

BILATERAL AGREEMENT BETWEEN THE COMMONWEALTH AND THE NORTHERN TERRITORY

Transition to a National Disability Insurance
Scheme

Part 1 – Preliminaries

1. The Commonwealth of Australia (the Commonwealth) and the Northern Territory are committed to the implementation of a National Disability Insurance Scheme (NDIS) in the Northern Territory.
2. This Agreement covers the roles and responsibilities for the transition to full coverage of an NDIS in the Northern Territory, building on the lessons learned in trials conducted in New South Wales, Victoria, South Australia, Tasmania, the Northern Territory, the Australian Capital Territory and Western Australia.
3. The Parties agree to continue work through the Council of Australian Governments (COAG) Disability Reform Council, or equivalent multilateral forum, to refine and further develop the NDIS over time.

Part 2 – Parties and Operation of Agreement

Parties to this Agreement

4. This Agreement is between the Commonwealth of Australia and the Northern Territory.

Commencement and Duration of the Agreement

5. The Agreement will commence as soon as the Parties have signed the Agreement.
6. This Agreement will cover the transition period during which all existing clients of the Northern Territory specialist disability services are moving into the NDIS and other transitional arrangements are being implemented.
7. The Agreement will expire on the date a subsequent agreement is signed by both parties that expressly intends to replace this Agreement and where the parties agree that the transition phase has concluded.
8. The *Intergovernmental Agreement for the NDIS Launch* and its associated appendices and Memorandums of Understanding will continue to apply to Barkly Regional Council local government area until 30 June 2016.
9. This Agreement also covers those eligible people who were scheduled to transition to the NDIS during the trial period and did not, regardless of the reason.

Interoperability

10. This Agreement is to be considered in conjunction with:
 - a. *The National Disability Insurance Scheme Act 2013* (the NDIS Act 2013); and
 - b. *The Heads of Agreement between the Commonwealth and Northern Territory Governments on the National Disability Insurance Scheme*.

11. This Agreement is also to be considered in conjunction with the following Northern Territory legislation:
 - a. *Information Act*;
 - b. *Disability Services Act*;
 - c. *Workers Rehabilitation and Compensation Act*;
 - d. *Domestic and Family Violence Act*;
 - e. *Care and Protection of Children Act*;
 - f. *Anti-Discrimination Act*;
 - g. *Adult Guardianship Act*;
 - h. *Mental Health and Related Services Act*;
 - i. *Criminal Code Act*;
 - j. *Carers Recognition Act*;
 - k. *Education Act*;
 - l. *Health and Community Services Complaints Act*;
 - m. *Housing Act*;
 - n. *Public Trustee Act*.
 - o. *Public Sector Employment and Management Act*; and
 - p. *Financial Management Act*
12. This Agreement is separate to the Operational Plan that will set out implementation arrangements for the transition to full scheme in the Northern Territory, as agreed by the Secretary of the Commonwealth Department of Social Services (or his delegate) and the Chief Executive Officer of the Northern Territory Department of Health, and the CEO of the National Disability insurance Agency (NDIA).
13. The Operational Plan will be developed following the finalisation of this Agreement and will be reviewed and updated throughout the period of the Agreement.
14. The Operational Plan will adhere to the principles and schedules of this Agreement.
15. Schedules to this Agreement will include, but not be limited to:
 - a. Participant Transition Arrangements;
 - b. Financial Contributions for Transition;
 - c. Cross-billing and Budget Neutrality Arrangements;
 - d. Continuity of Support Arrangements;
 - e. Sector and System Readiness;

- f. Quality and Safeguards;
 - g. Performance Reporting;
 - h. Workforce;
 - i. Mainstream Interfaces;
 - j. Cross-billing and Budget Neutrality Arrangements: 2013-14 to 2015-16; and
 - k. Provider of Last Resort.
16. Nothing in this Agreement affects arrangements under the National Disability Agreement unless otherwise specified.
17. Arrangements for implementation of a National Injury Insurance Scheme are outlined in the *Heads of Agreement between the Commonwealth and Northern Territory Governments on the National Disability Insurance Scheme*.

Part 3 – Role and Purpose of the Agreement

18. This Agreement builds on the NDIS trial in the Barkly region. It outlines how the NDIS is expected to roll out over the period from July 2016 to July 2019.
19. The Agreement details the agreed arrangements for transition to the full scheme NDIS in the Northern Territory.

