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Marketisation in disability services: A history of the NDIS

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Introduction

The National Disability Insurance Scheme (NDIS) has instituted a hyper-marketised model of disability service provision in Australia since its introduction in 2013. While disability services have long been provided by a mix of public, not-for-profit and for-profit providers, the NDIS aims to use the mechanism of individualised funding to establish a national competitive market. Individualised funding cashes out government funding as individual budgets that recipients can use to purchase services from providers or have services purchased on their behalf by third-party brokers. Whereas the previous system was governed at the state and territory level using contracts and competitive tendering between state governments and providers, the NDIS is the first federally regulated scheme to provide monetary payments in lieu of services provided or funded directly by government. While state governments are withdrawing from direct service provision, the federal government is committed to ‘as minimal interference as possible in the market’ (NDIA 2016c: 20). Consequently, the NDIS represents an important shift in the political economy of disability service provision, prioritising the role of markets in addressing social needs.

The NDIS is one of the largest, most costly and most rapidly implemented social policy reforms in Australia's history. Despite this, little has been written about its origins.¹ Scholars and commentators who are otherwise critical of market-based social service models initially suspended criticism of the NDIS, given its progressive reputation and links with the disability movement. More recently, however, issues of privatisation, unequal access, poor regulation, bureaucratic gatekeeping and workforce are receiving critical attention in both popular media and scholarship (Cortese et al. 2021; Cortis and van Toorn 2022; Malbon et al. 2019; Murphy 2020; Schultz 2020; Wilson et al. 2021).² Questions are being raised about how and why a scheme intended to empower disabled Australians has unintended consequences that, *prima facie*, seem to have the opposite effect. Such questions prompt critical reflection on the NDIS and the politics that have shaped its evolution.

Much of the existing literature on the NDIS emphasises its endogenous roots, playing down how the Australian experience accords with global trends in individualised, market-based disability provision. The policy's origins have been located in the Third Way social investment paradigm embraced by the Australian Labor Party (Needham and Dickinson 2018), the 'pro-market, pro-privatisation pedigree' of Australia's top policy advisors (Miller and Hayward 2017: 133) and in the human rights framework through which the Australian disability movement pressed its demands (Thill 2015).

While these accounts provide valuable insights, my aim in this chapter is to broaden the analysis beyond the nation-state by exploring some of the exogenous sources of policy learning and resource mobilisation that led to the adoption of individualised disability funding in Australia. I do so by tracing the transnational linkages and pathways through which individualised funding has travelled from the United Kingdom, paying particular attention to the role of disability and civil society advocacy groups in sourcing and translating ideas from abroad. I identify a variety of civil society groups whose advocacy work was central to Australia's adoption of individualised funding. I explore these transnational networks and examine what effects they had on domestic disability politics and policy

1 There has been relatively greater academic interest in the history of public health care in Australia, which is financed via an equivalent mechanism (that is, a designated tax levy) but delivered through a different funding model.

2 These issues are discussed further in the Epilogue to this chapter.

formation. To understand how such networks become implicated in the wider marketisation reform process, however, it is essential to look beyond the network itself. I therefore also consider the conditioning contexts that influence advocacy and the political arenas where ideas are remoulded, re-signified and repurposed in the service of other agendas. In so doing, we can appreciate how political and economic factors external to the network also shaped and constrained the way individualised funding was sold to, and implemented by, Australian social reformers. That is, we can begin to see how policy cooption occurs because of advocates acting in and on their immediate political environment.

The chapter is based on original empirical material collected through interviews as well as secondary sources. A key policy figure featured in this chapter, Jane Sinclair, was a founding member of advocacy group In Control Australia.³ Her account details the behind-the-scenes advocacy that shaped government thinking in the years leading up to and during the scheme's development. To supplement her account, I also draw on In Control publications and promotional materials as textual artefacts of its advocacy and lobbying efforts. Another set of key actors is disabled people engaged in policy advocacy and activism as members or representatives of disabled people's organisations (DPOs). DPOs are distinguished from non-user-led collectives, such as In Control, by the fact they are run by and for disabled people, according to principles of self-advocacy and self-determination (Barnes et al. 1999). The advocates and activists featured in this chapter include Therese Sands, who, at the time of interview, was the director of Australia's peak body of DPOs, Disabled People's Organisations Australia, and writer and activist El Gibbs. The final set of actors with firsthand insight into how global trends in individualised funding have manifested in Australia are the policymakers and bureaucrats who witnessed the construction of the NDIS as inside observers. Their accounts offered valuable insights into the internal processes and priorities shaping the design of the scheme. Also important for the purposes of this chapter is the way the scheme has been made *operational* through ongoing processes of institutional restructuring. As the case of the NDIS shows, marketisation is made possible through the relatively radical reordering of the state and its institutions. Once we begin to think about policy as a means of transforming the form and function of state institutions, a much wider range of actors comes into play, aside from those who 'make' policy.

3 'Jane' is a pseudonym to protect her identity.

For instance, even though the design of the NDIS is formally a federal government responsibility, the states have been implicated in the scheme's implementation, having agreed to dismantle various state government agencies and privatise their service functions—ostensibly to 'support the successful implementation of the NDIS' (NSW Government n.d.).⁴ State officials therefore have a role in the scheme's operationalisation. Their decisions to withdraw as the 'provider of last resort' have been hugely important in facilitating privatisation under the scheme. One such official is featured in this chapter to shed light on the motivations behind these privatisations and to underscore some of the more contradictory and contested elements of the scheme's operation.

