

SESSION II.
1923.
NEW ZEALAND

WAR PENSIONS COMMISSION

(REPORT OF).

Presented to both Houses of the General Assembly by Command of His Excellency.

COMMISSION.

JELlicoe, Governor-General.

To all to whom these presents shall come, and to JAMES RANKIN BARTHOLOMEW, Esquire, of Dunedin, Stipendiary Magistrate; WILLIAM HAROLD SEFTON MOORHOUSE, Esquire, of Wellington; and ALEXANDER MACINTOSH, Esquire, of Wellington: Greeting.

WHEREAS it is expedient that inquiry should be made into the working of the existing legislation with respect to war pensions, and the necessity or expediency of amending that legislation:

Now, therefore, I, John Rushworth, Viscount Jellicoe, the Governor-General of the Dominion of New Zealand, in exercise of the powers conferred 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 appoint you, the said

JAMES RANKIN BARTHOLOMEW,
WILLIAM HAROLD SEFTON MOORHOUSE, and
ALEXANDER MACINTOSH,

to be a Commission to inquire into the working of the existing legislation with respect to war pensions and the scales of pension thereunder, and to report what amendments, if any, in the said legislation, and what adjustments or alterations, if any, of the said scales of pension, are in the opinion of the Commission deemed advisable.

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

JAMES RANKIN BARTHOLOMEW,

to be the Chairman of the said Commission.

And you are hereby authorized to conduct any inquiries 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, plans, writings, documents, or records as you deem likely to afford you 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 seventeenth day of October, one thousand nine hundred and twenty-two, your recommendation 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 these presents shall continue in force although the inquiry is not regularly continued from time to time or from place to place.

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.

SEAL OF THE
DOMINION OF NEW
ZEALAND.

Given under the hand of His Excellency the Right Honourable John Rushworth, Viscount Jellicoe, Admiral of the Fleet, Knight Grand Cross of the Most Honourable Order of the Bath, Member of the Order of Merit, Knight Grand Cross of the Royal Victorian Order, Governor-General and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies; and issued under the seal of the said Dominion, at the Government House, at Wellington, this twenty-sixth day of September, in the year of our Lord one thousand nine hundred and twenty-two.

Approved in Council.

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

R. HEATON RHODES,
Minister of Defence.

REPORT.

To His Excellency the Right Honourable John Rushworth, Viscount Jellicoe of Scapa, Admiral of the Fleet, G.C.B., O.M., G.C.V.O., Governor-General and Commander-in-Chief in and over His Majesty's Dominion of New Zealand and its Dependencies.

MAY IT PLEASE YOUR EXCELLENCY,—

We have the honour to report pursuant to the terms of our appointment under the Commissions of Inquiry Act, 1908, to be a Commission "to inquire into the working of the existing legislation with respect to war pensions and the scales of pension thereunder, and to report what amendments (if any) in the said legislation, and what adjustments or alterations (if any) of the said scales of pension, are in the opinion of the Commission deemed advisable."

The Commission held sittings at Wellington on the 3rd, 4th, 5th, 6th, 7th, 9th, 10th, and 11th days of October, 1922, when we heard the evidence of a large and representative body of witnesses, including the Director-General of Medical Services, two other members of the War Pension Board, the Secretary of the Board and Commissioner of Pensions, representatives of various Patriotic Societies throughout the Dominion, representatives of the Returned Soldiers' Association, medical practitioners, and other witnesses, including public men, business men, and social workers. A copy of this evidence is annexed to our report [not printed]. Messrs. D. S. Smith and D. J. B. Seymour appeared as counsel for the Dominion Executive of the Returned Soldiers' Association, and presented a series of claims in respect of which it was submitted the legislation should be amended, and a large portion of the evidence hereinbefore referred to was called in support of their claims. The following is a detailed statement of their claims, together with a short summary of their arguments in support thereof:—

1. *That an increase of 75 per cent., subject to the necessary cost-of-living adjustment, should be granted in respect of the present basic pension—*
 (a) *To soldiers classed as over 50 per cent. disability, (b) to widows with a child or children, (c) to widowed mothers totally dependent.*

(a.) This proposal has been given general support, especially from witnesses who know the actual conditions of the soldiers, such as Colonel Mitchell, M.P., Mr. C. W. Batten (formerly Repatriation Officer), and from the secretaries of Patriotic Societies, who have all had wide experience in the employment problem. It has been further supported by Mr. Alexander Gray, K.C., and Mr. Alexander Roberts, as representatives of professional and business circles.

It must always be remembered that, in the great majority of cases, the members of the Pensions Board do not see the applicant for a pension personally at all.

A suggested modification of the proposals of the Returned Soldiers' Association was made by the secretaries of Patriotic Societies—viz., that the standard statutory disablement pension should be made £2 10s. per week, but that the supplementary pension should be increased to a maximum of £2. The disabled maximum would thus be increased to £5 10s. per week; and it has been noted that this is a considerably greater maximum than the Returned Soldiers' Association has asked for.

All the witnesses who have given a positive opinion have supported the Returned Soldiers' Association claim.

(b.) The claim for an increase of the pension to a widow with a child or children has been strongly supported by all the witnesses who have given an opinion. Particular weight has been given by the evidence of Brigadier Hoare (Salvation Army), who can speak from the widest and most intimate experience of the problem of the widow.

The Returned Soldiers' Association strongly presses the view that each widow as above is entitled to full increased pension irrespective of her private means. Her loss has been a personal and economic one. The fact that a few (and the evidence indicates very few) such widows have independent means should not operate to prevent the automatic grant of an increased pension.

2. *That the pension to the widow and child should be continued so long as the child is continuing its education.*

The reasonableness of this claim is already attested by the practice of the Pensions Board, for the Commissioner has given his assurance (see Mr. Fache's evidence). It only remains for the practice of the Board to be given statutory recognition, which should provide for pension to cover a university period if necessary.

