

NATIONAL INJURY INSURANCE SCHEME - OVERVIEW

Key points

- The Productivity Commission (PC) has proposed that the National Injury Insurance Scheme (NIIS) would be structured as a federation of separate State and Territory schemes that provide care and support for catastrophic injuries.
- This would mean that states and territories establish, control and manage their own schemes.
- However the Productivity Commission suggested there are some aspects where a level of national consistency across each of the schemes is desirable.
- National consistency should be established by minimum benchmarks, with states and territories able to provide above the benchmarks.
- Consideration should be given to whether there should be comparable base levels of care and support under each scheme and clear boundaries, assessment and eligibility criteria for both the NIIS and the National Disability Insurance Scheme (NDIS).
- There should be transparency by states and territories in the application of the agreed benchmarks and outcomes of the NIIS.

NIIS Senior Officials are working on developing minimum benchmarks for a 'model' NIIS, States and Territories are yet to agree to the NIIS and its implementation.

In its report into disability care and support, the PC proposed the establishment of two schemes: the National Injury Insurance Scheme (NIIS) and the National Disability Insurance Scheme (NDIS).

1. The NDIS would provide reasonable and necessary care and support for people with a permanent and significant disability.
2. The NIIS would provide no fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents, workplace accidents, medical misadventure, crime and general accidents occurring in the home or community.

The PC's rationale for the establishment of the NIIS is that current arrangements for catastrophic injury across jurisdictions are fragmented and variable, which in many cases leads to inadequate care and support. In addition, people in jurisdictions without no fault catastrophic injury insurance, such as is the case for some motor vehicle accidents schemes, need to establish fault of another party to obtain compensation. Court outcomes can be delayed, uncertain, inequitable and inefficient.

The PC recommended that a NIIS be established to cover all catastrophic accidents, structured as a federation of separate State and Territory schemes, on a no-fault basis. This includes a number of streams:

- Motor vehicle accident
- Medical accidents
- Workplace accidents
- General accidents (including victims of crime)

It is envisaged that minimum benchmarks would be developed separately for each injury class identified by the PC. These benchmarks may vary according to the injury class under consideration.

Governance arrangements will be determined by the individual jurisdictions. In the PC's view, the NIIS should be distinct from the NDIS for the following reasons:

- implementation of a NIIS could be relatively quick due to the existence of functioning care and support schemes in some states and territories (some no-fault);
- there is an opportunity to change behaviour leading to catastrophic injury through differential pricing of contributions according to risk; and
- there are some constitutional issues surrounding establishing a NIIS under Commonwealth legislation.

There are well established catastrophic injury schemes currently in operation in some jurisdictions, and these vary in the coverage and benefits they provide. The PC proposed that in order to ensure some level of consistency across coverage and benefits, schemes should be aligned and subject to minimum benchmarks. The PC considered that whilst the eligibility may differ between the different categories of accidents, it would be desirable to ensure that the care and support benefits are aligned amongst these different categories of accidents.

The PC proposed that consistent eligibility within an accident stream (such as motor vehicle accidents) would help to avoid gaps in coverage symptomatic of current arrangements.

Minimum benchmarks for catastrophic injury arising from motor vehicle accidents

The Standing Council on Federal Financial Relations agreed that Treasuries undertake further detailed work during 2012, for consideration by the Standing Council in late 2012, in relation to the development of a 'model' NIIS in respect of catastrophic injuries in motor vehicle accidents. This work is to include estimates of both set-up costs and annual costs. Treasurers also agreed to further work by Treasuries in 2012 to allow consideration by the Standing Council, at its meeting in 2013, of the extension of the NIIS to other causes of catastrophic injury.

The NIIS Senior Officials have prepared the attached paper on minimum benchmarks for no-fault motor vehicle accident catastrophic injury schemes. Jurisdictions would have discretion about whether to provide coverage and benefits above and beyond the minimum benchmarks.

Key reasons to pursue minimum benchmarks include:

- ensuring that people who suffer catastrophic injuries in motor vehicle accidents do not ‘fall between the cracks’ and receive inadequate care and support; and
- avoiding potentially anomalous differences in the interface between the NIIS and the NDIS across jurisdictions.

Fundamental NIIS Principles derived from the PC

Below are a set of fundamental principles, being considered by NIIS Senior Officials, which could be applied across all injury classes identified by the PC.

NIIS would be structured as a federation of separate state-based schemes with control of governance, funding and service delivery to be the responsibility of each jurisdiction.

