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# *The Vexed Question of Market Stewardship in the Public Sector: Examining Equity and the Social Contract through the Australian National Disability Insurance Scheme*

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## Abstract

*Personalized care and market-based approaches to public service provision have gained prominence in a range of Organisation for Economic Co-operation and Development countries. Australia has recently joined this trend, launching a complex and expansive programme of individualized care funding for disability through the National Disability Insurance Scheme. Public sector markets (i.e. where governments either directly fund a market by way of competitive tendering, or through personal budgets) have been embraced by actors at different points of the political spectrum and for a range of reasons, including efficacy and efficiency gains, empowerment of citizens and efforts to cater for diversity. Despite the growing dominance of public sector markets and individualized funding, many questions about the role and responsibility of governments in managing and regulating these markets remain unanswered. In this article we outline different roles governments might assume in the creation and management of public sector markets, based on the types of risks governments are willing to take responsibility for. We argue that to fulfil the social contract between government and citizens, governments need to ensure that markets are properly stewarded and embedded in broader social safety nets. This, we contend, can ensure citizens receive the gains of market models while being protected from market failures or market-produced inequities.*

## Keywords

*Public sector markets; Quasi markets; Market regulation; Equity*

## Introduction

Modern welfare states are in a state of transition (Anttonen 2012; Brown *et al.* 2000; Considine *et al.* 2011; LeGrand 2007). Faced with a range of fiscal

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and social pressures, we have seen shifts in many industrialized countries away from collective social welfare provision in favour of markets and 'self-directed care' (Giaimo and Manow 1999). Individuals are placed in control of their own service needs by leveraging market-mechanisms. Markets are a form of what is known as particularism in welfare: particularism aims to address differences between individuals on the basis of diversity of needs, moral frameworks and social expectations, through a non-institutional model (i.e. where the state does not make authoritative decisions on behalf of individuals) (Carey and Crammond 2014). As Needham and Glasby (2015: 268) have argued, 'Enhancing choice and control via personalization has primarily been achieved through financial devolution, making people who are eligible for state funding aware of how much money is available and then giving them more control over how that money is spent'.

Across the political spectrum 'choice and control' of public sector services are seen as a way to gain economic efficiency, while enabling citizens to have a more empowered relationship with the state (Boettke *et al.* 2011; Cutler and Waine 1997). Indeed, personalization through markets has been called the cornerstone of modernization of public services and is at the heart of reforms of major health and welfare structures in industrialized countries, including unemployment assistance in Germany, Denmark and the Netherlands (Knuth 2014; Van Berkel 2010), and the National Health Service in the UK (Williams and Dickinson 2015; Gadsby 2013). Most recently, this approach has become central to the biggest Australian policy reform in a generation – the National Disability Insurance Scheme (NDIS). The NDIS was launched in 2013 and is internationally unprecedented in the speed and scale of personalization and marketization of public services (though, as noted above, individual budgets have existed in other countries for some time) (Australian Productivity Commission 2011; Carey and Matthews 2017). It replaces a highly fractured system consisting of a patchwork of block-funded and procured services spread across State and Commonwealth governments (Australian Productivity Commission 2011). This previous system was seen as being inefficient, ineffective and inequitable and therefore in need of substantive reform.

Under the NDIS, citizens are given money directly by government to negotiate their use of services by sourcing, understanding and choosing services that best meet their needs from a range of private and not-for-profit providers. This can occur through direct payments, assistance in managing funds by government agencies (within the context of a personal budget) or to pay a third party (Australian Productivity Commission 2011). While reforms linked to a personalization agenda have seen a rise in the use of public sector markets, important questions about government's role in the development and ongoing management of these markets remain unanswered (Dickinson *et al.* 2014; Needham 2010). In this article we use the terminology of public sector market to indicate that this is a market created, funded and regulated by government to fulfil a public purpose (Cutler and Waine 1997; Gash *et al.* 2014; Greener 2008). As Needham suggests, 'personalization is an agenda in which policy roll-out is racing ahead of the evidence base – spreading into new services before earlier pilots are concluded' (Needham 2010: 136). This can be seen in Australia where, despite the fact that markets sit at the heart of the NDIS reform, there are questions about what kind of role government will play in the oversight, management and regulation of disability markets. A much used metaphor for the NDIS has been a 'plane being built during flight' (Whalan *et al.* 2014: 4). As an example of this, three years into the Scheme (and five months after full scheme roll out), the regulatory architecture is not yet in place (Department of Social Services 2016). There is therefore an important and unanswered question concerning the relationship between government and this new disability market.

