

Submission to the Senate Standing Committee on Community Affairs

Re National Disability Insurance Scheme Bill 2012

1. I am a Professor Emeritus of the Law School at the University of Melbourne.
2. For over 40 years I have studied, taught, conducted research and written books and articles on matters of compensation for injury and disability.
3. I have long argued in favour of a national social insurance scheme to provide for the needs for care and support of people with a disability, however that disability came about. I accordingly welcome the commitment by all political parties to a scheme of national disability insurance. I commend COAG for obtaining support for the scheme from all Australian governments and the federal Government for the early introduction of the Bill.
4. At this stage I wish to offer only a brief comment on one part of the Bill being considered by the Committee. The part on which I wish to comment is Chapter 5, Compensation Payments.
5. With regard to Part 1 of this Chapter, Requirement to take action to obtain compensation, clauses 104 and 105 are completely unacceptable. I submit that vulnerable people in the position of those receiving benefits under the scheme should never be required to take action to recover those benefits for the Commonwealth. Litigation is always stressful and it is not sufficient to leave the requirement to the discretion of the CEO.
6. Furthermore, unlike comparable legislation, the Bill does not provide for the Commonwealth to bear the costs of litigation which the person may be required to undertake.
7. Parts 2 and 3 of the Chapter, providing for the Commonwealth to recover payments it has made out of damages awarded to the injured person or directly from compensation payers, while less objectionable, are in my submission manifestations of a wrong policy. They aim at shifting part of the costs of the NDIS to state compensation schemes.
 - a. This is a wasteful process, which adds to the total expense which the community has to bear.
 - b. There is little evidence that it is effective in reducing the overall level of disability by providing incentives towards accident prevention, whatever the economic theory might say.
 - c. The contributions to the state schemes by premium and levy payers are mostly regressive in their operation, whereas contributions from Commonwealth taxpayers are theoretically progressive.
8. At present I am working on a substantial academic article that will elaborate on each of these points in detail. The article will not be completed in time to be submitted before the closing date for submissions and may in any event be too long for the Committee's purposes. However, if the Committee requires any explanation for what I have said above, I would be happy to clarify my statements.

Harold Luntz.

17 January 2013