

Schedule B:
Bilateral Agreement for
NDIS Launch between the Commonwealth and
Victoria

BILATERAL SCHEDULE B - VICTORIA**PART 1 — PARTIES TO THIS AGREEMENT**

1. This Agreement is between the Commonwealth of Australia (the Commonwealth) and the State Government of Victoria (Victoria).

PART 2 — ROLE AND PURPOSE

Role and purpose of this Agreement

2. This Agreement provides the foundation for a National Disability Insurance Scheme (NDIS) launch site in Victoria. It outlines how the NDIS is expected to operate in the launch site, including the respective roles and responsibilities of the Commonwealth and Victoria. It takes account of Victorian departments' roles as funder, regulator and service provider.
3. This Agreement has been prepared in the absence of the final NDIS legislation and rules and in parallel with the Intergovernmental Agreement for the NDIS Launch. Victoria has entered into this Agreement to permit the effective implementation of the NDIS in the Barwon area. Consistent with paragraph 129 of the Intergovernmental Agreement for the NDIS Launch, this Agreement may be amended at any time by agreement in writing by the Parties.

Launch Site Aims

4. In addition to the objectives of the NDIS launch outlined in the Intergovernmental Agreement for the NDIS Launch and the NDIS Bill 2012, as enacted into legislation, the Victorian launch site will have the following further specific launch aims:
 - a. there will be no diminution of existing clients' choice and control over their supports or support arrangements;
 - b. there will be no diminution of Victoria's quality assurance system and safeguards;
 - c. the launch will build on Victoria's existing engagement with mainstream services through the work of the Office for Disability and capacity building initiatives; and
 - d. there will be a seamless response for clients contacting either the NDIS or Victorian Government services, including Services Connect.

PART 3 — NATIONAL DISABILITY INSURANCE SCHEME – FIRST STAGE

Features of the Victorian launch site

5. The first stage of the NDIS will operate in the Barwon area of Victoria in the City of Greater Geelong, the Colac-Otway Shire, the Surf Coast Shire and the Borough of Queenscliffe for all eligible residents.
6. The Barwon launch is expected to cover around 5,000 people from 2013-14, as set out in Appendix A.

Areas of agreement for launch

7. The first stage of the NDIS in Victoria will commence in July 2013.
8. Both Parties agree that the process for phasing in the expected number of clients of the NDIS launch will be undertaken as set out within the agreed roll-out arrangements in Appendix B, subject to the NDIS Launch Transition Agency (the Agency) in collaboration with Victoria and Commonwealth developing client flow arrangements before mid-February 2013 that are consistent with the agreed funding arrangements.
9. Both Parties agree that Victoria will work with the Agency to implement the most effective delivery of the NDIS client pathway within the context of existing and future service delivery arrangements in the Barwon area.
10. Both Parties agree to establish an arrangement that will support an effective approach to managing the workforce commitments and needs of Victoria and the Agency, including arrangements for local area coordination. This agreement will be finalised by mid-February 2013 and be subject to a separate appendix.
11. Both Parties agree that in undertaking the work described in paragraphs 9 and 10 above, best endeavours will be made to minimise risks in areas where, in practice, the operations of the Agency may intersect with the operation of Victoria's existing personal injury insurance schemes, particularly in relation to: building the workforce capacity of the Agency, WorkSafe Victoria and the Transport Accident Commission and the service provider sector; resolving potential areas of duplication or gaps in client eligibility; and aligning best practice models and service provider requirements.
12. People who enter the NDIS Launch under the age of 65 will have the choice of remaining in the NDIS or transitioning to the aged care system once they turn 65 years and over (50 years for Indigenous participants). This reflects the principle of choice and control and ensures people have continuity of care as they age in the NDIS.
13. Both Parties recognise that, in accordance with the definition of eligibility contained in the NDIS Bill 2012, as enacted into legislation, the arrangements for clients who live outside the Barwon launch area but receive their disability supports within the Barwon launch area will remain the same. Support arrangements for existing clients who live inside the Barwon area but do not meet the definition of eligibility contained in the NDIS legislation will be agreed by mid-February 2013 in accordance with paragraphs 60-65 of the Intergovernmental Agreement for the NDIS Launch which gives effect to the COAG principle on continuity of support.
14. Both Parties agree that funds for sector development programs will be made available by the Commonwealth consistent with the agreed national framework on an equitable basis and further agree that state government providers of disability services will be included in sector development programs in line with the agreed national framework.
15. The existing Victorian quality assurance and safeguards framework as set out in Appendix C will apply in the Barwon launch site as it applies to the relevant new and existing funded client support programs for the launch subject to further development of and transition to a nationally consistent risk-based quality assurance approach in the longer term that does not diminish Victoria's existing quality assurance system and safeguards.. Victoria will continue its existing approach to the quality assurance of Victorian service providers subject to legislative and contractual arrangements. Victoria will identify details of the existing client support programs in the Barwon launch site and provide this information held by departments to the Agency for the purposes of registering

