

ACTU Submission to Productivity Commission Long-Term Disability Care and Support Scheme Inquiry

16 August 2010

Background

The Australian Council of Trade Unions (ACTU) is the peak national council for unions in Australia. Australian unions represent almost two million working Australians, including workers with disabilities and workers with caring responsibilities.

Unions support policies that aim to ensure that the most vulnerable members of the community are supported to enable their participation in economic and social life. There is considerable evidence to suggest that people with disability, and their carers, do not receive adequate support.

The ACTU believes that all people with disabilities should have access to high-quality, publicly funded care and support. Workers with disabilities are entitled to decent, safe and secure work and educational opportunities. People with disabilities should be assisted to participate meaningfully in society to the maximum extent possible. Without proper care and support, people with disabilities are at heightened risk of social exclusion.

Individuals who provide care and support to family members also face increased risk of social exclusion. Many carers experience financial hardship, and have difficulty participating in paid employment, education and training.

Introduction

The existing systems of disability care and support are not working and must be reformed.

The decision of the Australian Government to refer a national disability scheme to the Productivity Commission for inquiry reflects widespread acceptance that current arrangements to support people with disability and their carers are inadequate.

The idea of a National Disability Insurance Scheme (NDIS) has garnered much community support. An NDIS could stand alongside Medicare and compulsory superannuation as a landmark social reform.

A submission quoted in *Shut Out* notes that:

National compulsory superannuation and health insurance (Medicare) are already accepted as key pillars of Australian public policy. Many of the principles underlying government decision making on superannuation and health insurance also apply to the disability area.

Medicare and superannuation help to distribute risk across lifecycles and across the population. They promote social inclusion and reduce social inequity and hardship. An NDIS could do the same for people with a disability who require care and support. The ACTU and its affiliate unions played a key role in the development of Medicare and compulsory superannuation. The ACTU supports the introduction of a National Disability Long-term Care and Support Scheme, or National Disability Insurance Scheme (NDIS).

The ACTU believes that such a scheme should:

- provide a life long entitlement to disabled person-centred support and care;
- not displace existing workers' compensation or transport accident schemes;
- raise sufficient revenue to meet the demand for services;
- deliver revenue security over time;
- ensure that disability services organisations are adequately funded to allow fair wages and conditions for workers in the sector;
- not rely on competitive tendering as a funding model for service providers;
- maintain a strong role for the public sector in the direct provision of services; and
- not introduce new barriers for people with disability who wish to work.

The ACTU has publicly advocated for the introduction of hypothecated tax levies to fund particular socially beneficial programs, and believes that such an approach may be appropriate to fund a National Disability Long-term Care and Support Scheme.

Such a scheme would be the cornerstone of the Australian disability support system, but would need to be supplemented by an adequate income support system. This was also the key finding of the Disability Investment Group (DIG), as outlined in its report *The Way Forward: A New Disability Policy Framework for Australia* (the DIG report). The ACTU does not advocate empowering the NDIS with responsibility for income support, but urges the Commission to be aware of the broader context in which the NDIS must operate.

The ACTU largely supports the recommendations contained within the DIG report, with the significant caveat that Australian unions would strongly oppose any move to displace existing workers' compensation or transport accident schemes.

Workers' compensation

The creation of an NDIS must not undermine, displace or supplant workers' entitlements to compensation and rehabilitation under existing schemes.

Effective rehabilitation and return to work programs, as well as the provision of economic security through workers' compensation arrangements, are critically important to injured workers and their families.

Workers' compensation laws were first enacted in Australia early last century. These laws altered the existing public policy position in a number of key ways namely:

- in the event of work-related injury or death a limited amount of financial assistance was provided to workers and their families on a no-fault basis; and
- the cost for work-related injuries is borne by industry.

Over many decades workers compensation laws in all Australian jurisdictions have expanded coverage to include workers in all occupations and industries, extended the scope of injuries and diseases that are compensable and have introduced the concept of vocational rehabilitation as a vital element in all schemes.

The primary aim of workers compensation schemes in the 21st century should be to rehabilitate injured and ill workers to their pre-injury health level, and that workers should return to work as soon as they are able. Maintenance of the link between the injured or ill worker and their workplace is paramount in effective rehabilitation and return to work.

