Dear Commissioners,

Only someone who has not actually been on the receiving end of the welfare state would dare call it an instance of civic altruism at work

Michael Ignatieff (Professor of Human Rights, Harvard)[1]

Introduction

The professor quoted above had a point and, it remains a very important point in my view. For all the alleged "change" that the Commission's Draft Report into *Disability Care and Support* (the Report) proposes, much looks the same and much remains unanswered. The first question to ask however is what the true underlying cost of proposals in the Report. The *Overview* document identifies the funding of a so-called National Disability Insurance Scheme (NDIS) "would amount to an annual $280 premium per Australian".[2] Add the $30 suggested for the National Injury Insurance Scheme (NIIS)[3] and you reach $310 per head.

The real costs

These per head of population figures are somewhat misleading, because the Commission itself concedes that the 280 figure is based on higher taxation or "cuts in existing lower-priority expenditure and higher taxes".[4] In one sentence, the Commission has indicated that the Commonwealth Government is being asked to take two politically 'fatal' steps; it must raise taxes and alienate some interests by deeming them 'lower priority,' even before it seeks an agreement with the States and Territories.

The other problem with the Commission's financial reckoning is that the per-head calculation fails to exclude those who are too young or too old to be in the workforce. Equally, Saunders states:

> In 1965, only 3% of working age adults depended on welfare payments as their main or sole source of income…Fewer than 5% received any income support at all…Today, one in six working age adults depend on welfare payments as their main or sole source of income. Welfare dependency has increased more than 500%.[5]

Thus, adding in the extensive numbers of working age people either partly or fully reliant on welfare,[6] the true impact on Australia's taxpaying workforce will be significantly

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[1] Cited in Peter Saunders, *Australia's Welfare Habit and how to kick it*, Duffy and Snellgrove and the Centre for Independent Studies, Sydney 2004, p.59

[2] Productivity Commission (2011), *Draft Report: Disability Care and Support – Overview and Recommendations*, Canberra, February 2011, p.29

[3] *See* ibid., p.36

[4] Ibid., p.29

[5] Saunders, above n 1, p.3

[6] I acknowledge that I am a part time employee and part disability pensioner. See my assessment of the disability welfare and employment systems at

greater than you suggest. As a result, I believe it to be incumbent upon the Productivity Commission to address itself more earnestly to the *real* economic impact on working Australians of these proposals. You go to some length to demonstrate the inefficiency of many existing taxes, drawing on the KPMG figures.[7] You further concede that a hypothecated tax is not preferred among economists within or outside Government. You observe:

> Treasury departments and tax economists often question the appropriateness of hypothecated taxes. In responding to proposals for taxes to be earmarked for environmental purposes, the 2010 Henry Tax Review remarked:
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> > While [hypothecation] may promote public acceptance of a tax, it constrains the ways in which the government can allocate limited revenue between competing priorities. It can result in revenue being spent on hypothecated programs when it could have delivered greater social benefit if directed elsewhere, including through lowering existing taxes. (vol. 2, p. 355)[8]

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http://www.deewr.gov.au/Employment/ComplianceReview/Documents/AdamJohnstonSubReviewFinal.rtf as at 29 March 2011. In particular, note submission 1b, in which I state in part:

> *For all the importance placed on (the employment contract with the job agency) by the compliance regime, I have not cited it since signing it sometime in July 2009. Its principal terms were that the parties aimed to place me in legal or paralegal work. While my employment provider introduced me to my current employer a number of years ago, my current job (commencing late last year) came independently of either my employment service provider/agent, or the compliance system. That is: I got it myself. My provider became relevant in their ability to assist my employer to make some adaptations to the workplace to accommodate me.*
>
> *The compliance system can take none of the credit for my current employment. Ultimately, it is ridiculous to think that a system which seeks to check the minuscule detail of whether job seeker X attended an interview is (not) doomed to be an administrative Goliath liable to trip on its own feet. Again, as I asked in my last submission, has anyone bothered to do a cost/benefit analysis of the Goliath?*
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> *Equally, one disputes that penalties, fines or other reductions in payments necessarily turns the reluctant job seeker into the enthusiastic potential employee; indeed, it may harden their resolve to undermine employment efforts. I recall one participant at our consultation meeting relating the case of a person who continually moved address, who was listed on an employment provider's books, but had not been sighted by anyone for months. While the full facts of that particular case are unavailable, one thing that can be gleamed from this example is that determined individuals will always find ways to evade official processes. Further, it should be asked whether there is any real point in pursuing such people, given the time, effort and expense potentially involved.*

