

# Bilateral Agreement between the Commonwealth of Australia and the State of New South Wales on the National Disability Insurance Scheme

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## Part 1 – Objective of this Agreement

1. Through this Agreement, the Commonwealth of Australia (the Commonwealth) and State of New South Wales (NSW) 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 NSW 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 NSW 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 NSW.
6. This Agreement will commence on 1 July 2018.
7. This Agreement:
  - a. builds on the experiences of trial and transition in NSW and nationally;
  - b. outlines the ways the Commonwealth and NSW 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 NSW;
  - 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 NSW 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 NSW legislation, and any relevant NSW legislation:
  - a. *the National Disability Insurance Scheme (NSW Enabling) Act 2013*;
  - b. *the Disability Inclusion Act 2014*;
  - c. *the Guardianship Act 1987*;
  - d. *the Children and Young Persons (Care and Protection) Act 1998*;
  - e. *the Community Services (Care and Protection) Act 1993*;
  - f. *the Privacy and Personal Information Protection Act 1998*; and
  - g. *the Health Records and Information Privacy Act 2002*.
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 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 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 National 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 NSW 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 of people with disability; and
  - o. provide access to other services provided by the Commonwealth and NSW to all people with disability residing in NSW, 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 also defines the Ministerial Council as being designated by COAG as having responsibility for the NDIS, and is 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. Under the NDIS Act, the Commonwealth Minister, as chair of the Ministerial Council and with all state and territory 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 National Quality and Safeguards Commission**

23. 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.
24. 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**

25. 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.
26. 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 25(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**

27. 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**

28. 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**

29. The Commonwealth is giving effect to its key obligations under the NDIS Quality and Safeguarding Framework through the establishment of the NDIS Commission.
30. 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.
31. 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).
32. The Parties agree that other existing Commonwealth and NSW 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.
33. 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.
34. Consistent with the NDIS Quality and Safeguarding Framework, NSW is responsible for policy and any related legislation, the authorisation and consent arrangements for restrictive practices in NSW and the operational aspects of worker screening, including the operation of state-based worker screening units.
35. The roles and responsibilities of the Commonwealth and NSW in relation to worker screening are outlined in the Intergovernmental Agreement on Worker Screening.

### **Transitional Arrangements**

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

## **Part 6 – NDIS Market and Workforce Development**

### **Guiding Principles**

37. 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.

38. 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.

39. 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**

40. In the context of the Roles and Responsibilities for developing the NDIS Market and Workforce agreed by the Ministerial Council, NSW 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 implementing 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.

41. 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 NSW on risks and opportunities for price deregulation.

42. 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**

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

### **Annual Report**

44. 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.

45. 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**

46. 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.

47. This information will be provided at the national level, and also disaggregated to the level of individual jurisdictions, and include information that relate 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.

48. 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 NSW to monitor the impact of the NDIS on its population and service system.

### **NDIS Activity in Jurisdictions**

49. The NDIA must also give additional information when requested by a Commonwealth, State and Territory Ministers on:

- 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.

50. 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 NSW.

## **Part 8 – Funding Arrangements**

51. 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.
52. The Parties agree to contribute to the NDIS in accordance with Schedule A of this Agreement.
53. 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.
54. 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.
55. 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.
  - a. If agreement cannot be reached or the confirmation of members' commitment is not given by the Ministerial Council by March 2019, the Parties will consider alternative arrangements for a reserve.

## **Transitional Arrangements**

56. The Parties agree that NSW'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**

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

59. 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.
60. 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.
61. Each review should also address any additional issues relevant at the time of the review.
62. The Parties commit to consider the outcomes of the reviews in respect of this Agreement.
63. The outcomes of the reviews will also be considered by the Ministerial Council and reported to COAG.

