

TE HUNGA HAU MAURI MO NGA TANGATA KATOA



**Submission to the  
Productivity Commission  
on the  
More Effective Social Services  
April 2015 Draft Report**

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## **Introduction**

Efficiency, and net social benefit, are important social goals – but no more important, we would argue, than equity (in terms of equality of access or equality of opportunity). While the Productivity Commission’s draft report contains some good ideas, the report is hamstrung by a failure to recognise and address efficiency/equity trade-offs. Efficiency should not be the sole measure of achievement of social services.

The Treasury, in its advice on distributive equity, gives emphasis to improving the outcomes of those with the lowest standards of living, which is a fundamentally different approach from maximising net social benefit, especially if the latter is based solely on reducing future welfare liability (The New Zealand Treasury, 2011, p. 28). Specifically, the Treasury notes that equity sometimes means protecting the most vulnerable members of society, even if this does not improve overall efficiency from a narrow fiscal perspective (The New Zealand Treasury, 2013, p. 1).

An uncompromising focus on efficiency in social services will disadvantage some of society’s most vulnerable people. Unfortunately, the recent application of an efficiency-driven approach by the Ministry of Social Development attempts to do exactly that. The recent attempt by the Ministry of Social Development to apply the investment approach to employment and vocational services for disabled people was met with widespread negative feedback from providers, disabled person organisations and disabled people themselves. Critics were loath to see the welfare of some of society’s most vulnerable people traded off for narrow fiscal objectives.

**About us**

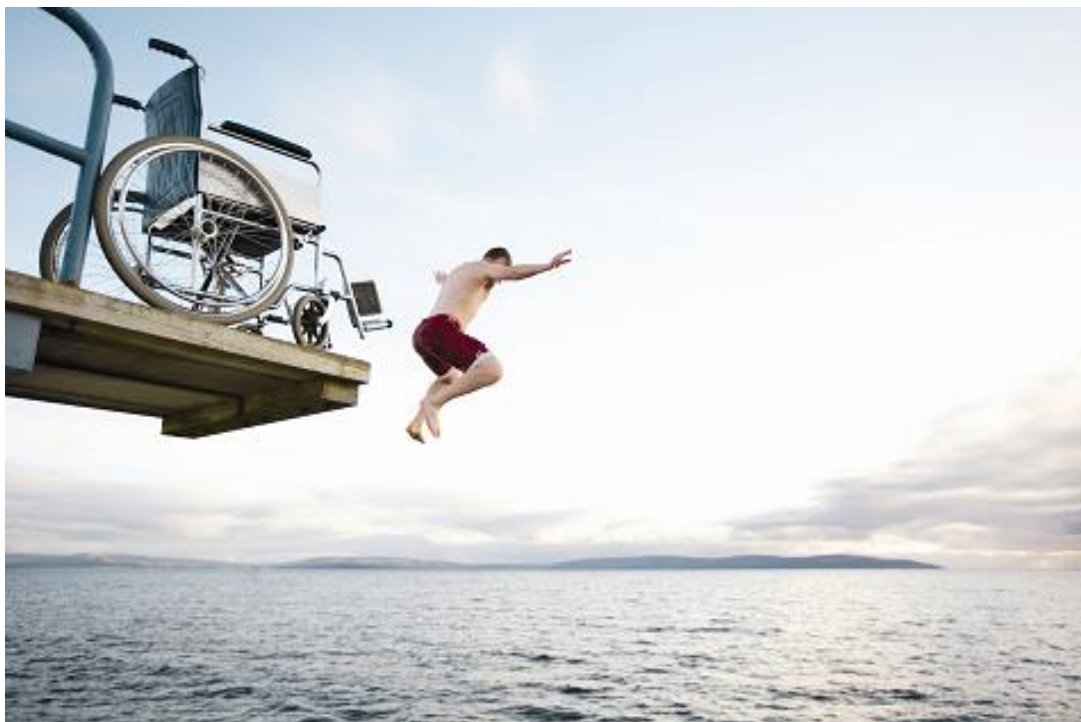
CCS Disability Action is a not-for-profit organisation, which, since 1935, has been advocating for disabled people to be included in the community. We provide disability support to over 5,000 people with disabilities and their families and whanau each year. We receive a mixture of government funding and private donations.

We operate the Mobility Parking scheme, which supports over 115,000 people to more easily access their local communities.

