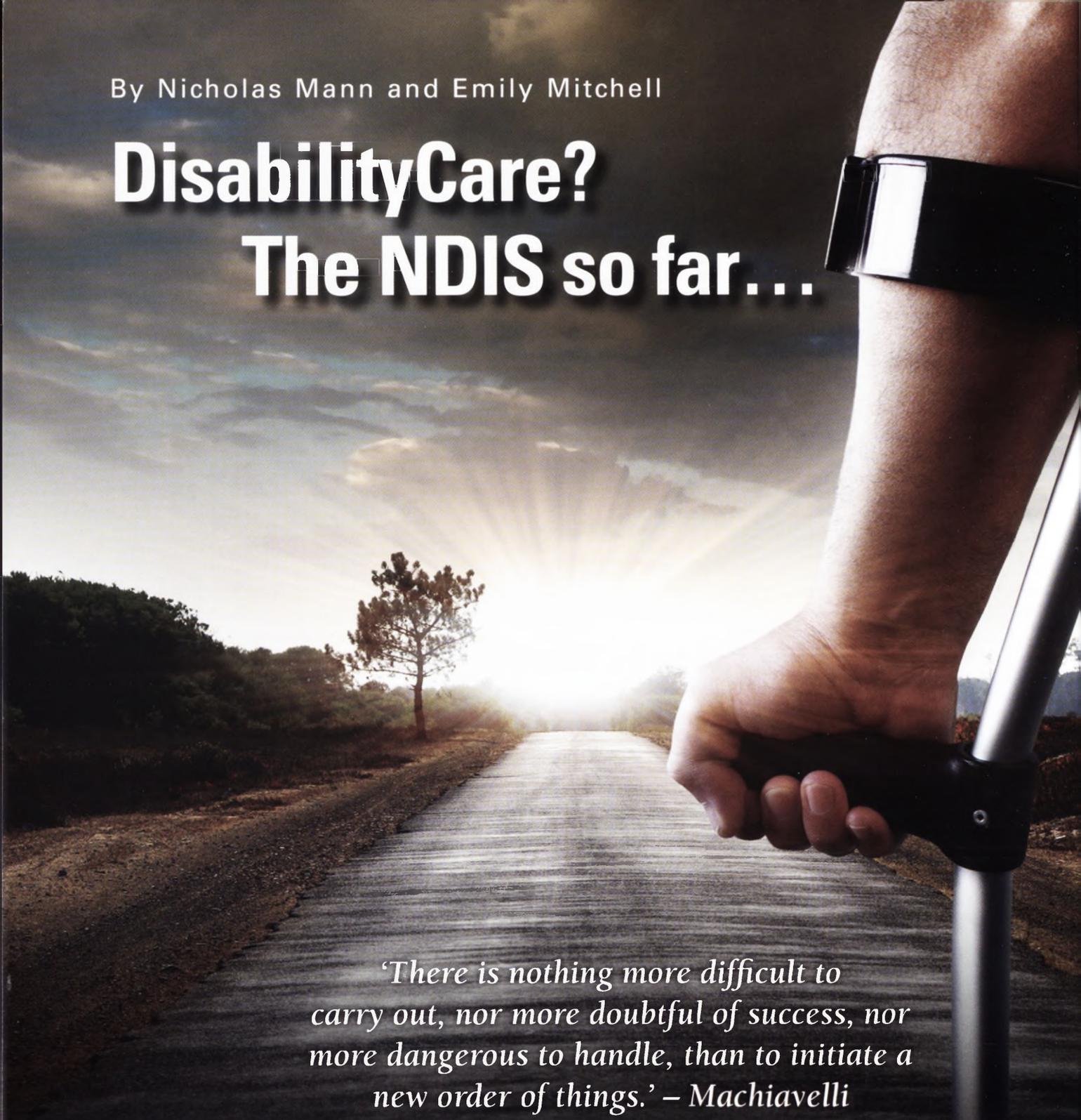


By Nicholas Mann and Emily Mitchell

DisabilityCare? The NDIS so far...

A photograph showing a person's hand holding a walking stick on a paved path that leads towards a bright sunset. The sun is low on the horizon, creating a lens flare effect. The path is flanked by trees and vegetation. The person's arm is visible on the right side of the frame, wearing a black wristband.

