TOWARDS A FAIR GO

Design Challenges for a National Disability Insurance Scheme

David Hetherington

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percapita research paper

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About the author

David Hetherington is the founding Executive Director of Per Capita. He has previously worked at the Institute for Public Policy Research (IPPR) and for L.E.K. Consulting in Sydney, Munich and Auckland. He has authored or co-authored numerous reports on economic and social policy including *Energy Market Design and Australia's Low-Carbon Transition* (2010), *Employee Share Ownership and the Progressive Economic Agenda* (2009), *Case Studies in Social Innovation* (2008), *The Full-Cost Economics of Climate Change* (2008), *Unlocking the Value of a Job* (2008), *The Investing Society* (2007), *Disability 2020* (2007) and *Would You Live Here?* (2006). His articles have appeared in the Sydney Morning Herald, the Australian Financial Review, the Age and The Australian and he is a regular radio and TV commentator on Radio National and ABC News24. David holds a BA with First Class Honours from UNSW and an MPA with Distinction from the London School of Economics where he won the George W. Jones Prize for Academic Achievement.

About Per Capita

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Executive Summary

This paper examines the barriers to the provision of adequate care and support to people with disabilities in Australia, and proposes a high-level outline for a National Disability Insurance Scheme to be complemented by improved coverage within existing accident insurance programs.

The paper identifies four explanations for the current inadequate levels of care and support: 1) partial failure of private insurance markets; 2) a shortfall in public funding; 3) disparities in state-based disability services; and 4) the absence of universal no-fault insurance for catastrophic injury.

The paper argues that effective coverage for disability care and support requires mandatory social insurance funded through hypothecated taxation revenues. The only exception to this is in the case of motor vehicle and workplace accidents where individual risks can be identified and priced and where, as a consequence, well-designed private markets can operate effectively.

The paper further argues that a false trade-off exists between no-fault and common law arrangements for catastrophic injury. While systems that offer only common law coverage can produce inequitable outcomes, those which offer hybrid schemes combining no-fault and common law coverage are able to combine the best of both approaches. The Victorian Transport Accident Commission (TAC) and the Tasmanian Motor Accidents Insurance Board (MAIB) provide useful illustrations of such schemes. While no-fault coverage is critical, schemes that have relied exclusively on no-fault arrangements, such as New Zealand's Accident Compensation Corporation (ACC) and South Australia's Workers Compensation scheme, have proven financially unsustainable.

The National Disability Insurance Scheme (NDIS) presented here would cover all Australians under 65 with permanent severe or profound disability. It would provide them with funding for timely access to care and support, therapy, equipment, home and vehicle alterations and periodic respite. It would be funded through a Disability Levy similar to the Medicare Levy, with revenues hypothecated into a dedicated insurance pool. The NDIS would be a hybrid scheme, offering no-fault minimum coverage without diminution of common law rights. The annual net cost of this scheme above existing spending would be around $6.6 billion.

The only category of disability not covered under the NDIS would be catastrophic motor vehicle or workplace injuries. These would continue to be managed by existing state-based accident insurance schemes. However, the Commonwealth would negotiate through a COAG process the introduction of no-fault coverage into those state and territory schemes which do not currently provide it to 'level up' coverage without diminution of existing rights.

Per Capita recognizes that the Productivity Commission has recently released a detailed proposal for an NDIS in the Final Report of its Inquiry into disability care and support. While we agree with much of the Commission's design approach, there are important points of difference. The most important of these are that:

- we propose a hypothecated Disability Levy to fund an NDIS, rather than the use of general taxation revenues;
- we argue that motor vehicle and workplace injuries should be managed under existing state-based schemes, rather than through a National Injury Insurance Scheme. However, all states and territories should introduce no-fault coverage within these schemes where it is not currently offered;
- we propose that existing common law arrangements should co-exist with an NDIS and be buttressed by no-fault coverage for catastrophic accidents where this does not currently occur;
- we argue that the states and territories should keep their existing tax bases, but commit revenues designated for disability into the NDIS premium pool; and
- we propose that the states would continue to provide disability services to NDIS recipients on demand and sign service level agreements with the Commonwealth under which they would receive incentives or penalties for performance against quality benchmarks.

We conclude the paper with a note of caution. Any form of comprehensive NDIS will be at a significant cost to taxpayers. We estimate that the NDIS proposed here would require a Disability Levy of 1.3%, or an average of $15 per week for eligible taxpayers. It must also be weighed against competing and growing demands on public money, from areas such as aged care, dental health and mental health.

Given the heated debate over recent new tax proposals, the implementation of such a scheme will require considerable political commitment. It is hoped that the cost of an NDIS will be outweighed by the social and economic benefits of assisting people with disabilities back into the community and workforce, but calculating these benefits is beyond the scope of this paper. Detailed analysis of these benefits would add considerably to the political argument in favour of a national disability insurance scheme.

However, if the available level of public funding is not forthcoming, the coverage of an NDIS would need to be scaled back in a way that ensures those with the greatest unmet need are least affected. Any scaling back of NDIS coverage should not prevent the leveling-up of state-based accident insurance schemes as this process is expected to be self-funding.

