

Policy

Governance for the National Disability Investment System

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It should not take Royal Commissions and class actions to remediate the intractable defects that exist within the NDIS, but the community demands justice and safety. So catastrophic is the crisis that a backlash at the polls is inevitable. Far worse than the polls, lives are at risk.

This sixth and final article in Defending the NDIS series pulls at the serious problems of governance design, systemic risk, and the silence of harm.

The [first article](#) dealt with the complexity of the system. The [second article](#) exposed the 'word salad' of assistive technology. The [third article](#) pulled apart the actuarial model that has helped destroy the scheme. The [fourth article](#) was an insider's look at what happened when the government took a wrecking ball to the National Disability Insurance Scheme's operating model.

And the [fifth article](#) looked at the hunger games of suffering and harm caused by the unregulated and indiscriminate use of powerful algorithms by the state.

Together, the six articles present a case study of the distortionary and human rights impact of defective design and governance. It is a case study of the electoral impact of the failings of digital government services.



Marie Johnson: The sixth in a series on articles on the troubled NDIS

Of all Australian institutions, the National Disability Insurance Scheme has an unusual dual posture. It is a system that simultaneously drives economic impact as well as a system that in its operations creates serious risk of harm to individuals.

There is no other Australian institution that does this. Not even Telstra. As bad as Telstra is, whole communities do not live in constant fear of a sudden, unexpected withdrawal of services that immediately causes harm.

This unique posture calls for a redefinition of what the NDIS actually is, together with a complete reframing of governance and administrative arrangements.

The NDIA / NDIS is misplaced. It is not governed nor operated as a national institution but treated as a troublesome minor agency tucked away in a services portfolio, torn apart by outsourcing.

Australia's peak economic institutions, the Productivity Commission and the Reserve Bank, both point to the massive economic impact of the NDIS. The RBA stated that in 2019, the NDIS alone was responsible for a fifth of all new jobs.

This makes the NDIS a massive job creation scheme, employing more than 270,000 Australians in more than 20 different occupations.

The NDIS fuels the economy with every \$1 of NDIS spending, delivering a \$2.25 benefit to the local community, and according to the [latest report by PerCapita](#) this means the economic contribution of the scheme in 2020-2021 alone was a massive \$52.4 billion.

The economic consequences are indeed significant: the upside as well as the downside. Utterly disproportionate with the remit of the agency, the complex bureaucratic chaotic administration directly impacts local economies, workforces, and other government budgets.

Not only do the state and territory governments fund half of the NDIS, but they bear the costs of the massive inefficiencies and complexities of the operations of the NDIA. In bureaucratic terminology, these are not just 'interface' issues.

Around Australia, people with disabilities are stuck in hospitals waiting for plans to be signed off or for disputes to be resolved – costing hospitals, that are already at crisis point, a shocking \$800 million per year for which there is no recovery. Some people waiting in hospital for years, effectively imprisoned. The same issues in education systems.

Insight into the extent of the hit from NDIA operations on the budgets of state and territory governments can be seen from their own submissions to the inquiry into Independent Assessments by the Joint Standing Committee on the NDIS.

All states and territories warned of the further negative and distortionary effect Independent Assessments would have on the health and allied health workforces in jurisdictions and regional areas.

So whilst the NDIA seeks to achieve questionable KPIs based on a flawed actuarial model of fictions and omissions, what is not included in any financial sustainability reporting is the backwash onto the budgets of state and territory governments; job growth; critical workforce capacity; red tape; nor any economic assessment of the burgeoning assistive technology market on which the NDIS depends.

How can the operations of a single agency tucked into a services portfolio, have such a distortionary effect nationally?

But should we really expect a broader national economic view from the NDIA, under the current governance posture and administrative arrangements?

Equally, how can it be that such an agency assumes to have the authority to devise interventions such as Independent Assessments and robplans, in contravention of health assessments? Interventions that directly cause harm, by the sudden and significant withdrawal of funding for critical supports.

This I have personally witnessed. As have many thousands of people around Australia.

This is a most disturbing breach of human rights on a massive scale.

This is not a fact in contention: the Disability Royal Commission continues to hear horrific evidence of the harm people are suffering through these processes.

These are not isolated administrative errors affecting one or two people, but systemic administrative patterns being observed by some commentators as the conditions for a massive class action. Such practices will also likely come within the terms of reference of a future RoboDebt Royal Commission.

The contemporaneous occurrence of human rights breaches together with economic distortions and contested projections, point to fundamental defects in the design of governance and administrative arrangements.

In fact, neither human rights risks nor systemic economic risks arising from the operations of the agency itself, are among the many other risks identified such as payment risks, cyber risks, and financial risks.

There is no evidence that the conflict of interest and risk of distortionary effect from the NDIA being both a price regulator and purchaser (on behalf of governments) has been considered.