3. *That the pension should be adjusted triennially in accordance with variation in the cost of living.*

This has been generally supported, particularly in the evidence of the Government Statistician. This system of adjustment is actually in full force in England at the present time. No serious objections have been put forward. The suggestion, however, has been made that the three-year period is too long under present conditions.

A definite provision is required to ensure that the pension for physical disability is adequate. The rates fixed by the 1917 Act are, in the opinion of the New Zealand Returned Soldiers' Association, sufficient as minimum rates.

4. *That extra allowances of £10, £8, and £3, in the case of upper-leg, lower-leg, and arm amputees respectively, for wear-and-tear of clothing, should be granted.*

This claim has received almost unanimous support apart from the evidence of the Hon. G. M. Thomson, who was obviously not acquainted with modern apparatus for amputees. No other witness has questioned the fairness of the proposed scale.

5. *An additional travelling medical officer of the War Pensions Board.*
 6. *Appeal from any decision of the Pensions Board should be provided for.*

The fact that there have already been successful appeals under the late Appeal Board shows the necessity of providing for an appellate tribunal; and it should deal both with medical and economic grounds of appeal. The one is as important as the other.

The appeal tribunal should consist of a Judge and two other members appointed by the Government, one of whom should be a medical practitioner and the other a representative of the New Zealand Returned Soldiers' Association. This tribunal should have power to call to its assistance specialist assessors in particular cases; but the decision should rest with the tribunal according to a majority vote.

The principle at issue is whether a difference in the opinion of expert witnesses is to be settled by another expert on the same matter, or by some one used to weighing evidence. It is submitted that the latter is a clearly established principle. Under the Workers' Compensation Act a reference to arbitration is made to an expert only on the written *consent* of both parties. The New Zealand Returned Soldiers' Association submits that the actual amount of money involved in the average appeal is much larger than the usual compensation claim, and that the decision of a Judge is additionally to be desired in view of the tremendous importance to a man involved in the refusal to him of a pension and medical treatment.

In England the appeal tribunals on attributability are of the same type as the one above suggested.

7. *That a pension should not be cancelled or reduced in addition to punishment inflicted by the Court.*

It is beyond argument that the soldier suffers by the cancelling or reduction of his pension beyond what a civilian suffers in a similar position.

While it is admitted that the economic element in the pension might fairly be reduced in such a case, it is submitted that the disability element should not be interfered with.

It is also submitted that, whatever reduction or cancellation of pension is to be made in respect of the offence, this should be by direction of the Magistrate or Judge, so that one authority is responsible for the whole legal penalty imposed.

8. *That soldiers' pensions should be exempted from income-tax.*

This claim has not been developed at length, as it is understood that the Government is introducing legislation to give effect to this principle; but the Commission is asked to approve the principle, on the ground that a man should not be taxed upon a compensation paid to him for his lost *capital*.

9. *That a soldier's widow should be eligible for a pension irrespective of the date of the marriage.*

The widows of soldiers are at present placed in different categories in respect of their right to receive a pension after the soldier's death. This position is a slight upon the young soldier and his wife, and should be remedied in all cases where the marriage is genuine.

The New Zealand Returned Soldiers' Association recognizes the necessity for a test designed to exclude "death-bed marriages," and

proposes that the present provisions should be widened to include—(a.) Cases in which death from the war disability did not occur within twelve months after marriage; (b) cases in which there was issue of the marriage.

It is admitted that the question at issue is the devising of a test for distinguishing marriages that are not genuine, and it is submitted that the above provisions will effectively meet the case.

As an alternative test, representatives of the New Zealand Returned Soldiers' Association individually approve of a certificate by a doctor that the man was in sufficiently good health to marry.

10. *That the seven-year limit in subsection (2) of section 3 of the 1915 Act should be abolished.*

The reasonableness of this claim has been unanimously admitted, as the applicant for pension must prove that the soldier died or became disabled as the result of war service.

In addition to the foregoing, various other matters engaged our attention, which will be referred to in due course.

Before entering on a consideration of all the above matters we have to refer to the administration of the existing legislation. After our exhaustive inquiries we are satisfied that the important and difficult duties of the War Pensions Board are performed with efficiency and sympathetic consideration to applicants—in fact, in some respects the Board has given a benevolent and liberal construction to the legislation which it would be difficult to justify on a strict legal interpretation. The composition of the Board is thoroughly representative, and no suggestion has been made of any way in which it could be strengthened or improved. The witnesses generally expressed confidence in the Board's administration of the existing legislation; the matters in respect of which dissatisfaction was expressed were based largely on the present state of the legislation. The evidence also showed that the Director-General of Medical Services is a gentleman of the highest qualifications for his responsible office, that he is fully alive to his responsibilities and most enthusiastic and alert in discharging his duties, and merits the confidence which is reposed in him.

There are, however, some suggestions we shall make as to further dealing with claims by the War Pensions Board in cases in which it is advisable there should be a right of appeal.

Before proceeding further with our report we shall refer to what appears to be the view taken of the nature of a pension by the existing legislation. A pension has a twofold aspect—(1) Its economic side, which would regard a pension as a provision for maintenance; and (2) its other aspect, in which a pension is viewed as a compensation for physical injury, irrespective of financial loss.

These two conceptions seem associated in our present system, but the latter view would appear in some respects to be the dominating factor, as is shown by reference to section 9 of the War Pensions Amendment Act, 1916, which reads,—

“9. Section fifteen of the principal Act is hereby repealed, and the following section substituted therefor:—

“15. (1.) In determining the rate of pension payable to a member of the Forces, or to the wife or to any child of a member of the Forces, the Board shall not take into consideration the property or income from any source of the applicant.