Section I: Introduction

There are three principal problems to be addressed in the context of long-term care and support for Australians with disabilities. These are:

- how to improve inadequate levels of care and support, both for those with catastrophic injuries and those with other significant disabilities;
- how to ensure equitable minimum coverage for all Australians with disabilities, irrespective of their location and the source of their disability; and
- how to sustainably finance this additional care and support.

Upon consideration, a number of secondary issues immediately emerge but these three challenges are the primary priorities which policymakers must address.

This paper offers an overview of the challenges in the provision of care and support to people with disabilities in Australia. Based on this examination, the paper proposes a high-level outline for an NDIS with a parallel set of arrangements for dealing with victims of catastrophic injury. It then proceeds to assess the costs and funding model required to support these arrangements.

Throughout, the paper makes reference to the Productivity Commission's Report on Disability Care and Support, and explains how Per Capita's policy design departs on occasion from the Commission's recommendations.

Section II: Weaknesses in existing provision of disability care and support

The reasons behind inadequate current levels of care and support are fourfold. First, market failures prevent private insurance providers from offering comprehensive coverage. Secondly, there is an overall shortfall in public funding. Thirdly, there are disparities in state-based regulation of injury insurance. Finally, the operation of a common law system in the absence of complementary no-fault insurance has left some accident victims poorly covered.

Market failures in private insurance provision

Private insurance markets often experience a failure of adverse selection in which low risk individuals choose not to insure, and insurers avoid those with higher risks that cannot be individually priced. In particular, these failures occur when insurers cannot quantify an individual's risk profile based on demographic or behavioural characteristics.

Private insurance arrangements can ameliorate these problems. For example, automatic acceptance of insurance for death, income protection and total and permanent disablement has been a successful ancillary benefit for the majority of Australian's superannuation fund members, demonstrating how private insurance arrangements can co-exist with adverse selection challenges.

However, mandatory social insurance is most frequently used to redress the market failures brought about by adverse selection. The underlying principle of social insurance is that every citizen bears some risk against particular outcomes such ill health or unemployment, and the efficient economic solution is to pool all that risk through mandatory insurance cover.

The risk of disability fits into this category. All of us bear some risk of disability and the most cost-effective way to insure against this as a group is to manage the entire pool of risk in a social insurance scheme. An NDIS which covers every Australian against the risk of disability should be based on these social insurance principles.

This does not mean that we must forego private insurance provision completely. Private provision can improve outcomes in some insurance markets by expanding choice and fostering innovation. In order to capture the benefits of competition and innovation within a social insurance pool, it may be possible to outsource elements of care and provision offered under an NDIS to private and not-for-profit providers. These contracts could be tendered on a regular basis, in order to provide competitive tension around costs and service levels.

The sustainable delivery of additional public funding

There is a clear shortfall in resources for care and support for people with disabilities in Australia. The Productivity Commission has compiled evidence showing that 15% of all people with disability experience unmet need for core activities such as self-care and mobility, while 37% face unmet need for other activities such as healthcare, paperwork and meal preparation (PC, 2011A: 2.8).

Clearly, an important part of the solution is a significant injection of additional public funding. How can additional funds be provided on a sustainable basis? There are three options: 1) the funds are collected as premiums under an insurance scheme arrangement, like the state-based workers' compensation and motor vehicle accident schemes; 2) they are hypothecated through a special purpose tax, such as the Medicare Levy; or 3) they are allocated from general taxation revenues. The first option can be undertaken by either Federal or state governments, while options 2 and 3 are only available to the Federal government, given its income taxation powers.

The sustainability of these funding arrangements is the critical question. Microeconomic theory tells us that an insurance scheme funded by risk-rated premiums is most efficient. Premiums can be structured to reflect individuals' risk profiles and adjusted over time to manage the actuarial liabilities on the insurance pool.

However, there are challenges with delivering a premium-based insurance scheme involving universal coverage. The moral and political arguments for mandating premium payments and differentiating payment levels based on uncontrollable characteristics are questionable. Furthermore, it is likely that those with the highest risks and therefore the highest premiums also have the least ability to pay.

Given this, a dedicated levy where adult taxpayers above a certain income pay a fixed levy to fund disability care and support is desirable. While the absence of risk-adjusted premiums means that this is not a full private insurance scheme, it can be designed to reflect a number of private insurance scheme characteristics. The income for the levy can be quarantined for the exclusive use of the scheme, and the levy itself can be adjusted over time to cover its forecast actuarial liabilities.

It is important that the rate of the levy is set by an independent process with regard to the forecast liabilities, rather than as part of the government's annual budgeting process. If the actuarial management of the scheme is deficient and the levy is set too low, the government will be forced to reduce the provision of care and support for disabled people. This has occurred repeatedly within New Zealand's Accident Compensation Corporation (ACC) scheme with detrimental outcomes for that scheme's participants.

A brief examination of the New Zealand experience is telling. Though the benefits of extending accident insurance coverage to all New Zealanders are widely acknowledged, the design of the ACC scheme has led to periodic funding crises. Between 1985 and 1990, scheme costs increased by 25 percent per annum, leading to the introduction in 1992 of "drastic measures designed to limit the scope of the scheme and to reduce the benefits it pays to accident victims" (Mahoney, 1992: 160).