providers. Effective working arrangements between Victoria and the Agency to ensure appropriate management and monitoring against these quality assurance frameworks will be developed and agreed by mid-February 2013. Both parties agree to review roles and responsibilities, including funding, for operation of the quality assurance and safeguards framework as part of the review of this Agreement following finalisation of the review of the NDIS Bill 2012, as enacted into legislation.

Collection and management of data

16. Both Parties agree that data and information will be collected for national and Victorian purposes in accordance with the parameters set out in the Intergovernmental Agreement for the NDIS Launch. This Victorian data and information and this, taken together with the outcomes from the other launch sites, will be shared with all governments to facilitate national data collection, consolidation and analysis. Data collection and management will take account of clients' rights and relevant legislation. The data management approach including data collection, storage and transfer will be agreed between the Commonwealth and Victoria and reflected in an information protocol to be finalised by early April 2013.
17. Both Parties agree to share client and provider information and data during the launch to ensure continuity of support, financial accountability and effective interactions with supports and services outside the NDIS, subject to privacy and other requirements.

Interactions with existing legislation

18. This Agreement is to be considered in conjunction with existing Victorian legislation. Victoria has provided to the Agency a non-definitive list of Victorian legislation that may be relevant to the NDIS Bill 2012, as enacted into legislation, and the NDIS rules and legislative instruments, as made. Victoria will endeavour to provide the Agency with any relevant updates to the list over the course of the NDIS launch, as and when it becomes necessary because of changes to Victorian legislation and/or the NDIS legislative framework. The purpose of this list is to assist the Agency to be aware of, and comply with, its obligations under Victorian law. It does not affect the statutory rights and obligations of the Parties or the Agency.

Financial contributions

19. Both Parties agree to contribute to the NDIS launch site in accordance with Appendix A.

Underspends

20. If, at the end of the first three years, total three year costs are less than the anticipated three year funding commitments set out in this Agreement and Victoria's actual contribution is a different proportion of actual cost, compared to Victoria's proportion of expected costs as set out in Appendix A, an additional adjustment will be made that will be either:
 - a. a payment from Victoria to the Commonwealth if the actual contribution was a smaller share of actual cost than the jurisdiction's share of expected costs; or
 - b. a payment from the Commonwealth to Victoria if the actual contribution was a larger share of actual cost than the jurisdiction's share of expected costs.
21. Arrangements for overspends and underspends in all other circumstances are outlined in the Intergovernmental Agreement for the NDIS Launch.

22. If at the end of three years there is a net underspend, Victoria's share of this underspend will be refunded to Victoria, or taken into account in determining Victoria's contribution in the following year, depending on any agreed arrangements for the transition to full scheme.

Agency recruitment

23. Victoria will be represented on Agency recruitment panels in future recruitment for the Agency where the position involves managing Victorian launch funding.

Review of this Agreement

24. This Agreement will be reviewed by both Parties following finalisation of the review of the NDIS Bill 2012, as enacted into legislation and amended if necessary to take account of the review outcomes, with the agreement of both Parties. The review of this Agreement will include consideration of the entry of clients into the scheme from July 2016 until the Council of Australian Governments (COAG) agrees to arrangements for transition to full scheme.

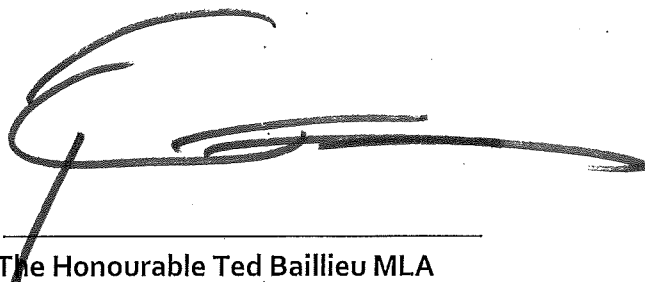
The Parties have confirmed their commitment to this Agreement as follows:

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

A large, stylized handwritten signature in black ink, likely belonging to Julia Gillard, positioned above the printed name and title.