“(2.) In determining the rate of pension payable to any dependant of a member of the Forces (other than his wife or children) the Board shall take into consideration the property and income from all sources of the dependant.”—

and subsection (3) section 8 of the 1917 Amendment Act:—

“(3.) When a permanent pension has been granted it shall not afterwards be reduced on account of any change in the earning capacity of the member.”

We take, therefore, as a starting-point the scale of pensions granted under the three schedules to the 1917 Act and also under subsection (3), section 5, of the 1915 Act, where these last mentioned have become permanent grants, and which relate

to other than scheduled injuries. An increase of 75 per cent. is asked for in respect of these pensions, irrespective of income, in all cases where the disablement is above 50 per cent. We are deeply impressed with the disabilities in life suffered by such men, even under the most favourable conditions, and this fact was only too painfully apparent in the evidence given. We also fully recognize the merits of the claim to generous treatment, and realize that no money payment can adequately compensate for such disabilities incurred in the country's service. The 75 per cent. increase asked for, and all calculations made by the Returned Soldiers' Association, are based on the existing pension for the lowest rank, but the schedule contains a graded scale of pensions according to rank, and any increase made on the basis asked for would presumably have to be applied to the present graded scale throughout the schedule. Furthermore, the claim for the 75 per cent. increase is limited to cases where the disability is over 50 per cent., but there are many cases of men of a less disability who are not adequately provided for and whose condition must be considered from the economic aspect.

While we are not primarily concerned with the effect of any increase in the scale of pensions on the State's finances, we cannot disregard the fact that our recommendations, to have value, cannot altogether ignore financial considerations, and would lose value to the extent that they are regarded as financially impracticable; in other words, we cannot deal with the matter on a pure basis of idealism or abstract justice.

It will be interesting to insert here a comparative table of pensions in other countries for total incapacity :—

COMPARATIVE STATEMENT OF WEEKLY PENSIONS PAYABLE.

	United States America.		Canada. (a).	Australia.	South Africa.	Great Britain. (b).	New Zealand.	
	Temporary.	Permanent.					Statutory.	Supplement- ary.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Soldier (private) ..	3 16 0	4 15 0	3 11 3	2 2 0	2 0 0	2 0 0	2 10 0	3 10 0
Soldier and wife ..	4 5 6	4 15 0	4 15 0	3 0 0	2 10 0	2 10 0	3 10 0	4 10 0
Soldier, wife, and one child	4 10 3	4 15 0	5 9 3	3 10 0	3 0 0	2 17 6	4 0 0	5 0 0
Soldier, wife, and two children	4 15 0	4 15 0	6 0 7	3 17 6	3 8 4	3 3 6	4 10 0	5 10 0
Soldier, wife, and three children	4 15 0	4 15 0	6 11 1	4 2 6	3 15 10	3 9 6	5 5 0	5 15 0
Additional for each subsequent child	..	..	0 9 6	0 5 0	0 7 6	0 6 0	0 10 0	..
Attendant's allow- ance to disabled soldier (additional)	0 19 0	0 19 0	2 19 4	(c)	1 15 0	1 0 0	1 0 0	..
Widow of soldier (private)	Up-to-date information not available.		2 6 0(d)	1 3 6	1 5 0	1 0 0	1 10 0	2 5 0
(¹) When reaches age 40 or (²) with children			..	..	..	1 6 8(^{1,2})	2 0 0(²)	2 15 0(²)
Widow and one child			3 0 4	1 13 6	1 15 0	1 16 8	2 10 0	3 5 0
Widow and two children			3 9 11	2 1 0	2 4 3	2 4 2	3 0 0	3 15 0
Widow and three children			3 17 7	2 6 0	2 13 6	2 10 2	3 10 0	4 0 0
Motherless children of deceased sol- diers—								
One child ..			1 8 8	Up to 10, 10s.; up to 14, 12s. 6d.; up to 16, 15s.	1 0 0	0 12 0	0 15 0	..
Two children ..			2 7 10	Double above	2 0 0	1 3 0	1 10 0	..
Three children ..			3 3 2	Treble above	3 0 0	1 14 0	2 5 0	..
Widowed mother ..			Up to 2 6 0(e)	1 0 0	Up to 1 18 0	Up to 0 15 0	0 15 0 to 1 10 0	..

(a) Includes 50 per cent. bonus. (b) Includes cost-of-living increase granted in 1919, and provides for review triennially, the first in April, 1923. An alternative pension based on pre-war income increases these rates in some instances. (c) Disablement pension increased to £4. (d) Includes 20 per cent. bonus. (e) If no widow or dependent children.

[It should be noted, however, that there is at present a Bill before the Australian Parliament providing for a considerable increase in their scale. A copy of this Bill has been before us, and is in the possession of the Department.]

The conclusion we have come to is that the best results can be obtained, and the interests of the soldiers and their dependants in general best served, by making the considerable increases we consider should be made by way of supplementary pensions on an economic basis, having regard to the total income of pensioners.

We recommend, therefore, that the present scale of pensions in the three schedules of the 1917 Act, together with the permanent pensions for other than scheduled injuries granted under subsection (3), section 5, of the 1915 Act, be regarded as the basis of compensation for physical injury, and be taken as the irreducible minimum and not liable to alteration.

We shall for convenience hereafter refer to these pensions as "compensation," and to the supplementary grants as "economic" pensions.

We now proceed to a consideration of the specific claims.

R.S.A. CLAIM 1.—*That an increase of 75 per cent., subject to the necessary cost-of-living adjustment, should be granted in respect of the present basic pension.*

(a.) TOTAL DISABLEMENT CASES.

Total disablement under the Act is not necessarily total incapacity: *e.g.*, a T.B. case classed as totally disabled and in receipt of temporary pension as such; also, loss of limb and eye is classed as 100 per cent. disablement, but the injured man may also be employed.