The chapter's structure reflects this dual concern with the micro and macro aspects of policy formation. Following a brief overview of the conceptual and institutional design of the NDIS, I consider several key policy players, processes and events that shaped the development of the scheme. This is followed by an analysis of the intermediary role of In Control Australia and other advocacy groups who mobilised around individualised funding. I pay particular attention to the In Control network because their transnational advocacy, among other things, facilitated the spread of individualised funding from the United Kingdom to Australia. The final section situates these processes in the changing political economy of disability service provision. These macro-structural dynamics are, I argue, key to understanding the specific and highly marketised form individualised funding has taken in Australia.

The anatomy of the NDIS

The NDIS has been described as a 'hybrid' scheme, combining several different and potentially conflicting principles and design features (Miller and Hayward 2017; Needham and Dickinson 2018). Framed broadly as a social insurance program, the scheme is available to all Australians regardless of income, wealth and work status, provided they meet a set of criteria related to disability. Access to NDIS funding is determined through the rules governing eligibility, under which prospective participants must have 'substantially reduced functional capacity' due to impairment/s that

4 In the case of New South Wales, for example, the agreement to 'support the transition of existing NSW services to the non-government organisation sector' was set out in a bilateral agreement between the Commonwealth and the State of New South Wales (COAG 2015: 4).

are permanent, affect their capacity for social or economic participation and necessitate life-long support under the NDIS (NDIA 2019). To be approved as part of a person's individual package, supports must be judged 'reasonable and necessary' by the statutory authority overseeing the scheme, the National Disability Insurance Agency (NDIA), and included in the participant's individual plan (which outlines individuals' goals and aspirations and how funded supports will contribute to fulfilling these) (Laragy and Fisher 2020). All NDIS participants have a plan developed with the NDIA and the option of self-managing their funds or using an NDIA planner or external brokerage service. It was estimated that by 2019–20, 475,000 Australians—those (and only those) classified as having a permanent and severe disability—would be in receipt of an individualised budget, and the time of writing that number had reached 535,000 (NDIA 2020; NDIA 2022).

The insurance aspect is related to how support is costed and how the scheme itself is financed. Rather than governments funding services through block grants, funding is allocated based on individual needs, which are calculated annually but expected to continue through an individual's life course. Theoretically, this creates an incentive for the insurer—in this case, the state—to intervene early and fund the necessary supports to enhance independence later in life, in the hope of reducing future dependence on the system (Steketee 2013). Under the new scheme, funding for disability services is a federal government responsibility, with state and territory governments now returning a portion of their revenue to fund the NDIS alongside federal revenue streams—namely, the 0.5 per cent increase to the Medicare Levy⁵ introduced in 2014 (PC 2017).

Another key feature of the scheme is the invocation of human rights norms as a basis for entitlement to individualised, self-directed support from the state. Passed in 2013 by a Labor government, with support from the conservative Coalition, the *National Disability Insurance Scheme Act 2013* (*NDIS Act*) was the first in Australia's history to place a statutory duty on the state to provide for needs arising from disability (Soldatic et al. 2014). It is strongly framed around Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities to grant disabled citizens equal rights to 'determine their own best interests,

5 The Medicare Levy is charged on taxable income, collected by the Australian Taxation Office and paid into consolidated revenue, to assist with the costs of Australia's national public health insurance system, Medicare.

including the right to exercise choice and control ... in decisions that will affect their lives' (*NDIS Act* [Cth], s. 4.8). The Act gives expression to these rights by enabling participants to access public funding for the supports included in their individual plan.

The NDIS has, *prima facie*, the appearance of a 'big-government' social insurance program. Notions of shared risk, collective responsibility and social investment characterise the scheme as 'analogous to the postwar Beveridge reforms of the welfare state' (Needham and Dickinson 2018: 732). The scheme is projected to cost more than \$30 billion a year by 2024–25, by which time the level of public spending on the NDIS will have surpassed the spending on Medicare (Australian Government 2021). As part of this institutional reordering of the state and its functions, the government has taken on new roles in regulating, legislating and supporting the development of a competitive market for disability services (Carey et al. 2018). As a stimulatory measure, this unprecedented injection of disability funding is expected to create 'clear incentives for [market] growth, expansion and entrance by new organisations' (NDIA 2016c: 7). So, while the scheme may have the appearance of a Keynesian-era social welfare program, what is in fact emerging is a new institutional apparatus and regulatory regime dedicated to the optimal functioning of a 'radically new disability marketplace', based on principles of competition, economic efficiency and cost containment (NDIA 2016c: 3).

