



**Response to the
Consultation Regulation Impact Statement on the
National Injury insurance Scheme:
Workplace Accidents**

**Submission by the
*Young People In Nursing Homes National Alliance***

April 2015

The Young People In Nursing Homes National Alliance

The Alliance is pleased to contribute to this consultation. We have taken a keen interest in the development of the National Injury Insurance Scheme (NIIS) and have been directly involved in the development of the National Disability Insurance Scheme (NDIS).

The Alliance made a submission to the Treasury's RIS consultation on Motor Vehicle Accidents that can be re-read as a companion piece to this submission.¹ A number of points made in that submission are relevant to this consultation on Workers Compensation schemes and will be referred to briefly where relevant.

The Alliance also made a submission to the Financial Systems Inquiry with regard to catastrophic injury schemes.² That information can also be read in conjunction with this submission.

What the Alliance does

The YPINH Alliance is a national peak organisation that promotes the rights of young disabled Australians with high and complex health and other support needs living in residential aged care facilities or at risk of placement there (YPINH™); and supports these young people to have choice about where they live and how they are supported.

The Alliance's membership is drawn from all stakeholder groups including YPINH, family members and friends, service providers, disability, health and aged care representatives, members of various national and state peak bodies, government representatives and advocacy groups.

We encourage a partnership approach to resolution of the YPINH issue by State and Commonwealth governments; develop policy initiatives at state and federal levels that promote the dignity, well being and independence of YPINH and their active participation in their communities; and ensure that young people living in nursing homes and their families have:

- A voice about where they want to live and how they want to be supported;
- The capacity to participate in efforts to achieve this; and
- 'A place of the table', so they can be actively involved in the service responses needed to have "lives worth living" in the community.

¹http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2014/National%20Injury%20Insurance%20Scheme%20Motor%20Vehicle%20Accidents/Submissions/PDF/Young_People_in_Nursing_Homes_National_Alliance.ashx

² http://fsi.gov.au/files/2014/09/YPINH_National_Alliance.pdf

As the pre-eminent national voice on this issue, the National Alliance's primary objectives are to

- Raise awareness of the plight of YPINH;
- Address the systemic reforms required to resolve the YPINH issue including the urgent need for community based accommodation and support options for young people with high and complex needs;
- Work with government and non-government agencies to develop sustainable funding and organisational alternatives that deliver 'lives worth living' to young people with high and complex clinical and other support needs;
- Provide on-going support to YPINH, their friends and family members.

Since its inception in 2002, the Alliance has argued for a lifetime care approach to development of supports and services for Australians; and for collaborative arrangements between programs and portfolio areas including health, disability, aged care and housing, to provide the integrated service pathways required by people in the YPINH group.

The Alliance has also led Australia wide moves for delivery of a national no fault catastrophic injury insurance scheme, consistently arguing for a scheme that would:

- Provide cover where none currently exists for injuries received in sporting and general accidents (including assaults and drug overdoses), whether at home or in the community
- Deliver a national approach to motor vehicle accidents that moves existing state fault based Motor Vehicle schemes to a no fault, 'reasonable and necessary' response basis
- Unify the various state work cover schemes through adoption of consistent benchmarks for work related accidents
- Support development and delivery of world's best practice clinical treatment and rehabilitation services protocols, particularly in those states with limited or no rehabilitative capacity at present
- Deliver optimal care and rehabilitation to injured Australians, no matter what state of the commonwealth they are injured in
- Deliver a truly national approach that provides world's best practice rehabilitation and life time care for catastrophically injured Australians regardless of where or how they are injured.

In 2007, the Alliance convened Australia's first *National Summit on No Fault Catastrophic Injury Insurance*. Key peak organisations and senior state and federal public servants came together to discuss the need for reforms around catastrophic injury insurance generally; and collaboration on development of a catastrophic injury insurance scheme for the nation.

The Alliance has also made submissions to and appeared before a range of parliamentary and other inquiries.