I would submit that the NDIS and NIIS are likely to be 'administrative Goliath's' similar to the Job Seeker Compliance Regime.

[7] *See Source: Commission calculations; KPMG Econtech 2010, CGE Analysis of the Current Tax System, Report to the Australian Treasury; ABS 2010, Taxation Revenue, Australia, 2008-09, Cat. No. 5506.0,* cited in Productivity Commission (2011), *Draft Report: Disability Care and Support – Draft Report*, Vol. 2, February 2011, pp. 12.19-12.20 (111-112 of 398)

[8] Ibid., p.12.12 (104 of 398)

Additionally, the Commission also admits that "any new hypothecated tax would be swimming against the tide of the (Henry) review's proposed (simplified) tax policy".[9] Compound this with the fact that your net cost for the NDIS involves a $3 billion margin for error[10] and the fact that you are yet to nominate a figure for the so-called "buffer",[11] and the creditability of the whole concept seems to come into question. In my view, the Commission needs to look very carefully at just how 'deliverable' the NDIS and NIIS really are.

Agency 'capture'

I further note that the Commission is now openly and repeatedly using the phrase 'National Disability Insurance Scheme' in what is an investigation about 'Disability Care and Support'. While acknowledging that the concept of an NDIS was raised in the 2009 Report *The Way Forward - A New Disability Policy Framework for Australia*[12] the Commission's ready use of the same phrase could easily lead to the impression that the Government's independent economic adviser being 'captured' by some of the activists and lobbyists.

My impression of the clear majority of submissions sent in response to the *Discussion Paper* (based on the sample I read) was that most people were in support of an Insurance Scheme. While accepting that one is advancing a minority opinion, my recommendation to the Commission is that any new scheme be voluntary. This is because, when considering what the Commission is allegedly 'offering', in many respects it retains the worst elements of the current State-based support systems and imposes them nationwide. Most notably, the National Disability Insurance Agency (NDIA) and the NGO 'service providers' who will seek referrals from it will still be staffed by many of the same caseworkers, social workers, physiotherapists and occupational therapists who staff current arrangements.

The same old system, renamed and reorganised

If you refer to my prior submissions to this Inquiry,[13] you will realise that for many of us, dealing with these caseworkers/agents is not the innocuous partnership the Commission may like to suggest when you say:

> Direct assistance will also be provided to people with a disability through better advice and support from case managers. This will help consumers make good informed choices, as well as better understanding their rights and how to

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[9] Ibid., p.12.14 (106 of 398)
[10] *See* ibid., p.14.25 (211 of 398)
[11] *See* ibid, p.14.24 (210 of 389)
[12] *See* The Disability Investment Group, *The Way Forward - A New Disability Policy Framework for Australia*, Commonwealth of Australia, 2009, pp. 15-29 http://www.fahcsia.gov.au/sa/disability/pubs/policy/way_forward/Documents/dig_report_19oct09.pdf as at 27 March 2011
[13] *See generally* http://www.pc.gov.au/__data/assets/pdf_file/0009/99486/sub0055.pdf and http://www.pc.gov.au/__data/assets/pdf_file/0016/100726/sub0186.pdf as at 5 April 2011

> exercise them, as well as the standard of support they should expect from service providers.[14]

The caveats on this statement are numerous. Firstly, the Commission makes clear that these case workers will be officers of the NDIA.[15] You also make clear that there will be an extensive process of assessment and evaluation of an individual's disabilities. More specifically, your description of the central agency's role in this is:

> The assessment would not be 'rubber stamped' (by NDIA). Prior to making budgetary decisions, the (NDIA) would confirm that the particular assessment followed the appropriate protocol, and was consistent with the 'benchmark' range of assessed needs for other people with similar characteristics. Deviations outside the norm would need to be justified. That means the agency would detect assessments before people got their individual package.[16]

Even if you were to role out the NDIS progressively, the Commission has by necessity created a bureaucratic bottleneck of assessments. Further, the concept of a disability 'norm' is a fallacy. In terms of my condition of cerebral palsy, my own life experience and meeting others similarly afflicted, tells me there is no 'Norm'. I know of people who were born at a similarly premature term to me; others were born at near full term. The spectrum of cerebral palsy trauma that results cannot be fully predicted or explained. The impact on people's lives and families are equally variable, and many elements would not render themselves easily to a statistical table. One is certain this true of many other conditions as well.

Furthermore, you must by necessity create long waiting times, if NDIA is going to have a robust and credible assessment review process. Much like the 'Work for the Dole' scheme and other similar programs, the burden of documenting activities and meeting other criteria for the NDIA, is likely to be too much for many people to endure. While a percentage will be (to use a classic Australian idiom) 'bludgers', many will lack literacy skills, be chronically ill, be homeless, or have a combination of these factors impacting on their lives.

In 2009, journalist Adele Horin wrote a telling article about how Centrelink operates. A witty headline writer had declared 'You'll work like a dog to keep Centrelink happy', possibly in the mistaken belief that this was an ironic turn of phrase. Under this, Ms Horin had written in part:

> I have vivid memories of a young man I interviewed who had had his unemployment benefit stopped for eight weeks. Even though he had been reduced to sleeping on the streets, he held onto a neat folder containing copies of every job application he had ever made, and all written responses, as well as every piece of correspondence from Centrelink filed in individual plastic

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[14] *See* Productivity Commission (2011), *Report, Vol. 1*, above n 7, p.8.27 (373 of 398)
[15] *See* ibid., *Vol. 1*, Box 7.1, p.7.14 (306 of 398)
[16] Productivity Commission (2011), *Overview*, above n 2, p.19

> envelopes. I marvelled at his orderly habits in stark contrast to the chaotic jumble on my desk. But even he had slipped up in the end, transgressing some rule or other.[17]

When people are reduced to this you have to wonder about the true objective of the compliance system? I asked Professor Disney and his Independent Review of the Social Security Compliance System to consider whether the true (if undisclosed) aims of the Social Security system is to cost shift; this shift is to move as many needy people from the Government welfare system to the non-government charitable sector. There is clear evidence that this happens. Ms Horin has written elsewhere:

> Mutual obligation, with its myriad rules, is creating an underclass of alienated, impoverished, and homeless young people. It has led to an explosion in the numbers of unemployed people [who are] docked a part or all of their unemployment benefit for minor infringements of burgeoning regulations. Increasing numbers of young unemployed people are turning to charity.[18]

Much the same could happen to people with disabilities, as they wait for the NDIA to endorse assessments. Many could potentially decide in desperation that they cannot wait any longer. And it would not be as if the case officers or regional managers will be effective advocates for people with disabilities who are in growing distress. The case officers are contracted to or officials of, NDIA and, as such *'He who pays the piper calls the tune.'*[19] For the Commission to seriously suggest that the NDIS or NDIA is about "giving people power and choice"[20] is therefore laughable on many levels.

Who is really in control?

The *Overview* makes very clear just how far 'choice' will go. The Commission states that people will be able to cash out some amounts for discretionary spending, but "would have to spend on and attend agreed therapies".[21] While this might, on the face of it, sound reasonable, it inherently maintains the vasal and serf connection between many people with disabilities and a coterie of 'alleged' experts. For example, from my own experience, physiotherapy, but for the fact that it is deemed a 'therapy,' could be more accurately described as a painful instance of assault, sometimes occasioning actually bodily harm.

