



## **Inquiry into the National Disability Insurance Scheme Bill 2012**

**Submission by Insurance Council of Australia to  
the Standing Committee on Community Affairs -  
Legislation Committee**

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## Introduction

The Insurance Council of Australia (ICA) provides the following submission to the Standing Committee on Community Affairs – Legislation Committee concerning the Inquiry into the National Disability Insurance Scheme (NDIS) Bill 2012 (Inquiry). We also appreciate the opportunity to consult with the NDIS Taskforce.

The ICA has been an active participant throughout the original Productivity Commission inquiry process and subsequently through the National Injury Insurance Scheme (NIIS) Advisory Group. The ICA and its members support the establishment of the National Disability Insurance Scheme (NDIS) and National Injury Insurance Schemes (NIIS) in the States and Territories to oversee disability care and support for people with a significant or catastrophic disability on a lifetime basis.

We represent general insurers who operate in a variety of personal injury compensation schemes across Australia. Our members are particularly interested in the progress of the NDIS Bill as they represent a significant proportion of “compensation payers” for the motor accident schemes in NSW, Qld, SA and ACT, and for workers compensation schemes in NSW, Victoria, Tas, WA, SA and NT and ACT. We will refer to these schemes generally throughout this submission as “compensation schemes” to differentiate them from the NDIS.

The primary purpose of our submission is to provide you with the benefit of our experience in these compensation schemes, and how they may interact with the NDIS Bill, with particular focus on Chapter 5 of the NDIS Bill. We will canvass the following:

- the potential impact of the recovery provisions in Chapter 5 on compensation scheme costs generally;
- the potential impact of section 104 of the NDIS Bill for recipients to take action to claim compensation if available; and
- administrative issues raised by the operation of Chapter 5.

In addition the ICA will also raise a number of other issues which arise from the NDIS Bill more generally.

## 1. Impact on Compensation Claims Costs

The ICA understands that sections 106 and 107 of the NDIS Bill are designed to ensure that the size of claims payable under various compensation schemes is not increased by the provision of NDIS support services. However we believe that the extent of services available from the NDIS may have an impact on claimant behaviour which could potentially increase the size and frequency of claims made under various statutory and common law compensation schemes.

An example of this is the particular provisions in place governing care services in the NSW Motor Accidents Scheme (CTP Scheme). The provision of gratuitous care is restricted by a 6 hour a week/ 6 month threshold<sup>1</sup> and is paid at a lower rate (approximately \$26 per hour) than commercial care (approximately \$36 per hour). In addition claims for gratuitous care are restricted to 40 hours per week.<sup>2</sup>

As a result of the upfront cost of commercial care, the experience of our members is that most claimants make claims for the past care provided to them on a gratuitous basis by their family members up to the date of finalisation of the CTP claim. Claims for future care which may be included in the final lump sum compensation claim are then usually calculated on a commercial basis.

We submit that the claimant's access to care services from NDIS may have the effect of inflating the amount claimed for past care as the restrictions in the NSW CTP scheme apply solely to gratuitous rather than commercial care. There may also be a further inflating effect if gratuitous claims are pursued in addition to those provided under the NDIS driven by altered claimant behaviour.

As such the practical effect of the objectives of the NDIS to meet the aspirations of the participant<sup>3</sup> may result in greater claims costs in other compensation schemes. This is despite the emphasis on the approval of expenses which are reasonable and necessary, common to many compensation schemes, and the different standards of the provision of care which may apply in various compensation schemes and the NDIS. Greater claims costs may then have an effect on the level of premiums charged in those compensation schemes.

The ICA submits that further analysis of the impact of the provisions on particular compensation schemes is required before the NDIS is implemented.

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<sup>1</sup> *Motor Accidents Compensation Act 1999*, section 128.

<sup>2</sup> *Ibid*, subsection (4)

<sup>3</sup> "realise their potential for physical, social, emotional and intellectual development" NDIS Bill, section 4

## 2. Section 104 Requirement to Take Action

The ICA understands that there is a similar provision currently in place in the social security legislation requiring recipients of Centrelink payments to take action to make compensation claims if available.<sup>4</sup> Our members understand, however, that this provision has not formally been exercised although it may be part of the informal discussions Centrelink staff have with their customers.

We submit that the current wording of the section and the way it is administered by the NDIS Agency, which potentially may be different from the stance Centrelink has taken, may have an impact on the frequency of claims made in various compensation schemes. Further, an increase in the level of legal representation in claims may also impact on the level of compensation scheme costs.

If the policy intent of this provision is to ensure that disabled people have early access to care services provided under particular compensation schemes, we submit that this may not be achieved due to the untested nature of this provision. Instead the ICA suggests that a provision to ensure that the claimant uses their best endeavours to explore appropriate avenues of compensation would achieve this intent without unintended consequences to compensation scheme costs.

In any event, the ICA believes that the section may also need clarification to ensure that NDIS recipients are not prevented from accessing early intervention services while consideration of appropriate compensation actions is taking place.

