

Bilateral Agreement between the Commonwealth of Australia and the Australian Capital Territory on the National Disability Insurance Scheme

Part 1 – Objective of this Agreement

1. Through this Agreement, the Commonwealth of Australia (the Commonwealth) and the Australian Capital Territory (ACT) 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.
2. Through this Agreement, the Commonwealth and the ACT 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, 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 the ACT in relation to governance, policy, 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 the ACT.
6. This Agreement will commence on 1 July 2019.
7. This Agreement:
 - a. builds on the experiences of trial and transition in the ACT and nationally;
 - b. outlines the ways the Commonwealth and the ACT 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 the ACT;
 - 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 ACT which provides for payment from the DisabilityCare Australia Fund (DCAF);
 - f. any relevant Commonwealth and ACT 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 ACT legislation, and any relevant ACT legislation:
 - a. *Guardianship and Management of Property Act 1991*;
 - b. *Information Privacy Act 2014*;
 - c. *Disability Services Act 1991*;
 - d. *Human Rights Act 2004*;
 - e. *Mental Health Act 2015*;
 - f. *Health Records (Privacy and Access) Act 1997*;
 - g. *Children and Young People Act 2008*;
 - h. *Human Rights Commission Act 2005*;
 - i. *Discrimination Act 1991*; and
 - j. *Senior Practitioner Act 2018*.
10. Schedules to this Agreement include, but are not limited to:
 - a. financial contributions; and
 - b. transitional provisions.

Part 3 – Roles and Responsibilities

Shared responsibilities

11. In addition to their shared roles and responsibilities outlined in existing frameworks and in Clause 8, 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 National Disability Insurance Agency (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 Quality and Safeguards Commission (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 ACT specialist disability programs who are found to be ineligible for the NDIS, to assist them to achieve similar outcomes. The Commonwealth will take full responsibility for those aged 65 and over (and Aboriginal and Torres Strait Islander people aged 50 and over);
- 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 for people with disability; and
- o. provide access to other services provided by the Commonwealth and the ACT to all people with disability residing in the ACT, 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 will work collaboratively with the NDIA to support it to undertake its role in the ACT, and will use available mechanisms to formalise collaboration between the NDIA and the Parties.
22. 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.
23. 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

24. 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.
25. 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

26. 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.

27. 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 26(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

28. 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

29. 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. avoid regulatory gaps and enable NDIS participants to make seamless transitions across jurisdictional regulatory boundaries;
 - b. embed best practice in safeguarding arrangements across agencies;
 - c. consult on decisions that might reasonably be expected to impact other parties; and
 - d. implement information sharing arrangements to ensure the success of quality and safeguarding arrangements.

Roles and Responsibilities

30. The Commonwealth is giving effect to its key obligations under the NDIS Quality and Safeguarding Framework through the establishment of the NDIS Commission.

31. 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.
32. 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).
33. The Parties agree that other existing Commonwealth and ACT 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.
34. 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.
35. Consistent with the NDIS Quality and Safeguarding Framework, the ACT is responsible for policy and any related legislation, the authorisation and consent arrangements for restrictive practices in the ACT and the operational aspects of worker screening, including the operation of state-based worker screening units.
36. The roles and responsibilities of the Commonwealth and the ACT in relation to worker screening are outlined in the Intergovernmental Agreement on Worker Screening.

Transitional Arrangements

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

Part 6 – NDIS Market and Workforce Development

Guiding Principles

38. 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.
39. 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.
40. 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

41. In the context of the roles and responsibilities for developing the NDIS market and workforce agreed by the Ministerial Council, the ACT agrees to be responsible for:
- a. working with the Commonwealth to develop, consider and implement market policies, strategies and actions to mitigate entrenched or systemic market risks, including supporting the implementation of market intervention and maintaining critical supports; and
 - b. facilitating the sharing of relevant market intelligence from state-based agencies to inform effective market oversight of the disability support sector.
42. 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; and
 - c. monitoring the impact of pricing policies on the disability support sector and advising the ACT on risks and opportunities for price deregulation.
43. 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.