1. NIIS would operate on a no-fault basis.
2. NIIS would operate prospectively and provide cover for new catastrophic injuries.
3. Benefits would include acute care, all medical treatment, rehabilitation, home and vehicle modifications and care costs.
4. There should be consistency in eligibility criteria, scope, and benefit structure regardless of where the accident occurred ensuring no gaps in coverage.
5. Overseas visitors would be excluded from the NIIS but would still be entitled to sue for all heads of damages including for long term care and support where there is an at fault party.

In addition, jurisdictions will have to consider issues including the following in their scheme design:

- Governance arrangements.
- The need for common law rights to continue to exist for life time care and support while recognising the need for pecuniary and economic loss and general damages to remain.
- Scope for having a model based on client choice and increased autonomy where that would deliver better outcomes for participants and work towards ways to allow self-directed funding.
- How the scheme can operate in a financially sustainable way while ensuring the provision of care and support is funded to cover the lifetime of eligible participants.

A model ‘NIIS’ might have the following characteristics:

1. States and territories should control and manage their individual schemes, agreeing national minimum benchmarks.
2. National consistency should be established by minimum benchmarks, with states and territories able to provide above the benchmarks.

3. There should be comparable levels of care and support, assessment and eligibility criteria under each jurisdiction's scheme and clear boundaries for both the NIIS and the NDIS and capacity for appropriate notifications to avoid dual benefits.
4. There should be transparency by states and territories in the application of the agreed benchmarks and outcomes of the NIIS.

1. States and territories should control and manage their individual schemes, agreeing national minimum benchmarks.

The PC considered it important for people with catastrophic injuries to be treated in similar ways no matter how that disability was caused. A federated model can build on existing arrangements already operating in some states and territories which allow local differences to be taken into account and can help promote innovation in prevention, treatment and long term care. A federated model with minimum benchmarks can combine all these features.

A federated model of state-based schemes will most effectively deal with the local context and the potential for new approaches because it allows states and territories to control their own schemes. Transparency of approach and outcomes will allow the most successful approaches to migrate across schemes.

2. National consistency should be established by minimum benchmarks, with states and territories able to provide above the benchmarks.

Minimum benchmarks will assist in providing national consistency to ensure clients receive an agreed level of basic support. Benchmarks are particularly important for eligibility, assessment and level of support.

As these are a minimum, states and territories could choose to provide above these benchmarks.

If a national federated model is adopted, it is important that arrangements ensure people are covered and do not fall between different arrangements in different jurisdictions. Benchmarks need to ensure that a consistent approach is taken to such issues. .

3. There should be comparable levels of care and support under each jurisdiction's scheme and clear boundaries, assessment and eligibility criteria for both the NIIS and NDIS.

One of the key objectives of the new arrangements will therefore be to ensure a level of national consistency for care and support packages within the NIIS and between the NIIS and NDIS.

Clear boundaries on eligibility and assessment criteria within a NIIS, and between NIIS and the NDIS, are necessary to ensure comprehensive arrangements for the care of clients with catastrophic injuries and (because the NDIS will operate as a fall back for anyone not covered by NIIS arrangements) to prevent cost shifting between the schemes and ensure the long term predictability and viability of both schemes.

Although some level of alignment between the NIIS schemes and the NDIS is important, there are areas where differences may make sense. Adopting a very clear approach to eligibility for elements of the NIIS may assist in limiting litigation and improving governance. For example, a very clear

approach such as a diagnostic test for eligibility based on injury type and severity may be appropriate in certain catastrophic injury classes and improve the predictability of future liabilities and efficient operation of statutory providers.

A NIIS may also provide additional supports not covered by an NDIS, which are more relevant to the needs of people with disability arising from injury, such as acute care and rehabilitation services.

The PC recommended that the NIIS cover catastrophic injury on a no-fault basis. However some jurisdictions currently specify exclusions. In practical terms, to achieve agreement between jurisdictions the existing exclusions will need to be addressed or accommodated in the design of the NIIS and NDIS. However, exclusions should be very carefully considered.

<p>4. There should be transparency by states and territories in the application of the agreed benchmarks and outcomes of the NIIS.</p>

Sharing scheme experiences could promote transparency, efficiency and innovation and assist scheme management by providing information to better understand trends and evaluate scheme effectiveness. There may also be opportunities to conduct shared research or periodic issue reviews to become more effective. It would be useful for schemes to have a base level of data collection to underpin analysis of claims experience, similar to arrangements that exist between existing heads of Compulsory Third Party (CTP). For example, this could include the number of clients, classification of injury, demographic information, average cost of care and client outcomes.

