised to £750 and the percentage on incapacity to 55. In 1922 this percentage was raised to 58.

Again it was found that there were defects in the Act, or no adequate provision in special cases or classes, and from time to time the Legislature passed amendments to provide for such cases. Under the 1911 amendment the wife of a deceased worker and his children under sixteen were presumed to be total dependants unless the employer was able to prove that the dependency was partial only. In the case of partial dependants the Court was given wider discretionary powers. Domestic servants were brought within the Act.

The 1913 amendments were mainly administrative provisions, except that special provision was made for workers under twenty-one or apprentices.

Another feature of the 1908 Act was that provision was made in the schedule for payment of compensation at a fixed rate for all cases where a worker lost an eye or a limb, or otherwise suffered a permanent physical injury, as, for example, loss of hearing, even though he did not necessarily have his earning-powers reduced.

These Acts and amendments were consolidated by the Workers' Compensation Act, 1922, which is the Act now in force. By an Amendment Act in 1926 the compensation in the case of death was increased from £750 to 208 times the average weekly earnings, or a maximum of £1,000. The amount during incapacity

was increased to 66⅔ per cent. of average weekly earnings, with a maximum of £4 per week and a total of £1,000.

As a result of our investigations we make the following recommendations, in the order in which they have application to the present Act :—

1. That the last portion of section 3 of the English Act (having reference to persons engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment—other than a hire-purchase agreement—in consideration of the payment of a fixed sum or share in the earnings or otherwise) be incorporated in the New Zealand Act, and also that the definition of the term "worker" be extended to include share milkers. Section 2.

2. That the words "five hundred and twenty pounds" be substituted for the words "four hundred pounds" as now contained in the definition of "worker," section 2. Section 2.

3. That the Act be extended to cover a worker not employed in and for the purposes of any trade or business carried on by the employer, or in any occupation now included in the First Schedule (excepting domestic service, the special provision for which should be cancelled, and which service would then fall strictly within the proposed extension), when such a worker has been employed by the employer in whose service the accident occurs for a period of at least three consecutive days within the period of twelve months immediately preceding the day of the accident: compensation to be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated. Section 3.

4. That the New Zealand Act be brought into line with the English statute of 1925, section 3, in so far as illegal employment is concerned. Section 3.

5. That the minimum sum set out in section 4 (1) (*a*) be £500 in lieu of £300. Section 4.

6. That the reference in section 4 (1) (*c*) to medical or surgical attendance, including first aid, be deleted; that the words "twenty-five pounds" be substituted for the words "fifty pounds"; and that the provisions in respect of medical, surgical, and hospital treatment, including first aid, contained in our recommendation No. 8 hereunder be applied in fatal cases. Section 4.

7. That weekly payments be a sum calculated as at present, but not to exceed £3, plus £1 for wife and 5s. for each child under sixteen years, or other dependant, but in no case to exceed 100 per cent. of the worker's average weekly earnings, with a maximum of £4 10s. Section 5 (5).

8. (1) That the cost of medical, surgical, and hospital treatment (including first aid) be paid, but not exceeding a total sum of £25. Section 5 (10).

(2) The scale of charges for hospital treatment to be prescribed shall be based on those in force by the public hospital nearest to the scene of the accident, to be calculated at a rate not exceeding £3 per week.

(3) The charge for medical or surgical treatment other than hospital treatment shall be calculated at a rate of 5s. per treatment (or visit), but not exceeding £1 per week.

(4) The charge for first aid shall be limited to the customary charge made in the community for such service to a member of the general public, but not exceeding £1.

(5) The cost of medical, surgical, and hospital treatment shall be paid direct by the employer to the medical practitioner or hospital, and, with the exception of first-aid treatment, the doctor to be engaged shall be approved by the employers.

9. (1) That the principle of section 43 of the English statute of 1925 be incorporated in the New Zealand Workers' Compensation Act in so far as it applies to industrial diseases, a residential Section 10.

qualification of two years to be prescribed, subject to power to reduce such period being vested in the Court.

(2) That all those industrial diseases that have already been investigated and approved by the Labour and Health Departments and recommended for inclusion in the Act be so included.

Section 19. 10. That a separate Court, to be known as the Workers' Compensation Court, be established to deal principally with workers' compensation cases, the Court to be constituted similarly to the present Arbitration Court, and to be vested with the powers now exercised by the Arbitration Court in regard to Compensation matters.

Section 53. 11. That the provisions of section 7 of the English Workers' Compensation Act, providing that compensation-moneys rank with wages in the event of bankruptcy, be incorporated in the New Zealand statute.

