



Disability Care and Support – Productivity Commission Issues Paper

Further Submission by Insurance Council of Australia

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INTRODUCTION

The Insurance Council of Australia is pleased to contribute further to the Productivity Commission's Inquiry into Disability Care and Support (Inquiry) to examine the feasibility, costs and benefits of replacing the current system of disability services with a new national disability care and support scheme.

Following our earlier submission on 12 August 2010 which highlighted issues concerning governance and scheme design we would now like to provide you with an analysis of our experience with commercial forms of insurance following our discussion with you at our meeting in April.

The insurance industry is currently involved (to different degrees depending on the individual scheme) in the collection of funds in relation to catastrophic injuries. While not covering all injuries, we believe that current accident compensation arrangements provide a significant level of funding to cover the costs of care for those who have been seriously injured. Further, we consider that these arrangements can be extended to widen the current level of insurance coverage within a proposed National Disability Care and Support Scheme (NDCS Scheme).

Our submission will encompass the following areas:

- A discussion of the principles and benefits of commercial insurance.
- An analysis of the limitations of a commercial insurance model for the entirety of a NDCS Scheme.
- A review of various models in which the principles of commercial insurance could be applied to particular segments of a NDCS Scheme.

A. COMMERCIAL INSURANCE

The concept of insurance is that people in a large community pay a small price (the premium) to form a pool of money from which amounts are paid to alleviate the burden of misfortune that falls upon a few (the loss). Individuals that would suffer a loss (financial or otherwise) from a prescribed event have an "insurable interest" to the extent of that loss.

Premiums in any scheme of insurance can be paid before the misfortune insured against arises (fully funded), or raised as levies to recover the cost of the loss as the expenditure arises (pay-as-you-go, or PAYG).

1. Definition of Commercial Insurance and Social Insurance

Commercial insurance exists for individuals that have an insurable interest and is usually offered by private insurers. It also allows the exercise of some choice in relation to offsetting, or hedging, the corresponding risk of loss. This choice could be in relation to whether or not to hedge the risk at all, or the choice of hedge. An example of hedging is the use of excesses to reduce the premium charged. By accepting the excess, the policyholder agrees to accept the first part of any loss incurred.

Commercial insurance operates on a fully-funded basis. This is enforced by the capital requirements imposed by the Federal Regulator, the Australian Prudential Regulation Authority (APRA).

Commercial insurance arrangements are well established on a global basis and are used today to cover risks from the very small to the very large, and all types of risks in between. Virtually every type of risk globally is to some degree covered under commercial insurance arrangements.

The Insurance Council submits that an examination of the principles and practices of commercial insurance which underpin the schemes in which our members operate would be of assistance to the Inquiry. Commercial insurance arrangements are already used for some of the risks that may be covered under any NDCS Scheme, such as catastrophic injuries arising from motor vehicle accidents, public liability, workplace accidents and medical incidents.

Some aspects of commercial insurance management and practice are also seen in the not for profit sector, specifically in some health insurers. Commercial insurance practices therefore can encompass both not for profit organisations as well as profit seeking ones.

The Insurance Council also submits that the insurance industry has developed sophisticated systems for integrating and monitoring the financial cash flows in fully-funded insurance, including the necessary commercial disciplines related to maintaining adequate reserves. The collection of premiums in advance and solvency requirements together contribute to this.

Social insurance schemes are usually government transfer programs whereby individuals who claim a condition or state that reduces their income, such as disability or unemployment, obtain a payment from the government for the duration of their loss. Social insurance has also been defined as a program where risks are transferred to and pooled by an organisation, often governmental, that is legally required to provide certain benefits to various members of its community.¹

The Insurance Council submits that social insurance usually has the following three characteristics:

1. the benefits, eligibility requirements and other aspects of the program are defined by statute;
2. it is funded by taxes or premiums paid by (or on behalf of) participants (although additional sources of funding may be provided as well); and
3. the program serves a defined population, and participation is either compulsory or the program is heavily enough subsidized that most eligible individuals choose to participate.²

Examples of social insurance schemes include Medicare where benefits are available to the entire community when the premiums for certain risks are likely to be prohibitively high for some segments of the population who are volume users of medical treatment. We believe that social insurance frameworks can also be described as social assurance where there is greater emphasis on the adequacy of benefits for all eligible participants. It is our

¹ Albanesi, Stefania. (2005) Social Insurance - Prepared for The New Palgrave Dictionary of Economics and Law, Columbia University, pp1-2 <http://www.columbia.edu/~sa2310/Papers/palgrave.pdf>

² Actuarial Standards Board *Actuarial Standard of Practice No. 32*, January 1998, developed by the Committee on Social Insurance of the American Academy of Actuaries, p1.

understanding that many of these frameworks are funded on a PAYG basis. This can, we believe, result on occasion in funding shortfalls which may require calls on the public purse.

