



PRODUCTIVITY COMMISSION

Disability Care and Support

**Submission by the Local Government Association
of South Australia**

May 2011

Introduction

The Local Government Association of South Australia (LGA) welcomes the opportunity to provide a submission in response to the Productivity Commission's draft report "Disability Care and Support". This follows a submission (519 of 17/8/10) in response to the Commission's initial call for input.

The LGA is recognised as the peak representative body for Local Government in the State of South Australia. It is a membership organisation that provides quality service and leadership relevant to the needs of member Councils. It is also relevant in this context to highlight that the LGA also operates a workers' compensation scheme covering all South Australian Council employees and a scheme providing public liability and professional indemnity cover for all SA Councils. Both schemes also involve extensive risk management support services.

This submission does not repeat issues raised in the LGA's original submission, rather it responds to key issues identified in the Commission's draft report. The LGA acknowledges the support and input of the SA Local Government Access and Inclusion Network in finalising this submission. The LGA is a constituent member of the Australian Local Government Association.

The LGA supports much of the Commission's Draft Report but has two broad areas where we believe improvements are necessary. This submission deals with these in two sections relating to the National Disability Insurance Scheme (NDIS); with the National Injury Insurance Scheme (NIIS); and provides some concluding comments.

1. National Disability Insurance Scheme (NDIS)

The LGA believes that the Draft Report Chapter 10 "collecting and using data under the NDIS" overlooks the gathering and use of data on:

- accessibility (which is more than data on disability); and
- physical and social environments (which are the context for disability services).

Accessibility data

For example, the Draft Report focus in Chapter 10 neglects the interaction between the design of aids and equipment and the physical environment in which these are used.

The rapid uptake of motorised scooters as an alternative to motor vehicles (whether due to ineligibility for a driver's license or in preference to an electric wheelchair) is not being researched. These mobility devices are regulated under South Australian law strictly for pedestrian and not road use. The variety of performance capabilities is challenging the assumptions about mobility aids made in Australian Standard 1428 ("Design for Access and Mobility") at the time when Disability Access to Premises (Buildings) Standards have come into force.

The NDIS data gathering should include for example the impact on people with disabilities of mobility aids which do not fit the minimum access standards and physical infrastructure such as footpaths for which no standards exist.

The NDIS needs to complement the National Disability Strategy so that a research and development agenda arises from the experience of people in all the NDIS tiers.

Social environment

Chapter 3 of the Draft Report proposes media and some advocacy strategies to improve social inclusion. The LGA is disappointed that the Draft Report fails to see Local Government as a key player in developing inclusive attitudes and practices through which people with disability will become valued citizens.

Data gathering about the efficacy of social inclusion strategies is also an important part of an NDIS.

Rather than restricting Local Government to a revenue raising vehicle for the NDIS, the Commission should acknowledge that Local Government has a vital role to support the generational change in attitudes about people with disability. Local Government community services already experience some conflict between members of our communities where “inclusion” of people with disabilities is managed poorly by under-funded service providers. This is in a context where many community members are unaware of or have negative attitudes to participation by people with disabilities. A lack of resources contributes to unacceptable pressure on paid and volunteer staff in community, recreation and positive ageing centres and programs in which a few people with disability are already trying to participate. Commonwealth and State government funding and associated accountability of Local Government for its outcomes could equip Council programs and services to hasten the generational change in attitudes in local communities.

The Draft Report starts to address this issue in Chapter Three.

“Several participants in this inquiry noted that societal attitudes are a major influence on a person’s ability to participate in daily life... The Commission recognises that societal attitudes and practices are potentially just as disabling as the conditions themselves. In this sense, influencing attitudes and practices in society may be one of the most significant roles of the NDIS, outside of its role of directly providing much needed supports.”

(Draft Report Chapter 3 “Who is the NDIS for?”, Pp 5 - 6, in rich text version.)

The recently adopted National Disability Strategy provides a context for this sort of change. The Productivity Commission can recognise the practical opportunity for changing societal attitudes which Local Government programs and services can offer if better resourced by State and Commonwealth governments. The NDS states:

“Outcome: People with disability live in accessible and well designed communities with opportunity for full inclusion in social, economic, sporting and cultural life.

...

Policy Direction 1

Increased participation of people with disability, their families and carers in the social, cultural, religious, recreational and sporting life of the community.

...

Policy Direction 2

Improved accessibility of the built and natural environment through planning and regulatory systems, maximising the participation and inclusion of every member of the community.”