Designing an NIIS

States and territories have agreed to first consider a NIIS for motor vehicle accidents. Focusing initially on motor accidents is in line with the PC's recommendation and was agreed by the Standing Council for Federal Financial Relations. The design considerations in this paper are shaping the consideration by Senior Officials of proposed benchmarks for catastrophic motor vehicle accidents. The same considerations should apply to the design of other streams, recognising that some differences may arise across the different streams, given the contexts in which they operate.

NATIONAL INJURY INSURANCE SCHEME (NIIS) – MINIMUM BENCHMARKS

The proposed National Injury Insurance Scheme (NIIS) is a “federation” of state-based schemes to provide long term care and support to people who suffer catastrophic injuries. Federal and State Treasurers have agreed to investigate a NIIS for people injured in motor vehicle accidents as a first stage, building upon existing schemes in each state and territory which provide insurance against bodily injury.

It is considered desirable that there be some minimum degree of consistency in the way each state and territory establish such a scheme, in order to ensure that there is an effective interface between each jurisdiction’s NIIS, and between the NIIS and the National Disability Insurance Scheme (NDIS). In particular it would be desirable to:

- Ensure that people who suffer catastrophic injuries in motor vehicle accidents do not “fall between the cracks” because of differences in coverage of each state and territory NIIS (e.g. because of the state in which they reside, the location of their accident, or the state of registration of the vehicle).
- Avoid potentially anomalous differences in the interface between the NIIS and the NDIS across jurisdictions (e.g. because of different NIIS coverage rules or exclusions across jurisdictions).

Who is covered by a NIIS?

The Productivity Commission (PC) recommended that the NIIS provide lifetime care and support to those who suffer new catastrophic injuries.

There are four key principles that could be considered in settling on an appropriate definition of catastrophic injury:

- It should be objective so that there is clarity around entry, which will also minimise boundary issues with residual Compulsory Third Party (CTP) schemes in those jurisdictions without full no-fault schemes.
- It should include a minimum benchmark for a definition of ‘catastrophic injury’ to be agreed by states and territories.
- It should ensure that all people with a defined lifetime care and support need as a result of their injury are included in the scheme.
- It should allow early identification of likely participants, to allow optimal returns from early intervention and treatment.

The NSW Lifetime Care and Support (LTCS) Scheme provides the clearest existing basis for determining eligibility in relation to catastrophic injury arising from motor vehicle accidents. The traumatic injury eligibility criteria rely in some instances on the assessment of functional need against an assessment tool by an accredited assessor. Assessment tools should serve multiple purposes, such as confirming entry into a NIIS scheme, identifying needs and support requirements or priorities and more generally linking people with appropriate services.

The NSW LTCS eligibility criteria provide a clear basis to determine the types of injury and functional needs which give rise to an entitlement to lifetime care and support services. A clear

definition is essential for jurisdictions where fault-based CTP schemes will remain in place alongside the NIIS.

In some jurisdictions where no-fault motor accident schemes already exist, the adoption of the NSW criteria may not be relevant. For example the Victorian Transport Accident Compensation (TAC) scheme provides no-fault lifetime care and support and would meet the benchmark inherent in the NSW criteria without the need to adopt them.

Recommendation

At a minimum, jurisdictions should have eligibility rules which include people who suffer the following catastrophic traumatic injuries in motor vehicle accidents:

1. Spinal cord injury – based on evidence of a permanent neurological deficit (principally paraplegia and quadriplegia).
2. Traumatic brain injury – based on evidence of a significant brain injury which results in permanent impairments of cognitive, physical and/or psychosocial functions. A defined period of post traumatic amnesia plus a Functional Independence Measure (FIM)¹ at five or less, or two points less than the age appropriate norm (or equivalent where other assessment tools are used), would be required.
3. Multiple amputations of the upper and/or lower extremities or single amputations involving forequarter amputation or shoulder disarticulation, hindquarter amputation, hip disarticulation or “short” transfemoral amputation involving the loss of 65% or more of the length of the femur.
4. Burns – full thickness burns greater than 40 per cent of the total body surface area (or greater than 30 per cent in children under 16 years) or full thickness burns to the hands face or genital area, or inhalation burns causing long term respiratory impairment, plus a FIM score at five or less, or two points less than the age norm (or equivalent where other assessment tools are used); or
5. Permanent traumatic blindness, based on the legal definition of blindness.

