

Adam Johnston

Committee Secretary
Senate Standing Committees on Community Affairs
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Dear Sir,

Supplementary Submission: A Bill for an Act to establish a National Disability Insurance Scheme and, for related purposes

I am writing to the Committee again, having noted the recent testimony of Reserve Bank Governor Glen Stevens, before the House Economics Committee. Mr Stevens expresses real concerns about the Commonwealth Government's ability to pay for promised new spending initiatives, including the National Disability Insurance Scheme (NDIS).¹

In my view, the Committee and the Government need to take note of these remarks and, establish whether either the State or Federal Governments have any real prospect of delivering the NDIS. Increasingly, I do not believe that anything much will be delivered and, have written to my State Premier the Hon. Barry O'Farrell MP, suggesting his Government walk away from the NDIS negotiations. This is not said lightly but, in the current economic and fiscal climate, it seems highly likely that the NDIS "promise" will be broken.

My email to Premier O'Farrell is attached for the Committee's information.

Yours faithfully,

Adam Johnston

4 March 2013

¹ See Proof Committee Hansard, HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS, Reserve Bank of Australia annual report 2012, (Public), FRIDAY, 22 FEBRUARY 2013, CANBERRA, p. 21, http://parlinfo.aph.gov.au/parlInfo/download/committees/commrep/acabdf3-97ce-4998-b908-f679e2f49be2/toc_pdf/Standing%20Committee%20on%20Economics_2013_02_22_1746.pdf;fileType=application%2Fpdf as at 4 March 2013

From: Adam Johnston
Sent: Sunday, 3 March 2013 12:32 PM
To: office@premier.nsw.gov.au
Subject: Call for NSW to leave NDIS process

The Hon. Barry O'Farrell MP
Premier of NSW
Macquarie Street
Sydney NSW 2000

Dear Mr O'Farrell,

I write to draw your attention to an exchange between Kelly O'Dwyer MP (Member for Higgins) and Glen Stevens, the Reserve Bank Governor, during hearings of the House of Representatives Economics Committee on 22 February 2013. On page 21, Ms O'Dwyer asks:

Ms O'DWYER: I am quoting from the Australian Financial Review. It is estimated that the government's commitments that are unfunded are up to \$120 billion. Does that give you cause for concern at achieving a surplus at any point in the future?

Mr Stevens: That would be over quite a long period. I will respond to that question by saying the following. I have observed, and I think I am right in saying this, that both the present secretary of the Treasury and his predecessor, at some point publicly in the last six or nine months, have said that there are significant challenges for the country over the medium term—we are not talking about this year or next year; we are talking about over time—in funding the things that as a community we have decided to spend money on. I make no comment on the various programs and whether they are worthy or not, but if society has chosen, through the political process, to do these things—and many of them may well be very good things—I think it is the case that there are significant medium-term challenges to find the revenue to pay for all of that. I think that is true. Again, that is not saying, 'Is it a surplus this year or next year?' That is not actually a question of major importance, in all honesty. The medium-term is the important bit. The people who know seem to be saying that there are nontrivial challenges there, and I would assume that they know what they are talking about.

Given Mr Stevens' clear acknowledgement that revenue will not cover proposed new outlays, I now ask you to walk away from NSW's commitment to the National Disability Insurance Scheme (NDIS). If there is not the income to pay for it, then let us be honest about that now, rather than cruelly raise expectations.

I have also read the proposed NDIS Bill. It is truly frightening in the amount of discretion it puts in the hands of the NDIS Agency CEO and other officers. My objections are outlined in my submission to the Senate, which I attach for your information. The NDIS's top-down prescriptive nature also runs counter to NSW's stated policies in the *Living Life My Way* program. If I want to "live life my way" it is inconsistent to submit to the administrative fiat of a Canberra based bureaucrat. The current design of the NDIS also exposes it as a welfare scheme, rather than an insurance measure. Therefore, if you decide that you must persist with this significantly flawed NDIS, then I urge you to consider the recommendations I made to the Senate. Namely:

Recommendation 1: That, if participants and their families are legally obliged to provide information to the Agency, that the Agency be placed under a comparable legal duty to provide support and advice in return.

Recommendation 2: That Clause 205(2) is deleted, so that the Crown cannot escape liability for malfeasance.

Recommendation 3: That, noting the level of personal disclosure required from individuals when making an access request, the Committee question the Transition Agency at length about whether requiring such a level of detail is truly necessary; and if it would actively discourage many from making access requests. In asking this, the Committee should observe that agencies including Centrelink, the Taxation Office, a potential participant's current service providers and their medical practitioner/s would already hold such information.

Recommendation 4: That (in the interest of accountability and transparency) the NDIS Rules be drafted by the Board, in the form of Regulations, which the Minister is then required to table in Parliament.

Recommendation 5: That any agreements made between the Agency and Registered Providers be public, legally enforceable documents, which are not based on non-justiciable, unenforceable guidelines.

Recommendation 6: That each individual participant is made (in the Bill's terms) a full, legal party/partner in any agreements relating to care services received by them and, that non-justiciable, unenforceable guidelines not be used.

Recommendation 7: That the Committee consider inviting representatives of the NSW Independent Commission Against Corruption, representatives of the NSW Legislative Assembly Committee on Community Services and, Mr Andrew Baker of the Centre for Independent Studies, to appear before you.

Recommendation 8: That the Board be reconstituted and be subject to the Corporations Act 2001.

Recommendation 9: That every participant becomes a company shareholder and that the Agency be formally redesignated 'a Corporation,' with the exceptions that:

- a. Section 8 of the CAC Act continue to apply to both the Agency and Registered Providers under the Bill;
- b. A Parliamentary Joint Committee also be established to oversee the Agency's operation;
- c. The Agency be given the power to seek funding from various sources, in a similar fashion to Part VI of the Australian Broadcasting Act 1983;
- d. Where appropriate, the Agency is able to levy premiums on participants, or provide subsidies to participants on low or fixed incomes.

Recommendation 10: That competition policies and principles be applied to the Agency's operation and that the ACCC be able to inquire into the Agency's actions as the Commission sees fit. The ACCC and related regulators should work to ensure that the Agency does not become monopolistic in its operation.

Recommendation 11: That the Independent Advisory Council (IAC) be formally consulted during the Bill's review, under Clause 208.

Recommendation 12: That where family members agree, they be funded directly, to care for relatives with disabilities.

Recommendation 13: That the onus for initiating legal action be placed on the Agency, rather than the individual participant.

Recommendation 13(a): That participant plans not be made too onerous, detailed or prescriptive.

Recommendation 14: That the Committee consider allowing the Bill to lapse and having the saved funds invested in the medical research which will ultimately remove the experience of disability from the human condition.

Finally, it is my intention *not* to become a participant in the NDIS as it is currently proposed, even though (as someone with a permanent disability) I would likely be eligible. Can you assure me that the NSW State agencies will continue to provide support services to those people outside an NDIS-type scheme?

Yours faithfully,



Adam



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You can see my paper on the Social Science Research Network (SSRN)

at: <http://ssrn.com/abstract=1855924>

Libertas inaeestimabilis res est - Liberty is a thing beyond all price. (Corpus Iuris Civilis: Digesta) (Latin-English Phrase)