



**THE LAW SOCIETY
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

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21 April 2011

M45,
RB;rp

Disability Care and Support
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Sir/Madam

Disability Care and Support

We refer to the Productivity Commission's Inquiry into Disability Care and Support. The Commission's Draft report has been considered by the Society's Accident Compensation Committee. Accordingly, we provide the following comments.

The Society sees a clear need for comprehensive care and support for those with permanent and severe disabilities. We understand that the level of funding provided by Disability SA to those with permanent severe disabilities is the lowest per capita of any State in Australia.

In our view, the delivery of services to persons with disability, even those eligible for Disability SA funding, is often ad hoc and is not comprehensively delivered through State funding.

However, given that infrastructure exists for the delivery of the necessary services, we question the proposal to create two new bureaucracies, a National Disability Insurance Scheme (NDIS) and a National Injury Insurance Scheme (NIIS), and therefore substantially increase the cost of delivery.

Providers including Medicare and Centrelink already deliver services at a national level. However, it is acknowledged that the delivery of those services is not always comprehensive and that the level of care and support for those with permanent and severe disabilities and catastrophic injuries is inadequate. However, those existing Commonwealth institutions ought to be able to be utilised to establish an appropriate but not duplicitous bureaucracy to run a care and support scheme that would involve considerably less expenditure.

We are concerned that a mechanism which relies upon States and Territories to establish their own no-fault arrangements for catastrophic injuries may not result in a seamless national system. It would be likely to result in gaps in coverage and limit rights to advocacy of those either participating in the Scheme or who may seek eligibility to do so.

We note the submissions of the Law Council of Australia that scheme management could effectively be handled by the proposed NDIS and that the establishment of a separate NIIS is not necessary. Whilst no-fault coverage should exist, regardless of how the disability was acquired, a NDIS should not be compulsorily applied.

In our view, the role of a NDIS may not, unless carefully considered, appropriately interact with other existing compensation schemes. Considerable work would be required to achieve an effective interface.

Costs of the Scheme

Our experience in South Australia of the impact of low per capita funding for disabled applicants available through Disability SA, causes us to emphasise that any scheme that is introduced will need to be adequately funded if it is to successfully deliver the desired outcomes. It is clear that an appropriately funded scheme would carry significant and substantial cost. The Law Council has provided details, as an analogy, of the NSW Lifetime Care and Support Scheme, which provides care and support for 390 people at an approximate cost of \$38M per annum. Based on this, a Scheme to provide services to an expected 355,000 people who could be eligible to participate would require a significant funding boost.

Rights of Advocacy

Disadvantaged people need to have express rights to advocacy. Limiting rights of review to those most disadvantaged would be a denial of procedural fairness to others participating in the scheme and particularly those that ought to participate in the scheme as intended. Accordingly, there should be express rights of review over decisions of the authority relating to treatment and care with merits review to an independent tribunal or other authority (such as the Administrative Appeals Tribunal).

Common Law

The Productivity Commission does not appear to have acknowledged the existing benefits of current common law, workers compensation and other compensation schemes. Many of these provide substantive and significant support to persons with significant injury.

Chapters 15 and 16 suggest that common law, workers compensation and other compensation schemes are inadequate to address the needs of injured people, whereas such schemes are critical and crucial to support the needs of injured people without causing additional costs to be incurred through a separate mechanism, as proposed.

In our view, the approach taken by the Commission towards common law does not appear well balanced and does not recognise the importance of common law and other compensation schemes within our community.

I trust these comments are of assistance.

Yours sincerely

Ralph Bönig
PRESIDENT