

Heads of Agreement between the Commonwealth and the Victorian Governments on the National Disability Insurance Scheme

This Agreement is made BETWEEN the COMMONWEALTH OF AUSTRALIA (Commonwealth) and the STATE OF VICTORIA (Victoria)

Preliminaries

1. This agreement between the Commonwealth and Victorian Governments outlines the process and commitments to establish the full National Disability Insurance Scheme (NDIS) in Victoria.
2. The NDIS will deliver better outcomes for people with a disability, their families and carers, by taking a fairer, more sustainable and equitable approach to supporting people with disability.
3. The arrangements in this Heads of Agreement will commence in Victoria in 2016-17, building on the launch commencing from July 2013. Victoria will remain on funding arrangements consistent with the Bilateral Agreement for NDIS launch between the Commonwealth and Victoria until 30 June 2019.
4. The NDIS in Victoria will:
 - a. provide all eligible Victorian residents with access to an insurance based scheme that guarantees lifetime coverage for participants for the cost of reasonable and necessary care and support;
 - b. provide people with disability the choice and control over their disability supports; and
 - c. guarantee a sustainable funding model for the provision of disability supports into the future.
5. People with disability will continue to have access to mainstream services provided by the Commonwealth and Victoria.

6. The full NDIS in Victoria will build on the lessons learned from the NDIS Launch, including through the NDIS performance framework, the NDIS launch evaluation, reviews of the *National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act 2013)*, rules and operational guidelines, and the Intergovernmental Agreement for NDIS Launch (IGA for NDIS Launch), in relation to participant outcomes and experience, service interventions, service delivery models (including early intervention, decision support and local area coordination), the development of an effective market for disability services, the interface between the NDIS and other services, scheme administration, implementation strategies, costs and liabilities.

Key Elements of a full NDIS in Victoria

Governance

7. Subject to the outcomes of the reviews of the NDIS legislation and IGA for NDIS Launch, the arrangements for the NDIS launch will continue for the full scheme in Victoria. The NDIS has been established under the *NDIS Act 2013* and will be overseen by the Standing Council on Disability Reform (Standing Council).
8. Victoria and the Commonwealth support the scheme being administered by DisabilityCare Australia (the Agency), the agency established to run the NDIS. The Agency will hold all funds in a single pool, manage scheme funds, administer access to the scheme and approve the payment of individualised support packages.
9. Arrangements for financial reporting will be consistent with paragraphs 66 – 69 of the IGA for NDIS Launch.
10. A reserve will be developed and funds invested to enable the Board of the Agency to manage its costs and liabilities from year to year.
11. The Standing Council is to be the decision maker on all NDIS policy issues (consistent with legislative changes of a kind referred to paragraph 77 of the IGA for NDIS Launch) Agency Board appointments and Agency Advisory Council appointments. COAG is to be the decision maker in relation to scheme costs and implications for mainstream services.
12. Consistent with paragraph 110 of the IGA for NDIS Launch, changes to the *NDIS Act 2013*, that impact upon the current or future costs of the scheme or policy (including rights and scheme outcomes for participants) for the scheme or matters that have implications for State laws or services will be agreed by the Commonwealth and launch jurisdictions based on the principles of fiscal impact and policy complexity that apply to the voting arrangements and categories for amending the rules.

13. Victoria and the Commonwealth will continue to work together, consulting with the Agency, to settle design and operational matters, as well as legislation for the full scheme, including interoperability with Victorian laws.

A National Approach to Funding the NDIS

Transition years 2016-17, 2017-18 and 2018-19

14. In 2016-17, 2017-18 and 2018-19, Victoria will be in transition to full scheme. For this period Victoria will contribute 59.4 per cent of care and support package costs for an agreed number of eligible participants each year. The Commonwealth will contribute the remaining 40.6 per cent for care and support package costs. Victoria and the Commonwealth will agree the number of eligible participants and total funding by Victoria by 1 July 2015.