We recommend that the pension for total disablement be the compensation pension of £2 per week, with the addition of an economic pension of £1 10s. per week as a maximum: this economic pension to increase or decrease in accordance with variation in the cost of living (which will be dealt with hereinafter), and the personal earnings to be taken into account in fixing the amount of economic pension, so that the total of the pensions and personal earnings do not exceed £3 10s. a week. Economic pension to be reviewed annually.

In addition to the above, the wife and children would be entitled to their pensions under the present scale.

(aa.) CASES OF DISABLEMENT OVER 50 PER CENT.

This is the most difficult and complex matter we have had to deal with, and has given us much anxious thought. Many of these men are at present in a most unfortunate position, being unemployed and in cases unemployable, and in receipt of a quite inadequate pension, particularly in the case of married men, and existing on charity and assistance from Patriotic Societies. Their position is not in keeping with what an enlightened public conscience must regard as their due. To illustrate the difficulties of the position: These men were regarded as the charge of the Repatriation Department, and many of them were given vocational training and employment found for them. Under the present financial stress many of them are unemployed, as employers cannot afford to employ disabled men. Others have had no training and are only fit for such work as messengers, lift-attendants, and so on, which class of work offers but a limited field for employment. Their position is particularly unfortunate in that, though married, many of them are not eligible for the supplementary pension under the existing legislation.

Section 4 of the 1917 Act provides that—

"4. If in any case the Board is satisfied that the amount receivable, in the aggregate, by a member of the Forces by way of pension in respect of his total or partial disablement, together with the amount receivable by way of pension in respect of such disablement by his wife and children (if any), or by any other person wholly dependent on him and living with him, and the average amount (if any) which, in the opinion of the Board, the member is capable of earning, is not sufficient to enable the member to maintain himself and his dependants in accordance with the standard of comfort to which they were accustomed before the war, the Board may increase the rate of pension payable to the member by an amount not exceeding one pound per week.

"Provided that in any case in which this section is applied the total amount payable by way of pension to all persons in respect of the disablement of the member shall not exceed five pounds a week."

The test under the section is a man's *capacity to earn*, not his actual earnings. The War Pensions Board has acted on this interpretation and governed its decisions accordingly. It is to be noted that the percentage of disability is fixed on a purely physical basis and has no relation to a man's occupation, the standard being the purely physical one of a man in normal health: *e.g.*, a solicitor minus his right arm at the elbow is deemed to suffer 80 per cent. disablement, and an engineer with similar disability is also 80 per cent. It will be clear, therefore, that the assessment has no relation to a man's economic loss. The Board refers such men to the Repatriation Department, and it is common knowledge what difficulties the latter Department has had in dealing with such cases. The position is further accentuated by the anomaly that if the Repatriation Department places a man in a job at, say, £1 a week the War Pensions Board can then take this as what the man is capable of earning and grant a supplementary pension, which the unfortunate man without a job cannot get. The position of these men has been particularly stressed by the Returned Soldiers' Association and the Patriotic Societies, and merits the most sympathetic consideration. As the Repatriation Department is closing down at the end of the year, the whole care of these men should be brought under the War Pensions Board.

We recommend that these cases be treated similarly to cases of total disablement in respect of economic pension in the discretion of the War Pensions Board, to the intent that while a disabled man of the class in question is unemployed through no fault of his own he should be entitled to the full benefit of the economic pension, and that the wife and children should also have the "compensation" pension as for total disablement of husband. Every effort should be made to procure work for these men, in their own interests and in the interests of the State; but it must be recognized that with the best intent on all sides many of these men will be unemployed, and the question has to be faced, "Are they to be left a charge to charity or the Patriotic Societies?" If the man refused employment or lost his employment through misconduct, it would be a proper exercise of the Board's discretion to refuse the economic pension.

(aaa.) CASES OF DISABLEMENT 50 PER CENT. AND LESS.

Many cases of this class are in the same position as the class we have last mentioned, and we can only recommend that they be dealt with in a somewhat similar way as regards economic pension and pension for wife and children. But, as the cases would vary infinitely, we suggest that a wide discretion be left to the Pensions Board. Principles on which this discretion is to be exercised might be laid down from time to time. Typical cases of this class would be a man who has lost four fingers of the right hand and a man suffering from disease and assessed at 50 per cent.; in the latter case particularly the man might be incapable of sustained work and therefore practically unemployable.

(b.) WIDOW WITH A CHILD OR CHILDREN.

We have to point out serious anomalies in this class. Widows who applied before the Finance Act of 1919 came into operation are entitled to both civil and war pensions; widows who applied after that date to only war pension. The following table shows how inequitable this is:—

	Post-Finance-Act Widow: War Pension under War Pensions Act, 1915, and Amendments.	Pre-Finance Act Widow: Civil Pension under Pensions Act, 1913, exclud- ing Amendments contained in Finance Act, 1919.	Total Pensions.
	Per Week. £ s. d.	Per Week. £ s. d.	Per Week. £ s. d.
Widow and one child ..	2 10 0	0 7 0	2 17 0
Widow and two children ..	3 0 0	0 11 6	3 11 6
Widow and three children ..	3 10 0	0 16 0	4 6 0
Widow and four children ..	4 0 0	1 0 9	5 0 9
Widow and five children ..	4 10 0	1 5 6	5 15 6
Widow and six children ..	5 0 0	1 10 0	6 10 0

It was strongly urged that a soldier's widow's first duty is to her young children, and that she could not give her children the care, oversight, and attention they are entitled to if she has to go to work to supplement her pension, and that the pension should be a sufficient sum for her and her children to live on. This is a view which commends itself to sympathetic consideration; the problems of the Juvenile Court largely arise from lack of parental control, and the more a parent's chances of control are weakened the greater is the danger.

