Queensland Nurses' Union

Inquiry into Disability Care and Support

Submission to the Productivity Commission

August 2010

1.0 Introduction

The QNU thanks the Productivity Commission (the Commission) for providing this opportunity to comment on disability care and support. We note that the federal government has asked the Commission to consider how a national disability scheme could be designed, administered, financed and implemented. Our submission specifically considers a no-fault social insurance model as one way of addressing the inconsistencies and inequities that currently exist.

Disability care relies on the dedication of carers and the support workforce. As a trade union we represent the industrial and professional interests of our members who provide nursing care to the disabled and work to improve the future for these Australians and their families. We therefore begin our submission with an overview of the QNU and the nursing profession in order to highlight the nature of the work our members undertake when caring for the Australian community.

2.0 About the QNU

Nurses and midwives are the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNU - the union for nurses and midwives - is the principal health union in Queensland. The QNU covers all categories of workers that make up the nursing and midwifery workforce in Queensland including registered nurses, registered midwives, enrolled nurses and assistants in nursing who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 40,000 financial members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNU.

The QNU promotes and defends the industrial, professional, social, political and democratic values and interests of members. Our vision is to:

- Unite members to work together to achieve security and fairness in the workplace and fairness, equality and opportunity in the community;
- Promote the recognition and acceptance of the legitimacy of the core nursing values of caring, professionalism, advocacy and holism as central to the identity and social contribution of nursing and midwifery;
- Advance our collective values in a health system that supports the efforts of nurses and midwives in providing high quality care, in work that is meaningful, and where their roles are advanced and rewarded as a recognised professional partner within a social model of health;
- Promote the general health and wellbeing of nurses and midwives; and
- Seek an environmentally sustainable future for our members, families and communities.

With the collective strength of our members the QNU works with nurses and midwives to bridge the gap between the real and the ideal of nursing at all levels.

3.0 About Nursing

Nurses represent the single largest group of health care providers and are in close proximity to the delivery of care. Nurses are the most geographically dispersed health professionals in Australia, working independently or collaboratively to provide professional and holistic care in a range of circumstances.

Nurses work to promote good health, prevent illness, and provide care for the ill, disabled and dying. Most nurses and midwives work in an area of clinical practice such as medical and surgical, aged care, critical care, perioperative, midwifery, emergency, general practice, community health, mental health, family and child health, rehabilitation and disability, rural and remote health and occupational health and safety. Nurses provide continuity of care for patients 24 hours a day, seven days a week.

Nurses advocate for the patient as a whole person within a complex health system. At every site and level of the nurse-patient relationship nurses facilitate and mediate the competing demands of patients, families, carers, the environment at points of immediate care, the system and society to achieve the best possible outcomes. They conduct research into nursing and health related issues and participate in the development of health policy and systems of health care management.

4.0 National Disability Insurance Scheme (NDIS)

Through this inquiry the Commission seeks to explore the features of a new long-term disability care and support scheme. The QNU supports a holistic approach to health care, one that draws together all sectors on the continuum from birth to aged care. Quality and safety are the two main features that must underpin the system. With the exception of community contributions and some disabilities associated with injury or third party negligence, the current system is based on funding care and support for people with disabilities through 'pay as you go' taxes collected by Australian governments (Productivity Commission, 2010).

At times adults and children suffer injuries in health care that give rise to profound disabilities. The impact of this small number of cases involving high levels of disability is great and the care costs component is the single main contributor. The long-term care costs of all those who require it are, in one way or other, borne by everyone.

At present the common law tort system provides the only means of meeting these costs (beyond the social security system) where there is no specific 'no-fault' provision. The majority of cases under the tort system are paid as a single lump sum payment. While the common law system promotes rehabilitation and encourages a plaintiff to become independent there are disadvantages. These include the deficiencies of assessing damages on a once-and-for-all basis, the difficulties and inconsistencies which arise in assessing damages for non-economic loss and the substantial legal and administrative costs associated with a common law damages action.

In a system based on lump sum awards, the potential to over-or under-compensate will always exist, especially in those cases where the medical prognosis is that the full manifestations of a plaintiff's injury will not be apparent for some years after trial. The once-and-for-all lump sum award is in those situations a seemingly inadequate form of compensation, because the task of translating the assumptions as to the future into the money figure to be awarded to a plaintiff as a single sum, is incapable of being performed with accuracy (Law Reform Commission NSW, 1992).

We contend that there is a fairer alternative scheme to compensate adverse outcomes than the common law tort system. Many of the resources of the legal system go into arguing these cases, to the cost of us all and to the benefit of the legal profession. We believe it is more equitable for support to go directly to meet the needs of people who suffer disabilities. The high level of legal and administrative costs associated with the tort system make it likely that a move to a no fault insurance scheme may not only be fairer but more cost effective.

As an alternative to the common law tort system for compensating adverse outcomes, many organisations advocate a no-fault scheme for medical treatment, such as exists in New Zealand. In New Zealand, the Accident Compensation Corporation (ACC) provides comprehensive, no-fault personal injury cover for all New Zealand residents and visitors to New Zealand regardless of how the injury occurred or who was at fault. The ACC works closely with businesses and the community to try to prevent injuries from happening. Until 1999, ACC operated under a 'pay-as-you-go' basis, collecting only enough levies each year to cover the cost of claims for that particular year. In 1999 the Government decided to change ACC from 'pay-as-you-go' to a 'fully funded' way of operating. The ACC now collects levies annually from individual earnings, business' payrolls, petrol and vehicles licensing in addition to government funding to cover the full lifetime costs of every claim that occurs in that year (ACC, 2010).

