

# Heads of Agreement between the Commonwealth and the Australian Capital Territory Governments on the National Disability Insurance Scheme

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*This Agreement is made BETWEEN the COMMONWEALTH OF AUSTRALIA (Commonwealth) and the AUSTRALIAN CAPITAL TERRITORY (ACT)*

## **Preliminaries**

1. This agreement between the Commonwealth and the ACT Governments outlines the processes and commitments to establish the full National Disability Insurance Scheme (NDIS) in the ACT.
2. The NDIS will deliver better outcomes for people with a disability and 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 the ACT in 2017-18, building on the launch commencing from July 2014. The ACT will remain on funding arrangements consistent with the Bilateral Agreement for NDIS launch between the Commonwealth and the ACT until the end of 2018-19.
4. The NDIS in the ACT will:
  - a. provide all eligible ACT residents with access to a scheme based on insurance principles that guarantees lifetime coverage for participants for the costs of reasonable and necessary care and support;
  - b. provide people with disability the choice and control over their disability supports, including specialist, mainstream and community supports; and
  - c. guarantee a sustainable funding model for the provision of disability supports into the future.
5. People with a disability will continue to have access to mainstream services provided by the Commonwealth and the ACT.

6. The full NDIS in the ACT will build on the lessons from the launch in relation to costs, liabilities, service interventions, service delivery models including decision-support and local area coordination and implementation strategies.

## **Key Elements of a National Scheme**

### **Governance**

7. The arrangements for the NDIS launch will continue for the full scheme in the ACT. The NDIS has been established under Commonwealth legislation, and will be overseen by the Standing Council on Disability Reform (the Standing Council).
8. The Parties 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. The Board of the Agency will be able to manage its costs and liabilities from year to year including through the development of a reserve and investment of funds.
10. The Standing Council is to be the decision-maker on all NDIS policy issues, Agency Board appointments and Agency Advisory Council appointments.
11. The model allows administrative simplicity, provides clarity for scheme participants, and portability of arrangements between participating jurisdictions.
12. The parties will continue to work together, consulting with DisabilityCare Australia, to settle design and operational matters.

## **A National Approach to Funding the NDIS**

### **ACT and Commonwealth contributions to the Scheme**

#### **Transition –2017-18 and 2018-19**

13. In 2017 and 2018, the ACT will be in transition to full scheme. For this period, the ACT will contribute \$130 million in 2017-18 and \$137 million in 2018-19. This represents 59.4 per cent of package costs for up to 5126 eligible participants in 2017-18 and 5,177 participants in 2018-19. The Commonwealth will contribute \$89 million in 2017-18 and \$93 million in 2018-19, representing the balance of package costs for the agreed number of participants, in addition to funding 100 per cent of package costs for people who turn 65 and choose to remain in the scheme and administration costs.

14. From 1 July 2016 all residents in the ACT who meet the eligibility criteria under the *National Disability Insurance Scheme Act 2013* will have access to the scheme.
15. ACT government providers of disability services will be included in sector development programs in line with the agreed national framework.

### Full scheme

16. From 2019-20 the ACT will contribute \$167 million in cash and in-kind services, subject to the process outlined in clause 21.<sup>1</sup>
17. The Commonwealth will contribute a premium on behalf of each citizen of the ACT to DisabilityCare Australia. For the ACT, this premium will be around \$175 million in 2019-20, depending on actual scheme costs. In addition, the Commonwealth will cover the full cost of people who turn 65 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.
18. The ACT will retain full policy and administrative responsibility for its in-kind services. Arrangements to access these services will be agreed with the Agency.
19. The Commonwealth agrees that the ACT Government will determine by February 2017 the appropriate composition of these in-kind services. The ACT will outline the composition of in-kind services, and this will reflect the final design agreed by COAG.
20. In-kind services will not be cashed out, unless the ACT determines to at a later date.
21. The capped, fixed contribution from the ACT of \$167 million 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 2018-19 (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 30.
22. The total contribution from the states and territories will be reallocated in 2023 and every five years thereafter in the year following the publication of the Census data.<sup>2</sup> The ACT contribution will be recalculated accordingly.

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<sup>1</sup> This figure is derived from the equivalent ACT contribution compared to the 2018-19 NSW contribution in the Heads of Agreement between the Commonwealth and NSW Governments on the NDIS (\$162 million) 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 clause 30, this contribution will be revised to be consistent with COAG final agreed escalation parameters.