In this article we examine and develop the concept of 'market stewardship', building on work from Gash *et al.* (2014), to capture the varied roles in which governments can or should be active in public sector market spaces. We use the case of the NDIS in addition to the literature on personalization, diversity and choice within welfare state design to deepen our understanding of what market stewardship might entail. Drawing on our research on the NDIS experience, we draw a distinction between market regulation and market stewardship. Market regulation entails a 'light' touch approach, whereby governments remove fraudulent providers from the marketplace and set some 'rules' for the market such as minimum qualification standards for providers. Market stewardship, however, comprises oversight actions of government that fully support the functioning of public service markets. This includes active support for innovation and diffusion of best practice, protecting against 'thin' markets and market failure in order to ensure equity of choice and control.

Based on the research presented in this article, we find that uncertainty and ambiguity exists regarding the responsibility of government to extend a regulatory role into a market stewardship role. We argue that this stems from several underlying and interconnected concerns: a belief in the vision of a fully de-regulated disability service market; a fear of introducing rigidity into the market through government intervention; and, in turn, undermining the supposed gains of public sector markets. Approaching market regulation and market stewardship as a continuum of potential roles that governments could play draws attention to the risks that governments are willing to tolerate and/or manage. We argue that decisions about risk speak to the type of social contract governments seek to form with citizens. To this end, we propose a framework that demonstrates how markets can be embedded within broader social safety nets, both in Australia and internationally, in order to promote equity.

## Markets in Public Service Systems

Over the past 30 years there have been major shifts in the way government(s) deliver public services. Increasingly, governments aim to give citizens greater 'choice and control' of the public services they utilize (LeGrand 2007). Driven in part by the philosophical influence of New Public Management, we have seen the creation of various forms of public sector markets (or quasi-markets) (Hood 2005; Klijn and Koppenjan 2000). Here, governments create 'markets' through contracting and tendering processes and/or by individualized care budgets (LeGrand 2007; Needham and Glasby 2015; Williams and Dickinson 2015). In both approaches, governments aim to generate efficiencies through increased competition between providers. Markets have been treated by some as a panacea for contemporary public sector challenges, 'choice and competition as a model for public service delivery … fulfills the principle of autonomy, and promotes responsiveness to users' needs and wants; it provides incentives for providers to provide both high quality and greater efficiency; and it is likely to more equitable than the alternatives' (LeGrand 2007: 42).

The shift to markets is not only widespread, but highly controversial and contested. It has been argued that most citizens 'are less concerned with who provides their public services than how good those services are' (Gash *et al.* 2014: 10; Needham and Glasby 2015). Yet, when it comes to assessing whether competition and diversity driven via market mechanisms have improved service quality, the evidence is sparse and contradictory (Considine *et al.* 2011; Gash *et al.* 2014; Needham and Glasby 2015; Williams and Dickinson 2015). While couched in terms of citizen choice and empowerment, the move towards public sector markets has also been driven by the spread of neo-classical economic ideas about the free market. That is, that unfettered markets can self-regulate to create efficiency and support growth and prosperity (Hayek 1960) and should therefore be used wherever possible in place of hierarchical coordination within the public sector (Anttonen 2012). Within economic circles there is, of course, a long running debate regarding the role governments should play in regulating markets (Keynes 2007; Stiglitz 2000). In the context of public service markets, these questions are heightened. This raises issues of market regulation, as well as the responsibility of governments to create and manage markets to guard against market gaps (or thin markets, where a limited or only one provider exists), that could harm citizens. Public sector markets also tend to differ in a fundamental way from private markets, because governments have often played a price setting role (which does not occur in private markets) (Gash *et al.* 2014).

Arguably, at the heart of market-based approaches to public service provision must lie a continual process of change, learning and adaptation (Carey and Matthews 2017). For public sector markets and/or individualized care to work effectively:

- new providers must be able to enter the market and grow;
- providers must compete actively, and in desirable ways;
- providers must be able to exit the market;
- those choosing services (whether service users or public officials choosing on their behalf) must be able and motivated to make informed choices;
- (as in all modes of service delivery) levels of funding must be appropriate to achieve government's objectives. (Gash *et al.* 2014: 23).

These activities require a degree of stewardship, i.e. the ability of governments to foster market function and sustainability. Gash *et al.* (2014: 23) have argued that market stewardship involves the following activities:

- engaging closely with users, provider organisations and others to understand needs, objectives and enablers of successful delivery;
- setting the 'rules of the game' and allowing providers and users to respond to the incentives this creates;
- constantly monitoring the ways in which the market is developing and how providers are responding to these rules, and the actions of other providers;
- adjusting the rules of the game in an attempt to steer the system (much of which is, by design, beyond their immediate control) to achieve their [government's] high-level aims (Gash *et al.* 2014: 6).

We now move on to provide an overview of the NDIS, before considering what a market stewardship approach might involve in this context.