We would recommend that the Treasury group examine these to get a full sense of the Alliance's work in this area. These documents can be accessed at www.ypinh.org.au/reports

Response to the Workplace Accidents RIS

Concurrent attention to all NIIS injury categories

The Alliance continues to believe that the work on all four injury categories of the NIIS needs to be done concurrently as, even after adoption of the Minimum Benchmarks in both the Motor Vehicle and Workers Compensation schemes, the design and funding limits of these schemes means that, by virtue of the circumstances of their accidents, some people will be excluded. For these individuals, there will be no adequate service response from the public system.

Because the current designs of Motor Vehicle and Workers Compensation schemes do not allow universality, exclusions such as non-farm off road accidents, casual workers, contractors, volunteers, off road cycle accidents etc., will only be picked up once the general injury component of the NIIS is finalised. This means that the current exclusions in these schemes will be maintained for an extended period – and these will have real human and systemic costs and consequences.

The Alliance believes this is unacceptable and calls on the senior officials to recommend an increase in resources for the NIIS be made to the COAG, to enable work on the general injury and medical injury components to be brought forward and considered concurrently with the other elements.

Question 1

The RIS mentions that lifetime care and support is not always available in every jurisdiction. The Alliance contends that this significantly understates the lack of lifetime care and support systems in Australia more generally. Outside the compensation environment and the newly emerging NDIS trials, service programs have been shown to be fragmented and underfunded³, so the notion of lifetime care and support being available at all, is abstract at best. This is particularly problematic for individuals with compensation status.

The Alliance's experience is that there are major barriers for these people when trying to access non-scheme public services (including mental health, housing, education). The cross-program coordination and advocacy required to achieve anything like a coherent lifetime care support system that brings together services from compensation schemes and mainstream services for individuals with disability, is colossal. This type of service coordination is mostly unavailable through Workers Compensation schemes. Individuals needing this type of service have to rely on publicly funded advocacy.

The Alliance agrees with the observation of the Productivity Commission that Workers Compensation schemes are not highly experienced or capable of managing the complexities of lifetime care and support. We recognise the Victorian

³ Productivity Commission, *Disability Care and Support Inquiry Report, Volume 1*, Canberra, 2010: 2.

arrangement that sees the Victorian WorkCover Authority (VWA) contract Victoria's Transport Accident Commission to undertake lifetime care claims management and believe this is a good option.

We would, however, like to see the options for subcontracting lifetime claims management (or parts thereof) broadened to enable engagement of not-for-profit community organisations with the capacity and expertise to perform this function for Workers Compensation schemes. Our experience is that claims planning and service coordination functions are best delivered at the community level and not by insurers or bureaucracies. In saying this, we do not countenance any form of managed care, but refer to a genuine consumer focused planning and coordination function that is essential to good outcomes for injured individuals and their families.

The description of the NDIS and its interaction with accident injuries in section 3.3 is an incomplete analysis, as it does not take the NDIS rules around compensation, or the practical realities of the rollout in trial sites, into consideration.

The casting of the NDIS being a 'top-up' arrangement would be far more complex than this section implies.

The point made about the ineligibility of people over 65 for the NDIS is, however, correct. There are significant problems with this age cut-off as it creates arbitrary divisions.

Questions 3-5

The Alliance does not recognise the base case as a viable option, and indeed questions its inclusion in the RIS, other than to show the practical sense in the case for the adoption of Minimum Benchmarks.

The base case is an unwieldy proposal that would require an unattainable level of cross-scheme coordination to make it work for individuals or for the schemes. The different funding rules, scheme objectives and bureaucratic requirements to deliver services would be a constant drain on an injured person's recovery, independence and capacity to live a good life.

The Alliance supports the option to implement the Minimum Benchmarks into Workers Compensation schemes, with the additional items detailed later in this submission.

We would want this reform delivered in such a way that results in lifetime no-fault long term care and support benefits being delivered to catastrophically injured workers without impinging on their entitlement to income benefits; access to common law action for pain and suffering; and/or economic loss.