As Bode (2009: 167) reminds us, 'welfare delivery, including its marketized forms, take[s] shape *through organisational action*, hence the need to consider the very agencies which make welfare markets work'. The agency tasked with making the NDIS market 'work' is the NDIA. The logic of marketisation is captured in the NDIA's governing ethos. One of its main aims is to facilitate the growth of 'a vibrant, multifaceted, open and competitive marketplace'—a role it terms 'market stewardship' (NDIA 2016c: 3). This role involves almost no direct service provision and very minimal commissioning. It does, however, entail some intervention in the supply side of the market, by ensuring a business-friendly environment for service providers and, importantly, by fostering in them an entrepreneurial mindset (NDIA 2016c). The NDIA (2016c: 11) maintains that '[e]xisting providers need to adapt their business models to a contestable marketplace ... They will need to operate efficiently without direct government procurement, and in a way that is attractive to consumers'. 'Market readiness' is the term often used in reference to what the agency is seeking to achieve in its work with these

organisations (NDIA 2016a: 26; 2016b: 30). Rather than intervening in the market—through, for example, monitoring the supply of services and supplementing the market where supply is not meeting demand—its more circumscribed role seems to entail simply setting ‘the rules of the game (e.g. prices)’, overseeing the provider registration process and establishing a nationally consistent set of quality and safeguarding mechanisms on the basis of which providers are expected to self-regulate (Carey et al. 2018: 18; Cortis and van Toorn 2022).

The NDIS is premised, then, on two parallel and contradictory framings—one based on social insurance principles, the other on a market logic of demand-driven service provision. It is the melding of these two conflicting design principles that makes the NDIS unique in Australia. Whereas social insurance implies a collective, state-centric and universal means of social protection, individualised funding delivers social supports on an individual basis via the mechanism of the market. To the extent these two frames coexist alongside and in conflict with one another, it is no accident. Each frame is a historical artefact of the way the NDIS was conceptualised by the various actors and groups involved in its design. Both the insurance and the market-oriented aspects of the scheme can be traced back to several key policy processes, players and events.

The making of the NDIS

The first key event in the making of the NDIS was a national leaders’ summit hosted in 2008 by the then Labor prime minister, Kevin Rudd (see Figure 5.1). The Australia 2020 Summit, as it was called, brought together more than 1,000 of Australia’s leading thinkers ‘to tackle the long-term challenges confronting Australia’ (Davis 2008: 1). It was here the idea of a national disability insurance scheme was first publicly floated. Its broad outlines had been sketched by Bruce Bonyhady, a prominent economist and policy advisor, a father of two sons with disability and a former chair of Yooralla, one of Australia’s largest and most generously funded non-government disability service providers. He went on to play a leading role in the design of the scheme and later became inaugural chair of the NDIA (Manne 2011). Bonyhady did not attend the summit, but had his proposal championed by delegates (Crabb 2016). His idea, in essence, was to incorporate insurance principles within a publicly funded, national individualised funding scheme. The scheme he envisaged would

guarantee all Australians the right to individualised support should they be born with or acquire a disability before the age of 65, provided they met the eligibility criteria. As mentioned above, the scheme would take an individual and lifetime approach to disability funding, in contrast to the previous system, which was funded cyclically and hence prone to cost-cutting and capping (Bonyhady 2016). Framing it as insurance, rather than ‘welfare’, Bonyhady hoped, would also help instigate a shift from a charitable to a rights-based approach to disability service provision (Bonyhady 2016). The scheme was considered one of the most promising and innovative ideas to come out of the summit (Davis 2008; Soldatic and Pini 2012).

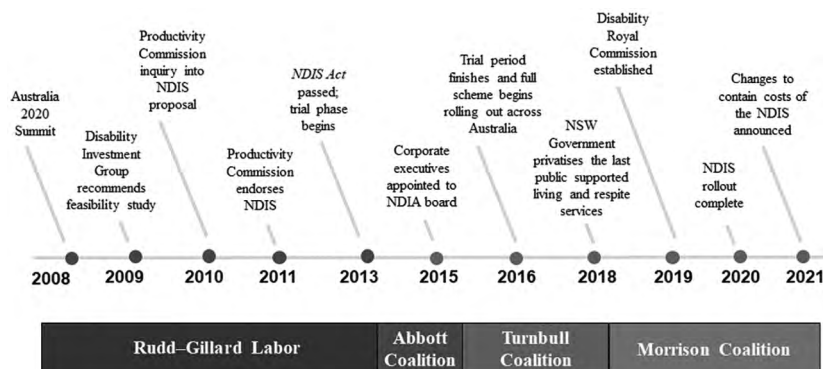


Figure 5.1 Timeline of NDIS policy developments

Source: Based on author's research.

Following the summit, the issue of disability care became the focus of unprecedented political discussion. Labor's Parliamentary Secretary for Disability Services Bill Shorten promptly appointed a group of experts, including Bonyhady and John Walsh, an actuary at business services firm PricewaterhouseCoopers, to 'explore innovative funding ideas from the private sector that will help people with disability and their families access greater support and plan for the future' (PwC 2009: 1). The Disability Investment Group, as it was called, published a report calling for 'structural reform' to the disability service system, using an individualised 'social insurance type approach' (PwC 2009: v). This echoed the findings of an important report, called *Shut Out: the experience of people with disabilities and their families in Australia*, in which a cross-sector alliance of disability advocacy bodies, carers' groups and service providers described the system as 'irretrievably broken and broke, chronically under-funded[,] under-resourced, [and] crisis driven' (National People with Disabilities and

Carer Council 2009). The Disability Investment Group recommended the government commission a feasibility study into a national disability insurance scheme, to which the government responded by referring the matter to the Australian Productivity Commission.