Further guidance as to the approach taken to assessment of eligibility under the NSW LTCS Scheme is provided in the attachment.

The minimum benchmark is not intended to be prescriptive as to the entry criteria and assessment tools which must be used by each jurisdiction’s NIIS. Schemes may use different criteria and assessment tools to achieve a scope of eligibility for no-fault care and support which is consistent with the minimum benchmark.

What is the scope of motor vehicle accidents for the first stage of the NIIS?

The PC preferred model for the NIIS is that all new catastrophic injuries would be covered, no matter how the injury arose. That is, the NIIS will be prospective. However, the first stage of the NIIS will be limited to motor vehicle accidents. If this involved a scope significantly different from

¹ The FIM is a basic indicator of severity of functional limitation that uses a seven point ordinal scale for each of 18 activities of daily living. The scale provides for the classification of individuals by their ability to carry out an activity independently, versus their need for assistance from another person or a device. If help is needed the scale assesses the degree of that need.

the current scope of CTP schemes then it would add to the premium adjustments required, which are already potentially significant for some schemes. At the margin, existing state and territory CTP schemes have a different scope of motor vehicle accidents which are covered, but there is a significant degree of commonality.

At a minimum the NIIS should cover injuries which arise from accidents which are typically covered by all CTP schemes at present. It is recognised that this will result in the potential exclusion of certain types of vehicle and other transport accident injuries during the first stage of the NIIS and that, as a result, the NDIS will potentially need to cover people who suffer catastrophic injuries in these contexts (unless and until a second stage of the NIIS is able to be implemented).

The recommended coverage in relation to the scope of vehicle accidents is also subject to other exclusions discussed below.

Recommendation

Each jurisdiction's NIIS should cover injuries which arise from accidents which:

- involve at least one registerable vehicle.
- occur on a public road or other locations where registered vehicles are commonly driven including driveways and car parks, and areas adjacent to roads such as nature strips, footpaths and other road related areas.
- are the result of the driving of the vehicle, the vehicle running out of control, action taking to avoid a collision with the vehicle, or a collision with the vehicle while it was stationary, and includes injuries to pedestrians and cyclists injured as a result of such incidents.

Jurisdictions may provide a broader scope if they desire.

For avoidance of doubt the NIIS need not as part of the first stage cover:

- Unregistered vehicles on private property such as farm vehicles.
- Unregisterable vehicles such as motor cross bikes, quad bikes, trikes, off-road or racing vehicles.
- Bicycles.
- Other modes of transport (trains, trams, waterborne craft).
- Injuries arising from organised motor sports.
- Injuries arising from acts of terrorism involving the use of a motor vehicle.

Which jurisdiction's NIIS should provide cover?

It is highly important that the territorial application of each jurisdiction's NIIS is aligned so that persons suffering catastrophic injuries in a motor vehicle accident do not find themselves ineligible to receive care and support simply because of the location of their accident, their state of residence and/or the state of registration of the vehicles involved in the accident.

Three possible options have been considered:

1. A model based on the location of the accident;
2. A model based on the state of residence of the injured person;
3. A hybrid model, based on location of the accident except where no locally registered vehicles are involved.

Option 1 – Location of accident

Under this model the location of the accident determines which NIIS assumes responsibility (financial liability) for the care and support needs of the eligible participant.

- This simple approach would ensure that there are no gaps in coverage.
- NIIS schemes would assume the liability for care and support needs of people who are not residents of the jurisdiction, and may return to their home jurisdiction post injury.
- This would require agreements between schemes to transfer the responsibility for the case management to the NIIS where the injured person is a resident, but the costs to be met by the NIIS where the accident occurred. Some agreements of this nature already exist.
- In terms of financial liability, each NIIS would bear costs for some non-residents but also be relieved of costs arising in relation to their own residents. Currently fault-based insurers already bear risks to compensate non-residents when one of their insured vehicles causes the injury. There may be concerns regarding compensation being provided to at-fault non-residents. Some jurisdictions may fear that they would be relatively disadvantaged (i.e. the net impact on their premium costs of exposure to costs for non-residents would be greater than for other jurisdictions). To ameliorate this concern, regular reviews could be undertaken to assess the extent to which state and territory NIIS schemes face differential (net) financial burdens in relation to liability for services provided to non-residents.

