



THE NATIONAL DISABILITY INSURANCE SCHEME

– what's it all about?

By Jnana Gumbert

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'The time is right to reform the disability sector: to shift from the current crisis-driven welfare system to a planned and fully-funded National Disability Insurance Scheme that will underwrite sustained, significant long-term improvements in meeting the needs of people with disabilities and their families.'¹

The establishment of a National Disability Insurance Scheme (NDIS) was recommended by the 2020 Summit in April 2008. Following that summit, the Hon Bill Shorten MP, Parliamentary Secretary for Disabilities and Children's Services, established the Disability Investment Group (DIG) to further explore the idea of such a scheme. The Report of the DIG was finalised in September 2009 and is available publicly on the FaHCSIA website.² The report, entitled *The Way Forward: A New Disability Policy Framework for Australia*, discussed the need for a National Disability Insurance Scheme and its benefits. PricewaterhouseCoopers (PWC) was commissioned to prepare a report in relation to the governance and funding of the NDIS. This report is also available via FaHCSIA.³

The Commonwealth government has asked the Productivity Commission to undertake an inquiry into the possibilities for providing long-term disability care and support in Australia, including the possibility of implementing a no-fault insurance system such as the NDIS. The inquiry began in April 2010 and it is expected that a draft paper without recommendations will be issued towards the end of 2010, with a call for submissions. The final report is to be released in July 2011.

THE NEED FOR A NATIONAL DISABILITY INSURANCE SCHEME

The main thrust of the DIG report is that, while the social security system goes some way towards meeting the needs of

people with disabilities (that is, by providing income support via Centrelink, and healthcare services via Medicare), there is currently no system in place to support all of the needs of people with disabilities, in particular their care and support needs.⁴

The PWC report finds that the services currently in place for people with a disability are inadequate, concluding:

'A fragmented service system, the ageing population, the current state of the informal care workforce and the likely future pressures on this workforce, along with the current indications of unmet need, indicate a disability system in need of reform.'⁵

The PWC report describes the proposed NDIS as an insurance scheme that is not risk-rated. High-risk policyholders (all participants) are subsidised by low-risk policyholders (all tax-payers) to achieve a public benefit.⁶ Examples of such schemes are Medicare, private health insurance, and also most compulsory third party motor accident schemes. The NDIS would 'provide a lifetime approach to care and support for people with disability and would replace the current arrangements for funding specialist disability services'.⁷

At this stage, it is not proposed that the scheme would provide income support. The DIG report has proposed a review of the current Disability Support Pension to ensure that it can adequately meet the living costs of people with disabilities.⁸ However, it has suggested that consideration should be given to bringing income support within the parameters of the scheme.

ELIGIBILITY FOR THE NDIS

It is proposed that the NDIS would provide lifetime care and support to people with 'severe or profound disability', regardless of how that disability was caused. The PWC report gives some guidance as to what is defined as a severe or profound disability:

- a **profound** disability: 'the person is unable to do, or always needs help with, a core activity task (core activity tasks are self-care, mobility and communication)';
- a **severe** disability: 'the person sometimes needs help with a core activity task and/or has difficulty understanding or being understood by family or friends and/or can communicate more easily using sign language or other non-spoken forms of communication'.⁹

However, only those people who acquire their disability before the age of 65 would be eligible for the scheme. The eligibility criteria for the NDIS are likely to be very similar to the eligibility criteria for the NSW Lifetime Care and Support Scheme (NSW LTCS). The guidelines for that scheme set out lists of eligible injuries, some of which are measured by the Functional Independence Measure to determine whether they are sufficiently serious to warrant inclusion in the scheme.¹⁰

THE BENEFITS

It is envisaged that the scheme will operate in much the same way as the NSW LTCS currently operates. The DIG report states that the NDIS would 'replace the current arrangements

for funding disability services and would work in a similar way as the no-fault injury insurance scheme that currently operate in some states and territories.'¹¹ It is noteworthy that PWC were the consulting actuaries for the NSW LTCS.

If the benefits provided by the NSW LTCS scheme are to be used as a model for the NDIS, then it can be expected that the NDIS will provide for the reasonable treatment and care needs of the person. The DIG report suggests that the scheme would provide for 'care, and support including aids, equipment, transport, respite, accommodation support and a range of community and day programs'.¹²

GOVERNANCE AND FUNDING

It is proposed that a National Disability Commission be established, probably as a statutory authority.¹³ The scheme would be based on insurance principles and there would be a prudential board of directors to oversee the scheme, and an advisory council of stakeholders to provide advice.