Section 59. 12. That the principle of reciprocity as laid down in section 7 (1) of the Ontario Act be incorporated in the New Zealand statute, the present application by Order in Council to be retained.

NOTE.—The section referred to reads—

"7. (1) Where a dependent is not a resident of Canada he shall not be entitled to compensation unless by the law of the place or country in which he resides the dependents of a workman to whom an accident happened in such place or country if resident in Canada would be entitled to compensation, and where such dependents would be entitled to compensation under such law the compensation to which the non-resident dependents shall be entitled under this part shall not be greater than the compensation payable in the like case under that law."

Section 61. 13. That section 61 of the Act be amended so as to provide that, in computing the amount of compensation payable in respect of injury to or the death of any seaman, in cases to which section 6 of the Shipping and Seamen Amendment Act, 1911, is applicable, the amount to be deducted from the full amount of compensation shall be an amount equal to the compensation that, if the claimant were an ordinary worker, would have been payable in respect of the period for which he is entitled to full wages under the said section 6.

Section 67. 14. That the maximum sum prescribed by section 67 (3) be increased to £1,250.

Second Schedule. 15. That there be included in the Second Schedule to the Act the following provision:—

"Loss of an only eye, 100 per cent. (less any compensation already paid for loss of sight)."

Second Schedule. 16. That there be included by way of a footnote to the Second Schedule of the Act the following:—

"For the partial loss of the sight of one eye there shall be payable such percentage of the amount that would be payable for the total loss of the sight thereof as is equal to the percentage of the diminution of sight, but no such payment shall be made where the loss does not exceed 50 per cent."

Second Schedule. 17. That to meet the case of the left-handed worker there be substituted in the Second Schedule the terms "major" and "minor" for the present "right" and "left."

18. That insurance be compulsory, and that wage statements be supported by statutory declaration.

19. That compensation paid under the Workers' Compensation Act should not operate to disentitle any person to such pension as may be provided for old age or widowhood.

In view of the evidence submitted by employers' representatives, we are not unanimously agreed that all the more highly rated industries are at present in a position to bear the cost of the improved benefits as recommended by this Commission, but we are agreed that from a social and humanitarian point of view the amendments suggested are desirable.

The Commission has no recommendation to make in respect of the following matters submitted for its consideration :—

1. That a miner who is a member of the Miners' Medical Society should not be debarred from receiving the amount of £1 allowed by the Act for medical expenses.
2. That compensation be calculated on full time in the case of miners, instead of on actual time worked.
3. That the Act be amended in respect of the provision under which a worker may be required to indemnify his employer.
4. That the Act should be extended to members of co-operative parties in coal-mines (cases where land is leased to men).
5. That where provision is made in the schedule for the payment of 100 per cent. ratio of compensation, this be altered to £1,000.
6. That the percentages payable under the Second Schedule for the loss of various fingers be amended.
7. That compensation be payable where a worker is injured while assisting another worker to perform work which is not within the scope of the injured worker's employment.

On other matters considered by the Commission we comment as follows :—

Scope of Employment.

Travelling to and from work : The Commission was asked to recommend an amendment to the Act so as to provide that workers be covered while travelling to and from work. We gave full consideration to this matter, but decided not to recommend any amendment, the reason being that such a provision would lead to costly litigation without much, if any, benefit to the injured worker. It was ascertained that in New South Wales 80 per cent. of claims under a similar provision could not be substantiated, and the provision has since been repealed. Further, we are of the opinion that such a provision would tend to load industry with the cost of social risks as distinct from risks properly attributable to employment.

With respect to extending the benefits of the Act to neighbouring farmers when assisting each other, we are of the opinion that it is better to leave the Act as at present. If such farmers were brought under the Act, compensation payable, based as it would be on wages paid, would be so small as to be negligible. Insurance companies now make special provision for this class.

Lump-sum Payments.

The Commission has no recommendation to make on the suggestion that no deduction should be made from lump-sum payments on account of weekly payments which have been made during period of incapacity.

Similarly, we have no recommendation to make with regard to the suggestion that 5 per cent. should not be deducted for present value in case of lump-sum payments. As the law now stands payment may be spread over a number of weeks ; lump-sum payments are a matter of convenience, and the deduction is the interest which would be earned by the employer if he retained the money, or could be earned by the worker if he invested the money.

Waiting-time.

It was agreed to leave the waiting-time, three days, as at present. To shorten the period would add to the costs of insurance by increasing the number of small claims and increasing administration costs out of all proportion to the benefits conferred.

Appeals against Decisions of the Court.

