Submission No 314

INQUIRY INTO IMPLEMENTATION OF THE NATIONAL DISABILITY INSURANCE SCHEME AND THE PROVISION OF DISABILITY SERVICES IN NEW SOUTH WALES

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Inquiry into the Implementation of the NDIS and the provision of Disability Services in NSW

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T**his submission is divided into 2 sections:**

1. Philosophical and Political Economic aspects of the NDIS.
2. Future Directions for the NDIS

Philosophical and Political Economic aspects of the NDIS

The Change to a 'Market Model'

The NDIS is in essence a change in disability services from a model where the state and long-standing charities provided disability services to a 'market model'. The assumption inherent in this is that markets optimise the distribution of resources. This extends to an assumption that those who need services would know what services they need, and that this would pressure the suppliers to provide services appropriate to the needs.

The basic principle that underlies the 'free market' is taught in Economics 101 is that there is knowledge on the behalf of multiple buyers and sellers, and some equality of power, so that the buyers can withhold purchase or purchase alternative products. The products sold are a commodity.

There have been many criticisms of this simplistic models and my experience is that the market model is simply not adequate to deal with the management of health. There is too much of a power imbalance between the sellers or suppliers and the buyers. The 'buyers' do not quite know what they need, so need to discuss and negotiate this. But the person or institution that they are dealing with is not disinterested; they usually have a desire or need to provide a service. In the end, if lifetime care may be needed or home support, this will make a lot of money for the supplier. It is often an unrealistic expectation that they will put the interest of the disabled client before the financial interest of the supplier.

The Royal Commission on Banking and Financial Services has given a large number of examples of banks and financial institutions putting their own interest first and ripping off clients. How much more vulnerable are disability clients?

Trust

Interestingly there is a systemic distrust of individuals and an implicit trust of corporations. The SIRA website that oversees insurers in NSW recently had Taskforce Raven which spent $1.2 million and found organised fraud of $10 million, but the whole tone of its website is to catch fraud of individuals against insurers, not to catch insurers' defrauding individuals[1]. My experience is that only a few, perhaps 3%, of CTP or Workers Compensation medical insurance claims are fraudulent, whereas insurers try to minimise the payouts in 100% of claims[2]. In my experience this results in insurers withholding payments from far more people who need and deserve payments than is ever

[1] www.sira.nsw.gov.au/fraud-and-regulation/preventing-fraud/ctp-fraud

[2] The total budget is not stated in the CTP Scheme Performance Review 2016-7, but if it was about $2.5 billion before the 2017 changes the $10 million would then be 0.4% of the scheme's value.

taken from them in fraudulent claims. They take the premiums but do not pay the claims. In short, the fraud by the companies hugely dwarfs the fraud by individuals and is embedded in their procedures and protocols that their junior staff implement in good faith. Insurers try to prove that either there is no injury, or that the injury pre-dated the accident, or there is exaggeration, or another injury, a huge amount of effort is put into trying to shift the health treatment costs elsewhere. In that the money is collected as premiums for the specific purpose of treating people injured, monies spent merely shifting the costs elsewhere is totally wasted money and amounts to an overhead on the scheme. I have written a submission to the Royal Commission on the behaviour of insurers in the CTP and WC schemes in NSW, and I will append the Summary[3]. The bottom line of this is that corporations cannot be trusted any more than individuals can, and in my experience far less. Individuals retain personal responsibility for their actions. Corporations take a direction that is profit maximising and then set up procedures of protocols which are implemented may be quite unjust and unfair. It might be noted that in some CTP and WC insurers in NSW the staff will not use their surnames. The staff turnover is high and I have had reports of insurance clerks self-harming. All this is in corporations who are supposedly handing out the money to help accident victims, but are actually not doing so.