## Variation to the Agreement

64. 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 NSW if NSW 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 clause (b) was invoked all relevant plans would need to be reviewed and cash supports removed where participants agreed to use the in-kind supports.
- a. The Parties agree that this provision excludes the quantum of the NSW contribution, including the provision of cash and in-kind contribution.
  - b. The Parties agree that this provision excludes NSW's in-kind funding cap and the values and phase-out deadlines agreed for the in-kind funded supports listed in Schedule B. If the Commonwealth agrees with another jurisdiction that an NDIS support is provided as a time-limited in-kind support for that jurisdiction and the Commonwealth did not agree the same support be provided as a time-limited in-kind support in NSW, the recognition of the following agreed NDIS supports will be offered to NSW: the NDIS supports that are provided as part of NSW's Out of Home Care program, the Housing and Accommodation Support Initiative and Taxi Transport Subsidy Scheme.
  - c. The Parties agree that this provision excludes the maximum level of cash provision for 2018-19 set out in Schedule B.

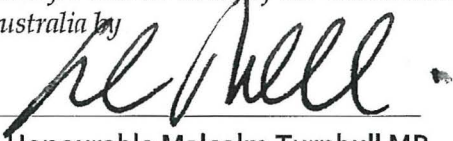
65. This Agreement and Schedule A to this Agreement may only be amended with the agreement of relevant First Ministers. This will include an amendment to Schedule A following reallocation of NSW's contributions in 2023 and every five years thereafter.
66. Schedule B to this Agreement may be amended or revoked, and new Schedules added, with the agreement of the Commonwealth Minister and the NSW First Minister or, where delegated, the relevant NSW Minister.

## **Part 10 – Process for Resolution of Disputes under this Agreement**

67. Any Party may give notice to other Parties 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 NSW 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 Malcolm Turnbull MP**  
Prime Minister of the Commonwealth of Australia

2018

*Signed for and on behalf of the  
State of New South Wales by*



**The Honourable Gladys Berejiklian MP**  
Premier of the State of New South Wales

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## Schedule A. Financial Contributions

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### New South Wales' financial contributions

1. NSW will contribute \$3,206 million in 2018-19.
2. The \$3,206 million includes \$73 million, escalated by 3.5 per cent per annum, as a result of the National Disability Specific Purpose Payment having fully transitioned to the NDIS.
3. The remaining contribution of \$3,133 million in 2018-19 will be escalated by 4.0 per cent per annum to account for inflation and population changes. Table 1 outlines NSW's financial contribution each year from 2018-19 to 2027-28:

**TABLE 1: NSW CONTRIBUTIONS**

Year	Total (millions)
2018-19	\$3,206.00
2019-20	\$3,333.88
2020-21	\$3,466.85
2021-22	\$3,605.14
2022-23	\$3,748.94
2023-24	\$3,898.47
2024-25	\$4,053.98
2025-26	\$4,215.69
2026-27	\$4,383.85
2027-28	\$4,558.73

4. The 4.0 per cent escalation rate will not be reviewed prior to the 2028 review of NDIS costs. NSW will not seek any variation of the 4.0 per cent escalation rate prior to the 2028 review.
5. NSW's 2018-19 contribution will include up to \$477.5 million in in-kind supports.
6. NSW's contribution will pay for 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.
7. NSW's cash contributions in 2018-19 will be made in advance, on the first working day of each month, following receipt of an invoice from the NDIA.

8. NSW's cash contributions in 2019-20, and every year thereafter, will be made in advance, on the first working day of each quarter, following receipt of an invoice from the NDIA.
9. NSW'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**

10. The Commonwealth will continue to project the future cost of the NDIS, informed by each independent review of NDIS costs commencing from 2023.
11. The Commonwealth will be responsible for the balance of all NDIS costs, taking into account the financial contributions from NSW, and will fully provision for all Commonwealth financial contributions.
12. The Commonwealth's cash contributions in 2018-19 will be made in advance, on the first working day of each month, following receipt of an invoice from the NDIA.
13. The Commonwealth's cash contributions in 2019-20, and every year thereafter, will be made in advance, on the first working day of each quarter, following receipt of an invoice from the NDIA.

