

Bilateral Agreement between the Commonwealth of Australia and Victoria on the National Disability Insurance Scheme

Part 1 – Objective of this Agreement

1. Through this Agreement, the Commonwealth of Australia (the Commonwealth) and Victoria commit to improve the outcomes of people with disability by supporting them through the National Disability Insurance Scheme (NDIS; the Scheme), with the shared goal of increasing social and economic participation. The National Disability Insurance Agency (NDIA) and the NDIS Quality and Safeguards Commission (NDIS Commission) are essential partners in the delivery of scheme objectives.
2. Through this Agreement, the Commonwealth and Victoria are committed to the delivery of the NDIS to ensure that it achieves the objectives set out in the *National Disability Insurance Scheme Act 2013* (the NDIS Act).
3. The NDIS will:
 - a. provide all eligible Australian residents with independence through access to a scheme based on insurance principles that guarantees lifetime coverage for participants for the costs of reasonable and necessary care and supports, including early intervention supports, to enhance their social and economic participation;
 - b. enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - c. provide an individualised approach to supporting people with disability based on a market approach;
 - d. provide safe and high quality supports to participants through national quality and safeguarding and market oversight arrangements; and
 - e. guarantee a sustainable funding model for the provision of disability supports to participants into the future.
4. This Agreement outlines the roles and responsibilities of the Commonwealth and Victoria in relation to governance, policy, quality and safeguards, market development and oversight and funding arrangements for the NDIS.

Part 2 – Parties and Operation of the Agreement

5. The Parties to this Agreement are the Commonwealth and Victoria.
6. This Agreement will commence on 1 July 2019.

7. This Agreement:

- a. builds on the experiences of trial and transition in Victoria and nationally;
- b. outlines the ways the Commonwealth and Victoria will work together on NDIS governance, funding and related policy matters;
- c. supersedes the NDIS Heads of Agreement and the Bilateral Agreement for Transition to the NDIS between the Commonwealth and Victoria;
- d. may be amended, according to the process set out in Part 9; and
- e. exists until such time as it is revoked or replaced by a decision of the Parties.

8. This Agreement is interoperable with:

- a. the NDIS Act and its associated Rules;
- b. the *DisabilityCare Australia Fund Act 2013* (the DCAF Act);
- c. the National Disability Strategy 2010-2020;
- d. the 'Principles to Determine the Responsibilities of the NDIS and other Service Systems – Applied Principles and Tables of Support (APTOS)' agreed by the Council of Australian Governments (COAG) on 19 April 2013, updated on 27 November 2015;
- e. any National Partnership Agreements between the Commonwealth and Victoria which provides for payment from the DisabilityCare Australia Fund (DCAF);
- f. any relevant Commonwealth legislation; and
- g. any relevant international agreements, which may be ratified from time to time, including the United Nations Convention on the Rights of Persons with Disabilities.

9. This Agreement is also to be considered in conjunction with the following Victorian legislation, and any relevant Victorian legislation:

- a. The Disability Act 2006;
- b. The Guardianship and Administration Act 1986;
- c. The Mental Health Act 2014;
- d. The Charter of Human Rights and Responsibilities Act 2006;
- e. Information Privacy Act 2000;
- f. Health Records Act 2001;
- g. Children and Young Persons Act 2005; and
- h. Education and Training Reform Act 2006.

10. Schedules to this Agreement include, but are not limited to:

- a. financial contributions;
- b. transitional provisions;
- c. continuity of support;
- d. market and workforce roles and responsibilities; and
- e. interface between the NDIS and Victorian services.

Part 3 – Roles and Responsibilities

Shared responsibilities

11. In addition to their shared roles and responsibilities outlined in existing frameworks and in Clauses 8 and 9, the Parties agree to:
- a. support and promote the objectives and principles of the NDIS, as set out in the NDIS Act;
 - b. work together through the governance structures in the NDIS Act and in this agreement to minimise risks to the delivery of the NDIS and ensure Scheme sustainability;
 - c. work collaboratively, consulting with the NDIA and engaging with people with disability, their families and carers, on ongoing refinement of the policy settings of the NDIS, including its interface with other service systems and non-government and community-based supports;
 - d. work collaboratively, consulting with the NDIS Commission and engaging with people with disability, their families and carers, on ongoing refinement of the policy settings and operational arrangements relating to the NDIS Quality and Safeguarding Framework, including its interface with other safeguarding systems;
 - e. consider reports on NDIS implementation, performance and outcomes, as well as impacts on other service systems, to inform their efforts to improve NDIS performance;
 - f. participate in agreed evaluations and reviews, including by providing relevant information where available;
 - g. make financial contributions to the NDIS, as set out in Part 8;
 - h. where required, provide continuity of support for clients of Commonwealth or Victorian specialist disability programs who are found to be ineligible for the NDIS, to assist them to achieve similar outcomes, as set out in Schedule C of this Agreement;
 - i. ensure the portability of NDIS supports between jurisdictions;
 - j. identify and report issues to the NDIA or the Ministerial Council or responsible government, as appropriate, in a timely manner to ensure that the NDIS, and the legislation underpinning the Scheme, is operating as intended;
 - k. coordinate and promote links between the NDIS and other service systems and non-government and community-based supports to create seamless delivery of supports to NDIS participants;
 - l. support the principles of interoperability with other service systems by sharing information and data to the greatest extent possible to support the effective integration of the Scheme and jointly monitor outcomes, subject to privacy and other confidentiality requirements;
 - m. support the development of a robust and comprehensive disability services market;
 - n. support the NDIA's implementation of Information, Linkages and Capacity Building (ILC) by promoting collaboration and partnership with local communities and other service systems to create greater inclusivity and accessibility of people with disability; and

- o. provide access to other services provided by the Commonwealth and Victoria to all people with disability residing in Victoria, in accordance with the agreed responsibilities of all governments.