Between 2004 and 2009, a New Zealand government steering group found that there had been "a dramatic increase in the outstanding claims liabilities of the Scheme", totaling NZ$14.4 billion (ACC Stocktake Group, 2010: 1). The ACC's first annual Financial Condition Report stated that the scheme's net funding position was negative NZ$10.3 billion as at 30 June 2010 (ACC, 2010: 2).

The New Zealand experience both demonstrates the actuarial challenges in forecasting no-fault scheme liabilities, and highlights the challenges of funding a scheme from general taxation revenues. Schemes funded from general revenues are subject to the competitive internal processes of government budgeting and are susceptible to being watered down as a result of political pressures, with the result that the provision of care and support is commensurately reduced. This produces exactly the sort of unpredictability around disability coverage that the Productivity Commission is seeking to address. Of course, it is possible for a dedicated levy to be subject to some watering down, but the transparency of the levy arrangement makes this politically more difficult for governments.

Disparities in state-based injury insurance schemes

Geographical disparities in coverage are the legacy of the evolution of separate state-based injury insurance schemes. As a result, people experience vastly different outcomes from similar accidents or illnesses, depending on where and how these occur. The Productivity Commission offers the example of the different experience faced by a driver who is catastrophically injured in a car accident in Coolangatta rather across the border in Tweed Heads. If no other party is at fault in the accident, under Queensland arrangements the Coolangatta driver will only have access to inadequate publicly funded support. In Tweed Heads, under NSW's third party motor vehicle insurance scheme, the driver receives lifetime high-quality care.

Such disparities are one of the most serious weaknesses in Australia's disability support arrangements; their removal is rightly an important goal of the Productivity Commission's enquiry.

It is highly desirable that disparities in coverage are removed in a way which lifts coverage for all Australians to the current maximum level rather than reducing coverage to the current minimum. In other words, coverage should be 'leveled up' rather than 'leveled down'.

It is not necessarily obvious that this should be the case. If existing minimum levels of coverage were generous and maximum levels were exorbitant, it would be reasonable to level down. However, the accumulated evidence indicates that minimum levels of coverage are far from generous: the Productivity Commission documents extensive disadvantage and unmet need amongst Australians with disabilities (2011A: 2.2-16). Furthermore, if the scheme can be designed to be self-financing, as the high-quality Victorian TAC has been, there is no reason to seek to minimize benefits available to scheme participants.

The interaction of no-fault and common law arrangements

This leads us to the final cause of inadequate care and support for people with disabilities in Australia: the balance between no-fault and common law arrangements. The principal reason for disparity in coverage across Australian states and territories is that some jurisdictions have embedded no-fault principles in the design of their motor vehicle insurance schemes, while others have eschewed no-fault principles in favour of exclusive common law arrangements. The former group includes NSW, Victoria, and Tasmania, while the latter covers Queensland, South Australia, Western Australia and the ACT.

The potential inadequacy of common law in the absence of no-fault insurance has led to a rigorous debate amongst many of the stakeholders in the disability sector over whether common-law arrangements should be discarded in favour of no-fault systems. In our view, this debate is based on a false premise, namely that no-fault and common law arrangements are mutually exclusive, and that policymakers are therefore faced with an either/or choice in favour of one of the other. This is not the case. In fact, the most highly regarded accident schemes in Australia are 'hybrid' schemes which combine the best elements of no-fault and common law. These include Victoria's TAC and Tasmania's MAIB. It is curious that these schemes are frequently referred to as 'no fault' despite the fact that they are hybrid, reflecting the widespread confusion over the issue.

Typically, 'hybrid' schemes offer no-fault coverage which allows them to pay out immediately for care, therapy, equipment, home alterations, lost wages, vocational retraining, as well as a capped lump-sum payment for permanent disability. Above this level, the common law elements of a hybrid scheme allow an injured person to pursue an at-fault party through the legal system for damages which cover pain and suffering, and compensation for financial loss over their lifetime. Only a small proportion of these cases (around 2%) proceed to court. The remainder are resolved within mandated pre-court processes or court supervised structures, designed to streamline claims and minimise expense. In most schemes, payouts are capped. Under the TAC, these caps are $472,500 for pain and suffering and $1.06 million for lifetime financial loss (TAC, 2011).