Part 7 – NDIS Performance Reporting

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

Annual Report

45. 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.
46. 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

47. 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.
48. 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.
49. 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 the ACT to monitor the impact of the NDIS on its population and service system.

NDIS Activity in Jurisdictions

50. 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.

51. The Parties will agree a performance reporting framework with the NDIA that will support shared monitoring and understanding of the achievement of outcomes for the NDIS in the ACT.

Part 8 – Funding Arrangements

52. 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.

53. The Parties agree to contribute to the NDIS in accordance with Schedule A of this Agreement.

54. 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.

55. 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.

56. The Ministerial Council will, by March 2019, 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. The Ministerial Council will also confirm that members commit to support the establishment of a national Reserve Fund. Decisions by the Ministerial Council will be in accordance with its Terms of Reference.

Transitional Arrangements

57. The Parties agree that the ACT'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

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

59. 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

60. 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.

61. 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.

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

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

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

Variation to the Agreement

65. 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 the ACT's contributions in 2023 and every five years thereafter.

66. Schedule B to this Agreement may be amended or revoked, and new Schedules added, with the agreement of the Commonwealth Minister and the ACT First Minister or, where delegated, the relevant ACT Minister.

Part 10 – Process for Resolution of Disputes under this Agreement

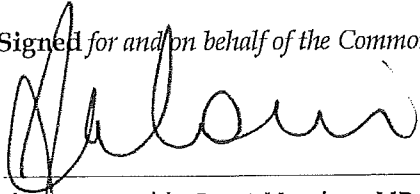
67. Any Party may give notice to the other Party of a dispute under this Agreement.

68. 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.

69. If the dispute relates to a common multilateral provision of the Agreement, and the ACT 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

A handwritten signature in black ink, appearing to read 'Scott Morrison', written over a horizontal line.

The Honourable Scott Morrison MP
Prime Minister

2019

Signed for and on behalf of the Australian Capital Territory by

A handwritten signature in black ink, appearing to read 'Andrew Barr', written over a horizontal line.

Andrew Barr MLA
Chief Minister of the Australian Capital Territory

2019

Schedule A. Financial Contributions

ACT's financial contributions

1. The ACT will contribute \$168.8 million in 2019-20.
2. The \$168.8 million includes a \$0.5 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 \$168.3 million in 2019-20 will be escalated as per Clause 4.
 - a. Table 1 outlines the ACT's financial contribution each year from 2019-20 to 2022-23.
 - b. The reallocation as per Clauses 11-15 in this Schedule will determine the ACT's contribution for 2023-24.
 - i. The ACT's reallocated contribution will be escalated as per Clause 4.

TABLE 1: ACT'S CONTRIBUTIONS (MILLIONS)

	2019-20	2020-21	2021-22	2022-23
Total	\$168.8	\$175.5	\$182.6	\$189.9

4. The escalation rate will be a fixed rate of 4.0 per cent per annum to account for inflation and population changes.
 - a. The 4.0 per cent escalation rate will not be reviewed prior to the 2028 review of NDIS costs. The ACT will not seek any variation of the 4.0 per cent escalation rate prior to the 2028 review.
 - b. The escalation rate may be reassessed by the Parties following the 2028 review, and any subsequent independent review of NDIS costs after 2028.
5. The ACT's contribution will contribute to participant supports, including:
 - a. individualised support packages for Scheme participants; and
 - b. Information, Linkages and Capacity Building and other general supports as described by section 13(2) of the NDIS Act.
6. The ACT'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.
7. The ACT'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's contributions

8. The Commonwealth will continue to project the future cost of the NDIS, informed by each independent review of NDIS costs commencing from 2023.
9. The Commonwealth will be responsible for the balance of all NDIS costs, taking into account the financial contributions from the ACT, and will fully provision for all Commonwealth financial contributions.
10. 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.