The NDIS and other service systems

- 12. The NDIS operates alongside other service systems in accordance with the APTOS. All governments have agreed that the guiding principles outlined in the APTOS will be used to determine the funding and delivery responsibilities of the NDIS; and that the interactions of the NDIS with other systems will reinforce the obligations of other service delivery systems to improve the lives of people with disability, in line with the National Disability Strategy.
- 13. The service decisions regarding support for NDIS participants made by the NDIA and other service systems, in line with the principles in the APTOS, should be implemented in a consistent manner. To support this, the NDIA will continue to publish all Operational Guidelines that guide decision making about funding supports for NDIS participants.
- 14. The APTOS may be amended from time to time. Recognising that changes to the APTOS impact the NDIS and other service systems; any changes to the APTOS will be undertaken through a collaborative and jointly agreed process between the Commonwealth and all states and territories and will be agreed by COAG.

Part 4 – Governance

Ministerial Council

- 15. The NDIS is established by the NDIS Act and as outlined in Part 5 of the NDIS Act the NDIS is overseen by a Ministerial Council. The NDIS Act defines the Ministerial Council as being designated by COAG as having responsibility for the NDIS, and as being subject to COAG guidance for Ministerial Councils.
- 16. The Ministerial Council consists of the Commonwealth and all states and territories, and currently comprises Ministers with responsibility for disability and Treasury portfolios.
- 17. The Ministerial Council is supported by a Senior Officials Working Group (SOWG), chaired by the Commonwealth.
- 18. Representatives from the NDIA and the NDIS Commission will attend Ministerial Council and SOWG meetings as required.
- 19. Under the NDIS Act, the Ministerial Council may make recommendations to COAG about NDIS policy matters or issues that arise under the NDIS Act or that respond to a scheduled review of the operation of the NDIS Act. The Ministerial Council provides an annual report to COAG and other reports as requested.

Working with the National Disability Insurance Agency

20. The NDIA is an independent statutory agency, whose role, as set out in the NDIS Act, is to deliver the NDIS and manage the financial sustainability of the NDIS, and to develop the sector, build community awareness and undertake data collection and research relating to disabilities.
21. The Parties may work with the NDIA to consider and resolve bilateral matters relating to the operation of the NDIS. This will be supported by agreed local and state-level governance arrangements which bring together the relevant parties and the NDIA. Unresolved matters could be escalated to the relevant Ministers or First Ministers, or where they have multilateral relevance, the Ministerial Council – or relevant officials' bodies.
22. The Parties will establish governance arrangements for oversight of the NDIS in Victoria from 1 July 2019, as outlined in the Tripartite Agreement Governing Operating Protocols for the NDIS between the NDIA, the Victorian Government and the Commonwealth Government.
23. The Parties agree to the establishment of a Victorian Executive Steering Committee (ESC). The Parties agree the Victorian ESC should comprise senior representatives from Commonwealth and Victorian agencies and the NDIA.
24. The Parties agree to the establishment of a Victorian NDIS Community Advisory Council as set out in the Tripartite Agreement Governing Operating Protocols for the NDIS between the NDIA, the Victorian Government and the Commonwealth Government.
25. The Parties agree to review and assess the operation of the Tripartite Agreement Governing Operating Protocols for the NDIS between the NDIA, the Victorian Government and the Commonwealth Government biannually, with the first review to commence no later than June 2021.
26. Under the NDIS Act, the Commonwealth Minister, as chair of the Ministerial Council and with all states' and territories' agreement, can:
 - a. give directions, by legislative instrument, to the NDIA about the performance of its functions; and
 - b. provide strategic guidance to the NDIA Board.

Working with the NDIS Quality and Safeguards Commission

27. The NDIS Commission is an independent statutory agency, whose role, as set out in the NDIS Act, is to provide functions relating to the quality and safety of services provided to people with disability, register and oversee the operation of NDIS providers and manage and resolve complaints about NDIS providers.
28. The Parties may work with the NDIS Commission to consider and resolve bilateral matters relating to the operation of the NDIS. This may be supported by agreed

governance arrangements which bring together the relevant parties and the NDIS Commission. Unresolved matters could be escalated to the relevant Ministers or First Ministers, or where they have multilateral relevance, the Ministerial Council – or relevant officials' bodies.

Consultation processes on the NDIS Act and legislative instruments

29. Where consultation is required in relation to a proposed change to the NDIS Act, or a new or existing instrument made under it, the following process will be followed:

- a. contact at officer level between the Commonwealth and affected jurisdictions;
- b. SOWG consideration of a proposed multilateral change;
- c. if there is an unintended impact on a jurisdiction the Commonwealth should be notified within 14 calendar days of SOWG consideration;
- d. where there is an unintended impact, the Commonwealth will work with that jurisdiction to remove or minimise it;
- e. if the process outlined in (c) or (d) above occurs and it results in redrafting, the Commonwealth will recirculate the proposed change to SOWG for agreement within five working days;
- f. the process outlined in (c), (d) and (e) above may occur more than once;
- g. if there is no unintended impact notified under (c) above or, where there is such an impact, when the process in (c) (d) and (e) above has occurred, the Commonwealth Minister or, where delegated, the NDIS Commissioner, will write to jurisdictional Ministers about the proposed change and request a response within 28 calendar days of the letter being sent; and
- h. the Commonwealth Minister, or NDIS Commissioner, will not make the proposed change before the 28 calendar days in (g) above has expired.

30. Where a proposed change to the NDIS Act, or an instrument made under it, requires formal agreement of a jurisdiction, a majority of jurisdictions, or all jurisdictions:

- a. the processes outlined in 29(a) to (h) will be followed; and
- b. if a jurisdiction has not responded within the 28 calendar day period indicated in the Commonwealth Minister's or NDIS Commissioner's letter, the jurisdiction is deemed to have agreed the proposed change; unless
- c. the jurisdiction has notified the Commonwealth in writing within the 28 calendar day period that its formal agreement requires a formal decision, in which case:
 - i. the notification by the jurisdiction in writing includes the date by which the decision will be made;
 - ii. the notified decision date in (i) above is within 90 calendar days since the date the Commonwealth Minister's or NDIS Commissioner's letter was sent;
 - iii. the jurisdiction notifies the Commonwealth of its decision within two working days of this specified date; and
 - iv. if the Commonwealth has not been notified of the decision, within two working days of the notified date, the jurisdiction will be deemed to have agreed.