The Commission decided to make no recommendation in the direction of empowering the Court to reopen cases where decision had been given, being of the opinion that it would be detrimental to the interests of all parties and add greatly to legal costs if appeals were admitted. The Court now has power to grant suspensory awards in cases where there is a doubt as to the extent or duration of injury, and it has made these awards in many cases. To leave cases open to

appeal would prolong litigation, and injured workers might be kept waiting for payment until the final decision. We have made other recommendations designed to expedite decisions, and to provide for appeals or for reopening cases would defeat our aims in that direction.

Monopoly of Workers' Compensation Insurance.

We have devoted much time and attention to the question of a monopoly of workers' compensation insurance, and in this connection have inquired carefully into "the principles, working, and cost of the Ontario system, with a view to determining, having regard to New Zealand conditions, what, if any, of its provisions might with advantage be adopted in the Doimnion." (*Vide* resolution of National Industrial Conference, 1928.)

Witnesses who advocated a monopoly did so on the ground mainly that present working-expenses would be greatly reduced, and that the saving, with any profit now made by insurance companies, would be available for injured workers. We therefore made careful inquiries as to the average margin for working-expenses and profit in the present premiums charged to employers. In the course of our inquiries we ascertained that the State Accident Office at its inception instituted a system, by means of the actuarial staff of the Government Insurance Department (to which the Accident Office was then attached), whereby the workers' compensation business was placed upon a scientific foundation. This system continues at the present time. At suitable intervals the experience of insurance companies is submitted to the State Accident Office (now attached to the State Fire Office) for actuarial examination, and rates based upon the aggregate experience of all offices, including the State Accident Office, are then fixed. In effect, this is State control of rates.

We are informed that in the earlier years, when data was very incomplete, it was considered necessary by the Actuary to have rates based on a 50-per-cent.-claim cost, leaving 50 per cent. for expenses, reserves, and profit. As time went on the claim ratio was increased and the margin for expenses, &c., reduced. In 1926, when the last Workers' Compensation Amendment Act was passed, claims were absorbing 63 per cent. of premiums, leaving 37 per cent. for expenses, &c. At that time Government decided that the cost of the additional benefits of the 1926 Amendment—estimated at 15 per cent. of premiums—were to be borne without an increase in rates; in other words, that the cost of the additional benefits had to be provided out of the insurance offices' "overhead" margin of 37 per cent. Up to the present we understand the estimate has not been reached, and the latest experience figures show that claims under present legislation are costing on the average about 71 per cent. of premiums, leaving 29 per cent. to the insurance offices for working-expenses, &c. It is represented that for the margin of 29 per cent. allowed in this Dominion the insurance offices not only cover the risk of claims in excess of 71 per cent, but also provide a convenient organization throughout the Dominion for the effecting and renewal of insurances and for the settlement of claims, an organization upon which employers and workers have become accustomed to rely as a consequence of its operation for a period of twenty-nine years.

The New Zealand margin is less than was recommended by the British Departmental Committee on Workers' Compensation in 1920 as appropriate to British offices. That Committee's report (page 20) is as follows:—

> "After prolonged and careful consideration of all the circumstances, we arrived at the conclusion that the management expenses, payments for commission, and profits of the companies should not exceed 30 per cent. of the premium income. This proportion would leave 70 per cent. of the premium income for the provision of benefits to workmen or their dependants under the Act. We believe this is a more economical arrangement than is to be found in the working of insurance companies in any other country."

It should be explained that eventually a somewhat higher rate than 30 per cent. was allowed the companies in Great Britain. In other countries the margin, where there is any system of Government control, appears to be not less than 40 per cent.

The Ontario system is to be distinguished not by the employments covered or excluded, or by the scale of benefits provided—both are details variable by law from time to time under any system—but by the principle of combining under a Board of Commissioners—

(*a*) Compulsory insurance by employers on a mutual or collective liability basis without State guarantee and with all common-law rights abrogated;

(*b*) Final adjudication of claims "upon the real merits and justice of the case" without being bound by strict legal precedent, and without the intervention of solicitors;

(*c*) Accident-prevention and merit rating (accident-prevention in New Zealand is undertaken by the Labour Department, but there is no system of merit rating); and

(*d*) Administration of compensation-moneys by way of pensions or lump sums to injured workmen or their dependents. (In New Zealand the Public Trustee administers compensation payments made on behalf of the widows and children of deceased workers, and the State provides a pension scheme apart altogether from workers' compensation.)

It is obvious that such a system, efficiently managed and kept free of political or other outside influences, eliminates all profit, reduces working-expenses, and expedites the final settlement of claims without the legal expense which an appeal to the Court involves. The evidence before us leads us to believe that the system in the country of its origin is giving general satisfaction, apart from its limited scope (which there is an agitation to enlarge), and is providing out of the assessments on employers, and interest on investments, a greater percentage for the injured worker who is covered than would be possible under any system of competitive insurance.