Part 4 - Principles

Principles and Approach During Transition

20. Given the small, culturally diverse, dispersed population over remote geography, and the unique remote service delivery operating context, the parties agree that the Northern Territory's approach to transition, including operational planning, will be guided by the following principles:
- a. Place based, tailored solutions to planning, market development, access to services and risk management;
 - b. A coordinated, client-centred, and tailored approach to the operating model in remote communities informed by existing effective frameworks, that maximises access, engagement and management of risk for individuals;
 - c. Culturally competent engagement and professional practices; and
 - d. Local planning, market development and risk management strategies informed by timely and appropriate data.
21. The Principles should be read in conjunction with the Objects and Principles of the NDIS Act 2013.

Part 5 – Roles and Responsibilities

Shared Roles and Responsibilities of the Parties

22. During the life of this Agreement, the Parties will, to the best of their endeavours:
- a. work together to minimise risks and manage unexpected risks through developing jointly agreed response strategies as issues arise, and in accordance with the *Heads of Agreement between the Commonwealth and Northern Territory Governments on the National Disability Insurance Scheme*;
 - b. continue to work collaboratively, consulting with the NDIA, on ongoing refinement of the policy settings of the NDIS and settle operational matters as needed;
 - c. engage with people with disability, their families and carers to provide input into ongoing refinements of the policy settings of the NDIS;
 - d. report on progress, results and outcomes to inform ongoing refinement of the policy settings of the NDIS, including through input to and consideration of the NDIS evaluation, and by identifying where arrangements are having unintended impacts;
 - e. share information to assist with policy development and scheme administration, subject to privacy requirements;
 - f. prepare for the phasing of clients into the NDIS by providing the NDIA with access to available data on potential participants;
 - g. prepare Commonwealth and Northern Territory programmes that are in scope for the NDIS for transition into the NDIS by aligning the service offers with the COAG Principles to Determine the Responsibilities of the NDIS and Other Service Systems;
 - h. facilitate local implementation of the NDIS, together with the NDIA, by preparing existing providers and clients to transition into the scheme, consistent with the phasing agreed at Schedule A and the Operational Plan to be agreed between the Parties and the NDIA;
 - i. facilitate the implementation of the NDIS by maintaining support for clients of disability services prior to the full roll-out of the NDIS in their area;
 - j. support the NDIA to deliver Information, Linkages, and Capacity building by coordinating and promoting links between the NDIS and mainstream services and non-government and community based support;
 - k. provide continuity of support for existing clients of disability services in accordance with Schedule D; and
 - l. provide advice to the NDIA to develop targeted strategies for remote, regional and Indigenous service delivery consistent with the NDIA agreed Rural and Remote Strategy, including where there are thin or non-existing markets, that mitigate risks in these markets, and promote local Indigenous economic participation opportunities and engagement.

Part 6 – National Disability Insurance Scheme – Transition to a Full Scheme

Aims of the Transition

23. In addition to the objects and principles outlined in the NDIS Act 2013, the Northern Territory transition will have the following further specific aims:

- a. build upon the evidence from trial sites;
- b. ensure that the transition of people with disability in the Northern Territory to the scheme occurs as smoothly and effectively as possible, with minimal service gaps or disruptions, including in locations which border other jurisdictions;
- c. support the orderly transition of relevant State-based community and population knowledge and systems to the NDIA where appropriate;
- d. encourage development of a sustainable market, and maintain a skilled workforce, where strategies for market development align with and support the transition of existing NT services to the non-government organisation sector, as well as Indigenous economic participation opportunities;
- e. ensure the transition is implemented in a way that does not inflate the cost of the full scheme;
- f. develop an environment where people with disability can exercise choice and control over the supports they choose by supporting a diverse and innovative workforce and market to grow and better meet the needs of its client base;
- g. ensure that carers and the families of people with disability are active partners with the scheme, and are involved in decisions that affect them;
- h. ensure that people with disability are not disadvantaged by the transition to the full roll out of the NDIS with particular reference to Indigenous people and disability clients residing in regional and remote communities; and
- i. ensure the transition is rolled out in a way that is culturally appropriate for Indigenous clients, and appropriate to the needs and circumstances of regional and remote communities.

Participant Phasing

24. The Parties agree to priorities for transitioning people from the existing Northern Territory and Commonwealth specialist disability system to the NDIS in accordance with Schedule A.

25. Implementation phasing arrangements will be contained in the Operational Plan for transition in the Northern Territory to be finalised following the finalisation of this Agreement.

