
Inquiry into Disability Care and Support

The Tasmanian Government's Submission to the Productivity Commission

Introduction

The scope of the Productivity Commission (PC)'s Inquiry is very broad. This submission does not seek to cover all of the issues and questions raised in the Issues Paper. Rather it addresses broader issues around scope and makes some general comments on areas of interest to Tasmania.

Tasmania has the highest rates of disability in Australia at 23 per cent. The 2006 Census of Population and Housing revealed that 23,655 Tasmanians, or 5.2 per cent of the population, required daily assistance with self-care, mobility or communication because of a long-term health condition, disability or old age. This was higher than the national average of 4.4 per cent. Excluding people who acquire a disability over the age of 65, more than 11,800 Tasmanians with disability require daily assistance with core activities.

Given the projected impact of Tasmania's ageing population on the availability of both formal and informal support for people with disability in the coming decades, consideration of a disability care and support scheme is particularly important.

Rationale

The current social security system in Australia entitles all citizens to some level of health services and income support, while there is no equivalent entitlement to disability care and support services.

The present care support system, out of necessity, uses a demand management approach, rationing services rather than meeting individual need. Despite increased government spending on the disability system, there

remains significant and growing unmet need, even though the vast majority of care and support is provided informally rather than formally.

The provision of essential care and support for eligible people with a severe or profound disability on an entitlement basis approach, such as a scheme funded through a social insurance model on a no-fault basis, has merit. In particular, there are potential benefits in a scheme that focuses on early intervention and delivering supports that produce the best long term outcomes to maximise opportunities for independence, participation and productivity.

Other benefits of such a scheme are that it would:

- enable people with a disability, their families, friends and carers to be placed at the centre of the system;
- facilitate person-centred planning approaches; and
- provide more individualised funding and service options, especially if it includes direct funding to persons with disabilities.

It is anticipated that the vision and principles that underpin the draft National Disability Strategy (NDS) will also inform the work of the PC. A key principle is that 'care and support' is not viewed as an end in itself or disconnected from its intended outcomes. The outcomes sought should include equal rights, access to a typical life (home, health, education, employment and relationships) and valued social and civic inclusion and participation.

In reconsidering the long term care and support needs of people with disability, entrenched societal views of people with disability as a burden on society, as not having anything to contribute, or generally being perceived to be of lesser worth, should be challenged.

This Inquiry provides an opportunity to examine schemes that allow formal support services to be reframed from a community perspective according to quality of life standards. For example, the concepts and practices associated with 'respite' and day programs perpetuate notions of difference and low status for people with disability. Under any scheme to provide long term care and support, respite and day programs in particular need to be re-conceptualised and renamed according to intended outcomes for people with

disability, based on what other citizens would aspire to and expect for themselves.

Scope

There is a number of options for defining the scope of a long term care and support scheme, varying from a comprehensive scheme covering all people with disability to one with a narrow eligibility covering only those with severe and profound disabilities.

One general argument for the scheme having a comprehensive scope relates to the importance of maintaining the scheme's 'universality'. If the majority of people are expected to contribute (through some form of tax or levy) to the cost of the scheme then everyone who requires support, even at a very low level, should be eligible to receive it.

The scheme being assessed by the PC, as reflected in the Terms of Reference, is not intended to provide services to all people with disability (many of whom may need no or few supports). Rather the scheme is intended for those in significant need of support.

This approach fails to recognise the benefits of early intervention. It is generally accepted that a small amount of targeted support at the right time can prevent greater needs arising in the future. People who currently have relatively low needs may miss out on support resulting in avoidable higher needs arising in the future.

A related issue is whether benefits should be means tested. Apart from the difficulties of determining an applicable level of income or wealth, it may discourage people to seek work, or encourage people to restructure their financial assets, to allow them to access the scheme. Also it may alienate whole sections of the community who have to contribute to the scheme but are not eligible for assistance because of their income or wealth.

There is also the question of coverage in relation to short-term disability versus long-term or permanent disability. As a general principle, coverage

under the scheme should not duplicate generic supports and services already available such as acute care and rehabilitation services.