Our fully owned subsidiary, Lifetime Design Ltd, advocates for and provides universal design guidelines to improve the accessibility of New Zealand housing, which will benefit all people throughout their life. Lifetime Design Ltd functions as a social enterprise.

Our governance has strong disabled leadership.

Our advocacy is evidence-informed, honest and responsible.



## **Our response to the Commission's Recommendations**

### **We strongly support the following recommendations made by the Commission**

**Recommendations 6.4 and 11.1:** Funders and providers should always aim to empower and maximise a person's choice and control, including through person-directed budgets. We fully support this recommendation.

**Recommendations 6.8, 6.9, 6.10 and 7.1:** Underfunding is chronic issue in the disability sector. Adequate funding is important, especially as disabled people the right to the support necessary for living and inclusion in the community, and to prevent isolation or segregation from the community. The underfunding of disability supports directly undermines these rights.

**Recommendation 5.1:** We believe there is merit in investigating local crown entities with a representative governing board as a way to develop policy and commission services in certain areas of social services, such as disability support services.

### **We strongly oppose the following recommendations made by the Commission**

**Recommendations 9.1 and 9.2:** We are deeply opposed to an investment approach based on future welfare liability. This would disadvantage some of the most vulnerable people in society, particularly people who face complex barriers to employment, such as disabled people with high support needs.

## **Our recommendations**

### **Recommendation 1**

The Productivity Commission should recommend that the government address the complex issues person-directed budgets create for existing legislation and regulation. There also needs to be adequate safeguarding systems to minimise the chance of abuse, neglect and bullying in person-directed budgets.

### **Recommendation 2**

The Productivity Commission should recommend that the government has to identify possible funding for rolling out pilots and clear explicit criteria for the success or failure of pilots, before starting pilots.

### **The Investment Approach and Future Welfare Liability**

We have major reservations about the investment approach. While it may be advantageous from a narrow fiscal stance, it is problematic in terms of the society's broader social goals. In fact, the investment approach contains a major flaw, which means it would disadvantage some of the most vulnerable people in society. The investment approach's emphasis is on allocative efficiency and it largely ignores distributional equity (often defined in terms of equality of opportunity, or equality of access).

Only if one's particular circumstances coincide with the Government's parameters and rules for reducing future welfare liability will a person be better off under the investment approach.

On equity grounds (e.g. equal access for equal need) one may be deserving of support (resources). If, however, one's circumstances do not align or fit the specified criteria for maximising "net social benefit" then one will go without that support – even if it would have meant a large gain to one's individual/household welfare in terms of income, quality of life, quality of working life and/or other relevant measures.

Maximising "net social output" for society as a whole (in accordance with allocative efficiency and the investment approach) might conveniently improve the government's fiscal position but it does not imply that any given individual will necessarily be better off. Distributive equity is independent of allocative efficiency. In fact, equity per se receives little attention in the April report. Despite an acknowledgement on page 43 of the report that "... equity of access is an important consideration in delivering social services", there is scant mention of it through the remainder of the document.

The discussion document on employment and vocational services released by the Ministry of Social Development in March 2015 provides a very good illustration of how inequitable the investment approach can be when applied to employment services. The Ministry wanted to target employment support,

using an investment approach, to those capable of finding more than 15 hours of paid work per week. The Ministry wanted to focus funding on reducing future welfare liability (Ministry of Social Development, 2015, pp. 5-8, 11).

Those people judged by officials as not capable of doing “paid work of 15 or more hours per week” would have limited access to employment services in these proposals. This is despite their need for (and wider benefits derived from) paid work being as great, or even greater, than those capable of working 15 hours or more per week. They were judged by officials as not capable of generating a good return on investment for the government.

The government’s fiscal position may be strengthened but, inevitably, at the cost of some of the most vulnerable New Zealanders – such as disabled people with moderate to very high needs – losing access to employment support. This group risks becoming marginalised in NZ society, through a discriminatory policy. This is the practical implications of a narrow focus on future welfare liability.

Of course, a small proportion of the people who miss out will endeavour to access services through their own means – and at their own cost. In these circumstances, costs will be effectively shifted from the State onto vulnerable, low-income people and their households.

We believe that the investment approach and the allied strategy of reducing future welfare liability is discriminatory and contravenes core human rights. Further, it is incompatible with the key protocols governing the disability sector, including the New Zealand Disability Strategy, the United Nations Convention on Rights of Persons with Disabilities and the Disability Action plan 2014-2018.