The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia
7 December 2012

Signed for and on behalf of Victoria by

A large, stylized handwritten signature in black ink, likely belonging to Ted Baillieu, positioned above the printed name and title.

The Honourable Ted Baillieu MLA
Premier of Victoria
7 December 2012

APPENDIX A - FUNDING ARRANGEMENTS FOR LAUNCH

1. The Commonwealth and Victoria agree that the estimated existing and new client population covered by the launch site is as shown in Table 1.

Table 1	2013-14	2014-15	2015-16
Estimated existing client population	3,876	4,176	4,176
Estimated new client population	200	345	926
Estimated total clients	4,076	4,521	5,102

2. This estimate is based on the following assumptions:
 - a. Persons who, in the 2006 Census, reported that:
 - i. They were resident in one of the four LGAs of the launch area;
 - ii. They were less than 65 years of age;
 - iii. They had a need for assistance in one (or more) activities of daily living;
 - b. The extract was recalculated by applying the known growth rate for the LGAs in order to incorporate expected growth in the number of people requiring assistance. The growth rate was applied against each of the age groups and assumed that the population age demographic would be stable for the intervening years up to 2011.
 - c. The final dataset included just over 5,400 people resident in the LGAs who might be eligible for services under the proposed NDIS. However, included in this group would be a number of people who have a core activity limitation but whose needs are funded from other schemes and who do not qualify for the NDIS. These include:
 - i. People with core activity limitations resulting from road accidents or employment-related injuries and who supported by services funded by the Transport Accident Commission, Victoria or the WorkSafe Victoria;
 - ii. People whose core activity limitations are the outcome of a health condition whose care needs would be met by the health system; and
 - iii. People whose core activity limitation is temporary rather than permanent.
 - d. Discounting these groups, the total potential population who might seek NDIS funded services would be about 5,000 people under 65 years of age in 2013-14.

3. The estimated total cost of NDIS funded supports to the agreed client profile in Table 1 is shown in Table 2.

Table 2	2013-14	2014-15	2015-16
Estimated total cost of NDIS funded supports	\$71.3 million	\$158.1 million	\$186.1 million

Commonwealth contribution

4. The Commonwealth's funding for NDIS funded supports is shown in Table 3.

Table 3	2013-14	2014-15	2015-16
Commonwealth's funding for NDIS funded supports	\$28.9 million	\$64.1 million	\$75.5 million

5. The Commonwealth's share of funding for NDIS funded supports will be provided in cash and through direct provision of services. The value of cash contributions to the scheme is shown in Table 4.

Table 4	2013-14	2014-15	2015-16
Commonwealth cash contributions to the scheme	\$16.1 million	\$35.7 million	\$42.7 million

6. The Commonwealth programs which are expected to be drawn on in providing direct services include:
- Australian Disability Enterprises;
 - Autism Specific Early Learning and Care Centres;
 - Better Start for Children with Disability Initiative;
 - Continence Aids Payment Scheme;
 - Support for Day to Day Living in the Community: A Structured Activity Program;
 - Disability Employment Services - Work Based Personal Assistance;
 - Helping Children with Autism;
 - Hearing Services Program;
 - Improved Support for people with younger onset dementia;
 - Targeted Community Care - Mental Health Respite: Carer Support and Personal Helpers and Mentors component;

- k. National Auslan Interpreter Booking and Payment Service;
 - l. After School Hours Care for Teenagers with Disability;
 - m. Partners in Recovery: Coordinated Support and Flexible Funding for people with severe and persistent mental illness and complex needs;
 - n. Respite Support for Carers of Young People with Severe or Profound Disability; and
 - o. Young Carers Respite and Information Services.
7. The Commonwealth will pay for all Agency-related administration and system support costs associated with the launch.
8. The Commonwealth will be responsible for meeting all scheme costs for clients who turn 65 and choose to remain in the scheme. The estimated numbers of clients over 65 are shown in Table 5.

Table 5	2013-14	2014-15	2015-16
Estimated client population aged over 65	68	140	218

Victorian Contribution

9. The Victorian share of the cost for NDIS funded supports is shown in Table 7.

Table 7	2013-14	2014-15	2015-16
Victorian funding for NDIS funded supports	\$42.3 million	\$93.9 million	\$110.6 million

10. The Victorian share of funding for NDIS funded supports will be provided in cash and through direct provision of services. The Victorian cash contributions to the scheme is shown in Table 8.