Option 2 – Residency basis

- This option seeks to address any potential concerns about schemes assuming financial liability for non-residents and minimising the extent to which schemes will have to arrange for services to be provided to injured persons returning home to another jurisdiction (although there may still be instances where this occurs – e.g. someone who has been resident in a jurisdiction but post-injury seeks to return to their birth state to be closer to family and friends).

- Restricting scheme coverage only to residents in this way faces two major problems:

A pure residency model may be open to legal challenge. It would mean that each jurisdiction's NIIS would not provide entitlements to any injured party who was not a resident. Section 117 of the Constitution may prohibit state discrimination against non-residents.

A clear definition of "resident" will need to be included in the legislation. This could be difficult to define – the cases of persons who work in the mine fields but own a home in another state which they return to during their off time? The cases of international students who "reside" in a state to conduct their studies but intend to return to their home country, and backpackers who "reside" for months while fruit picking. Value judgements may be required to define the permanency and duration of residency to ensure that the definition withstands legal challenge. While existing schemes may deal adequately with residency tests to make determinations about whether someone is a resident of their own jurisdiction, under a NIIS a residency test would need to meet a higher hurdle – namely to determine which jurisdiction a person was a resident of. The model would require an agreed and consistent definition of residency which ensured that an individual was able to claim residency of one jurisdiction no matter their circumstances.

- Given the potential legal impediments a pure residency model may not be feasible.

Option 3 – Hybrid model

- A hybrid model could involve:

where a vehicle registered in the jurisdiction where the accident occurred is involved in the accident (but not necessarily responsible) – that jurisdiction assumes financial liability.

where no locally registered vehicles are involved – the registration jurisdiction of the vehicle in which the injured person was travelling (or the registration jurisdiction of the vehicle involved if the injured person is a non-motorist i.e. pedestrian/ cyclist).

- This approach creates a closer nexus between the care needs of the individual and the financial liability of the scheme. However there will still be instances where a scheme becomes liable for the care needs of a person who will reside in a different jurisdiction. It reduces the scope for this to occur but does not eliminate it.
- It may also face legal challenge on the grounds of discrimination to non-residents.

Based on the above it would appear that jurisdictions will need to provide cover to non-resident Australian citizens injured in their jurisdictions, or at least may face some legal impediments to restricting support provided to non-residents. The Constitutional restrictions point towards a location of accident basis for jurisdictional coverage.

There are also potential issues in relation to the accounting treatment of NIIS schemes that are related to the jurisdictional coverage benchmark. The NSW LTCS Scheme has been established on the basis that it is not carrying out insurance activities, in part because it does not follow a policy holder across jurisdictions and restricts eligibility for lifetime care to people injured in NSW. If the LTCS Scheme were to adopt an alternative coverage benchmark and insurance accounting treatment, there would be significant implications for liability estimations and scheme costs – see box below.

An illustration of the potential impact if the design of the NIIS required compliance with AASB1023

Based on the current scheme design and legislation of the LifeTime Care and Support (LTCS) Scheme in NSW, the LifeTime Care and Support Authority (LTCSA) is not carrying out insurance activities and therefore AASB 1023 is not applicable. The LTCS scheme design includes a mandatory levy on all vehicles to fund the LTCS and coverage by the LTCS for all people injured in motor vehicle accidents in NSW who meet the LTCS eligibility criteria. Put simply LTCS eligibility does not cover motor vehicle accidents involving NSW vehicles or residents if the incident occurs outside NSW. In that regard it is not like an insurance policy that follows the policy holder from jurisdiction to jurisdiction. People who do not pay the levy from inter-state will be covered if the motor vehicle accident occurs in NSW and they meet the eligibility criteria.

The Authority is not taking on insurance risk in return for a premium and is therefore not undertaking general insurance activities.

The Authority's liabilities need to be accounted for under AASB 137 Provisions, Contingent Liabilities and Contingent Assets.

Pricewaterhouse Coopers (PwC) have provided advice to LTCSA that if, to comply with NIIS benchmarks, LTCSA were to come under AASB1023 this would imply that the Authority had responsibilities in line with issuing an insurance contract. This leads to a number of implications including the approach to discount rates, risk margins, unexpired risk provisions and Goods and Services Tax (GST) treatment.

Compliance with AASB1023 requires specific use of a risk free rate of return based on Government bond yields. Short term bond yields are currently quite low, at around 2 - 3 per cent over the next five years, meaning that such an approach would have a significant impact on the cost basis of the NIIS if compliance with AASB1023 was required.

