

# Passing the baton in the shadow of the NIIS

By Anthony Kerin



As I write this, my last president's page, the federal government has attempted to pave the way for the National Disability Insurance Scheme (NDIS) to live well into the future. But lurking in the shadows of every NDIS agreement signed between the Commonwealth and the states and territories is the National Injury Insurance Scheme (NIIS).<sup>1</sup>

If there was any doubt as to the intention of the current government, these agreements reveal the very clear objective of taking the common law apart, piece by piece. With nationally consistent no-fault minimum benchmarks for catastrophic injury under negotiation – starting with motor vehicle accidents, workplace accidents and medical negligence (and with general accidents and criminal injuries on the agenda) – we must question the fundamental premise of this policy.

The NIIS has taken shape largely behind closed doors, with private discussions between the Treasury, Standing Council on Federal Financial Relations and the NIIS Advisory Group. While the NDIS emerged in a context of some transparency and consultation (albeit with indecent haste), the NIIS has moved with stealth, speed and little public accountability.<sup>2</sup>

I am ever more convinced that in dealing with governments in Australia today, transparency and proper consultation have been abandoned in favour of a tokenistic, box-ticking exercise and political expediency. Several times over the past year, we have witnessed the swift emergence of laws that, initially appearing as recommendations in 'independent' reports, have subsequently been passed into law as *faits accomplis*.

In our future campaigns, while always being ready, willing and able to talk, we must be more proactive, especially with our strategic use of social media, the most powerful tool for communication and influence in today's world.

The steady medicalisation of disabilities and the creation of administrative bureaucracies has subtly ousted the jurisdiction and discretion of the courts, and eroded the transparency with which decisions affecting people's rights are now made.

In my home state of South Australia (SA), medical experts have been proffered as compensation scheme experts. In fact, none of them has any such qualifications. They are

clinicians. The ISV AMA Guides are designed to dumb down damages, categorising them ultimately in terms of the severity of injury or the loss of function, rather than their effect on the injured person. We need to educate the public further on the benefits of common law, pointing far more aggressively to the disadvantages of the no-fault scheme in New Zealand, Comcare and SA's Workcover scheme, all of which demean the individual and commoditise compensation claims. We live in the age of the administrator. They are the individual's real enemy.

It remains to be seen whether the NDIS becomes another faceless bureaucracy without accountability, or whether it really does deliver what it promises (and at what cost, particularly over the longer term).

In SA, the Labor government has recently ravaged the CTP scheme, eradicating the right to damages in many instances. (It had already emasculated the Workers' Compensation Scheme back in 2008, and the Scheme is now in a worse financial state than it was then.) Legal commentators are suggesting that between 40 and 80 per cent of claims will be affected. Thresholds have been introduced that do not even exist in the Queensland scheme, upon which the SA scheme was partly modelled. Multiple injuries are not treated fairly, but you can be sure that there will be a big bureaucracy set up to run the system. The ALA will scrutinise these costs in due course and continue to do its utmost to hold accountable those whose decisions so fundamentally affect the outcomes for individuals.

I have enjoyed the journey as ALA's national president. I hand the baton on to Geraldine, who I am sure will continue to advocate for reform in the best interests of justice, freedom and the rights of the individual. ■

**Notes:** **1** For more information, see *National Disability Insurance Scheme – Agreements for Launch and Full Scheme* <http://www.ndis-launch/intergovernmental-agreement/> **2** The ALA has requested the release of information concerning the NIIS under freedom of information laws, in an effort to throw some much-needed light on the details.

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