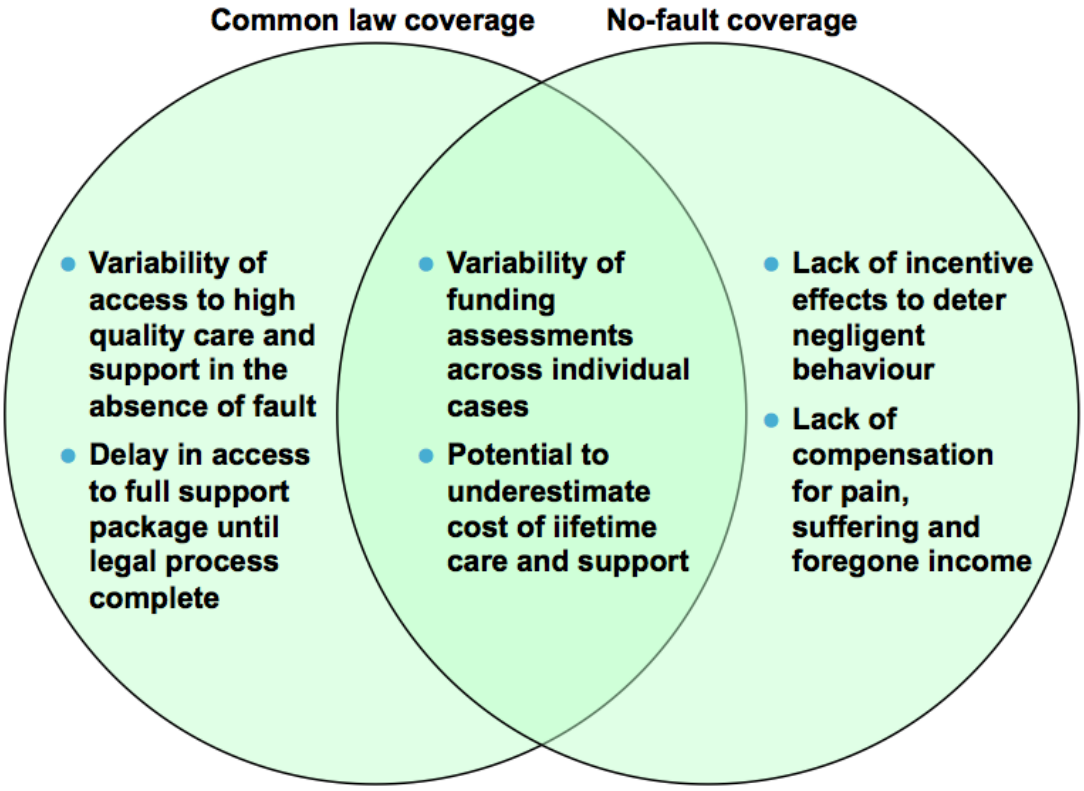
The existence of these hybrid schemes offers policymakers a third option. Rather than seeking to remove disparities in coverage by moving all jurisdictions to a no-fault scheme or common law scheme, they can do so by introducing hybrid schemes.

The extension of no-fault coverage to all Australians would ensure that the hypothetical driver in Coolangatta does not receive vastly inferior treatment than their Tweed Heads counterpart. Most simply, this could be achieved by those jurisdictions with common law schemes choosing to introduce no-fault principles alongside their common law arrangements in a hybrid scheme format.

The Productivity Commission has taken a different view: it has recommended the no-fault only arrangements. It does not explicitly evaluate the benefits of hybrid schemes. Given a choice between the remaining alternatives of a no-fault system and common law arrangements, the Commission has expressed a strong preference for the no-fault option. It argues that a series of weaknesses in common law arrangements renders common law less suitable for the provision of disability care and support.

The evidence on the relative merits of common law schemes is mixed, and this evidence can be used selectively by both proponents and detractors to mount their cases. The key question here is how any weaknesses in common law identified by the Commission might affect the design of a national disability insurance scheme. It is useful to categorise the relative weaknesses of common law and no-fault schemes as follows:

Figure 1: Weaknesses of Common Law and No-Fault Coverage



Some weaknesses are exclusive to either common law or no-fault schemes, while others are shared by both. By offering a hybrid scheme which combines no-fault coverage with the retention of common law rights, we capture the strengths of both approaches while avoiding their unique weaknesses. This design has performed creditably in the state-based work accident and motor vehicle insurance schemes, and should be replicated in the NDIS.

Section III: Design approaches to national disability insurance

Having reviewed the underlying causes of inadequate and inequitable care and support, we now turn to the challenge of a scheme design that can address these causes. In the context of the current debate, there are several inter-related questions to answer:

• Should we manage accident insurance separately from other disability coverage as proposed by the Commission?
• Should we seek to retain existing state-based schemes, albeit within a national framework, or disband them altogether?
• What funding approach should be used – premiums, a hypothecated levy or general taxation revenues?

Two insights dictate the design approach Australia should take to improving national disability insurance.

The first is that the dynamics of insurance coverage for accident victims who have suffered catastrophic injury are fundamentally different to those for people with disabilities who are not victims of accident.

Coverage for most accidents can be provided under a full insurance scheme model which can be largely self-funding, and in which premiums can be risk-rated for individual profiles. On the other hand, as explained in Section II above, disability arising outside of accidents in which every citizen bears similar uncontrollable risks is better suited to universal social insurance.

The second is that motor accident victims with catastrophic injuries are relatively well served by existing hybrid schemes in NSW, VIC, and TAS, but less well covered in other jurisdictions which lack no-fault insurance.

So how should we improve the overall shortfall in care and support for people with disabilities, given that there are both economic and legacy reasons for managing these two groups differently?

Per Capita believes that the optimal solution involves a new National Disability Insurance Scheme for people with disability arising outside of catastrophic accidents, complemented by improved coverage for catastrophic accident victims.