Not all workplace injuries for which workers can receive workers' compensation would be of sufficient magnitude for the worker to become eligible for assistance under a NDIS. For these and other reasons, the creation of a NDIS must not undermine, displace or supplant workers' entitlements to rehabilitation and workers' compensation under existing schemes. Additionally employers or industry must not be able to avoid or shift their workers compensation obligations to other schemes or government programs.

Notwithstanding the above, it may be desirable for workers who acquire severe, permanent disability to have the ability to opt-in to the NDIS system on a purely optional, voluntary basis. There must be appropriate safeguards to ensure that workers are not coerced, induced or pressured to do so.

Revenue collection and sustainability

The existing model of disability service provision is of a safety net level of support, rather than a comprehensive and universal level of support that meets people's needs.

The National Disability Strategy Consultation Report *Shut Out: the Experience of People with Disabilities and their Families in Australia* finds that:

The chronic underfunding that has characterised the disability service sector for decades has had many consequences. The extraordinary level of unmet need has forced many people with disabilities and their families to purchase services and support privately, contributing to the high cost of living with a disability and trapping many people and their families in a desperate cycle of poverty. It has also resulted in a demand-management approach to service delivery, with greater attention paid to rationing services than meeting individual need. Resource constraints also contribute to a one-size-fits-all approach. Most importantly, the system clearly fails to ensure people with disabilities have the support they require to live as independent a life as possible, and enjoy a quality of life others in the community take for granted.

Governments can fix the quantum of revenue that is devoted to a particular purpose, as under the current system, or they can guarantee support on an entitlement basis, but they cannot do both. The entitlement to care and support under a new scheme must be strong, lest the new system merely perpetuate the undersupply of services that has characterised past arrangements. If the entitlement to care and support remains subject to non-needs based rationing then little will have been gained from reform.

In order to guarantee care and support on an entitlement basis, the NDIS must ensure the scheme collects sufficient revenue and has sufficient stability in revenue over time.

Suggestions advanced for a funding model for the proposed NDIS have included:

- funding from general revenue;
- transfers from general revenue to a 'future fund'; and
- a hypothecated levy.

Continuing to fund disability care and support from general revenue may lead to a situation in which funding is neither sufficient nor stable. Such a system would mean that funding for disability care and support would be imperilled in times of Government budgetary strain. There is a danger that funding an NDIS from general revenue would represent an incremental reform rather than the more substantial reconfiguration that is so manifestly required.

Funding care and support from a dedicated fund, with initial public transfers being invested over time to generate a self-sustaining revenue pool, has some attraction. Such a system would be less subject to the vicissitudes of the political cycle, but may come under more strain in economic downturns as the value of the fund's investments contracts.

A hypothecated tax levy may provide greater assurance of revenue adequacy and stability.

Funding service providers

The creation of a National Disability Long-term Care and Support scheme must not perpetuate the undervaluation of disability services work. The ACTU believes that competitive tendering models for the provision of services such as disability services are incompatible with fair wages and conditions.

The Productivity Commission itself recognised the inadequacy of current funding arrangements in its report into the contribution of not-for-profit organisations¹:

Governments often adopt a partial funding model for a range of services, even for contracts that are deemed to be purchase agreements. This requires NFPs to subsidise service costs from other revenue sources. A significant consequence, especially for community services, has been that wages have been squeezed to the point where many NFPs find it difficult to attract or retain professional staff, with implications for the quality of services.

In response to the inadequacies of present funding models, the ACTU Congress 2009 endorsed the following policy:

The use of competitive tendering in the provision of social and community services is inimical to the provision of the highest quality services for the most disadvantaged and marginalised in our community. Competitive tendering is based on an assumption that the lowest cost base for the delivery of services is best for government. Such models of funding do not adequately reflect an appreciation and recognition of the needs of those who use the services. Congress calls for social and community services to be funded on “cost basis” models such as those used to fund health and education.

We note that “cost basis” or activity-based funding has been further affirmed as an appropriate mechanism for health funding in the National Health and Hospital Network (NHHN) reforms². Under the NHHN system, a method of activity-based funding will form the basis of hospital funding. Local hospital networks will receive payments linked to the number and type and type of services they provide. The rate of funding for particular services will be determined by an independent umpire.

Such a model is preferable to a competitive tendering approach which encourages service providers to undermine service standards and employees’ wages. This model may prove appropriate for inclusion in the design of a National Disability Long-term Care and Support scheme.