The success of the system in Canada, however, does not by any means establish that a similar system would be equally successful in New Zealand. The psychology of the people has to be considered, and we are not certain that this Dominion would take kindly to an autocratic system, however well administered, which combined the present functions of an insurance office with the judicial authority of the Arbitration Court. In Ontario the collective-liability system was established coincidentally with the workers' compensation law, and on its introduction there was practically no business lost to the insurance companies. In New Zealand, however, its establishment would displace a system of insurance which was operated not unsatisfactorily to employers and workers for twenty-nine years, and would more or less adversely affect the livelihood of many thousands of persons. In Ontario the establishment of the system had the support both of labour organizations and of the largest association of employers in Canada. In New Zealand, evidence was given to the Commission that the majority of employers would oppose a monopoly, and that the workers would oppose the loss of the right of action at common law.

On the important question of comparative cost, the evidence shows that the low working-expense ratio in Ontario (in 1927 it was 6·54 per cent., on the basis of comparison adopted in New Zealand) is due to a considerable extent to the fact that workers' compensation liability in that province (as in nearly all American States, irrespective of whether competitive or monopolistic insurance systems operate) is not imposed upon farmers, employers of domestics, or small employers. For example, the following industries are excluded:—

Wholly: Florists, seedsmen, gardening, fruitgrowing, hand laundries, barbers' shops, undertaking, mail-carrying, wholesale or retail mercantile business, hotelkeeping and restaurant-keeping, public garages, photographers.

Where less than six workmen are usually employed: Butter and cheese factories, power laundries, operation of threshing-machines, confectioneries, bakeries; cutting, hauling, or hewing logs; the business of window-cleaning.

Where less than four workmen are usually employed: Repair shops, blacksmiths, upholstering, picture-framing, butchering.

In New Zealand, on the other hand, the liability extends not only over the whole industrial field, irrespective of the nature or size of the industry, but even beyond it, and the demand is for the removal of the few remaining exemptions. The administrative cost in New Zealand, therefore, of a collective-liability system on the Ontario model, applied to all employers under the Act, however distantly situated from the administrative centre and without regard to the smallness of the wage-sheet, must of necessity be much higher than in Ontario, and might be expected to approximate that of Queensland, where State monopoly (not a collective-liability system as in Ontario) operates over a field of coverage more comparable with that in New Zealand. The expense ratio in Queensland in 1929 was 15·6 per cent.

It is clear that any saving which might be effected by the establishment of a collective-liability system in New Zealand would be counterbalanced by the loss of much of that service which the present system now supplies to the employer, and to a lesser extent to the worker. The change would be felt particularly in the country districts. In addition, it is reasonable to believe that the administration would be hampered by the antagonism of employers, solicitors, displaced agents, and others who so long have been interested in the maintenance of the present system.

The evidence has satisfied us that there is effective control of rates in New Zealand through the State Accident Office, and that the margin in premiums allowed for working-expenses, profit, and reserves is lower probably than under any competitive system elsewhere. We have arrived at the further conclusion that without the support of both employers and workers the establishment of a monopoly—whether State or collective liability—would at the present time and under present conditions be a doubtful experiment of a far-reaching character not warranted by the possible saving in cost.

EXPLANATORY MEMORANDA ON OUR RECOMMENDATIONS.

Definition of Worker. (See Recommendation No. 2.)

The present Act does not include any person employed otherwise than by manual labour whose remuneration exceeds £400 a year. The Commission was asked to amend this by increasing the amount; and after considering the evidence on this point, and having regard to the fact that a higher limit is provided in several Australian States, it was agreed to recommend that this clause be amended by substituting £520 for the £400 now stated.

Extension of Act to include certain Classes of Workers not now covered. (See Recommendation No. 3.)

Evidence has been given regarding the hardship imposed upon certain classes of workers, not employed in and for the purpose of any trade or business carried on by their employer, by reason of their exclusion from the benefits of the Act, owing to their employment not being included in the occupations covered under the First Schedule of the Act. This hardship is not confined to New Zealand; indeed, our Act gives protection to a greater number of workers not employed "in and for the purposes of the employer's trade or business" than the law in England or in the Australian States. At the same time we recognize that in principle there can be little justification in excluding from the benefits of the Act, for instance, a gardener employed in the grounds of a private home, or a labourer engaged by an employer (who is not in trade or business) to do jobbing-work about his home. However, to place all workers, and particularly casual workers, not employed in and for the purposes of the employer's trade or business, on the same footing might react on the unemployed man seeking work, particularly if insurance becomes compulsory. Employers requiring a man for an odd day or even two, not having had previous occasion to take out a policy, might be loth to engage the casual applicant if by doing so they immediately become liable not only for compensation, but also for penalties for not having insured. Similarly, the housekeeper engaging

domestic assistance for a short period in a moment of emergency might find it a practical impossibility to obtain insurance cover before the employment commenced.