Part 5 – NDIS Quality and Safeguarding

31. The NDIS Quality and Safeguarding Framework, agreed by COAG, outlines the roles and responsibilities of the Commonwealth and all state and territory governments in relation to ensuring high quality supports and safe environments for NDIS participants.

Guiding Principles

32. All governments share a common goal of ensuring appropriate quality and safeguarding arrangements are in place for people with disability under the NDIS, in line with the following principles:
- a. protect and prevent participants from experiencing harm arising from poor quality or unsafe supports or services;
 - b. avoid regulatory gaps and enable NDIS participants to make seamless transitions across jurisdictional regulatory boundaries;
 - c. embed best practice in safeguarding arrangements across agencies;
 - d. consult on decisions that might reasonably be expected to impact other parties; and
 - e. implement information sharing arrangements to ensure the success of quality and safeguarding arrangements.

Roles and Responsibilities

33. The Commonwealth is giving effect to its key obligations under the NDIS Quality and Safeguarding Framework through the establishment of the NDIS Commission.
34. The Commonwealth, through the NDIS Commission, will be responsible for:
- a. registration and regulation of NDIS providers, including practice standards;
 - b. compliance monitoring, investigation and enforcement action;
 - c. responding to complaints and reportable incidents, including abuse or neglect of a person with disability;
 - d. national policy settings for the screening of workers;
 - e. national oversight in relation to behaviour support and monitoring the use of restrictive practices within the NDIS with the aim of reducing and eliminating such practices, and assisting all state and territories to move towards greater consistency around authorisation and consent arrangements;
 - f. monitoring and overseeing the NDIS market; and
 - g. facilitating information sharing arrangements between the NDIS Commission, the NDIA and all states and territories and other Commonwealth regulatory bodies.
35. The NDIS Commission will also regulate supports and services provided outside the NDIS in certain circumstances, where a program or provider is prescribed by the NDIS rules, including the Commonwealth Continuity of Support Program for people with disability aged 65 and over (and Aboriginal and Torres Strait Islander people aged 50 and over).

36. The Parties agree that other existing Commonwealth and Victorian quality and safeguarding arrangements will continue:
- a. for services for people with a disability delivered through service systems outside the NDIS;
 - b. for matters which fall outside the jurisdiction of the NDIS Commission;
 - c. to cover all existing clients that have not transitioned to the NDIS; and
 - d. to cover all in-kind supports, which do not fall under the remit of the NDIS Commission because they are not funded under the NDIS Act.
37. The Parties agree that universal complaints and redress mechanisms, including police, fair trading bodies, professional and industry bodies, consumer protection laws, tenancy protection laws and other regulatory and complaints systems, will continue to be available to both NDIS participants and people with disability outside the NDIS.
38. Consistent with the NDIS Quality and Safeguarding Framework, Victoria is responsible for policy and any related legislation, the authorisation arrangements for restrictive practices in Victoria and the operational aspects of worker screening, including the operation of state-based worker screening units.
39. The roles and responsibilities of the Commonwealth and Victoria in relation to worker screening will be outlined in the Intergovernmental Agreement on Worker Screening.

Transitional Arrangements

40. Transitional arrangements for Quality and Safeguarding are outlined in Schedule B of this Agreement.

Part 6 – NDIS Market and Workforce Development

Guiding Principles

41. The Parties are committed to an NDIS delivered through an open market where:
- a. people with disability exercise choice and control to access reasonable and necessary supports;
 - b. diverse and sustainable providers offer a full range of quality supports wherever people live;
 - c. workers with appropriate skills deliver quality supports using a person-centred approach;
 - d. prices are monitored to support value for money for participants and Scheme sustainability, and decisions about price controls or deregulation are informed by evidence about the functioning of the market;
 - e. the sharing of high-quality and timely market intelligence is promoted by all agencies to the greatest extent possible;
 - f. governments adhere to principles of competitive neutrality when offering or providing supports to people with disability; and

- g. the market is monitored and regulated, and receives support and intervention as necessary to ensure it delivers in the interests of participants.
- 42. The Parties acknowledge:
 - a. that reform of the disability support market and workforce is ongoing; and
 - b. the role of consumers, providers and workers in building a mature NDIS market.
- 43. The Parties agree to:
 - a. continue to support NDIS market reform through their respective education, training and regulatory systems;
 - b. forge connections to other relevant sectors (for example, health and aged care); and
 - c. support innovation in the disability support market, either directly or by not impeding innovation in the market.

Roles and Responsibilities

- 44. In the context of the Roles and Responsibilities for developing the NDIS Market and Workforce agreed by the Ministerial Council, Victoria agrees to be responsible for:
 - a. working with the Commonwealth to support the implementation of market intervention and maintaining critical supports;
 - b. facilitating the sharing of relevant market intelligence from state-based agencies to inform effective market oversight of the disability support sector; and
 - c. working with the Commonwealth to develop an NDIS workforce with appropriate skills and capabilities to deliver safe and quality supports and meet expected workforce growth requirements.
- 45. In the context of the Roles and Responsibilities for developing the NDIS Market and Workforce agreed by the Ministerial Council, the Commonwealth agrees to be responsible for:
 - a. engaging in good faith to develop, consider and implement market policies, strategies and actions to mitigate entrenched or systemic market risks;
 - b. implementing market monitoring and regulation to protect participant interests and support market sustainability, competition, and viability;
 - c. monitoring the impact of pricing policies on the disability support sector and advising Victoria on risks and opportunities for price deregulation; and
 - d. working with Victoria, and other states and territories to develop a NDIS workforce with appropriate skills and capabilities to deliver safe and quality supports and meet expected workforce growth requirements.
- 46. The Parties agree to share responsibility for consulting with stakeholders and partners to inform advice to governments about entrenched or systemic market risks (including in particular sub-markets or geographies), their severity and likely impacts.