¹ Productivity Commission 2010, Contribution of the not-for-profit sector – Research report, p. xxxii.

² See Australian Government 2010, A National Health and Hospitals Network for Australia’s Future, pp.69-70.

The disability services workforce

The ACTU believes that the development of a disability care and support scheme cannot be divorced from the development of the disability services workforce. This inquiry provides an opportunity to design a new system from the ground up and ensure that the sector is sustainable and workers receive fair remuneration. Under current arrangements, the sector is not sustainable and workers do not receive fair remuneration.

The ACTU Congress endorsed a policy stating:

“Delivery of services... requires a highly skilled, highly committed, and properly rewarded workforce. An inclusive society does not build the capacity of its citizens by exploiting the compassion of those who provide services and care to those who are vulnerable and at risk”.

The disability services sector, and the broader social and community services sector of which it is a part, has been chronically undervalued. The Productivity Commission, in its 2010 report into the contribution of the not-for-profit sector, found that:

in some human service sectors, such as disability, mental health, and aged care NFPs make up a high share of providers. Wages in these sectors have tended to remain relatively low, despite a significant increase in the qualifications required of workers. This could be a result of a low wage history, the predominantly female and part-time labour force, and the heavy reliance on public funding of services in these sectors. For NFPs in these sectors, gaps between the wages they can offer compared to similar positions in government, makes retaining workers more difficult. The problems of workforce retention are compounded by uncertainty associated with short-term contracts.”³

³ Productivity Commission 2010, Contribution of the not-for-profit sector – Research report, p. xxxii.

Arising from this and other findings, the Commission recommended that:

“In order to ensure that not-for-profits can sustain their workforces, and as wages are a major factor in the successful recruitment and retention of staff, Australian governments purchasing community services need to base funding on relevant market wages for equivalent positions. Costings need to take into account the skill sets required to perform the purchased services and be indexed appropriately to market wage growth within that industry sector.”

The Commission should be cognisant of the above recommendation when it makes recommendations for a new disability care and support scheme.

There should be no gap in pay between workers in the not-for-profit or Government-funded sector and those doing work of comparable value in the public sector. The design of the NDIS, including the chosen mode of revenue collection and the recommended service funding model, must not be founded on the perpetuation of low pay in the disability services sector.

The ACTU has advocated measures that will improve the ability for social and community services organisations, including those that provide disability services, to attract and retain skilled staff. These measures include:

- Adequate funding to ensure that workers receive appropriate remuneration, at a minimum equal to work of comparable value performed in other sectors;
- The development of a portable long service leave scheme to enable mobility within the sector;
- Career paths that recognise skills and experience, and allow mobility through the industry;
- Lengthened funding rounds in order to increase revenue stability for organisations and deliver concomitant stability for workers.

The ACTU also supports, and is participating in, a significant equal remuneration case that would cover disability services workers in the non-Government social and community services sector⁴. As part of this case, the Australian Services Union, Health Services Union of Australia, Australian Education Union and Liquor, Hospitality and Miscellaneous Union are seeking an equal remuneration order from Fair Work Australia to improve the pay rates to which workers in the sector are legally entitled.

If successful, this case will significantly improve wages in the non-Government disability services workforce. However, the long term sustainability of the sector would still be imperilled if a NDIS was implemented without appropriate consideration being given to the needs of the sector's workforce to have the ability to access fair and reasonable remuneration and conditions.

Individualised approaches

The inquiry's terms of reference direct the Commission to consider a scheme that "includes individualised approaches" to the deliver of disability care and support. The principle of person-centred care must not be the vehicle for undermining service standards. Aged care and the Job Network provide cautionary tales of areas in which outsourcing of public services under an individualised funding model has led to intensive competition among service providers for an inadequate stream of income.

Such a situation undermines service standards, wages in the sector, or both. The ACTU calls on the Commission to recognise that any funding model it proposes will be inherently monopsonistic; the funding body has a significant degree of control over the price of service delivery. An individualised funding model may approximate certain characteristics of a competitive market, but it is characterised by a fundamental inequality between market participants.

The ACTU therefore expresses its concern and caution regarding any recommendations that seek to implement an individualised funding model for the provision of disability services. Any such design feature of a NDIS must be accompanied by measures that ensure that competition will not erode fair wages or service standards in disability services.

⁴ Further information is available at: <http://www.fwa.gov.au/index.cfm?pagename=remuneration&page=introduction>