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Strange magic: what can the emergence of ‘magic concepts’ tell us about policy implementation?

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ABSTRACT

Pollitt and Hupe have identified the emergence of “magic concepts” in public administration and policy. These concepts are seductive but do not solve – and often render invisible – important policy challenges. In highlighting the role of magic concepts, Pollitt and Hupe demonstrate the importance of linguistic battles within the bureaucracies. In this paper we examine the emergence of magic concepts in the context of the Australian National Disability Insurance Scheme. We analyze semi-structured interviews with policymakers to elucidate their use of magic concepts – for example, the new NDIS regulatory body – for addressing implementation challenges in the NDIS. This paper examines implementation of the NDIS through the application of Pollitt and Hupe’s “magic concepts” to a context-specific case. We argue that paying attention to where magic concepts emerge is critical – they can alert us to areas that require further inquiry and where problems are emerging in governance, practice, and policy implementation.

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1. Introduction

“Never trust anything that can think for itself if you can’t see where it keeps its brain.”

JK Rowling, *Harry Potter and the Chamber of Secrets*

Language can give shape to the way that a public problem is perceived, and the solutions suggested for addressing it. Thus the study of language in public administration has strong foundations (Fairclough 2000; Pollitt and Hupe 2011; Fairclough 2013). We draw on these foundations in our examination of the language used to describe implementation challenges and potential regulatory solutions in the newly implemented Australian National Disability Insurance Scheme (NDIS).

This article uses the case of the Australian National Disability Insurance Scheme (NDIS) and the establishment of a new regulatory body for oversight of the scheme to explore the ways in which structural solutions are sought to complex problems.

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46 More specifically, we show that there is a tendency to pose “magic concepts” (i.e.
47 structural solutions) as a means by which to solve a range of governance and imple-
48 mentation issues. While it is increasingly recognized in the scholarly literature
49 that structural solutions to organizational performance and governance challenges
50 are often inadequate or problematic, they can still frequently be found in practice
51 (Carey et al. 2017).

52 We argue that the creation of the new NDIS regulator equates with Pollitt and
53 Hupe’s (2011) notion of a “magic concept”. Magic concepts in public administration
54 are: “very broad, normatively charged and lay claim to universal or near universal-
55 application” (Pollitt and Hupe, 2011 p.643). As concepts, they are defensible and allow
56 little room for opposition, but are simultaneously so vague that they do not necessarily
57 solve underlying problems. Magic concepts have rhetorical value in that they can
58 “facilitate new orientations and frameworks, initiate the launch of new research strat-
59 egies, stimulate campaigns for additional resources, enthuse staff, and assist a number
60 of other developments.” (Pollitt and Hupe 2011: p652). In this paper, we argue that
61 magic concepts can be deployed on context-specific levels to avoid tackling challenging
62 problems and further muddy already complex governance arrangements and policy
63 challenges (Pollitt and Hupe 2011). Where and when magic concepts are deployed can
64 give insight into the perennial problems that plague public administration, and identi-
65 fying them can help to support clarity in structural decision making.

66 Pollitt and Hupe (2011) outline four characteristics of a “magic concept” in public
67 administration:

- 69 1. Broadness: they are widely applicable, have a wide scope and high valency.
- 70 2. Normative attractiveness: overwhelmingly positive connotations, it is hard to
71 argue against them.
- 72 3. The implication of consensus: they obscure conflicting interests and logics.
- 73 4. Marketability: the concept is known and used by the practitioners and academics,
74 frequently appearing in communications material and referred to as solutions.

76 Other magic concepts identified in the literature include, “performance”,
77 “participation”, and “innovation”, all of which can be argued to meet the four criteria
78 above (Pollitt 2003; Kettl and Kelman 2007; Pollitt and Hupe 2011). Pollitt and Hupe
79 (2011) provide a closer examination of three other magic concepts which are widely
80 used in policy: “governance”, “accountability” and “networks”, Through an analysis of
81 the scholarly and grey literature they found that these terms are ubiquitous but
82 deployed in normative ways whereby they are presented as wholly positive, but pro-
83 vide little if any specific direction.