Equally, one would question the short, medium and long term benefits of many interventions urged by a range of professionals over a number of years. Indeed, some of

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[17] Adele Horin, *You'll work like a dog to make Centrelink happy*, January 31, 2009 <http://www.brisbanetimes.com.au/news/opinion/youll-work-like-a-dog-to-make-centrelink-happy/2009/01/30/1232818724404.html> as at 10 June 2010

[18] Adele Horin, *Sydney Morning Herald*, 26 May 2001, cited in Peter J Crawford, *Captive of the System! Why Governments fail to deliver on their promises – and what to do about it*, Richmond Ventures Pty Ltd © 2003, p.110

[19] *See* http://idioms.thefreedictionary.com/He+who+pays+the+piper+calls+the+tune as at 6 April 2011

[20] Productivity Commission (2011), *Overview*, above n 2, p.25

[21] Ibid, p.26

these have left me with greater pain and incapacity.[22] Yet, the Commission appears reluctant to step away from the model of therapist/case worker knows best. This is despite your acknowledgement that "(mandatory) certification effectively compels (some people) to pay for something they do not actually want".[23] And, a fellow submitter could not have put it more plainly to you, when she said:

> I never ask anybody I employ if they have got any training in disability because it doesn't matter to me. I'm one of the people who talk to the person; it's their attitude. Do they speak to my son? Do they acknowledge he exists? Do they have the right sense of social justice? That comes first. I can teach them how to work with Jackson. I can do that, and everybody — this whole individual thing, you know, it doesn't matter if you get somebody with 15 certificates in disability, you still have to teach them about your person, because they all have their idiosyncrasies. (Sally Richards, trans., p. 402)[24]

In my view, the negative impact of 'professionalism' is not only that it increases costs, but also that it could be acting as a pseudo-tariff wall protecting current disability service providers. It is noteworthy for example, that the Northcott Society (amongst others) told the Commission that workers in the sector should hold a Certificate III as a minimum.[25]

Applying such a standard might admittedly have some benefits in assuring service consistency and quality, but it also helps to maintain the current government and non-government service providers in place. I anticipate that this will be the case, particularly when the NDIA makes referrals to services. Who are they likely to make referrals to, other than those agencies already established in the sector? This is unfortunate, because it will be an impediment to real reform, unless the NDIA makes a deliberate decision (at least initially) to preference smaller operators and/or sole proprietors. Indeed, it would be

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[22] For example see my 2006 submission my submission to the Senate Community Affairs Committee inquiry into the *Somatic Cell Nuclear Transfer (SCNT) and Related Research Amendment Bill 2006,* http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/2004-07/leg_response_lockhart_review/submissions/sub53.pdf as at 7 April 2011. In support of expanding stem cell research, I argued in part:

> *I have an image of in my mind of a car in a mechanic's garage, covered from bumper to bumper with defect notices from the Roads and Traffic Authority (RTA); the car is my body, the mechanic my surgeon and the garage a hospital, while the RTA is the recurring cost and inconvenience of my disability.*
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> *Furthermore, the additional "rub" for not only me as the patient, but my family and friends is the cost and inconvenience of my hospitalisation, the length and difficulty of recuperation and, the knowledge that not all procedures will have lasting long-term benefits. Indeed, extended recuperation has at times accentuated a loss of muscular strength and tone, while some muscular tension released by surgery will re-tighten over succeeding years. After all, orthopaedic surgery can only deal with the outward manifestations of spasticity, such as tight muscles. It cannot deal with the cellular, neural and nerve damage which lies at the heart of the condition. Cellular regeneration and replacement can strike at the heart of my condition and that of many others.*

[23] Productivity Commission (2011), *Report,* Vol. 2, p.13.44 (184 of 398)

[24] Ibid., p.13.43 (183 of 398)

[25] *See* ibid., p. 13.44 (184 of 398)

appropriate to make provisions so that disabled persons and their families could "poach" preferred care attendants, therapists and other advisors from current service providers, with their individualised funding.