The NDIS would be funded by all taxpayers through general revenue or an extension of the Medicare insurance levy.¹⁴ The PWC report states that there is 'an estimated initial funding requirement of \$7.44 billion and projected offsets of \$6.47 billion – an additional 2011 funding requirement of \$0.97 billion'. The scheme will be partially funded (similar to the 1987 NSW Transcover scheme or the New Zealand Accident Compensation Corporation) rather than fully funded (such as the NSW LTCS).¹⁵

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The DIG report has proposed a staged implementation over seven to ten years, to allow adequate time for the development of a new infrastructure and workforce.¹⁶

PEOPLE INJURED IN COMPENSABLE CIRCUMSTANCES

Most people who are injured in compensable circumstances will probably be unaffected by this scheme. Studies conducted by PWC reveal that approximately 770 Australians are 'catastrophically' injured each year and that approximately 50 per cent of those people have entitlements to compensation (including no-fault compensation such as workers' compensation, the NSW LTCS and the TAC). Calculations in 2005 indicated that approximately \$675 million per annum is currently paid through accident compensation for lifetime care and support for people with catastrophic injuries.¹⁷

People who have acquired a severe or profound disability in compensable circumstances constitute a very small proportion of the total population of people who would be eligible for the NDIS. In 2009, there were approximately 600,000 people who fit the criteria for eligibility in the NDIS, and only 15,000 of those people (0.025 per cent) sustained their disability through injury. It is safe to say that the vast majority of people who would be eligible for the NDIS currently have no entitlement to any form of compensation.

The DIG report states: 'People who are covered by state/territory-based accident compensation schemes would continue to be covered by them, however, the interaction of these schemes should be further investigated.' It is unclear whether this statement is intended to apply to all people covered by existing accident compensation schemes, or only to those people who would not be eligible for the NDIS.

As discussed above, the NDIS would be a form of social insurance. The PWC report notes: 'Virtually all social insurance schemes are comprehensive in population coverage – that is, they need to be either compulsory or allow opt-out only under some regulated conditions which maintain the public benefit.'¹⁸ Certainly, it is extremely important that people with compensable rights retain their right to claim damages for the items not included in the scheme, such as non-economic loss and economic loss. Hopefully, the scheme will also have an 'opt-out' provision to give those people the freedom and the autonomy to choose to pursue their full fault-based compensation rights for lump-sum allowances for future treatment and care needs, should they wish to do so.

It appears more likely, however, that existing compensation schemes across the country will be modified to create no-fault care and support benefits for those who sustain

catastrophic injuries in accidents, thereby negating the need for these people to enter the NDIS at all. The DIG report states:

'To ensure a comprehensive and equitable national approach, the various insurance schemes that provide lifetime care and support for traumatically injured Australians should extend to become no-fault and nationally consistent.

The Commonwealth and state and territory governments should work together in the context of the feasibility study to ensure that state-based accident insurance schemes are consistent with the proposed national scheme.'¹⁹

Although the word 'catastrophic' is absent from the excerpt above, it can be inferred that at this stage the DIG report is suggesting only that no-fault schemes be implemented for catastrophic injury cases, as all of the discussion and costings contained in the DIG report and in the PWC report relate only to people with catastrophic (or 'severe and profound') disabilities. The proposed disability scheme structure in the PWC report envisages state-based lifetime care schemes and the NDIS running side by side.²⁰

CONCLUSION

It is apparent that the existing structures which provide services to the severely and profoundly injured are inadequate and are not meeting the needs of these people. The proposed NDIS would provide lifetime care and support benefits for the seriously disabled, regardless of the cause of their disability.

Some uncertainty remains regarding the interaction of the NDIS with existing state compensation schemes. The most desirable model would seem to be to entitle catastrophically injured accident victims to no-fault care and support, either through the NDIS or through state-based schemes, but to ensure that they have the right to opt out of these schemes and pursue their full compensable rights if they choose to do so. Otherwise, there is a real concern that their rights will be diminished. The Australian Lawyers Alliance will be making submissions to the Productivity Commission once the draft report is released. ■

Notes: **1** B Bonyhady & H Skyes, *Disability Reform: From Crisis Welfare to a Planned Insurance Model* (2008). **2** Disability Investment Group, *The Way Forward: A New Disability Policy Framework for Australia* (2009) available at http://fahcsia.gov.au/sa/disability/pubs/policy/way_forward/Documents/national.htm (DIG Report). **3** PricewaterhouseCoopers, *National Disability Insurance Scheme – Final Report* (2009) available at http://fahcsia.gov.au/sa/disability/pubs/policy/National_Disability_Insurance_Scheme/Documents/default.htm (PWC Report). **4** DIG Report, p1. **5** PWC Report, at [1.3.3]. **6** PWC Report, at [8.5.2]. **7** DIG Report, p6. **8** DIG Report, p30. **9** PWC Report, at [1.1] **10** Lifetime Care and Support Guidelines 2009. **11** DIG Report, p4. **12** DIG Report, p4. **13** DIG Report, p7. **14** <http://www.ndis.org.au/theplan.html>. **15** PWC report, at [6.1]. **16** DIG Report, p15. **17** PWC Report, at [1.2.15]. **18** PWC Report, at [8.5.2]. **19** DIG Report, p28. **20** PWC Report, at [8.6.2].

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