Supervision and Enforcement

All laws need to have reasonable enforcement mechanisms, and it seems that corporations delivering services to disadvantaged people are no exception. If an insurer in the workers compensation system in NSW does not pay someone who they should have paid, only SIRA, the State Insurance Regulatory Agency has the right to prosecute them and it never has. So insurers denying benefits are in the position of shoplifters whose only penalty is to have to put it back even if they lose in court. Anyone else would call this a moral hazard for corporations, yet it is never even noted. One might even think of it as a moral hazard for the NSW government as it uses SIRA as a senior insurance clerk, making sure that companies do not overpay. It seems to have no care for patients, the worthy workers or motorists for whom the schemes exist. Indeed, while many of my patients are in desperate straits and unable to get treatment because of unjustified refusal of their treatment by insurers, the NSW Government took a large dividend from the CTP scheme and returned $300 million to motorists[4] as a pre-election gift. The fraud pursued by Taskforce Raven was $10 million, small change while many patients are untreated.

Privatisation in Education

One could argue that the privatisation of the Education market has led to a proliferation of dodgy and overpriced courses giving diplomas of dubious and unvalidated value. If this can happen to intelligent younger people seeking education, how much easier is to offer dodgy products to those who have disabilities and their carers, where the decisions taken may have permanent effects, far longer than what is suffered by students attending a dud course.

[3] Chesterfield-Evans A. 'Systemic Problems in the Insurance Industry with special reference to NSW CTP and Workers Compensation', Submission to the Banking and Finance Royal Commission 2018

[4] http://www.abc.net.au/news/2017-10-14/partial-refunds-on-ctp-green-slip-for-nsw-car-owners/9049954

Growing Ignorance in Awarding Contracts

To return to the theme of competition driving efficiency, it is assumed that private corporations competing for government contracts will drive down prices and increase efficiency. As the government sector gets smaller and smaller and delivers fewer and fewer services, it will have fewer and fewer people with knowledge of what is happening on the ground and the costs and opportunities there. The trend is for there to be fewer and fewer contract negotiators, so fewer and fewer contracts and fewer and larger contractors. These become an oligopoly, and either operate for profit, or behave as if they do. Because the government want to deal with a few contractors it awards contracts for whole areas where they have no staff or facilities, and the bigger corporations bully or take over operatives in those areas who are de-funding by not having achieved contracts because they were too small. I know of one area where a large and very prestigious not-for –profit contractor took over an existing women's refuge, and their only real contribution was to take 15% of the money as a corporate overhead and ask the existing service to keep working with less than it had had. The large corporation knew little about the area and little about women's refuges, so the nett effect was an immediate drop of at least 15% in available funding.

The Tendering Process

A huge amount of effort is put into the tendering process as this is the lifeblood of the corporations. The government gives up trying to manage individual providers. It is assumed that the corporations will ensure quality control and manage the staff. If it is believed that individuals can choose their own services why can they not choose a carer services as they might chooses a plumber from a discussion with their neighbours and from a local paper. Now they might use a website with a list of services and feedback. Governments accredit doctors, physiotherapists, chiropractors and a whole host of other professions and have regulatory bodies. If this were done a government level with accreditation of carers to do a number of tasks this would create a real market which would drive prices down and make a far more person-to- person service. As it is corporations offer contracts for certain numbers of hours with minimum amounts and costs per hour that are hugely greater, perhaps double or triple the wages paid to the people actually doing the job. The employer becomes a middleman, a corporate parasite that takes up to two thirds of the money. This is because the government seems unwilling to set up a real market and trust or supervise individual carers. It sets up a market of corporations and supervises them absolutely minimally. It might be commented that if a management unit is unable to control or direct its own workers, it has little hope of controlling those under another entity, particularly if that entity has a profit motive rather than a service ethos. An award-winning Swedish film[5] tells the story of an ageing man who has a corporate expert trying to define him as a problem so as to put him into their facility at vast profit. In this movie the neighbours successfully support him both practically and legally. But one cannot but reflect that this will not always be the outcome.