Reallocation of the ACT's contributions

11. 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.
12. State population shares will be taken from the Australian Bureau of Statistics measure *3101.0 – Australian Demographic Statistics*.
13. 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).
14. 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.
15. 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)

16. The minimum benchmarks are outlined in the COAG Decision Regulation Impact Statements – Standing Council on Federal Financial Relations for motor vehicle or workplace accidents.
17. The ACT will make additional contributions to the NDIS if the ACT'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.

18. The amount of any additional contributions from the ACT under Clause 17 will be the cost of the NDIS plan, and agreed administration costs, provided to a person in the NDIS.
19. The Commonwealth and the ACT will continue to assess the feasibility of a NIIS for catastrophic general accidents in good faith, through the Standing Council on Federal Financial Relations.
20. The Commonwealth and the ACT 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

In-kind funding contributions

1. 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 2. 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.
2. The ACT will receive an in-kind offset, in arrears, for the following supports listed in Table 2:
 - a. Special Needs Transport for Students with Disabilities; and
 - b. Personal Care in Schools.
3. The estimated in-kind offset the ACT will receive in each school semester for the supports listed in Table 2 will be agreed in an exchange of letters between senior Commonwealth and ACT officials by 31 March each year. The ACT will initiate correspondence by advising on the estimated number of NDIS participants that should access each in-kind support, and the estimated average unit value for each in-kind support, for the following financial year. Agreed details will be provided to the NDIA. The estimates will be used to provide the ACT with a preliminary in-kind offsets. The preliminary in-kind offset will be subject to the adjustment in clause 6.
4. The ACT will provide the NDIA with individualised data that meets the NDIA's requirements to calculate an in-kind offset.
5. The value of in-kind supports subject to average annualised unit values, defined in Table 2, 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 average annualised unit value of the in-kind support, as per Table 2 and the exchange of letters outlined in clause 3.
6. If the actual unit price varies from the estimated unit price, the ACT will agree with senior Commonwealth officials an adjustment to be applied no later than 31 March for Semester 2 of the previous calendar year and 31 September for Semester 1 of the current calendar year. The difference between the estimated and actual in-kind offset will be handled through an adjustment provided as a discount to the ACT's contribution to the NDIS upon the raising of the next invoice by the NDIA.

7. The maximum in-kind offset the ACT can receive in a year will equal the actual in-kind offsets agreed in clause 3 and 6.
8. These arrangements will apply until the end of the 2023 school year, as agreed by the Ministerial Council, or until otherwise agreed by the Ministerial Council.
9. The average unit values identified in Table 2 are based on the ACT cost of service delivery. They do not reflect the cost to the NDIS of providing these services.

TABLE 2: AGREED ACT IN-KIND SUPPORTS

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
Special Needs Transport for Students with Disabilities	See Clause 8	Average annualised Unit Value	To be specified in an exchange of letters, as per clause 3 of Schedule B.			
Personal Care in Schools	See Clause 8	Average annualised Unit Value	To be specified in an exchange of letters, as per clause 3 of Schedule B.			

Quality and Safeguarding

10. The transition to national quality and safeguarding arrangements will be guided by a multilateral framework and implemented through agreed arrangements between the Commonwealth and the ACT.
11. 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.
12. The Parties agree that the Commonwealth will develop working arrangements and protocols as required with the ACT in relation to the reduction and elimination of restrictive practices and the NDIS Commission's behaviour support function.
13. The NDIS Commission will agree working arrangements with ACT agencies that support the NDIS Commission's functions and the ongoing functions of ACT agencies. This includes State Ombudsman's offices, health care complaints bodies and other bodies as appropriate.

Governance

14. The Parties agree to request the Ministerial Council to supplement the Strategic Guidance endorsed by the Ministerial Council in March 2017 to reinforce the expectation that the NDIA Board will continue to work collaboratively with all governments during full Scheme.

Market and Workforce Development

15. The Parties recognise that the Commonwealth and the ACT's stated roles in regard to market and workforce development (Part 5) are to be considered by the Ministerial Council by early 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.

Changes to the NDIS Act to allow streamlined decision making

16. 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.

17. 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.