## The Australian National Disability Insurance Scheme

The NDIS legislation was passed in 2013 with broad public and political support after a concerted and highly effective community-led campaign (Thill 2015; Commonwealth Government of Australia 2013). In total, approximately 460,000 individuals are expected to participate in the scheme as of 2019 located across Australia (including urban, rural and remote localities) (Australian Productivity Commission 2011; Collings *et al.* 2016). Based on an insurance model, the NDIS will provide no-fault insurance cover for Australians who are born with or acquire a disability, and more recently, includes people experiencing forms of mental illness (Australian Productivity Commission 2011; Collings *et al.* 2016; NDIS 2014). The insurance approach is a unique dimension to the NDIS and, in theory, means that the Australian Government covers the lifetime costs of disability-related care for eligible individuals (Walsh and Johnson, 2013). The insurance model is said to be premised on accident and compensation approaches in Australia and New Zealand (Walsh and Johnson 2013). Given that these principles have not been used in the context of social policy or traditional welfare policy areas previously, it is unclear how they will translate (or not) into areas such as disability (Needham and Dickinson 2017, forthcoming). In the social insurance model the state itself is seen as a collective strategy of protection against the vicissitudes of individual life (Ewald 1991; Defert 1991), and the pool of resources it draws upon is the Treasury rather than any 'ring-fenced' fund that is replenished by premiums and (at least in principle) protected from re-allocation by political leaders with different views on the role of the state (Miller 1993).

The NDIS began with seven trial sites in 2013 and, as of July 2016, has moved into national roll out (ANZSOG 2016; Collings *et al.* 2016; NDIS 2014). Under the NDIS, eligible individuals will be encouraged and supported to exercise choice and control over a needs-based funding envelope to purchase supports that most effectively meet their life circumstances (Bonyhady 2014; KPMG 2014; NDIS 2014). The NDIS represents a shift from a complex mix disability services (where individuals were able to access variable types and quality of services), to a personalized model whereby individuals are given 'funding packages' determined by their level of need and self-defined goals (Australian Productivity Commission 2011; Collings *et al.* 2016).

In the remainder of the article we further develop the concept of market stewardship, using research undertaken on the NDIS. In the following section we briefly outline the methods used to collect primary data in this study.

## Methods

Data was collected as part of a longitudinal study on the implementation of the NDIS. This focused on the federal level Department of Social Services (DSS), which has increasing power in the implementation of the NDIS, along with the Agency tasked to carry out the day-to-day activities.[1,2] Interviews were conducted in early 2016, three years into the scheme and several months before national roll out. This study aims to document the institutional decisions and logics that transform the structure of the Scheme through implementation, with a particular focus on decisions that constrain or enable learning in this complex reform. All policymakers from the Commonwealth government charged with the implementation of the NDIS participated in semi-structured interviews (N = 26). Interviews were transcribed verbatim. Topics discussed in the interviews included: decisions on the governance structure of the NDIS, accountability processes in the NDIS, challenges facing the implementation of the Scheme, regulation and market management.

A thematic analysis was conducted, where like themes were grouped together and the interconnections between them explored (Strauss 1987). This article focuses exclusively on the data emerging from two lines of questioning: regulation and market management. This analysis was conducted a second time to identify sub-themes, and the relationships between them. From this emerged different perspectives on how markets could or should be regulated or managed. Key design documents were examined thematically for regulation and market management, predominately the blueprint for the NDIS produced by the Australian Productivity Commission (2011). These were compared and contrasted to the perspectives of policymakers interviewed to explore how the government's role in the market is being viewed during implementation.

## Market Regulation versus Market Stewardship

The Productivity Commission provided the original blueprint for the NDIS in 2011 (Australian Productivity Commission 2011), which was later legislated in 2013 (Commonwealth Government of Australia 2013). Variations exist between the blueprint and the legislated Act (i.e. differences in expected numbers of participants, frequency of reporting), with the former laying out the most comprehensive framework for implementation. The situation is also made slightly more complex in the sense that the Federal government also needs to put in place formal agreements with each State and Territory. In interviews with policymakers at the Commonwealth level, the Productivity Commission report appeared to be the key reference point for policymakers and described as the most comprehensive framework to guide implementation.

The Australian Productivity Commission has played a key role in social and economic reform in Australia since its establishment in 1998 (Banks 2003). Until recently the Productivity Commission was a unique body internationally (in 2015, New Zealand established a similar institution). The Commission is said to provide independent advice and information to government(s), operating at arm's length to other government agencies.[3] In this sense, the Productivity Commission is said to be an autonomous body that undertakes 'inquiries' (taking the form of detailed research reports and consultations) at the behest of government (Banks 2003).