[5] A Man Called Ove

The Allocation Process

The essence of the NDIS is that disabled people are given budgets to spend as they think best. The question is 'who decides how much money each person needs?' The answer in a management framework is to find an 'expert who knows' who then makes a judgement of the need or worthiness of a disability for a package. By definition, that 'expert who knows' has a relatively transient contact with the disabled person, so much hinges on the relatively short time that the expert has with the disabled person. Hearing of phone interviews and other transient contacts gives little optimism that this process will be thorough or just. It amounts to trusting an 'expert'. If there were a network of waged people such as district nurses or community care workers, they would know the disabled people individually and could both judge their needs and also the relative needs compared to others in their area. They would have a far better sense of proportion than anyone of however much academic or management expertise who comes in for a brief interview or visit. So the allocation model is flawed, the resources are likely to be sub-optimally allocated due the lack of willingness to have salaried people who are actually doing the job empowered during the allocation process. It is a matter of lack of trust of people actually doing the job, but wanting to have experts higher up the management structure. It might be said that not only is the allocation likely to be flawed, the whole layer of experts themselves are a cost. If the people actually doing the job started out delivering services and then as their workload increased could discuss intelligently who their extra clients were, and what their needs were the provision of services would grow organically, aware of needs and relative needs at a systemic and embedded level. The FIFO (Fly In Fly Out) model of an expert giving out packages, with marketers following along behind is unlikely to give an integrated or comprehensive service. There was an excellent book on the rise of managerialism in the British NHS[6] which pointed out that when it started as a zealous, staff-driven organisation where everyone contributed to its success and discussed its problems, it administrative overheads were only 1%. With each 'reform' the percentage of its total funding consumed by managers rose, and is now about a third. It is a salient lesson that management in the end is merely an overhead, lessening the efficiency of those who actually do the job.

What Will it Cost?

As an MP I was on the Social Issues Committee which looked at disability support issues and there was always the questions of how many people were disabled, and what disability was. The first step in analysing any problem is to find out how many people were affected. This basic question was never satisfactorily answered. There were numbers of how many people were receiving benefits of certain types, or how many people were in homes or facilities. Then there were questions about waiting lists, but it seemed that people often spent years believing that they were on lists that did not exist, and in most cases there were no comprehensive lists of anything. If all the people who could be counted were added up, some answer was reached. If, however, one asked the AIHW

[6] Hart, Julian Tudor 'The Political Economy of Health- Where the NHS Came From and Where It Could Lead' 2nd Edition Bristol Uni Press 2010

(Australian Institute of Health and Welfare) what percentage of the population had a disability and then multiplied this percentage by the number of people in the population, there were usually about 10x as many as were in the other count. So the question became, if there were unlimited services, how many people would avail themselves of them? Would there be 10x as many people wanting services as currently have them, and would the budget then be totally unable to cope. It seems likely to me that the race will be to the swift. Those who apply early for NDIS funding will get it, there may be some over-allocated packages in the early heady days, and those who come later will meet with an inevitable rationing, as experts look at their limited budgets. They will presumably be unable to claw the money back as it will have been committed to corporate service providers with high overheads and strong political voices.

A Government Teat for Corporations?

Medicare is being starved of funds and has had its funding increased at roughly half the CPI for 35 years. It was 85% of the AMA fee when Medibank started, it is now 46%- an almost 50%. Yet while this has happened the Government has with great fanfare announced an increase in the Medicare levy from taxpayers to fund the NDIS. So in the short term its funding is fine.

When the experts have given out the packages, service providers then compete to provide services or, more precisely, compete to get those who have the money to give it to them for whatever service they claim to be offering. One of the previous problems was that there were only a certain number of services of each type, so that either there was a shortage, or people had to take services that were not quite what they wanted, but that was all that was available. These two problems led to a call for 'choice', but the danger is that these two problems which might have been solved with greater resources and more flexible and responsive management have been used to create a 'market' where those who act quickly get the monies, and those who market well take them. If they are big corporations they are likely to be allocated quite quickly and there will be a big political resistance to any change in the allocation system. A huge transfer of wealth from public to private will have taken place with a lot of rip-offs as happened in Education.