This approach requires the political will to commit considerable new public funding to disability insurance. As stated above, competing demands on public funds are growing. In particular, an ageing population in Australia will result in enormous pressure on the aged care and health sectors over the next two generations. Should this political will fail to eventuate, the coverage of an NDIS would need to be reduced in line with actual new funding available. The improvement in coverage for catastrophic accident victims is less exposed to the commitment of new funds since risk-rated premiums can be raised to cover cost increases.

We will now examine a proposed NDIS design before turning to improvements in catastrophic accident coverage.

A National Disability Insurance Scheme

Per Capita supports the creation of a National Disability Insurance Scheme for people under 65 with permanent severe or profound disability arising outside of motor vehicle or workplace accidents. Based on evidence collected by the Commission, this Scheme would be likely to provide direct support to around 360,000 people (PC, 3.1).

In the event of disability, the NDIS should provide citizens with funding for timely access to care and support, therapy, equipment, home and vehicle alterations and periodic respite. It would not cover education and training, employment or income support which would be provided through mainstream government services. It would also not cover compensation for pain, suffering or financial loss although these might be pursed through common law channels where applicable.

It is desirable that the NDIS provide choice to people with disability wherever possible. In practice, this means that people eligible for NDIS funding are able to opt for self-management of an annual budget for the care and support needs listed above. The level of need and corresponding budget would be assessed (and periodically reassessed) by a health professional approved or appointed by the National Disability Insurance Agency (NDIA), a regulatory body established to manage the scheme. In certain cases, the NDIA may approve a lump-sum payment for the self-management of daily care needs over an agreed period. Where this occurs, the recipient would not be eligible for further NDIS payments until the expiry of the agreed period.

Additionally, where a common law claim is pursued, the scheme would include a provision for the repayment into the NDIS by victims of medical incidents, criminal assaults and general community accidents such as falls who receive settlements under common law processes. It is common practice for both Medicare and Centrelink to require recipients of common law awards to make some contribution to cover a share of their social insurance expenses, and it is reasonable for the NDIS to adopt a similar practice.

The NDIS should be funded through a dedicated disability insurance levy similar to the Medicare Levy, with revenues hypothecated directly for disability. This means that that the Scheme would not operate as a private insurance scheme with individually tailored risk-rated premiums, but rather as a social insurance scheme as outlined in Section II above. Claimants would be required to pay modest excess in cases where they have the financial means.

We believe that the rate of the disability insurance levy should be determined outside of the political process by an independent Disability Commissioner. The Federal Government should commit in advance to the level of care and support it wishes to provide through the NDIS, and the Disability Commissioner would have the freedom to set the rate of the levy based on an actuarial analysis of forecast liabilities.

Should the Government wish to modify the level of care and support offered, it would need to provide advance notice to the Disability Commissioner and communicate this to the public. We feel that this process is less likely to be subject to dilution through the political process over time compared with funding from general taxation revenues where governments come under multiple pressures to adjust eligibility and benefits. As discussed above, this has been a recurring problem for New Zealand's ACC scheme.

Improved coverage for catastrophic accident victims

For people who incur catastrophic injuries through accidents, the Productivity Commission has recommended the creation of a separate National Injury Insurance Scheme which operates as a federation of existing state-based schemes.

While a separate injury scheme based on insurance principles may be desirable in theory, we believe the Commission's federation proposal would be extremely challenging to achieve in practice.

This would require the states and territories conceding considerable autonomy around the management of their existing schemes. In recent years, states have proven reluctant to concede autonomy in areas as diverse as hospital funding and occupational health and safety standards, and it is unlikely that injury insurance schemes would prove significantly different. What's more, certain states such as Victoria generate considerable surpluses from their existing schemes, creating further resistance to excessive federal intervention.

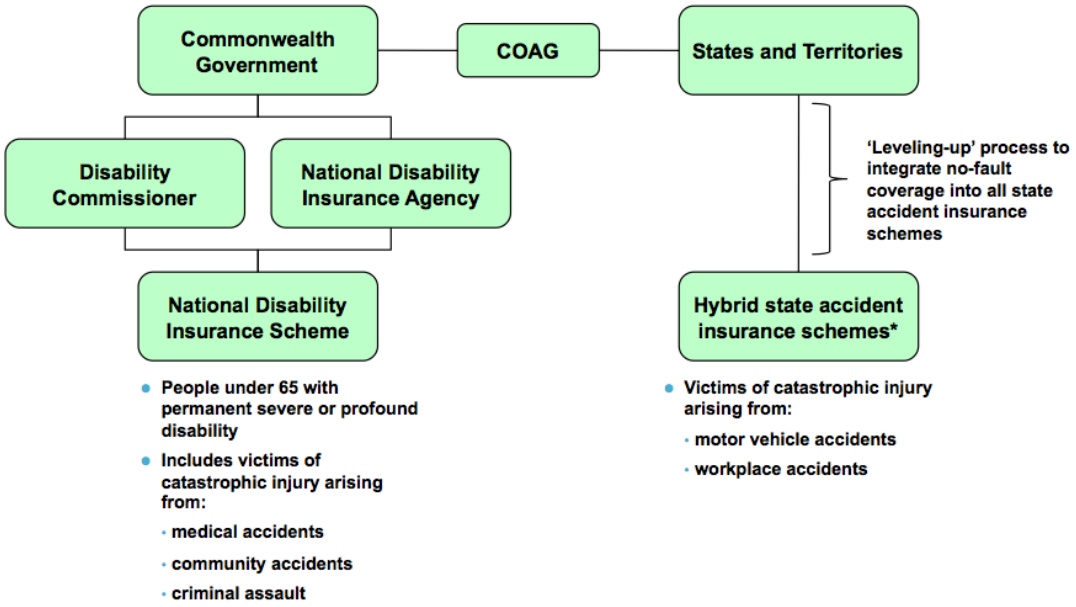
Given this, policymakers should aim for the outcome consistent with the goal of uniform, high-quality minimum coverage which can be achieved with the least degree of federal intervention.

