Policy Review

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The ability to live life to the fullest, where the quality of life is defined by being able to make complete use of our bodies is nothing short of a blessing. However, there are those that have to do without the blessing of being able to make complete use of their minds and their limbs. While some suffer when their bodies betray them and they are rendered disabled for just about any reason, there are ways in which these individuals can be rehabilitated into society and become a fully functioning part of it, regardless of the lack of full potential of their bodies to do so. In 2013, the federal government of Australia introduced NDIS i.e. the National Disability Insurance Scheme (Soldatic, van Toorn, Dowse, & Muir, 2014; Thill, 2015). This scheme was a ground-breaking step taken for the reformation of disabled individuals and the support they are provided by the government. The basis of this scheme was giving disabled individuals an increased choice and control over the support services they require. The NDIS gives disabled individuals, i.e. the ones that are eligible to avail this scheme, a legislated entitlement to any and all kinds of support that they may require. This is done to increase their independence despite their disability and be a contributing member of society both socially and economically. Many have seen NDIS as an encouraging move by the Australian government to improve the infrastructure of their own country while complying with UN Convention on the Rights of Persons with Disabilities (UNCRPD) (Szmukler, Daw, & Callard, 2014). UNCRPD gives disabled individuals equal civil and political rights under the eyes of the law. They have the right to equal legal capability to fully-abled individuals, under Article 12 of CPRD. This paper will explore the concept of ‘choice and control’ granted to those that avail the NDIS and critically review the policy behind the scheme, especially in comparison with other similar policies, such as CPRD that was adopted in 2006. Furthermore, it also seeks to explicitly address the various conceptual and practical challenges one can face while availing the use of NDIS.

# Overview of NDIS

The purpose of the National Disability Insurance Scheme (NDIS) is to increase the participation of disabled individuals in the social and economic spheres of development in society. This is done by improving the means of disability which are not only provided but also accessed in Australia. The present system in place has been increasingly criticized for a number of reasons. It has been cited as unfair, underfunded, fragmented, and even inefficient (Commission, 2011). Furthermore, the system has also been targeted for lacking a customer focus, along with a lack of choices, and its dependence on block funding as opposed to flexible funding. These factors have limited the range of services and support being provided by the system to disabled individuals. The NDIS has also been criticised on the basis of significant variations between states on the basis of unequal services and support for disabled individuals across the country. While the NDIS has been designed to address these imbalances by offering new service designs, it has yet to do so despite additional funding to address this issue exclusively.

The new model of disability support envisaged under the system will be responsible for meeting the support needs of disabled individuals which are reasonable and necessary (Walsh & Johnson, 2013). It is tasked with using a more person-centred approach, where everyone is dealt with on an individual basis.

In principle, people with disability will access NDIS if they meet certain age, residency and disability criteria, namely the person:

* Is aged 0 to 65
* Is resident in Australia and
  + an Australian citizen, or
  + the holder of a permanent visa, or
  + a special category visa holder who is a protected special category visa holder.
* Has a disability that is, or is likely to be, permanent and
  + the disability results in substantially reduced functional capacity to undertake the activities of daily living, and
  + the person is likely to need support from the scheme for the rest of his or her life; or
* Has one of a number of types of impairment that is, or is likely to be permanent, or is a child with developmental delay.

The purpose of planning and assessment is to bring together the participant’s statement with their support needs identified through goal-based planning. The statement of participant supports may include informal care, mainstream and community services, local area coordination (where chosen) and other reasonable and necessary supports. Planning is done by the participant and the Agency planners, with local area coordination and design and decision support assistance where required. Using these inputs, the Agency determines the participant’s support needs. Furthermore, the way these plans will be managed and how the reasonable and necessary funding for support is to be allocated will also be determined by the agency.

Disabled individuals have the capacity to make decisions that affect their lives. This is recognized by the *National Disability Insurance Scheme Act 2013,* with one stipulation (Thill, 2015). It requires the disabled individual to appoint a nominee to act on his or her behalf, while also making decisions on their behalf as well. However, this appointment is only justified when it is impossible for the disabled individual to make certain decisions themselves.

# Evaluation of Policy

For the very first time, the primary goal of the Australian federal government and its disability policy is to advance the personal autonomy and the independence of disabled individuals. As mentioned, NDIS gives such individuals the legislative entitlement to the support they require for this purpose. While the model being implemented is revolutionary and the first of its kind, there are certain flaws in the system. The very first flaw in the system is the fact that, while NDIS is all about promoting the autonomy of an individual and provide them with the support that they need, it still chooses to substitute a decision-making model where nominees are appointed for an individual to exercise their rights in a legal capability. This shows that while NDIS embraces the idea of enabling an individual to become socially and economically independent, the legal equality it promises to disabled individuals is largely absent, especially if the facts are being compared to the Article 12 of the UNCRPD.