Generally, jurisdictions in Australia define 'disability' as an impairment that is permanent or likely to be permanent or of an ongoing episodic nature. This definition is designed to exclude those who may be severely impaired but are expected to recover in the short term. These people are usually referred to as being injured or ill rather than disabled and their support and care requirements are sourced from acute and/or community health and rehabilitation services.

The crucial issue will be how 'long-term' and 'short-term' are quantified (i.e. six months, twelve months) or whether only those with permanent impairments are covered. The latter option however may have the unwanted consequence of providing a perverse incentive for people to seek to exaggerate their level of impairment.

Support services and informal networks

The type of supports available through a national scheme should include at least those specialist disability services that have been recognised for some time as the core specialist services necessary for an effectively functioning disability support system. This core set of services includes: respite and accommodation support, personal care, community access, community support, advocacy, employment support, transport, equipment, aids and appliances, and home modifications. Income support should continue to be separate and provided via unemployment benefits or disability pensions.

There remains a question on the extent to which a national care and support scheme would broaden the range of supports available to include those that are aspired to in the draft NDS. As noted earlier, the NDS promotes a focus on equal rights through access to broader mainstream services. This type of approach would contribute to the aspiration for people with a disability to have the opportunity to fully participate in society.

While it is acknowledged that the Commonwealth Government and all states and territories have a major investment in disability specific support, it needs to be recognised that a life of meaning and quality for people with disability, as for anyone, is dependent on factors other than access to formal services.

The anticipated decline in the availability of informal care cannot be compensated for by strategies designed to increase the level of formal care services alone.

Informal networks and relationships with friends and family are essential to realising the outcome of full participation by people with disability in the community. A new disability support scheme should enable family and friends of people with disability to:

- have a natural authority in the life of the person with disability;
- assist the person with disability to envision, plan and build a decent life;
- preserve their ordinary roles and relationships as family or enduring friends; and
- remain a consistent, enduring link between the person, the community and support system.

It is critical that the importance of informal or freely given care and support from families and the community is taken into account and not undermined by a national care and support scheme. This is an area that will require considerable investment through governments promoting and fostering the development of personal networks of support. Such support networks would be comprised of other citizens who have, or could develop, connections to the family or the individual. In the first instance the network could assist persons with severe and profound disability and their families envision and plan a positive future for their lives.

Informal support networks can play a vital decision-making, quality assurance and safeguarding role in relation to a person with disability. In addition, members of informal support networks are best placed to support the personal and emotional life of the person as well as encourage and enable their social participation.

Legal and financial planning could also be undertaken by such support networks to ensure that the person with severe or profound disability has access to sufficient funds to ensure a satisfactory quality of life as they age without their parents.

Relationship to existing schemes, insurance markets and litigation

The Tasmanian Government has concerns about how a scheme might impact on existing insurance arrangements, including the no-fault compensation schemes.

Where there are well functioning insurance markets where risks are well managed and an appropriate level of care is provided, a new national disability care and support scheme should not seek to replace these arrangements. For example a new scheme should not seek to replace established and well functioning insurance markets for the medical profession, for professional indemnity or for public liability.

A significant proportion of catastrophic injuries are received as a result of motor accidents. In Tasmania, there is already a highly regarded and efficient no-fault compensation scheme that provides compensation and ongoing care for persons injured in motor accidents. This scheme is administered by the Motor Accidents Insurance Board (MAIB). The MAIB is a Tasmanian Government Business Enterprise which operates a combined common law/no fault motor accident scheme for Tasmanians.

Tasmania's experience with MAIB has shown the benefits of a scheme that provides the incentives to encourage rehabilitation of individuals to a point where they have greater independence, including the potential for a return to work. There is a concern that a possible move from an insurance market model (such as the MAIB) to a health services provider regime (through a national care scheme) may not contain sufficient incentives to encourage rehabilitation. A national care and support scheme should seek to build in the incentive to rehabilitate individuals to a level that enables them to return to work and regain some independence, where appropriate to do so. This is not only desirable for the individuals themselves but it also constrains the cost of the scheme, or allows resources to be available for other care services under the scheme.

