



Submission to the Economics and Governance  
Committee

*Debt Reduction and Savings Bill 2021*

**[April 2021]**

## Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>

The ALA office is located on the land of the Gadigal of the Eora Nation.

## Our submission

1. The ALA welcomes the opportunity to provide this submission to the Economics and Governance Committee regarding the *Debt Reduction and Savings Bill 2021*. ALA members have been prominent in holding NIISQ to its legislative mandate, and ensuring that NIISQ's behaviours have been illuminated.
2. The ALA's comments are confined to the proposed amendments to the governance structure of the National Injury Insurance Scheme Queensland (NIISQ) contained within the Bill, namely the proposal to abolish the NIISQ Board and leadership and to appoint the current Insurance Commissioner of the Motor Accident Insurance Commission (MAIC) as the chief executive officer responsible for the future management of the NIISQ Agency.
3. The ALA believes that the decision to overhaul the governance of NIISQ as part of the *Debt Reduction and Savings Bill 2021* is an excellent outcome for participants of the NIISQ scheme who have encountered difficulties in recent years with the NIISQ Agency and should be supported.

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<sup>1</sup> [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au).

4. In the ALA's view, the NIISQ scheme, and governance thereof, was sound when first introduced in 2016.
5. It is also the case that the scheme when it first commenced, and based on the drafting of the State Government's initial legislation, worked effectively and fairly to provide a valuable safety net to Queenslanders who had suffered catastrophic injuries, including in providing participants with choice and control regarding their long-term care.
6. However, over time and with changes to the governance and leadership of the NIISQ Agency, the Agency and the scheme's structure overall became less responsive and less sensitive to the needs of scheme participants.
7. This was further compounded by the independence of the NIISQ Agency from Government. Whilst likely well-intentioned, that independence over time has led to the Agency lacking accountability and leaving Government unable to respond to stakeholder concerns.
8. NIISQ was always intended to be a simple and fair scheme, but the current Board and CEO have moved the scheme to be closer to a highly bureaucratised long-tail scheme; a scheme that is unresponsive, often leaving participants with few options but to go to Court or elsewhere to seek an appropriate determination of their matter, as occurred in the case of *Taylor v The National Injury Insurance Agency, Queensland*.
9. Such an approach creates great distress for participants and their families when they are already grappling with the wider and invariably traumatic consequences of a catastrophic and life-changing injury.
10. The governance changes therefore proposed by Treasurer Cameron Dick to address these issues have significant merit and are welcomed by the legal profession on behalf of NIISQ participants more widely.
11. The ALA has advocated for such improvements and we welcome that these are now being delivered. The proposed changes demonstrate that the State Government has both listened to the experiences of participants and is responding swiftly and appropriately to address participant concerns.

12. While this submission rightly focuses on the concerns regarding the leadership and governance of the scheme and its impacts upon participant experiences, the ALA also strongly supports the economic basis upon which the Bill is premised.
13. The proposal from Government to address the Agency's governance is a good savings measure that we believe will lead to less money being spent on unnecessary litigation, poor stakeholder management and bureaucracy, thus ensuring the Agency can again appropriately prioritise the needs of participants within the NIIS scheme in a timely manner, as was always intended.
14. We therefore commend the economic basis upon which the Government's changes will occur. Our experience with many other schemes, including Queensland's excellent workers' compensation and CTP schemes, gives us great confidence that NIISQ can be run more efficiently with improved governance.
15. Such changes will mean that NIISQ will once again return to its original intent – that being to serve as an invaluable safety net that ensures appropriate and responsive service delivery to Queenslanders who have suffered a catastrophic injury and their families.
16. This is important in ensuring that NIISQ upholds its responsibility to ensure genuine choice and control for scheme participants, and end more recent practices that are not only insensitive and unresponsive to those needs, but also extend beyond its permitted legislative remit.
17. In closing, the ALA also welcomes the appointment of Mr Neil Singleton, the current Insurance Commissioner of MAIC, as the chief executive officer who will become responsible for the management of the NIISQ Agency.
18. Mr Singleton has demonstrated experience in the management and oversight of the NIISQ Agency, having successfully overseen this for an interim period when the NIISQ scheme first came into effect prior to the introduction of its more recent governance structure.
19. Mr Singleton has also has long overseen the Queensland CTP scheme as Insurance Commissioner of MAIC, a scheme that is characterised by excellent design to ensure

fair outcomes for injured people whilst also remaining financially strong and affordable.

20. The ALA expects the Commissioner will bring a similarly fair and financially responsible approach to the NISQ scheme and its Agency in his new role.

Should you have any questions about any of the issues identified above, please do not hesitate to make contact.

At attachment outlining case studies of poor client experiences under the recent governance of the NISQ Agency are also enclosed for the Committee's information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Spinda', is placed over a light grey grid background.