84 Pollitt and Hupe (2011) discuss magic concepts at a high level, identifying concepts
85 that are ubiquitous across all areas of public administration, however, the notion is
86 also useful on a context-specific scale to identify magic concepts within a given pro-
87 gram, reform or set of practices. We think that many practitioners will be able to
88 image such “magic concepts” within their own spheres of influence. Here, we have
89 used Pollitt and Hupe’s (2011) criteria to identify the use of a context-specific “magic
90 concept” within the context of the implementation of the Australian NDIS.

1.1 The Australian National Disability Insurance Scheme (NDIS)

The Australian National Disability Insurance Scheme (NDIS) is Australia's first large-scale national policy utilizing personalized budgets, passed into legislation in 2013 (Needham and Dickinson 2017). Under the NDIS, approximately 460,000 individuals who have a significant and permanent disability will receive personalized funding to pay for their care (Productivity Commission 2011). The scheme is due to be fully implemented across Australia by 2019 (Productivity Commission 2011; Collings, Dew and Dowse 2016).

The creation of the NDIS has involved a significant shift of responsibilities that have traditionally been the concern of state governments and territories, up to the Commonwealth level. This includes shifts in funding, safeguards, and regulatory protections for people with a disability and service providers (Productivity Commission 2011). Specifically, two new entities have been created as the key sites of governance and regulation for the NDIS. These are the National Disability Insurance Agency (NDIA) and a new regulatory body, which is yet to be given a name. The NDIA is charged with the implementation of the NDIS, including the creation and administration of funding packages to individuals, and market stewardship (Productivity Commission 2011; Carey, Dickinson, et al. 2017). The establishment of these bodies is part of a process of creating national consistency regarding the regulation and oversight of disability services, consistent with the shift from a state-based model to a federal model.

The new regulatory body that is being established for the NDIS is envisaged to play a wide range of oversight roles, taking over responsibilities from the states and standardizing these across jurisdictions (Commonwealth Department of Family and Community Services 2017). This regulatory body was not envisaged in the design of the NDIS, but rather emerged in response to the demand for greater regulation of the sector and a nationally consistent approach (Commonwealth Department of Family and Community Services 2017). At present, how this body will be structured, its precise roles and how they will be shared or demarcated with regard to the NDIA is under consideration.

Since its launch, the NDIS has been plagued by the implementation challenges (ANAO 2016; Carey, Kay, and Nevile 2017; Carey, Dickinson, et al. 2017). These have included significant IT issues, capacity issues with the NDIA and accountability concerns (ANAO 2016; Malbon 2017; Productivity Commission 2017b). The establishment of the regulator has been proposed in response to the implementation issues thus its examination offers insight into the implementation problems of the NDIS and their perceived solutions.

2. Methods

This paper draws on data from a longitudinal study of the implementation of the NDIS (author reference). The aim of the study is to examine the experiences of large-scale policy design and implementation in real time over a period of five years. The study utilizes a case study research design, enabling in-depth investigation (Yin 2014), across time. Semi-structured interviews ($N=32$) were conducted with key

136 policymakers in the Commonwealth government charged with the design and imple-
137 mentation of the NDIS working in the Department for Social Services (DSS).
138 Interviewees were responsible for designing and implementing the governance and
139 regulatory architectures for the NDIS. Participants were identified by the Deputy
140 Head of DSS on the basis of their role and expertise and were at the executive and
141 senior executive level. Interviews were semi-structured and featured a range of ques-
142 tions designed to explore experiences of policy design and implementation regarding
143 the NDIS. These included broad questions about implementation, governance, current
144 challenges the scheme is facing as well as more specific questions regarding the estab-
145 lishment roles and responsibilities of the new regulator, the roles, and responsibilities
146 of the NDIA, accountability mechanisms and market management.

147 Interviews were recorded and transcribed verbatim. We used Pollitt and Hupe's
148 (2011) framework to identify where magic concepts were being deployed within dis-
149 cussions of the NDIS's implementation. The framework identifies four characteristics
150 of magic concepts: broadness, normative attractiveness, the implication of consensus
151 and marketability. We would add to this frequency of use. Once the regulator
152 emerged as a potential magic concept we undertook purposive sampling to more
153 deeply analyze how it was being described and used. We found that participants dis-
154 cussed six overlapping functions that the new regulatory body would perform. These
155 coincided with the major implementation challenges presented to date by the scheme
156 (see ANAO 2016; Malbon 2017; Productivity Commission 2017b).
157
158