### **Reallocation of New South Wales' 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. NSW arrangements for motor vehicles and work cover insurance as at January 2018 will be considered to satisfy any minimum standards that will be required for all states and territories participating in the NDIS, unless the minimum standards are amended by agreement through the Standing Council on Federal Financial Relations.
20. NSW will make additional contributions to the NDIS if the NDIS incurs additional costs because changes are made to NSW motor vehicle or workplace insurance schemes after January 2018 that reduce benefits or eligibility for NSW citizens below nationally agreed minimum benchmarks.
21. The amount of any additional contributions from the NSW Government under Clause 20 will be the cost of the NDIS plan, and administration of that plan, provided to a person in the NDIS.
22. NSW 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 NSW 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

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### End of transition arrangements

1. Remaining transition funding mechanism payments will be in addition to NSW 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 NSW will be made during the first months of the full Scheme funding arrangements.
2. If the transition of existing active NSW specialist disability clients into the NDIS is not complete by 30 June 2018, the Parties agree to apply a temporary discount to NSW's financial contribution, for a maximum of six months until 31 December 2018.
3. The discount will include:
  - a. \$1.9 million per month for the reasonable fixed costs associated with continuing to support existing NSW specialist disability clients, applied in arrears on a monthly basis until the month following the final plan approval for the remaining existing clients, or a maximum of six months; 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 NSW specialist 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 per person amount in Clause 3b will be equal to one-twelfth of costs identified in Table 2, multiplied by the number of months from 30 June 2018 until the mid-point of the month of plan approval, up to a maximum of six months. The NDIA will calculate the amount on a per person basis in the month following plan approval, and apply the discount to the next invoice.

**TABLE 2: ANNUAL PER PERSON AMOUNT FOR SERVICE DELIVERY COSTS**

<b>Client Cohort</b>	<b>Cost</b>
Group Homes	\$182,983
Community High	\$134,287
Community Access	\$48,091
Community Support	\$13,345
Respite	\$38,161
Community Care	\$18,426

5. Any discount will be applied in arrears on a future invoice, based on the end-month client status report submitted to NSW by the NDIA.

## **In-kind funding contributions**

6. 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.
7. NSW 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.
8. The maximum in-kind offset NSW can receive in any financial year is \$477.5 million.
9. The estimated in-kind offset NSW will receive for specific supports and participants will be specified in an exchange of letters between senior Commonwealth and NSW 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.
10. NSW will provide the NDIA with individualised data that meets the NDIA's requirements to enable in-kind supports to be included in NDIS participant plans.
11. NSW 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 NSW's contribution upon the raising of the next invoice by the NDIA.
12. The value of in-kind supports subject to individual quotation, defined in Table 3, will be the amount paid by NSW, conditional upon NSW providing the quote to the NDIA and providing the services.
13. 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. 1/12<sup>th</sup> of the agreed average annualised unit value of the in-kind support, as outlined in Table 3.
14. 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.
- 15. Table 3 does not specify a deadline for phasing out in-kind funding for the following in-kind supports:
  - a. Assisted Student Travel;
  - b. Personal Care in Schools for NSW government schools; and
  - c. Personal Care for high needs students.
- 16. The Ministerial Council will determine when the in-kind funding for supports in Clause 15 will be phased out, once it has considered options for the future delivery of personal care in schools and specialist school transport for all schools that are appropriate for participants, providers and governments.
  - a. The average unit values identified in Table 3 for these supports are based on the NSW cost of service delivery. They do not reflect the cost to the NDIS of providing these supports.