For the reasons stated, we think some qualification as to the period of employment is desirable. We are of the opinion that a reasonable compromise would be effected if the Act were extended to cover a worker not employed in and for the purposes of any trade or business carried on by the employer, or in any occupation now included in the First Schedule (excepting domestic service, the special provision for which should be cancelled, and which service would then fall strictly within the proposed extension), when such a worker has been employed by the employer in whose service the accident occurs for a period of at least three consecutive days within the period of twelve months immediately preceding the day of the accident. The three-days qualification would, we consider, give the employer reasonable time in which to effect insurance.

In connection with the occupations covered by the proposed extension, we are of opinion that the average weekly earnings should be computed in manner best calculated to give the average rate per week at which the worker was being remunerated.

Illegal Employment. (See Recommendation No. 4.)

It having been brought to the notice of the Commission that hardship may arise in cases where the employment is technically illegal, it was resolved to recommend the adoption of the provisions of the English Act, which are contained in the following section :—

" Section 3. (3) If on any proceedings for the recovery of compensation under this Act it appears to the Judge of County Courts or other person by whom the claim to compensation is to be settled that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened was illegal, he may, if, having regard to all the circumstances of the case he thinks proper to do so, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship."

Compensation in case of Death. (See Recommendation No. 5.)

A great deal of evidence was heard on this matter. Suggestions were made for increasing benefits, and also for varying compensation in accordance with the number of dependent children of the deceased worker. We went thoroughly into all the suggestions, but having regard to the benefits provided by the Widows' Pension Act and to the fact that compensation paid on account of fatal accident is administered by the Public Trustee, acting under direction of the Court, in the best interests of all dependants, it was decided not to recommend any alteration, except in regard to the minimum payment. This we recommend should be increased from £300 to £500.

Funeral Expenses. (See Recommendation No. 6.)

The Act at present provides, in addition to the compensation, that a payment not exceeding £50 be made for medical and funeral expenses. We recommend that this clause be amended to provide for funeral expenses only, the amount not to exceed £25. Provision is recommended elsewhere for medical, surgical, and hospital treatment, including first aid.

Compensation according to Dependants. (See Recommendation No. 7.)

Many suggestions were made to the Commission that the percentage of wages paid to workers in cases of incapacity should be increased beyond the $66\frac{2}{3}$ now provided. Some witnesses asked that full wages be paid, others that payment should be on a basis taking into consideration the injured worker's dependants. Very full consideration was given to these representations. The basis of payment under the Act up to the present has been the earnings of the injured worker, irrespective of the number of his dependants.

In some Australian States, however, under systems of insurance similar to our own, the principle of dependency has been recognized, and the Commission, being impressed by representations made and regarding such a system as more equitable, more particularly with respect to lower-paid workers, recommends a change in our system which introduces the principle of providing for dependency. In order to do this without imposing too great a burden on industry, we recommend that the present maximum of £4 should be reduced to £3, and additional allowances granted for dependants up to a maximum of £4 10s., but not in any case exceeding full wages.

Medical, Surgical, and Hospital Treatment, including First Aid. (See Recommendation No. 8.)

The payment of medical, surgical, hospital, and nursing attention, including first aid, has been stressed by a number of witnesses as most important in the interests of the injured worker, and subsection (10) of section 5 of the Act has been the subject of much criticism. The Commission has been impressed with the evidence, and it therefore recommends that provision be made to enable the injured worker to receive adequate medical treatment with a view to the early restoration of earning-capacity. Evidence was given to the effect that in many instances the cost of medical, surgical, and hospital treatment could not be met by injured workers, and in cases where this has been met it had a material effect in reducing the amount of monetary compensation due in accordance with the Act. Although it has been recorded in evidence that the intention of the Amendment Act of 1926, by which the weekly payment for total incapacity was increased from 58 per cent. to 66⅔ per cent. of the worker's average weekly earnings, was to afford relief to injured workers to defray the cost of medical and hospital treatment, it is the opinion of the Commission that further relief should be granted. While it is admitted that the expense of such treatment should be provided by industry, it is felt to be necessary and prudent in the interests of employers and workers alike that the cost of such treatment should be limited, and we would refer to the opinion expressed by Mr. Justice Frazer in that connection, which is as follows:—

> "I make the suggestion that if you think of making a recommendation that the present first-aid allowance of £1 be increased you could fix a limit and provide that the fees charged for medical and hospital treatment shall not exceed those that would have been charged for similar treatment in the nearest public hospital."