159 **3. Findings**

160 Our interviews with Commonwealth policymakers found the concept of “the regu-
161 lator” has come to be a “catch-all” for the problems that the NDIS is currently experi-
162 encing. For example, some of the roles that the NDIS regular has been said to take
163 responsibility for include: safeguards on the scheme workforce, market stewardship,
164 auditing, complaints, and provider registration. Some of these roles, such as safe-
165 guarding the workforce, are presented as the sole responsibility of the (currently non-
166 existent) regulator. Other roles appeared to be shared between the NDIA and the
167 regulator – such as “market stewardship”. The identification of the roles that the
168 NDIS regulator is said to solve provides insight into policymakers' representations of
169 major implementation challenges for the NDIS and highlights the lure of struc-
170 tural solutions.

171 In total eight overlapping roles for the new regulator were discussed, which are
172 explored in turn below.
173
174

175 **3.1. Ensuring workforce quality through worker screening**

176 One of the most important roles envisaged for the regulator is worker screening and
177 qualifications to protect against poor practices in the sector. There has been a great
178 deal of concern over responsibility and accountability surrounding the workers within
179 the NDIS scheme (Commonwealth Department of Family and Community Services
180 2017; Malbon 2017). As one policymaker explained:

181 Worker screening is a component of the overall regulatory picture. The states and
 182 territories will be responsible for that. For some of them it will be an extension of their
 183 existing, like working with vulnerable children, vulnerable people check in the A.C.T...
 184 And the regulator has a responsibility then to, I guess, essentially making a report in if
 185 there are concerns about workers... This is an industry where often the most
 186 vulnerable participants are supported in the most unseen private spaces, and their risk is
 higher. GP_30

187 For this participant, the introduction of the new regulator means that responsibil-
 188 ity for worker screening will be lifted from the states and brought under the
 189 Commonwealth. It is worth noting however that state-based schemes, such as work-
 190 ing with vulnerable people checks, will remain the responsibility of state governments
 191 (Commonwealth Department of Family and Community Services 2017). Hence
 192 coordination will continue to be needed between state governments and the new
 193 regulator. While the regulator may solve some issues regarding worker screening,
 194 greater complexity will persist in coordinating state and national practices, reducing
 195 the “magic” nature of the regulator.
 196

197 **3.2. Guard against risky providers and ensure provider standards**

199 Earlier experiments in marketization in Australia demonstrated the potential for
 200 “risky” providers to enter the market (Considine 1999). That is providers who seek
 201 profit at the expense of participants/consumers. In the care sector, the risks are high,
 202 as experienced within the aged care sector where breaches of human rights and death
 203 have occurred (Reynolds 2000). This participant envisaged the regulator’s role to
 204 extend from the individual employees through to the organizations in order to pre-
 205 vent these types of predatory behaviors:
 206

207 The bad thing happens. They drop the person, some terrible assault, whatever it is.
 208 Who’s accountable? So, if they’re employed by [an organisation] or whatever, then the
 209 government goes to [that organisation], and it goes, what the hell? Was the person
 210 supervised properly? Were they trained properly? What were your assurances around
 211 that? What went wrong? Was this just a completely random rogue individual? Or is
 212 something systemic happening with your organisation?... And we’ll hold the firm to
 213 the greater extent somehow accountable for what happened... The job of a regulator is
 to check whether that’s the case or not. GP_20

214 Similarly, the regulator was seen as necessary because of a lack of shared informa-
 215 tion between state governments about poor providers:

216 The States do not share at the moment, they do not share at all information about what
 217 they’re doing in relation to bad behavioural practice of any of the others. G_P26
 218

219 Finally, one policymaker envisaged the role of the regulator to extend as far as
 220 ensuring providers functioned effectively in the market: “the regulator’s responsibility
 221 is more around the individual providers and making sure they’re functioning
 222 effectively” (G_P32). These varied roles of the regulator rely on the normative notion
 223 that more regulation of the sector is an inherently good thing and will circumvent
 224 problems emerging in the Scheme from individual harms through to organizational
 225 functioning. Here the regulator has considerable marketability in relieving community
 concerns about the risks of the scheme.