And it is not sufficient that the Quality and Safeguards Commission, Royal Commissions, and the Australian Human Rights Commission are left to deal with the serious aftermath of human rights and safety risks long after these have eventuated.

The rebuilding of the NDIS will require the fundamental redesign of governance and the recasting of administrative arrangements. To maximise the economic benefits and safeguard against – and in fact remediate – the current economic distortions, the NDIA needs to be reconstituted within the Treasury portfolio, with changes to board governance and the addition of technical oversight governance.

And there are long standing mature examples within the Treasury portfolio to model this.

These include the Board of Taxation and the RBA Payment Systems Board, both of which are focussed on the integrity, risk and functioning of each particular system.

To address the concerns expressed by health professionals and advocacy groups regarding the over-reach of the actuary function into areas of service design and the construction of health interventions, a technical oversight authority similar to that provided by Australian Technical Advisory Group on Immunisation (ATAGI) is necessary.

As currently operating, the NDIS actuary function is a closed loop that designs the model, service interventions, the digital experience, and then reports the outcomes. There needs to be separation of these functions to ensure that safety and human rights is built into the system. Incantations of human rights at board meeting prayers is not enough.

The NDIS technical advisory group, constituted by health, disability and ethics experts would be the authorising body for any interventions such as the Independent Assessment and any algorithmic processes.

The NDIA Board itself needs to be reconstituted. The predominance of political appointees and representation from the banking and insurance sectors has distorted the culture and posture of the NDIA and NDIS.

Over the years, the profile of the NDIA workforce has changed with an increased representation of bankers and a decline in representation of people with disability. Let that sink in.

The representation of people with disability on the board must be legislated. Would it be radical to have 50 per cent of board directors as people with disability, voted upon by NDIS participants? I can see the clutching of pearls over this idea.

And to ensure the broadest system-wide economic perspective, a reconstituted NDIS board should include Treasury or Productivity Commission membership.

The redefinition of the board, changes to the role of the actuary, and the creation of the technical advisory group would require legislative change.

The agency itself needs reform: led by people with disability; the reinstatement of the 10,000 APS operating model; building co-design as a core capability; and bringing back in-house of all outsourced functions.

The rebuilding of trust with the community, with the agency rebuilding trust with staff with disability including doing all that is possible and more to be an outstanding exemplar in the innovative and inclusive use of assistive technology so that people can do their jobs.

Rebuilding the NDIS will involve structural changes with a longer-term system wide view.

However, there will be no grace period. There have been years of Senate inquiries, Royal Commissions, reviews, audits, and inquiries. The community, individuals, health professionals, advocacy groups, and myself and family included, have taken considerable time and revisited trauma in good faith, to document the problems and propose solutions.

So, whoever forms government, there is no need to lavish billions on a conga line of consultants taking three years to identify the problems.

The community will not be entertained. Things have to immediately change: stopping the cuts; reinstating funds that have already been cut; stopping the use of algorithms; stopping the bureaucracy; and stopping the aggressive pursuit of participants at the AAT.

The NDIS can no longer continue to be seen as a slow burn insurance model, but the unchallenged doctrine of insurance principles, executed by aggressive insurance practices.

It is not an insurance company, and it is not an insurance business.

The NDIS is in every way, a National Disability Investment System, for every Australian.