Thus, we have a fundamental problem with various passages in the April report. For instance, on page 17 of the report, it is stated:



*“The reforms outlined in this report have the potential to improve the efficiency and effectiveness of New Zealand’s social service system, in turn raising the wellbeing of users of social services and of citizens more generally.”*

We contend that the linkage referred to is neither as direct, nor as straightforward as this statement suggests.

On page 186 it is stated:

*“Further, the social services system will be most effective if decisions about what services are provided, who they are provided to and when they are provided, are made so as to maximise the net social benefit from the funds employed.”*

And,

*“The Government’s Investment Approach is an attempt to increase the effectiveness of social services through better investment and targeting of investment.”*

On page 307 it is stated:

*“A well-functioning system would see government funding targeted at areas with a high return on investment, improving both the well-being of clients and the efficiency of government spending.”*

What is clear is that “effectiveness” in the context used above is devoid of a sense of social/distributional equity. “Targeting” under the investment approach is about picking winners in order to maximise net social benefit and improve the government’s fiscal position. Accordingly, resources are provided only to those individuals who are deemed likely to deliver a high return on investment. While this strategy might have a favourable impact on reducing

the fiscal deficit, the most disadvantaged members of society (such as people with severe disabilities) who would potentially reap the greatest welfare gain from State-funded support would be disadvantaged and become further marginalised. The proposed reforms based on the investment approach allied to reducing future welfare liability are a radical, unproven approach to social policy. They are an unlikely way of promoting social justice.

Applied on its own, future welfare liability would generate perverse outcomes in disability support services. For instance, we believe it would channel resources towards services for younger people with low to moderate needs and take resources from older people as well as young people with high needs. This would be highly inequitable and hence unjustifiable. The stronger the incentives are for government departments to focus just on reducing future welfare liability, the more inequitable social services are likely to become for the most disadvantaged.

There are strong reasons for believing New Zealanders value equity and equality of opportunity over crude economic efficiency or maximising social return (James, 2005) (Bromell, 2014). The investment approach combined with Future Welfare Liability is out of step with the recent New Zealand social policy. In fact, the Treasury has noted that the New Zealand public and successive governments have been consistently supportive of ensuring equality of opportunity for all citizens (The New Zealand Treasury, 2013, p. 2).

Clearly, a social service system based mainly on an investment approach using future welfare liability would not meet the needs of all participants. Inevitably, it would disadvantage young people with high needs and older people thus, we do not believe New Zealanders would support such a system.

### **Our response to recommendations 9.1 and 9.2**

We are deeply opposed to an investment approach based on future welfare liability. This would disadvantage some of the most vulnerable people in

society, particularly people who face complex barriers to employment, such as disabled people with high support needs.

### **Devolution of responsibility for social services**

As stated in our previous submission, we believe there is merit in investigating crown entities, with a representative governing board, as a way to develop policy and commission services in certain areas of social services. Western Australia uses this model in disability policy and for funding disability services (Western Australia, 2014).

This could be done at a local level, similar to district health boards. A representative governing board may ensure better community involvement and commitment to social services. It may also relieve some of the workload pressure from central government departments, which have in the case of the Ministry of Health contributed to performance issues (Grammer, Russell, & Van Eden, 2013, pp. 4-5).

### **Our response to recommendation 5.1**

We believe there is merit in investigating local crown entities with a representative governing board as a way to develop policy and commission services in certain areas of social services.

### **Person-directed budgets (Client-directed budgets)**

We stand by our statements in our previous submission that person-directed budgets are overall a positive direction for social services. They rely, however, on adequate funding levels to be effective. Person-directed budgets cannot achieve good outcomes without adequate funding levels (Slasberg, Beresford, & Schofield, 2012, p. 1033).

There is also a potential issue between moves to person directed budgets and the dependency of outcomes for a person on wider social change.

Approaches focused on individuals may be ineffective at creating wider change. (Sherlaw, Lucas, Jourdain, & Monaghan, 2014, p. 449). This is also a

potential issue with individual outcomes in performance for pay contracts. It will therefore be important to consider the need to maintain community development capability, and independent community organisations, alongside person-directed budgets.

### **Person-directed budgets; flexibility and choice**

It is also important to consider the impacts of transition and transaction costs in moving to a new model, such as person-directed budgets. Similarly, cost-shifting from government onto organisations and ultimately onto private individuals/households needs always to be properly monitored and addressed.