‘There is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things.’ – Machiavelli

Most people agree that, in principle, the National Disability Insurance Scheme (NDIS) is a positive and long overdue development. However, there has been comparatively little comment or analysis to date on the finer details. With many of the details still a work in progress, it is unclear how the Scheme will operate, including its likely impact on the practice of personal injury law. This article aims to provide a broad understanding of the NDIS and some of its practical implications.

BACKGROUND

In August 2011, the Productivity Commission released its final report into disability care and support, proposing a National Disability Insurance Scheme (NDIS) and a National Injury Insurance Scheme (NIIS). The proposed NDIS received broad support from the health sector, disability groups, government and opposition at both federal and state levels. The NIIS has since been incorporated into the *Intergovernmental Agreement on the NDIS Launch*, signed in December 2012, and all subsequent Heads of Agreement

signed between the Commonwealth and states and territories on the NDIS.¹

In November 2012, the federal government introduced the *National Disability Insurance Scheme Bill 2012*. In March 2013, a Senate committee inquiry report² and government amendments were released³ in the same week. Announcements were made to rename the NDIS 'DisabilityCare',⁴ and the Bill passed both Houses of Parliament on 21 March 2013. On 17 May 2013, the *NDIS Legislation Amendment Bill 2013* – legislation to increase the Medicare levy to 2 per cent⁵ and a host of bills relating to DisabilityCare and taxation – were passed by both Houses.⁶ A DisabilityCare Australia Fund was also created.⁷

In July 2013, DisabilityCare Australia will commence with launch sites (intended to trial and iron out how the Scheme will work) in the NSW Hunter local government areas of Newcastle, Maitland and Lake Macquarie; and the Victorian Barwon region, comprising the local government areas of the City of Greater Geelong, the Colac-Otway Shire, the Borough of Queenscliffe and the Surf Coast Shire. State-wide launches will be rolled out in South Australia and Tasmania. In South Australia, children aged 0-2 will be the first group to access the scheme, with children up to five years entering the scheme before July 2014. In Tasmania, the launch site will cater for young people aged 15 to 24 years with significant and permanent disability. In July 2014, launch sites will commence in the Barkly region of the Northern Territory and territory-wide in the ACT. DisabilityCare Australia will also commence its roll out in Queensland from July 2016.⁸ As at time of writing, Western Australia has made no commitment to the Scheme.

The objects and principles of the *National Disability Insurance Scheme Act 2013* (NDIS Act) envisage an increase in access to support and consumer choice.⁹ However, the fine print of some of the structural provisions within the Act appears to run contrary to the broader vision of enhancing individuals' choice and empowerment. At the time of writing, many of the substantive working elements of the Act have been deferred to 'NDIS rules' that have only been released in incomplete draft form.¹⁰

The rationale

A key reason for the reform was to address the current imbalance between those with compensable and non-compensable significant disabilities. Many people currently live with support needs that are not met by any scheme, either by virtue of the way in which they became disabled, or as a result of their location at the time they sustained an injury. The experience of these individuals contrasts starkly with someone who, for instance, has sustained the same set of injuries at work rather than at home.

In an attempt to address these inequalities, the Productivity Commission proposed a parallel scheme, the NIIS, to provide no-fault lifetime care and support to individuals with catastrophic injuries. By 2020, the Productivity Commission recommended that there should be an independent review, to examine replacing other heads of damage for personal injury compensation; widening coverage to the care and support needs of non-catastrophic injury; and merging the

NDIS and the NIIS.¹¹ Such an approach bears a resemblance to the Accident Compensation Commission scheme in New Zealand, which has struggled financially since its inception in 1974.¹²

Disability support services should be recognised as a basic right in a civilised society, like universal healthcare and social security. The right to seek effective remedy for violation of an individual's rights¹³ is also important. Individual legal rights, or common law rights, can, and indeed must, comfortably co-exist with a basic and decent level of disability support services. This already occurs among Australia's most successful compensation systems, such as the Transport Accident Commission in Victoria.

The Productivity Commission itself admits that the costings of the NIIS are approximate.¹⁴ Another, crucial reason for preserving common law rights is to alleviate financial pressure on the NDIS and, inevitably, individuals' supports. Removing common law rights would allow insurers to socialise the cost of negligently caused injury.