Health insurers generally are an example of organizations applying sound commercial management to the provision of health care, allowing people to determine their level of cover, and therefore premiums, above and beyond the universal safety net provided by the Medicare social insurance system. This principal is something that can be applied when considering the structure and opportunities provided by possible models of a NDCS Scheme.

2. Comparison of Commercial Insurance and Social Insurance

Similarities of social insurance with commercial insurance include:

- Wide pooling of risks;
- Specific definitions of the benefits provided;
- Specific definitions of eligibility rules and the amount of coverage provided;
- Specific premium, contribution or tax rates required to meet the expected costs of the system.

Differences between social insurance and commercial insurance include:

- **Equity versus Adequacy:** Commercial insurance programs are generally designed with greater emphasis on equity between individual purchasers of coverage where higher risks results in higher premium costs. On the other hand social insurance programs generally place a greater emphasis on the social adequacy of benefits for all participants.
- **Voluntary versus Mandatory Participation:** Participation in commercial insurance programs is often voluntary, and where the purchase of insurance is mandatory, individuals usually have a choice of insurers. Participation in social insurance programs is generally mandatory, and where participation is voluntary, the cost is sufficiently subsidized to ensure essentially universal participation.
- **Contractual versus Statutory Rights:** The right to benefits in a commercial insurance program is contractual, based on an insurance contract. The insurer generally does not have a unilateral right to change or terminate coverage before the end of the contract period unless it is specifically stated in the contract itself. Social insurance programs are not generally based on a contract, but rather on a statute, and the right to benefits is thus statutory rather than contractual. The provisions of this type of program however, can be changed if the statute is modified by government.³
- **Funding:** Individually purchased commercial insurance generally must be fully funded. Social insurance programs are often not fully funded, and some argue that full funding is not economically desirable.⁴

³ Margaret E. Lynch, Editor, *Health Insurance Terminology*, Health Insurance Association of America, 1992

⁴ Pricewaterhouse Coopers *Disability Investment Group – National Disability Insurance Scheme – Final Report*, p7.

3. Principles of Commercial Insurance

Commercial insurance requires specific criteria to be met in order to operate. In determining whether or not a risk is insurable, insurers take into consideration the following factors:

- 1. Whether the incident of loss is random or expected.** Losses that can reasonably predicted to occur for an individual, such as known hereditary disorders, are not generally insurable due to the unaffordable nature of the premium. Losses that are extremely rare may be insurable, however there is a requirement to hold significant capital reserves to meet them. The incidence of loss between individuals must also be independent of each other, that is, an injury for one individual is random but not if it affects many individuals at once; the difficulties associated with insuring floods, earthquakes and pandemics are examples of losses that do not satisfy the independence criteria.
- 2. Whether the maximum possible loss can be quantified.** The setting of a fully funded premium requires the likely level of payments, including the maximum possible payment, can be established prior to the collection of premium.
- 3. Whether the average loss is stable from year to year.** Premium setting and loss ratios affect profitability, and therefore predictable claims costs enhance the likelihood of the losses being insurable.
- 4. What is the frequency of the occurrences of the loss.** Losses that occur infrequently are more difficult to actuarially price. Alternatively, losses that occur too frequently may lead to unaffordable premiums.
- 5. Whether the premium is affordable to consumers.** Insurance relies upon many participants rather than a few. If the premiums are unaffordable, then there will be too few participants to generate the required pool to cover the losses incurred.
- 6. Is there opportunity to limit moral hazards.** The risk insured must be capable of being defined so that certain types of behaviour, involving manipulation or outright fraudulent activities, are discouraged and will accordingly be excluded from coverage under the policy.
- 7. What are the requirements of public policy.** Public policy excludes or limits certain activities from being covered by insurance, such as injuries occurring under the influence of alcohol while driving. Stability of public policy over time is also required, as this enables insurers to set a reasonable premium with confidence. Public policy can also vary over time as it responds to voter attitudes; if public policy were to effectively broaden the benefits payable, then insurers may find that the premium collected to assume the risk was retrospectively inadequate.
- 8. What are the relevant legal restrictions.** Insurance must operate within the legislative framework as this provides both consumers and insurers with surety of the benefits payable over time.
- 9. Whether the coverage limits can be set.** This refers not only to the policy limit the insurer agrees to provide to the policy holder, but also how the policy operates within different parameters, such as differing national and international jurisdictions, existing social insurance, and the interplay of different schemes and products of insurance.