The second significant event in the making of the NDIS was the ensuing public inquiry conducted by the Productivity Commission in 2010–11. The inquiry comprised an extensive public consultation with disability, industry and policy stakeholders. During the inquiry, the NDIS was reframed in ways that more closely resembled the Productivity Commission's own ideological predispositions and practical mission. The commission's *raison d'être* is to promote competition and the use of market mechanisms to solve all manner of policy problems. Its bias towards market solutions was evident in the issues paper it released to inform consultations. In it, stakeholders were invited to comment on the proposed approach, whereby:

under individualised funding, people with disabilities or their families would have a greater capacity to choose the services that best met their needs. Service provision would then be consumer-focused (as in most markets), and block funding of service providers by governments would largely disappear. (PC 2010a: 25)

This was the beginning of a shift in the way individualised funding was conceptualised and promoted by elite policy communities. Bonyhady's 'social insurance-type approach' still provided an overarching policy framework but with a strong added emphasis on competition and consumer choice. During the inquiry, the commission received more than 1,000 public submissions. Through these, it received widespread endorsement, or at least qualified support, from civil society and other stakeholders for the market-based model it was proposing. Stakeholders across the political spectrum viewed the scheme as consistent with the maximisation of consumer choice and control (see, for example, In Control Australia 2010; NDS 2010; NSW Government 2010). Through the consultation process, a modified vision of the NDIS emerged, which was then more fully elaborated in the commission's report to the government (PC 2011b).

The commission's vision for the NDIS was for a market-based system of disability provisioning in which consumer demand, as an expression of individual needs and preferences, would drive the quality and supply of services. Its report placed a heavy emphasis on 'consumer choice', stressing

that currently, the government was ‘the main constraint on competition and responsiveness to people with disability and carers’ (PC 2011b: 407). Individualised funding would also serve a market-disciplinary function. While consumers would enjoy greater choice and control over their support, service providers would be compelled to compete to ‘satisfy the needs of consumers, given that they would otherwise lose their business’ (PC 2011b: 357).

Such statements reveal the values animating advocates of market-based models of welfare in general and the NDIS in particular. On the one hand, these include the assumption that government, by definition, is unresponsive to the needs and preferences of service users. In this view, government represents a kind of bureaucratic sludge through which users must labour, and which ultimately restricts the efficient allocation of social services. On the other hand, government is assumed to constrain competition and therefore undermine the quality of services that a functioning market would otherwise guarantee. On both points, it is an article of faith that the market rather than government holds the key to cheaper and better outcomes.

Behind the scenes, both before and after the Australia 2020 Summit and the Productivity Commission’s inquiry, disability advocacy groups were also working among the nation’s top federal Labor politicians and members of the public service to cultivate support for a Commonwealth-funded individualised scheme. This advocacy work was crucial in so far as it helped build consensus and support for the scheme among politically polarised groups, including disability and carer organisations as well as powerful industry stakeholders. In what follows, I explore the role of advocates in more depth—in particular, the role of transnational advocacy networks in facilitating the spread of market-based models of state restructuring.

Framing disability: Transnational advocacy in the age of marketisation

From a neo-institutional perspective, the evolution of policy is viewed as a path-dependent process. This means the way a policy develops owes much to decisions already taken and patterns of decision-making that, over time, become institutionally entrenched (Brenner and Theodore 2002). If historical memory is to some degree encoded into formal decision-

making processes, the domain of civil society advocacy must have its own policy-shaping path dependencies, too. Following the cultural turn in social movement theory, these path dependencies have tended to be viewed in normative-symbolic terms, as frameworks that guide collective action and advocacy on a given issue (Benford and Snow 2000). Tarrow, for example, argues that certain trends or cultures of advocacy begin to crystallise when ‘a given collective action frame becomes part of the political culture—which is to say, part of the reservoir of symbols from which future movement entrepreneurs can choose’ (quoted in Keck and Sikkink 1999: 95). In other words, the way in which issues have been framed in the past will continue to shape future framings.

The Australian disability movement is unique in having long framed disability as a consumer rights issue, as opposed to a human rights or social justice issue (Newell 1996). Newell (1996) argues this consumer orientation has its roots in the dominance of non-disabled professionals, bureaucrats and service providers in disability advocacy. He suggests organisations *of* disabled people have not had the same social, human and financial capital as the welfare and service provider lobbies. Consequently, disabled people have lacked an effective political voice. By contrast, organisations *for* disabled people, such as the Australian Council for Rehabilitation of the Disabled (ACROD), were considered well organised and highly effective at representing the interests of service providers (Newell 1996). ACROD, now called National Disability Services (NDS), as the peak body for private and charitable disability providers, is still one of the leading lobby groups and was one of the driving forces behind the \$5 million campaign for the NDIS (NDS 2013).⁶ Professional advocacy bodies like NDS tend to operate within the fairly circumscribed parameters of state-sanctioned consumer advocacy and political discourse. While they may be prepared to lend their support to consumer causes in the belief that ‘increased consumer choice will help to assure quality [service provision]’, they are less inclined to weigh into debates about the desirability or otherwise of market-led reform strategies (NDS 2015: 2). Hence, it has been left to user-led groups to defend their interests against the ‘many things [that] have been done in the name of the “rights” of people with disabilities’, including the extension of market forces into disability services (Newell 1996: 430).