47. The Parties agree to work collaboratively with all jurisdictions, the NDIS Commission and the NDIA to consider approaches to improve the effective operation of the market for NDIS services, including consideration of pricing practices for improved transparency on price settings, pricing principles for market and workforce development, and pricing governance (including exploration of options for independent pricing and pathways to deregulation), market confidence, capacity building and depth, flexibility of the market to innovate and meet participants' needs, and consumer choice and regulation for quality and safety.

Part 7 – NDIS Performance Reporting

48. Under the NDIS Act, the NDIA will provide the following levels of reporting about NDIS performance.

Annual Report

49. An annual report, which summarises the performance and operations of the NDIA as required by the Public Governance, Performance and Accountability Act 2013 and the NDIS Act.
50. The annual report may also present the actions, initiatives and key performance indicators on the implementation and management of the NDIS against targets set out in the Commonwealth's Portfolio Budget Statements and the NDIA's Corporate Plan.

Quarterly NDIA Performance Reporting

51. The NDIA Board will report quarterly to the Ministerial Council on aspects of operational performance that contribute to the achievement of outcomes for the NDIS.
52. This information will be provided at the national level, and also disaggregated to the level of individual jurisdictions, and include information that relates to either or both of the following in the period to which the report relates:
- a. participants in each jurisdiction; and
 - b. funding or provision of supports by the NDIA in relation to each jurisdiction.
53. Reporting at this level is designed to provide jurisdictions with the information they require to meet their own individual accountability requirements, especially in the budget-reporting context, and to enable Victoria to monitor the impact of the NDIS on its population and service system.

NDIS Performance Reporting Framework

54. The Parties agree to work collaboratively through COAG, the Ministerial Council and with the NDIA to establish and develop over time a robust Performance Reporting Framework to comprehensively monitor the performance and governance of the NDIS against its goals, as stated in the NDIS Act.
55. The Parties agree that the NDIS Performance Reporting Framework (including any reporting obligations) will be included as a Schedule to this Agreement once the NDIS Performance Framework has been endorsed by SOWG and the Ministerial Council.

NDIS Activity in Jurisdictions

56. The NDIA must also give a Commonwealth, State or Territory Minister who is a member of the Ministerial Council additional information when requested by that Minister about:
 - a. expenditure, relating to a particular host jurisdiction, of money received by the NDIA from the Commonwealth or that host jurisdiction; or
 - b. activities of the NDIA relating to that jurisdiction.

Part 8 – Funding Arrangements

57. The NDIS Act provides for the payment of NDIS financial contributions by the Commonwealth and the states and territories. This Agreement sets out the detail of agreed funding arrangements and payments to be made to the NDIA.
58. The Parties agree to contribute to the NDIS in accordance with Schedule A of this Agreement.
59. The Parties agree that contributions made to the NDIA from the Commonwealth and Victoria towards participant supports in Victoria that are not expended in a financial year will remain with the NDIA for participant supports, general supports, NDIA working capital and/or a NDIS Reserve Fund.
60. The Parties agree to establish a NDIS Reserve Fund, from 1 July 2019. The objectives of the Reserve Fund are to improve participant outcomes and manage scheme sustainability on insurance principles by using the Reserve Fund to manage the lifetime risk of participant costs.
61. The Reserve Fund will be built from accumulated cash in the Scheme. No governments are expected to make additional payments to the Reserve Fund. Actuarial and economic analysis will inform advice to governments about the development and optimal level of the Reserve Fund. The actuarial and economic analysis will be peer-reviewed.

62. The Ministerial Council will consider the broad policy and design parameters of the Reserve Fund, including the overall purpose and use of the Reserve Fund, the optimal level of reserves and reporting requirements.

- a. If agreement cannot be reached or the confirmation of members' commitment is not given by the Ministerial Council by December 2019, the Parties will consider alternative arrangements for a reserve.

Transitional Arrangements

63. The Parties agree that Victoria's contribution to the NDIS may be temporarily adjusted in accordance with Schedule B of this Agreement.

Part 9 – Reviews and variations

Review of the operation of the Agreement

64. The Parties agree to commission a review no later than the end of 2023 that will assess the operation of this Agreement.

65. The review of the operation of this Agreement may take into account outcomes of the legislative review of the NDIS Act, to be commissioned by the Ministerial Council in or after 2021.

Reviews of NDIS Costs

66. The Parties agree to the Ministerial Council separately commissioning an independent review of NDIS costs in 2023 and 2028 and, thereafter, as commissioned by the Ministerial Council. This will include consideration of the parameters and terms of reference of the review.

67. As members of the Ministerial Council, states and territories will have a role in setting the parameters and terms of reference of the review.

68. The reviews should examine the following issues:

- a. sustainability of the NDIS, including costs and achievement of participant outcomes and the effectiveness of ILC;
- b. cost pressures, including wages pressures;
- c. the NDIA's operational costs;
- d. efficiencies within the Scheme;
- e. whether there has been any service and financial impact, positive or negative, on other service systems; and
- f. the most appropriate levers to manage financial risks and any cost pressures.

69. Each review should also address any additional issues relevant at the time of the review.

70. The Parties commit to consider the outcomes of the reviews in respect of this Agreement.

71. The outcomes of the reviews will also be considered by the Ministerial Council and reported to COAG.

Variation to the Agreement

72. In the event the Commonwealth offers terms that are more favourable in subsequent bilateral agreements with other jurisdictions, these will also be made available to Victoria, if Victoria makes such a request and the request relates to substantial financial and governance arrangements and/or policy settings. The Parties agree to negotiate appropriate amendments to this Agreement to give effect to any changes, including from when any changes come into effect, recognising that if subclause (b) was invoked all relevant plans would need to be reviewed and cash supports removed where participants agreed to use the in-kind supports. The Parties agree that this provision excludes:

- a. the quantum of the Victorian contribution, including the provision of cash and in-kind contribution and escalation rate; and
- b. Victoria's in-kind funding cap and the values and phase-out deadlines agreed for the in-kind funded supports listed in Schedule B, except that if the Commonwealth agrees with another jurisdiction that it can receive time-limited in-kind recognition for its Taxi User Subsidy Scheme, (the Multi-Purpose Taxi Program in Victoria), this will also be offered to Victoria.