It has been widely argued that the Productivity Commission holds largely economically rationalist values (Carey and Corr 2017, forthcoming), but a degree of market stewardship and regulation was envisaged within the original plan for the NDIS. This was described in terms of government being a market regulator for basic standards of service:

> The use of individualised packages and greater consumer choice will increase competition in the provision of high quality services. Nevertheless, there is a strong argument for a continued role for regulatory oversight in protecting vulnerable consumers from harm and ensuring providers adhere to a basic standard of service. (Australian Productivity Commission 2011: 471)

Individuals would be free to 'self-manage' care, choosing from a range of services to be delivered by a registered provider. The market regulator is yet to be established, despite full scheme rollout having commenced. The Productivity Commission proposed that the NDIA take up a regulatory role whereby it should:

- develop complete, nationally consistent standards that would apply to all funded specialist service providers and disability support organizations;
- encourage the diffusion of best practice throughout the disability sector;
- provide consumers with information about the quality and performance of service providers on the national internet database of service providers;
- establishing an innovation fund that providers for developing and/or trialing novel approaches to disability services.

Moreover, the Commission suggested that the NDIA:

- should monitor compliance with these standards and other regulations through a range of instruments, including graduated and rolling audits of service providers, community visitors, senior practitioners, independent consumer surveys, complaints, monitoring by local area coordinators and interrogation of the electronic disability record. (Australian Productivity Commission 2011: 81).

Despite envisaging a national regulator (which at various points in the report sits within the NDIA or the Treasury), the Productivity Commission suggested the market would eventually self-regulate and require less government intervention, 'Under the NDIS, the pace of adoption of self-directed funding can be expected to grow as people gain confidence in the new system, as the market evolves, and as the system provides more support for exercising choice (for example, through disability support organisations)' (Australian Productivity Commission 2011: 45). At present the prices paid for services are set by government, but it is imagined that this will not continue as the market begins to self-regulate, 'Ultimately, the pricing role of the [National Disability] Agency[4] would diminish as the market developed, and this could allow disability services to even more closely resemble the economy-wide service sector' (Australian Productivity Commission 2011: 51). This would also require individuals to self-manage their funds (as opposed to being managed by the National Disability Insurance Agency or a third party), however self-management targets have been set at just 12 per cent (NDIS 2014; Commonwealth Department of Social Services 2015). These low targets, and potentially continued low take up, of self-management could be prohibitive to market growth with Scheme participants potentially having less freedom to make decisions about how their funds are used and impeding innovation (Hislop 2016; Ryan 2016).

The Productivity Commission vision for the disability service market might be considered idealistic given that, worldwide, no public sector market has yet reached the point of being sufficiently self-regulated for government(s) to no longer play a role in price setting (Gash *et al.* 2014). The ultimate vision for the NDIS, in some respects, therefore outstrips what has been achieved in public sector markets internationally to date. The challenge for policymakers, is that there is no blueprint to build upon in designing this functional self-regulating market.

The Productivity Commission did recognize that the scale and geographical spread of markets will require some degree of government intervention. For example, in regional or remote areas where markets are thin or non-existent the Commission indicated that 'block funding' by governments (i.e. the traditional contracting and procurement processes that currently exist) may continue:

> block funding may continue in certain circumstances, such as in building community capacity, pilots of innovative services, in some rural areas where markets might not support the provision of any service, and where there is a need to build longer term capacity, such as Indigenous-specific services. (Australian Productivity Commission 2011: 51)

However, this was couched very much in language that this would be as a last resort, with markets always producing better outcomes than government-provision:

> The scope for full competition may not always be present when suppliers have market power, consumer knowledge is poor, where services are complex, or where the market context would be likely to lead to distorted consumer decisions. Markets may also take some time to develop, as will the capacities for making informed choices by people

> with a disability and their families (hence the need for supporting people in implementing self-directed funding). However, choice among specialist disability services may often still produce better outcomes even where markets are imperfect. (Australian Productivity Commission 2011: 357)

A discussion paper on the National Quality Safeguards Framework (NQSF) for the NDIS was developed in late 2015 by the Commonwealth government (Commonwealth Department of Social Services 2015). As a starting point for the creation of a national regulator for the NDIS, it proposes a more 'lean' approach to regulation. The NQSF discussion paper states that while additional protections are needed during a time of rapid change, the aim is to have minimal regulatory intervention (Commonwealth Department of Social Services 2015). The principle role of the regulator will be to prevent fraudulent and non-competitive practices within the market, while encouraging providers to offer high quality services (Commonwealth Department of Social Services 2015). This is in contrast to the Commission, which envisaged the regulator as a support for innovation and diffusion of best practice (rather than just removal of poor practice). The difference between these two proposals points to a variety of ways to conceptualize the role of government in public sector markets. We differentiate here between the functions of market regulation and market stewardship. While the Commission hoped for a fully deregulated market, it conceded that in some places and at some time points this might not be possible and that government would need to adopt a more 'stewardship'-type behaviour. This might include activities such as block-funding services to address market gaps or thin markets. The NQSF, however, strips the role of government back to a basic regulatory function of registering providers and removing fraudulent providers from the market.