6 For further discussion of the ‘Every Australian Counts’ campaign, see Thill (2015), NDS (2013) and Steketeetee (2013).

Yet disabled people and their organisations, Newell (1996) argues, have also contributed to the framing of disability issues in ways that resonate with policy agendas of marketisation and privatisation. Newell noted in the mid-1990s that:

[i]n Australia the last 10 years has featured organisations of people with disabilities defining themselves as ‘consumers’, attaching themselves to the politically stronger discourse of consumerism. Via this discourse political ends have been achieved, including representation in government and non-government arenas ... Hence, predominantly in Australia many do not identify as ‘the disability rights movement’ but as ‘consumers with disability’.
(1996: 429)

Disability advocacy groups are no longer in the business of consumer advocacy—at least not to the extent Newell described in 1996—and most now firmly identify with the disability rights orientation to which Newell refers. As the case of the NDIS shows, however, such groups still at times selectively appropriate consumer discourse to help give their proposals more widespread political appeal.

To appreciate how consumer discourse came to feature in advocacy around individualised funding and the NDIS, we can distinguish two distinct phases in this advocacy, separated by the Productivity Commission inquiry. The first phase saw disability advocates and other supporters of individualised funding look to other countries as exemplars of individualised approaches. Here, the advocacy group In Control played an important, behind-the-scenes role. In Control Australia was established in 2008 and was formally affiliated with, and partly modelled on, the original In Control non-government organisation (NGO) based in England and founded by Simon Duffy, an influential disability advocate and the architect of the United Kingdom’s ‘personalised budgeting’ system (Epstein-Frisch 2009). The Australian network described itself as a ‘collaboration involving a number of individuals and agencies around Australia’, who ‘share a determination to see self-directed funding [or] Individualised Funding ... available as a standard option for people living with disability’ (In Control Australia 2010: 3). Its mission was to promote the idea, support the small number of individualised funding programs already operating across Australia and bring international evidence and experience to bear on developments in Australia (In Control Australia 2010). The network saw its role as providing ‘an avenue for information exchange, critical inquiry, dialogue, collaboration, leadership

and influence', with the 'common use of the name [signalling] a common interest in discovering and sharing best practice, on an "open source" basis' (In Control Australia 2010: 3). While not the most prominent or influential voice in the chorus of disability reform/advocacy groups, In Control Australia managed to carve out a role for itself as an organisation of individualised funding policy specialists.

As interest in, and support for, an Australian individualised funding scheme began to mount after the Australia 2020 Summit, In Control found there was a growing audience for its ideas. The network played an intermediary role in bringing these ideas to the attention of key politicians and bureaucrats. Its approach was to marshal the 'wealth of evidence and experience of how [individualised funding] has been successfully implemented in international jurisdictions', including the United Kingdom, and present this to government as a working model of how it could operate in Australia (In Control Australia 2010: 6). At the time, the UK arm of In Control was overseeing an open-source repository of individualised funding-related information, research, practice guidelines and success stories (In Control 2011). Members of In Control Australia disseminated these materials in high-level discussions with governments in the years leading up to the 2010–11 Productivity Commission inquiry. As one of its founding members explained to me in an interview:

[In Control] was a tool for informing the sector here in Australia and for lobbying government ... There was new information from In Control UK that one just gets by email and keeping in touch with certain people. And we caught a momentum. [In Control Australia] was very effective because there was lots of new stuff coming out of the UK and I would just read it and pass on materials to the senior people in [the NSW Department of Ageing, Disability and Home Care] ... In Control Australia became a place of ... 'authoritative information'—up-to-date perspectives, and what have you. And we could just flood decision-makers ... In Control UK was terrific ... [Using the In Control name] gave it authority. (Jane, individualised funding advocate)

The effectiveness of this strategy is evident in the fact that all the major individualised funding program evaluations conducted by In Control in the United Kingdom were subsequently cited in the Productivity Commission's report (PC 2011c). The Productivity Commission found

these studies provided ‘compelling evidence’, ‘generally revealing highly positive views about the impacts of self-directed funding’ on both individuals and the economy (PC 2011a: 1–2).

As the idea of a national disability insurance scheme gained momentum after the 2008 leaders’ summit, and the national Disability Investment Group was investigating issues of feasibility, there was interest among Labor ministers, federal public servants and the group itself in how individualised funding operated elsewhere, and how it could work in Australia (PwC 2009). Identifying the opportunity to contribute ideas and expertise, In Control Australia began staging events to bring members of the extended network into contact with Australian decision-makers (Epstein-Frisch 2009). Reflecting on the group’s intermediary role, an In Control Australia founding member recounted that during this time:

[W]e were able to use UK people to host ... quite a number [of] events ... We had some In Control folk come out to Australia and what was exciting in those days was that we knew more than government. And so we would bring out people and they would clamour, senior [ministers] ... you know, I had a seminar with someone talking about [the UK resource allocation system] and I had the minister and his policy staff and they wanted their own event. (Jane, individualised funding advocate)

The informant goes on to explain how at the time:

everyone was kind of struggling with questions around resource allocation, etc., and ... I hosted a roundtable ... [with] people from [the departments of the] Prime Minister [and Cabinet], Premier and Cabinet, and Treasury ... the central agencies, not just [state] agencies ... we were the resource that could put them in touch with experts from overseas about how these mechanisms worked. (Jane, individualised funding advocate)

In the second phase, there was a marked shift in emphasis and in the language of advocacy, starting around the time the Productivity Commission began its inquiry in 2010. Whereas advocacy for individualised funding had previously emphasised social inclusion, citizen agency and self-empowerment, In Control and large sections of the disability rights lobby increasingly adopted the commission’s own framing of the NDIS as a pro-market enterprise promising greater consumer ‘choice’. That is not to say that advocates themselves were adherents of marketisation per se, but that

their vision of how individualised funding would work was framed in ways that were compatible with that agenda. For example, in its submission to the Productivity Commission's inquiry, In Control Australia argued:

[Individualised funding] calls on services providers to operate under the commercial conditions that are taken for granted in other sectors. It creates a competitive marketplace in which service organisations grow or fail according to their ability to respond to the demands of their customers. This in turn means that the range of services will be shaped by the demand[s] of people with disabilities, largely removing the need for state-driven service commissioning. (2010: 85)

In a similar vein, the peak body, NDS, argued that in the interests of fairness, equality and self-empowerment, disabled 'consumers should have choice about the services they receive' (NDS 2010: 16). A content analysis of the transcripts of 23 public hearings conducted by the Productivity Commission during the inquiry shows the words 'consumer' and 'choice' were used 597 times by the participants and commissioners. While there was some dissenting opinion, the emphasis on consumer choice was overwhelmingly positive, with many agreeing that '[e]nabling people with disabilities to exercise choice and control ... would provide a significant incentive for service providers to offer a greater variety of better quality services' (PC 2010b: 95).

By appealing to the logic and language of consumer choice, the disability lobby achieved what Snow and Benford (1988) call 'frame resonance': alignment 'between an organization's interpretive work and its ability to influence broader public understandings' (Keck and Sikkink 1999: 95). It was able to project an image of its preferred policy that resonated with the prevailing logic of marketisation and that 'hooked' its solution—individualised funding—to the problem of disabled people's disenfranchisement. Arguments in favour of consumer choice were a powerful endorsement for the market model proposed in the Productivity Commission's report. They lent weight to the notion that the rights of disabled Australians were not just compatible with, but also in fact demanded, the creation of a national competitive market for disability services. They also provided a persuasive rationale for the privatisation, or 'transfer', of government-owned and operated services to the non-government sector. The inquiry's transcripts suggest many of the people and organisations consulted displayed a somewhat passive acceptance of marketisation and privatisation as inevitable parts of the trend towards

person-centred service provision. When a representative of In Control was asked at a public hearing for her opinion on whether states should remain in the business of service delivery, she answered:

I think [the] state government is ... outsourcing service provision wherever it can to the non-government sector. I think that there will continue to be a non-government sector. I imagine under a national disability insurance scheme we'd also see a strengthening of the private for-profit sector. (PC 2010b: 698)

As this statement implies, processes of marketisation and privatisation were already in motion by the time disability advocates began mobilising to support the NDIS. These structural changes in the political economy of disability services had a momentum of their own that was not reducible to individual advocates and their chosen strategies, although their buy-in was crucial in terms of building public support for the scheme. Their deployment of consumerist language and logic also had the effect of disarming, or at least 'complicating', arguments against the marketisation of disability services (Miller 2017: 104). However, their role in the reform process should be understood in light of the prevailing policy trend towards greater marketisation. Their advocacy was effective because it was consistent with the direction in which disability policy was already headed. Advocacy discourses centred on consumer choice found a receptive audience not only among social progressives, but also among leading neoliberal reformers intent on increasing the role of markets in such provisioning. The scheme that eventuated was an imperfect expression, but an expression nonetheless of advocates' demands for greater choice. There is always a discrepancy between the programs and practices that advocates might advance and the institutions that subsequently form, which are agglomerations of new ideas and existing institutional realities.

The discussion so far has centred on domestic and transnational civil society advocacy and the strategies used to instigate one of the largest social reforms in Australia's history. This line of analysis is useful in so far as it helps explain the specific form individualised funding has taken in Australia. Yet it is unable to account for the dramatic structural changes to the political economy of disability service provision, which constitute the conditions of constraint and enablement in which transnational advocacy networks and actors pursue their specific agendas. I now turn to these political-economic conditions.

The changing political economy of Australia's 'disability marketplace'

The NDIS has been rolled out at a time of significant change in the political economy of disability service provision in Australia. It is no coincidence that its national implementation has seen the dismantling of public service infrastructures and policy agencies at the state level. In fact, a logic of privatisation was built into the scheme via a series of intergovernmental agreements that specified how the scheme was to be implemented in each state and territory. New South Wales, in particular, has been the focal point of one of the largest public service privatisation programs in recent history (Sansom 2014). The launch of the NDIS in the Hunter region of New South Wales in 2016 was underpinned by an agreement between the Liberal (conservative) NSW and federal Coalition governments to transfer all government-owned and operated specialist disability services, including specialist disability housing stock, to the non-government sector (COAG 2015). Under the new system, NDIS participants could access funding for specialist disability housing via their individual budget, but neither the state government nor the NDIA would provide these services directly, nor retain ownership of housing assets (NDIA 2015). The withdrawal of state governments from disability services, under the guise of giving people greater choice of providers, would eliminate entirely the state's role in the direct provision of services under the NDIS. As part of the transition to a fully privatised system, the NSW Government would no longer function as the 'provider of last resort' for people with no other means of support, as it had in the past. The last tranche of supported living and respite services was transferred out of public hands in June 2018 (NSW Government 2018).

