

Justice for Australia's Disabled People

by Peter Gordon, of Slater & Gordon, at the cocktail party of the
Strength to Strength Conference in Melbourne on March 1, 2012

I retired from active practise as a lawyer after 30 years at Slater & Gordon in September 2009.

After all that time, I thought I'd seen most there was to see in terms of people injured one way or another.

I've acted for over 3,000 asbestos cancer victims including those who had to take on the might of CSR over Wittenoom and James Hardie. I've sat in the bedrooms of couples who had lived together for 60 years and watched as a wife lovingly sponged her husband's brow as mesothelioma took him from her, breath by breath.

I've acted for the dying victims of big tobacco, and seen them fade away; struck by the fact that the merchants of that deadly product were never there for the final act... they were somewhere else in the middle of town, making plans to market cigarettes to a new generation.

I've seen the haunted lives of hundreds of men those whose childhood innocence and whose bodies were taken and raped by Catholic clergy.

In the 1990s, I acted for a whole generation of haemophiliacs whose arthritic and tortured bodies were blighted by the AIDS virus, after Australia's blood supply became contaminated in the early 1980s.

And I retired from that career in September 2009, proud of who and what I'd fought for and interested to know if I could find something else to be good at.

Barely a week had passed when I was asked to contribute my time to efforts to get compensation for Australia's thalidomide survivors.

Some thalidomiders had received a pittance back in the 1970s...but most had received nothing at all. And so with all the bravado and all the complete lack of judgment of a litigation Don Quixote, I saddled up for one more fight. Two and a half years on, I am fighting for thalidomiders in countries all over the world. Thalidomide will be the last big fight in my career as a lawyer. Nothing in my thirty years as a lawyer could have prepared me for what I have learned from thalidomiders in the last three years...about people, about the human spirit, about how Australia has treated its disabled people...about the unending capacity of large companies to put profit before safety.

I learned to laugh at myself and my inane and misplaced sense of political correctness. I want to tell you a story about that.

I had breakfast in late 2009 with Brett Nielsen, a man born with no arms. As he asked me to pass the sugar for his coffee and I picked up a sachet of 'equal' and started to rip it open, he snatched it off me with his toes and then commenced to tear it open with the two biggest toes on each foot before pouring the contents into his coffee and then picking up the teaspoon with two toes and stirring it, and saying, 'Don't you think I can do anything!!'

Minutes later, we went up to the buffet and I stood back respectfully, waiting for him to perform a similar feat (pardon the pun,) when he eventually turned around and said ... "well, what about a bit of a hand, ya bastard!"

That year, I also got to meet Mary Henley-Collopy, a woman born only with a foot attached to a hip, and some fingers coming directly out of her shoulder ... no limbs. Given up by her biological mother shortly after birth, she was raised by adoptive parents and grew to be one of Australia's foremost public servants in the Department of Social Security. The most recent email I got from her, late last year, she was in Africa, helping out as a volunteer in one of the townships. I never cease to look at what Mary has made of her lot, with awe and with pride.

Around the world, I now act for or help out with over half a dozen women effectively missing all of their limbs. Their circumstances range from the unbelievable lifetime commitment and care Ian and Wendy Rowe have provided to their daughter Lynette Rowe (the lead plaintiff in the thalidomide class action.) and people like Mary who were abandoned by their mothers and whose lives were transformed by people who volunteered to totally commit the balance of their lives by making the commitment to raise a seriously disabled child...and sadly, to others whose parents abandoned them as babies at a municipal tip; parents who found it in themselves to habitually sexually abuse a daughter with no arms, no legs, no means of escape or complaint. It is humbling to know of and represent these women. There can in my view be no more important role for a lawyer. It is as inspiring as it is traumatic, to try to comprehend their fifty years on this planet...about the same time I've been here.

In my first few months of knowing the Rowe family, I visited them several times but never went past the front lounge room of their modest weatherboard home in Nunawading. The room was always clean but the carpet worn and frayed and the furniture old. The Rowes and their daughter, always presented bright and welcoming faces, always made me and my associates welcome, and always offered us tea and biscuits.

The circumstances which led me to go out the back of their house only transpired after six months of getting to know them and several visits. Most of the back section of the house was built over a few weekends in 1978 as a Lion's Club project.

You see, the breadwinners in the Rowe family had to give up their day jobs fifty years ago and spend almost all their time looking after Lynette, and each other. Because Lynette is completely limbless, she has required the fulltime care of both of

them day and night for fifty years. And because of that, the back door hadn't been able to open or close since about 1984. Movement in the foundations had fixed it solid, two inches open at the top, so that for the last 28 winters, the cold wind has blown in, with nothing to stop it. The room where Lynette has spent most of that time drops a full eight inches from one corner to the one diagonally opposite. The floor of the bathroom where Lynette's parents have washed her every day, all these years, was never wet-sealed and it creaks loudly when you walk on it...as if to tell you its days are numbers and if you're standing on it at the wrong time, so might yours be.