This change in modelling approach would significantly increase the costing basis of the Authority (affecting both Levy and Liability).

Key impacts would include:

1. Unexpired risk provision: the NIIS would be required to hold an additional liability for the premium that it has already collected where the period of cover has not yet occurred.
2. Risk margin: a margin would need to be embedded in the liabilities of the NIIS to increase the probability that total reserves would be sufficient in the longer term.
3. Impact of changes in discount rates.

PwC have advised that falling under AASB1023 would increase the liability of a scheme like the LTCSA transitioning to the NIIS by almost 50%. This also represents a significant increase in levies.

There would also be possible loss of GST benefits because insurance premiums are subject to GST and the LTCSA levy is not. The LTCSA would possibly lose any GST/ITC tax benefits currently in place if the NIIS minimum benchmarks required compliance with AASB1023. Possible loss of GST-free status on the LTCSA Levy is an additional, uncertain cost if the transition to the NIIS requires compliance with AASB1023.

To ensure that there are no gaps in coverage it is proposed that, at a minimum, schemes provide cover to people injured in accidents which occur in their jurisdiction. Some jurisdictions may

choose to exceed this benchmark and provide cover to their own residents (or registered vehicles) when involved in accidents outside their jurisdiction. In these instances and injured person may be entitled to lifetime care and support from more than one scheme. Individual jurisdictions could put in place arrangements to determine which scheme accepts liability in these instances.

Recommendation

- At a minimum each jurisdiction's NIIS will cover people who are catastrophically injured in motor vehicle accidents which occur in that jurisdiction. Jurisdictions may, if they wish, provide broader coverage extending beyond their jurisdiction.
- State and territory NIIS schemes will establish arrangements to purchase care and support services from each other when a scheme participant resides in a different jurisdiction to that which assumes funding responsibility.
- A review will be undertaken every 5 years to assess the extent to which state and territory NIIS schemes face differential (net) financial burdens in relation to liability for services provided to non-residents.
- In all cases the jurisdiction assuming financial responsibility should retain the right to seek recovery from the CTP insurer of an interstate registered vehicle.

Should there be any exclusions?

In relation to Australian residents who suffer new catastrophic injuries in a motor vehicle accident, a purely no-fault scheme would not involve any exclusions. While some existing no-fault motor vehicle accident schemes in Australia adopt this approach in relation to care and support for those with lifetime needs, some existing no-fault schemes do have exclusions. These may include exclusions for persons who are drivers/owners of unregistered vehicles or who drive without a valid licence, those who engage in reckless or illegal conduct (drink driving, dangerous driving or injuries suffered while in the commission of a crime etc) or those who undertake deliberate acts (intentional injury or attempted suicide).

If there were exclusions of this nature in a NIIS, services and supports would have to be provided through some other mechanism. Currently this would occur through public disability programs, families, charities and other informal arrangements.

Catastrophically injured persons excluded from a NIIS could potentially be eligible for NDIS services. Differential NIIS exclusions between jurisdictions would result in different boundaries between the NIIS and the NDIS across jurisdictions, and differences in the balance between funding of catastrophic injury by taxpayers and motorists respectively.

Injured persons who have received a common law compensation settlement for damages for lifetime care and support would not have entitlements to NIIS services (although arrangements may be put in place for services to be purchased from the NIIS in such circumstances).

Someone may be injured in a vehicle accident when already a participant in the NDIS. It is likely to be preferable to have their care and support schemes managed by one scheme.

The PC recommended that international visitors should not be covered by a NIIS, and should instead rely on travel insurance. Each jurisdiction's NIIS may consider its own approach to coverage of persons who are not Australian residents. It is not likely to be feasible for care and support entitlements to be provided outside of Australia.

Recommendation

- The minimum benchmark is that exclusions be limited to persons who:
have received a common law compensation payment in respect of their care and support needs resulting from the motor vehicle accident;
have an existing catastrophic injury; and
are already a participant of the NDIS.

What are the entitlements?

The NIIS will have a broader scope than the NDIS because it is dealing with accidental catastrophic injury. To be effective in supporting catastrophically injured people to achieve maximum possible restoration, the NIIS should be involved at the earliest possible stage post injury which will involve assuming responsibility for a range of medical needs as well as ongoing attendant care and support needs. The NIIS will not involve any ‘cashing-out’ or lump sum payouts of entitlements, as it will provide lifetime care and support only.

