

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

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*This Agreement is made BETWEEN the COMMONWEALTH OF AUSTRALIA (Commonwealth) and the STATE OF QUEENSLAND (Queensland)*

## **Preliminaries**

1. This agreement between the Commonwealth and Queensland Governments outlines the process and commitments to establish the full National Disability Insurance Scheme (NDIS) in Queensland.
2. The NDIS will deliver better outcomes for people with disability, their families and carers by taking a fairer, more sustainable and equitable approach to supporting people with disability.
3. The full scheme in Queensland will be implemented by 1 July 2019.
4. The transition to the full scheme in Queensland will commence from 1 July 2016.
5. The NDIS in Queensland will:
  - a. provide all eligible Queensland residents with access to a scheme based on insurance principles that guarantees lifetime coverage for participants for the costs of reasonable and necessary disability care and support;
  - b. provide people with a disability with 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.
6. People with disability will continue to have access to mainstream services provided by the Commonwealth and Queensland.
7. The full NDIS in Queensland 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 National Scheme**

### **Governance**

8. The NDIS has been established under Commonwealth legislation, the *NDIS Act 2013*, and will be overseen by the Standing Council on Disability Reform (Standing Council).
9. Queensland 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 disability care and support packages.
10. If there are underspends, a reserve may 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 (including 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. Queensland 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 Queensland laws.

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

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

13. In 2016-17, 2017-18 and 2018-19, Queensland will be in transition to full scheme. For this period Queensland 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 Indigenous participants who turn 50 and choose to remain in the scheme and 100 per cent of scheme administration and overhead costs. Queensland and the Commonwealth will agree to an approach to phasing into the scheme eligible participants and the associated funding arrangements by December 2014.

14. Prior to 1 July 2016, Queensland will continue to implement reforms to disability services in accordance with the NDIS design principles, the Intergovernmental Agreement for the NDIS Launch and the *NDIS Act 2013*, including introducing greater consumer choice and control.
15. Queensland and the Commonwealth will continue to work together, collaborating with the Agency, to prepare for implementation, including:
  - a. joint planning for transition;
  - b. sharing data;
  - c. settling design and operational matters;
  - d. adopting NDIS-like policies and processes wherever possible;
  - e. implementing capacity-building initiatives; and
  - f. engaging with key stakeholders.

#### **Full Scheme 2019-20 onwards**

16. From 2019-20 Queensland will contribute \$2.03 billion in cash and in-kind services, subject to the process outlined in clause 21.<sup>1</sup> 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 Queensland funding contribution will be reduced by a proportionate amount.
17. The Commonwealth will make a contribution on behalf of each citizen of Queensland to the scheme. For Queensland, this will be around \$2.14 billion in 2019-20, depending on actual scheme costs. In addition, 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 the Agency in each jurisdiction will depend on the number of participants and the actual cost of the scheme in that jurisdiction.
18. Queensland will retain full policy and administrative responsibility for its in-kind services. The Commonwealth will retain full policy and administrative responsibility for its in-kind services. Arrangements to access these services will be agreed by the respective party with the Agency.

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<sup>1</sup> This figure is derived from the equivalent Queensland contribution compared to the 2018-19 NSW contribution in the Heads of Agreement between the Commonwealth and NSW Governments on the NDIS (\$1.96 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 clause 31, this contribution will be revised to be consistent with COAG final agreed escalation parameters.

19. The Commonwealth and Queensland 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 determine to do so at a later date.
21. The capped, fixed contribution from Queensland of \$2.03 billion in 2019-20 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 (the States) will be reallocated in 2023 and every five years thereafter in the year following the publication of the Census data in line with each states' share of the total national population. The Queensland contribution will be recalculated accordingly.<sup>2</sup>
23. Queensland 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 Queensland from the DisabilityCare Australia Fund in 2019-20 (the first full year of the scheme in Queensland) is \$197 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 other general supports as described by section 13(2) of the *NDIS Act 2013*; and
  - c. all administration and overhead costs for the Agency.

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<sup>2</sup> 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. Queensland 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. Queensland 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 Queensland) 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 fund 100 per cent of the risk for full scheme in Queensland 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 committed to always assuming a minimum of 75 per cent of risk, and conversely Queensland is committed to assuming no more than 25 per cent of risk for participant support costs as set out in paragraph 23 (except for risk in changes to escalation parameters, as set out in paragraphs 31 to 33).
30. Queensland 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 commencement of the full scheme in Queensland 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.