2.Future Directions for the NDIS

I am most concerned with the direction that government has gone, with her NDIS having large amounts of funds, a huge uncertainty about the number of people it needs to service, its high allocation costs in a relatively arbitrary framework, and its potential for exploitation or rip-off by dodgy or misguided corporatio0ns. The ideology of small government and the loss of people actually going the job who might add a strong knowledge resource base to policy and practical allocation decisions will be a problem as is the increasing tendency to have laws that are unenforced.

It is hard to know how to stop such a model, but if a market is to be successful it must respond to need and keep overheads low so that as much of the money as possible goes to those who need it rather than those who manage it.

One of the justifications for manager is that they organise the workers and also accredit and train them. The government could have a carer accreditation scheme which would include a register of qualifications and tasks that were allowed to be performed. There would have to be an insurance scheme for the health of the carer and the protection of the clients. There could also be a website or exchange system where clients linked up with carers, and presumably in this social media age, some sort of feedback about carers and clients. It would be better if this were government initiated and funded by registration fees that covered costs only as this would keep the overheads to a minimum and would facilitate the easiest contact between client and carer with the minimum of third party overheads.

The presence of a large cohort of individual providers dealing directly with clients will empower both clients and individual providers to keep people at home and lessen the margin that corporate providers are able to demand.

Biography of Arthur Chesterfield-Evans
I am a former MLC and now a doctor practising as a GP in NSW with a particular interest in Workers Compensation and CTP injury.

Summary and Recommendations of Submission on the NSW CTP and Workers Compensation Systems to Banking and Finance Royal Commission

I have extensive medical professional experience in CTP and Workers Compensation in NSW. I have similar but limited experience but similar with the Victorian and Queensland CTP schemes.

The actions of the insurance industry are wilful, unchecked and very similar to the recently revealed conduct of the banks. They arbitrarily refuse treatments, investigations or referrals with no real respect or concern for patients or treating doctors. They use investigators, rehabilitation professionals and a number of other strategies to minimise their costs. Instead of being a niche funding mechanism for a certain type of medical problem, they are a government-created opaque market with huge overheads and supernormal profits.

The legal system is so expensive that it has largely been excluded from the CTP and WC systems, and so slow that victims' physical and financial health is destroyed by the wait. The whole system immensely favours the insurers and the regulatory mechanism, SIRA (State Insurance Regulatory Authority) (of NSW) is a failure, as its principal aim is to minimise payouts rather than to ensure that insurers deal with injured people fairly.

The Rehabilitation profession is now highly corporatised, beholden to the insurance industry and acting in its interest rather than that of the patients.

Any money 'saved' by the CTP and WC system is merely transferred as delayed but still necessary treatment to be paid for by some other part of the health system. Hence it is an industry that merely shifts costs and wastes premiums that are supposed to benefit injured people.

Recommendations

1. That the Royal Commission investigate the insurance industry systematically.
2. That the Royal Commission look at existing regulatory mechanisms such as SIRA in NSW and assess their cost-effectiveness.
3. That a meaningful, simple and accessible regulator be established to be an avenue of appeal for insurance consumers that allows redress without the costs of court appearances.
4. That if private insurance is retained, treating doctors are paid in a similar way to Medicare or other private health insurers.
5. That standard contracts for insurance be promulgated by the regulator so that insurers compete for a known product and variation in wordings cannot be used to deny claims.
6. That the regulator keep records of comparative indices such as the rate of denials and payouts of insurers and make these public to allow an informed market to control costs.
7. That the Commission recommend that the NSW CTP and WC schemes be abolished in their present form.
8. That insurance be considered a public good, and a government-owned insurer be available for cost control in the market and with the reserves used for public projects.
9. That steps be taken to give control of rehabilitation back to treating practitioners and be made to act in the interests of victims, rather than insurers.

10. That all insurance schemes for accidents be ‘no fault’.
11. That an inquiry into all of Health Insurance in Australia be initiated.
12. That Police be funded to document all CTP accidents.