A National Disability Insurance Scheme (NDIS) with an emphasis on prevention and safety would complement the National Health and Hospitals Reforms that focus on primary health care. It is also consistent with other schemes such as no-fault workers' compensation which now operates in all states and territories in Australia and in three states there are schemes for injuries caused by motor vehicle accidents.

A comprehensive 'no fault' scheme could operate as an alternative approach to cover catastrophic risk particularly in obstetrics. The issue of professional indemnity insurance premiums and suggestions of reforms to combat the rise in premiums is not new. From 1991-1995 the federal government conducted an extensive review that identified the costs of future care where someone had a catastrophic disability as being one of the main drivers of premium for medical indemnity, particularly among doctors who delivered babies. As well as reviewing the system of indemnity arrangements in Australia, the review looked at many of the reform options including structured settlements; mandatory indemnity insurance; good samaritan legislation; and alternative models for compensating adverse outcomes (Commonwealth of Australia, 1995).

The QNU is concerned about recent changes to registration requirements for private indemnity insurance for independent midwives. Since 1 July, 2010, privately-practising, eligible midwives are able to access federal government supported professional indemnity insurance. This insurance will not, however, cover the planned delivery of babies in the home – for which there is a two year exemption from the requirement under the National

Registration and Accreditation Scheme for midwives to hold professional indemnity insurance. The exemption relates only to the actual homebirth. Midwives in private practice still need to have insurance for providing ante natal and post natal services, regardless of the birth setting (Department of Health and Ageing, 2010).

Although currently in Australia only a minority of women decide on homebirth, women will continue to make this choice. The registration requirement that a midwife practicing homebirth must have indemnity insurance is likely to result in women giving birth without a registered midwife in attendance. Unregulated birth attendants, without accountability to professional standards of competence, ethics and conduct, and without obligations regarding maintaining emergency skills, are likely to fill the vacuum created by the forced withdrawal of registered midwives from homebirth. This will make homebirth very dangerous, even for low risk, healthy women for whom homebirth may be a safe option.

Indemnity insurance arrangements and the lack of a system of no-fault insurance is also considered partly responsible for high caesarian rates among Australian obstetricians (Sydney Morning Herald, 2005)[1]. Tort law reform through the removal of responsibility for long term care costs of severely disabled/catastrophic injury from the insurance of individuals to that of the NDIS may assist in addressing the real and perceived risk of liability, and may help reduce intervention rates (ANF, 2008).

5.0 Open disclosure

The QNU supports and promotes a culture of 'open disclosure' to medical error in a quality focused environment. 'Open disclosure' is the open discussion of incidents that have resulted in harm to a patient while receiving health care. In Queensland, open disclosure is a key component of clinical incident management in Queensland Health and is integrated into the Queensland Health Clinical Incident Management Implementation Standard 2009. Open disclosure aims to provide honest and factual responses to patients, families and staff who experience, or are affected by, serious adverse events. The focus of open disclosure is primarily to assist affected patients/families and clinicians with the grief associated with an adverse event. (Queensland Health, 2010). A nationally funded NDIS would appropriately compensate consumers for medical error and adverse events within an open disclosure environment.

6.0 Co-ordination with Health and Aged Care

We note the inquiry seeks to assess how these models would interact with Australia's health, aged care, informal care, income support and injury insurance systems. The terms of reference exclude disability arising from 'natural ageing' from a national disability scheme, thus establishing a threshold issue of eligibility. A system that supports people of all ages,

[1] The most recent Australian Institute of Health and Welfare (AIHW, 2010) data indicates that the proportion of females having caesarean sections has continued to increase over the latest decade, from 21% in 1998 to 31% in 2007.

providing they acquired the disability before age 65, or some other notional age, would establish two parallel schemes, the aged care system and a disability insurance scheme.

We recognise that the aged care sector manages the high prevalence of age related disabilities such as dementia, however we would not welcome any scheme that might come at the expense of an already overburdened sector. As the recruitment and retention of aged care nursing staff is already difficult, particularly due to the significant wage differential, we continue to seek more funding for this sector with separate tax payer funding for a disability insurance scheme. The QNU has also made a comprehensive submission to the Productivity Commission's Inquiry into Caring for Older Australians that includes a number of recommendations regarding aged care.

Recommendation

The QNU would like to give further consideration to issues the Commission raises through this inquiry given the many ways it may impact on our members – as providers of health services and potential sufferers from injury. However, in the interim, the QNU recommends that the federal government:

- Gives serious consideration to establishing an NDIS to support people of all ages. We recognise that although the inquiry mainly emphasises support for people who acquire the disability aged less than 65 years, we believe that the government will need to monitor whether age 65 is an appropriate threshhold given the ageing population and a lengthier working life.

- Provides a range of services through the NDIS such as personal care, respite and accommodation, community access and support, income support, employment, transport, aids and appliances, home modification etc should the government determine to establish such a scheme.

- Considers an innovative financing approach to an NDIS that reallocates the funds currently assigned to the private health insurance rebate towards the scheme, thus limiting the requirement for tax payers to contribute beyond the current level of funding allocated by the Commonwealth to health related funding initiatives.

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