Local Government needs both resources from and collaboration with other levels of government to enable these outcomes. These apply to all three tiers in the proposed NDIS.

2. National Injury Insurance Scheme (NIIS)

The LGA has not formed definitive views regarding the proposals in the draft report in relation to a National Injury Insurance Scheme (NIIS). In principle the concept of dealing consistently with those suffering catastrophic disabilities as a result of injuries – whatever the cause – is one which we are attracted to. Inherently therefore we are attracted to the notion of a no-fault system.

The LGA does however have significant concerns regarding the complexity of the proposal to establish an NIIS, the lack of detailed information on the proposal, and aspects of what is proposed. Our three primary concerns are:

1. the complexity of the proposed approach involving a federation model working towards consistent arrangements;
2. the proposal to use municipal rates as a partial funding source for the NIIS; and
3. potential for aspects of the scheme to undermine successful risk management strategies established within SA Local Government in relation to risks for which it is responsible.

The draft report proposes a national scheme comprised of a form of federation of State/Territory-based entities aiming to achieve consistency of outcomes for its target client base. We understand that to achieve consistent outcomes in the current environment requires an integration of a range of existing arrangements in different jurisdictions. We see broadly two possible ways of achieving consistent outcomes in the current environment – the NIIS proposal of assembling different elements (as a jigsaw) into a whole; or alternatively creating a centrally-run scheme in which existing elements are integrated. The first model, favoured by the Commission's draft report, in our view involves very significant risks and would involve significant unnecessary duplication in expertise and effort to achieve consistent outcomes. We would suggest greater consideration be given to a centrally-run national scheme.

The LGA has severe concerns regarding the proposal to use municipal rates as a funding source for the proposed NIIS.¹ The draft report advances several reasons for this (in summary):

- Rates are an existing efficient tax;
- Property taxes have few distortionary effects;
- Councils already bear some liability costs which would be taken up by NIIS;
- If contributions were linked to claims it would provide some incentive for Councils to minimise risks; and
- Some replacement incentive is required given private insurance contributions would be removed.

We would group these under two headings: the efficiency of municipal rates covering the first two points; and, creating some local incentive for risk management, covering the final three.

The efficiency of municipal rates

In relation to the first two arguments, the LGA agrees that rates are an existing efficient tax and that property taxes have few distortionary effects in the economy but believes there are even more compelling reasons why municipal rates are not an appropriate source of funding for NIIS. These arguments are set out below:

1. Rates are a delegated tax established as part of Local Government legislation in each State and are provided for locally-elected Councils to apply to fund locally-determined

¹ We would note here that the Commission's term "municipal rates" is not used in SA in legislation or common reference (as opposed to the common usage being "Council rates") however we have adopted the Commission's terminology here for consistency and simplicity.

services and infrastructure. Local Government Acts provide extensive mechanisms to promote accountability between Councils and their communities. To apply a central levy across Council rates for a purpose irrespective of local decision making would offend these provisions and mechanisms and require complex amendments to legislation which would reduce accountability. There is a public acceptance of models in which central governments redistribute funding to Local Government (often with capacity to modify accountability requirements should problems arise) to address vertical fiscal imbalances, (such as Financial Assistance Grants). However our experience with the reverse model (particularly through Natural Resource Management levies in SA) indicates little public acceptance because of the lack of capacity for the government accountable for raising the revenue to manage the expenditure.

2. Rates are a tax applied to property, not to people. The NIIS would benefit individuals, not property. This mismatch would cause substantial public confusion rather than promoting transparency or understanding.
3. Councils have considerable discretion in the application of rates. In SA Councils are able to apply: rates based on three alternative valuation methods; minimum amounts payable or a fixed charge component; differential rates for different land use categories; different rates at different value levels; and to apply rebates in various ways. This is a high-level summary only. In other States, legislation allows similar but different flexibilities including in at least one State the ability to use average valuations across multiple years. As a result the application of a levy for a common national purpose would result in significant variations of payment for properties in similar circumstances.
4. The Commonwealth Government has recognised Councils have very different capacities in revenue raising and challenges in expenditures. This recognition is embodied in the Commonwealth Local Government (Financial Assistance) Act under which Commonwealth financial assistance is provided to equalise Council capacities across Australia. It is recognised that this funding is inadequate to fully equalise Councils and that the funding is unfairly distributed between States (on a population rather than a fiscal equalisation basis). In this context it would not make sense to apply a levy to Councils which would further undermine the Commonwealth objectives of equalising Councils.