A stewardship role is typically described as going beyond ensuring minimum market protections for citizens, to ensure long-term outcomes and public value (Gash *et al.* 2014). In the context of the NDIS, this would mean actively working to address market gaps or 'thin' markets where there is insufficient supply in a geographical area or for a particular need (as suggested by the Commission). For meaningful choice and control to be guaranteed, in addition to government fulfilling its social contract with citizens, these dimensions of market stewardship would need to be addressed. Currently, what form the regulator will take and where it will be located within the bureaucracy (i.e. a new independent agency, co-located with the main implementation body the National Disability Insurance Agency [NDIA] or combined with an existing regulatory agency) is undecided (Commonwealth Department of Social Services 2015). Where the regulator sits will, to some extent, shape the role that it plays. For example, if it is co-located with the NDIA the regulator is more likely to take on market stewardship functions as it will be embedded in the day-to-day activities of running the NDIS. If, however, it sits with an existing regulatory body within federal government it is likely to be removed from the details of the market and will adopt existing structures and processes, such as registering providers and compliance checks.

## Stewardship during Implementation

Having set out the tensions within the proposed approaches to the government's role in NDIS service markets in the design documents, in this section we draw on interviews with policymakers during the early implementation process. Through interviews with policymakers, we found a greater level of ambiguity around the role of government in the market than is represented either in the Productivity Commission report or the NQSF discussion paper. Overall, policymakers were confident in the need for the government to take on a market regulator role. For example:

> *'The regulator will be national … the regulator won't manage the market, at least that is my understanding. All of the things you need to have in place [will be there] but they won't be manipulating or structuring the market.'* (Participant 13)

> *'One of the things we're all very conscious of is the risks of lack of supply, the risk of lack of quality and that's where it then leads into safeguards obviously, exploitation, it could be a lot of focus from enquiries on abuse and neglect of people, but also the scammers that are out there waiting. When there's money around they come out of the woodwork. So there's a whole kind of spectrum of risks like that that we're conscious of in designing quality and safeguards and how that gets implemented.'* (Participant 16)

One policymaker, who worked on the development of options for the regulator function, indicated that Federal government was leaning towards outsourcing the regulator role:

> *'There are a couple of models, aged care for example in-sources their auditors and some of the States do now but there was a general consensus that outsourcing auditing was going to be more efficient, it was going to be more flexible, it's a competitive market, why wouldn't you access auditing from a general market rather than have in effect a group of public servants taking the auditing role.'* (Participant 15)

As noted in the previous section, where the regulator sits has implications for what type of function it plays. Regulatory functions are generally not outsourced, so there are many unknowns with regard to this scenario (Braithwaite 2008).

As set out in the reports from the Productivity Commission and the later NQSF, the regulator would 'have the role of then taking action in regard to potential deregistration of providers' (Participant 15). Whether this remains as a regulator or stewardship role, however, was contested. The following quote explains how State governments (which oversaw disability services prior to the NDIS) supported the Commonwealth government playing a market stewardship role:

> *'That's one of the things that we're looking at, a really live issue about the regulator because there's a couple of States in particular who have been pushing quite hard for this regulator to actually have a market regulation role and not just a quality assurance type role.'* (Participant 15)

Some policymakers felt that the vision of the NDIS set out by the Productivity Commission was one of full market deregulation and, as such, this should remain the goal (though it may take time to achieve). Under this interpretation a stewardship role is not needed:

> *'Deregulation … That was a vision I think of the Productivity Commission, whether that becomes a reality we all hope it and think it. But that's my point earlier. There may be areas where thin markets, remote regional areas where you've got to have a different approach where you can't be totally deregulated. But it's definitely the vision for total deregulation. But you'd be progressively going there and I don't think you'd have full market deregulation for a good 10 years.'* (Participant 17)

> *'From where I sit, it appears to be people are happy for it to be organic at the moment, but with an eye to what are the levers and what could be done, and building from things that are already going on.'* (Participant 12)

Here, the ultimate goal is a fully de-regulated market but there is acknowledgement that government may need to play some, yet to be defined, role.

Other policymakers were clear that some degree of market stewardship, over and above a regulatory role, was necessary:

> *'With the market, there's certainly I think for governments, a market stewardship role and understanding and actually a monitoring role on what's going on in the market. And then there's a sort of support facilitation role in terms of across the board what investments could be made ... So I think it is sort of a market stewardship role then it's about thinking about what happens when there's market failure.'* (Participant 16)

This policymaker went on to say that the stewardship role had to be balanced with the type of compliance-driven approach seen in other Australian public sector markets (e.g. employment [Considine *et al.* 2011]):

> *'So one of the risks is they were worried that the NDIA was becoming just a big bureaucracy, and to me that meant that they were taking a bureaucratic process driven approach to things. And I think in my view, that's how the Job Network became a bit too much; report on this, collect this data, measure these.'* (Participant 16)

Hence, a market stewardship function ought to be balanced with the supposed gains of public sector markets to devolve government functions and make them more efficient and effective:

> *'It's an interesting question about the role of governments… There are recent reports from the Harper Review about the government's role in market stewardship and the Productivity Commission … that say that it's not up to governments to control the market and design the market and intervene in the market. But it's actually about understanding the policy settings and the incentives/disincentives and impacts that that has. And that can go from how heavy handed regulation is for example, and what the market impacts are [of that]. But also how any financial incentives play out.'* (Participant 16)

As earlier indicated, the Productivity Commission report on the NDIS did outline a role for government that includes some features that extended beyond market regulation, towards a market stewardship role.

