

Public sector

# NDIS algorithms and King Henry VIII powers

**Marie Johnson**

Contributor  
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The political repudiation of the Commonwealth's proposed changes to the National Disability Insurance Scheme by all States and Territories was far more than a routine stoush of the federation.

What exploded on Friday 9 July was an episode of the conjunction of two extremely powerful forces – algorithms and King Henry VIII powers – each of which separately obliterates transparency and accountability.

'King Henry VIII clauses' are so named because of the unchecked power these involve.

When combined, the impact of algorithms and King Henry VIII powers on Australian citizens is unfathomable. These two forces are eating away at our democracy.



Marie Johnson on the NDIS blow-up over independent assessments

What exploded was not a fight about 'reform'.

You see, the disability community desperately wants reform: after all, it was from the community that the NDIS was created. But reform is needed because the NDIS has been either accidentally or intentionally steered away from its intended purpose.

And the community might just know a thing or two about exactly where that reform is needed.

Brilliant insights for reform are detailed in more than 300 submissions to the Senate inquiry on independent assessments. And in countless submissions to a great many inquiries into the NDIS across its short eight-year life. The reform pathway is hiding in plain sight.

Fixated on the fallacious doctrine that anything can be automated – including apparently people's lives and bad processes – the 'listening theatre' of government is not 'hearing' the universal calls for co-design whilst [selectively referencing](#) experts and elements of strategic reports going back to the original 2011 Productivity Commission Report.

What I and hundreds of thousands of disabled people and their families want to know is:

- Why does it take a year to change bank account details?
- Why does it take two years for kids' wheelchairs to be approved – a quarter of the time that the NDIS has been in existence?
- Why are sensitive reports and documents sent to the NDIA, repeatedly lost?
- Why do we receive plans containing other people's highly confidential details?
- Why do NDIS plans have allocated funds of \$2.02 for two years (this is not a typo)?
- And why during the Independent Assessment campaign, were people receiving multiple cold call spam-like text messages, again often containing other people's private details?

How this happens is a daisy chain of unmonitored mailboxes; no intelligent workflow; process dead-ends; off-system manual manipulation of data and documents; metastasised off-system databases; the passing around of spreadsheets; and a grotesquely complex website that makes a mockery of any notion of accessibility and inclusion.

That this happens so systemically is evidence of defective systems and processes at the core.

*And pasted on top of these defective systems, will be defective algorithms.*

Algorithms based on 400 personas that have not been co-designed, scrutinised, validated nor apparently tested. This is akin to having an algorithm developed to detect cancer from scans, without the process and algorithm validated by cancer domain experts.

Algorithms that are based on a mash-up of functional capacity assessment tools, where no evidence has been provided by the NDIA to the [Senate Committee](#) of the validity and safety of these tools when used together.

Algorithms that appear to have been developed without an ethics framework, according to evidence to the [Senate Estimates](#).

And as a warning of what could possibly go wrong, the [horrific examples](#) of algorithm-driven funding assessment models used in the United States read like a template for NDIS independent assessments.

The US algorithm-driven funding assessments "hit low income seniors and people with disabilities in Pennsylvania, Iowa, New York, Maryland, New Jersey, Arkansas and other states, after algorithms became the arbiters of how their home health care was allocated – replacing judgments that used to be primarily made by nurses and social workers."

In Arkansas, "you had people lying in their own waste. You had people getting bed sores because there's nobody there to turn them. You had people being shut in, you had people skipping meals. It was just incalculable human suffering."

So serious is the risk of algorithms to human rights, especially for people with disability, that the Australian Human Rights Commissioner, Edward Santow, [expressed concerns](#) about the NDIS robo-planning push.

"I'm very conscious that in the move towards the use of independent assessments in the NDIA that there is a risk that some of the mistakes that were made with regard to robo-debt could be made again in this context."

This follows the landmark Australian Human Rights Commission, [Human Rights and Technology Report](#), calling for a moratorium on the use of algorithms in decision making.

But the algorithm genie is out of the bottle, especially as an accompaniment to the "God-like" King Henry VIII powers – which in the leaked draft NDIS legislation, removes the veto power of state and territory governments. The same state and territory governments that are the co-funders of the Scheme.

In an article in [The Saturday Paper](#), Rick Morton explained that the King Henry VIII powers give the Commonwealth minister a new ability "...to make so-called 'rules' at any time, which the chief executive of the National Disability Insurance Agency must follow when interpreting the legislation."

These 'God-like' powers determining rules that will not require the scrutiny of the Parliament, will be executed via opaque algorithms and not scrutinised by domain experts.

Indeed, a God-like power creating an algorithm driven funding assessment model that has been shown to damage people.

So the explosive meeting of disability ministers was not just about NDIS reform.

It was about the hidden agenda of the Commonwealth creation of a new architecture of automation and control that will reach across all servicing sectors: disability, veterans, aged care, education and beyond. The NDIS has long been the stalking horse of this disturbing future.

Australian civil society and the bureaucracy are tragically ill-equipped for the era of algorithms.

And the King Henry VIII powers government wants to grant itself will remove the rights and abilities of citizens to protect themselves against this dystopian machine-led future.

Do you know more? Contact James Riley via [Email](#).

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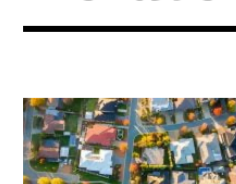
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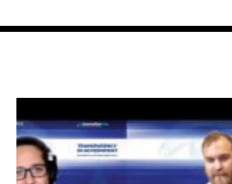
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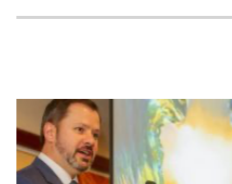
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### EDITORIAL CONTACT

James Riley  
Editor  
[james@innovationaus.com](mailto:james@innovationaus.com)  
+61 424 300 992

Corrie McLeod  
Publisher  
CEO Hello Espresso  
[corrie@innovationaus.com](mailto:corrie@innovationaus.com)  
+61 419 526 848

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Aaron Page  
Business Development Lead  
[aaron@innovationaus.com](mailto:aaron@innovationaus.com)  
+61 0422 405 087