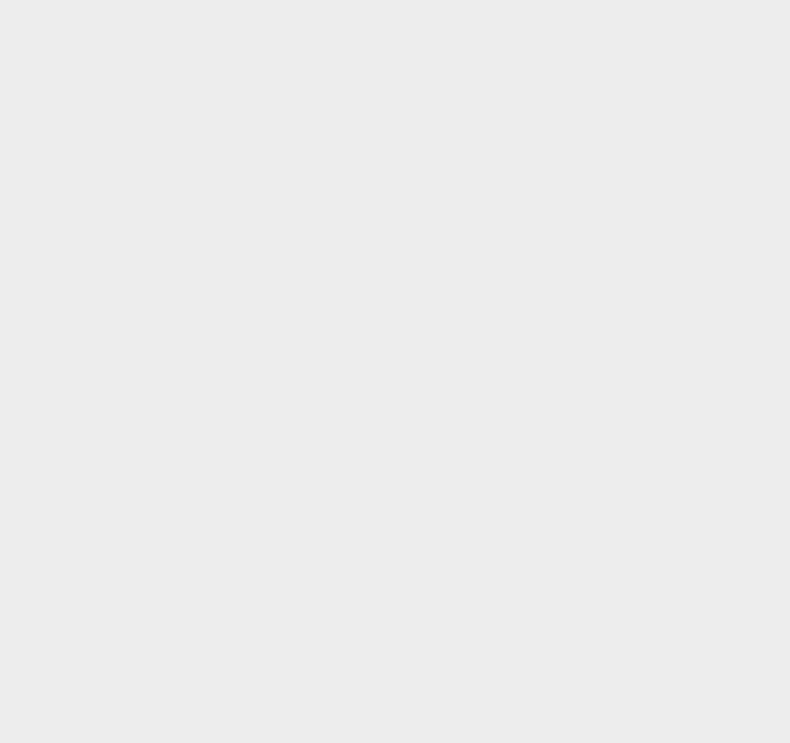
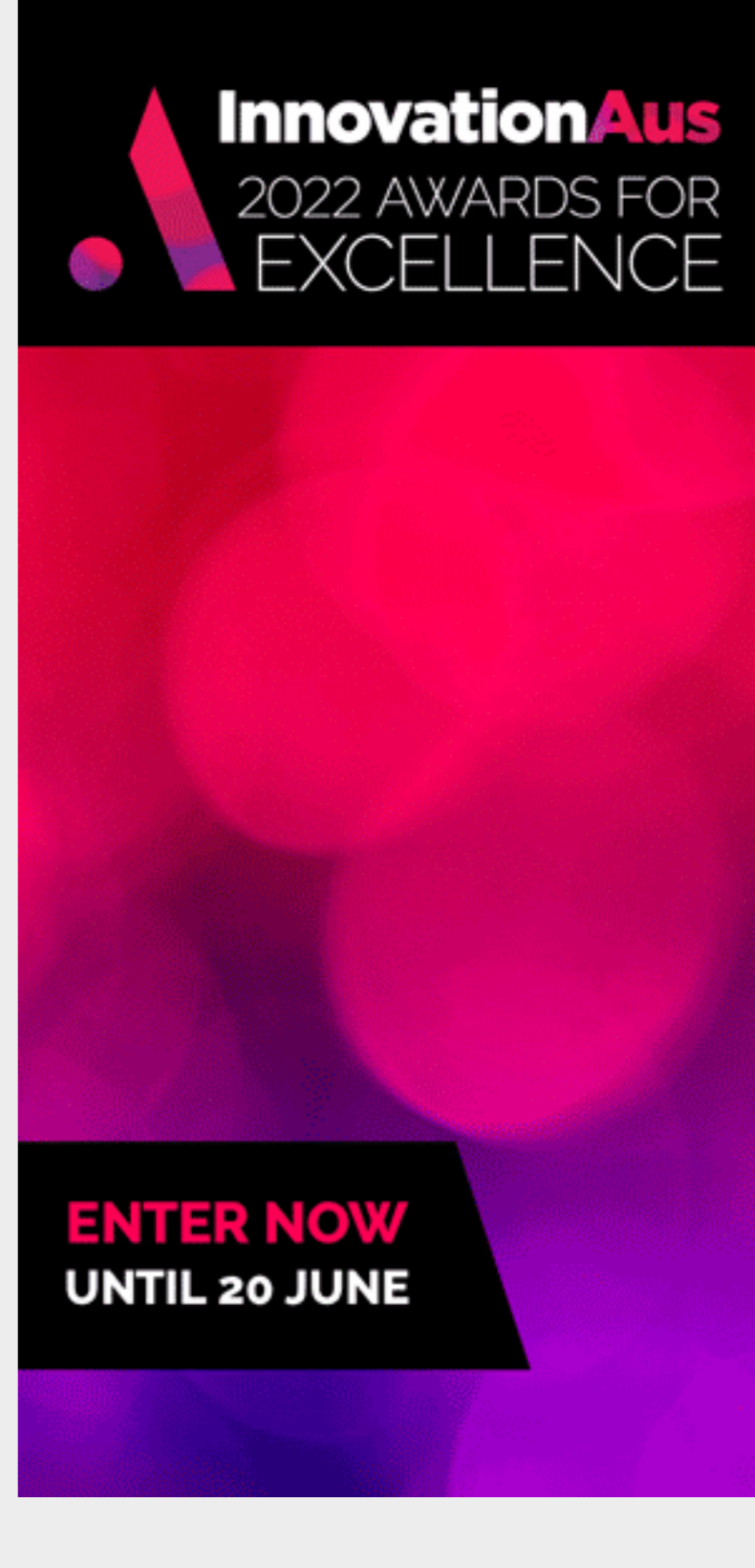
Marie Johnson is the CEO of the Centre for Digital Business. She is a global award-winning digital authority and advocate for the humanitarian application of AI. Her experience encompasses the public and private sector experience in Australia and internationally, including leading Microsoft's Worldwide Public Services and eGovernment industry based in Seattle.

Marie was Head of the Technology Authority for the National Disability Insurance Scheme responsible for the technology business case, co-design, and the creation of Nadia. For many years, Marie was the Department of Human Services Chief Technology Architect, with responsibilities including the architecture and technology business cases bringing together the massive systems of Centrelink, Medicare Australia, and the Child Support Agency.

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