The simplest approach would be to negotiate through COAG the introduction of no-fault coverage into those state-based schemes which currently do not offer it. The Commonwealth should dedicate specific funds to the negotiation towards this outcome, as well as providing funding for transitional arrangements for those schemes concerned.

The only anomaly with this proposal is that there are currently no state-based schemes which insure catastrophic injuries arising from general community accidents, medical accidents or crime. Typically, these involve falls and assaults, which cause around 35-40,000 serious injuries per year across Australia (PC, 2011A: 16.24). As there is no existing coverage for permanent disability arising from these incidents, it is sensible to insure them through the new NDIS.

The overall design framework for an NDIS combined with improved catastrophic accident coverage is outlined in Figure 2 below.

Figure 2: Outline of proposed NDIS and levelled-up state accident schemes



Section IV: Assessing the costs of national insurance provision

How much is the scheme presented above likely to cost? What does this translate into for individual taxpayers? And how should we respond if the full funding requirement is not delivered by politicians?

Total funding requirement for an NDIS

Under the Tier 3 of the NDIS presented by the Productivity Commission, around 360,000 people would receive individually tailored financial support at a gross cost of approximately $12.5 billion (PC, 2011A: 14.24).

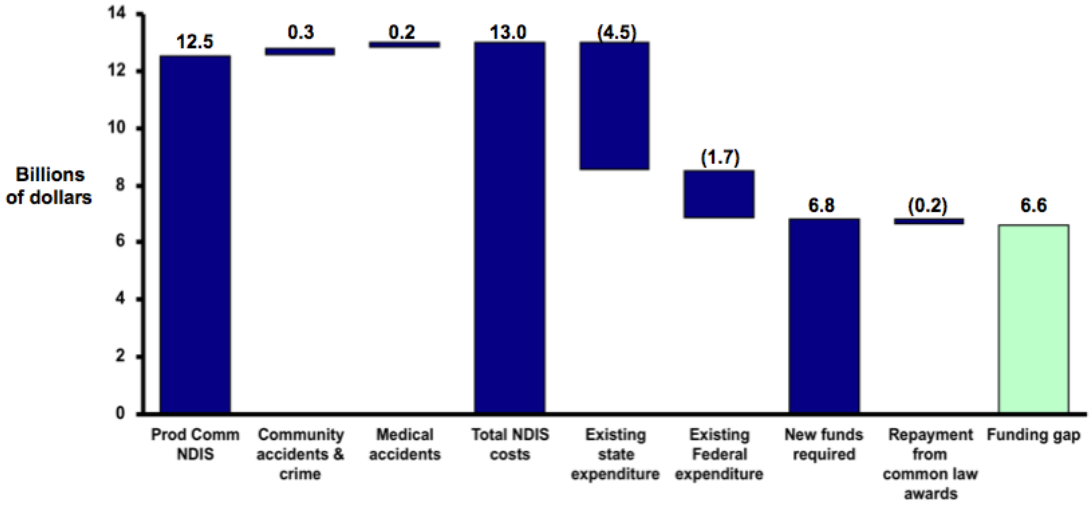
In addition to this, Per Capita's scheme would include those injuries which cannot be covered under hybrid insurance schemes – medical accidents, general community accidents and criminal assaults. As outlined above, these involve an extra 35-40,000 injuries per year from community accidents and crime, at a cost of $300-350 million p.a. (PC, 2011A: 16.26). In addition, there are around 2,500 medical incidents costing $200 million annually (PC, 2011A: 16.16). Given this, the gross cost of an NDIS under Per Capita's design would be $13.0 billion.

These costs do not represent the additional new spending required to finance the NDIS. They are gross costs and are offset by existing expenditure already provided by State and Federal governments. The Commission shows that these offsets totaled $6.2 billion (PC, 2011A: 14.26), with $4.5 billion spent by the states and territories and the remaining $1.7 billion by the Commonwealth.

Finally, we must include repayment into the NDIS by scheme participants who receive settlements under common law processes. There are around 320 such settlements for catastrophic injuries each year, at an average of $1.5 million, totaling approximately $470 million. If these recipients contributed around 40% of their total settlement to cover their lifetime care and support costs, this would provide an offset to the NDIS of around $200m p.a.