Further, the House of Representatives in its 2003 report "Rates and Taxes: A Fair Share for Responsible Local Government" recognised significant cost shifting to Councils by other governments and proposed a number of mechanisms aimed at ending such cost shifting. One of those mechanisms is the "Inter-governmental Agreement Establishing Principles to Guide Inter-Governmental Relations on Local Government Matters" (known as the IGA on Cost Shifting) which was signed by all State and Territory governments, by the Commonwealth and the Australian Local Government Association in April, 2006.

This IGA on Cost Shifting incorporates a number of clauses which are relevant to the Commission's proposals however the following are highlighted:

"3. The Parties agree in principle that where local government is asked or required by the Commonwealth Government or a State or Territory Government to provide a service or function to the people of Australia, any consequential financial impact is to be considered within the context of the capacity of local government."

and,

"10. Where the Commonwealth or a State or Territory intends to impose a legislative or regulatory requirement specifically on local government for the provision of a service or function, subject to exceptional circumstances, it shall consult with the relevant peak local government representative body and ensure the financial implications and other impacts for local government are taken into account."

In relation to the capacity of Local Government we would draw the Commission's attention to considerable work undertaken by this Association in the form of an independent review of the financial sustainability of Local Government (2005) [<http://www.lga.sa.gov.au/goto/fsp>], similar studies by other State associations, and the PriceWaterhouseCoopers report by the Australian Local Government Association. In addition we would note the conclusions of the Commission's research report "Assessing Local Government Revenue Raising Capacity" (April, 2008) both in relation to differences in fiscal capacity of Councils (in particular urban vs. rural and remote) and its overall conclusion with our emphasis:

*"Analysis of the relative potential of local governments to increase their own-source revenue indicates that councils are raising about 88pc of their hypothetical benchmarks, on average across Australia. **This should not be taken to imply that local governments should increase the revenue they raise. – Whether councils can realise this hypothetical benchmark will depend on their individual circumstances and the willingness of their communities to pay.**" (P XVIII)*

We would also highlight the report's comments in relation to State regulatory constraints on rates (P 95-134); its finding 5.6 that "there is a case to review the provision of Australian Government general purpose grants to local governments" (P XXXVIII); and the fact that the terms of reference did not allow the report to consider issues such as ongoing infrastructure backlogs. Councils in SA have continued to work to address infrastructure backlogs within the willingness of their communities to pay, since the publication of this report, with support through a substantial program provided by the LGA and now supplemented through the Commonwealth's Local Government Reform Fund.

In South Australia, and in other jurisdictions various formal agreements between State Governments and State Local Government Associations are also relevant including in SA a legislative protocol (Consultation Flowchart for Legislative Proposals) which requires the SA Government to consult with this Association prior to introducing legislation with significant impact on Local Government to the SA Parliament [refer <http://www.lga.sa.gov.au/goto/intergovernment>]. Our experience has been that both the SA Government and the SA Parliament have a very high level of respect for the views of Local Government, particularly where a matter relates to primary Local Government legislation. While a matter for speculation, it is our view that the likelihood of gaining consistent legislative amendments around Australia with significant Local Government opposition is low.

Local Incentive for Risk Management

In relation to the remaining points regarding incentive to reduce risk, we believe the Commission's arguments are confused and the proposal would result in the opposite outcome – a lack of incentive to reduce risks. This view is based on our considerable experience in operating the LGA Mutual Liability Scheme, providing unlimited civil liability cover (including public liability and professional indemnity) for all SA Councils for more than 20 years.

The success of the LGA MLS (and the work safety-based LGA Workers' Compensation Scheme) in supporting Councils to continually improve and mitigate their whole of risk environment is firstly based firmly on the ownership Councils have of the LGA itself. While membership of the MLS is voluntary 100% of South Australia Councils participate. This allows for Councils to have a wide variety of ways of raising sector-based concerns and/or proposing and implementing change directly through the MLS management (ultimately to a Board which is a standing committee of the LGA State Executive Committee) or directly via the LGA's range of structures and mechanisms provided under its constitution pursuant to Schedule 1 of the Local Government Act 1999 (SA).

We should note here that in part as a result of the success of the MLS, incidents in which Councils have been held liable for catastrophic disability injuries are extremely rare in SA.

The scheme's success also rests on a careful mix of linkages between Council membership contributions (and bonus payments), attaching claim history and the measured success of the application of strategic investment in risk management support. It is also important to recognise that such arrangements are made in the context of clear legislative parameters around Council functions and responsibilities. Ultimately a Council controls its level of exposure through decisions regarding ownership and management of land, infrastructure functions and services.