Rather than being implemented in ways that 'best suits' their jurisdiction as stated in 4.2 of the RIS, the Minimum Benchmarks need to be implemented to **guarantee** that benefits that match or exceed the expectations they embody, can be delivered by the schemes. The language and intent behind this option needs to be more prominently expressed; and must be more directive, to ensure that jurisdictions enact the required legislative changes needed for full implementation.

We agree that total scheme harmonisation is unlikely and unrealistic in achieving the NIIS goals within a reasonable timeframe.

Questions 6-11

As stated in the response to Question 3 above, the Alliance does not support the base case.

We also oppose the NDIS being cast as a safety net of any description, but appreciate this characterisation needing to be made to make up the flawed base case. This undermines the NDIS' integrity as a program. It also effectively makes the NDIS subordinate to poorly designed Workers Compensation schemes that lack alignment with the contemporary lifetime support philosophy that is at the heart of the NDIS and indeed the Minimum Benchmarks themselves.

We cannot agree with the point made in 5.1.2 that avoidance of reform in this area actually constitutes an advantage for government. If government were not occupied with this NIIS reform, then it would simply devote its resources to other policy agendas.

Because of the range of competing demands on governments, it is imperative that we not let the opportunity pass to work towards pursuit of a comprehensive lifetime care and support system in Australia.

Question 14

We believe that Workers Compensation schemes raising additional revenue to fund current and future lifetime care and support liabilities under the NIIS, is entirely appropriate. Given the overall community benefit that would accrue from the NIIS being implemented in the workers compensation area, the impact on premiums detailed in Table 5 appears to be eminently affordable.

The Alliance is bemused by the notion that reform of statutory Workers Compensation schemes to incorporate the Minimum Benchmarks could be considered to be a 'burden' to governments. Reform programs that improve public administration and the lives of citizens are the core business of governments, and the purpose of the NDIS/NIIS reforms fall squarely into this category. We read this notion as being the other side of the preposterous proposition in 5.1.2 that avoiding reform is an advantage to government.

States and Territories (other than Western Australia) have signed up to this reform, so changing legislation and negotiating with insurers and stakeholders is more of an implementation challenge than a 'burden' of governing.

These governments have also agreed to bi-lateral arrangements that would see them reimbursing the cost of NDIS supports for people injured in cases that should be covered by catastrophic injury insurance schemes. This means that there is a greater burden created by doing nothing, as this approach would create an unfunded drain on their budgets as they reimburse the NDIS. The base case provides no additional premium income to fund the cost of lifetime care and support for these people. Nor does it provide opportunities for service development in the rehabilitation area or any overall economic benefit.

Question 18

The Alliance supports a legislative approach to round up the various non-statutory schemes to ensure that they are required to adopt the Minimum Benchmarks of the NIIS.

We also believe that they should be able to contract lifetime care and support claims management and review to an appropriate and capable claims management organisation. Such an organisation does not have to be an insurer, CTP or otherwise.

Developing a market in this area will be an important contribution to the overall NDIS/NIIS environment. Some jurisdictions, such as Queensland and Western Australia, have virtually no infrastructure or capacity in the area of no-fault claims management because they have never had no-fault CTP schemes in place.

Other options, including government disability programs, or even the NDIS, need to be available.

Comments on the Draft Minimum Benchmarks

Eligibility

The eligibility for lifetime care and support following workplace catastrophic injury in Workers Compensation schemes must be consistent with the Motor Vehicle CTP Minimum Benchmarks.

Scope and inclusions

We believe that the scope of the Draft Minimum Benchmarks needs to be as broad as possible so that those people at the margins of Workers Compensation schemes but currently excluded, are brought into scope. Not doing so would otherwise see them left without access to rehabilitation or lifetime support.

Until the general injury category is finalised in the NIIS implementation, there is a risk that people injured in these marginal workplace contexts could be left in this predicament and be forced into institutional settings because no other options exist. Pending the full implementation of the NIIS, we would like to see consideration given to the widest practicable inclusions in this reform.

A no-fault system should be just that. Having exclusions undermines the purpose of no-fault schemes as a key public health measure and simply shifts costs to other government programs and to injured people and their families.