Not all people are necessarily in a good position to administer their own budget in such a way that they achieve a better personal outcome. (Thus, we agree with recommendation R6.4.). Furthermore, people's situations change overtime. People should be able to choose, and alter later, their involvement in managing their budget. A person-directed budget should not be seen as a binary one-off decision, but a sliding scale of control that can be flexible based on each person's wishes.

There are intangible costs to people when managing their budget, which include factors such as the time involved, logistical difficulties and stress. Sometimes these costs might outweigh the benefits. Such transaction costs on individuals need to be acknowledged, measured and evaluated. It cannot be assumed that person-directed budgets, per se, are inherently more effective in general, or cost-effective in particular, than alternative options.

Sometimes people may want full control of their supports, other times they may want less control because they are lack the time or energy. They may also sometimes want more time to focus on other aspects of their life such as family, employment or education. Also, some people may need to develop the capability over time to take control over their support.

### **Person-directed budgets; workforce issues**

As the Productivity Commission notes, the evidence on the workforce impact of person-directed budgets is limited and mixed (The New Zealand Productivity Commission, 2015, pp. 235-236). Our experience of person-directed budgets (primarily Individualised Funding) is that it is a very different system from the traditional approach to service delivery. It requires a very different way of addressing quality and risk, training and employment relations.

At its best, person-direct budgets results in better pay as well as increased job satisfaction for workers. People receiving support can choose to pay good workers more than providers who are often limited by remuneration scales and collective agreements. The increased flexibility and ability to respond to people receiving support can also increase job satisfaction. As long as overall funding levels are adequate, the impact of person-directed can be positive on the workforce.

Person directed budgets can result in less oversight and control over workers, especially if the person receiving support is not confident managing workers. Workers can also be more isolated and less supported. This, in turn, may create risks for workers, as well as people receiving support. Abuse, neglect and bullying are a potential risk under person-directed budgets both for workers and for people receiving support. Nonetheless, abuse, neglect and bullying are, of course, a risk under the traditional system as well as the Putting People First report showed (Grammer, Russell, & Van Eden, 2013).

What is important is that appropriate safeguards are put in place. Existing safeguards may not be well suited to the new person-directed budget system, where workers can be more isolated.

### **Person-directed budgets; funding issues**

Overseas officials have recognised that a widespread move to person-directed budgets might decrease the advocacy power of people receiving

support, through diluting their effective bargaining strength. They might then become vulnerable to funding cuts. Individual people might have less power to oppose funding cuts relative to providers (Power, 2014, pp. 837-838).

Research carried out in Canada, the United Kingdom and the United States found that officials had widespread concerns about the future of person-directed budgets in disability support services. Officials believed there were a large number of disabled people currently relying on unpaid help from family and friends. If these people started accessing government-funded services, funding would soon run out (Power, 2014, p. 839).

Officials talked about trying to decrease people's expectations of services and there seemed to be a conflicting situation emerging. Officials were attempting to improve the quality of government-funded supports through reforms (including by moving to person-directed budgets), but were conscious and very concerned that inevitably, this would increase demand (Power, 2014, p. 839).

Officials expressed similar fears during the paid family carers court and tribunal cases. During the cases, the Ministry of Health described its supports as just being there to meet gaps in unpaid support. The Ministry said most support should be met through unpaid support from family and friends and that the government-funded system was only available as a back-up (Atkinson and others v Ministry of Health, 2010). The Ministry had similar fears as overseas officials about a cost blow-out occurring if people switched to government-funded services, should they become these more available/attractive.

As long as funding fears vex officials, the pace of any reforms may be slow and officials may be forced to look for ways to restrict access to services or reduce individual budgets. It will be difficult for person-directed budgets to realise their potential under such a regime. The only way forward may be through increased funding and/or a move to a social insurance system. A

social insurance system combined with person-directed budgets is essentially the model used with the Australian National Disability Insurance Scheme.

### **Person-directed budgets; unresolved regulatory issues**

A growing issue is the inability of government, both Parliament and government departments, to adequately consider the impact of regulations and legislation on person-directed budgets. People using person-directed budgets can employ their own support workers, making them employers in the eyes of the law. Legislation, such as the Vulnerable Children Act, as well as regulations and standards, such as the Home and Community Support Sector Standards, would likely apply to people using person-directed budgets. This has never been properly clarified and the implications have not been properly assessed.