This suggestion appealed to the Commission as worthy of its serious consideration, and, as a result of further evidence and investigation, the Commission is convinced that effective control of cost is essential.

Industrial Diseases. (See Recommendation No. 9.)

Lengthy evidence was given in regard to industrial diseases which affect workers in many industries, and strong claims were made to have all such diseases brought within the scope of the Act.

Some witnesses advocated abolition of the gazetting of diseases as provided in section 10, subsection (6), and the payment of compensation in all cases where evidence established that a disease of any kind was caused by a worker's occupation. The Commission, after due consideration, decided that to adopt this procedure would have an uncertain and far-reaching effect, resulting in a considerable increase in litigation. This conclusion is in line with that of the Report of the Departmental Committee appointed by the British Government in 1919 to inquire into the system of compensation for injuries to workmen, as follows:—

> "The extension of the Act to cover any disease or injury which is not specific to the employment would, we are satisfied, give rise to constant and irritating disputes, and involve employers and workers in a great deal of costly and fruitless litigation, and would not, except in rare instances, secure any benefit to the disabled workman."

We therefore recommend that a schedule be incorporated in the Act in a similar manner to that provided in the English Act.

In addition to the diseases provided in section 10 of the New Zealand Act, we recommend inclusion of the following :—

Description of Disease or Injury.	Description of Process.
(1) Miners' beat-knee, beat-hand, beat-elbow.. ..	Mining.
(2) Nystagmus	Mining.
(3) Dermatitis—	
(*a*) Dermatitis produced by dust or liquids	Baking; cement-working; woodworking; french-polishing.
(*b*) Ulceration of the skin produced by dust or liquids	
(*c*) Ulceration of the mucous membrane of the nose or mouth produced by dust	
(4) Diseases arising out of the handling of basic slag ..	Handling of basic slag by watersiders.
(5) (*a*) Epitheliomatous cancer or ulceration of the skin due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances	Handling or use of tar, pitch, bitumen, mineral oil, or paraffin, or any compound product, or residue of any of these substances.
(*b*) Ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product, or residue of any of these substances	Handling or use of tar, pitch, bitumen, mineral oil, or paraffin, or any compound product, or residue of any of these substances.

The present system of adding further diseases by Order in Council after due inquiry appears to us to be satisfactory.

We recommend that, with similar safeguards, the principle of section 43 of the English Act, 1925, be incorporated in the New Zealand Workers' Compensation Act, in so far as it applies to industrial diseases; that is to say, we consider that an employer should be held liable unless he can prove that the disease was not due in whole or in part to the employment of the worker while in his service.

We further recommend that no compensation be payable unless the worker has been resident in New Zealand for a period of two years next preceding the date of his first disability, except where the Court is satisfied that the disease is not due to other cause than his employment in New Zealand.

Separate Court. (See Recommendation No. 10.)

Up to the present time disputes arising under the Workers' Compensation Act have been dealt with by the Industrial Arbitration Court. That Court, as its name implies, was set up to settle disputes arising under the Industrial Conciliation and Arbitration Act, an Act which was passed in 1894. The Workers' Compensation Act did not come into force until some years later, in 1901, and the Court of Arbitration was vested with the power of settling disputes under that Act in addition to the work it already had. That the Court performed its function under the Workers' Compensation Act satisfactorily for a long time is admitted, but of recent years there have been many complaints owing to delay, the Court from pressure of work being unable to visit the various centres sufficiently often to enable cases, both industrial as well as those arising under the Workers' Compensation Act, to be dealt with expeditiously.

Practically all the witnesses before the Commission referred to these delays, and some stated that the delays increased the costs of compensation, while also causing unnecessary worry to parties awaiting settlement of compensation cases. In order to overcome these delays and their consequences, witnesses suggested that a separate Court should be set up to deal with matters arising under the Workers' Compensation Act. Witnesses were not in agreement as to the form, constitution, or functions of the proposed new Court, but we have carefully considered the various suggestions which were made, and we are unanimous in the recommendation which we now make, namely : That a separate Court, to be known as the Workers' Compensation Court, be established to deal principally with workers' compensation cases, the Court to be constituted similarly to the present Arbitration Court, and to be vested with the powers now exercised by the Arbitration Court in regard to compensation matters.

Another recommendation which has a bearing on the recommendation for a separate Court, and is in a measure supplementary to it, is that the provision for appointment of medical referees now provided for in section 58 (1) of the Act

should be made mandatory instead of permissive as it is at present, and that several such medical referees should be appointed in each centre. It was the opinion of some witnesses that if a Medical Board were set up it could deal with a number of cases and thus relieve the present Court of Arbitration of some of the work; other witnesses suggested a medical assessor as a member of the Court.