15. The Commonwealth and Victoria agree to implement changes to the roles and responsibilities of the Victorian and Commonwealth governments for people aged over and under 65, consistent with the roles and responsibilities of other state governments (except Western Australia) as set out in Schedule F of the National Health Reform Agreement 2011, amended to reflect any changes required by the introduction of the NDIS. Once these arrangements have been finalised, the Commonwealth will fund 100 per cent of supports for non-Indigenous participants who turn 65, and Indigenous participants who turn 50, and choose to remain in the scheme from 1 July 2015. The Commonwealth and Victoria will work together to retain the benefits of Victoria's current Home and Community Care service system.

Full Scheme 2019-20 onwards

16. From 2019-20, Victoria will contribute \$2.51 billion in cash and in-kind services, subject to the process outlined in paragraph 21.¹ If the in-kind contribution committed by New South Wales under the NSW Heads of Agreement is less than \$441 million in 2018-19, the Victorian funding contribution will be reduced by a proportionate amount.
17. The Commonwealth will contribute a premium on behalf of each citizen of the Victoria to DisabilityCare Australia. For Victoria, this premium will be around \$2.6 billion in 2019-20, depending on actual scheme costs. Subject to paragraph 15 above, the Commonwealth will cover the full cost of people who turn 65 and Indigenous participants who turn 50 and choose to remain in the scheme. The actual amount spent by DisabilityCare Australia in each jurisdiction will depend on the number of participants and the actual cost of the scheme in that jurisdiction.

¹ This figure is derived from the equivalent Victoria contribution compared to the 2018-19 NSW contribution in the Heads of Agreement between the Commonwealth and NSW Governments on the NDIS (\$2.425 billion) escalated by 3.5%. In the event COAG agrees to revise the escalation parameters based on the advice of the Productivity Commission review referred to in paragraph 28, this contribution will be revised to be consistent with COAG final agreed escalation parameters.

18. Victoria will retain full policy and administrative responsibility for in-kind services. Arrangements to access in-kind services will be agreed with the Agency.
19. The Commonwealth and Victoria will respectively determine by 1 July 2018 the composition of their in-kind services and this will reflect the final NDIS design agreed by the Council of Australian Governments (COAG).
20. The in-kind services contributed by a party will not be cashed out unless that respective party determines to do so at a later date.
21. The capped, fixed contribution from Victoria of \$2.51 billion will be escalated at a rate agreed by COAG following a review by the Productivity Commission (PC) in 2017 or at 3.5 per cent from 2019-20 (based on the following escalation parameters: CPI, wages policy (midpoint of the long term CPI target Reserve Bank of Australia range (2.5 per cent) and the total population growth (ABS data)), subject to paragraph 31.
22. The total contribution from the States and Territories will be reallocated in 2023 and every five years thereafter following the publication of the Census data in line with each states' share of the total national population. The Victorian contribution will be recalculated accordingly.²
23. Victorian funding will pay for participant supports:
 - a. individualised support packages for scheme participants; and
 - b. local area coordinators and other general supports as described by section 13(2) of the *NDIS Act 2013*.
24. The amount to be allocated to Victoria from the DisabilityCare Australia Fund in 2019-20 (the first full year of the scheme in Victoria) is \$244 million, indexed at 3.5 per cent in subsequent years.
25. The Commonwealth will provide funding for all additional costs for participant supports and administration of the scheme as follows:
 - a. individualised support packages for scheme participants;
 - b. local area coordinators and other general supports as described by section 13(2) of the *NDIS Act 2013*; and
 - c. all administration costs for the Agency.

² Following the Commonwealth Grants Commission Methodology Review referred to in paragraph 26, jurisdictions may agree that the total contributions from States and Territories will also be reallocated in line with each state's share of the total national population in 2018-19 following the release of the 2016 Census, if that simplifies the GST redistribution implications of the NDIS.

26. Victoria and the Commonwealth agree that the Commonwealth Grants Commission Methodology Review, agreed by the Standing Council on Federal Financial Relations (SCFFR) on 3 April 2013, should:
- a. determine the most appropriate treatment of disability services in the period during the transition to the NDIS as well as the treatment once the full scheme is operating nationally, with examination of full scheme treatment to address the issues of:
 - i. if, and when, backcasting would be applied; and
 - ii. the implications of the proposed full scheme funding model in which states contributions are set to equal per capita every five years; and
 - b. give priority to determining the appropriate treatment of the NDIS to allow SCFFR to consider the issue at the time the draft report is received.
27. Victoria and the Commonwealth agree that the Agency may keep any underspends that accrue on a yearly basis (to a maximum cap to be agreed between the Commonwealth and Victoria) so that DisabilityCare Australia is able to manage its costs and liabilities from year to year including through the creation of a reserve as described in paragraph 10.