3.3. Market stewardship

Responsibility for market stewardship has been an area of growing concern regarding the NDIS (Carey, Dickinson, et al. 2017; Productivity Commission 2017b). As noted in a recent report by the Australian Productivity Commission (a premier policy advice body):

To date, market stewards have not given market supply issues sufficient and timely attention. This may be partly due to ambiguity about who is responsible for market development, what market stewardship entails, why it is needed, and lack of capacity or impartiality of governments to undertake market stewardship functions. As such, ‘the system for identifying and addressing emerging issues is currently informal and unfixed in the NDIS implementation. (Productivity Commission 2017b, p.394)

Market stewardship involves protection against market gaps and thin markets through monitoring, steering, supplementation, and active diffusion of the best practice (Gash 2014; Carey, Dickinson, et al. 2017). Policymakers identified three different aspects of market stewardship the regulator would, or could, be involved in. At the broadest level, policymakers felt that the regulator has an important role in market stewardship: “the response to a lot of the things in the market will be what powers are available and their appropriate application by the regulator” G_P20. Moreover, that these would need to be carried out in coordination with the NDIA and could also extend to financial reporting by providers in the market:

So, the functioning of the market is clearly a role for the regulator. I’m not even going to go into the detail, because it is what it is. It’s also clearly a role for the NDIA who have an important stewardship role around doing that signalling of where there are gaps or opportunities, or spaces to fill. G_P30

The regulator will, I call it almost prudential oversight. So, there is a large provider here, and you’re getting consistent complaints about quality. That indicates that provider may actually have some financial difficulties. So, I see the regulator having that role of, prudential oversight sounds too draconian, but they’re going to have the market intelligence about where there is an oversupply of providers, where there is behaviour that is resulting in poor quality outcomes. Again, that’s an exchange with the NDIA. G_P31.

As we will explore later in this paper, this proposed structure presents a major coordination issue for shared governance over the NDIS between the NDIA, the regulator, and Commonwealth government.

As implementation has progressed there has been growing concern over the risk of “thin markets” and market gaps, where an undersupply of service providers persists. Guarding against thin markets is increasingly seen as a major part of the market stewardship function of government (Carey, Dickinson, et al. 2017; Productivity Commission 2017b). Policymakers suggested the regulator would also play a role in identifying non-robust markets:

keeping a very close eye where we know we have potential for market failure, and making sure that there’s a level of robustness around the oversight there that doesn’t hinder organisations, but encourages. When we’ve got those situations, which we will have, particularly in rural and remote regions where choice is very limited, that those

271 services are doing the best they can. And striving to do better. Rather than potentially
272 being a monopoly in the market. G_P20

273 One of its roles is to look at the market, and try and look at risks and when you've got
274 a thin market or a failed market G_P26

275 Part of this role included providing advice on price setting, which is currently car-
276 ried out by the scheme actuaries (without input from the Commonwealth) (Walsh
277 and Johnson 2013; Treasury 2014): "the regulator will be signaling participants as
278 consumers in the market will send providers. And about the regulator's role in really
279 amplifying that. Both from an individual practice level, and I think that will come up
280 particularly in the complaints space". G_P25

281 The need for government to act as a "provider of last resort" in the case of thin
282 markets or market gaps has been raised in two recent Productivity Commission
283 reports (Productivity Commission 2017a; 2017b). The Commission noted that "While
284 the NDIA typically does not supply any supports ... it has been suggested that, as the
285 scheme scales up, the NDIA might need to act as a provider of last resort for com-
286 munities where the market is thin." (Productivity Commission 2017a, p.19). In our
287 interviews, policymakers suggested the regulator could determine when the NDIA or
288 government needed to step in as a provider of last resort:

289 The regulator will have information that will be kind of canary in the coal mine. Things
290 look like they might be about to go badly. And I think particularly in those concepts
291 around provider of last resort. G_P30

292 one of the things it would worry about is the extent to which there are actually
293 solutions in place, such as provider of last resort G_P26

294 Here the regulator is being deployed as a magic concept to the problem of pro-
295 viders of last resort. In particular, it is obscuring logics regarding how government
296 should deal with market failure through market stewardship. By placing these con-
297 cerns on a yet-to-be-established regulator, capacity development for the highly vexed
298 issue of market stewardship in the NDIA could be sidestepped.