## 3. Administrative Issues

The ICA notes that sections 109-115 of the NDIS Bill covering recovery of NDIS payments are similar to certain provisions in the social security and Medicare legislation. Our members currently comply with the different recovery regimes currently in place for economic loss and medical expense payments. Our members are concerned that the implementation of a third, slightly different recovery regime under NDIS will add to the administration costs involved in various compensation schemes.

In addition our members have experienced, from time to time, delays in obtaining the appropriate clearance from one or other of the relevant agencies which delays the receipt of settlements by injured claimants. They are concerned that these complexities may be exacerbated when the NDIS adds a third recovery regime.

The ICA submits, that wherever possible, measures are taken to streamline the recovery process and promote harmonisation across recovery regimes. In this regard we suggest that consideration of the procedure currently in place for Medicare recoveries for 10% of the settlement monies to be set aside for Medicare recovery is implemented for the recovery of Centrelink and NDIS payments. This would, in our submission, significantly speed up the receipt of settlement monies by injured claimants.

We also submit that a single web portal for the delivery of information to the Commonwealth payment authorities would expedite the process and streamline administrative costs.

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<sup>4</sup> Section 1166 *Social Security Act 1991*

There are also likely to be administrative complexities where there is a dispute as to which NDIS payments are recoverable from a compensation payer. If, for example, a person suffering from a pre-existing disability and in receipt of NDIS payments subsequently suffers a compensable injury we submit that there is currently no mechanism in the legislation to determine which payments are in fact recoverable. Without an appropriate mechanism, we submit that compensation claims may be delayed and claimants may not receive timely access to rehabilitation and treatment expenses.

This may be exacerbated in compensation schemes where periodic payments are made, such as workers compensation where rehabilitation plans may conflict with NDIS support plans.

The ICA submits that clear guidelines will be required to ensure that the various compensation schemes can communicate and work productively with the NDIS Agency.

#### 4. Other Key Issues Requiring Consideration

In addition to the matters raised under Chapter 5 of the NDIS Bill, our members would like to comment on the following issues raised by the NDIS Bill more generally.

- **Non-compliance** – Sections 110 and 114 of the NDIS Bill imposes an imprisonment term of 12 months, a 60 penalty unit fine or both for non-compliance if their obligations are not strictly complied with. We note that similar provisions are also utilised in sections 1183 and 1184D of the *Social Security Act 1991*. We submit that the penalties for non-compliance in both sets of legislation are significantly disproportionate to the severity of the breach.

We note that, despite any breach of sections 110 and 114, amounts refundable to the NDIS Agency become due as debts pursuant to Section 115 of the NDIS Bill. The ICA submits that a detailed review of the effect of these provisions in the social security legislation should be undertaken prior to the enactment of Sections 110 and 114 of the NDIS Bill to determine the need for such provisions.

- **Section 186** – Part 7 Chapter 1 of the NDIS Bill deals more generally with debt recovery. We note that section 185 refers to recovery from financial institutions. Section 186 provides the NDIS Agency with the power to obtain information from a person who owes a debt to the NDIS Agency. We submit that the wording of section 186 and subsequent sections should clarify that these provisions do not apply to compensation payers, as Chapter 5 deals with these issues.
- **Demand for Carers** – The demand for care providers will substantially increase once the NDIS is implemented. This is likely to affect the availability of the pool of care providers which currently operate in various compensation schemes. Such increases in demand may also lead to increased claims costs in those compensation schemes and dilute the quality of services and service standards until the supply of care providers increases.

The ICA submits that the impact on the cost of care will need to be properly quantified by compensation schemes across Australia. Compensation schemes which are required to be fully funded will need to incorporate the effect of claims cost inflation in

these circumstances. In those compensation schemes which are privately underwritten, our members will also need to quantify the level of the impact.

The ICA submits that any research undertaken by the government estimating the likely impact on the availability of carers is made available to our members to assist them to understand the level of potential impact in particular compensation schemes. We also submit that detailed modelling be undertaken of the likely impact on the cost of care which will be needed by compensation schemes to properly calculate premium levels.

The ICA also submits that such resourcing quality assurance issues be monitored carefully in the implementation of the NDIS.

- **Review of Recovery Provisions** – Having regard to the potential complexities raised above, the ICA submits that a review of the operation of the recovery provisions be undertaken in 2 to 3 years time to monitor any unintended consequences of the implementation of the NDIS Bill.

## Conclusion

As the Standing Committee on Community Affairs – Legislation Committee and the NDIS Taskforce develops their positions on the implementation of the NDIS, the ICA and our members are keen to remain involved through ongoing engagement on these matters.

We support the policy intent of the NDIS Bill, and are keen to see the NDIS implemented effectively. The ICA and our members believe that we can be of assistance to the Standing Committee on Community Affairs – Legislation Committee and the NDIS Taskforce with a more detailed analysis of the areas of overlap with the various compensation schemes.