Table 8	2013-14	2014-15	2015-16
Victorian cash contribution to the scheme	\$16.6 million	\$50.3 million	\$63.8 million

11. The Victorian programs which are expected to be drawn on, to provide direct services, include:
- a. Early Childhood Intervention Services;
 - b. Multi-purpose taxi program;
 - c. Shared Supported Accommodation, Residential Institution and Facility Based Respite;
 - d. Complex case management;
 - e. Behaviour Intervention Services provided by the Department of Human Services;
 - f. Aids and Equipment;

- g. Psychiatric Disability Rehabilitation Support Services.
- h. Other small programs which will be the subject of discussion and finalised by the parties by mid February 2013.
- 12. Other programs, including the relevant proportion of state-funded HACC services, to be provided in-kind, will be subject to discussion and finalised by both parties by mid-February, taking into account any relevant decisions taken by the Ministerial Council in the interim.
- 13. By mid-February 2013 the Agency will complete a comprehensive review of prices for services to be provided under NDIS including supported accommodation and agree a policy on pricing with the Commonwealth and Victoria for supported accommodation, with an expectation that the price for supported accommodation will not decline in real terms for the period of the launch unless there is sound evidence for so doing.

Arrangements for Intergovernmental Payments

- 14. The Parties agree that intergovernmental payments currently provided by the Commonwealth to Victoria for the purpose of providing disability services to individuals should be repaid to the Agency on behalf of the Commonwealth commensurate with the expected NDIS client numbers in the Barwon area as a proportion of the total expected NDIS client numbers in Victoria.
- 15. Intergovernmental payments include the Commonwealth contribution to the Victorian Home and Community Care program and payments made through the National Disability specific purpose payment.
- 16. Victoria agrees to pay the Agency on behalf of the Commonwealth the amount of intergovernmental payments set out in Table 9 in instalments during the financial year, at the same time as the cash contributions to NDIS funded supports, as outlined in paragraphs 32-39 of the Intergovernmental Agreement for the NDIS Launch.

Table 9	2013-14	2014-15	2015-16
Repayment of Commonwealth grants by Victoria	\$7.5 million	\$16.6 million	\$19.5 million

APPENDIX B - PLANNED INTAKE OF CLIENTS OVER THE PERIOD OF THE LAUNCH BASED ON A NUMBER OF CLIENT CHARACTERISTICS.

1. On the basis of the agreed funding and the population assumptions, it has been agreed that the client flow will be as per Table one in Appendix A above.
 - a. It is acknowledged that these clients will need to be phased into the NDIS. The expected monthly transition will be attached to this Agreement by mid-February 2013 and may need to be adjusted to take account of the Agency capacity to recruit staff. In determining the actual clients that are to be processed, the Agency will use best endeavours to jointly with Victoria ensure an appropriate balance of new and existing individuals and to the extent that this reduces annual client phasing, funding flows will also need to be adjusted.
2. In determining the client flow, the Agency will need to ensure that there is adequate capacity in funding and resourcing allocation to allow for crisis and unplanned assessments.
3. It is further agreed that in determining the client flow, that existing funded support programs may be considered and that the details of how clients within programs will be transitioned into the launch will be agreed by mid-February 2013 and attached to this Agreement as a separate appendix.
4. These strategies will then be considered in the context of the impact of these flows on:
 - a. providers involved and impact on the overall sustainability of the supports provided where this support is required by other individuals;
 - b. the provider transition strategy required to meet the conversion from in-kind to cash contributions;
 - c. the nature of current funding arrangements with providers; and
 - d. the availability of cash and in-kind funds and the needs of the NDIS funded supports that can or cannot be met by the existing in-kind arrangements .
5. By March 2013, both parties will agree on the specific arrangements to facilitate participants' access to Victoria's in kind programs as referenced in Appendix A. The strategy will be incorporated into detailed joint communication materials from the Commonwealth and the Victoria from March 2013 onwards.

APPENDIX C - CURRENT QUALITY ASSURANCE AND SAFEGUARDS FRAMEWORK FOR PEOPLE WITH A DISABILITY IN VICTORIA

Disability Services

The Disability Act 2006 (Vic)

The Disability Act (the Act) is a legislative framework based on the principles of human rights and citizenship for the provision of high quality services and supports for people with a disability.

The main components of the Act governing quality assurance and safeguards in Victoria's disability services sector are:

Standards and Monitoring of Performance

The Act requires the Minister to determine standards to be met in the provision of services and supports under the Act. These may be in relation, but not limited, to: service delivery, support plans, complaints and information management and privacy and confidentiality.