If insurers can quantify and or assess each of these 9 factors, then the risk is said to be insurable. If one or more of these factors is not able to be quantified or assessed, then the risk may become more difficult to insure. If more of the factors become unquantifiable or unable to be assessed, the risk becomes less and less insurable and may result in the risk becoming uninsurable. In some circumstances, certain combinations of the 9 factors may render the situation uninsurable, particularly where there is a high frequency of large losses such as a pandemic influenza.⁵

The table below indicates how some of the most common types of insurance meet the 9 insurance factors.

Table: Comparison of Insurance Schemes with 9 Insurance Factors

Insurance Criteria	Potential NDCS Scheme	CTP Insurance	Workers Compensation	Public Liability
1. Whether the incident of loss is random or systematic	Random for injuries but may not be random for hereditary disorders	Random	Random	Random
2. Whether the maximum possible loss can be quantified	Insufficient actuarial data exists at this time to allow reasonable estimations	Although the maximum loss can not be quantified, the legal environment is well understood and allows insurers to reasonably estimate the maximum probable losses.	Although the maximum loss can not be quantified, the legal environment is well understood and allows insurers to reasonably estimate the maximum probable losses.	Although the maximum loss can not be quantified, the legal environment is well understood and allows insurers to reasonably estimate the maximum probable losses.
3. Whether the average loss is stable from year to year	Unsure, will depend upon scheme design	Yes - For even small proportions of the total exposure	Yes - For even small proportions of the total exposure	Yes - For modest proportions of the total exposure
4. The average period of time between loss occurrences	Unsure, will depend upon scheme design	There are only a small proportion of catastrophic losses relative to the number of participants	There are only a small proportion of catastrophic losses relative to the number of participants	Short
5. Whether the premium is affordable to consumers	Not for some classes of individuals, eg pre-existing medical conditions.	Yes, with at least some community rating	Yes, with industry rating	Yes

⁵ Baruch Berliner *Limits of Insurability of Risks*, Prentice-Hall Inc 1982

Insurance Criteria	Potential NDCS Scheme	CTP Insurance	Workers Compensation	Public Liability
6. Does the scheme provide opportunity for moral hazards	No, excluding fraud	Yes, for no-fault, or first party design	No, excluding fraud	No, excluding fraud
7. Public policy excludes certain activities from being covered by insurance	Unsure, will depend upon scheme design	Yes - Eg motor racing, off-road, no-fault	No except for certain circumstances involving serious and wilful misconduct	No
8. Legal restrictions	Unsure, will depend upon scheme design	Yes	Yes	Yes
9. Coverage limits	Unsure, will depend upon scheme design	Generally no, although some specific to particular cases Eg earnings cap, NEL, overall access if at-fault	No	Self-imposed Insurance cover limits

Other insurance schemes such as medical indemnity insurance do not lend themselves as easily to this type of analysis as its funding sources come from a range of avenues, including the Government through particular schemes in place to pay for high cost claims, Medicare payments to health practitioners, private health insurance and from patients directly. In our members' experience medical malpractice incidents which lead to severe disability are of relatively very low frequency.

At this stage there is a considerable amount of uncertainty surrounding the details of the proposed NDCS Scheme. The Insurance Council has prepared the comparison above to assist the Productivity Commission when considering the scope of scheme design which we believe is of significant importance to its successful implementation.

4. Benefits of a Commercial Insurance Model

The Insurance Council submits that commercial insurance offers distinct benefits that are either unique to these arrangements or easier to achieve under a commercial insurance framework. Further, we believe that the wider community will benefit from both the competitive nature and the risk-rating⁶ principles of commercial insurance.

We submit that the principles of commercial insurance also offer clear benefits in the cost effective management of not only schemes themselves, but also in relation to health outcomes such as the provision of care and support. We believe that some of these are most effective under commercial insurance arrangements.

A benefit of commercial insurance is the transfer of risk, which we believe provides benefits such as:

- The need to provide capital to cover liabilities is transferred from the common purse to private enterprise.
- Governments can rely on insurers to comply with the regulation of a fully funded scheme.
- Governments are not required to assume the liabilities for the future costs of participants.
- Insurers have a significant incentive to find opportunities for cost reduction by optimising health outcomes, such as measures to ensure early intervention and provider management of care and support regimes.

The Insurance Council submits that commercial insurance arrangements can also facilitate behaviour change in particular schemes which will assist in reducing scheme wide costs.

