

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

This Agreement is made BETWEEN the COMMONWEALTH OF AUSTRALIA (Commonwealth) AND the STATE OF SOUTH AUSTRALIA (South Australia)

Preliminaries

1. This agreement between the Commonwealth and South Australian Governments outlines the process and commitments to establish the full National Disability Insurance Scheme (NDIS) in South Australia.
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 South Australia in 2016-17, building on the launch commencing from July 2013. South Australia will remain on funding arrangements consistent with the Bilateral Agreement for NDIS launch between the Commonwealth and the South Australia until the commencement of full scheme from 2018-19.
4. The NDIS in South Australia will:
 - a. provide all eligible South Australian residents with access to a scheme based on insurance principles 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, including in-scope 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 South Australia.

6. The full NDIS in South Australia will build on the lessons learned from the NDIS 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 full NDIS in South Australia

Governance

7. The arrangements for the NDIS launch will continue for the full scheme in South Australia. The NDIS will be established under Commonwealth legislation and will be overseen by the Standing Council on Disability Reform (Standing Council) with representatives from all participating jurisdictions.
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 the Launch Transition Agency and subsequently DisabilityCare Australia, to settle design and operational matters, including interoperability with South Australian laws.

A National Approach to Funding the NDIS

Transition in 2016-17 and 2017-18

13. In 2016-17 and 2017-18, South Australia will be in transition to full scheme. For this period South Australia 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, as well as funding 100 per cent

of package costs for people who turn 65 and choose to remain in the scheme and administration costs. South Australia and the Commonwealth will agree the number of eligible participants and total funding by 1 July 2013.

Full Scheme 2018-19 onwards

14. From 2018-19, South Australia will contribute \$723 million in cash and in-kind services.
15. South Australia will retain full policy and administrative responsibility for in-kind services. Arrangements to access in-kind services will be agreed with the Agency.
16. The Commonwealth agrees that the South Australian Government will determine by 1 July 2015 the appropriate composition of in-kind services. South Australia will outline the composition of in-kind services, and this will reflect the final NDIS design agreed by COAG.
17. In-kind services will not be cashed out, unless South Australia determines to do so at a later date.
18. The capped, fixed contribution from South Australia of \$723 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 27.
19. 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 state's share of the total national population. The South Australian contribution will be recalculated accordingly.¹
20. South Australian funding will pay for participant supports:
 - a. individualised support packages for scheme participants; and
 - b. local area coordinators for referrals to mainstream and community based supports.

¹ Following the Commonwealth Grants Commission Methodology Review referred to in paragraph 25, jurisdictions may agree that the total contributions from State 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.

21. 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 for referrals to mainstream and community based supports; and
 - c. all administration costs for the Agency.
22. South Australia 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.
23. South Australia 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 South Australia) 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.

Risk

24. The Commonwealth will fund 100 per cent of the risk for the launch and transition period.
25. The Commonwealth will assume 100 per cent of risk for full scheme in South Australia from 2018-19 – subject to the review of scheme costs by the PC in 2017 as set out in paragraph 27, noting the Commonwealth is always committed to assuming a minimum of 75 per cent of risk and South Australia's commitment to assuming a maximum 25 per cent risk for client supports as set out in paragraph 20 (except for the risk in changes to escalation parameters, as set out in paragraphs 27 to 29).
26. Both Parties agree to costs being managed to reduce risk.

27. 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 South Australia rollout 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.
28. In the event COAG agrees to revise the escalation parameters based on the advice of the PC review, South Australia and the Commonwealth will revise their escalation parameters to the COAG final agreed escalation parameters.
29. 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 as a result of these reviews, South Australia and the Commonwealth will revise their escalation parameters to the COAG agreed escalation parameters.

Conditions

30. In the event that not all States and Territories sign up to the full NDIS, the Commonwealth agrees that South Australia will not be disadvantaged.
31. The Commonwealth agrees South Australia will not be any worse off from any subsequent agreement with any other State or Territory.²
32. Following commencement of the full NDIS, the South Australian Government will no longer directly fund specialist disability services or basic community care services to those people who are being supported by the NDIS. The South Australian Government will, however, continue to provide basic community care services to a range of other people.
33. The Commonwealth bears full funding responsibility for non-Indigenous people over 65 years and Indigenous people over 50 years who choose to stay in the scheme as per the National Health Reform Agreement (rather than moving to the aged care system).
34. The Commonwealth agrees that the first offer of employment for the NDIS should be to appropriately skilled existing South Australian Government disability staff.

² The Commonwealth agrees that South Australia will be extended any benefit that is part of a NDIS full scheme agreement between the Commonwealth and any other jurisdiction.

South Australian arrangements for lifetime care and support for people who are catastrophically injured

35. South Australia will provide no-fault lifetime care and support to people who are catastrophically injured in a motor vehicle accident in South Australia, and indemnifies the owner and driver of a South Australia registered vehicle against liability for an accident causing death or injury caused by their vehicle anywhere in Australia.
36. South Australia agrees to implement nationally-consistent minimum benchmarks to provide no-fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents by 1 July 2013 in South Australia. If nationally-consistent minimum benchmarks are not implemented in South Australia by 1 July 2013, clause 42 will apply.
37. South Australia's proposed reforms to compulsory third party insurance for motor vehicles, are expected to satisfy the minimum standards that would be required for all States and Territories participating in the NDIS, unless amended by agreement through the Standing Council on Federal Financial Relations.
38. South Australia also hosts a universal no fault WorkCover scheme that provides legislated benefits to workers and their employers in the event of a work related injury or disease, including lifetime care and support where appropriate.
39. South Australia commits to develop and agree, and endeavours to implement, nationally-consistent minimum benchmarks for workplace accidents by 1 July 2016. If nationally-consistent minimum benchmarks are not implemented in South Australia by 1 July 2016, clause 42 will apply.
40. South Australia commits to retaining its current arrangements for managing risk for the treatment of medical injury caused by fault in its public hospitals. South Australia and the Commonwealth will continue negotiations, through the Standing Council on Federal Financial Relations, on no fault medical injury coverage, with an aim to develop and agree, and endeavour to implement, nationally-consistent minimum benchmarks for medical treatment injury by 1 July 2018. If nationally-consistent minimum benchmarks are not implemented in South Australia by 1 July 2018, clause 42 will apply.
41. South Australia and the Commonwealth will continue negotiations, through the Standing Council on Federal Financial Relations, on nationally-consistent minimum benchmarks for general accidents (including criminal injury), with the commencement date for implementation subject to agreement by jurisdictions.

42. South Australia will be responsible for 100 per cent of the cost (both administration and care and support) of participants in the NDIS who are in the NDIS because they are not covered by an injury insurance scheme in South Australia that meets the nationally-consistent minimum benchmarks for catastrophic injuries from motor vehicle accidents, workplace accidents, medical treatment injury and general accidents (including criminal injury) by the dates specified above.

43. Jurisdictions that do not implement nationally-consistent minimum benchmarks as specified above 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 South Australia by

The Honourable Julia Gillard MP

Prime Minister of the Commonwealth of
Australia

April 2013



Australian Government

The Honourable Jay Weatherill MP

Premier of South Australia

April 2013