The Commissioners
Disability Care and Support Inquiry
Productivity Commission.
GPO Box 1428
Canberra City.
ACT. 2601.

Dear Commissioners, M/s Patricia Scott, David Kalisch and John Walsh attached is a brief annexure to my original

SUBMISSION TO THE AUSTRALIAN GOVERNMENT PRODUCTIVITY COMMISSION

It may well be opportune to remind the Productivity Commission that Australia and it citizens do not have the protection of a Bill of Rights under our national constitution like some other democratic nations. This has been raised over the decades by better informed Australians in our community and more frequently in recent years. The response from some politicians and members of the legal profession has been, that our rights are protected and may be addressed under **Common Law**.

I raise this issue because it appears that the Productivity Commission, based on the draft report of February 2011 seems hell bent on promoting to the Australian Government the removal of our constitutional right, our "Common Law right" to sue for damages from a third party.

I do not recall reading in the Discussion paper the Commission being tasked to do that!

Draft report February 2011, "Disability Care and Support Inquiry"

The Commission is proposing a **federation** of accident insurance schemes for catastrophic injury (NIIS) quote –unquote.

That in my opinion would be a very poor foundation to initiate such potentially important legislation for the Australian community, because what is proposed would be based on "the lowest common denominator".

In this case legislation of the State of Victoria, The TAC Act 1986.

I have outlined previously in my submission to the commission just exactly where and how the TAC Act 1986 legislation is seriously at fault, in fact prejudicial to natural justice and our common law rights under the Federal Constitution, and those facts are based on our experience of the TAC Act 1986, and TAC Insurance.

"hybrid no fault third party motor vehicle insurance schemes throughout Australia. (NT, Victoria, Tasmania and NSW)" quote – unquote

Is a situation which has developed by those individual State Governments having taken the approach of letting the Insurance companies make suggestions for amendments to legislation which reduce their exposure to substantial entitled damages settlements (limited /capped), increase premiums, and leave victims of accidents, incidents whether at fault or not to fend for themselves.

While the Insurance industry is a stakeholder is these proposals, they should be placed at the **bottom** of the list consideration wise, and that their "by choice" participation will be managed by Federal Legislation

A classic and irrefutable example is what we are now seeing in Queensland with Home and Contents insurance claims after those terrible floods and storms we have had in the past three months.

We have six major insurance companies seeking too and escaping there lawful obligation by having their own interpretation of what is flood damage, storm damage and all the in between, and therefore not paying for replacement, repairs, etc and escaping there **common law** liabilities.

This has now placed pressure on both, State and Federal Governments to review insurance legislation and produce a standard ruling on what is Flood or storm damage, etc and **not** leave it to the Insurance companies.

The exact same situation will occur with the Insurance industry in each individual State with the **proposed federation** of insurance schemes.

For this project to have any chance of succeeding there must be one piece Federal Insurance legislation which has to be enshrined in each State and Territory legislation verbatim and each and every Insurance Company participating in the scheme, would have to incorporate policy identical to the legislation, no room to move or variation.

That having been said there is absolutely no need for the Productivity Commission or any individual State Government or Insurance Corporation to promote changes to the Federal Constitution **to remove** our Common Law rights to sue for damages, that is counter productive .

The argument in the Draft Report Feb 2011-04-09 "nor is there evidence that common law right to sue for compensation for care costs increases incentives for prudent behavior by drivers, doctors, and other parties".

That statement is a red herring, CTP, Compulsory Third Party Insurance

Insurance premiums, were never meant to be a behavior modifier or law enforcer, they are there as finance generator for the Insurance Companies and protection for situations and incidents for the policy holder**.**

Any of the Insurances schemes that are promoted to be implemented are laudable and probably in relation to **certain** types of illness or deficits given by birth, catastrophic injury through medical misadventure or motor vehicle, industrial or other accident may be viewed as a entitlement too State (Commonwealth) assistance by being an Australian citizen.

The potential monetary cost to the nation of the proposed national insurance schemes, will be huge, very expensive, and by necessity there are going to have to be some qualifying criteria set in place.

But **the cost** of financing these schemes should not be at the **cost** of my or any Australian citizen Common law rights, freedoms and responsibilities guaranteed under the Australian Constitution we enjoy today(29/4/ 2011)

What has not been addressed by the Productivity Commission, has been the likely hood of confrontation between parties and the State for receipt of assistance in either Insurance scheme, whether part of any criteria put forward for support of either of the proposed national insurance schemes, **may involve any recipient having to be made a ward of the State.**

This then falls to our Common law rights and freedoms under the Australian Constitution, any whittling or interference with those rights affects the majority of the community, not the 5% this review is about.

Yours Sincerely

Cyril Dennison

29th April 2011