An example of regulatory incohesiveness is the Vulnerable Children Act. The safety checking and protection policy requirements apply to any individual that is funded by a state service to provide regulated services. Regulated services include home and community disability support, which can also be accessed under Individualised Funding. A strict application of the Vulnerable Children Act would require families with Individualised Funding for their child to have a Child Protection Policy that meets the legislative requirements, as well as meet the strict safety checking and recruitment standards. In practice, this seldom, if ever, occurs.

Enforcing the above requirements would quickly become cumbersome and practically impossible. For a start, the official guidelines contain no suggestions for implementing the legislative requirements in a person-directed budget setting. Yet not applying the requirements may leave children under a person-directed budget at heightened risk of child abuse as their support workers will not have been rigorously checked. These problems are not insurmountable, but require effort to resolve. Thus far there is no evidence that the government has even considered such issues created by person-directed budgets; certainly not in the public domain.

We submit that the government needs to address the complex issues person-directed budgets create in terms of legislation and regulations. We strongly support person-directed budgets, but are not convinced that the current regulatory and safeguarding system is well equipped to manage them.

### **Our response to recommendations 6.4 and 11.1**

We fully support these recommendations. Funders and providers should always work to empower and maximise a person's choice and control, including through person-directed budgets.

### **Our recommendation 1**

The Productivity Commission should recommend that the government address the complex issues person-directed budgets create for existing legislation and regulation. There also needs to be adequate safeguarding systems to minimise the chance of abuse, neglect and bullying in person-directed budgets.

### **Evaluating pilots and reforms**

As noted in our previous submission, there has been little attempt to objectively compare the effectiveness or cost-effectiveness of piloted services to existing services. It is clear that more primary evaluation work needs to be carried out to determine both their effectiveness and cost-effectiveness of reforms, such as Enabling Good Lives. Further complicating the situation, Enabling Good Lives now consists of two very different pilots, one in Christchurch and one in Hamilton. Without question, it is critical to rigorously evaluating pilots/trials especially in relation to the status quo and other reforms.

The question needs to be asked what happens when a pilot/trial ceases, because there is likely to be a further round of transition costs in reverting to the former regime, or operating the new regime on a continuing/permanent basis. Inevitably, there is a risk that some of these transition costs will be shifted onto clients.



Limited funding has hampered reforms and led to unsatisfactory situations where pilots, such as Local Area Coordination, are becoming permanent, but geographically or capacity limited. This is the inevitable side-effect of trying to create a better system within existing funding. There is no funding to roll pilots out, but the government does not want to face the backlash of ending a pilot so the pilots continue in a limited form. This results in inconsistency and inequality in terms of the support available for disabled people.

The Government has never identified success or fail states or clear explicit criteria for pilots and demonstrations (Possibly because they do not want to commit to future rollout funding). As a result, pilots never actually succeed or fail. One of the original impetuses for the reforms of disability support services was the Social Services Select Committee's report in 2008. This report found that disability support services were fragmented, and often difficult to access (Social Services Committee Forty-eighth Parliament, 2008, p. 41). The current reforms may have inadvertently made this situation worse.

Current demonstrations and pilots include:

- Two Enabling Good Lives demonstrations both of which are run differently and are in different regions.
- Local Area Coordination in the Bay of Plenty.
- A local area coordination style pilot in the Hutt Valley.
- Choice in Community Living in Waikato and Auckland.
- Enhanced Individualised Funding.

Funding has never been properly identified or appropriated to roll out any of these pilots. Further, the pilots are not being compared with each other. Some of the pilots have been very successful in achieving good outcomes for disabled people, such as Choice in Community Living. At the same time, they have all been more expensive for the government in the short-term. Initially the government believed many of these pilots would be cost-neutral or

generate savings. The tendency for pilots to be more expensive, however, at least in the short-term, is foreseeable.

Current services are often very unattractive to disabled people and their families, not necessary always due to shortcomings of providers or workers. Rather the services the government will fund are too often based on limited and outdated models that rely on segregation, which is increasingly undesirable to disabled people. This is particularly the case among certain ethnicities and younger age groups.

As an illustration, Pasifika peoples underutilise residential services because they prefer family-based options. As a result, Pasifika peoples are overrepresented among users of carer support options, which are of limited availability and include subsidies rather than full support (Ministry of Health, 2015, pp. 24, 30, 40, 45, 51).

Pasifika peoples are currently avoiding expensive fully funded residential options, in favour of the far cheaper, for the government, carer support options. This reduces government spending, but inevitably shifts costs, in terms of time and resources, onto these families; often families who struggle to afford these costs. These partially funded carer support options are a mere “top-up” to the unpaid support of family members and friends.