The evaluation policy logic provides an analytic framework for observing input-output chains that relate stimuli (the inputs) to responses (input-triggered activities and expected and possibly unexpected outputs). The evaluation of the NDIS needs to understand the policy logic outcomes and how they may be measured, and thus the criteria for assessing success or failure. It also needs to understand the assumed underlying principles and mechanisms for bringing about the intended change. The evaluation policy logic provides a template for conceptualising and visualising the change process, while the evaluation will need to assess whether the model has adequately and appropriately represented the real change brought about by the introduction of the NDIS.

This assessment will explore the linkages between the main sequences (from input to activities and then on to outputs and outcomes), and also the connections of individual components within these sequences and across the sequences. While it is not possible to test all conceivable combinations for their logical and practical coherence, the evaluation can assess the model’s validity by:

* Exploring in a sequential order the occurrence of unintended outputs or outcomes, both positive and negative, their origins and their consequences for the achievement of the NDIS objectives, and
* Examining in reverse order whether outcomes and outputs have been, or could have been, achieved as a result of current activities and inputs.

At the onset of the evaluation, this requires a careful examination of assumptions and logic links, and their application in the implementation of the NDIS. The evaluation needs to be sensitive to the diversity and particularity of expectations, needs and goals of those directly affected by the NDIS. It also needs to be realistic and cover a comparatively short period of implementation, it must acknowledge that not all outcomes can be fully achieved within the observation period, at least not at the necessary evidence-based standard. This may be particularly the case for the high-level outcomes of promoting wellbeing, participation and community connection. These have been long-standing goals for many in the disability sector and society more broadly. In some instances, change may be too slow to be clearly observed and measured within the timeframe of the evaluation, especially when this timeframe is short.

## Overview of Article 12

Article 12 of the UNCRPD fully recognizes the rights of a disabled individual on an equal basis with others. The basic purpose of this article is to give such individuals the core human right of an individual to be recognized as a full legal person who is subjected to all the rights and responsibilities of such an individual. For an individual to be recognized as a full legal individual, that individual must be able to hold rights and legal status. Furthermore, they should also be able to execute these rights. All these are quite necessary for the mechanism to be put into place where all these rights are recognized and granted (CRPD, 2014; UNEDITED, 2015).

The legal capacity of an individual has been defined as a tool to advance that individual and secure him the notion of personhood in the world (Quinn, 2010). Under Article 12, the mere conceptualization of personhood is holistic and inclusive, which gives a three-dimensional view of the human condition (Quinn & Arstein-Kerslake, 2012). It recognizes the autonomy of the relationship dynamic which states that an individual, even disabled, is socially embedded, with shared personhood (Davy, 2015).

The normative principles that lay the basis of Article 12 are: (a) legal capacity is a universal attribute inherent in all persons; (b) legal capacity and mental capacity are two distinct concepts that should not be conflated; and (c) States Parties (States) must never deny, remove or restrict a person’s legal capacity on the basis of disability or their level of decision-making capability (CRPD, 2014; Flynn & Arstein-Kerslake, 2014)

From this basis, the core normative principles underpinning Article 12 are that: Mental capacity is an individual’s decision-making ability, which can vary based on a range of factors. Here, legal capacity is the recognition of legal status and legal agency of an individual (CRPD, 2014; Flynn & Arstein-Kerslake, 2014). The various substituted regime making schemes represents the denial of legal capacity of an individual on the basis of disability. However, in areas where such the will or preference of an individual is not preferred, significant efforts need to be made on the basis of the best interpretation of a person’s will and in a manner which is not objective to the agencies best interests (CRPD, 2014; Flynn & Arstein-Kerslake, 2014).

# The Need for Support

Article 12 effectively recognize the importance of equal legal capacity, so it acknowledges that a disabled person should be given appropriate assistance for the recognition of equal legal capacity. Supporting an individual with disabilities is highly important to ensure the practice of legal capacity. According to Article 12.3 of the UNCRPD, it is necessary for the government to take some adequate steps to ensure that a disabled person can easily practice the equal legal capacity in an effective manner. According to Quinn, the provision of such assistance is of utmost importance regarding the paradigm shift intended by Article 12. It is well recognized that the relational model of autonomy should be embraced to provide effective support for a person with disabilities to augment decision-making capacities regarding equal legal capacity (Quinn and Kerslake 2010).

