

The government's new NDIS social reforms are intended to ensure that existing insurers and compensation schemes continue to pay their share of costs and to avoid 'double dipping'. Depending on the NDIS' attitude to seeking recovery, however, insurers could see an increase in claims.

# NDIS

## The Impact for Insurers and Schemes



*On 1 July 2013 one of the most far reaching social reforms of the last 30 years, the National Disability Insurance Scheme (NDIS), commenced at four launch sites across Australia. The Australian Government will commit \$19.3 billion to NDIS over seven years. When fully implemented, it will be one of the single largest costs of the Federal Government.*

*The August edition of the GIPC Newsletter was devoted to the issues around NDIS – see <http://www.actuaries.asn.au/Library/KnowledgeBank/GINewsletters/2013/GIPCNewsletterAugust2013.PDF>*

*In this article we comment specifically on the potential interaction of NDIS with insurers and schemes around Australia.*

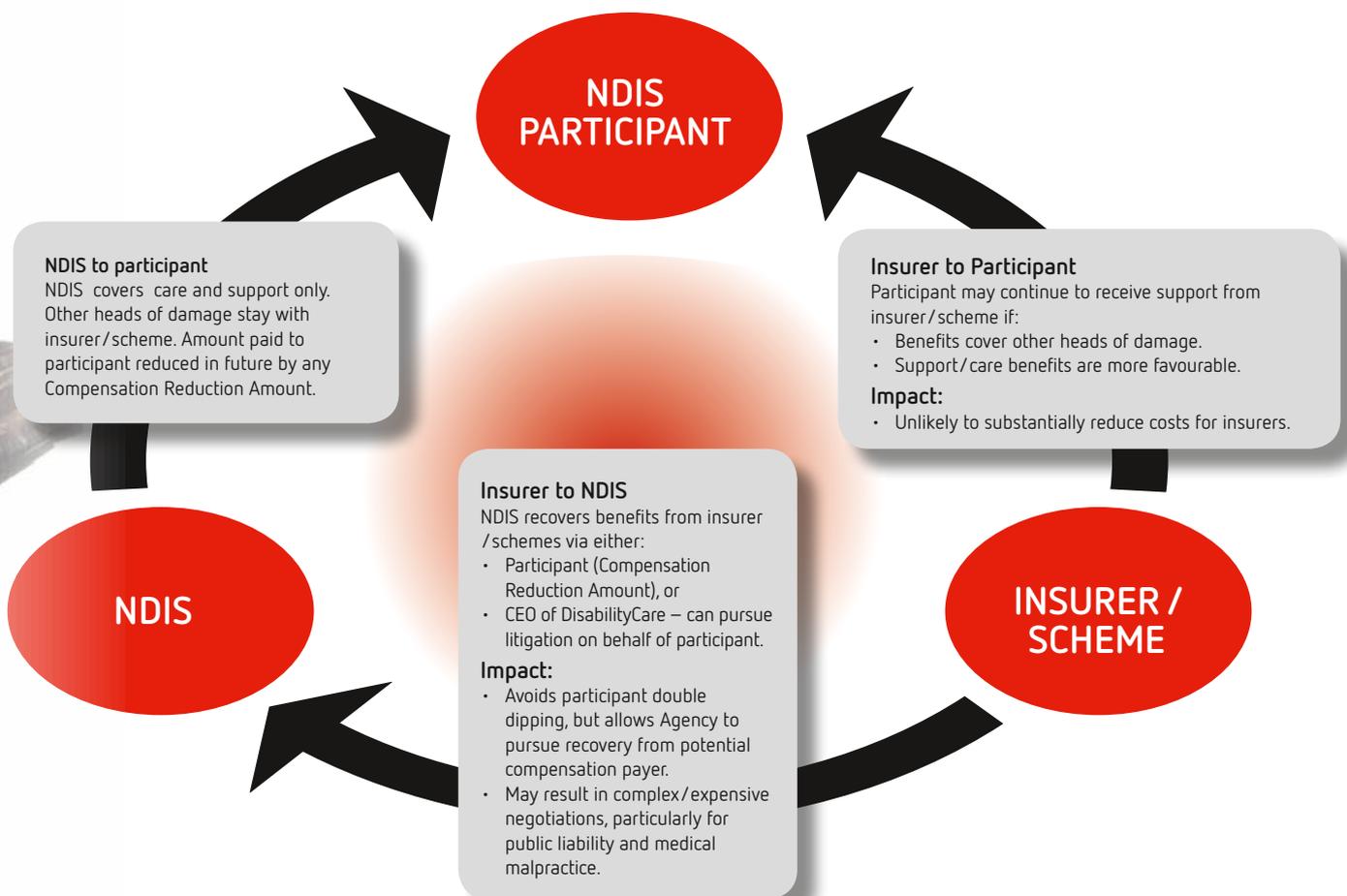
**N**DIS does not exclude anyone who might be entitled to compensation or be able to pursue common law in relation to an injury. However, to ensure that existing insurers and compensation schemes continue to pay their share, and to avoid 'double dipping', this creates some significant complications.