This is likely to increase poverty rates among Pasifika families who have a disabled family member. Pasifika peoples who use disability support services are the mostly likely ethnicity to live in deprived areas. 53 per cent of Pasifika who use Ministry of Health disability supports are in deprivation deciles 9 or 10, which indicate the highest levels of deprivation (Ministry of Health, 2015, p. 14).

Pilots, such as Choice in Community Living and Enhanced Individualised Funding offer a means of addressing this imbalance. These pilots are more flexible about where support is provided, which means people can receive

more support in settings of their choice, such as family or independent living settings. This greatly increases equity and fairness, but will be more expensive as costs are partially shifted from families onto government. The result will hopefully be a reduction in the number of Pasifika families with disabled family members living in poverty.

We note that the Australia Government and the Australian disability community has always been upfront with the Australian public that the Australian National Disability Insurance Scheme will be more expensive, but will also be fairer. In contrast, the New Zealand government has tried to create a fairer system, but largely within existing funding. Inevitably, this has been problematic and budget blowouts have delayed progress. Compared with Australia, there is a lack of vision, commitment and, indeed, momentum in New Zealand.

There needs to be urgent consideration of funding and resourcing in relation to New Zealand's reforms. Better quality and fairer support usually necessitates more funding. To date, officials have focused on reforms without properly addressing their funding. This is barely feasible in the short-term, let alone the medium to long-term.

## **Our recommendation 2**

The Productivity Commission should recommend that the government has to identify possible funding for rolling out pilots and clear explicit criteria for the success or failure of pilots, before starting pilots.

### **Commissioning: Funding and Under-funding – Question 6.1**

The social services sector is characterised by numerous funding arrangements that are arbitrary and anomalous and some of these arrangements date back to the era of deinstitutionalisation or further. Commonly, such arrangements manifest in the underfunding of social services by Government. This, in turn, leads to both inefficiencies and inequities in their delivery.

Not the least of these unsatisfactory arrangements is contributory funding (aka partial funding) on a bulk-funding basis. Contributory funding has led to chronic underfunding in the vast majority of circumstances. In the disability sector, the situation is highlighted with vocational services (including community participation) funded by the Ministry of Social Development. Contributory funding originates from the era of charities providing services. It was seen as a top-up when charitable/voluntary arrangements would not suffice. The charity model is no longer appropriate in the disability community. Disabled people have rights and entitlements and should no longer be reliant on the charitable goodwill of organisations for essential support.

Contributory funding has become an anachronism: considerably more than a “top-up” is required. Nonetheless, contributory funding continues to provide a far too convenient rationale for successive governments to underfund core social services. In F6.8, the Commission states that Government faces incentives to underfund contracts with providers for the delivery of social services with probable consequences for long-term services provision and acknowledges that this observation is consistent with the reports of many providers. We agree with the finding.

Under the Convention on the Rights of Persons with Disabilities, disabled people have the right to full and effective participation and inclusion in society (Convention on the Rights of Persons with Disabilities). In particular, under Article 19 disabled people have the right to the personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community. The underfunding of these services directly undermines these rights, hence oppressing a vulnerable group.

We submit that where there is a clear obligation for services to be provided in sufficient quantity and sufficient quality to people in need, but where there is a failure to provide these services adequately, owing to contributory funding, there should be a progressive move to government fully funding such

services. Practice would then be consistent with what is spelled out in the Convention on the Rights of Persons with Disabilities that have been developed and endorsed for the sector – to which government is a signatory.

We agree with recommendation R6.10 that “fully funded” social service payments to non-government providers should be set at a level that allows an efficient provider to make a sustainable return on resources deployed. We contend that funding should be sufficient to cover the payment of fair wages to all staff and cover the costs of materials consumed, as well as overheads. Funding also needs to provide for replacement investment of capital items (including buildings where providers own them) and the upgrading of technologies.

A test of whether staff wages/salaries are high enough is the ability of organisation to recruit and retain an efficient workforce. Non-volunteer workers usually want to be paid at least enough to cover their opportunity cost. While “mission orientation” and contribution to society may partially compensate for a lower rate of pay, the effect is limited, particularly in the disability sector where high turnover is a major concern. Yet a stable workforce is fundamental to promoting quality of service delivery.