With the combined Federal and State government offsets of $6.2 billion plus $0.2 billion in common law recoveries, we have total offsets of $6.4 billion to set against the gross scheme cost of $13.0 billion. This gives us a net new cost for Per Capita's NDIS of $6.6 billion.

Figure 3: Gross costs and funding gap for proposed NDIS



Sources of NDIS funding and impact on taxpayers

This funding need raises two questions. Firstly, where does the incremental $6.6 billion come from? Secondly, are changes required in the management of the existing $6.2 billion of Commonwealth and State disability spending?

As outlined above, Per Capita believes the new spending should be funded through a national Disability Levy modeled on the existing Medicare Levy. The Medicare Levy is currently set at 1.5% of taxable income, and is payable by all taxpayers with incomes over $18,488. (It is partially payable by those with incomes between $18,488 and $21,750, with higher thresholds applying for senior Australians.) The Medicare Levy (excluding the surcharge) was paid by 8.3 million taxpayers in 2008-09 and generated $7.4 billion dollars in revenue (ATO, 2011: 24).

Based on the ATO's 2008-09 Medicare Levy figures, a national Disability Levy would need to be set at 1.3% in order to raise the $6.6b net costs of the NDIS. This would equate to an additional $790 per eligible taxpayer. We do not believe that a surcharge akin to Medicare Levy surcharge is appropriate in this context. The Medicare surcharge is levied on those who do not take out private health insurance, but in the case of disability, private insurance is already mandatory in those areas where quasi-private markets operate (motor vehicle and workplace accident cover).

As outlined above, changes to the level of the Disability Levy would be controlled by an independent Disability Commissioner. The Commissioner would monitor the actuarial liabilities of the NDIS and independently set the Levy at a rate that would cover those liabilities. The Government would be free to change the breadth and depth of coverage of the NDIS, but would need to provide the Disability Commissioner with three years' notice of such a change. This period would have the dual benefit of giving sufficient notice to the Commissioner to revise actuarial liabilities and incorporating at least one Federal Election to allow the public to the opportunity to vote on the proposed changes.

The second critical question concerns the management of the existing $6.2b government spending on disability. The Commission proposes that the States and Territories cede control of disability service provision to the Commonwealth and reduce state taxes by the amount they currently use to provide these services ($4.5 billion).

In its Final Report, the Commission proposes that the new Commonwealth National Disability Insurance Agency (NDIA) would ultimately replace existing state and territory disability agencies, which currently pay for, oversee and in some cases fund disability service provision. As part of ceding control of funding and service provision, the states and territories would give up $4.5 billion in annual revenue, by foregoing their existing Special Purpose Payment (SPP) for disability and reducing state-level taxes.

We believe that this approach, while desirable in principle, is unlikely to succeed in practice. In a welcome development at the Council of Australian Governments (COAG) meeting following the release of the Commission's Report, all governments expressed in-principle support for an NDIS. However, the statement released after the meeting pointedly "noted that disability services are currently the responsibility of State and Territory Governments" (2011: 4). The States and Territories will be extremely unwilling to give up existing state taxes, even if this means a reduction in their service obligations. The States and Territories are keenly aware of the shifting patterns of GST allocation, and wish to safeguard their own revenue bases at all costs. Furthermore, they are skeptical of the Commonwealth's ability to take responsibility for service delivery, in light of recent failures such as the 'pink batts' program. Moreover, many States and Territories believe that their arrangements, whilst not perfect, are better than those which would be put in place by the Commonwealth.

The Commission recognizes that the States and Territories may not wish to participate in a 'tax swap' under which they forego both revenues and service delivery obligations, and suggests in this case that the Commonwealth gradually reduce Special Purpose Payments. However, an alternative approach might be to negotiate with the States and Territories an agreement under which they retain their tax bases, but commit the $4.5 billion to the NDIS pool. They would continue to offer disability services, and recipients of NDIS payments could choose whether to use government, non-profit or for-profit providers. This is consistent with the self-determination theme strongly evident in many submissions to the Productivity Commission. Additionally, the States and Territories could sign Service Level Agreements with the NDIA, under which they are rewarded for exceeding quality benchmarks and penalized for failing to meet them. This approach has worked successfully for state provision of Commonwealth-funded public housing construction (FAHCSIA, 2010).

As described in Section III above, we propose a COAG process to negotiate the 'leveling up' of state-based accident schemes through the introduction of no-fault coverage. This leveling-up should be largely self-funding, as states will be able to raise premiums to cover the increased cost of additional coverage. However, the Commonwealth should make some funding available for negotiation and transition arrangements.

Section V: Conclusion

This paper has examined options for the equitable provision of high-quality care and support for people with severe or profound disabilities in Australia. It has identified four primary reasons for the inadequacy of existing disability support provision, and explored the policy challenges inherent in each of these. The paper has developed high-level outlines for a National Disability Insurance Scheme and leveled-up accident insurance schemes which would address these challenges and deliver equitable provision of high-quality care and support.