We, however, are of the opinion that there are few cases in which medical and no legal matters are in dispute, and that there would be few cases which a Medical Board would be able to entirely settle, and we do not recommend a Medical Board as suggested. With respect to the suggestion that a medical assessor should be a member of the Court, we are of the opinion that as medical and/or surgical matters coming before the Court are so varied in character as to make it very improbable that any one medical man would be a competent medical assessor in all cases, it would be better that the Court should have the power, as it has now, to obtain the opinion of medical or surgical practitioners on the cases which come before it, having regard in each case to the nature of the injuries and the special qualifications of the medical witness.

It will be noted that we recommend that the proposed Court should deal "principally" with workers' compensation cases, the inference there being that the Court might deal with other matters, as, for instance, assisting in any industrial arbitration work which might be allotted to it. We think, however, it would be misleading to suggest that the proposed Court might not be fully occupied with compensation work. Past experience in New Zealand and in other countries indicates that amendments to the Act have a tendency to increase the number of cases coming to the Court for settlement, and we have no reason to believe that such would not be the case again. Indeed, we suggest the separate Court so that more cases may come to it than now go to the present Court, because we have very strong reason to believe that rather than wait for the Court, as the parties are now compelled to do, claims are settled by agreements, which are sometimes unsatisfactory to the one side, sometimes to the other, and the Act itself is blamed in those cases for faults which are not inherent in the Act but are due to delays in administration. One witness, Mr. P. J. O'Regan, who has had an extensive experience in compensation cases, says in his evidence: "One complaint against the Act as it stands is the fact that the compensation is frequently stopped and the worker put to the inconvenience of going for a considerable time without compensation pending the next sitting of the Court of Arbitration. The number of accident cases coming before the Court is constantly increasing and will increase. It is a mistake to conclude that as time goes on and the principles of the Workers' Compensation Act are settled by judicial decision there will be fewer cases coming before the Court. There is a very large percentage of cases that has to come before the Court for the reason that it is impossible to get an injured man to agree to a settlement."

On the question of the constitution of the proposed Court many suggestions were made, and these were all carefully considered. Finally we have decided to recommend a Court constituted similarly to the present Arbitration Court, as we believe that a Court so constituted would secure the confidence of people to a greater degree than any of the alternatives suggested. To quote again from the evidence: "I think the public have every reason to be satisfied with the Court of Arbitration as far as its administration of the Act is concerned, and I think the assessors justify themselves, because there is a rooted belief on the part of the public in favour of the jury system, and this Court combines Judge and jury."

Further suggestions were that in place of permanent assessors travelling with the Court, assessors should be elected for each centre, or chosen by the parties to sit with the Court for each case. We, however, recommend permanent assessors, and on this point a witness with wide experience of the Court said, "I favour the permanent tribunal; a tremendous lot depends on that. It is very helpful when you get up in Court to be able to remind the Court of another case that you had had, something like it. If you are talking to people who have had no experience you cannot argue; it is far better to have a tribunal the members of which have had some experience, and to whom you are able to talk in a way satisfactory to yourself and to your client."

The cost of this proposed Court should not, in our opinion, be considered a serious objection, as it seems evident that the Legislature would be called upon to provide some means of expediting the work of the Arbitration Court even if amendments to the Workers' Compensation Act had not become necessary.

Common Employment. (See Recommendation No. 14.)

The Commission was requested to give consideration to section 67 with a view to the deletion of the limit of £1,000 contained in subsection (3) thereof, the effect of the request being to cause the employer to be liable for an unlimited amount for non-fatal injuries caused by reason of the negligence of a fellow-servant quite independently of the question whether or not there had been negligence on the part of the employer.

We have thoroughly investigated the representations made, and, bearing in mind that the worker has, or his dependants have, remedies against the employer independently of this Act for accidents causing injury or death brought about by defects in works, plants, or machinery, due to the employer's own negligence, are of the opinion that even although the Act does not limit the amount of damages that may be awarded in regard to fatal cases a maximum liability with respect to non-fatal cases is desirable. We recommend that the maximum sum prescribed in subsection (3) be increased to £1,250.

Partial loss of Sight. (See Recommendation No. 15.)

The recommendations of the Commission in respect of partial loss of sight and the loss of an only eye are made with a view to relieving cases of hardship and to bring the Act into line with the provisions of some Australian Compensation Acts.

Compulsory Insurance. (See Recommendation No. 18.)