ACCESSING THE SCHEME

The NDIS will be delivered by the National Disability Insurance Scheme Launch Transition Agency (the Agency).¹⁵ The Chief Executive Officer (CEO) is vested with wide powers of decision-making across the NDIS, which weigh heavily against the powers granted to individuals. The CEO may delegate any of all of his/her powers or functions to 'an officer'¹⁶ with only minor limitations regarding privacy.¹⁷

In order to be eligible to access the NDIS, a person must be under 65 when they make the request for access (s22). Secondly, the person must reside in Australia and be an Australian citizen, permanent resident or holder of a special visa category (s23). (These criteria are unlikely to be controversial.) The CEO of the Agency has the power to determine whether a person meets the access criteria under s20(a).

Before accessing the NDIS, a person will also need to establish that they have either a 'disability requirement', or an 'early intervention requirement'. Disability requirements include a disability attributable to one or more of an intellectual, cognitive, neurological, sensory, physical or psychiatric condition.¹⁸ There is a requirement for the condition to be permanent, or likely to be permanent, and for that impairment to result in substantially reduced functional capacity and impairment of social and economic participation.¹⁹ Finally, it will be necessary to satisfy the CEO of the Agency that the person's support needs are likely to continue for their lifetime.²⁰

Alternatively, a person may access the scheme by establishing that they meet the 'early intervention requirement'. This requires that a person demonstrate that they have a disability attributable to an intellectual, cognitive, neurological, sensory, physical or psychiatric condition, or that they are a child with a developmental delay.²¹ Further, the CEO must be satisfied that the provision of early intervention is likely to reduce the person's future needs for supports, and that early intervention will mitigate, alleviate or prevent the deterioration of the person's functional capacity, or strengthen the sustainability of their informal supports.²²

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Reasonable and necessary support

Section 34 of the NDIS Act requires that the CEO be satisfied of all of a number of factors in relation to the funding or provision of each support. These include that the support assists the participant to pursue their goals, objectives and aspirations; facilitates their social and economic participation; represents value for money; is likely to be beneficial and effective for the participant; and that it takes account of what it is reasonable to expect families, carers and other community networks to provide.

The NDIS Rules may set out more specific criteria for deciding reasonable and necessary supports,²³ and also prescribe what supports will and will not be funded under the NDIS.²⁴ The draft NDIS Rules, at the time of writing, specify further considerations, including the ability of the CEO to consider available evidence, which may include published literature, any consensus of expert opinion, or anything the Agency has learned through the delivery of the NDIS. The CEO may also directly seek expert opinion.²⁵ It is unclear whether clients will have ready access to this information, especially in light of appeals.

CEO'S POWER TO COMPEL DOCUMENTS

The CEO has the power to compel documents from a person that may be relevant to its considerations. For example, if a person holds a document indicating that a participant receives supports or funding through a statutory compensation scheme, they may be required to provide that information to the CEO. Section 57 of the Act creates an offence for failing to provide that information.

This may give rise to a situation in which a lawyer is asked to provide information which is subject to legal professional privilege. In circumstances where a client has instructed a lawyer not to waive privilege over a document, the lawyer may seek to have the offence disallowed on the basis that there is a reasonable excuse for the failure to provide that information.²⁶

REQUIREMENT TO OBTAIN COMPENSATION

Where the CEO is of the opinion that a participant or prospective participant may be entitled to seek compensation, the CEO may require a person to take 'reasonable action' to claim or obtain compensation within a specified period of at least 28 days.²⁷ ('Reasonable action' has not been defined.) Prior to making such a direction, the CEO must have regard to the disability of the person, the circumstances that give rise to the possible compensation entitlement, and any impediments which the person may face in recovering compensation.²⁸ The CEO must also be satisfied that the claim for compensation has reasonable prospects of success;²⁹ and a host of other criteria laid out in s104. The decision by the CEO to give a notice to require an individual to take action to claim or obtain compensation is appealable.³⁰ A participant may also apply for an extension of the time period that they have been given to take action to seek compensation.³¹ A decision to refuse to extend this time period is also appealable.³²

A participant may face significant penalties for failing to comply with the CEO's direction. A participant with a support

plan in place will have their plan (and any supports provided as part of it) suspended until the requested action has been taken. A participant submitting a new plan would be entitled to have that plan determined, but it would not come into effect until the CEO's direction was complied with.³³ This amounts to differential treatment between those living with a disability, and those living with an acquired injury, in the provision of disability support.