Before these changes, about 40 per cent of services—including accommodation support, personal assistance, speech pathology, occupational therapy and respite services—were provided directly by the NSW Government (Browne 2016). Ageing, Disability and Home Care (ADHC), part of the NSW Department of Family and Community Services, was by far the largest provider of in-home support and personal care, delivering 70 per cent of services of this kind to disabled people and the elderly (Belardi 2015). In 2013, the government passed legislation enabling public assets to be transferred to the non-government sector, and later sold, as part of the transition to the new market-based system

(Lewis 2017). Two years later, the Home Care Service of NSW⁷ was sold for \$114 million to a private health insurer (Belardi 2015). By May 2018, 9,500 public sector jobs had been transferred to the non-government sector (Kirkwood 2018) and ADHC had been disbanded (ADHC 2017). At the time, these moves were justified as the logical ‘next steps’ in preparing for the rollout of an individualised, consumer-oriented scheme with choice and control at its core (ADHC 2017).

The rationale given by a senior NSW state bureaucrat for the government’s withdrawal from disability services illustrates how notions of choice and empowerment feature in elite accounts of privatisation. In his view, markets were attuned to the needs of consumers and personalised service provision was impossible to achieve so long as public providers remained part of the service mix:

So, we are exiting all service delivery ... All of our services are being transferred into the NGO sector [because] it happens to be the right thing in terms of flexibility, responsiveness and so on. When you’ve got people with disability able to be that potent, as consumers, governments are just too slow and frankly too inefficient ... the state [currently] provides 40 per cent of the market, so to say that we should be staying there, that is antithetical to increasing the variety in the market. [Government withdrawing] will in fact maximise the range of choice that people with disability have. (John, state government bureaucrat)

While there is nothing new about the use of ‘empowerment’ in defence of privatisation, in this case, the government had in the disability advocacy lobby an additional, external source of legitimacy for its consumer choice agenda. It could make the claim that by letting the market and the non-government sector play a larger role in the delivery of services, it was merely responding to demands from the disability sector for more individual choice and agency. As the NSW Government official said:

[F]or the first time, you have a system which is genuinely and fully empowering of those individuals. They are not dependent on organisations or on government, per se. And that empowerment, not only is it the right thing to do, but it will actually drive a whole

7 The Home Care Service was the NSW Government’s provider of home-based care to support older people, people with disability and their carers to live independently in their own homes. Its funding predominantly comprised Commonwealth funds for the Home and Community Care program and the NSW Community Care Supports Program.

host of market responses ... This aligns perfectly—perfectly—to the interests of the person with disability, which is why it is so empowering. (John, state government bureaucrat)

While the disability lobby was broadly supportive of increased choice and competition in the disability sector, there was some ambivalence about the government's divestment program. Disability groups vehemently defended the closure of large, state-run residential centres, which for them represented the worst aspects of the old model of institutionalised care (O'Reilly 2014). However, there has been concern among these groups that a system with no public provider of last resort could fail to cater to individuals with particularly acute and complex needs—individuals with whom NGOs might refuse to work or who may not gain access to NDIS funding in the first place. According to disability advocate Therese Sands:

[T]here's not a great deal of confidence in the private sector in terms of being able to meet the needs of particular groups of people with disability, particularly, say, those people in the criminal justice system, those who perhaps have more complex needs, those that are labelled with challenging behaviours, people ... that have traditionally received supports from the mental health service sector. There are just real concerns about what happens to people who aren't eligible for the NDIS. Where will you get your disability support? (Therese Sands, DSO representative)

Reflecting on what privatisation will mean for people who are ineligible for support under the NDIS, disability activist and commentator El Gibbs likewise noted:

[T]he privatisation of ADHC, I think it's a disaster, in lots of respects. Because it means that if you don't qualify for the NDIS, you will get nothing. There are now no services in NSW for anyone who doesn't qualify for the NDIS.

The pitfalls of a system that relies exclusively on market mechanisms and private providers for the provision of social needs are exemplified in the case of a Victorian man, Francis, aged 20, who has autism and an intellectual disability. Amid the transition to the NDIS, the Victorian State Government is also withdrawing from direct provision of disability services (Milligan 2017). Following an assault, Francis was put in jail on remand. He received no sentence for the offence but remained in jail for three months. This was because, despite having an NDIS individual budget worth an annual \$1.5 million allocated to him, no private or

voluntary agency would provide him with the support required. Legal Aid workers reported that providers were refusing clients like Francis on the grounds they presented a ‘business risk’ to their organisation (Milligan 2017). Victorian Legal Aid lawyers told a federal government committee reviewing the scheme’s performance they had four other clients in Francis’s position and were aware of others in New South Wales. Neither the NDIA nor the government would accept responsibility for supporting these individuals. According to the lawyers, ‘the clients’ families were being told by the [NDIA] it was simply an “insurer or a bank”, and by the Victorian Department of Health and Human Services that it was simply a “landlord”’ (Milligan 2017). Cases like these are often described in terms of ‘market failure’, the implication being that the market mechanism—in this case, individualised funding—has failed to work in the way one might expect. In fact, the opposite is true. The market’s response to Francis’s case was in fact optimal, with market players acting according to financial incentives, to protect themselves against perceived risks and threats to profitability. The response to Francis was logical and perhaps predictable in a system that transforms services into commodities and in which market actors expect to, and are in fact required to, generate a surplus from their provision. At a microlevel, the logic of this system dictates that when a person’s need comes into conflict with a provider’s perceived ‘business risk’, the need for support will be subordinated to the financial imperatives of profit-making. At the macrolevel, the absence of an overarching coordinating mechanism or provider of last resort means there is no responsibility by any provider to meet any individual’s needs, and equally, no means to ensure all needs are met. This demonstrates the importance of a public provider operating outside the market to help mitigate problems of inequity and unmet need in social service markets (see Chapter 9 for a detailed discussion of the rationale for and role of public providers).

