

12 February 2016

The Research Director  
Communities, Disability Services and  
Domestic and Family Violence Prevention Committee  
Parliament House  
George Street  
BRISBANE QLD 4000



Dear Research Director

**Report by Taylor Fry**

I write to provide Queensland Law Society's comments on an actuarial report by Taylor Fry tabled in Parliament in January 2016. The Society noted in its initial submission to the Inquiry that it was difficult for stakeholders to provide comment on the funding model when no actuarial report had been released, and in that sense it is pleasing that this report has been released. What is disappointing is that the Society, as one of the major stakeholders in the implementation of the NIIS, was not made aware of this report and discovered it through the diligence of its own officers; the Society is of the view that stakeholder consultation is vital to the successful implementation of the NIIS.

In relation to the report itself, the Society has the following concerns:

**1. Lump Sum Payments**

The Taylor Fry Report appears to assume that, under a hybrid system, a significant number of claimants will exhaust their lump sum payments and be forced back onto the NDIS for care and support, and that any payments made by the NDIS will be recoverable from the State government.

There would appear to be no examples from other jurisdictions which substantiate this, and in the absence of other evidence to which the Society has not been made a party, this assumption would appear to be utterly baseless. Indeed, the Western Australia experience is that in over 70 years of the CTP scheme's existence, the insurance commission has not been presented with evidence that indicates that lump-sum payments had run out.

A fundamental tenet of evidence based policy is that the policy is founded on empirical observation and past experience. The assumption in the Taylor Fry Report – that all lump sum recipients will ultimately access the NDIS – is entirely inconsistent with experience and, in the Society's submission, utterly unsustainable; it follows that the costs estimates in relation to a hybrid system lack the credibility to inform the Committee in determining the best method of implementing the NIIS.

Further, some percentage of catastrophically injured persons will be intellectually impaired as a result of their injuries; intellectually impaired claimants have their lump sums administered by the Public Trustee's Office or a private trustee company subject to the approval of the Court. The assumption that all claimants return to the NDIS is, therefore, anticipating that the Public Trust Office (or the court-approved private trustee) will mismanage funds paid to intellectual impaired claimants. As there is no evidence that this is the case - indeed, there is much evidence to show the public trust office does an exceptional job in administering these funds - this simply reinforces the inescapable conclusion that the Taylor Fry Report is based on flawed assumptions and is inherently incapable of informing the Committee in its deliberations.

## 2. NDIS assumptions

The Taylor Fry Report assumes that the cost of caring for any claimant who ultimately comes to rely on the NDIS would be recovered from the Queensland Government. Given that the NDIS is in its early stages, much of its operational detail is yet to become clear. The assumption that 100% of these payments will be recovered from the Queensland Government is premature, and indeed flies in the face of the experience of other insurance schemes.

For example, the Queensland Building and Construction Commission operates an insurance scheme which protects consumers from the consequences of defective and incomplete building work by licensed contractors. Examination of the annual reports for the Queensland Building and Construction Commission (and its predecessor the Queensland Building Services Authority) show that only a modest percentage of payments made under that insurance scheme are recovered.

In view of this, it is the Society's submission that even if some recipients of lump-sum payments under a hybrid system ultimately claim from the NDIS, there is no basis for suggesting that the entire cost of that claim will be recovered from the Queensland Government.

Further, the NIIS minimum benchmarks specifically provide for an exclusion for persons who have received a common-law compensation payment. It is difficult to see how claimants specifically excluded from the NIIS can be considered likely to contribute to the cost of its implementation. The assumption is, in the Society's submission, unsound and again undermines the ability of the Taylor Fry Report to inform the Committee's decision.

## 3. Consultation

The Society, along with other stakeholders, was invited to make submissions by 8 January 2016, following a public briefing on 2 December 2015 (which the Society's representatives attended).

At the public briefing, Treasury officials were questioned as to the actuarial modelling behind the document which Treasury had submitted. The Treasury officials undertook to investigate providing that material to the Committee.

On 22 January 2016 Treasury forwarded the Taylor Fry Report dated 20 January 2016 to the Committee. The report is stated to be a supplementary report to the report of 8 July 2014, and as a matter of logic is not the actual material sought by the Chair.



As a consequence, it would appear that neither the Committee nor the stakeholders have access to the initial actuarial modelling, only the Taylor Fry Report provided after stakeholders had made submissions to the Inquiry.

The late release of the actuarial modelling has meant that stakeholders have been unable to obtain expert assessment of the modelling. Given that, as noted above, even a cursory examination of the report reveals that many of the assumptions underlying the report are unsustainable, the Committee can place little reliance on the Taylor Fry Report in coming to its decision.

The method the Committee chooses to implement the NIIS will affect catastrophically injured persons, and their families, for decades; it is not something which can be taken lightly or based on unsound assumptions. As noted in the Society's initial submission, the experience of other jurisdictions is that the elimination of common law rights is an invitation to fiscal purgatory. The Taylor Fry Report—based at it as it is on assumptions which appear largely unjustifiable – should not be seen as persuasive in the light of the actual experiences in other jurisdictions. The Society maintains its call for a hybrid system as being the one which will provide the best health outcome for Queenslanders, as well as being most fiscally responsible model.

Again, I thank the opportunity to comment on these important issues. Should you wish to discuss them further, please do not hesitate to contact me, or Shane Budden, the Society's Senior Policy Advisor, or [REDACTED]

Yours faithfully

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Bill Potts  
**President**