In order to ensure financial sustainability, schemes will need to be able to effectively manage their liabilities and ensure that they are not exposed to demands for services which extend beyond those which are “reasonable and necessary” to facilitate the ability of the injured person to undertake their daily activities, maximise their independence and engage in employment opportunities.

It is also desirable that the supports provided by the NIIS are not substantively different from the equivalent entitlements under the NDIS to ensure that there are no incentives for cost shifting between schemes.

The support people receive will need to take account of the person’s goals and aspirations and maximise the person’s control over the design and delivery of the support that they receive.

Recommendation

A minimum level of entitlement in each jurisdiction’s NIIS will include reasonable and necessary needs for eligible persons for the following services to the extent that they arise from the motor vehicle accident:

- medical treatment (including pharmaceutical)
- dental treatment
- rehabilitation
- ambulance transportation
- respite care
- attendant care services
- domestic assistance
- aids and appliances

- artificial members, eyes and teeth
- education and vocational training
- home and transport modification.

Individual jurisdiction's NIIS may provide a broader range of services, and may also provide capacity for self-managed funding by participants where appropriate.

Entitlements will only be provided within the Commonwealth of Australia.

Reasonable and necessary supports:

- a) are designed to support the individual to achieve their goals and maximise their independence;
- b) support the individual's capacity to undertake activities of daily living to enable them to participate in the community and/or employment;
- c) are effective, and evidence informed;
- d) are value for money;
- e) reflect community expectations, including what is realistic to expect from the individual, families and carers; and
- f) are best provided through a NIIS and are not more appropriately provided through other systems of service delivery and support, including services that are offered by mainstream agencies as a part of its universal service obligation to all citizens.

In determining what is reasonable and necessary the following factors should be considered:

1. Benefit to the participant – to progress or maintain the participant's recovery, management and participation.
2. Appropriateness – services provided are consistent with the participant's current medical or rehabilitation needs, are consistent with current clinical practices and are congruent with other services provided to the participant.
3. Appropriateness of the provider – service providers are qualified, readily accessible and appropriate given the participant's age, ethnicity and other characteristics.
4. Cost effectiveness of the services – the benefits and expected outcomes outweigh the costs, the cost is comparable to those of other providers, no other services would achieve comparable outcomes and alternatives to purchasing equipment or undertaking modifications have been considered.
5. That the services provided relate to needs arising from the injury sustained in the motor vehicle accident.

Consistent reporting standards

Under a federated model each jurisdiction will face their own incentives to monitor the performance of their NIIS schemes to ensure that they are financially sustainable, achieve high quality care and

support outcomes for participants and achieves those outcomes efficiently. Schemes will collect their own data in order to undertake such performance monitoring.

There would be benefit, however, in agreement being reached on a core set of data which can be reported on a nationally consistent basis. National reporting could facilitate comparisons of experiences across the individual schemes and across the broader disability support arrangements being built through the NDIS. Under the federated model each jurisdictions will be responsible for its own models of governance, service delivery and workforce management. Nationally consistent data collection and reporting will enable schemes to benchmark their performance and identify best practice approaches.

Recommendation

That each Scheme agree to collect information in regard to the following items and report under a consistent definitional framework:

1. The number of entrants to each scheme and their characteristics (age/gender/location of service provision – i.e. metro/regional/rural);
2. The classification of injuries of entrants - Spinal injuries (including level of lesion), head injuries (moderate + severe), other severe injuries;
3. The average cost of support of scheme entrants (overall and by the agreed injury classification);
4. The average cost of care in each jurisdiction (to understand variations in the cost of attendant care and monitor trends); and
5. The amount of care per claim overall and by injury classification.

Attachment – Further Guidance in Relation to Eligibility Criteria under the NSW LTCS Scheme.

1. Spinal cord injury

A spinal cord injury is an acute traumatic lesion of the neural elements in the spinal canal (spinal cord and cauda equina) resulting in permanent sensory deficit, motor deficit or bladder/bowel dysfunction.

Eligibility criteria:

- The spinal cord injury was caused by an in-scope motor accident; and
- There is a spinal cord injury resulting in permanent neurological deficit

2. Traumatic brain injury

A traumatic brain injury is an insult to the brain, usually with an associated diminished or altered state of consciousness that results in permanent impairments of cognitive, physical and/or psychosocial functions.