26. Detailed phasing arrangements will be outlined in a legislative rule under the NDIS Act 2013.

Portability of Supports

27. Governments agree that once NDIS is fully implemented as a national scheme, NDIS supports will be fully portable across Australia.
28. During the transition, portability will apply in all jurisdictions transitioning to the NDIS consistent with existing qualifying and ongoing residence requirements in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*.

Continuity of Supports

29. Arrangements for continuity of supports are outlined in Schedule D.

Sector and System Readiness

30. Key elements for readiness of the disability services market, including providers, the broader sector, workforce and participants, and existing systems for transition are outlined in Schedule E. The Operational Plan, to be agreed between the Parties and NDIA, will detail implementation arrangements including arrangements to support readiness of the disability services market, including providers, the broader sector, workforce and participants, as well as the design and delivery of arrangements that are appropriate to Indigenous and regional and remote service delivery requirements.

Workforce

31. Arrangements for the first offer of employment to the NDIA, for appropriately skilled Northern Territory Government staff, are outlined in Schedule H.

Quality and Safeguards

32. The Commonwealth and jurisdictions are working together with the NDIA on the design of a nationally consistent quality and safeguarding system to be agreed by the Disability Reform Council in 2016.
33. The parties agree that existing quality assurance arrangements in the Northern Territory will continue to apply wherever possible, supplemented by the development of additional necessary quality assurance processes during transition.
34. Arrangements for quality and safeguards during transition in the Northern Territory will be outlined in Schedule F.
35. These arrangements will be reviewed by June 2016 to ensure they reflect the outcomes of the Ministers' decisions.

Consultation

36. The Parties, in conjunction with the NDIA, will jointly use existing consultative forums involving people with disability, families, carers and sector and community representatives to advise on refinements to, and further development of, the NDIS over time.

Collection and Management of Data

37. The Parties agree that during the transition period qualitative and quantitative data and information on any issues relevant to the roll-out of the NDIS, taken together with the outcomes from other jurisdictions, will be shared with all governments to facilitate national data collection and consolidation that will contribute to the analysis of costs, liabilities, service interventions, service delivery models and implementation strategies.
38. The data management approach including data collection, storage and transfer, will be consistent with the information protocols developed between the Parties and the NDIA, and consistent with privacy and information legislative requirements following finalisation of this agreement.
39. The Parties agree to share client and provider information and data during the transition to manage continuity of support, financial accountability and effective interactions with supports and services outside the NDIS, subject to privacy and other requirements.

Performance and Financial Reporting

40. The Parties agree to the Performance Reporting arrangements at Schedule G.
41. The NDIA will provide to a nominated official a download from the database (de-identified as appropriate) of participant data at client unit record and aggregate level, including for all in-kind contributions provided.
42. The NDIA will provide access to nominated official/s in the Northern Territory, with the capacity for this access to be delegated to additional officials for a defined purpose or period of time to the case management and financial management systems in real time on a read only basis. The officials will need to abide by the NDIA's confidentiality and privacy requirements.
43. Any reporting additional to that set out in the NDIS Act 2013 and this part of the Bilateral Agreement may be negotiated with the NDIA on a fee-for-service basis and cost neutral changes to reporting may be agreed between the NDIA and the Parties at any time. The NDIA will be required to provide, state-specific reports on Commonwealth and Northern Territory funding, covering funding, expenditure and in-kind services, according to agreed regional boundaries detailed in the Operational Plan, provided to participants at the end of every financial year.
44. The NDIA will provide receipts for funding contributed by the Northern Territory and report on the use of Commonwealth and Northern Territory services on a monthly reporting schedule.

Evaluation and Review

45. The Parties agree to input into the NDIS evaluation; and jointly monitor its progress, results and outcomes to inform arrangements for full scheme.