73. This Agreement and Schedule A to this Agreement may only be amended with the agreement of relevant First Ministers. This will include an amendment to Schedule A following reallocation of Victoria's contributions in 2023 and every five years thereafter.

74. Schedules B, C, D and E to this Agreement may be amended or revoked, and new Schedules added, with the agreement of the Commonwealth Minister and the Victorian First Minister or, where delegated, the relevant Victorian Minister.

Part 10 – Process for Resolution of Disputes under this Agreement

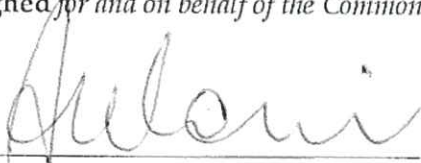
75. Any Party may give notice to other Parties of a dispute under this Agreement.

76. Officials of relevant Parties will attempt to resolve any dispute bilaterally in the first instance, then if not resolved, escalate through the relevant Ministers and First Ministers.

77. If the dispute relates to a common multilateral provision of the Agreement, and Victoria and the Commonwealth agree, it could also be escalated through relevant multilateral officials groups, and if necessary, the Ministerial Council and COAG.

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

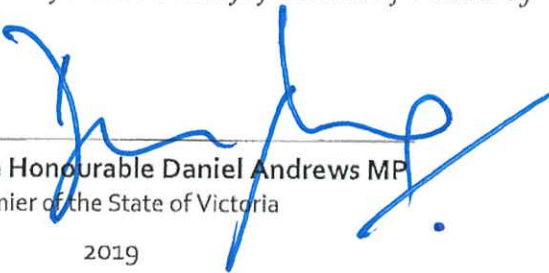
Signed for and on behalf of the Commonwealth of Australia by



The Honourable Scott Morrison MP
Prime Minister of the Commonwealth of Australia

2019

Signed for and on behalf of the State of Victoria by



The Honourable Daniel Andrews MP
Premier of the State of Victoria

2019

Schedule A. Financial Contributions

Victoria financial contributions

1. Victoria will contribute \$2,586 million in 2019-20.
2. The \$2,586 million includes a \$65 million Budget Neutral Adjustment as a result of changes to Commonwealth and State roles and responsibilities under Schedule F of the 2011 National Health Reform Agreement. The Budget Neutral Adjustment will be escalated at 3.5 per cent per annum.
3. The remaining contribution of \$2,522 million in 2019-20 will be escalated by 4.0 per cent per annum to account for inflation and population changes.
 - a. The escalation rate may be reassessed by the Parties following each independent review of NDIS costs.
 - b. Table 1 outlines Victoria's financial contribution each year from 2019-20 to 2022-23:

TABLE 1: VICTORIA CONTRIBUTIONS (MILLIONS)

	2019-20	2020-21	2021-22	2022-23
Total	\$2,586.35	\$2,689.48	\$2,796.72	\$2,908.25

4. Victoria's contribution will contribute to participant supports, including:
 - a. individualised support packages for scheme participants; and
 - b. Information, Linkages and Capacity Building (ILC) and other general supports as described by section 13(2) of the NDIS Act.
5. Victoria's cash contributions will be made in advance, within the first two working days of each quarter, following receipt of an invoice from the NDIA.
6. Victoria's cash contributions will be adjusted to take into account end of transition arrangements and in-kind funding contributions, as outlined in Schedule B.

Commonwealth contributions

7. The Commonwealth will continue to project the future cost of the NDIS, informed by each independent review of NDIS costs.
 - a. The Commonwealth will continue to project costs informed by Productivity Commission estimates until the next independent review of NDIS costs in 2023;
 - b. The Commonwealth will continue to project NDIA administration, ILC and participant supports costs on a national basis.

8. The Commonwealth will be responsible for the balance of all NDIS costs, taking into account the financial contributions from Victoria, and will fully provision for all Commonwealth financial contributions.
9. The Commonwealth confirms its contribution will be consistent with the Heads of Agreement signed between Victoria and the Commonwealth on 4 May 2013. The actual amount spent in each jurisdiction will depend on the number of participants and the cost of the NDIS in that jurisdiction. To give effect to this:
 - a. the Commonwealth commits to using an average package cost of no less than \$43,324 per participant in Victoria as the basis of the Commonwealth contribution in Victoria until the next independent review of NDIS costs. The average package cost will be indexed by the Commonwealth's floating escalation rate until the next independent review of NDIS costs;
 - b. The Commonwealth's contribution will be adjusted according to participant numbers and costs;
 - c. The Commonwealth's contribution will not be comprised of nor adjusted due to accumulated cash in the NDIA arising from the implementation of the Bilateral Agreement between the Commonwealth and Victoria for Transition to a NDIS;
 - d. After taking into account the financial contributions from Victoria, the Commonwealth will be fully responsible for ensuring the NDIA has adequate funding to meet all participant costs and cash flow requirements.
10. The Commonwealth will contribute to other general supports as described in the NDIS Act, including ILC investments for the benefit of all Victorians with disability.
11. The Commonwealth's cash contributions will be made in advance, within the first two working days of each quarter, following receipt of an invoice from the NDIA.
12. In addition, under the NDIS Act, the NDIA must respond to a request by a host jurisdiction Ministers for information about:
 - a. expenditure of money received by the NDIA from that jurisdiction; or
 - b. expenditure, relating to that jurisdiction, of money received by the NDIA from the Commonwealth; or
 - c. activities of the NDIA relating to that jurisdiction.
13. The Commonwealth agrees to provide regular reports on actual NDIS expenditure in Victoria, noting this is currently reported in NDIA annual reports.