302 **3.4. Complaints**

303 There has been a great deal of public scrutiny over the handling of participant com-
304 plaint functions within the NDIS (Morton 2017). In part this has stemmed from cap-
305 acity issues within the NDIA and the fact that, at present, the NDIA is both
306 implementing the scheme and handling complaints from participants (often about the
307 NDIA itself) (ANAO 2016). Handling complaints was the most commented on role
308 for the regulator:

309 The regulators role... will be strongly around those complaints, serious
310 incidents. G_P30

311 [The regulator] specialises in quality audits and complaints. G_P20

312 Run the complaints, the critical incidents, the registration function and the restrictive
313 practices kind of functions. G_P28

316 Regulator, when they come on-board, will also have some market insights because they'll
317 be the register of providers and they will also be getting complaints etc. G_P13

318 As noted by the last quote, the complaint function is also viewed as giving the
319 regulator market information that would support the market stewardship functions.
320 However, the more crucial function for the NDIS regulator to play in the handling of
321 complaints is to enforce the Quality and Safeguards framework (Commonwealth
322 Department of Social Services 2015) that protects against abuses within the disability
323 care system. Here, the regulator is being deployed to solve pressing market steward-
324 ship problems over and above more straightforward regulatory roles.
325

326 **3.5. Registration of providers**

327 All providers who want to enter the marketplace for the NDIS need to be registered
328 and comply with quality and safeguarding registration standards (Commonwealth
329 Department of Family and Community Services 2017). The other commonly dis-
330 cussed and fairly straightforward responsibility for the regulator was registration of
331 providers, which is currently done by the NDIA:
332

333 The arrangements that are in place now between the states and territories around the
334 NDIA and the registration will change dramatically because what we envisage is that
335 the regulator will have, will be operating all of that registration function. Rather than at
336 the moment it's a bit the states, it's a bit the NDIA G_P28
337

338 The regulator will take responsibilities from the states and territories, but also from
339 the NDIA in terms of that just very administrative job of signing a provider up. But
340 states and territories still have responsibility under the framework. So it's not a just
341 hand it over and go. It needs to continue to be quite a collaborative model, going
342 forward. G_P30

343 The registration of providers is a very procedural and administrative based task,
344 and assigning such a role to the NDIS regulator frames the regulator as taking up
345 some burden of administration from the NDIA and states and territory governments.
346 This is in contrast to the framing of the role of the regulator as providing market
347 stewardship, where we can see it is more clearly deployed as a magic concept to alle-
348 viate concern over major implementation challenges.
349

350 **3.6. Guarding against "disorderly exit"**

351 A key policymaker working on the formation of the regulator discussed the notion of
352 preventing disorderly exit from the market. Preventing disorderly exit refers to ensur-
353 ing that providers exiting the market (for a range of reasons) do not leave market
354 gaps or problems in their wake (Fisher 2016). This could involve the regulator ensur-
355 ing organizations have market exit plans for organisations above a certain size.
356

357 Disorderly exit. So, a provider disorderly exiting for a whole range of reasons, it will be
358 the regulator that sees that starting to happen. G_P30
359

360 While the regulator would be unable to monitor all organizations, nor would all
departures from the market leave substantive gaps, it was suggested that they would

361 have a role to play in certain situations. Particularly when a provider is of a certain
 362 size or the only type in a particular locality: “not all providers present a risk to partic-
 363 ipants of a disorderly exit. ... So we’ve got to get that balance right.” G_P30. Here
 364 we can see the regulator being applied again solve market issues, in this case, to
 365 guard against market gaps.

367 **4. NDIA as co-regulator**

368 Our participants were aware that many of the functions identified above by the poli-
 369 cymakers for the regulator need to be done in conjunction with the main implemen-
 370 tation agency for the NDIS, the National Disability Insurance Agency or NDIA.
 371 However, coordinating and sharing roles across the agencies presents boundary and
 372 coordination issues (Keast and Brown 2006), further suggesting the regulator is being
 373 used as a magic concept. Roles that were said to be shared between the two agencies
 374 included market stewardship and ensuring participants can exercise choice:
 375

376 Making sure that participants are active consumers – that’s really a very strongly shared
 377 role, because the regulator won’t have that much touch, except on interacting with
 378 participants, except where things are not going well in a kind of complaints, serious
 379 incidents way. Whereas the NDIA; that’s their bread and butter. G_P30
 380

381 The NDIA has a strong market stewardship role in being able to send signals to the
 382 market about where there are gaps or opportunities or those kind of things. And the
 383 regulator’s responsibility is more around the individual providers and making sure
 384 they’re functioning effectively. G_P31