Management of Risk

46. Pursuant to clauses 27-32 of *the Heads of Agreement between the Commonwealth and Northern Territory Governments on the NDIS*, both parties agree that the management of risk and unexpected costs to either the Northern Territory and/or the Commonwealth is a vital part of ensuring that the NDIS is sustainable.
47. The Parties agree that the Northern Territory and the Commonwealth, in consultation with the NDIA, will continually monitor and review risks, with responsibilities for managing respective risks outlined in the respective schedules. Risks include but are not limited to:
- a. market, sector and system readiness to transition to the NDIS in accordance with Schedule E;
 - b. monitoring of quality and safeguard mechanisms particularly in remote communities, as outlined at Schedule F;
 - c. the implementation of the principles agreed by COAG in April 2013 and updated in in 2015 (Schedule I) which determine the responsibilities of the NDIS and other service systems, particularly in terms of any gaps in services that may occur for individuals; and
 - d. cash flow pressures on the Commonwealth, the Northern Territory and the NDIA during the transition to full scheme.
48. If financial or other risks, including those outlined between clauses 46 and 47 emerge at any time for either party, the party with the primary responsibility for the risk will work with the other parties, including the NDIA, to develop agreed mitigation proposals. Risk management strategies will take a flexible and timely approach to effectively manage emerging risks during transition. Response strategies could include:
- a. actions to improve provider and participant readiness, including targeted investment from the Sector Development Fund and initiatives that can be taken within existing programmes run by the Northern Territory and/or the Commonwealth; and/or
 - b. changes to the participant phasing arrangements outlined in Schedule A, but other strategies will be fully pursued prior to considering this option. Should the agreed strategies include changes to participant phasing, the Parties will jointly assess the need to adjust financial contributions outlined at Schedule B;
 - c. targeted actions to mitigate significant remote service delivery issues including heightened community engagement, as outlined at Schedule F; and
 - d. actions to deliver the required supply of services where market failure has been identified, as outlined at Schedule K.
49. The parties agree to use the escalation process outlined in clauses 56 - 58 to resolve issues, including issues that may arise relating to clauses 46 - 47.

Part 7 - Financial contributions

Funding Contributions

50. The Parties agree to contribute to the NDIS in accordance with Schedule B and with regard to the commitment in the *Heads of Agreement between the Commonwealth and Northern Territory Governments on the National Disability Insurance Scheme*.
51. The Parties agree to the long-term arrangements for Cross Billing and Budget Neutrality in accordance with Schedule C on Cross Billing and Budget Neutrality and with regard the *2011 National Health Reform Agreement*.
52. The Parties agree that if the review of mainstream interfaces changes the scope of the NDIS, the Northern Territory's contribution to the scheme will be adjusted accordingly.

Auditing Arrangements

53. The Commonwealth will request the Commonwealth Auditor-General ensure the financial audit of the NDIA undertaken annually by the Australian National Audit Office under the Auditor General Act 1997 (Cth) includes certification from him or her that funds paid by host jurisdictions to the NDIA have been acquitted consistently with this Agreement, including the schedules.

Part 8 - Governance of the agreement

Variation of the Agreement

54. This Agreement may be amended at any time by agreement in writing by the Northern Territory Minister for Disability Services and the Commonwealth Minister for Social Services.

Variation to Schedules to the Agreement

55. The Parties agree that any amendments to the schedules can be agreed at any time by agreement in writing between the Northern Territory Minister for Disability Services and the Commonwealth Minister for Social Services.

Escalation of Issues

56. Any Party may give notice to other Party of a dispute under this Agreement.
57. Officials of relevant Parties will attempt to resolve any dispute in the first instance, through bilateral steering committees for transitioning sites and relevant multilateral officials groups.
58. If the issue cannot be resolved by officials, it may be escalated to the relevant Ministers and, if necessary, the Disability Reform Council and COAG.

Termination of the Agreement

59. In exceptional circumstances, either of the Parties may withdraw from this Agreement by giving 12 months' notice of its intention to do so, in writing, to the Disability Reform Council, or the equivalent Ministerial Council and COAG.

60. Following notification of a Party's intention to withdraw from this Agreement, the terms of the withdrawal, including the date on which the Party will cease to be a Party, and any legislative changes and other arrangements that may be necessary as a consequence of the withdrawal will be negotiated in good faith and agreed between the Parties, on a basis which ensures continuity of support to participants.
61. The withdrawal of a Party shall not release that Party from meeting its agreed funding commitment to participants unless this is otherwise agreed by COAG through the process outlined in escalation clauses above.

Bilateral Agreement between the Commonwealth and the Northern Territory for the transition to an NDIS

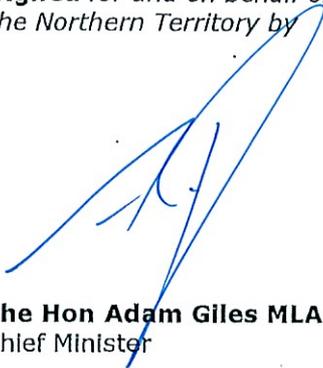
The Parties have confirmed their commitment to this Agreement as follows:

Signed for and on behalf of the
Commonwealth of Australia by



The Hon Malcolm Turnbull MP
Prime Minister

Signed for and on behalf of
the Northern Territory by



The Hon Adam Giles MLA
Chief Minister