Eligibility criteria:

- The brain injury was caused by an in-scope motor accident; and
- The duration of Post Traumatic Amnesia (PTA) is greater than 1 week. If the PTA assessment is not available or applicable (for example, if the child is under 8 years of age, or the injured person has a penetrating brain injury), there must be evidence of a very significant impact to the head causing coma for longer than one hour, or a significant brain imaging abnormality due to the motor accident; and
- One of the following criteria is met:
 - if over 8 years of age at the time of assessment, a score of 5 or less on any of the items on the FIM™ or WeeFIM® due to the brain injury; or
 - if aged from 3 to 8 years at the time of assessment, a score two less than the age norm on any item on the WeeFIM® due to the brain injury; or
 - if aged under 3 years at the time of assessment, a medical certificate from a paediatric rehabilitation physician or a specialist that states the child will probably have permanent impairment due to the brain injury resulting in the need for daily attendant care services.

3. Significant amputation

Multiple amputations of the upper and/or lower extremities or a single amputation involving forequarter amputation or shoulder disarticulation, hindquarter amputation, hip disarticulation or “short” transfemoral amputation involving the loss of 65% or more of the length of the femur. or equivalent impairment.

Eligibility criteria:

- The injury resulting in the amputations, or the equivalent impairment, was caused by an in-scope motor accident;

and

- There are multiple amputations of the upper and/or lower extremities, meaning that there is more than one of the following types of amputation at or above the level of:
 - a. a “short” transtibial or standard transtibial amputation, as defined by the loss of 50% or more of the length of the tibia. This includes all other amputations of the lower extremity (such as knee disarticulation or transfemoral amputation) above this level;
 - b. a thumb and index finger of the same hand, at or above the first metacarpophalangeal joint. This includes all other amputations of the upper extremity (such as below-elbow or above-elbow amputation) above this level.

or

- The injured person has had one of the following types of amputation:
 - c. forequarter amputation (complete amputation of the humerus, scapula and clavicle) or shoulder disarticulation;
 - d. hindquarter amputation (hemipelvectomy by trans-section at sacroiliac joint, or partial pelvectomy);
 - e. hip disarticulation (complete amputation of the femur); or
 - f. “short” transfemoral amputation as defined by the loss of 65% or more of the length of the femur.

Notes:

- i) *Measurement of percentage loss of length of the amputated tibia or femur is to be calculated using x-ray imaging pre- and post-amputation. Where x-ray imaging is not available, measurement of the contralateral length of the femur should be compared with the length of the amputated femur to measure percentage loss.*
- ii) *There may be rare circumstances, such as traumatic bilateral transtibial amputation, where contralateral tibial length and tibial length prior to amputation is unknown and therefore percentage measurement is not applicable. In this case, percentage loss is defined as 50% of tibial length calculated from estimated knee height. Estimated knee height is to be calculated from the injured person’s documented total height prior to the motor accident injury.*

4. Burns

Full thickness burns greater than 40 per cent of the total body surface area (or greater than 30 per cent in children under 16 years) or full thickness burns to the hands face or genital area, or inhalation burns causing long term respiratory impairment, plus a FIM score at five or less, or two points less than the age norm (or equivalent where other assessment tools are used);

Eligibility criteria:

- The injury was caused by an in-scope motor accident; and
- There are full thickness burns greater than 40% of total body surface area, or greater than 30% of total body surface area in children under 16 years; or
- Inhalation burns causing long term respiratory impairment; or
- Full thickness burns to the hand, face or genital area; and
- One of the following criteria is met:
 - if over 8 years of age at the time of assessment, a score of 5 or less on any of the items on the FIM™ or WeeFIM® due to the burns; or
 - if aged from 3 to 8 years at the time of assessment, a score two less than the age norm on any item on the WeeFIM® due to the burns; or
 - if aged under 3 years at the time of assessment, a medical certificate from a paediatrician or a specialist that states the child will probably have permanent impairment due to the burns resulting in the need for daily attendant care services.

5. Permanent traumatic blindness, based on the legal definition of blindness.

Eligibility criteria:

- The injury was caused by an in-scope motor accident; and
- The person is legally blind, that is
 - a. Visual acuity on the Snellen Scale after correction by suitable lenses is less than 6/60 in both eyes; or
 - b. Field of vision is constricted to 10 degrees or less of arc around central fixation in the better eye irrespective of corrected visual acuity (equivalent to 1/100 white test object); or
 - c. A combination of visual defects resulting in the same degree of visual loss as that occurring in (a) or (b) above.