It is our view that these elements could not successfully be replicated in the NIIS as proposed. Councils have the utmost respect for the law and for the majority of State Government managed agencies and processes, however there also exists a level of mistrust between Local and State governments. In part the formal State/Local Government Relations Agreement most recently renewed and signed by the Premier, Mike Rann MP and the then President of the LGA, Mayor Felicity-ann Lewis in February, 2011, is based on the need for both sectors to promote respect and increase levels of trust. In our experience the imposition of a levy against the views of Councils would not result in a high level of engagement and enthusiasm for a State-run NIIS.

Further we believe the draft report is misguided in its understanding of the responsibilities of Councils. In SA Councils are given powers and responsibilities through around 45 Acts of the SA Parliament (and from time to time some may use powers and processes in an estimated further 50 Acts of Parliament). These powers and responsibilities have significant variation between States and are undocumented (with the exception of an attempt in Appendix C of the October, 1997, Industry Commission Research Report: "Performance Measures for Councils – Improving local government performance indicators". These complex range of powers and responsibilities do not provide a broad remit for Councils to prevent risk of social harm in the community – certainly not to the exclusion of State Governments which bears primary responsibility for this in South Australia.

It is our view that the Commission has misunderstood the legal responsibilities of Councils in relation to their capacity to prevent social harm. For example the quotation from the National Committee on Violence report is not one with which we would take issue:

"...local governments, which are the level of government closest to the everyday lives of most Australians, are in an important position to contribute to the prevention and control of violence within their respective communities."
(Chappell 2004, p. 158)

However, being in an "important position to contribute to the prevention and control of violence within their respective communities" does not equate to having primary legal responsibility for risk management in relation to such issues. The State's responsibilities for legal frameworks, for police, for alcohol licensing, for drug control, for mental health and for a range of related services place it in a far stronger position to take primary responsibility for risk management. Local Government is in an important position to contribute to such efforts.

Within SA we believe Councils make a very significant commitment and effort in relation to the managing all risks associated with the services and infrastructure for which they are responsible – but do not have the resources to manage this area to the extent we would like. To try to create an incentive (via the penalty of a levy on ratepayers) for Councils to influence a range of issues for which it does not have legal responsibility in most jurisdictions would, we believe, result in: demands on Council resources, including financial, which could not be met; add to confusion over roles and responsibilities between governments; add to risks of cost shifting; and would be doomed to failure.

The Local Government Association has not undertaken substantial work to identify alternative funding sources for the proposed NIIS. In the Australian context we would submit that the Commonwealth and the States have primary legislative and financial responsibilities for this area. We note that the Australian Constitution provides clear powers for the Commonwealth in relation to: “insurance”, “invalid and old-age pensions”, “sickness and hospital benefits,” “medical and dental services,” “benefits to students and family allowances” (Australian Constitution, Section 51, clauses xiv, xxiii and xxiiiA) and the most extensive powers for raising general taxation. The LGA SA is open to reform of the federation but reform of roles and functions should be based on the strengths of each sphere of government, its capacity, and enhancing transparency and accountability to communities. We believe responsibility for funding any proposed NIIS should vest with the Commonwealth possibly in conjunction with State jurisdictions, not with Local Government.

We suspect there may be a contributory role which Local Government could play in relation to local risk management beyond the current responsibilities of Councils. Such a role however should be properly negotiated with ALGA and State Local Government Associations (refer 2010 LGA Policy Manual Pp 12-15, in relation to functional reform and intergovernmental transfers at <http://www.lga.sa.gov.au/goto/corpdocs>); properly defined and funded by other governments via grant contract; and not be a side product of a desire to create an artificial local incentive to replace private insurance premiums.

Should an NIIS be established in some form and absorb some responsibility for support of people who might otherwise be the subject of cover provided by the LGA MLS, the LGA would provide a transparent mechanism by which any savings would be identified and separately allocated as appropriate, either for a new purpose or as a rebate to Councils.

3. Concluding comment

The LGA wishes to be explicit in recording that its opposition to the use of municipal rates should not be interpreted as opposition to proposals either for the NDIS or the NIIS contained in the draft report. In our initial submission and today we remain of the belief that current systems to support people with disability and their families in Australia are deeply flawed and will increasingly be unable to meet people's needs. It also wishes to record its willingness to provide further information to the Commission in relation to any issues, but specifically on the successful operation of its self-managed “insurance” schemes, being the LGA Workers' Compensation Scheme, the LGA Mutual Liability Scheme and the Local Government Asset Mutual Fund.