Determining a ‘correct’ level of funding will always be a somewhat arbitrary exercise. It is not a precise science. However, neither is it rocket science. Thus, we broadly agree with recommendation R6.11. In doing so, we note that government has numerous models and methodologies at its disposal for costing/pricing social services and paying providers. For instance, the government can compare the wages/salaries of frontline workers across different sectors, noting which have a competent and low turnover workforce.

Another useful basis for pricing might be Ministry of Health’s “pricing model” (developed in association with the business/financial consultancy KPMG) for the purpose of promoting “nationally consistent prices” in purchasing disability support services – although specific circumstances where providers

unavoidably face higher than typical costs should be recognised and funded accordingly. A particular advantage of a payment system that is based on nationally consistent prices for purchasing services is that such systems induce providers to keep overhead and other costs down, thereby operating in a technically efficient manner.

Because disputes over funding may not be uncommon and may potentially lead to the abrupt withdrawal of services by providers, with adverse consequences for disabled people, we believe that a disputes resolution system is important. We consider that an arbitration system may be more appropriate than a regulatory authority in settling disputes impartially and in a timely manner. An arbitration system would most likely be funded by Government but would need to operate independently of Government and providers, and be seen to do so. A Board composed of Government and social service provider representatives may be the most suitable means of achieving this. Mediation should be a mandatory step prior to formal arbitration. The resolution process should be (and should be seen to be) based on the scrupulous examination of all relevant facts and arguments. The arbiter's decision should be final. The scheme may subject to an independent review at set intervals to ensure that it is meeting core principles, such as independence, impartiality and efficacy.

#### **Recommendations 6.8, 6.9, 6.10 and 7.1**

Underfunding is chronic issue in the disability sector. Adequate funding is important, especially as disabled people the right to the support necessary for living and inclusion in the community, and to prevent isolation or segregation from the community. The underfunding of disability supports directly undermines these rights.

#### **Insurance approaches – Question 9.1**

A social insurance approach with a single government-owned insurer could offer some advantages over the current tax-based system, which generally relies on rationing when allocating support, rather than an entitlement based

approach. Much, however, depends on the details. The idea needs to be explored in depth, based upon Australia's recent experience, as well as other relevant models. Australia's National Disability Insurance Scheme is showing some promising, albeit early, signs.

New Zealand's current taxed-based system is a proven low-cost means of funding social services. It has much to recommend it, including a reputation for being equitable and reasonably efficient. Social insurance with a single government-owned insurer might, however, have some advantages over our tax-based system. It might, for instance, create stronger incentives for people in need to be dealt with in a more responsive manner – for example, through earlier, more timely intervention and/or through better on-going support. A key question is whether any gains in terms of efficiency and equity would be sufficient to offset increased costs, including transition costs of moving to such a regime, as well as the additional transaction costs.

We are much less optimistic about a system of multiple, competing insurers operating in a social insurance context. We believe that such a system would be cumbersome and expensive to operate. Notably, the transition costs of moving to such a system would be considerable but the potential gains much more dubious. In any case, it seems possible that there would be economies of scale accruing to a single insurer that would not be achieved by a competitor in a multiple insurer regime.

We have a fundamental concern that a multiple insurer regime would buffer the government from its responsibility for providing social services. Government, for instance, could try to shift responsibility onto the insurers when convenient – excusing itself from shouldering responsibility and dealing with problems that arise over time.

Extra layers of regulation would be required to make multiple insurer system work in a fair way and there would always be the risk of company failures. There may be ways of dealing with the company failure risk but inevitably

these would add to the costs of running the system and, in any case, government would still likely have to step in as the insurer of last resort. We assume that a multiple insurer scheme would involve universal coverage based on each individual's ability to pay and that government would pay insurance companies on the basis of a risk/experience rating for each client. Even with risk rated premiums, however, there could be no assurance that market failures in the form of "cherry picking" and "parking" would be avoided. Some insurers would still devise means to "invent around the rules" in pursuit of profits.

Nor could it be taken for granted that competition would actually eventuate within a multiple insurer system. Even when, rationally, clients have an incentive to change to another insurer (such as there is underpayment or tardy payment of claims) the evidence from other New Zealand industries (such as banks, telecommunications and electricity) show that there is a widespread reluctance to do so. The inertia evident is often associated with the transaction costs incurred by clients – measured in terms of factors such as time, inconvenience and frustration. Targeted initiatives such as the Government's PowerSwitch campaign have met with limited success but still add to the costs of attempting to make the market work. When the threat of actual competition does not loom large, some insurers are bound to exploit the situation further – engaging in their worst excesses.

