

Service providers, the NDIS and conflicts of interest **by Dr Leighton Jay**

You've probably heard others say that the NDIS is the most significant social reform in Australia for over forty years. It is a reform that many people with disability and their advocates have waited a long time for. We are still at an early point in its development and so far there have been some positive signs despite the inevitable problems and issues that have also been experienced.

I've been encouraged to notice that many disability-related conversations have become more aspirational. This is due in part to the NDIS Act putting Australia's commitment to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into actions. The CRPD is a watershed human rights document that requires a shift to both our thinking and actions. It is a shift **away** from making decisions and acting in another person's best interests **to** enabling people with disabilities to be "citizens with rights" on an equal basis with others.

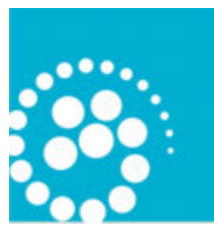
"People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity". (NDIS Act 2013: Ch1, Part 2, Sect 4 (8) p6).

At this early point in the NDIS journey, the ongoing debate between disability service providers and the National Disability Insurance Agency (NDIA) around perceptions of "conflicts of interest" brings the challenge inherent in this clause sharply into focus. This is especially so for participants with profound intellectual disability and/or complex communication needs.

Several NDIA leaders are on the public record expressing concerns about service providers having a conflict of interest between their organisational goals, interests and obligations and their participants' or clients' goals, interests and preferences.

In contrast, many service providers view this perception as overstated, inaccurate and problematic. They and their peak body, National Disability Services (NDS), are understandably defensive. Many people who are involved in, or aware of this debate agree that a more constructive dialogue would be a good thing for all concerned, especially for participants.

With this as a goal, I want to make a few suggestions that will hopefully assist such a shift. I invite you to join this as a constructive conversation.



Adopting the term 'bias' instead of 'conflict of interest' might be a helpful start. Bias has a less judgemental tone than conflict of interest, which can seem to imply that service providers are doing something wrong.

For genuinely constructive dialogue to be possible, all parties need to hold less tightly to positions they have taken, adopt more curious mindsets towards those who hold different perspectives to them, and ask questions that enable them to better understand the others' point of view.

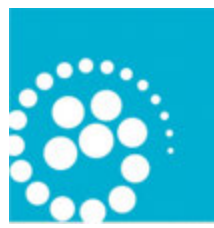
For example, some CEOs have rightly told me that on some occasions, service providers share a 'commonality of interest' with participants. Collectively exploring how this common interest can be expanded and put into action in individual lives could be fertile ground.

Service providers can acknowledge that one implication of their directors' legal duty to act for and in the interests of the organisation is that organisational decisions frequently cannot align with individual participants' choices, interests and preferences. There will often be 'organisational biases' at work. This is reality and is neither good nor bad.

Let's take a group home example. In what ways do participants in group homes have a say about the what clothes they wear? Or what food they eat (and when)? Or who their support workers are? To what extent do they have ready access to the fridge and pantry? How do they determine when to get up and when to go to bed? These are small 'I' life decisions that most Australians take for granted in their own lives. As quoted above, the NDIS Act specifies that *people with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives*. There isn't a sub-clause noting that this applies only when it fits with a service provider's business model, budget or staffing requirements. There is an inherent tension when these don't align.

One way service providers can address this tension is to proactively enable and support their participants to have independent support with decision-making in all aspects of their plans, supports and services. This will demonstrably help shift the locus of control from service providers to participants. It will open up a 'third way' that is notably different to what 'either/or' thinking will produce.

Consistent with this, service providers can establish decision-making policies, processes and systems that make it impossible for them to provide planning support and support coordination to participants receiving core supports from them. They can build their own solid wall that tangibly demonstrates their commitment to supporting what the Act is trying to achieve.



It is also worth noting that supported decision-making has not yet really emerged in the NDIS context. Given political imperatives and competing priorities, it will take some time before it gets the attention that it needs.

However, in the long term, independent, supported decision-making is an incredibly important piece of the NDIS puzzle. It is absolutely required if participants with complex communication needs and profound intellectual disability are to experience the choice and control required by the Act.

The process of beginning to understand, practice and implement supported decision-making can start now by ensuring that the choices, interests and preferences of their most vulnerable participants are heard and noticed in both the big and small decisions affecting their daily lives.

Finally, in this excellent short video Tom Nerney usefully identifies four citizenship rights that most of us take for granted but are routinely dismissed, ignored or overlooked for highly vulnerable people with disability:

<https://www.youtube.com/watch?v=fBMzCCKEuss&t=6s>. He suggests that if service providers focus on supporting their clients to achieve these, it will revolutionise disability support services, especially for the most vulnerable people.

I think he is right.

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