The resulting pressure on providers would be a true catalyst for freedom of choice and structural reform in the sector. It would hopefully also dilute the power of therapists and NDIA assessors. After all, if services faced the dual risks of not only losing a client's funding, but staff as well, then the constant refrain of "You must wait for the assessment" would be used much more judiciously than it is now. For individuals and families, this would provide an important element of structural leverage over service providers which we have never had before, as well as providing us with a good measure of freedom to challenge the coterie of assessment and therapy 'experts'.[26]

Truly making life easier

In my preferred model, the only two functions an NDIA would have are the ability to make referrals and, take complaints. Regrettably, under the Commission's model, a number of key, related functions, like access to Medicare and Centrelink pensions would remain outside the proposal.[27] While understanding this from a practical and legal point of view (as the NDIS is principally focused on State-based services), it is nonetheless regrettable that planners have missed yet another opportunity to create a "single point of access" portal for all services. It is not as if such proposals lack for discussion, research or design. For example, the Commonwealth Ombudsman has written:

> One option is for agencies that work closely together to set up a special joint complaint handling unit to liaise with clients and investigate matters—a 'one stop shop' approach. Staff of the unit can be authorised to resolve matters on behalf of all the agencies involved, or to refer more complex or sensitive matters to the appropriate line area.
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> A second option is to set up a central contact point for all complaints. This may be little more than a phone number, mail box or web address. Upon receipt, complaints can be filtered to identify those requiring referral to an agency for a further response or investigation. It will be likely that many complaints can be

[26] The courts have also struggled for some time with the question of how to handle expert witnesses. *See* for example, The Hon Justice Peter McClellan, *Contemporary Challenges for the Justice System – Expert Evidence,* Australian Lawyers' Alliance Medical Law Conference 2007 http://www.ipc.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/SCO_mcclellan200707 as at 27 March 2011.

The Commission's *Draft Report* is sharply critical of the legal system for its complexity and long timelines, variability in awards and the like. Some of these criticisms are no doubt merited. However, if the response is to simply dismiss any opinion deemed not to be 'expert' (which is the experience of many individuals and families) and to take damages/compensation claims to another forum called the NDIA, what has really been achieved? In my opinion, the problem has simply been relocated, not changed or improved. I again insist that there can be no other outcome, for so long as a case worker or therapist continues to play a significant role.

[27] *See* Productivity Commission (2011), *Overview,* above n 2, pp. 22-24

> dealt with promptly, either at the initial contact point or after referral to an agency, especially if the complaint is in the nature of a request for information or clarification.[28]

The value of the 'one stop shop' approach has also been recognised internationally, with the House of Commons Public Administration Select Committee calling on the UK Government in 2008:

> (To) explore providing a single point of contact for impartial information about complaints to Government and public services-"Public Services Direct". This service would act as a "one stop shop" for complaints about public services.
>
> In the Committee's view complaints should be handled effectively at the earliest possible point, not least because this is cheaper for all concerned. The Committee says there appears to be a systemic problem with first-tier complaint handling by government organisations and is "disturbed" that so many complaint reviewers described a poor standard of complaint handling.[29]

Why should this concept be limited to complaint handling? As someone with a disability, navigating the 'service merry-go-round' can be both time consuming and tiring. A body which acted as a referral and general advice 'clearinghouse' would be much more useful (and less intimidating) to me than a NDIA 'King Kong'.

Service delivery

When I look at the NDIS and NDIA, Medicare (and its attendant difficulties) echoes loudly. Medicare provides 'universal' coverage; the NDIS proposal does the same thing.[30] While the NDIS has three tiers, the Commission should consider developing strict rules for capping and limiting activities at tier one.