We submit that the advantages of commercial insurance arrangements include:

- The ability to risk rate premium, with the potential to modify behaviour to reduce the risk, guard against moral hazard, and put steps in place to control fraud.
- The identification of emerging risks early and the application of early strategic risk minimisation programs to counter the particular issue. We submit that the social insurance model may not have the flexibility or the same incentive (as social insurance can continue to operate when the scheme is in deficit) to respond in the same manner.
- The ability to ensure a fully funded model to cover future liabilities.

At the heart of commercial insurance, we submit, is a pricing discipline based on an understanding of what drives claim costs and ensuring these are fully funded. This includes risk based pricing, namely that better risks pay lower prices and poorer risks pay higher prices. Pricing therefore provides a direct financial incentive for individuals and entities to reduce their risk profile and reduce their cost of insurance.

⁶Risk rating: The premium charged for insurance is related to the expected claims cost.

Examples of how this works in practice include:

- Businesses investing in OHS programs to reduce workplace injuries and ultimately lower their workers' compensation costs.
- Motor vehicle owners reducing risky driving behaviour so as to protect their 'no claim bonus'.

5. Commercial Insurance and Active Case Management

The Insurance Council submits that commercial insurance arrangements also foster the management of complex financial drivers of various lines of insurance, particularly those involving injury to persons. We understand that some of these factors may have different applications when dealing with catastrophic disabilities. However we believe that an examination of the principles of case management utilised by our members can be of benefit on a broader scale.

Commercial insurance by its very nature focuses on "total cost" over the life of the claim and not just individual cost elements. As such it promotes the use of measures which aid the recovery of injured persons to reduce those costs.

However, as insurers do not provide care and support services, they are independent of any particular care and support or service regime and are not rewarded on the basis of arranging particular service. They can therefore effectively focus on a total cost management approach which maximises health benefits for injured persons.

To best manage total costs and achieve optimal health outcomes, insurers utilise various strategies including:

- Early medical and rehabilitation intervention.
- Management of external service providers.
- Continually scanning the medical and allied health environment for the latest evidence based programs.

Early Intervention

The Insurance Council submits that enshrining the principles of early intervention into the design of a compensation scheme can ensure that appropriate care and other relevant services are provided to the injured person when they will receive the most benefit. Our members also believe that the receipt of appropriate case management at an early stage is likely to aid the functional capacity of the injured person and lead to an overall reduction in scheme costs.

The Insurance Council submits that early intervention is recognised as a key predictor of better rehabilitation outcomes. There have been many studies and reports which confirm this, some of which are referred to in the Issues Paper.⁷ We would also like to draw your attention to a recent study reported in the Lippincott Williams & Wilkins Journal. The study *Early Intervention for the Management of Acute Low Back Pain: A Single-Blind Randomized Controlled Trial of Biopsychosocial Education, Manual Therapy, and Exercise* concluded that:

⁷ Disability Care and Support – Productivity Commission Issues Paper, p 18

At short-term, intervention is more effective than advice on staying active, leading to more rapid improvement in function, mood, quality of life, and general health. The timing of intervention affects the development of psychosocial features. If treatment is provided later, the same psychosocial benefits are not achieved. Therefore, an assess/advise/treat model of care seems to offer better outcomes than an assess/advise/wait model of care.⁸

In facilitating and achieving sustainable return to health and work outcomes, insurers believe that early intervention and the active management of rehabilitation and other providers go hand in hand.

Our members would like to provide the Productivity Commission with an example of their experience of early intervention within the workers compensation scheme in Tasmania:

The scheme in Tasmania is a privately underwritten insurance scheme regulated by WorkCover Tasmania. Since 2004 the Insurance industry has been working with WorkCover Tasmania as a key stakeholder to develop a model to promote and support the effective injury management of workers. The industry has supported the process which formalised their existing internal injury management procedures into a cohesive model. This support resulted in the successful introduction of the Tasmanian WorkCover Return to Work and Injury Management Model (RTWIMM).

Case Study 1: An animal trainer injured her hand during course of her employment. The claim involved extensive surgical treatment and specialist physiotherapy.

The insurer applied the RTWIMM to institute injury management and return to work programs. The insurer was then able to coordinate appropriate medical treatment until the injured person was sufficiently recovered to commence her return to work. Following this program the injured person completely recovered from her injuries and has returned to her pre-injury duties.

The injury management and return to work programs enabled the insurer to maintain consistent and regular contact with the injured person. The insurer's active participation in this process helped the injured person maintain a positive outlook and contributed to success of the RTWIMM.

Effective Provider Management

The Insurance Council submits that the experience of insurers as external provider managers has been an integral factor in the successful implementation of various rehabilitation programs. Insurers have developed strong protocols to ensure that the services provided is both appropriate for the individual claim and that the cost of each service is appropriate.