The approach of support concerning the broad domain of ‘both informal and formal support arrangements concerning to different types and various intensity levels. This overall spectrum comprised on formal decision-making paradigms under the legal domain. The practical perspective of this arrangement reveals that an individual has the authority to appoint one or more persons for the sake of necessary assistance. The first facet of this broad idea is to attain and successfully understand the necessary information. The next phase is to critically assess different potential alternatives concerning the outcomes of a decision. The final stage is to explicitly express and effectively communicate a decision to all the stakeholders. Finally, it is crucial to indicate that both the spectrums of nature and intensity of supports need to be individually designed to achieve better outcomes in the end (CRPD, 2014; Flynn & Arstein-Kerslake, 2014).

# Recommended Changes to NDIS

The NDIS is both non-prescriptive and principles-based. A key objective of the act is its policy to provide its participants with ‘reasonable and necessary support’ system. However, it does not prescribe the type of support which would be considered necessary and reasonable for all participants. This shows that the system at hand needs certain improvements, a few of which are recommended here to improve the system altogether. They are:

## Social and economic participation

Section 3(1)(c) states that NDIS works to ‘support the independence and social and economic participation of people with disability.’ On the other hand, another section i.e. Section 3(1)(h) states that NDIS is to raise community awareness regarding the issues which affect the participation of people with disability in the social and economic growth of society (Reddihough, Meehan, Stott, Delacy, & Group, 2016). Based on a landmark inquiry report, the Productivity Commission from the Occupational Therapy Australia recommended that the key function of NDIS should be modified to ‘maximise the social and economic participation of people with disability’. In this manner, any disparity on the subject will be refuted and disabled individuals would be able to benefit from the system in a better manner.

## Choice and control

Section 3(1)(e) states that NDIS enables disabled individuals to exercise their choices, as well as control to pursue their goals in a manner that is supported by the NDIS (Reddihough et al., 2016). Upon review, Australian Association of Social Workers suggested that the section should be amended to “acknowledge the impact of intellectual disability and cognitive impairment on the principles of choice and control, and commit to specialised access and planning support for these participants” (AASW, 2019). Given how improved the policy would be when this change will be implemented, making such a change would be ideal.

## National consistency

Section 3(1)(f) states that an object of the NDIS Act is to “facilitate the development of a nationally-consistent approach to the access to, and the planning and funding of, supports for people with disability” NDIS (Reddihough et al., 2016). However, some stakeholders on the matter questioned the use of the section, highlighting the use of the term ‘nationally-consistent’ which brings into question the variation of how NDIS is delivered. However, the question remains is that whether or not NDIS needs to be nationally-consistent, or it needs a single approach in terms of planning and funding to support disabled individuals. Thus, while the use of term maybe questionable, it is well-placed in broader sense of the policy at hand.

## Physical, social, emotional and intellectual development

Section 4(1) of the NDIS states that disabled people have the same rights as other members that make up the Australian society. These rights extend to their social, physical, intellectual and even emotional development (Reddihough et al., 2016). However, the addition of psychological potential to this list will only make this section more well-rounded, encompassing all the necessary details. Thus, it suggested that amending section 4(1) to recognise ‘psychological development’. This related to the mind and mental phenomenon, thus it will prove to be a great addition since mental disabilities is also a part of disabilities held by a number of disabled individuals.

# Conclusion

Choice has been adopted as a principle to recognize disability rights in Australia’s reforms to disability policies. This paper analysed its interpretation in NDIS legislation and policy documents related to provision, finding a diminishing influence of the disability rights agenda in favour of economic discourses. These issues arise because the choice is part of a larger political and ideological movement in liberal democratic countries that have seen the reconstitution of publicly funded disability services as select goods that the discerning consumer can evaluate in terms of utility benefits and thereby achieve their personal goals. The ambiguity of choice as a policy principle allows policymakers to avoid or delay specifying how it will be applied in practice, to gain popular support and pre-empt criticism. Support is gained by arguing that market competition generates choice for individuals and efficiency for taxpayers, compared to the stereotypical view of bureaucratic and paternalistic public service provision. The “Shut Out” report illustrated a failure of mainstream and disability services in Australia to deliver equitable access to, and optimal outcomes from. Choice has become a dominant yet imprecise vision to address these failures but is taken for granted and unchallenged. The findings from this research contrast with the political rhetoric of “choice and control” and highlight the risks of devolved policy implementation perpetuating inequalities in access to support. Economic imperatives for cost-containment have been adopted as the primary criteria for assessing individual and collective assistive product procurement decisions, while the persistent problems with the workforce capacity and systemic issues of service quality remain unaddressed. In the end, while there are a number of recommendations which can improve the overall infrastructure of the scheme i.e. NDIS, it is a step in the right direction. Simply choosing to implement various reformatory measures that will make its approach more well-rounded and accessible to all regions of the state will help its improvement, growth and outreach.

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