Because of the likely ineffectiveness of competition, the whole argument for a multiple insurer regime is undermined. Conversely, the case for a single insurer system is strengthened. This begs the question of how sub-standard practice of a single insurer might be dealt with. We contend that a comprehensive and independent complaints resolution service would create a strong incentive for a single government insurer to provide good quality, fair service in the best interests of clients. We note that ACC, and many banks and insurance companies operate such services – the latter two through Ombudsman schemes.



We believe that most firms willing (and able) to diversify into social services' insurance would be from the for-profit sector, especially financial services. Entrants from the not-for-profit sector are likely to be relatively few, because the vast majority of them will lack access to the necessary capital requirement, or the ability to raise it. It is of note that the Netherlands already had existing non-for-profit social insurance providers before switching to the universal compulsory insurance system (Productivity Commission, 2015, pp. 200 - 201).

New Zealand relatively open procurement rules would mean social insurance tenders would probably have to be open to international for-profit providers. We note that the use of for-profit disability insurance providers overseas has been associated with inequitable outcomes for individuals and regulatory problems for government. Unum, a for profit organisation and the largest disability insurance provider in America, has frequently been found to have denied legitimate claims and was declared in 2005 to be an outlaw company by the California Insurance Commissioner (Gosselin, 2005). Unum has also been found to have defrauded the government-run social security system (Walsh, 2008). For-profit disability insurers have a strong financial incentive, in the form of increased profits, to shift costs onto individuals and government, whenever possible. They sometimes test the boundaries of legal and ethical restrictions, when pursuing this goal.

For-profit organisations, such as Unum, also often command immense lobbying capability, which makes effective regulation difficult. Unum, in particular, has been a sponsor of the Centre for Psychosocial and Disability Research at the University of Cardiff, including the work of Professor Sir Mansel Aylward (Unum, 2011). Aylward, in turn, has been very influential in advising the United Kingdom and New Zealand governments on welfare reform (Bennett, 2012).

More generally, the use of for-profit organisations in disability insurance and assessment has been associated with:

- Increased regulatory burden on government, which must regulate providers in the face of significant well-funded lobbying.
- Cost shifting onto individuals in the form of overzealous denial of applications and the “strategic” searching for excuses, including technicalities, to deny payment of benefits. This outcome increases psychological and financial stress on individual and families. It also increases disputes and litigation.
- Increased rate of disputes and litigation. The use of a for-profit provider to assess disability claimants in the United Kingdom led to a high number of tribunal appeals, which in turn cost the government £42.2 million pounds in 2010/2011 (Parliament Office of Science and Technology, 2012, p. 2).
- Cost shifting onto government by insurers who always seek to shift people to government-funded support, including sometimes through fraudulent means, in order to boost their profits.

In summary, we think further consideration of a social insurance model with a single Government owned (or Crown entity) insurer for disability support services (and perhaps other social services) is warranted. It may have certain advantages over the current tax-based system. Such a system might be based on the ACC model, or even piggy-backed onto ACC. We note that Australia’s National Disability Insurance Scheme is showing some impressive early outcomes. It should be closely observed.

At the same time, we have little appetite for a multiple insurer type system. In the New Zealand context, the risks are too high relative to any benefits that might accrue.

## **Conclusion**

The Commission's report traverses a plethora of ideas. While some of these ideas may have merit, we note there is a general lack of scientific/empirical evidence to support many of the report's proposals and recommendations. We are left feeling most concerned that some of the key tenets of the document (for example, the investment approach married with future welfare liability) would impact adversely on vulnerable people.

Pointedly, many of the report's proposals have the potential to shift costs from the State onto groups of our most vulnerable citizens, yet there is a dearth of discussion on this critical matter. How is cost-shifting onto private individuals to be monitored and addressed? This – combined with the report's omission to deal with factors such as the transition and transaction costs inevitable with new regimes – suggests that enhancements in social efficiency are far from assured.

As well, the report is dismissive of the whole dimension of social equity. There is, for example, very little discussion about equality of opportunity, or equality of access.

Given the above weaknesses of the report, we urge caution. We are keen to see sensible, properly trialled innovation in the funding and provision of social services in the interests of disadvantaged people making an enhanced contribution to their communities, while enjoying better lives. But we are far from convinced that Commission's April report contains a useful blueprint for achieving such outcomes.

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