Our members consider that effective provider management in fact commences even before the worker suffers an injury. Building strong working relationships enables the insurer to leverage from the experience of an external and independent party to assist in the return to health process in particular claims. The implementation of service level agreements ensures that they are able to monitor progress and minimise costs through outcome based fee structures. The experience of our members indicates that this is more effective than a

⁸ Lippincott Williams & Wilkins Journal, 1 November 2004 - Volume 29 - Issue 21 - pp 2350-2356. Extract available at http://journals.lww.com/spinejournal/Abstract/2004/11010/Early_Intervention_for_the_Management_of_Acute_Low.3.aspx

purely process driven fee structure. This outcome based approach also facilitates the use of incentive payments such as higher fees for optimal health outcomes.

Insurers manage the performance of multiple outsourced providers on a regular basis. This is demonstrated through several methods such as;

- A preferred provider panel that specialises in specific areas of expertise and ensures full coverage across rural and regional areas of the jurisdiction. Our members consider that this panel also encourages competition between providers to maximise optimal health outcomes and reductions in overall rehabilitation costs.
- Agreed standards of service including monthly reporting on costs and outcomes, customer service expectations and delivery timeframes.
- Regular meetings to discuss expectations
- Ongoing review of correspondence received, including; progress reports, plans for further care and costs.

The utilisation of this process allows insurers to work closely with various external providers to pilot programs that are tailored towards the rehabilitation of particular types of claims. Such tailored services can address specific needs of particular sections of injured persons and set costs to maximise scheme wide results.

Our members believe that the outsourcing of service providers has been a key method in case management, improving the overall claim outcomes on the basis that it:

- Provides an independent opinion on the ongoing injury management strategies.
- Allows face to face contact by providers with the injured person, providing greater control and transparency on the day to day claims issues.
- Provides a mechanism for the communication of the needs of the injured person in the context of the requirement that care and support must be reasonable and necessary.
- Provides valuable intervention and recommendations to improve claim outcomes.
- Provides a positive influence on the injured person's behaviour. Conflicts are often more easily resolved when such stakeholders are engaged as they are in person which creates a different level of contact and perspective.
- Provides an array of expertise and knowledge in specific injury fields. Specialised carers can be engaged with particular expertise in brain and spinal cord injuries.

Our members wish to provide the Productivity Commission with a practical example of their experience with external provider management in the managed fund context of the New South Wales Workers Compensation Scheme, where many of its operations, including the use of insurers as scheme agents, follow the principles of commercial insurance.

The service delivery model requires a designated rehabilitation consultant, who is responsible and accountable for coordinating the services, that brings about this outcome in the most cost effective way. This model necessitates effective communication between

all parties, so that decision making is an informed process resulting in the best outcome both for the injured worker and in regards to financial accountability.

Case Study 2: A man who worked as a back-hoe operator suffered significant injuries including brain injury and multiple fractures when he was operating the machinery during the course of his employment.

The injured worker had remained totally unfit for five months after his injury was sustained, including a long period in hospital. He was referred to a rehabilitation provider by the insurer's case manager while still in hospital on the basis of well established communication protocols between the insurer and the external provider in addition to the provider's demonstrated expertise, knowledge and experience to deal with the particular case.

The rehabilitation company chosen for this case were known to the insurer's case manager from previous claims. The case manager made initial contact with the provider prior to the formal referral and set the insurer's expectation of the management and the outcomes required. This management continued throughout the life of the claim.

The rehabilitation company developed a return to work plan whereby the injured worker initially worked 3 - 4 hours, three days a week. This also allowed the injured worker time to attend his treatment, walking and swimming regimes, which were required for the management of his multiple soft tissue injuries.

The insurer anticipated the psychological advantage which returning to the workplace gave the injured worker to boost his outlook and mood. As a result the worker actively participated in the program which led to upgraded work hours.

Our members believe that the development of a rapport between the insurers and the providers are essential for the ongoing case management of injuries.

Use of Evidenced Based Medicine

Our members continually review international best practice in medicine to ensure that their case management results in improved health outcomes for injured persons. Keeping abreast of innovation in medical and other techniques, which includes the systematic review of medical literature, clinical testing and risk/benefit analysis enables insurers to provide the most effective care and support while maintaining control over claims costs.

This process can result in the development of treatment protocols for particular injuries. An example of this is in the CTP scheme in NSW is the protocols put in place for Whiplash Associated Disorder.⁹

Our members have experienced the following benefits through the use of evidenced based protocols. We submit that these are also likely to be of assistance in the case management of a range of disabilities under a NDCS Scheme as follows:

- Consistency of care and support services relevant to the type of injury suffered.
- Consistency of claims costs.