23. The ACT funding will pay for participant supports:
- a. individualised support packages for scheme participants; and
  - b. local area coordinators and referrals to mainstream and community based supports.
24. 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 referrals to mainstream and community based supports; and
  - c. all administration costs for the Agency.
25. The ACT 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; 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.
26. The ACT 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 the ACT) so that the Agency is able to manage its costs and liabilities from year to year including through the creation of a reserve and by the investment of funds.<sup>3</sup>

## Risk

27. The Commonwealth will fund 100 per cent of the risk for the launch and transition period (2014-15 until 2018-19).

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<sup>2</sup> Following the Commonwealth Grants Commission Methodology Review referred to in paragraph 25, 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.

<sup>3</sup> An agreement on how to manage underspends will be negotiated with all participating jurisdictions.

28. The Commonwealth will also assume 100 per cent of the risk for full scheme in the ACT from 2019-20 subject to the review of scheme costs by the PC in 2017, as set out in paragraph 30, noting the Commonwealth is committed to always assuming a minimum of 75 per cent of risk, and conversely the ACT is committed to assuming no more than 25 per cent of risk for participant support costs as set out in paragraph 24 (except for risk in changes to escalation parameters, as set out in paragraphs 30 to 32).
29. Both parties agree to costs being managed to reduce risk.
30. By July 2017, the Ministerial Council will set out terms of reference for a PC independent review of scheme costs prior to commencement of the full scheme in the ACT 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 wages 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.
31. In the event COAG agrees to revise the escalation parameters based on the advice of the PC review, the ACT and the Commonwealth will revise their escalation parameters to the COAG final agreed escalation parameters.
32. The Ministerial 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 as a result of these reviews, the ACT and the Commonwealth will revise their escalation parameters to the COAG agreed escalation parameters.

## **Conditions**

33. To ensure long term arrangements build on launch experience, the ACT and the Commonwealth will review the agreement in advance of the 1 July 2019 full scheme commencement.
34. The parties agree that the scheme will be established irrespective of whether all States and Territories sign up to the full Scheme.
35. In the event that not all States and Territories sign up to the full NDIS, the Commonwealth agrees that the ACT will not be disadvantaged.
36. The Commonwealth agrees the ACT will not be any worse off from any subsequent agreement with any other State or Territory.

37. The Commonwealth bears full funding responsibility for non-Indigenous people over 65 and Indigenous people over 50 who choose to stay in the Scheme as per the National Health Reform Agreement (rather than moving to the aged care system).
38. In the context of the creation of the new national agency DisabilityCare Australia, the Commonwealth agrees that the first offer of employment should be to appropriately skilled existing ACT Government disability staff.

### **ACT arrangements for lifetime care and support for people who are catastrophically injured**

39. The ACT has agreed to implement nationally-consistent minimum benchmarks to provide no fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents before the commencement of the ACT launch in July 2014. From 1 July 2014, the ACT will be responsible for 100 per cent of the cost of NDIS participants who are in the NDIS because they are not covered by an injury insurance scheme that meets the minimum motor vehicle benchmarks.
40. The ACT agrees to develop and implement nationally-consistent minimum benchmarks for workplace accidents by 1 July 2016. If agreed nationally-consistent minimum benchmarks (or in the absence of agreement to the benchmarks, equivalent lifetime care and support arrangements to the NSW workcover scheme) are not implemented in the ACT by 1 July 2016, the ACT will be responsible for 100 per cent of the cost of NDIS participants who are in the NDIS because they are not covered by an injury insurance scheme that meets these requirements.
41. The NSW lifetime care and support arrangements for motor vehicle accidents and work cover insurance will be considered to satisfy any minimum standards that would be required for all States and Territories participating in the NDIS, unless amended by agreement through SCFFR.
42. The ACT commits to retaining its current arrangements for managing risk for the treatment of medical treatment injury caused by fault in its public hospitals. The ACT and the Commonwealth will continue negotiations, through SCFFR, on no fault medical injury coverage.
43. Jurisdictions that do not implement injury insurance schemes as specified above will be responsible for 100 per cent of the costs of their citizens and visitors who enter the NDIS due to a disability caused by relevant accidents within their jurisdictions.

*Signed for and on behalf of the Commonwealth of Australia by*

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**The Honourable Julia Gillard MP**

Prime Minister of the Commonwealth of  
Australia

19 April 2013



**Australian Government**

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**Ms Katy Gallagher MLA**

Chief Minister of the Australian Capital  
Territory

19 April 2013



**ACT**  
Government