32. In the event COAG agrees to revise the escalation parameters based on the advice of the PC review, Queensland 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 Queensland 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, Queensland and the Commonwealth will revise their escalation parameters or risk sharing arrangements, as agreed by COAG.

## Conditions

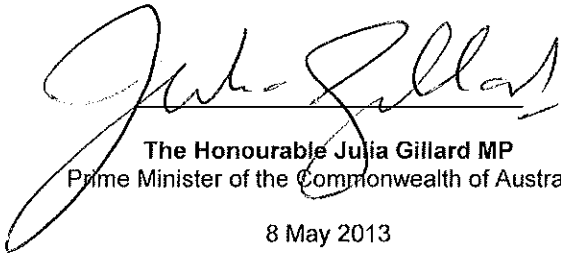
34. In the event that not all States sign up to the full NDIS, the Commonwealth agrees that Queensland will not be disadvantaged.
35. The Commonwealth agrees Queensland will not be any worse off from any subsequent agreement with any other State or Territory. The Commonwealth agrees that Queensland will 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 Queensland Government will no longer provide specialist disability services or basic community care services to those people whose needs are intended to be met by the NDIS. The Queensland Government will, however, continue to provide basic community care services to a range of other people to meet support needs not intended to be met by the NDIS.
37. The Commonwealth bears full funding responsibility for non-Indigenous people over 65 years of age and Indigenous people over 50 years of age who choose to stay in the scheme as per the National Health Reform Agreement (rather than moving to the aged care system).
38. The Commonwealth agrees that the first offer of employment for DisabilityCare Australia should be to appropriately skilled existing Queensland Government staff working on programs within the scope of the NDIS.

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

39. Queensland currently operates a common law 'fault' based compulsory third party (CTP) scheme. The scheme provides motor vehicle owners, drivers, passengers and other insured persons with an insurance policy that covers their unlimited liability for personal injury caused by, through or in connection with the use of the insured motor vehicle in incidents to which the *Motor Accident Insurance Act 1994 (Qld)* applies, anywhere in Australia. For the injured third party, it provides access to common law rights. Eligible claimants are entitled to funded rehabilitation, care and support services during a claim.
40. Queensland agrees in principle with the National Injury Insurance Scheme (NIIS) minimum national benchmarks that have been developed through the SCFFR for the provision of no-fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents and agrees to undertake work to determine the feasibility of extending its CTP scheme to meet the NIIS minimum benchmarks for motor vehicle accidents. From 1 July 2016, Queensland will be responsible for 100 per cent of the costs 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.
41. Queensland currently hosts a universal, no-fault workers' compensation scheme that is not age-limited and provides legislated benefits to workers in the event of a work related injury or disease, including long latency diseases, for up to five years and includes cover for employers against claims for damages at common law for such injuries. Lump sum compensation is payable for injuries deemed stable and stationary in lieu of continuing weekly benefits or a worker can elect to sue the employer for damages at common law. In respect of catastrophic injuries, statutory lump sum compensation is payable commensurate with the assessed level of impairment with additional lump sum payable for any ongoing gratuitous care. These entitlements do not affect an injured worker's right to seek damages at common law.
42. Queensland agrees to develop and implement minimum national benchmarks for workplace accidents by 1 July 2016. If agreed minimum national 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 Queensland by 1 July 2016, Queensland 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
43. The Queensland Government Insurance Fund self-insurance scheme provides protection for insurable risk for all Queensland public hospitals for sums they may be liable to pay as compensation or damages where a person is injured through fault by the hospital or its employees.

44. Queensland commits to retaining its current arrangements for managing risk for the treatment of medical treatment injury caused by fault in its public hospitals. Queensland and the Commonwealth will continue negotiations, through the SCFFR, on no fault medical injury coverage.
45. 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.

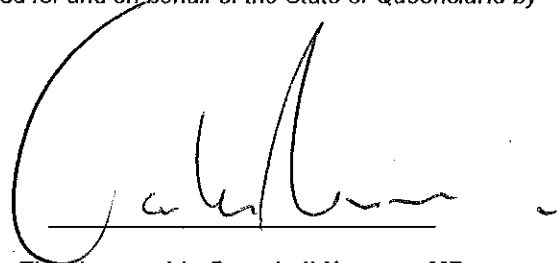
*Signed for and on behalf of the Commonwealth of Australia by*



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

8 May 2013

*Signed for and on behalf of the State of Queensland by*



**The Honourable Campbell Newman MP**  
Premier of the State of Queensland

8 May 2013



**Australian Government**



**Queensland  
Government**