Risk

28. The Commonwealth will fund 100 per cent of the risk of any increase in costs associated with higher participant numbers and/or higher average per person care and support costs, and 100 per cent of DisabilityCare Australia's cash flow risk, during the launch and transition period.
29. The Commonwealth will assume 100 per cent of the risk as described in paragraph 28 for full scheme in Victoria from 1 July 2019 subject to the review of scheme costs by the PC in 2017, as set out in paragraph 31, noting the Commonwealth is always committed to assuming a minimum of 75 per cent of risk and Victoria is committed to assuming a maximum 25 per cent risk for participant supports as set out in paragraph 22 (except for the risk in changes to escalation parameters, as set out in paragraphs 31 to 33).
30. Victoria and the Commonwealth agree to costs being managed to reduce risk.
31. In July 2017, the Standing Council will set out terms of reference for a PC independent review of scheme costs prior to the commencement for the full scheme in Victoria for COAG consideration. The PC will report no later than 31 December 2017. The review will examine the sustainability of scheme costs, jurisdictional capacity, cost pressures (including wage pressures), changes in the agreed escalation parameters, if efficiencies have been achieved within the scheme and whether there has been any impact on

mainstream services. The review will also examine the most appropriate levers to manage any potential cost overruns.

32. In the event COAG agrees to revise the escalation parameters based on the advice of the PC review, Victoria and the Commonwealth will revise their escalation parameters to the COAG final agreed escalation parameters. If COAG agrees to revise the risk sharing arrangements, then Victoria and the Commonwealth agree to revise those arrangements to reflect COAG's decision consistent with the parameters described in paragraph 29.
33. The Standing Council will commission a similar independent review of scheme costs, escalation parameters and the Agency's operational costs in 2023 and every five years thereafter, for COAG consideration. Should COAG agree to revise the escalation parameters or risk sharing arrangements, as a result of these reviews, Victoria and the Commonwealth will revise their escalation parameters or risk sharing arrangements, as agreed by COAG.

Conditions

34. In the event that not all States and Territories sign up to the full NDIS, the Commonwealth agrees that Victoria will not be disadvantaged.
35. The Commonwealth agrees Victoria will not be any worse off from any subsequent agreement with any other State or Territory. The Commonwealth agrees that Victoria will be extended any benefit that is part of a NDIS full scheme agreement between the Commonwealth and any other jurisdiction.
36. Following commencement of the full NDIS, the Victorian Government will no longer fund specialist disability services or basic community care services to those people whose needs are intended to be met by the NDIS. The Victorian Government will, however, continue to provide basic community care services to meet support needs not intended to be met by the NDIS.
37. The Commonwealth agrees that the first offer of employment for DisabilityCare Australia should be to appropriately skilled existing Victorian Government staff working on programs within the scope of the NDIS.

Victorian arrangements for lifetime care and support for people who are catastrophically injured

38. Victorian arrangements for people injured in motor vehicle accidents or work place accidents are agreed by the parties to satisfy the nationally-consistent minimum

benchmarks to provide no-fault lifetime care and support for people who are catastrophically injured in motor or vehicle accidents or work place accidents in Victoria, unless the minimum standards are amended by agreement through the SCFFR.

39. Victoria commits to retaining its current arrangements for managing risk for the treatment of medical treatment injury caused by fault in its public hospitals. Victoria and the Commonwealth will continue negotiations, through SCFFR, on no fault medical injury coverage.
40. When the full scheme commences, jurisdictions without equivalent motor vehicle and workplace schemes will be responsible for 100 per cent of the costs of their citizens and visitors who enter the NDIS due to disability caused by relevant accidents within their jurisdiction.

Signed for and on behalf of the Commonwealth of Australia by

Signed for and on behalf of the State of Victoria by

The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia

The Hon Dr Denis Napthine MLA
Premier of Victoria

4 May 2013

4 May 2013



Australian Government