Conclusion

I began this chapter by noting the recent shift in Australian disability policy towards more individualised, market-based models of disability provisioning. This was the starting point for a deeper exploration of the mechanisms that facilitated the transnational movement of individualised funding as a concept and as a working model of disability reform. Disability advocates organised through transnational advocacy networks

including In Control, along with other local groups and alliances, were shown to have played a major role in the transmission and favourable reception of these concepts. Their advocacy efforts not only convinced the government of the merits of individualised funding, they also helped marshal public support for the NDIS and—perhaps inadvertently—diffused opposition by claiming for themselves the trope of ‘consumer choice’ and tying this to a defence of disabled people’s rights as citizens.

In a climate of broader neoliberal restructuring, advocates of individualised funding faced a unique set of political opportunities and constraints. Elements within the disability movement found that hitching their demands to a broader project of market-oriented state restructuring was an effective political strategy. By appealing to an agenda that celebrates consumer choice and control, and links it to rights, disability advocates seized the opportunity to affect change in line with their vision of a just society. But in so doing they also re-signified and reinvigorated that agenda, vesting it with the moral force of an emancipatory project and bestowing on it the imprimatur of leftist social progressivism. Moves to outsource and privatise services gained a Left cover, as no sooner was the NDIS introduced than these privatising moves were touted as ways to liberate and empower disabled people. Disability advocates for their part seemed loath to question these developments, lest funding for the scheme be cut and its political support jeopardised.

It would be wrong, therefore, to attribute the highly marketised nature of the NDIS to the political sensibilities and strategies of the Australian disability lobby alone. In making their case for the scheme, key advocates deployed the language and logic of the market to great effect. This helped build consensus and support for the scheme among politically disparate parties and interest groups. Yet the sensibilities and strategies of these advocates were, like the scheme itself, a function of the political and economic climate in which they were operating. Policy ideas and discourses borrowed from elsewhere are always filtered through local political cultures, institutional configurations and path dependencies, which in Australia’s case were heavily weighted in favour of marketisation. Individualised funding was layered into this existing institutional landscape in such a way that the resulting scheme was infused with neoliberal market rationales and notions of consumer citizenship. Individualised funding in its institutionally embodied form owes much to the unique constellation of neoliberal political and institutional paths that characterise the contemporary Australian welfare state.

Epilogue: Recent developments and future challenges for the NDIS

Since this chapter was written, the Covid-19 pandemic, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and changes to the NDIS made by the conservative Coalition government have further highlighted the contradictions and tensions inherent in the scheme. In the first half of 2020, when Covid-19 cases were on the rise in Australia, frontline disability support workers and people with disability more generally were overlooked in the pandemic response, including in the national distribution of personal protective equipment. The health risks to workers delivering NDIS services and NDIS participants themselves were amplified by problems of poor management, under-resourcing, low pay, poor job security, multiple job-holding and unpaid work (Cortis and van Toorn 2020). While Covid-19 shone a spotlight on these problems, they pre-dated the health crisis and were closely bound up with the long-running marketisation of the sector. To protect the safety of NDIS workers and participants in (post-)Covid-19 conditions, more planning and investment are needed in critical overheads and infrastructure (for example, for staff training, supervision, safety and reporting), and government regulators including the NDIA must ensure the NDIS pricing schedule can adequately cover at least minimum entitlements for workers.

The need for regulatory reform of the disability sector was further highlighted by the Disability Royal Commission. Established in April 2019, the commission found that ‘inappropriate funding structures’ combined with a lack of regulatory oversight had enabled provider organisations to prioritise financial imperatives over client safety and wellbeing (Australian Government 2020: 20). The safety implications of marketisation were underscored by testimony from NDIS participants who felt that ‘some providers of disability services saw people with disability as a “commodity”’ (Australian Government 2020: 181). Better regulation of providers will go some way towards remedying these issues. However, NDIS participants will continue to face risks to their safety and wellbeing if providers are incentivised to prioritise profits over the quality of services.

In 2021, the NDIA drastically increased its projections for the number of people anticipated to be in the scheme by 2030, from 582,860 to 870,761 (Disability Intermediaries Australia 2021). While the assumptions and information on which these projections are based have not been made public, the Coalition government has made clear its intentions to try to contain the cost of the scheme, which is now expected to reach an estimated \$60.3 billion by 2030 (NDIA 2021: 15). Notwithstanding the accuracy or otherwise of these figures, they are currently dominating debate over the future of the NDIS. They have been used to justify a range of measures, including government plans to take control of the assessment process through which a person's eligibility for NDIS funding is determined and cede it to government-contracted health professionals and computer algorithms (van Toorn, forthcoming). These plans were recently abandoned in the face of strong opposition by disability, legal and medical groups, who argued the new assessment process would undermine the scheme's core principles of choice and control. Against the backdrop of these various developments, the Coalition government allocated an extra \$13.2 billion to the NDIS over four years in the 2021–22 budget. However, it remains to be seen whether this additional funding will achieve its intended purpose or simply further enable profiteering by large commercial care providers.

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