Failure in this area could lead Tier One and Two become an unmanageable 'honey pot,' attracting spin doctors, advertisers and advocates. Promotion and awareness to the community as a whole could become as poorly targeted (and costly) as benefits for non-urgent, less complex medical interventions and pharmaceutical prescriptions. The perverse outcome of subsidising GP appointments, medical tests and minor ailments according to Dr. Jeremy Sammut is a draining of resources away from more complex medical/hospital based care. He says:

> (When) individuals are paying for only 12% of the cost from their own pockets, it is impossible to tell how many billions of dollars are being wasted on millions

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[28] Commonwealth Ombudsman, *Fact Sheet 7: Complaint handling: multiple agencies*, April 2009, http://www.ombudsman.gov.au/docs/fact-sheets/onlineFactSheet7_multi-agency.pdf as at 9 April 2011

[29] www.parliament.uk Press Notice 25, Session 2007-08, *PASC calls for one stop shop to make it easier for people to complain about public services*, 24 March 2008, http://www.parliament.uk/business/committees/committees-archive/public-administration-select-committee/pasc0708pn25/ as at 9 April 2011

[30] *See* Productivity Commission, *Overview*, above n 2, p.11

> of unnecessary consultations and tests. What the total cost of Medicare therefore does not measure is the waste (unnecessary use of services by patients), over-servicing (by doctors, including outright fraud), and opportunity cost (misallocation of resources and forgone hospital care) that high expenditure on the (Medical Benefits Scheme) MBS involves.[31]

If you are determined to proceed with an NDIS, learning the historic lessons of Medicare are essential, to prevent the size and cost of the scheme ballooning uncontrollably. I recommend that the Commission abandon Tier One, on the basis that it is the non-essential element.

Equally, drawing on Sammut's work, Tier Two referral work does not necessarily have to be a State-run monopoly, and neither should the NDIS cover marginal needs. Furthermore, people should be encouraged to use self-insurance, in part because this is a demonstrative exercise of personal choice and responsibility. It is also worth remembering the rationale for Australia's first Government-run health insurance initiative. As Sammut explains it:

> The National Health Scheme was put in place in the early 1950s by the federal Coalition government led by Liberal Party Prime Minister Robert Menzies and Country Party Deputy Prime Minister and Health Minister Dr Earle Page, a former medical practitioner. The scheme was designed to offer a minimum level of protection for those who genuinely could not pay for their own health care, while requiring those who could afford to help themselves to take out private insurance as a condition of receiving government financial assistance with health costs. It was also designed to ensure that federal health spending was used in a manner that kept insurance coverage high, while supporting the financing of state government-run public hospitals.[32]

Self-help or rationing limited resources seems to be a near impossible argument for contemporary politicians and policy makers to sustain. Yet with the complexity and cost of care increasing, this is arguably an even more important reason for people to maintain private insurance. However, if the introduction of the Private Health Insurance Rebate was any guide, many were no longer prepared to self insure for medical needs (unless the Government subsidised it).

Dr. Sammut effectively argues that Australia moved from a mutualised to a socialised health system.[33] My concern is that the disability sector, which is already heavily dependent on public money, would advocate for something which increased that reliance and call it a reform. As my previous submissions made clear, one has often been more than a little disturbed by official/welfare interventions (read: bureaucratic molestations at

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[31] Dr Jeremy Sammut, *How! not how much: Medicare spending and health resource allocation in Australia,* Centre for Independent Studies, 2011, p.11 http://www.cis.org.au/images/stories/policy-monographs/pm-114.pdf as at 6 April 2011

[32] Ibid., p.5

[33] *See* ibid

times when I am feeling less that charitable about an agency) in my life. From a practical point of view, should I be obliged to enter a contract with the NDIA in order to receive a support service, my thinking will turn to whether this was a form of civil conscription, prohibited by Section 51(xxiiiA) of the *Constitution.* Professor Cheryl Saunders states that the prohibition "is a little mysterious".[34] She argues it prevents the Commonwealth directing doctors as to how they will provide care.[35] While acknowledging that the Commonwealth has a general insurance power under Section 51(xiv), Saunders states that this "enables insurance law to be uniform".[36] Whether this section was ever meant to allow the Commonwealth to prescribe a particular form of insurance for a particular group of people, is not clear.

I look forward to addressing these and other issues with the Commission.

Yours faithfully,

April 10, 2011

[34] Cheryl Saunders, *The Australian Constitution (Annotated),* 2nd ed., 1997, The Constitutional Centenary Foundation, p.53
[35] *See* ibid
[36] Ibid, p.51