We recommend that the pension be increased by the grant of an economic pension of 10s. per week in the case of a widow with one child, with an increase of 25 per cent. on this amount for each additional child. This would work out as follows :—

	Widow and One Child.	Widow and Two Children.	Widow and Three Children.
	£ s. d.	£ s. d.	£ s. d.
Compensation pension	2 10 0	3 0 0	3 10 0
Economic pension	0 10 0	0 12 6	0 15 0
Totals	3 0 0	3 12 6	4 5 0

Income from all sources, including civil pension, to be taken into account and the economic pension to be reduced accordingly. The economic pension to vary with the cost of living.

(c.) WIDOWED MOTHERS TOTALLY DEPENDENT.

At present this class receives a war pension of £1 10s. a week, which we will treat as a compensation pension. In addition, some may be entitled to old-age pension of 15s. per week, which is not affected by the grant of a war pension.

We recommend the grant of an economic pension of £1 per week to bring up the total income to £2 10s. All income, including old-age pension, to be taken into account, so that the total of pension and income should not exceed £2 10s. To be reviewed on change of circumstances, and economic pension to vary with cost of living.

(cc.) WIDOWED MOTHERS PARTIALLY DEPENDENT.

This class is at present entitled to war pension of 15s. a week.

We recommend an economic pension of £1 a week to provide for cases of poverty. In determining the rate of pension the Board to take into consideration the property and income from all sources (including old-age pension) of the pensioner, and of all persons liable at law for her maintenance. To be subject to review and reduction as class (c) above.

R.S.A. CLAIM 2.—*That the pension to the widow and child be continued so long as the child is continuing its education.*

The Board is at present carrying out this policy, purporting to act under section 13 of the Act of 1916. This is an instance of the liberal and benevolent interpretation by the Board to which we have referred. We are of opinion that authority should be given to the Board in express terms so to act, but proper safeguards should be provided to ensure that the children are really benefiting by advanced education and are proper subjects for advanced education. The certificate of the headmaster should be required by the Board to that effect. Similar provision should also be made in the case of gifted children, such as holders of scholarships proceeding to a university course.

R.S.A. CLAIM 3.—*That pension should be adjusted triennially in accordance with variation in cost of living.*

This is a provision in the British Royal Warrant. We are of opinion that this principle should be applied in the case of economic pensions, but as prices are still

in the process of being stabilized the triennium is too long. We favour an annual review based on the average of the monthly prices over the preceding year, and recommend the standard to be taken at the date of the passing of the legislation.

R.S.A. CLAIM 4.—*That extra allowances of £10, £8, and £3 in the case of upper-leg, lower-leg, and arm amputees respectively for wear-and-tear of clothing should be granted.*

We are satisfied from the evidence and clothing, &c., produced that there is considerable extra wear-and-tear of clothing and foot-wear in the case of leg amputees. A reference to the evidence will fully set out its nature. No detailed account of extra expenditure was supplied, the witnesses all giving estimates ranging up to £18 per annum. We consider that a certain amount of extra expenditure can be minimized in the matter of socks worn on artificial legs. There is great wear-and-tear on these, but this can be obviated as by the provision of canvas soles; further, there is no real necessity for the sole, as the leg of the sock can be fastened to the artificial limb.

We recommend an allowance of £8 and £6 per annum respectively in the case of upper-leg and lower-leg amputees. With regard to arm amputees, the evidence is that artificial arms are seldom used, and we have no recommendation to make.

R.S.A. CLAIM 5.—*An additional travelling medical officer of the War Pensions Board.*

This has been met by the appointment of Dr. Christie, and we are impressed with its great value, both from the point of view of the individual and the State. An extract from the evidence of Dr. Izard will give an indication of this value: "Dr. Christie saw three hundred cases in three weeks in the King-country, which in medical fees alone saved 150 guineas, apart from what reductions he recommended in the pensions of men whom he saw were overpensioned."

This system could be advantageously extended if medical men of sufficient standing and military experience were procurable. The Director-General of Medical Services is in accord with this view. The Director-General of Medical Services is preparing a very full and detailed list of instructions to examining doctors, a draft of which has been shown to us. Attention to these instructions should assist in procuring complete and reliable reports from the examining doctors.

R.S.A. CLAIM 6.—*Appeal from any decisions of the War Pensions Board should be provided for.*

This was urged with very great insistence by counsel for the Returned Soldiers' Association, and they had the support of various Patriotic Societies throughout the Dominion, representatives of which attended the Commission. The right of appeal is deep-rooted in human nature, and is generally recognized in our administration of justice, also in the Civil Service and in other spheres.

A War Pensions Medical Appeal Board was created by the Finance Act, 1920, and was in active operation for some time, with the following results: Total appeals, 600; number upheld, 31; dismissed, 448; reduced, 43; made permanent, 5; cancelled, 20; appellant did not appear, 53. From this it will be seen that it had a certain usefulness.

This Board has not been acting for some time, and is distasteful to the Returned Soldiers' Association, and is viewed with a certain element of suspicion, being regarded as a sort of relation of the Medical Department controlled by the Director-General of Medical Services.

This feeling found expression also in Great Britain in connection with an earlier appeal tribunal set up there, as is evidenced by the following extract from the Pensions Report (England): "Although the Minister accepted the decisions of that authority, there remained a suspicion that the tribunal was after all merely a branch of the Ministry, and as such was perhaps unwilling to reverse a decision arrived at by another branch of the same Department."

The present position in Great Britain is set out in the following extracts from the Third Annual Report of the Minister of Pensions, issued in 1921 :—

MEDICAL APPEAL BOARDS.

Two separate and distinct rights of appeal were considered by the select Committee—viz., an appeal on the question of entitlement, and an appeal against the amount of pension awarded.