Internal process for complaints

The Act requires all disability service providers to establish and operate a complaints system to receive and resolve complaints about the services they provide.

The Disability Services Commissioner

The Act provides for an independent and accessible process for dealing with complaints about disability services through the appointment of a Disability Services Commissioner. The functions of the Disability Services Commissioner include: the investigation and conciliation of complaints relating to disability services, review and identification of the causes of complaints and an annual report to Parliament.

Community Visitors

The Act provides for the appointment of community visitors with powers to inspect residential services. These powers include: inquiring into matters pertaining to the quality and appropriateness of residential services and any failure to comply with the Act.

The Senior Practitioner

The Act provides for the appointment of a Senior Practitioner. The Senior Practitioner is responsible for ensuring that the rights of people subject to restrictive interventions and compulsory treatment are protected, and that appropriate standards in relation to restrictive interventions and compulsory treatment are complied with.

Mental Health

The Mental Health Act 1986 (Vic)

The Mental Health Act is currently under review. This act establishes procedures for initiating involuntary treatment, making involuntary treatment orders and independent review by the Mental Health Review

Board. Key features of the Mental Health Act are its emphasis on rights and the requirement that treatment should be provided in the least possible restrictive environment and in the least possible intrusive manner.

This act provides that interference with the rights, privacy, dignity and self-respect of people with mental illness must be kept to the minimum necessary in the circumstances.

Other Legislation

The Guardianship and Administration Act 1986 (Vic)

The Guardianship and Administration Act establishes the Public Advocate as an independent statutory authority to protect and promote the rights of people with a disability. This act provides a legislative framework for the appointment, powers and responsibilities of substitute decision makers. It is subject to a report from the Victorian Law Reform Commission.

Rights Based Frameworks

The rights of people with a disability in Victoria are protected more generally by:

- *The Equal Opportunity Act 2010 (Vic)*
- *The Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- *The Health Records Act 2001 (Vic)*
- *The Information Privacy Act 2000 (Vic)*
- *The UN Convention on the Rights of Persons with Disabilities*
- *The Children, Youth and Families Act 2005 (Vic)*

Criminal Justice system

The rights of people with a disability in the criminal justice system are considered in:

- *The Sentencing Act 1991 (Vic)*
- *The Serious Sex Offenders (Detention and Supervision Act) 2009 (Vic)*
- *The Crimes (Mental Impairment and Unfitness to be tried) Act 1997 (Vic)*

Home and Community Care (HACC) Program

The Home and Community Care Act 1985 and Review Agreement 2007

The HACC Act established the HACC Program and the Review

Agreement is an agreement between the Commonwealth and Victoria for the funding and administration of home and community care services, including ensuring a "streamlined and consistent approach to quality assurance".

On the 1 March 2011 the Community Care Common Standards (CCCS) replaced the HACC National Service Standards across Australia. There are three Standards with 18 Expected Outcomes:

Standard 1: Effective Management - The service provider demonstrates effective management processes based on a continuous improvement approach to service management, planning and delivery.

Standard 2: Appropriate Access and Service Delivery - Each service user (and prospective service user) has access to services and service users receive appropriate services that are planned, delivered and evaluated in partnership with themselves and/or their representative.

Standard 3: Service User Rights and Responsibilities - Each service user (and/or their representative) is provided with information to assist them to make service choices and has the right (and responsibility) to be consulted and respected. Service users (and/or their representative) have access to complaints and advocacy information and processes and their privacy and confidentiality and right to independence is respected.

Victorian HACC funded organisations are independently reviewed triennially to ensure that they are complying with the CCCS, other HACC Program (such as the National HACC Complaints Policy) and Department of Health requirements (such as incident reporting requirements).

Supported Residential Services

- *Supported Residential Services (Private Proprietors) Act 2010*
- *Supported Residential Services (Private Proprietors) Regulations 2012*

The Supported Residential Services Act and Regulations form part of a new legislative framework to protect the safety and wellbeing of residents and to provide a set of minimum accommodation and personal support standards and statutory occupancy rights for residents.

The Supported Residential Services Act provides for the appointment of community visitors to visit any supported residential service and to query whether services are being delivered to residents in accordance with the principles of the act and the prescribed accommodation and personal support standards, and to query the status of any complaint made on behalf of a resident and the progress of its resolution.

Operational Policy

In addition, service providers in Victoria are required to comply with a range of operational policies through their service agreements. For example, service agreements with the Department of Human Services include:

- Incident reporting instructions
- Reporting allegations of physical and sexual assault to the police
- Fire safety requirements
- Adverse events management guidelines