Reallocation of Victoria's contributions

14. A net neutral reallocation of all state and territory contributions will occur from 1 July 2023 and every five years thereafter, in line with each state's and territory's share of the total national population as per the most recent Census data at the time. This Schedule will be amended in 2023 and every five years thereafter to reflect the reallocation.
15. State population shares will be taken from the Australian Bureau of Statistics measure 3101.0 – *Australian Demographic Statistics*.

16. State population shares will be taken from the December data from the year that each Census was undertaken (i.e. the first data used will be December 2021 Census data).
17. When a reallocation occurs, the total quantum of baseline state and territory financial contributions to the NDIS in a financial year will be considered as a single figure. This figure will then be divided based upon the updated share of national population residing in each state and territory.
18. This reallocation will result in increased contributions from states and territories whose share of the national population has grown, and reduced contributions from states and territories whose share of the national population has fallen, at the time of reallocation.

The National Injury Insurance Scheme (NIIS)

19. The minimum benchmarks are outlined in the COAG Decision Regulation Impact Statements – Standing Council on Federal Financial Relations for motor vehicle or workplace accidents. Victoria is considered to meet the minimum benchmarks as at 1 March 2019.
20. Victoria will make additional contributions to the NDIS if Victoria's motor vehicle or workplace insurance schemes are below nationally agreed minimum benchmarks, or any revised minimum benchmarks subsequently amended by the Standing Council on Federal Financial Relations. The Commonwealth will agree with states and territories a process to verify that minimum benchmarks continue to be met.
21. The amount of any additional contributions from Victoria under Clause 20 in this Schedule will be the cost of the NDIS plan, and agreed administration costs, provided to a person in the NDIS.
22. Victoria and the Commonwealth will continue to assess the feasibility of a NIIS for catastrophic general accidents in good faith, through the Standing Council on Federal Financial Relations.
23. The Commonwealth and Victoria may continue negotiations, through the Standing Council on Federal Financial Relations, on coverage for no fault catastrophic medical treatment accidents, following a decision by COAG in 2017 to not proceed with the medical injury stream of the NIIS at this time.

Schedule B. Transitional Provisions

End of transition arrangements

1. Remaining transition funding mechanism payments will be in addition to Victoria's NDIS contributions made under this Agreement. The arrears nature of the transition funding mechanism means that payment(s) for the final period of transition from Victoria will be made during the first year of the full Scheme funding arrangements.
2. If the transition of existing Victoria disability clients into the NDIS is not complete by 30 June 2019, the Parties agree to apply a temporary discount to Victoria's financial contribution, for nine months until 31 March 2020.
3. The discount will include:
 - a. \$6.869 million per month for the reasonable fixed costs associated with continuing to support existing Victorian disability clients, applied in arrears on a monthly basis until the month following the final plan approval for the remaining existing clients; and
 - b. a per person amount for service delivery costs associated with the client cohorts in Table 2, applied in arrears following plan approval, for all existing active Victorian disability clients for whom:
 - i. a final access decision has not yet been made but who ultimately go on to meet access requirements; or
 - ii. an eligible access decision has been made and they do not yet have an approved plan.
4. The adjustment per person for service delivery costs will be equal to one-twelfth of costs identified in Table 2, multiplied by the number of months from 30 June 2019 until the mid-point of the month of plan approval, up to the agreed temporary discount period. The NDIA will calculate the amount on a per person basis in the month following plan approval and apply the adjustment to the next invoice.

TABLE 2: ANNUAL PER PERSON AMOUNT FOR SERVICE DELIVERY COSTS

Client Cohort	Cost
High cost clients	\$189,788
Medium cost clients	\$42,160
Low cost clients	\$15,429

5. If the number of existing Victorian clients that have NDIS eligibility confirmed but do not have an approved plan is greater than 750 at 31 March 2020, the Parties agree to apply a temporary discount to Victoria's financial contribution for an additional three months until 30 June 2020.
6. If applied, this temporary discount will be consistent with arrangements set out in Clauses 3a, 3b and 4 of Schedule B.

7. A decision will be made about Schedule B Clause 5 in January 2020. The number of Victorian clients that will not transition to the NDIS by 31 March 2020 will be estimated in January 2020 informed by a full assessment by the Parties and the NDIA.
8. If the number of existing Victorian clients that have NDIS eligibility confirmed but do not have an approved plan is greater than 750 at 30 June 2020, the Parties agree to negotiate a further temporary discount to Victoria's financial contribution, based on the arrangements set out in clauses 3b and 4 of Schedule B (the fixed costs in clause 3a would not apply).
9. A decision will be made about Schedule B Clause 8 in April 2020. The number of Victorian clients that will not transition to the NDIS by 30 June 2020 will be estimated in April 2020 informed by a full assessment by the Parties and the NDIA.
10. Victoria will develop a list of the existing disability clients yet to transition as at 30 June 2019 based on data received from the NDIA for that period. Each existing disability client will be allocated to a client cohort in Table 2 to be used for the purposes of calculating the per person amount for service delivery.
11. This list will be sent to the NDIA for agreement and a de-identified version to the Department of Social Services for information by 31 July 2019. The list cannot be revised after 31 July 2019.
12. Any discount will be applied in arrears on a future invoice, based on the end-month client status report submitted to Victoria by the NDIA.

In-kind funding contributions

13. The Parties agree to phase out in-kind funding contributions. Exceptional circumstances have been agreed between the Parties to apply an in-kind funding offset for the defined supports identified in Table 3. These in-kind supports have been assessed on the basis they:
 - a. do not contravene section 17A of the NDIS Act in relation to participant's exercising choice and control;
 - b. do not constrain the development of a NDIS support market;
 - c. adhere to principles of competitive neutrality;
 - d. allow the in-kind supports and amounts to be included in participant plans; and
 - e. will be calculated using the NDIA price for supports, where available, or an alternative, agreed unit value.
14. Victoria commits to phasing out in-kind supports as soon as possible and no later than the deadlines specified in Table 3, unless otherwise agreed by the Parties.
15. The maximum in-kind offset Victoria can receive in any financial year is \$785.4 million.