In reports into the implementation of the NDIS, 'market levers' were identified as key design features in steering and managing the markets (KPMG 2014). When asked what these levers might be, under a stewardship role, views were mixed:

> *'The NDIA's main market lever is to be able to provide information to providers saying look, there's a market gap over here'* (Participant 12)

> *'[We] are thinking of it in terms of there's a thin market or there's market failure. [Like] the Northern Territory, chronic everything failure but market failure amongst them so what are you going to do about that? The [NDIA] will know about that because it's in the business of doing people's plans and trying to work out who's going to provide things. They'll know how well the market's working and how well it isn't. If it isn't working well then they can take action to, in effect, cultivate another provider or have to set up a provider of last resort or whatever it is that they're doing ... They might be able to approach a provider saying you're very successful in remote Western Australia have you thought for example about expanding over the border? We can help you explore opportunities potentially.'* (Participant 15)

> *'Well obviously the NDIA will be the presence on the ground in terms of being able to monitor and see what's there. They, I think, over time as part of their new technology; ICT platform will be able to send some signals to the market, like be able to kind of give a bit of an indication of need and demand so that if there are potential providers or players out there, they can kind of make some assessment of [the market]'* (Participant 8)

> *'And where the Commonwealth has some levers there around what's good information and analysis of workforce and workforce planning and employment trends and things like that we can certainly make available, the agency started putting out its market position statements which have been fantastic.'* (Participant 16)

Based on these responses, market stewardship may involve distributing information, monitoring market gaps or working closely with providers to support and guide them into areas where more services are needed. However, these were raised as hypothetical scenarios, suggesting concrete thinking regarding market stewardship is yet to emerge. There is also debate over who will have control of 'market levers': the NDIA, the regulator or the Federal government:

> *'Early on in the process whenever that was raised the NDIA went "nick off, we do market, we do market regulation, we'll take care of that", no need for another body who's going to duplicate those functions to do that. Then they seem to be in the process of shifting, just recently and they seem to be saying well maybe that's not a role for them, maybe all of that should actually be the role for a regulator.'* (Participant 16)

This shift in thinking may reflect the fact that the NDIA has seen a two-thirds reduction in staff (Bo'sher 2015; Fifield 2015), which is likely to limit its ability to monitor and steer the market. However, if market monitoring and steering is left to a market regulator it is unlikely they will engage in the same level of market stewardship either because it sits at odds with a regulation approach, they are outsourced, or sit at the Commonwealth level too far removed from local markets. As one participant noted, *'At one level you can talk about that nationally but there are different markets, of course, there's not one market there is lots of different ones'* (Participant 13). One national-level regulator (irrespective of its scope) may struggle to manage multiple and diverse local markets. Ultimately, how far along the continuum of market regulation versus market stewardship the government ends up in terms of the NDIS appeared to come down to *'the tolerance of governments for market risk'* (Participant 13).

## Discussion

Markets, and the use of choice and competition, in public service delivery rests on the assumption that these approaches are more efficient and effective than state-provided services and will lead to an increase in citizen welfare (LeGrand 2007; Ostrom and Ostrom 1971; Spicker 1994). However, research into public sector markets has highlighted uncertainty and ambiguity with regard to the role(s) governments should adopt. Gash *et al.* (2014: 5), for example, 'found repeated uncertainty about whose job it was to perform important market stewardship functions'. Our research supports these findings. Despite being three years into the implementation of a national market-based scheme and having commenced full roll out (from an initial set of seven trial sites), issues of market regulation and stewardship remain vexed. Despite the strong international trend towards the use of public sector markets, little is known about the degree to which governments should manage (or steward) markets and how. As noted at the outset of this article, the appetite for public sector markets currently outstrips the evidence base of their success in delivering quality services (Needham 2010).

In the case of the NDIS, ambiguity regarding what role government should take in managing markets appears to stem from concerns about undermining the vision of the NDIS set out by the Productivity Commission. Policymakers described this vision as a fully deregulated market. Yet, when we analyzed the Commission's report we find elements of what we might consider a stewardship role – addressing thin markets and providing ongoing block funding. Hence, the free market discourse is a powerful influence on implementation, even when mitigated or dampened in design.