⁹ See Motor Accidents Authority Annual Report 2008-2009, page 18 for details of the expanded use of the MAA's 2007 whiplash guidelines.

- Benchmarking of progress and review of the management of claims
- Consistent approach & expectations by all parties
- Likely reduction in friction costs.

B. COMMERCIAL INSURANCE AND THE NDCS SCHEME

The Insurance Council understands that the proposed NDCS Scheme may be required to cover a wide range of disabilities. The final report prepared by Pricewaterhouse Coopers for the Disability Investment Group (DIG) refers to six different classes of condition which may give rise to disability needs which would be met by a NDCS Scheme:

1. Congenital anomalies and intellectual disability
2. Nervous system disorders
3. Injury
4. Mental health
5. Sensory conditions
6. Other physical conditions¹⁰

These classes may require different levels of care and support depending on the scope of the proposed NDCS Scheme. In addition there may be many sources of current and proposed funding for these conditions.¹¹

Existing accident compensation systems cover care and support for some injury victims, but not all victims are covered. The extent to which victims are covered will vary widely between states based on arbitrary factors, including:

- The State in which the accident occurred.
- Whether or not it is possible to establish that the accident occurred through the “fault” of some other party.
- The nature of the accident itself – i.e. workplace accident, motor accident, medical malpractice, accident on commercial or domestic premises, etc.

The Insurance Council submits that there are likely to be significant challenges in applying commercial insurance arrangements across the whole of the NDCS Scheme. Section A above discusses the nine specific factors which are required for commercial insurance.

While injury related disabilities are likely to fulfil most if not all the nine conditions for insurance, we anticipate that only a portion of non-accident related disabilities are likely to be commercially insurable. These disabilities may be more amenable to a social insurance program.

The extent to which portions of the new scheme may be insurable or uninsurable will largely depend upon the design of the scheme. However disabilities caused by congenital disorders are unlikely to be insurable, due to their occurrence being expected rather than random. This type of disability accordingly does meet the first criteria of commercial insurance.

¹⁰ Pricewaterhouse Coopers *Disability Investment Group – National Disability Insurance Scheme – Final Report*, p5.

¹¹ *Op cit*, Table 70, p 146

As there has not been such a broadly based disability care scheme operating within Australia, there is a lack of robust actuarial data in regards to the costs of care. There is also a lack of data concerning the prevalence of the various disabilities potentially covered by the scheme. This lack of actuarial data is likely to prevent insurers from seeking to insure the entire scheme. The actual proportion of the scheme that may be insurable could only be determined once the parameters of the scheme have been firmed up and a full assessment of the actuarial data available had been completed in accordance with the second criteria.

To the extent that various components of the scheme may currently be uninsurable, regulations may be enacted that overcome some of the difficulties and return the scheme to insurability.

1. Suggested Regulatory Approaches

Our members believe that the scope of the commercially underwritten components of the current injury schemes could be significantly enhanced to apply to a NDCS Scheme through the introduction of appropriate regulatory measures which would promote price stability. Such measures may include:

- Access to data to scope the number of persons in any particular class
- Clear eligibility criteria to this class of persons and clear industry minimum standards
- Regulatory measures to ensure timely and cost effective dispute resolution.
- Regulatory measures to ensure that all insurers participating within the scheme have equal access to claims data and reporting.
- The establishment of premium collection procedures and the regulations governing the limits of risk based pricing.

Aspects of these regulatory measures can be seen in each of the privately underwritten injury schemes within Australia.

Another regulatory approach would be to follow the model of the Australian Reinsurance Pool Corporation, whereby insurers would underwrite a significant portion of eligible disabilities and the Government could provide reinsurance protection to reduce the capital requirements of each insurer.

There may also be scope for current CTP and workers compensation schemes within each state to be transitioned entirely into commercial insurance arrangements, thus further reducing each State Governments exposure to the possibility of potentially underfunded schemes. If this were to occur it would also address “boundary issues” between the NDCS Scheme and existing accident compensation systems which could potentially create inconsistency.

A more global response would be to harmonise the existing schemes by creating new national systems, especially for workers compensation and motor accidents. The Insurance Council submits that existing private insurers would be well placed to manage and underwrite such schemes, with national coverage of premises, staff and the management of systems and networks of specialist providers.

The Insurance Council submits that the NDCS Scheme as a whole would benefit from the principles of provider management discussed above.