As regards the latter, the Select Committee recommended the constitution of what they termed Appeal Tribunals on Amount. For a number of reasons this recommendation was not considered to be practicable, but the principle of appeal was conceded for both officers and men, and was duly put into force in the form of Medical Appeal Boards. These Boards are quasi-judicial in character, and are composed of the Deputy Commissioner of Medical Services of the Region as Chairman, one specialist in the particular disease or disability, and one medical assessor. The duty of a Medical Appeal Board is to deal with applications based on dissatisfaction with the assessment of a previous Board, and their decision is binding for the currency of the award on both the Ministry and the pensioner unless the man's condition should become substantially worse, in which case there is suitable provision for review. The Board has power to confirm, raise, or lower an assessment in accordance with their opinion.

PENSIONS APPEAL TRIBUNAL.

The right of appeal on entitlement had already existed, a man whose application for pension had been refused on the ground that his disability was neither attributable to nor aggravated by service in the Great War having a right of appeal to a tribunal appointed by the Minister. Although the Minister accepted the decisions of that authority, there remained a suspicion that the tribunal was, after all, merely a branch of the Ministry, and as such was perhaps unwilling to reverse decisions arrived at by another branch of the same Department. Such a suspicion was, of course, groundless, but in the view of the Select Committee it was thought preferable that the independence of the tribunal should be established beyond question. The right of appeal was accordingly made statutory, and independent tribunals were set up under the Lord Chancellor (in Scotland under the Lord President of the Court of Session), their constitution, jurisdiction, and procedure being determined under the War Pensions (Administrative Provisions) Act, 1919. The members are appointed by the Lord Chancellor, or Lord President, and consist of one legal representative (who acts as chairman), a disabled officer or man (dependant upon whether an officer's or a man's case is under consideration), and a duly qualified medical practitioner. Decisions of the tribunal are final.

The right of appeal now exists in all cases where the Minister is unable to accept the death or disability as attributable to or aggravated by service in the late war (or, in the case of a claim by the widow of a man, that the fatal disease was contracted or commenced while on active service); or where it is held that the death or disability is due to serious negligence or misconduct; or where the disability, although admitted to be aggravated by service, is not certified as attributable thereto. The right extends to officers, nurses, men, and the widows and motherless children of officers and men. (Later it was extended to a parent or dependant).

It will be seen that the Appeal Board in Great Britain exactly corresponds in its constitution with our own War Pensions Board. We do not know what is the constitution of the Boards which deal with pensions in the first instance, but we understand they are local committees, and presumably of inferior composition and standing to the Appeal Board. Our War Pensions Board deals with thousands of cases, and in most cases without seeing the applicant, as is inevitable and obvious considering the magnitude of its work, and from its constitution the Board is well qualified to discharge judicial duties. Any appeal tribunal from such a body would necessarily require to be one of superior qualifications and authority, which could hardly be supplied short of the authority of a Supreme Court Judge. It is manifestly impracticable to give the right of appeal in cases where the Board exercises its discretion, and we think is uncalled for. This, however, is not the burning question. The crux of the matter is the right of appeal on the question of attributability, which question it is claimed should be a matter for judicial decision and not left to the final arbitrament of medical opinion in cases in which medical opinion differs. This shortly, though not comprehensively, sums up the position. The matter is of the greatest importance to the individual, to whom it may mean a matter of hundreds of pounds.

After full consideration of the matter, we are of opinion that the right of appeal to a tribunal of the highest authority should be given in certain cases. But to reduce the number to genuine appeals, and to prevent an avalanche of unmeritorious and frivolous appeals, it would be necessary to provide safeguards.

We recommend the repeal of the existing Medical Appeal Board, and that the right of appeal be given in the following cases :—

- (a.) The rejection of any claim for a pension on the ground that the death or disablement of the member of the Forces in respect of whose death or disablement the claim is made was not due, directly or indirectly, to his employment as a member of the Forces, or, in the case of disablement, that the condition of disablement was not aggravated by such employment ; and
- (b.) The assessment of a pension granted to any member of the Forces in so far as the assessment is based on medical grounds.

On any appeal under these provisions the tribunal may either confirm the decision of the War Pensions Board or may direct the Board to grant a pension or to increase or reduce the amount of any pension.

As a condition precedent to appeal, there should first be a hearing by the War Pensions Board which the applicant has an opportunity to attend in person and be represented by counsel or agent, if he so desires, and submit all his evidence. We do not suggest the impossible course of the War Pensions Board giving a personal hearing to every applicant in the first instance, but where the applicant is dissatisfied with the Board's decision on the grounds above set out he should notify the Board, and then arrangements should be made for a hearing at which applicant must submit all his evidence. If, after such hearing, applicant wishes to appeal, the whole case to be submitted to a Stipendiary Magistrate or to the Crown Law Office to certify whether it is a reasonable case for appeal. This is absolutely essential to guard against abuse of the right to appeal. If this certificate is given, applicant to have the right to appeal to a tribunal consisting of a Judge of the Supreme Court, with a medical assessor, who preferably should be a specialist in the particular class of case ; this assessor would act purely in an advisory capacity and take no part in the decision. The appeal to be by way of rehearing, and unless by special leave of the Court no additional witnesses to be called : such a provision would tend to ensure a complete presentation of the case to the War Pensions Board in the first instance. The Court to admit any evidence it deems proper, whether legally admissible or not, in the same way as the Board does, and the parties to have the right to appear by counsel or agent.

As the War Pensions Board consists of a Stipendiary Magistrate, a medical man, and a soldiers' representative, and any appeal tribunal must be a body of higher qualifications and standing, this could not be obtained by appeals being made to another Stipendiary Magistrate—in fact, such a procedure would probably render intolerable the position of the War Pensions Board. What is necessary to inspire confidence and give authority to its decisions is a finding by a judicial body which is entitled to general respect, and many of the cases may be abstruse and difficult. It is for the above reasons that we make our recommendation for the constitution of the appeal tribunal. With the procedure and safeguards we have suggested as preliminary to appeal it is reasonable to expect that the number of cases proceeding to appeal would be so limited that they could be coped with by the Judges in the different judicial districts in which they arise.