The potential impact of these provisions is significant. A heavy onus will rest on the CEO to effectively determine the reasonable prospects of success of individuals' cases, leaving individuals vulnerable to the CEO's directions. Whether the CEO will satisfy themselves of the prospects of success via their own enquiries, or via the advice provided to participants by personal injury lawyers, is unknown.

The CEO's power to compel a person to claim or obtain compensation has generated concern among disability lobby groups, which anticipate that the exercise of the CEO's power could place participants at financial risk in obtaining legal advice or in pursuing a claim.

The Australian Lawyers Alliance (ALA) views the CEO's power to compel a person to obtain compensation as inappropriate and departing from the NDIS Act's stated objective to empower people with disability to exercise choice.

SUBROGATION OF CLAIM

In March 2013, Minister for Disability Reform, Jenny Macklin MP, moved an amendment to the NDIS Bill which created the power of the Agency to subrogate a person's claim in certain circumstances. These circumstances include where a claim is 'otherwise than under a scheme of compensation under a Commonwealth, State or Territory law'.³⁴ It is not entirely clear, but it may be assumed that this may affect public liability matters and other claims not covered by state-based schemes. State-based schemes, such as motor accidents, workers' compensation and asbestos schemes will, presumably, be excluded from such ambit.

The CEO may take action to claim or obtain compensation in the name of a participant or prospective participant. The CEO may also 'take over the conduct of any existing claim'.³⁵ Both types of decisions are appealable.³⁶ Before taking such action, the CEO must have regard to a number of criteria specified in s105(5).³⁷ The CEO must notify the participant in writing that the action is being considered and 28 days' notice must be provided.³⁸

In pursuing a claim, the CEO may take whatever steps are required to bring the claim to conclusion, with an individual being compelled to sign any document relevant to the claim.³⁹ Any amount obtained as a result of a claim must be paid to the Agency, which will deduct past NDIS amounts paid to the participant, and any costs incidental to the Agency in pursuit of the claim. The balance will be paid to the participant.⁴⁰

The extent to which subrogation powers may be used by the Agency in practice and its impact on the rights of participants in the scheme remains to be seen. Similarly, the practicalities surrounding the CEO's exercise of that power

are unknown – such as whether the CEO's office would have conduct of the claim, or whether the Agency would engage external solicitors for such a purpose.

The ALA and the Law Council of Australia have raised a number of significant concerns with the government about this section of the legislation, with the aim of clarifying how it will operate and optimising the right of individuals to choose whether to make a claim and within the time period that is in their best interests. Of note, the amendments passed in May to ensure that these decisions are appealable provide greater protections for an individual's rights than the NDIS Bill in its original form.

If the Agency intends to exercise its powers of subrogation, safeguards are needed to avoid conflicts of interest and the removal of an individual's past NDIS supports' costs from other heads of damage. A client should have access to advice about what is in their best interests via an experienced and independent plaintiff personal injuries lawyer, who is not conflicted by a parallel duty to the Agency.

THE IMPACT ON COMPENSATION

Repayment of past supports

In order to properly advise clients anticipating settlement of their claim, personal injury lawyers will need to be aware of the process for recovery, and have an understanding of the amount likely to be recovered by the CEO, so that they are in a position to give clear advice to their clients.

The NDIS Act gives the Agency the power to recover the cost of supports that have been funded by the NDIS before a claim for compensation is settled or determined in a court ('the recoverable amount').⁴¹ Amounts received under the NDIS prior to the settlement of a common law claim would be repaid from that settlement, as is the case currently in relation to Medicare and Centrelink repayments.

The NDIS Act states that the recoverable amount is set by reference to the past payments which have been made by the Agency⁴² and would then be adjusted in accordance with any reduction in an award of compensation by virtue of an apportionment of liability.⁴³ Some of the key provisions affecting recoverable amounts are as follows:

- The recoverable amount cannot be greater than the net compensation amount payable; that is, after repayment of Medicare, Centrelink or repayments made under any other law prescribed by the NDIS Rules.⁴⁴
- In seeking to obtain a recoverable amount from compensation, the Agency will have the power to issue a preliminary notice to the compensation-payer stating that they may wish to recover payments from compensation.⁴⁵
- Within seven days of becoming liable to pay compensation, the compensation-payer will be required to give written notice to the CEO regarding the liability to pay compensation. The penalties for failing to give notice to the CEO are either 12 months jail or, where the offender is a body corporate, a pecuniary penalty.⁴⁶
- The CEO will then determine the recoverable amount, and in light of the notice provided by the compensation-payer, issue a recovery notice.
- The recoverable amount will then exist as a debt owed by the compensation-payer to the Agency.⁴⁷ Payment to the Agency of the recoverable amount must precede payment of compensation to the participant.
- Penalties will apply where an insurer or compensation-payer fails to comply with a recovery notice, or where a participant is paid prior to recovery by the Agency.
- The Act allows the CEO to decide not to issue a notice to recover an amount from a participant's compensation if s/he considers it appropriate in the special circumstances of the case.⁴⁸ Legal practitioners acting on behalf of clients where special circumstances may exist may be able to apply to the CEO to have this exception applied for the benefit of their clients.

Effect of legislation on compensation for future supports

Clarification is needed on how common law compensation for future care and support may be affected by the NDIS. Section 35(4) of the NDIS Act provides that the NDIS Rules may prescribe methods and criteria regarding how to take into account lump sum compensation that do and do not specifically include amounts for the cost of supports; and regarding periodic compensation payments that the CEO is >>

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satisfied include an amount for the cost of supports.⁴⁹ These rules will have significant scope to impact upon and reduce an individual's entitlements.

The Senate Community Affairs Committee noted in March 2013 that 'the draft NDIS rules relating to compensation issues have yet to be publicly released by the department. We anticipate that the draft NDIS rules will substantially clarify the issues raised by submitters [to the Inquiry] in relation to compensation issues.'⁵⁰

At the time of writing (May 2013), the draft rules regarding compensation have not yet been released.

This is despite specific reference to the NDIS rules on compensation in the *NDIS Legislation Amendment Bill 2013*, which appears to indicate that these rules will apply to action taken to claim or obtain compensation in respect of a personal injury, regardless of the timing of the commencement of the NDIS Act. The rules will apply regardless of whether the injury occurs before, on, or after the commencement of the NDIS Act; whether the action is taken before, on, or after commencement; and whether or not the action was brought to a conclusion before the commencement.⁵¹

Concerns have been raised that the NDIS rules may affect a participant's compensation and also complicate their right to receive support under the NDIS after settlement. The ALA has also questioned how individuals can protect their supports in the event that the Scheme proves to be financially unsustainable.

SEEKING AN APPEAL

Chapter 4, Part 6 of the NDIS Act sets out how decisions may be reviewed, and the types of decisions considered to be reviewable are listed in s99.⁵² Once a decision has been made by the Agency, the CEO must give written notice of the reviewable decision.⁵³ However, failure to do so does not affect the validity of the reviewable decision; or the right of a person directly affected to request review.⁵⁴ A person directly affected by a reviewable decision has three months to request that the decision be reviewed by the CEO.⁵⁵ If approached for legal advice, lawyers should advise the participant of the time-limit for lodging such a request for review, regardless of whether or not they are engaged to represent the participant.

For individuals seeking review of a decision, the first step is internal review. A reviewer, who will be appointed as the delegate of the CEO, and is someone who was not involved in making the original decision, must then review and confirm, vary or set aside the decision. Subsequently, decisions are appealable to the Administrative Appeals Tribunal (AAT),⁵⁶ which will incorporate a new NDIS division.⁵⁷ (The AAT advertised for additional Tribunal members in early April to administer this new jurisdiction and is seeking to appoint people with life experience of disability.)

While the NDIS Act did not entertain any special AAT rules that may apply to the NDIS, it is anticipated that the ordinary rules of the AAT would apply regarding the representation of applicants and the payment of the applicant's costs on successfully reviewing a decision. However, the costs of seeking review in the AAT may be prohibitive.

ACCESS TO JUSTICE

While we understand that further work is under way, it is unclear how individuals will be assisted through the appeals process. Government amendments to the Bill explicitly stated that legal assistance for reviews of decisions will not be funded by the Agency: 'nothing in this Act' permits or requires the Agency to provide such funding.⁵⁸

Disability advocacy has not (as yet) been so definitively blocked from funding, and may be expected to play a crucial role in supporting individuals through the appeals process.⁵⁹

The significant barriers that people with disability face in accessing justice are widely acknowledged.⁶⁰ Individuals with cognitive impairment, especially, face unique obstacles. There is also, already, 'insufficient government funding to respond to the high levels of need for advocacy support ... advocacy support available across the country is patchy and seriously rationed'.⁶¹

Given these challenges, it is crucial to facilitate independent advocacy and advice, and reducing the deterrent posed by adverse costs. The burden of seeking appeals will otherwise rest personally on the individual, their families, disability advocacy services, or the pro bono work of lawyers. In the longer term, imposing such a burden on existing services may not be sustainable.