16. The estimated in-kind offset Victoria will receive for specific supports and participants will be specified in an exchange of letters between senior Commonwealth and Victoria officials by 31 March each year for the following financial year. This will reflect the phase out deadlines and values specified in Table 3, and the estimated number of NDIS participants included in the supports listed in Table 3. These details will be provided to the NDIA.
17. Victoria will provide the NDIA with individualised data that meets the NDIA's requirements to calculate an in-kind offset.
18. Victoria will receive an in-kind offset in arrears based on actual use of in-kind services. The offset will be provided as a discount to Victoria's contribution upon the raising of the next invoice by the NDIA.
19. The value of in-kind supports subject to average annualised unit values, defined in Table 3, will be calculated as:
 - a. the number of months each participant has accessed the in-kind support since the last discount was applied, multiplied by
 - b. 1/12th of the agreed average annualised unit value of the in-kind support, as outlined in Table 3.
20. The value of in-kind supports subject to average daily unit value, defined in Table 3, will be calculated as:
 - a. the number of days each participant has accessed the in-kind support since the last discount was applied, multiplied by
 - b. the daily rate of the in-kind support provided in the participants' plan, as outlined in Table 3.
21. The value of in-kind supports subject to average hourly unit value, defined in Table 3, will be calculated as:
 - a. the number of hours each participant has accessed the in-kind support since the last discount was applied, multiplied by
 - b. the hourly rate of the in-kind support provided in the participants' plan, as outlined in Table 3.
22. Table 3 does not specify a deadline for phasing out in-kind funding for the following in-kind supports:
 - a. specialist school transport; and
 - b. personal care in schools.
23. The arrangements for the in-kind funding for supports in clause 22 will apply until the end of the 2023 school year, as agreed by the Ministerial Council, or otherwise agreed by the Ministerial Council.
 - a. The average unit values identified in Table 3 for these supports are based on the Victorian cost of service delivery. They do not reflect the cost to the NDIS of providing these supports.

TABLE 3: AGREED VICTORIA IN-KIND SUPPORTS¹

Supports	Phase Out Deadline	Value for in-kind offset	Average Unit Value 2019-20	Average Unit Value 2020-21	Average Unit Value 2021-22	Average Unit Value 2022-23	Average Unit Value 2023-24
Supported Independent Living (transferring services) - Supported Independent Living - For 2,3,4,5,6,7 – Complex, Standard, Lower need	30 June 2021	Average annualised Unit Value	\$206,683	\$214,950	N/A	N/A	N/A
Short-term accommodation and assistance (transferring services) - Short term accommodation and assistance – Ratio 1:4 weekday	30 June 2021	Average daily Unit Value	\$655	\$681	N/A	N/A	N/A
Supported Independent Living (non-transferring services) - Supported Independent Living - For 2,3,4,5,6,7 – Complex, Standard, Lower need	30 June 2023	Average annualised Unit Value	\$206,683	\$214,950	\$223,548	\$232,490	N/A
Day Programs - Group based activities in the community – Ratio 1:2 – standard – weekday daytime	30 June 2023	Average hourly Unit Value	\$28	\$29	\$30	\$31	N/A

¹ * Average unit prices have been escalated by 4.0 per cent per annum.

Home and Community Care	31 December 2019	Average annualised Unit Value	\$6,301	N/A	N/A	N/A	N/A
Specialist Disability Accommodation - Specialist Disability Accommodation (SDA)	30 June 2021	Average annualised Unit Value	\$10,672	\$11,099	\$11,543	\$12,005	N/A
Specialist School Transport	See Clause 22	Average annualised Unit Value	\$12,848	\$13,362	If required, to be agreed between Victoria and the Commonwealth by 31 March for the following year.		
Personal Care in Schools (Attendant Care)	See Clause 22	Average annualised Unit Value	\$17,612	\$17,612	\$17,612	\$17,612	\$17,612

Quality and Safeguarding

24. The transition to national quality and safeguarding arrangements will be guided by a multilateral framework and implemented through agreed arrangements between the Commonwealth and Victoria.
25. The Commonwealth, through the NDIS Commission, and all jurisdictions will provide reports to the Ministerial Council on progress in implementing the NDIS Quality and Safeguarding Framework.
26. The Parties agree that the Commonwealth will develop working arrangements and protocols as required with Victoria in relation to the reduction and elimination of restrictive practices and the NDIS Commission's behaviour support function.
27. The NDIS Commission will agree working arrangements with Victorian agencies that support the NDIS Commission's functions and the ongoing functions of Victorian agencies. This includes State Ombudsman's offices, health care complaints bodies and other bodies as appropriate.

Changes to the NDIS Act to allow streamlined decision making

28. The Parties agree the Commonwealth introduce changes to the NDIS Act to allow:
 - a. NDIA Board appointments and terminations to be made by the Commonwealth Minister on the basis of majority agreement between jurisdictions, where the majority includes the Commonwealth;
 - b. Independent Advisory Council appointments to be made by the Commonwealth Minister on the basis of consultation with jurisdictions; and
 - c. rules made for the purpose of plan management (Sections 35, 40, 44, 45 and 46) unless it relates to Statement of Participant Supports, timeframes for decision-making (Section 204), risk management (Section 125B) and the Scheme actuary (Section 180C) to be made by the Commonwealth Minister on the basis of consultation with jurisdictions.
29. If required, the Commonwealth will also introduce changes to the NDIS Act to allow a 28 day requirement for Ministers to respond to requests for agreement to new or amended rules, where no response after 28 days is taken as agreement.