385 As we move into a world where you’ve got six or seven or eight providers, and one’s
 386 doing yoga and one’s doing trumpet lessons, and one’s doing personal support, the
 387 ability to say “no, it’s a provider’s responsibility to deliver some quality of life outcomes”
 388 starts to become a lot less of a robust concept. So it most definitely is a shared
 389 responsibility, and I don’t want to be suggesting that the regulator has no interest in
 390 these things. However, there’s a mechanism that’s around the planning process. NDIA
 391 lacks their interaction in that. There’s a mechanism that’s around ensuring that
 392 providers are meeting a certain performance standard, and that will be clearly the
 393 regulators. G_P26

394 Precisely how market stewardship will be carried out or participant choice sup-
 395 ported in the NDIA is still to be determined (Productivity Commission 2017a).
 396 Sharing these roles across two new agencies – the NDIA and the regulator – espe-
 397 cially when the NDIA has been identified as having major capacity issues, is likely to
 398 add to confusion and complexity around these activities. In particular, there would
 399 need to be shared data and market monitoring activities:

400 So, no one party owns all the market oversight but predominantly, the Agency [NDIA]
 401 will have an ongoing role because they’ll know, it will be their data that says “Our
 402 support has been provided in particular localities... these are particular supports that
 403 can’t be offered.” But the Regulator will also be looking for trends in relation to the
 404 registration, complaints processes and may need to provide feedback back to the Agency
 405 like are there terms of business, for example, leading to providers doing some things
 that might not be appropriate in that space G_P21

406 However, at present, the NDIS Act (2013) does not permit the NDIA to share data
407 with other agencies (Carey et al. 2018). For these functions to be shared, an amend-
408 ment to the NDIS Act (2013) would be needed. Hence, coordination between these
409 two new agencies is likely to present a range of new challenges to policymakers.
410 Rather than solving the issues within the main implementation agency, the concept
411 of the regulator was used to sidestep addressing known challenges. The problem of
412 market stewardship faced by the NDIA could be shifted to the regulator or
413 “magically” solved, even though in reality a highly complex networked governance
414 arrangement would have to be negotiated between the two agencies. Further, without
415 legislative change, the NDIA would be under no obligation to share the data that the
416 regulator would need to make accurate assessments about market stewardship.
417

418 5. Discussion

419 As noted at the outset of this paper, the NDIS has experienced a range of high profile
420 implementation issues. In response to these issues and part of the overall develop-
421 ment of the scheme, policymakers have proposed the establishment of a new regula-
422 tor to take on a host of responsibilities relating to the scheme.
423

424 The sheer range of roles identified by policymakers through our interviews sug-
425 gests that the regulator has become a “magic concept” by which to “solve” a host of
426 implementation issues which are less straightforward functions for any regulator to
427 undertake. In particular, these relate to market stewardship functions (monitoring
428 and acting on thin markets or market gaps), decisions regarding where the govern-
429 ment needs to step in as a provider of last resort, and supporting robust choice and
430 control for scheme participants. There was broad agreement that the NDIS regulator
431 will handle complaints from scheme participants and the registration of providers,
432 perhaps because the complaint function in particular has received significant media
433 attention and public scrutiny and is currently seen as a key implementation challenge
434 (Morton 2017).
435

436 The establishment of an NDIS regulatory body within the context of the NDIS
437 implementation meets, on a context-specific scale, Pollitt and Hupe’s (2011) four cri-
438 teria for magic concepts outlined in the introduction. In Table 1 we map the NDIS
439 regulator against the criteria for a magic concept and include questions practitioners
440 can ask in order to identify magic concepts.

441 We have demonstrated the way that Pollitt and Hupe’s (2011) criteria of magic
442 concepts can be applied on a context-specific scale to identify “magical” structural
443 solutions. In addition, we argue that the way in which the concept of the NDIS regu-
444 lator was deployed as a “fix all” by participants supports the claim that bureaucrats
445 may look to establish new bodies and other structural solutions to solve difficult
446 problems, rather than attempting to fix problems in existing agencies (Howlett and
447 Rayner 2013). Rearranging the boundaries of public sector organizations is a well-
448 rehearsed practice in public administration (Alford and O’Flynn 2012), but a ten-
449 dency to turn to structural solutions before attempting other possible solutions should
450 be avoided (Carey, Buick, et al. 2017).

Table 1: Identifying magic concepts.