Potential conflict of interest

If such services are not to be included under the Scheme, larger questions of access to justice will arise, especially as a person's access to supports for their lifetime may rest on the information supplied in their initial application to the Scheme. And if such advocacy is intended to be funded by the Scheme, care will be needed to avoid conflicts of interest. In the current system, already, conflicts exist: 'advocacy programs are currently funded and administered by government agencies that also develop disability policy, and fund and administer disability services'.⁶²

CONCLUSION

The NDIS is now commencing its rollout. Time will tell as to whether people with compensable injuries will be better off under the Scheme. We understand that the government is seeking to address some of the issues raised in relation to the Scheme's operation. However, in implementing reforms designed to increase support and care to those in the community, the government must exercise caution to avoid creating an environment in which those with compensable injuries become the accidental victims of a broader march to disability insurance. The risk is that the Scheme may end up disadvantaging some of the most vulnerable people in the community, the very same section of the community whom disability insurance schemes are designed to assist.

In the meantime, lawyers practising in personal injury must endeavour to keep abreast of these legislative developments, so that they are in a position to advise their clients properly about how these reforms may affect their entitlements. ■

Notes: **1** The agreements are accessible at <<http://www.ndis.gov.au/ndis-launc/intergovernmental-agreement/>> **2** Senate Community Affairs Legislation Committee, *National Disability Insurance Scheme Bill 2012[Provisions]* (2013). Accessible at <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=clac_ctte/completed_inquiries/2010-13/ndis/report/index.htm>. **3** Government amendments are accessible at Parliament of Australia, (2013) *National Disability Insurance Scheme Bill 2013* (NDIS Bill) <http://aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4946>. **4** Michael Gordon, 'Insurance scheme renamed Disability Care', *The Sydney Morning Herald*, 18 March 2013. Accessible at <<http://www.smh.com.au/opinion/political-news/insurance-scheme-renamed-disabilitycare-20130317-2g8x9.html>>. **5** See *Medicare Levy Amendment (DisabilityCare Australia) Bill 2013*. **6** These bills were *Medicare Levy Amendment (DisabilityCare Australia) Bill 2013*; *Fringe Benefits Tax Amendment (DisabilityCare Australia) Bill 2013*; *Income Tax Rates Amendment (DisabilityCare Australia) Bill 2013*; *Superannuation (Excess Concessional Contributions Tax) Amendment (DisabilityCare Australia) Bill 2013*; *Superannuation (Excess Non-concessional Contributions Tax) Amendment (DisabilityCare Australia) Bill 2013*; *Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (DisabilityCare Australia) Bill 2013*; *Income Tax (TFN Withholding Tax (ESS)) Amendment (DisabilityCare Australia) Bill 2013*; *Income Tax (First Home Saver Accounts Misuse Tax) Amendment (DisabilityCare Australia) Bill 2013*; *Family Trust Distribution Tax (Primary Liability) Amendment (DisabilityCare Australia) Bill 2013*; *Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1) Amendment (DisabilityCare Australia) Bill 2013*; *Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2) Amendment (DisabilityCare Australia) Bill 2013*. **7** See *DisabilityCare Australia Fund Bill 2013* (Cth). **8** See Commonwealth of Australia, 'Launch locations' (2013). Accessible at <http://www.ndis.gov.au/ndis-launc/launch-locations/>. **9** See objects and principles of the NDIS Act, s3, 4. **10** Some of the draft NDIS Rules can be viewed at <<http://yoursay.ndis.gov.au/document/index/11>>. **11** Productivity Commission, *Disability Care and Support Inquiry Report*, July 2011, Recommendation 18.7, at 915. **12** A brief overview of the ACC's history can be viewed at its website <<http://www.acc.co.nz/about-acc/overview-of-acc/introduction-to-acc/ABA00004>>. In 2009, following a \$4.8 billion deficit, extensive cuts were made to the scheme and to individuals' benefits. Figure sourced from Accident Compensation Corporation (New Zealand), Annual Report 2009, at 3. **13** See, for example, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, art 8. **14** 'It should be emphasised that this [annual net cost of an NDIS will be around \$830 million] is an approximate figure in the absence of more detailed evidence.' Productivity Commission, *Disability Care and Support – Inquiry Report* (July 2011) at 907. **15** NDIS Act, s118. **16** NDIS Act, s202(1). **17** *Ibid*, s202(2). **18** *Ibid*, s24. **19** *Ibid*. **20** *Ibid*, s24(2). **21** *Ibid*, s25(a). **22** *Ibid*, s25(a)-(e). **23** *Ibid*, s35.