Schedule C. Continuity of Support

Principles

1. People with disability, their families and carers will be provided with continuity of support that will enable them to achieve similar outcomes to the outcomes they were aiming to achieve prior to the introduction of the NDIS.
2. The assistance provided to people through continuity of support will aim to support people to live as independently as possible by working with them to reduce their need for supports or to access supports from other systems, where appropriate. Where a person's support needs are reduced through capacity building work, or are met by other service systems, the assistance through continuity of support will be phased out.
3. The Parties agree that people with significant ongoing needs will be provided with assistance to prevent hardship where this would significantly undermine the person's wellbeing, or social and economic participation.
4. The Parties agree that their respective continuity of support delivery arrangements may change over time to respond to client need and recognise the importance of providing clear advice on these arrangements to people eligible for continuity of support.
5. The types of assistance provided through continuity of support should be flexible because the assistance that best builds the person's capacity to live independently may be different from the supports the person was previously accessing. The flexibility could, for example, include up-front investments that assist people to live more independently.
6. If a person receiving continuity of support is under 65 years and has had a change in their circumstances, the person can make an access request to the NDIA to become a participant at any time. If they are 65 years or older they can apply to access supports through the aged care system.

Who should receive Continuity of Support

7. The Parties agree that continuity of support will apply for people resident in an area or part of a cohort that transitioned (or continues to transition) to the NDIS if:
 - a. they received support but do not meet the access requirements outlined in the NDIS Act; or
 - b. are receiving supports that do not meet the definition of reasonable and necessary support in the NDIS Act; and

- c. the funding for this support was attributed to a program or service that ceased when the NDIS was introduced, or where the funding for that program or service was largely transferred to the NDIS.

People aged under 65 and Aboriginal and Torres Strait Islander people aged under 50

- 8. The Commonwealth will be responsible for providing continuity of support to people under the age of 65, and under the age of 50 for Aboriginal and Torres Strait Islander people, who were in receipt of Commonwealth administered disability programs and services.
- 9. Victoria will be responsible for providing continuity of support to people under the age of 65, and under the age of 50 for Aboriginal and Torres Strait Islander people, who were in receipt of Victorian administered disability programs and services.

People aged 65 and over and Aboriginal and Torres Strait Islander People aged 50 and over

- 10. The Commonwealth will be responsible for providing continuity of support to people aged 65 and over, and Aboriginal and Torres Strait Islander people aged 50 and over.
- 11. This includes those people who were previously receiving support through a Victorian Government program, as set out in the Bilateral Agreement between the Commonwealth and Victoria on Transitioning Responsibilities for Aged Care and Disability Services in Victoria.

Relationship to Information, Linkages and Capacity Building

- 12. The parties note that Continuity of Support is complemented by the ILC function of the NDIS that connects all people with disability (including those who cannot access the NDIS), and their families and carers, with broader systems of support by providing information and building individual and community capacity.

Schedule D: Market and Workforce Roles and Responsibilities

1. The Parties commit to working to improve the transparency and oversight of market and workforce developments of the NDIS.
2. The Parties recognise that Commonwealth and Victoria's stated roles in regard to market and workforce development (Part 6) are to be considered by the Ministerial Council in 2019. Any changes or amendments to these roles will be undertaken through a collaborative and jointly agreed process between the Commonwealth and all states and territories and will be agreed by the Ministerial Council.
3. The Parties are committed to supporting the development of the NDIS market and workforce to enable the NDIS to deliver on its objectives.
4. The Parties are committed to seeking agreement through the Ministerial Council and publication of full scheme market and workforce roles and responsibilities to improve transparency and accountability and to build market confidence.
5. The Ministerial Council will consider the market and workforce roles and responsibilities of the Commonwealth and state and territory governments, the NDIA and the NDIS Commission.
6. The Parties agree roles and responsibilities need to be clarified for market and workforce development, including market oversight, responses to thin or underperforming markets, maintaining critical supports (including provider of last resort) and workforce development.
7. Transition market and workforce roles and responsibilities agreed by the Ministerial Council will remain in operation until replaced by agreed full Scheme roles and responsibilities.
8. The Parties note the Senior Officials' Market Oversight Working Group (MOWG) has oversight of all significant market issues, including policy consideration of pricing arrangements and governance, and oversight of the NDIA's implementation of the McKinsey Independent Pricing Review, and report to SOWG and the Ministerial Council.
9. MOWG will consider full scheme market and workforce roles and responsibilities and advise the Ministerial Council in 2019. Following Ministerial Council agreement to full scheme market and workforce roles and responsibilities, the Parties agree to add it as a new schedule to this agreement.
10. The Parties agree to work with the MOWG to develop a process for review of the market and workforce roles and responsibilities to ensure that they are fit for purpose as the market develops, to be considered by SOWG and the Ministerial Council.

11. The parties agree that *Schedule D: Market and Workforce Development* will be included as a Schedule to this Agreement until or unless superseded by outcomes from related SOWG and Ministerial Council processes.

Schedule E: Interface between the NDIS and Victorian services

Supporting collaborative practice in mainstream interfaces

1. The parties renew their commitment to meet responsibilities under the Principles to Determine the Responsibilities of the NDIS and other service systems (the Principles), and in particular agree to work together to ensure participants receive coordinated supports from the NDIS and mainstream systems.
2. The parties agree to work through existing trilateral processes (for example, case by case escalation processes, the Victorian ESC and its subgroup the Transition Oversight Steering Group) to collaboratively:
 - a. develop individual responses for participants experiencing support gaps;
 - b. develop bilateral systemic responses to service gaps affecting multiple participants; and
 - c. participate in work towards multilateral systemic responses where these are necessary.

Ensuring continued relevance of the principles

3. The parties agree to continue to work bilaterally, and to contribute to multilateral work, to clarify and refine the Principles as necessary, based on experience with the NDIS to date.
4. The parties agree that *Schedule E: Interface between the NDIS and Victorian Services* will be included as a Schedule to this Agreement until or unless superseded by outcomes from related SOWG and Ministerial Council processes.