C. POTENTIAL SCHEME MODELS

The Insurance Council submits that no single model is likely to be appropriate for such a large and complex scheme. We therefore recommend a consideration of a model with “carve-outs” for different segments within the scheme. When considering specific model options for the scheme we believe that wherever possible, existing schemes should be utilised either in whole or in part.

We would like to provide specific recommendations regarding what we consider to be viable scheme carve-outs and the basis for the structure under which each of these carve-outs could operate.

1. Commercial Insurance Carve Out

We submit that the first carve-out deals with applying commercial insurance to parts of the scheme where this is viable. This could include for example catastrophic injuries in the scheme where commercial insurance already plays a significant role, such as in various CTP and workers’ compensation within Australia.

There are also other segments within the potential scheme as identified in Section B above where a commercial insurance model could also apply. While there are no current insurance products for these types of risk categories, member insurers would appreciate the opportunity to explore the potential to underwrite these or other types of risk profiles.

By allowing commercial insurers to underwrite insurable segments within the NDCS Scheme, the overall scheme costs may be reduced and the behaviours of corporations and individuals may become less risky if the results of risk behaviours were costed, with the opportunity to reduce premiums for changed behaviours.

We anticipate that the extent of our members’ interest in these additional components would depend significantly on the model under which the scheme would operate. Factors which such a model may include are discussed in more detail below.

Commercial Insurance Model

We recommend that the Productivity Commission consider an insurance model which is based on the same principles in use today for other classes of commercial insurance. This would include (but is not limited to) the following:

- Underwriting the risk with regard to the risk profile based on the exposure of loss caused by the individual/entity’s participation, quantified by statistical ‘expectation’.
- Grouping certain risk profiles within in a class to permit targeted strategies to modify risk behaviour
- Premium collection undertaken by the insurers directly
- A regulatory regime allowing insurers common access to claims data and actuarial analysis as well as basic requirements to the setting of premiums.
- In respect of accident related injuries, price setting mechanisms similar to those states which currently have privately underwritten CTP and/or workers’

compensation. In the CTP schemes, for example, the price is related to characteristics of the vehicle's shape and usage as may also depend upon other risk factors.

Commercial Insurance Case Management Model

Inclusive within the insurance model is targeted case management. Case management would be provided by insurers directly, as is the case in other classes of commercially underwritten business. This option is based on commercial underwriting for a specific class of persons to achieve certain specified outcomes whilst adhering to appropriate care requirements, thus creating a unique premium setting model. In this model Insurers have an incentive to manage each claim in a manner that maximises health outcomes to reduce costs. This incentive to reduce costs ultimately leads to a reduction in overall scheme costs.

As the insurers would be bearing the direct underwriting risk for this carve-out, it would be a requirement that they also have direct control of case management. Further, the Insurance Council submits that efficient case management is a key skill of insurers and that its members implement leading practices in terms of both efficiency and effectiveness as discussed in Section A.3 above.

There may well be opportunities to commercially insure specific outcome based models (as opposed to a traditional risk rating based models) and member insurers would like to explore opportunities to expand upon these models along with the specific models offered below.

In order to further consider the opportunity for commercial insurance of portions of the scheme, our members would require further clarification surrounding the extent of benefits proposed to be provided to scheme participants and the criteria used for inclusion in the scheme. Our members look forward to working closely with the Productivity Commission to establish a more detailed model.

2. Employment Focused Carve Out

A second area we recommend for carve-out is the segment of the disabled population with a capacity for employment. Specifically, we believe that as more disabled people are employed there would be a direct benefit in a reduced need for care and support costs for this group. As the current unemployment rate for disabled people is significant, the potential savings from employing more disabled people are likely to be substantial.

This issue was highlighted by DIG in *The Way Forward – A New Disability Policy Framework for Australia* (DIG Report) where it was reported that:

The OECD ranked Australia:

- *13th out of 19 countries on the employment rate for all people with disability; and*
- *lowest of 16 countries on the percentage of people receiving disability related benefit while they were also employed (only 11% of people receiving these benefits were in employment in Australia).*

The report also noted that only 15% of people with a profound level of disability participated in the workforce, and a higher unemployment rate overall of 14%.¹²

For this segment we are proposing a social insurance model that utilises the principles of commercial insurance. In this case we propose using a financial mechanism to give employers incentives to employ disabled people as a mechanism to reduce reliance on the public purse for payment of care and support costs.

Employment Focused Insurance Model

The underlying insurance model proposed would be based on a social insurance framework in that there would not be risk based pricing for participants.