24 *Ibid*, s35(1)(b),(c). **25** *National Disability Insurance Scheme Rules – Supports for participants*, Part 3.1-3.3, at 7. **26** NDIS Act, s57(2)(3). **27** *Ibid*, s104. **28** *Ibid*, s104(3). **29** *Ibid*, 104(4). **30** *Ibid*, s99(o). **31** *Ibid*, s104(5A). By virtue of *NDIS Legislation Amendment Bill 2013* (Cth) (hereafter, 'NDIS Amendment'), Schedule 1, part 5, cl 57. **32** *Ibid*, s99(oa). By virtue of NDIS Amendment, Schedule 1, Part 5, cl 56. **33** *Ibid*, s105. **34** *Ibid*, s105(4). **35** *Ibid*, s105(4). **36** *Ibid*, s99(ob), (oc). By virtue of NDIS Amendment, Schedule 1, part 5, cl 56. **37** This is due to NDIS Amendment, Schedule 1, Part 5, cl 58. **38** NDIS Act, s105(6), due to NDIS Amendment, Schedule 1, Part 5, cl 58. **39** *Ibid*, s105A(2), (3). **40** *Ibid*, s105B. **41** *Ibid*, s106. **42** *Ibid*. **43** *Ibid*, s107(3). **44** *Ibid*, s106(5). **45** *Ibid*, s109. **46** *Ibid*, s110. **47** *Ibid*, s111(7). **48** *Ibid*, s116. **49** NDIS Act, s35(4). **50** Senate Community Affairs Legislation Committee, above note 2, at 131. **51** See NDIS Amendment, Schedule 1, Part 2, cl 46. **52** *Ibid*, s99. **53** *Ibid*, s100(1). **54** *Ibid*, s100(8). **55** *Ibid*, s100(2). **56** *Ibid*, s103. **57** See NDIS Amendment, Schedule 2, cl 1. **58** NDIS Act, s 200A. **59** It may be possible that funding for disability advocacy support may be secured under s6 or 14. **60** *Disability Rights Now*, the Civil Society Shadow Report to the UN Committee on the Rights of Persons with Disabilities, compiled by disability representative, advocacy, legal and human rights organisations noted that people with disability confronted obstacles to accessing justice that included the unaffordability of legal services due to high living costs and difficulty in securing employment; the underfunding of public legal services and subsequent tightening of eligibility criteria; and the threat of cost risks. People with cognitive impairment face 'significant barriers at all stages of the justice system, often not receiving adequate or appropriate support to communicate instructions to legal representatives and do not understand the substance and significance of legal issues, documents or formal court processes'. *Disability Rights Now* (October 2012) at 75 and 79. Accessible at <http://doc.afdo.org.au/CRPD_Civil_Society_ReportPPDF> **61** *Ibid*, 37. Service provision is so limited that in some areas advocacy support is available only by telephone. **62** *Ibid*.

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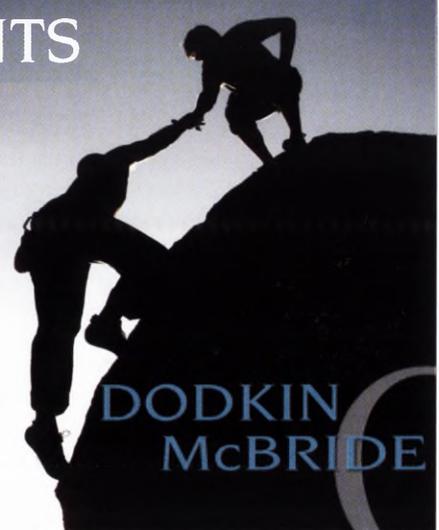
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