In a number of respects, this outline is consistent with the NDIS design contained in the Productivity Commission's Final Report. Both would be managed as a social insurance pool and both envisage similar levels of eligibility and generosity. In both cases, catastrophic injuries from motor vehicle or workplace accidents would be covered through separate arrangements. Like the Commission, Per Capita believes that choice should be extended wherever possible to NDIS recipients and favours self-management of allocated funds where appropriate.

Per Capita's scheme design does differ in important ways from the Commission's proposal. Per Capita believes that, in the context of a contested political process, it unlikely that sufficient funds can be reliably allocated from the Commonwealth's general taxation revenues to fund the NDIS. Given this, we believe a hypothecated Disability Levy, similar to a Medicare Levy, is more suitable funding mechanism. The rate of this Levy would be set by an independent Disability Commissioner in order to cover the actuarial liabilities of the Scheme. The Commonwealth would retain the right to alter the scheme's coverage and generosity with sufficient notice to the Commissioner and the public.

Per Capita also differs from the Commission in its treatment of existing state and territory revenues. We feel that the states and territories are highly unlikely to give up their own tax revenue base. Instead, we suggest that the states and territories negotiate to commit existing disability revenues to the NDIS pool, and continue to provide disability services to NDIS recipients on demand. The Commonwealth would sign service level agreements with the states and territories, under which they would receive incentives or penalties for performance against quality benchmarks.

Furthermore, Per Capita believes that the Commission's proposed National Injury Insurance Scheme is unlikely to receive sufficient levels of support from the states and territories to be adequately implemented. Instead, Per Capita proposes a looser form of Commonwealth/State co-operation in which the Commonwealth negotiates for those states currently without no-fault arrangements for motor vehicle and workplace accidents to introduce no-fault coverage alongside existing common law coverage. Medical incidents, general community accidents, and criminal assaults would remain under the NDIS, with no-fault coverage supported by existing common law rights.

Finally, a note of caution. While Per Capita has tried to account in its design for some of the political obstacles likely to be faced by a National Disability Insurance Scheme, it should be acknowledged in concluding that an NDIS at this scale will require great political commitment and involve important trade-offs. The proposed Disability Levy of 1.3% equates to an average of $15 per week for each eligible taxpayer. Given the heated debate over the flood levy, mining super-profits tax and carbon tax, it will be a challenging proposition for Government to embrace. What's more, other important areas of unmet social need – aged care, dental care and mental health – also have legitimate and sizeable claims on the public purse.

If the Commonwealth does not make the necessary funding available, the coverage of the NDIS would need to be restricted to a level that is financially sustainable given the available resources. Should this occur, coverage should be reduced in line with the severity of disability so that those people with profound disability who experience the greatest level of unmet need are best protected against cuts in coverage. The leveling-up of state-based accident schemes should occur irrespective of any coverage reductions in the proposed NDIS as it is expected to be budget-neutral.

Ultimately, the role of political leaders is to weigh these claims and deliver an equitable outcome for all concerned. Per Capita believes that a comprehensive National Disability Insurance Scheme should form part of that outcome.

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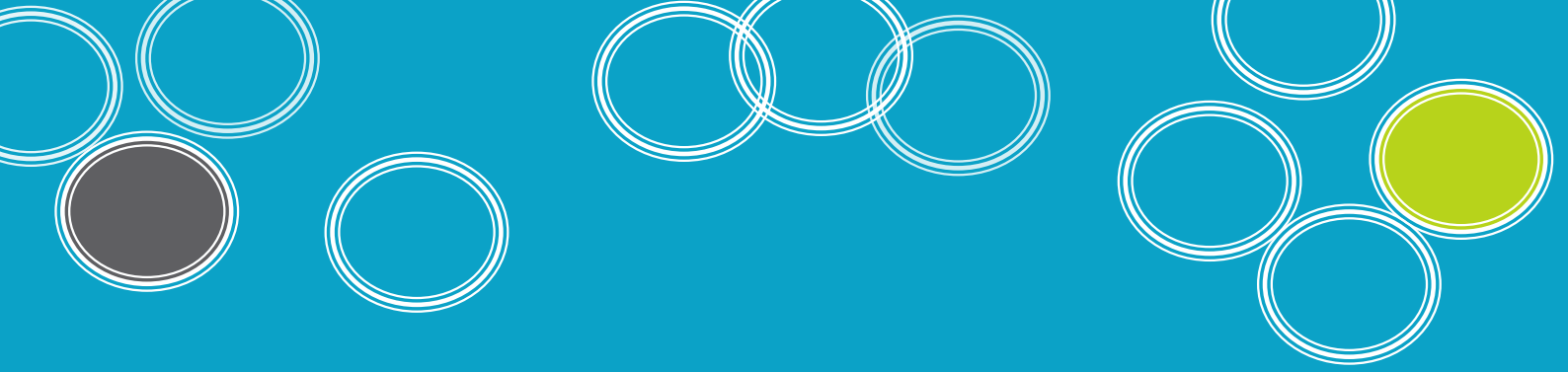

www.percapita.org.au

percapita

Suite 205 61 Marlborough Street Surry Hills NSW 2010
50 Cardigan Street Carlton VIC 3053
info@percapita.org.au