The Act at present imposes a heavy liability upon employers; and although the great majority of employers now insure, we are satisfied that cases of hardship arise through the failure of some employers to do so. The recommendations we are making will, if adopted, impose a further liability upon employers; and, as we do not think that any worker who has a claim under the Act should be exposed to the risk of not receiving the compensation provided by the Act, we consider and recommend that insurance should be made compulsory on all employers except the Crown, a local or other public authority, and any other employer who, in the opinion of the Workers' Compensation Court, has adequate financial resources to meet all possible claims under the Act for a period of not less than five years, and who obtains a certificate of exemption from the Court.

We recommend further that penalties be provided for failure to insure, action against defaulting employers in this connection to be taken by the Labour Department.

Wage Statements. (See Recommendation No. 18.)

Evidence has been submitted to the Commission that frequently there is difficulty in obtaining from employers correct wage statements, upon which compensation premiums are based. We consider that a statutory duty should be imposed upon every employer to keep a careful and accurate account of all wages paid to his employees, and to render a correct account thereof to his insurance office, whenever required, accompanied by a statutory declaration. Employers' wage accounts should be open to audit by an authorized representative of the insurance office, and penalties should be provided for wilful breaches of these provisions.

Facial Disfigurement.

Provision is already made for compensation where disfigurement results in loss of earning-power, and cases where such loss occurs appear to be adequately met.

Verbatim reports of the evidence given were taken and a copy thereof is presented to Your Excellency with this report.

Dated at Wellington, this 31st day of May, 1930.

SYDNEY G. SMITH.	ARTHUR SEED.
H. T. ARMSTRONG.	G. KERRUISH.
G. R. SYKES.	THOMAS BLOODWORTH.
JAS. T. HOGAN.	W. NEWTON.
J. H. JERRAM.	

APPENDIX.

LIST OF WITNESSES AND OTHERS WHO SUBMITTED EVIDENCE AND INFORMATION.

Name.	Organizations represented.
Aslin and Brown.	
Badham, B.	
Baird, William George	Public Trust Department.
Bishop, Thomas Otto	New Zealand Employers' Federation.
Boyes, John Henry	Pensions Department.
Bowling, Owen Ernest	Public Trust Department.
Brophy, William.	
Brown, R.	
Cannons, Ernest	Hospital Boards' Association of New Zealand.
Caughley, Robert	Alliance Assurance Co., Ltd.
Christie, Herbert A.	
Darvell, Mervyn.	
Dowland, Charles Edwin James ..	Land and Income Tax Department.
Elliott, Dr. J. S.	
Evans, H. H.	
Ferguson, James	New Zealand Federated Furniture Trades Industrial Association of Workers.
Gibbs, Dr. Harry Edward	British Medical Association (New Zealand Branch).
Giesen, Dr. Ernest William.	
Gilbert, L. W.	Vacuum Oil Co. (Pty.), Ltd.
Glanville, P.	
Green, William John.	
Hall, Dr. A. J.	
Harrison, R.	
Hunt, William Duffus.	
Ingram, Samuel	New Zealand Railway Tradesmen's Association.
Johns, Arthur Israel	New Zealand Insurance Co., Ltd.
Larcombe, V. E.	Shell Oil Co. of New Zealand, Ltd.
Leary, A.	
McDonald, E. E.	
McIlvride, Lewis	Amalgamated Society of Railway Servants.
McKibbin, Thomas	Department of Health.
Mills, Walter.	
..	Mines Department.
..	Mine Workers' Council.
Nash, Walter, M.P.	New Zealand Labour Party Legislation Committee.
..	New Zealand Farmers' Union (Inc.).
Nicholson, William H.	New Zealand Sheepowners and Farmers' Federation.
O'Regan, P. J.	
Poupard, Laurence	New Zealand Dairy Farmers' Union.
Read, John	Secretary, Wellington Timber-yards and Sawmills Industrial Union of Workers, Wellington Stationary, Traction, and Locomotive Engine Drivers and their Assistants Industrial Union of Workers, and the New Zealand Federated Engine-drivers, River Engineers, Greasers, and Firemen Industrial Association of Workers.
Reardon, Michael John.	
Revell, Henry Charles	New Zealand Freezing-works and Related Trades Industrial Association of Workers.
Rogerson, John Taylor	Associated Freezing Companies of New Zealand.
Sarlett, John Richard.	
Sherman, G. A.	
Sutcliffe, Ernest Charles	New Zealand Amalgamated Society of Carpenters and Joiners' Industrial Association of workers.
Swindell, Herbert Edward ..	Wellington Electrical Workers' Industrial Union of Workers.
Thompson, R.	Atlantic Union Oil Co., Ltd.
Wakelin, George Herbert	Public Works Department.
Worrall, Henry	Canterbury General Labourers' Industrial Union of Workers.

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