The Federal Government clearly intends to make the funding for accidents (at least compensable accidents) a State Government responsibility. In the various Heads of Agreement signed with individual states there are a variety of commitments that makes the funding of relevant participants a State responsibility, but without specific mechanisms necessarily being identified.

Chapter Five of the NDIS Act includes a set of provisions for recovery from other insurances or schemes. If a participant has applied and been accepted for NDIS then the agency is entitled to recover any compensation or damages for care from the participant, an insurer or scheme.

The Act includes strong provisions allowing NDIS to require a participant to pursue a claim (including a common law action) and, if they do not, for NDIS to take the action on their behalf.

The Rules relating to recovery were issued in late July 2013 and define a rather complex set of arrangements for calculation and collection of the recovery, or alternatively, offset against NDIS package funding. Under the Rules it is possible for the NDIS to choose not to reduce the package of care and support.





The Rules specify how the CEO of DisabilityCare will determine the 'compensation reduction amount' in the following circumstances:

- A judgement or settlement is made that specifies the components of the settlement (easy, just subtract it).
- A judgement or settlement is made 'all in' (rules have been developed that apply an element of 'rough justice').
- The participant is receiving regular payments from a scheme: the CEO will rely on an actuarial model to work out the reduction.
- If the participant hasn't pursued litigation but the CEO thinks they should have: in this case the CEO will form a view about what they believe the participant would have received.

While the Rules stop short of compelling individuals to pursue litigation, the fact that the CEO can reduce the support given to an individual will provide a strong incentive for people to pursue their legal rights.

In some classes of insurance – including public liability and medical malpractice – causation and negligence are often extremely complex (and costly) to determine. Depending on the NDIS' attitude to seeking recovery, insurers could see an increase in claim numbers: individuals who would not currently make an insurance claim may claim NDIS benefits, and NDIS' right to recover may 'force' an insurance claim.

We look forward to seeing how the Rules 'play out' in practice.

There is no requirement to participate in NDIS even if eligible. Where there are well developed no-fault schemes (workers compensation and CTP in some states), we expect that injured people will continue to claim on the no-fault scheme, particularly if the benefits are more generous.

The table below illustrates the potential interactions between NDIS and existing CTP schemes (no fault and at-fault examples).

**A**

	VIC CTP – no one/self at fault	VIC CTP – someone else at fault	QLD CTP – no one/self at fault	QLD CTP – someone else at fault
<b>Covered by CTP?</b>	Yes	Yes	No	Yes
What CTP Scheme covers	All heads of damage on statutory basis.	Some access to common law for 'seriously injured' (>30% whole person impairment): Future Economic Loss, General Damages. Cannot commute medical or care benefits.	Not covered.	All heads of damage on common law basis.
<b>Would NDIS apply?</b>	Yes – if disability permanent and under 65 at time of accident.	Yes – if disability permanent and under 65 at time of accident.	Yes – if disability permanent and under 65 at time of accident.	Yes – if disability permanent and under 65 at time of accident.
Would NDIS seek to recover from CTP Scheme or participant?	Yes	Yes	No	Yes