Similarly, Tasmania's workers' compensation system generally operates efficiently although it does not have systems for handling catastrophic brain or spinal cord injuries. The history and practice has been to settle those claims, usually by common law deed, once the treatment processes are complete and

the claimant's future losses are clear. How much a claimant receives depends on whether negligence can be established. However, there is often a substantial degree of contributory negligence by the employee that results in damages awards being reduced. There is also justified concern that large lump sum settlements are often misused or are grossly inadequate for long term support. Coverage of catastrophic injury under a national scheme would seem to offer a more equitable outcome for the very few cases of catastrophic injury (around one per year in Tasmania).

The cost of disability support for the catastrophically injured could be funded through the employer's workers' compensation premium (as it is now) but the entitlement would not be included in any claim settlement. It would be preserved or paid into a disability support fund. Alternatively a percentage of the premium could be paid to the national disability scheme and all eligible claims would be paid by the national disability insurance scheme.

While there are benefits in transferring care for the catastrophically injured to a national scheme, Tasmania is concerned that the State's workers' compensation system would be adversely impacted if a national scheme were to include all those who require long term care from employment-related injuries, and not just the catastrophically injured.

The Tasmanian workers' compensation scheme has recently undergone major reform with an emphasis on early intervention, improved injury management and stronger incentives for rehabilitation and return to work. The scheme provides access to some disability support services and some long term claimants also access Commonwealth funded disability programs. It would be undesirable if case management became more fragmented as a result of the establishment of a national scheme.

It would also be of concern if workers compensation premiums were to increase as a result of the transfer of all disability-related care to a new national scheme. Again, the issue arises of the incentives under a national scheme to ensure quick rehabilitation, where feasible, and early return to work.

Economically efficient outcomes are encouraged by arrangements where those most liable to risk arising from potential injury are responsible for

managing these risks. This includes both those at risk of injury and those liable to paying compensation in the event of injury. A broad disability care scheme could remove the incentive to manage these risks and consequently could lead to perverse outcomes.

The proliferation of high risk adventure tourism operators in New Zealand following the introduction of its national no fault Accident Compensation Scheme may be seen as a consequence of how such a scheme can impact on the risks and costs that businesses face and therefore on the goods and services they offer. In turn, this affects the risks that consumers and others face. It would be highly undesirable if existing, well operating insurance markets are negatively impacted through the introduction of a national disability care and support scheme.

A related question is whether a national scheme would remove common law rights. For example, would individuals retain the right to seek damages for future care costs as well as economic and other costs? It would be regarded as inequitable if these common law rights were removed, but access to the scheme was not universal, such as through the application of means testing.

Health services

The Tasmanian Government supports the current cooperative arrangements entered into between the state and territory governments and the Commonwealth Government on the provision of health services. The net impact of a national disability care and support scheme should not require states and territories to expend additional resources servicing those individuals that do not meet the new scheme's requirements. That is, the scheme should be cost neutral for state and territory governments and it should not affect existing agreements for the provision of health care services.

It is expected that a new scheme would be highly resource intensive and require careful consideration of workforce and staffing impacts in a sector that is already under significant pressure to attract, train and retain competent staff. A national scheme is likely to raise expectations on the availability, level and standard of services for people with a disability. The aged care workforce also requires similar sets of skills to the disability workforce. All of these factors increase the pressure on an already stretched workforce. Therefore the design of such a scheme would need to include a parallel plan to develop and grow the sector to meet the anticipated increased workforce demand.

While the concept of a care and support scheme for people with a severe or profound disability funded through a social insurance model on a no-fault basis has merit, the Tasmanian Government remains to be convinced that such a scheme should be operated by the states and territories. A national scheme, such as that discussed in the Issues Paper, would appear to have the greatest chance of success if funded and operated by the Commonwealth Government.