

Clear as mud

By Mark Blumer

With an edition focusing on clients with special needs, it's timely to examine the proposed

National Disability Insurance Scheme.

How the NDIS will affect the present system(s) of compensation for injuries is unclear, partly because the proponents of the scheme, in the report *The Way Forward: A New Disability Policy Framework for Australia*,¹ are unclear about what it should cover.

Formulations include:

1. A comprehensive NDIS delivering care and support for life to people with severe and profound disability using an individualised and lifelong approach; including reform of state-based insurance schemes for **all traumatically injured** people.² [my emphasis]
2. Who are eligible? People with **severe or profound disability... People covered by state/territory-based accident compensation schemes would continue to be covered by those; however, the interaction of these schemes would be further investigated.**³
3. The feasibility study⁴ should consider how state and territory accident insurance schemes should interact with the proposed national scheme and move to providing **nationally consistent, no-fault insurance for traumatically injured people...**⁵
4. A number of state/territory-based insurance schemes **currently cover a range of injuries (most significantly traumatic spinal cord injury and brain injury)** ... To ensure a comprehensive and equitable national approach, the various insurance schemes providing lifetime care and support for **traumatically injured Australians** should extend to become no-fault and nationally consistent.⁶

5. The insurance system **predominately covers a range of injuries, the most significant of which are traumatic spinal cord injury and brain injury.** There are wide differences in coverage and entitlement across jurisdictions and across cause of injury.⁷

6. In Australia and NZ, the best indicators of potential success of this approach are available through the funded (partially or fully) accident compensation schemes (workers' and motor accident compensation in particular).

...as part of this initiative, seek collaboration between the Commonwealth, states and territories to work towards a comprehensive and national approach to providing care and support for people who sustain **catastrophic traumatic injury.** Such an approach would encourage modification of existing statutes of workers' compensation, motor accident compensation, civil (public) liability (extended to general injury) and medical indemnity (extended to treatment injury).⁸

My concern is the imprecise and internally inconsistent language used:

Extract 1 discusses reforming state-based insurance schemes, including 'all traumatically injured' people. 'Trauma' means 'physical injury or wound',⁹ suggesting that all people injured by accident, rather than illness, would be covered by the scheme. Perhaps 'traumatically' means 'catastrophically', or 'profoundly'?

By contrast, **Extract 2** confines eligibility to 'people with a severe or profound disability', saying that 'people who are covered by state/territory-based accident compensation schemes would continue to be covered by them', with the rider that 'however, the interaction of these schemes would be further investigated'. These two statements would appear to be incompatible.

Extract 3 refers again to 'traumatically injured people', for whom there should be 'nationally consistent, no-fault insurance'. This suggests a national no-fault insurance scheme for all injured people, which is inconsistent with Extract 2.

Extract 4 again discusses 'people traumatically injured', but then implies that the discussion concerns only 'schemes that provide lifetime care and support' for those people.

Extract 5 teams 'traumatic' with 'spinal cord injury and brain injury', as does the previous extract.

Extract 6 suggests an NZ-type scheme, applying to 'people who sustain **catastrophic traumatic injury**'. So the word 'traumatic' is not synonymous for 'catastrophic', because here they are being used together!

We are determined to make sure that the Productivity Commission's inquiry is carried out in an evidence-based and intellectually rigorous way. The ALA will be making a submission to the inquiry. Any suggestions will be gratefully received at mark@blumers.com.au. ■

Notes: **1** The report was presented to the Hon Bill Shorten MP, Parliamentary Secretary for Disabilities & Children's Services in late 2009, and is available on the NDIS website. **2** Covering letter to Bill Shorten from Ian Silk, Chairperson, Disability Investment Group, pv. **3** Report, p6. **4** The report (and the issue) has been referred to the Productivity Commission for a feasibility study. **5** Report, p8 and again at p15, replacing *people* with *Australians*. **6** *Ibid*, p28. **7** *Ibid*, p56. **8** *Ibid*, p58. **9** *The Australian Pocket Oxford Dictionary*, 4th edn, p1160.

Mark Blumer is National President of the Australian Lawyers Alliance and partner at Blumers Personal Injury Lawyers in Canberra.

PHONE (02) 6208 2608

EMAIL mark@blumers.com.au