R S.A. CLAIM 7.—*That a pension should not be cancelled or reduced in addition to other punishment inflicted by the Court.*

It is claimed by the Returned Soldiers' Association that a soldier suffers double punishment if deprived of his pension, and in this respect is more harshly dealt with than civilians. We are by no means satisfied that the proposition can be stated so absolutely : *e.g.*, a Civil servant who goes to gaol loses not only his employment but his pension rights. This, however, is stated merely by way of parenthesis.

As the nature of the offence and character of the offender will differ in varying degrees, it is not possible to lay down any general rule which would apply equitably to all cases. Two cases will illustrate this : (1.) A pensioner may be sentenced for theft, but apart from this his general character may be good. (2.) A case which the Board actually dealt with : A soldier in receipt of a pension of 10s. a week seduced the wife of another pensioner and lived with her ; he was also of dissolute habits. The Board cancelled both his pension and that of the offending wife. We submit that it would shock the public conscience if the State had continued to subsidize this dissipated immorality.

The position in Great Britain as to forfeiture is as follows :—

“ Forfeiture of pensions : The question of the forfeiture or suspension of pension during and following service of a term of imprisonment for a civil offence was reconsidered during the year, following upon representations as to hardship thereby inflicted. After careful consideration of the position, the Minister decided that, except in cases of conviction for treason, pension should for the future be restored to the pensioner as from the date of his release from prison. With the same exception it was also decided in the case of married pensioners to permit the wife (subject to the pensioner's consent) to receive a part of the pension during imprisonment. In all cases allowances to wives and children at the appropriate rates are now continued while the man is serving sentence.”—(Extract from Third Annual Report, Minister of Pensions).

We recommend that the matter be left to the discretion of the Board, subject to the approval of the Minister, as at present. The general exercise of this discretion should be based on some such principles as these : Where the pensioner is married the pension be paid to his dependants during his imprisonment ; if single, his economic pension (if any) be suspended, but his compensation pension to accumulate for his benefit after discharge. If a man's conduct is satisfactory after discharge he be reinstated to his full rights. The man's character and conduct appear to us to be all-important. At present the Board has power under section 15 of the 1916 Act to refuse a pension to an applicant of notoriously bad character or who has been guilty of gross misconduct dishonouring him in the public estimation. On such refusal the applicant has the right to have his character further investigated by a Magistrate.

We recommend that power be expressly given to the Board to review or cancel any existing pension on like grounds, the pensioner having the right as above mentioned to have his character further investigated by a Magistrate.

R.S.A. CLAIM 8.—*That soldiers' pensions should be exempted from income-tax.*

We understand a provision to this effect is at present before Parliament, and it commends itself to us as a proper concession.

R.S.A. CLAIM 9.—*That a soldier's widow should be eligible for a pension irrespective of the date of the marriage.*

We approve of the general principle of this claim, subject to certain necessary safeguards. This principle has been recognized in the case of a soldier's wife (the husband being still alive) by the Finance Act, 1919, which provides that a woman “ shall have the benefits of a dependant who becomes by marriage in New Zealand the wife of a member of the Forces at any time after the expiry of two years from the date of his discharge, if having regard to all the circumstances of the case the Board is of opinion that she should be entitled to the benefits of a dependant.”

Limitations were generally recognized to be necessary to guard against death-bed marriages. The Board has exercised its discretion under this provision in the case of marriages which it regarded as proper, having regard to the health of the soldier at the time of the marriage. There is the case of a T.B. patient, an inmate of a sanatorium, on full pension, who married a girl of eighteen years during his absence on leave from the sanatorium, and died a year or two later leaving two children. This is manifestly an improvident marriage. The present position is that though the Board can grant a pension to the wife in the case of what is regarded as a proper marriage, when the soldier dies from war disability she does not get the rights of a soldier's widow, though anomalously enough the children appear to be still entitled to the full rights of a soldier's children.

We recommend that the marriage time-limit be abolished, and that the woman be entitled to full rights of a soldier's wife and widow (if death results from war disabilities), subject to the proviso that the Board is satisfied that the marriage was a reasonable and proper one, having regard to the man's health at the time of marriage. As regards future marriages, this assurance could be supplied by medical certificate, and the Board's approval could be given before marriage. In the cases of marriages already contracted the Board could make inquiry, and decide on similar principles. It was suggested that if the marriage endured for twelve months this would be an assurance that it was not an improvident one. The T.B. case cited above shows that this period in itself would not be a proper safeguard.

R.S.A. CLAIM 10.—*That the seven-year limit in subsection (2) of section 3 of the 1915 Act should be abolished.*

This provision limits the pension rights of a wife and children to cases where the soldier dies from war injuries or disease within seven years after war injuries received or disease contracted. This is an arbitrary limitation, and no reason has been shown why it should be maintained. The abolition has the approval of the Director-General of Medical Services, and we recommend accordingly.

GENERAL.

Throughout the foregoing report our recommendations with regard to pensions deal only with the lowest grade—that of Private. In the cases of the higher grades we recommend that the benefit of the economic pension be given in cases where the existing compensation pension does not amount to the total of the compensation and economic pensions now recommended in the case of the lowest grade: *e.g.*, a sergeant-major's widow with one child is entitled to a compensation pension of £2 4s. a week and 10s. a week for the child: she would accordingly, if she has no other income, be entitled to an economic pension of 6s. a week—total, £3: the position of the private's widow being—compensation pension, £2; child's pension, 10s.; economic pension, 10s.: total, £3.