From the lounge room back, this whole house has been falling down.

I have wrestled with an odd sense of shame since I first went out the back of the Rowe family home. And now I think I can begin to explain why. It's because I had thought I was helping these people by running their case. I thought I had some decent understanding of their lives.

But I had no idea really...because I had never gone out the back.

Just as most Australians...just as Australia... has itself never before "gone out the back"... and caught a glimpse... any kind of insight... of the real lives our seriously disabled people... and their carers... have lived.

It's time to go out the back.

There's a lot I don't pretend to understand about the current debate.

First and foremost, I don't understand how it's come to this. How can we think of ourselves as a decent society when we have allowed these conditions to persist...for such utterly decent and heroic Australians to be left so bereft of care and support for so long...especially in a country whose politicians have contended for credit over the past twenty years for giving us the strongest economy in the world.

Second, I don't understand why the proposal to address these problems is called a disability insurance scheme. This is not a matter of insurance. What we are talking about here...proper and paid care...proper support and pay for families of disabled people...decent and appropriate accommodation...are matters of basic human rights in a decent society. If there is any meaning whatsoever to be accorded to charters of human rights, to equality under our Constitution and the under the law, it is that Wendy Rowe, at the tender age of 76, should no longer have to go to the gym three times a week to maintain the upper body strength to get up and turn her fifty year old daughter, three times a night...every night. It's not, or at least it should not be, a matter of paying a premium and getting some coverage.

Third, I don't understand why some people connect the need for this scheme to a desire to take away the rights to justice of those people who became disabled because of someone else's negligence.

From where I sit, there are two issues here...the first is the fundamental right to support and care provided by a decent and prosperous economy.

Second, the right to justice for those who, like Lynette Rowe, can point to the fact that her disabilities might never existed at all, and her life be completely different...if a giant pharmaceutical company had chosen to act on hundreds of warning signs over the drug from which it was making millions, instead of ignoring them.

These rights...the right to appropriate and decent care and the right to justice...might be different rights...but they are both fundamental...and they do not conflict. Those who contend otherwise are really telling you that while the likes of James Hardie, Union Carbide and Grunenthal can capitalise their profits...their losses should be socialised and paid for everybody else except them.

Maybe it ought not be a surprise that such a suggestion comes from something called "the Productivity Commission". It is hard to measure the productivity of justice...of happiness. But the failure of Governments in the past to go beyond matters of productivity ...and to address decency and fairness...has been the bane of this issue. The Productivity Commission should share its Canberra accommodation with a Happiness Commission and a Fairness Commission.

I support the aims of the National Disability Insurance Scheme (NDIS) and believe that it can deliver one of the most important social reforms of this decade, providing that the services and entitlements "level up" to the best available in the country.

I support the fundamental principle that people with a disability, in the case of the National Injury Insurance Scheme with catastrophic injuries, should be given a decent level of care and support on a no-fault basis, regardless of where they live or the cause of disability.

There is clearly a disparity in the resources available and the level of care provided for Australians who are injured in different circumstances, in different places, even though they have suffered a similar injury or have a dissimilar disability. The Productivity Commission calls present arrangements "dysfunctional, unfair...and postcode based". It is quite right to do so.

We should all be committed to seeing this change.

We should all be committed to this as a national endeavour and insist no one will be disadvantaged in a national levelling exercise and that rights, services and support are improved.

We want to see an end to the approach that sees services rationed because of inadequate resourcing or availability of specialised services, and lacks dignity for people because there is no choice, or self-determination.

On Saturday night, my wife Kerri and I and the five other lawyers working on Lynette's case are proud and delighted to be invited to her fiftieth birthday party. In four months time, she and her parents will move into a new home in which the back will be just as flash as the front lounge room, with state of the art voice and vision activated technology.

I have said once or twice this year that there can be no more potent a symbol of our justice system than that a woman with no arms or legs can call to account two of the biggest multi-national companies in the world in the court of her home town and on behalf of thalidomiders everywhere.

My wish for Lynette is that by year's end, she lives in a new house that she loves, with parents re-invigorated and secure about her future and theirs, that she has won justice denied to thalidomiders for fifty years and that she lives in an Australia which has delivered real change and real rights for the care of seriously disabled people.

My wish for all of you is that this campaign, so long in the planning and the fighting, delivers for Australia's disabled and their families the transformation in their lives, that the Rowe family can now hope for. In my view, there is no cause more meritorious and I wish each and every one of you the very best and I thank on behalf of each and every one of my thalidomider clients, everyone who has played a role in the campaign so far.

These are fundamental rights...long overdue!