As this carve out would apply only to disabled people with employment prospects, the first requirement will be to identify this group of people within the scheme. The final report prepared by Pricewaterhouse Coopers for the DIG Group refers to 316,000 Grade C disabled people who require lower levels of support.¹³ There may be other groups which could be considered including those suffering from disability as a result of mental health or cancer. It is likely that this is the class highest potential for employment. The scheme would need to determine the extent of the liabilities for this group separate from other segments of the scheme.

Existing workers compensation schemes could then be used to fund this class of disabled people, for example, through a percentage based levy on workers' compensation premiums to cover the cost of disability care and support. This can apply in both underwritten and managed fund schemes (plus self insurance schemes as well).

To provide incentives to encourage behaviour change amongst employers, the model proposes the ability for employers to reduce or eliminate this levy by employing disabled people. We picture this as some type of premium "rebate" based on the number of disabled people an employer has on staff. The intention is that an employer can reduce (or perhaps even fully eliminate) this levy by employing people with disabilities. The size of this rebate would need to be determined and evaluated against benefits currently available in Commonwealth schemes¹⁴ with a more detailed assessment of the expected "savings" to the scheme from higher levels of employment amongst disabled people.

Employment Focused Case management Model

As the underlying insurance model is that of social insurance, it will be necessary to put in place the mechanism for active case management through other means. We submit that the case management model currently used by Workers Compensation Managed Fund schemes in Australia provides an ideal framework. The core model of these schemes is that "agents" of the scheme are contracted for active case management. These agents do not have a direct financial incentive in the scheme itself, but instead are remunerated based on their ability to meet or exceed scheme outcome targets. This model has been successfully applied across a number of existing schemes (as discussed in A.3 above) and could also be applied to the NDCS Scheme.

Requirements for success

- For the insurance model
 - People in this group will have a measurable work capacity

¹² Disability Investment Group, *The Way Forward – A New Disability Policy Framework for Australia*, p44

¹³ Pricewaterhouse Coopers *Disability Investment Group – National Disability Insurance Scheme – Final Report*, p6.

¹⁴ Under the current Disability Employment Services provided by Centrelink. Full details are available at http://www.centrelink.gov.au/internet/internet.nsf/services/disability_emp_services.htm

- Programs will need to be developed to help train/skill this group
 - Incentives to employers must be meaningful
 - Programs must be collaborative in approach to ensure meaningful sustained positive outcomes
- Consider whether to only apply levy to larger employers with better capacity to employ disabled people
- For contracted case management agents
 - Scheme outcome targets must be agreed and well articulated and agents' key performance indicators must be agreed, clear and transparent.
 - Service delivery must be standardised to best practice and subject to national codes of practice.
 - Incentives should be available for agents who exceed scheme outcomes or enhance the scheme's viability through innovation.
 - Fixed period for 'fee for service' contract to ensure scheme viability and active, positive competition between agents.

3. The balance of the Scheme

We submit that social insurance is more applicable to those segments where there is unlikely to be any potential for behaviour modification. Congenital abnormalities are good examples of this. We anticipate that it would be against social policy to risk rate premiums on types of disability such as genetic pre-disposition which are not linked to human behaviour.

Accordingly, we submit that a social insurance framework would apply to those disabilities where:

- The particular benefits, eligibility requirements and other aspects of the scheme are defined by legislation;
- Funding is raised through taxes, levies or premiums paid by the broadest group of people as possible to cover the cost of the scheme that is affordable; and
- The scheme serves a defined group of the population.

Scheme Funding Model

Premium collection may be achieved by using existing structures and cover as broad a group of people as possible, options include:

- Addition to Medicare levy
- Payroll tax
- Compulsory superannuation levy
- Addition to the GST levy

The Productivity Commission may also wish to consider the enunciation of other efficient tax raising mechanisms raised in the Henry tax review.

Scheme Case Management Model

As discussed above under the employment-focused carve-out, a Managed Fund style agent model would also be ideal for the case management of the remaining people in the

scheme. Given the diverse makeup of the people covered under this part of the scheme, we would advise that consideration should be given to further segmentation at the case management level based on the skills required for different segments.

CONCLUSION

As the Productivity Commission develops its thoughts on the design of the Disability Care and Support Scheme, the Insurance Council trusts that the details of our members' experience above have been of assistance. The Insurance Council and our members believe that we can be of assistance to the Productivity Commission in a range of circumstances:

- Exploring segments of the scheme which are amenable to commercial insurance.
- Areas where the principles of commercial insurance can be applied to a socially based scheme.
- Through the provision of case management services to the scheme.

The insurance industry is keen to remain involved through ongoing engagement with the Productivity Commission and looks forward to discussing further the issues raised in our submission with you.