Greg Spinda  
Queensland President  
**Australian Lawyers Alliance**

## **Addendum – case study examples**

### *Case of Tom Taylor (Taylor v The National Injury Insurance Agency, Queensland)*

Tom is 54 years old and lives in Central Queensland.

In late 2019, Tom suffered a spinal cord injury, a fractured spine, bleeding on the brain and other injuries after a serious car accident and spent time in the PAH Spinal Injuries Unit before returning to Rockhampton Hospital and later Yeppoon Hospital. He has only recently been released into temporary accommodation, more than a year after being injured. Tom is now a tetraplegic as a result of his injuries.

While Tom was in hospital his lawyers organised for an assessment to be done by external rehabilitation specialists to assess his future care needs including a home assessment, as it was likely Tom would need significant home modifications to manage his injury long-term. Tom also became a participant of NIISQ in late 2019.

Despite Tom's lawyers having already organised for a home assessment to be undertaken externally, NIISQ advised that it would be undertaking its own home assessment. This was not as in-depth or thorough as the external assessment, although both assessments found Tom needed new, purpose-built accommodation to meet his needs.

NIISQ then later, without consulting Tom or his wife, refused any further external case management in his case, insisting they would do this themselves. This then led to Tom going more than three months without urgent case management, which is crucial in the early stages of a catastrophic injury. Nothing also was done about his housing situation in the meantime, which was becoming more urgent.

Tom had to take NIISQ to Court to get his own case managers, as per his wishes.

The Court ultimately ruled in Tom's favour that NIISQ's efforts to administer case management services exceeded its legislative powers, and that he had a right to have this undertaken by external providers as per his wishes. As part of the case it was identified that NIISQ were acting beyond their legal remit, with Tom being put through the stress and expense of a legal battle to prove this.

NIISQ appealed the decision. Queensland's highest court ultimately dismissed the appeal, but not without further months of proceedings that continued to add significant stress.

Tom is now continuing with his own case managers, as per his wishes.

### *De-identified case study #1*

The NIISQ participant was catastrophically injured in a collision with another motorcyclist over 12 months ago.

He suffered numerous injuries, including a brachial plexus injury, where the nerves that send signals from the spinal cord to the shoulder, arm and hand are torn from the spinal cord, causing permanent and complete paralysis of the arm.

Despite the severity of this injury, there are currently no relevant provisions in the NIIS Regulation to qualify a person for NIISQ when suffering a brachial plexus injury.

The participant in this case was receiving external case management funded by his CTP insurer whilst waiting to see whether his application to be accepted into the NIIS would be accepted. He faced considerable challenges in being accepted into the scheme – he was refused entry initially and had to challenge this decision in Court, where the Agency's decision was overturned.

When he was eventually made a participant of the NIIS his lawyers asked for his case management to continue to be funded by NIISQ and for his existing case managers to be retained, based on the participant's wishes for continuity of care.

NIISQ pushed the client for more information as to why he should have external case managers, despite the recent decision in Taylor v the NIISQ being law and despite that he had been receiving his existing external case management for almost 12 months.

NIISQ ultimately accepted the participant's request regarding continuing external case management, but this was not without significant challenges.

#### *De-identified case study #2*

The participant was accepted as an interim participant in the NIIS in 2019 after suffering a catastrophic traumatic brain injury.

Initially, while the participant was in hospital and in a rehabilitation unit, the Agency failed to proactively manage and support the participant or his family, and no appropriate case management was put in place.

As a result, the participant's condition further declined, and he had to be re-admitted to hospital. There were also significant failures by the Agency to provide comprehensive services in a timely way such as dental and speech pathology, which have impacted on the participant being able to achieve the best possible outcome from early intervention.

The participant's discharge from a rehabilitation unit was also substantially delayed due to failures of NIISQ, that impacted on his ability to return home to his family.

As a result of the many failures of the Agency, the participant's family organised their own case managers to provide an assessment to assist in his discharge planning and ensuring his needs when he returned home could be met. His lawyers asked for the costs of this external case management to be met by NIISQ, this request was rejected by the Agency along with a number of other recommendations for ongoing treatment and support.

An application for review was lodged with the Workers' Compensation regulator in 2020. As part of this the Agency, among other parties, also sought to prevent the participant's partner from acting in her capacity as his guardian and sought to strike out her request for a review.

The regulator ultimately sided with the participant and his guardian in approving external case managers and their recommendations for his continuing care, and the Agency subsequently funded this. The Agency continued to refuse however to fund the initial rehabilitation assessment, despite the clear decision of the Regulator.

They also continued to communicate directly with the participant's various service providers, despite the express wish of the participant's guardian for any communication to be done through the participant's external case manager or lawyers.

This has caused considerable and unnecessary further stress for the participant and his guardian, who have lodged a formal complaint regarding the actions taken by NISSQ.