Entitlements and benefits

The list of benefits needs to be consistent with those available under Motor Vehicle schemes and those being funded by the emerging NDIS.

Together with the types of services that will be funded by Workers Compensation schemes, cross sector service coordination should be included as a benefit of a funded package to ensure that access to non-scheme supports through mainstream government programs and other community organisations, can be achieved.

It is appropriate that individuals be able to opt for self management of their support funding as they are able to do in the NDIS. This needs to be defined in similar ways to the NDIS legislation, to enable a range of models of self management (including for people requiring assistance with decision making) to be available to injured workers.

The range of entitlements should also include capacity to provide direct and indirect supports for families and informal carers of injured workers.

Values and objectives

The Minimum Benchmarks should include a section detailing the values and objectives of lifetime care and support arrangements that are consistent with elements of Section 4 of the National Disability Insurance Scheme Act 2013:

4. General principles guiding actions under this Act

- (1) People with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development.
- (2) People with disability should be supported to participate in and contribute to social and economic life to the extent of their ability.
- (3) People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime.

- (4) People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports.
- (5) People with disability should be supported to receive reasonable and necessary supports, including early intervention supports.
- (6) People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.
- (7) People with disability have the same right as other members of Australian society to pursue any grievance.
- (8) People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity.
- (9) People with disability should be supported in all their dealings and communications with the Agency so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.
- (10) People with disability should have their privacy and dignity respected.
- (11) Reasonable and necessary supports for people with disability should:
 - (a) support people with disability to pursue their goals and maximise their independence; and
 - (b) support people with disability to live independently and to be included in the community as fully participating citizens; and
 - (c) develop and support the capacity of people with disability to undertake activities that enable them to participate in the community and in employment.
- (12) The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected.
- (13) The role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy supports people with disability by:
 - (a) promoting their independence and social and economic participation; and
 - (b) promoting choice and control in the pursuit of their goals and the planning and delivery of their supports; and
 - (c) maximising independent lifestyles of people with disability and their full inclusion in the community.
- (14) People with disability should be supported to receive supports outside the National Disability Insurance Scheme, and be assisted to coordinate these supports with the supports provided under the National Disability Insurance Scheme.

- (15) Innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of supports to people with disability are to be promoted.
- (16) Positive personal and social development of people with disability, including children and young people, is to be promoted.⁴

Capacity Building and Service Development

Given the immature state of no-fault systems in most Australian jurisdictions and major service gaps that exist as a result, it is essential that Workers Compensation schemes are obliged to play their part with Motor Vehicle CTP schemes, in building the capacity of lifetime care and support systems in Australia.

In particular, there is a significant need for capacity and service development in rehabilitation services in every jurisdiction. The need for significant investment in rehabilitation service development and delivery was well articulated in the Treasury's NIIS Motor Vehicle Accident Consultation RIS.

Because mainstream employment and vocational sectors are not delivering effective services in this area, improving specialist vocational service offerings to this group is also urgently needed.

In addition, lifetime care and support management/coordination services need to be developed to ensure that the goals of individuals can be pursued in the community; and the risk of commodification of scheme participants because of their compensation status, is minimised.

Given the intent of the NDIS principles above, it is critical that the Minimum Benchmarks are designed to enable schemes to support individuals as citizens first; and to enable them to live connected lives in the community.

As a consequence of having paid care relationships crowd out genuine familial and social relationships, the Alliance is aware of the very real risk that compensable individuals can become socially isolated and be prevented from accessing routine community services because of their compensation status. Skilled service coordination and advocacy is important to safeguarding the citizenship of individuals in this situation.

Conclusion

The Alliance is supportive of the option to implement the Minimum Benchmarks (amended as recommended above) so that all Workers Compensation schemes can fund contemporary lifetime care and support services to catastrophically injured workers.

⁴ See <http://www.comlaw.gov.au/details/C2013A00020>

Despite the relatively small numbers of people in this group, it is vitally important that the reforms in the Workers Compensation area enable schemes to contribute to systemic improvements and increased capacity in the community service sector.

We are happy to contribute further to work in this area.

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