What was less contested within out interviews was the need for government to either play or provide (through outsourcing) a regulatory role. A regulatory role, our research suggests, is where governments establish standards for providers through registration and may, to some degree, set the rules of the market through price setting. This is in distinct contrast to what we have called a stewardship role, where governments actively monitor the market for inequities and not just protect citizens from worst case scenarios (i.e. fraudulent providers) but steer and manage the market to ensure it is benefiting all citizens. Drawing on our analysis and the available literature, figure 1 delineates between a regulatory and market stewardship approach.

Uncertainty around market stewardship has significant implications for practice, as it is unclear who will be responsible for identifying and addressing emerging issues. Our data supports this ambiguity; the system for identifying and addressing emerging issues is currently informal and unfixed in the NDIS implementation; however, this will be more formalized when the proposed Quality and Safeguards Framework has been finalized. Research suggests that vulnerable citizens are less likely to reap the benefits of market-based service reforms (Anttonen 2012; Booltink *et al.* 2015; Botti and Iyengar 2006; Dan and Andrews 2016; Jilke 2015). Jilke (2015), for example, found that socio-economic position is a significant determinant of the quality of services citizens will receive and their ability to switch from unsatisfactory providers. This suggests that if government aims to prevent a rise in inequity, stewardship roles (as opposed to regulatory roles) are crucial. Arguably, as Needham (2010) suggests, at the core of government intervention in markets sits the question of the state/citizen contract. If this contract is to ensure the welfare of citizens

Figure 1

Regulation versus stewardship

| **Regulatory role** | **Stewardship role** |
|---|---|
| ***Role***:<br>• Establish standards for providers<br>• De/Registration of providers<br>• Passively encourage diffusion of best practice<br>• Set 'rules of the game' (e.g. prices) | ***Role***:<br>• Provide consumers with information about providers<br>• Monitor markets for inequities<br>• Steer markets (e.g. via seed funding)<br>• Supplement markets to address gaps<br>• Monitor service quality<br>• Actively encourage diffusion of best practice<br>• Set *and* adjust 'rules of the game' (e.g. prices) |
| ***Risks being managed***:<br>• Fraud<br>• Poor or damaging providers | ***Risks being managed***:<br>• Thin markets<br>• Market failure<br>• Poor care<br>• Inequity |

and protect against rising inequality, governments must ensure high quality services and proper choice and control for all citizens – requiring a more hands-on approach to public sector markets. Otherwise, the shift to personalization results in deregulated public sector markets and potentially a return to pre 1945 welfare state arrangements, couched in free market language and assurances (Anttonen and Sipila 2012; Needham 2010).

As Taylor-Gooby (1994; see also Thompson and Hoggett 1996) argued over two decades ago, we must balance the need to cater for diversity amongst citizens and an avoidance of paternalistic relationships with the state, with a full retreat from interventionist welfare statism. It has been argued that there is a trade-off between equity and efficiency (Amirkhanyan 2008; Lerner 1994; Stiglitz 2000) and this was certainly found to be a concern amongst our participants. However, it is important to note that this is not borne out in the evidence to date, suggesting it may be a false dichotomy (Dan and Andrews 2016, 2014). This would indicate that governments can engage in more stewardship type behaviour (to protect equity) without undermining the efficiency gains of markets. Arguably, discussions as to whether governments should undertake stewardship roles ought to pivot on questions of diversity, quality of care and the provision of choice to *all* citizens (Glasby *et al.* 2013; Needham 2010; Needham and Glasby 2015).

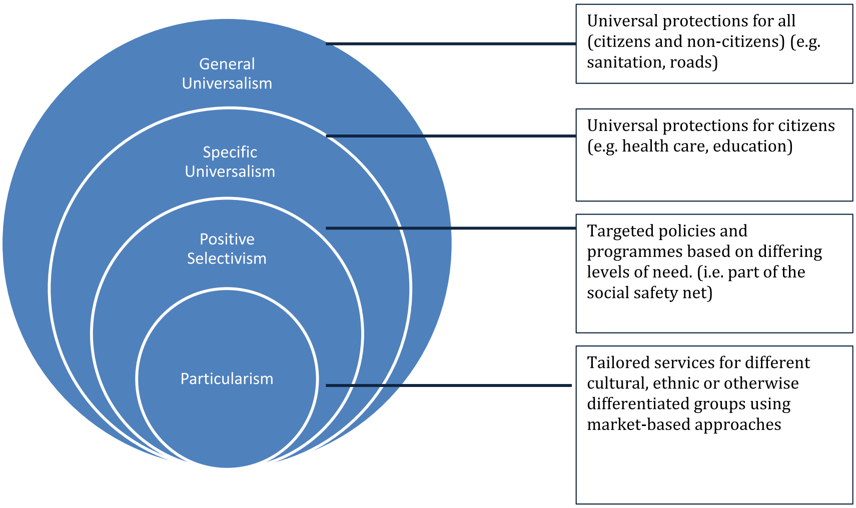
Markets have been positioned as the most effective way to breakdown power and the monolithic nature of public sector service provision, while enabling the expression and diversity of individual choice (Anttonen and Sipila 2012; LeGrand 2007; Spicker 1994). Figure 2 situates markets within broader welfare state structures. It is important to note that 'diversity' and 'choice' raise questions regarding choice for whom and on what basis. Research has shown that vulnerable people can still end up in tutelage relationships with the state within market approaches – unable to truly exercise choice and control (Booltink *et al.* 2015; Carey and Crammond 2014; Jilke 2015; Williams 1992). As figure 1 outlines, this is more likely to occur where governments take up regulatory roles, but shy away from market stewardship. As Williams (1992: 208) argues:

> Whilst it is important to acknowledge the varieties of ways in which identities are constituted, it is also important to recognize how far the *structured conditions of people's existence create these forms of diversity*. How far is consumer choice about the subjective expression of individual choice, or about the structured diversity of need? How far does diversity in welfare provision mirror the stratified society around it?

Market-based approaches to service provision are a form of 'particularist' support within the overall structure of the welfare state (Carey and Crammond 2014). Particularism aims to address differences between individuals on the basis of diversity of needs, moral frameworks and social expectations (Spicker 1994), through a non-institutional model (i.e. where the state does not make authoritative decisions on behalf of individuals). However, as noted above, particularism is often incompatible with equity.

Figure 2

A framework for ensuring equity in a pluralistic welfare state. [Colour figure can be viewed at wileyonlinelibrary.com]




*Source*: Adapted from Carey *et al.* 2015

Critics have argued that the emphasis on choice and pluralism risks subverting efforts to combat inequality and has the potential to promote exclusion (Spicker 1994; Taylor-Gooby 1994), 'Choice based models can create economic, social and racially stratified communities, because they depend on market-based approaches which, ultimately, produce winners and losers' (Carey and Crammond 2014: 4).

Carey *et al.* (2015) have argued that approaches underpinned by particularist principles need to be used sparingly and embedded within a strong social safety net. Figure 2, adapted from Carey *et al.* (2015), provides a framework for thinking about how to harness the benefits of markets (i.e. choice and empowerment) while still protecting against inequity. The framework outlines how plurality within welfare states can be aligned to guard against inequity and to uphold the social contract of Beveridge-style welfare state commitments. Within this proposed framework, this is achieved by maintaining a range of universal and targeted supports. In addition to this, we would suggest that the market-based parts of this system require careful stewardship as outlined above. By embedding markets within a strong welfare state framework, we can also ensure that 'buck-passing' does not occur where universal supports/services do weaken their own efforts to address and cater for, in this instance, disability (Glendinning *et al.* 2011). For the NDIS, this would mean that participants in disability service markets would have equity of choice in terms of specialist disability services, but also be ensured that mainstream services (health, education and so forth) continue to cater for people with disabilities.

In making these statements it is important that we acknowledge the limitations of this research. These interviews were conducted at a particular snapshot in time and as we have demonstrated in this article, issues in this space are changing and developing at pace. Further, in this project we only sought to speak to representatives of the Commonwealth government. This inevitably gives a partial perspective of issues and others, for example those in the NDIA, may have different opinions.

## Conclusion

Our research into the NDIS supports emerging research in the extent that there is a high degree of uncertainty regarding the responsibilities and roles governments should play in public sector markets. This is despite widespread international growth in the use of public sector markets – a growth which outstrips the current evidence base about actual gains and costs of service markets. Our research suggests that this ambiguity arises from a belief in the vision of a fully de-regulated disability service market, a fear of introducing rigidity into the market through government intervention and, in turn, undermining the supposed gains of public sector markets. We delineate market regulation and market stewardship – suggesting that these roles manage fundamentally different market shifts (though exist along a continuum). Where governments situate themselves on this continuum speaks to the type of social contract governments seek to form with their citizens. To honour post-1945 welfare state contracts but allow for the plurality of modern states, we argue that markets require careful stewardship to ensure alignment with other state-provided supports.

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## Notes

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1. It is worth noting that the Productivity Commission design documents suggested that the National Disability Insurance Agency play a much larger role in policy and implementation – operating more arm's length to government – than what has occurred in practice. This has been a major change which has occurred during implementation.
2. The Productivity Commission design documents recommended that responsibility for the NDIS sit with the Treasury. However, during implementation this shifted to the DSS on the basis of it having greater implementation experience (Carey *et al.* 2017, forthcoming).
3. The Commission's existence and remit for advice is protected by its own legislation (the Productivity Commissions Act 1998) and through the Chairperson, Deputy Chairperson and Commissioners, who are appointed by the Governor-General.
4. The National Disability Insurance Agency (NDIA) is the main implementation agency for the NDIS which is jointly governed by the Federal and State governments (Carey and Matthews 2017; NDIS 2014).

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