The subject of the medical treatment of ex-members of the Forces calls for consideration. The present position is set out in the following minute by the Director-General of Medical Services:—

With reference to the subject of medical treatment of ex-members of the N.Z.E.F. for disabilities due to or aggravated by their service:—

1. The authority for this treatment is contained in paragraph 106 (i) of Demobilization Instructions, which reads as follows: "The Defence Department will provide medical treatment for discharged soldiers who are suffering from a recurrence of illness arising out of and directly caused by their service in the Forces, such as the reopening of a wound, muscular rheumatism, neurasthenia, pneumonia, or any other ailment which renders them unfit to follow their daily avocations.

This instruction is defective to the extent that it suggests that only disabilities which render men unfit to follow their daily avocations should be treated. This is obviously not the intention of the instruction, and, of course, that limitation has not been recognized in practice.

2. The War Pensions Act of 1915 stated that war pensions would be granted to ex-members of the N.Z.E.F. whose disabilities arose out of their service. The War Pensions Amendment Act, 1917, cancelled that section, and provided that pensions would be granted apparently for any disabilities arising on service. It will be seen, therefore, that war pensions and medical treatment for disabilities arising on service were not granted under the same conditions, in so far that a group of disabilities which arose on service but were not due to or aggravated by service were pensionable, but not eligible for treatment. In order to overcome this anomaly, a General Headquarters Instruction was drafted, giving authority to the Director-General of Medical Services to give treatment in other cases at his discretion. The object of this General Headquarters Instruction was to cover the group of cases to which I refer.

3. As formerly medical treatment was granted by the Defence Department and war pensions by the War Pensions Board, in the early stages it frequently happened that the Defence Department granted treatment to men whom the Pensions Board would not pension, and *vice versa*. This anomaly was overcome by conferences between the Director-General of Medical Services and the War Pensions Board in doubtful cases, so that by the goodwill of these Departments this anomaly was removed. This procedure was adopted a little more than two years ago. Since the 1st July of this year [1922] the treatment and pensioning of ex-soldiers are carried out by the Pensions Department, the Director-General of Medical Services being in charge of the medical arrangements of the latter Department. The liaison between treatment and pension is now complete, and the position now quite satisfactory.

4. The authorities for treatment, however, remain, as described in the opening paragraphs of this letter, in a somewhat unsatisfactory position, and I suggest that if any amending legislation is to be introduced with reference to the War Pensions Acts that it should be set out that medical treatment will be granted to ex-members of the N.Z.E.F. for disabilities which would render them eligible for granting of a war pension. Medical treatment should be specified to include the provision of surgical appliances, and such other arrangements as I suggest might be set out as regulations under the Act. These regulations would include the supply of artificial limbs, other surgical appliances, artificial eyes, the provision of accommodation to T.B. patients on discharge from sanatoria, and other apparatus, &c., as is already approved by different orders and regulations at present in existence.

We recommend that the matter be cleared up by statutory provision being made for medical treatment to be granted to ex-members of the Forces for disabilities which render them eligible to be granted a war pension, and that authority be also given to make the necessary regulations.

REGRADING OF SCHEDULED INJURIES.

There is a further matter introduced by Dr. Izard which calls for attention—viz., that there should be a regrading of the scheduled injuries by three orthopædic specialists. The reasons for this are given in Dr. Izard's evidence. He points out that a man who loses his leg above the knee gets £1 12s. a week, but the man who loses his leg at the hip-joint and is condemned to a life on crutches only gets 2s. a week more. Dr. Izard also states: "I think experience has shown that the artificial hand is a failure. When the schedule was made out it was anticipated that artificial hands were going to be successful."

We recommend that the schedule be regraded, with the provision that the percentages of the present schedule are not to be reduced in any case.

ATTENDANT'S ALLOWANCE.

The final matter calling for our attention is that of the amount of allowance where the services of an attendant are indispensable. The present allowance is not exceeding £1 a week. We regard this as quite inadequate, as it would not pay for an attendant's food. The number of the cases must be small, and such cases are particularly deserving of more generous treatment.

We recommend a maximum of £3 a week, in the discretion of the Board.

As already indicated, we are not directly concerned with the question of finance, but have based our recommendations on what is a reasonably adequate payment to the different classes of pensioners in the varying circumstances enumerated in our report. We append a table showing a summary of annual liability for war pensions:—

				£
Year ended 31st March, 1917	..	..	..	257,771
" 1918	..	..	..	904,383
" 1919	..	..	..	1,615,827
" 1920	..	..	..	1,869,366
" 1921	..	..	..	1,748,865
" 1922	..	..	..	1,513,263

In conclusion, as will be apparent from our report, we have found many of the questions dealt with of the utmost complexity and difficulty. We have avoided burdening this report with a lengthy detailed reference to the evidence. An examination of the evidence will emphasize the difficulties referred to.

We present our report in the hope that the conclusions we have arrived at may be regarded as a useful contribution towards settlement of the grave issues calling for attention.

We desire to record our appreciation of the excellent manner in which the case for the soldiers was presented by Messrs. D. S. Smith and D. J. B. Seymour, and also our indebtedness to Brigadier-General Sir Donald McGavin, Director-General of Medical Services, and to Mr. G. C. Fache, Secretary to the Pensions Board and Commissioner of Pensions, for much valuable information, and for records, reports, &c., which were of material assistance to us. We also thank the numerous other witnesses who assisted us by appearing and giving evidence.

We have the honour to surrender our Commission into Your Excellency's hands.

We have, &c.,

J. R. BARTHOLOMEW.

W. H. SEFTON MOORHOUSE.

A MACINTOSH.

Wellington, 16th October, 1922.

Approximate Cost of Paper.—Preparation, not given; printing (475 copies), £12.

By Authority: W. A. G. SKINNER, Government Printer, Wellington.—1923.

Price 6d.]