**TABLE 3: AGREED NSW IN-KIND SUPPORTS**

<b>Supports</b>	<b>Phase Out Deadline</b>	<b>Value for in-kind offset</b>	<b>Average Unit Value 2018-19</b>	<b>Average Unit Value 2019-20</b>	<b>Average Unit Value 2020-21</b>	<b>Average Unit Value 2021-22</b>	<b>Average Unit Value 2022-23</b>
Assisted Student Travel Program	See Clause 15 and 16.	Average annualised unit value	\$17,369 per annum	If required, to be agreed between NSW and the Commonwealth by 31 March for the following year.			
Personal Care in Schools (Government Schools)	See Clause 15 and 16.	Average annualised unit value	\$7,214 per annum	If required, to be agreed between NSW and the Commonwealth by 31 March for the following year.			
Personal Care: High needs students	See Clause 15 and 16.	Average annualised unit value	\$60,470 per annum	If required, to be agreed between NSW and the Commonwealth by 31 March for the following year.			
Group Homes	31 December 2018	Average annualised unit value	\$231,958 per annum				
Enable: Aids and Equipment Program	30 June 2020	Individual Quotation	\$1,252	\$1,302			
Enable: Prosthetic Limb Services	30 June 2020	Individual Quotation	\$2,827	\$2,940			
Large Residential Centres	31 December 2020	Average annualised unit value	\$261,182 per annum	\$271,630 per annum	\$282,495 per annum		
Disability	30 June 2021	Individual Quotation	\$20,419	\$21,236	\$22,085		

Modifications			per annum	per annum	per annum		
Enable: Home Ventilation Program	30 June 2023	Average hourly unit value	\$57.32 per hour	\$59.61 per hour	\$62.00 per hour	\$64.48 per hour	\$67.06 per hour

## NDIS access for new and other Commonwealth clients in 2018-19

17. In NSW, it is estimated that around 26,404 new and other Commonwealth clients will access the NDIS between 1 July 2018 and 30 June 2019. This number does not include:

- a. any estimate of the new and other Commonwealth clients that were due to transition to the NDIS before 30 June 2018; and
- b. any existing NSW disability clients that did not transition into the NDIS by 30 June 2018, as identified in Schedule B, Clause 1 to 5 of this Agreement.

18. The Parties agree that provision will be given for these new and other participants to access the scheme, including:

- a. people not previously accessing any specialist disability supports from the NSW Department of Family and Community Services;
- b. people currently accessing Commonwealth specialist disability or Aged Care supports;
- c. people who have sporadically received specialist disability services funded or directly provided by the NSW Department of Family and Community Services in previous years;
- d. people currently accessing supports through other NSW Government agencies; and
- e. new incidence of disability.

19. The Parties agree that the remaining estimated eligible population will access the NDIS based on available capacity from 1 July 2018 through to 30 June 2019.

20. The Parties agree to work with the NDIA to support the remainder of the expected NSW population of 26,404 to access the NDIS evenly over the four quarters of 2018-19, as outlined in Table 4 below.

**TABLE 4: 2018-19 ESTIMATED NEW PARTICIPANTS**

Client Cohort	2018-19 Q1	2018-19 Q2	2018-19 Q3	2018-19 Q4	2018-19 Total
New and Other Commonwealth/State Participants	6,601	6,601	6,601	6,601	26,404
<b>Total Cumulative Intake</b>	<b>6,601</b>	<b>13,202</b>	<b>19,803</b>	<b>26,404</b>	

## **Maximum level of cash for participant package costs in 2018-19**

21. The Parties agree that in 2018-19 there is a maximum level of cash the NDIA can hold for the package costs for participants aged 0 to 64 years (excluding package costs for Aboriginal and Torres Strait Islander participants aged 50 to 64 years). If this maximum level is reached, the remaining funding contributions from the Commonwealth and NSW would be reduced such that maximum cash holdings does not exceed the maximum level. The maximum level is:
  - a. equal to the 3 months of the 2017-18 Agreed Annual Funding Contributions indexed by 4.3% for participants in the Scheme (the ceiling would not be based on actual plan commitments); and
  - b. recalculated each month at the time invoices are prepared.
22. Both Parties agreed to scale cash contribution across the 2018-19 financial year, to reflect the rate of additional participants scheduled to enter the Scheme as outlined in Schedule B, Clause 17 to 20 of this Agreement.
23. The Parties agree that the detailed calculation method for the maximum level of cash in 2018-19, including the scaled cash contributions, will be agreed by senior officials via an exchange of letters no later than 30 June 2018.

## **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 NSW.
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 NSW in relation to the reduction and elimination of restrictive practices and the NDIS Commissions' behaviour support function.
27. The NDIS Commission will agree working arrangements with NSW agencies that support the NDIS Commission's functions and the ongoing functions of NSW 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.