Criteria	Questions	NDIS case study
Breadth	Does the concept cover huge domains, have multiple, overlapping domains or connect with many problems?	The range of possible roles for the regulator is noticeably broad and wide in scope, including: worker screening, provider quality and safeguards, complaints handling, market oversight, monitor thing markets, decisions about providers of last resort, registration of providers; supposedly addressing many current implementation challenges experienced by the scheme
Normative attractiveness	Is the concept hard to argue against because of its perceived progressive values?	No participants were arguing <i>against</i> the instigation regulator or suggesting that the NDIA capacity should be increased instead of putting resources into the new regulator solution Regulation is difficult to argue against, especially in the context of vulnerable populations and a scheme that is already experiencing implementation challenges
Implication of consensus	Does the concept dilute or deny conflicting interests, logics or arguments about the best solution to the context-specific problem?	All participants spoke with confidence about the role of the regulator, without details about how it would fulfil such a wide range of roles
Marketability	Is the concept known and used by many practitioners and feature in new policy documents, titles and new units within the context?	The NDIS regulator has marketability providing a narrative of a potential 'fix' for the many implementation challenges faced by the NDIS

Magic concepts rarely offer “reconciliation” of the problems that they are presented as addressing (Pollitt and Hupe 2011). In this sense, the NDIS regulator as a magic concept is slightly different to Pollitt and Hupe’s original notion of a magic concept. The NDIS regulator, in the early stages of its conception, has been applied as though it is a magic concept, but at some point in the future the bureaucracy will pin down and define exactly what functions the NDIS regulator will and will not serve. At that point, the NDIS regulator will no longer be able to be used as a magic concept within the NDIS because its breadth, ubiquity, and applicability will be limited. It is uncertain what the final responsibilities of the regulator will be, but its remit is unlikely to provide solutions to all the problems that policymakers in our study have ascribed to it. Moreover, the fact that most of the identified roles need to be carried out in a coordinated fashion with the NDIA suggests that the establishment of the regulator will increase the complexity of governance arrangements for the scheme. Issues not solved by the NDIS regulator will remain as implementation challenges that must be addressed at some point by the bureaucracy. We argue that policymakers in the NDIS are looking to a “magic concept” to solve these problems rather than having a clear understanding of the roles and responsibilities of existing government agencies to manage those problems.

Many of the roles outlined for the new NDIS regulator originally sat solely with the NDIA, as outlined by the Productivity Commission blueprint (Productivity Commission 2011). However, as noted throughout this paper, major concerns have been raised about the capacity of the NDIA to deliver on its existing duties

496 (ANAO 2016; Productivity Commission 2017b). Rather than address these capacity
497 issues, a new entity has been proposed in the form of the NDIS regulator.

498 Overall, our analysis suggests that it is important to pay attention to where magic
499 concepts emerge during policy implementation to alert us to problem areas. As
500 alluded to in the opening quote, it is risky to trust something when you cannot see
501 “where it keeps its brain” or, in other words, it is risky to trust something when the
502 details and intricacies of its functioning are not understood. NDIS bureaucrats would
503 be wise not to trust that the instigation of the NDIS regulator will provide solutions
504 to all the problems that they hope it will address. As Pollitt and Hupe (2011 p.654)
505 argue practitioners “should not be seduced into thinking that these apparently unop-
506 posable ideas actually solve previous dilemmas or resolve awkward trade-offs”. Given
507 the NDIA will need to act as a co-regulator, and undertake many roles in conjunction
508 with the new NDIS regulatory body, the capacity issues of the NDIA are likely to pre-
509 sent on-going problems even after the NDIS regulator is established.
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512 **6. Conclusions**

513 Using interviews with policymakers, we identified the use of the new NDIS regulator
514 as a context-specific “magic concept” (Pollitt and Hupe’s, 2011) used to manage
515 expectations about the way that the Australian government will solve the implementa-
516 tion problems faced by the NDIS. We argue that when we find magic concepts in use
517 we are likely to uncover problems and tensions which are being glossed over. As
518 Pollitt and Hupe (2011 p.654) suggest, these magic concepts do not provide detailed
519 recipes for action or solution: “Magic” is entertaining. It excites discussion, but when
520 the show is over many hard choices remain”. This means that while the identification
521 of magic concepts can help us find gaps in problem-solving strategies, the concepts
522 themselves should rarely be utilized as solutions.
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