

**SCHEDULE I: BILATERAL AGREEMENT BETWEEN
THE COMMONWEALTH AND THE AUSTRALIAN
CAPITAL TERRITORY**

**TRANSITION TO A NATIONAL DISABILITY
INSURANCE SCHEME**

Part 1 – Preliminaries

1. This Schedule sets out the roles and responsibilities for the transition to a National Disability Insurance Scheme (NDIS) in the Australian Capital Territory (ACT).
2. This Agreement is a new schedule to the Intergovernmental Agreement for the NDIS launch and builds on Schedule E, both signed on 7 December 2012.
3. Nothing in this Schedule affects arrangements under the National Disability Agreement unless otherwise specified.

Part 2 – Parties and Operation of the Schedule

Parties

4. This Schedule is between the Commonwealth and the ACT (the Parties).

Commencement and Duration of the Schedule

5. The Schedule will commence as soon as the Parties have signed the Agreement.
6. This Agreement will cover the period until 30 June 2019.

Interoperability

7. This Schedule is to be considered in conjunction with:
 - a. The National Disability Insurance Scheme Act 2013 (NDIS Act 2013); and
 - b. The Heads of Agreement between the Commonwealth and the Australian Capital Territory Governments on the National Disability Insurance Scheme.
8. Appendices to this Schedule include:
 - A. Cross Billing and Budget Neutrality Arrangements; and
 - B. Continuity of Support Arrangements.
9. Arrangements for implementation of a National Injury Insurance Scheme are outlined in the *Heads of Agreement between the Commonwealth and the Australian Capital Territory Governments on the National Disability Insurance Scheme*.

Part 3 – Transition to Full Scheme

Portability of Supports

10. Governments agree that once the NDIS is fully implemented as a national scheme, NDIS supports will be fully portable across Australia.
11. During the transition, portability will apply in all sites 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 Support

12. Arrangements for Continuity of Support are outlined in Appendix B.

Quality and Safeguards

13. Existing State, Territory and Commonwealth quality assurance arrangements will continue to apply until a national approach, including agreed roles and responsibilities and any associated impact on funding contributions to the NDIS, is implemented.

Evaluation and Review

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

Part 4 - Financial Contributions

Funding Contributions

15. The Parties will continue financial contributions under the commitment in the *Heads of Agreement between the Commonwealth and the Australian Capital Territory Governments on the National Disability Insurance Scheme*.
16. The Parties agree that the ACT will contribute funding on a monthly basis in advance, based on the agreed annual funding contributions, divided into 12 even monthly instalments.
17. If the National Disability Insurance Agency's (NDIA) cash reserves are depleted to a cash floor of less than one month's worth of the committed expenditure for all active participants in the ACT, taking account of underutilisation trends, the Commonwealth and the ACT Government will recommence negotiations to address the shortfall for the remainder of the transition period.
18. The Parties agree to the long-term arrangements for Cross Billing and Budget Neutrality in accordance with Appendix A and with regard to the *2011 National Health Reform Agreement*.
19. The parties agree that no further reconciliation of the ACT financial contributions will be undertaken, noting that this includes financial contributions for 2015-16 and all subsequent years covered by this agreement.
20. The Parties agree to minimise in-kind contributions to the NDIS, and where possible cash out in-kind program to accelerate the transition from in-kind services to cash contributions. The Parties will agree on a list of in-kind contributions for transition by the end of November 2017.

ACT responsible Intergovernmental Payments

21. The parties agree that the Commonwealth will no longer provide existing Intergovernmental payments to ACT, relating to specialist disability services, from 1 July 2017.
22. Intergovernmental payments include:
- c. The National Disability Specific Purpose Payment;
 - d. The relevant portion of the National Partnership on Pay Equity for the Social and Community Services Sector; and

- e. Cross-billing arrangements for older people in ACT specialist disability services.
23. For the period 1 July 2017 to 31 December 2017, the Commonwealth will provide a one-off transition payment to the ACT for the cost of providing continuity of support to older people in specialist disability services, pending the transition of these clients to Commonwealth administration on 1 January 2018.

Cash and In-Kind Contributions

24. The Parties agree to minimise in-kind contributions to the NDIS, and where possible cash out in-kind programs to accelerate the transition from in-kind services to cash contributions. The Parties agree that where it is not possible to cash out programs they will:
- a. ensure that contracts with providers can be adjusted to facilitate the cashing out of programs once the transition to the scheme has commenced where reasonable; and
 - b. consider whether the remainder of the contract can be novated to the NDIA and, where contract novation occurs, provide funding to the NDIA at the value of the novated contract on a monthly basis (or as otherwise agreed with the NDIA) until the contract terminates.
25. The balance of cash and in-kind contributions during 2017-18 will be finalised as soon as possible, consistent with clause 15 above, if required.

Part 5 - Governance of the Agreement

Variation of the Schedule

26. This Agreement may be amended at any time by agreement in writing by the ACT Minister for Disability and the Commonwealth Minister for Social Services.
27. The Parties agree that any amendments to the appendices can be agreed at any time by agreement in writing between the ACT Minister for Disability and the Commonwealth Minister for Social Services.

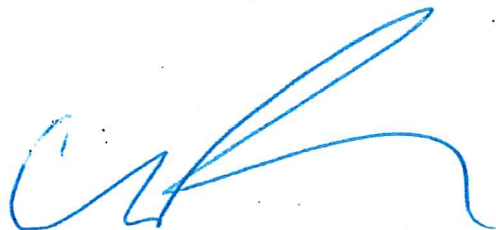
Escalation of Issues

28. Any Party may give notice to another Party of a dispute under this Agreement.
29. Officials of relevant Parties will attempt to resolve any dispute in the first instance, through the ACT bilateral steering committee or relevant multilateral officials groups.
30. If the issue cannot be resolved by officials, it may be escalated to the relevant Ministers and, if necessary, the Disability Reform Council or equivalent Ministerial Council and the Council of Australian Governments (COAG).

Termination of the Agreement

31. In exceptional circumstances, either of the Parties may withdraw from this Schedule by giving 12 months' notice of intention to do so, in writing, to the Disability Reform Council or the equivalent Ministerial Council and COAG.
32. 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 the escalation clauses above.

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

A handwritten signature in blue ink, appearing to be 'C. Porter', with a long, sweeping horizontal stroke extending to the right.

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

The Hon Christian Porter MP
Minister for Social Services

10 November 2017

A handwritten signature in blue ink, appearing to be 'R. Stephen-Smith', with a horizontal line at the end.

**Signed for and on behalf of
the Australian Capital Territory by**

Ms Rachel Stephen-Smith MLA
Minister for Disability, Children and Youth

28 November 2017

Appendix A

Cross Billing and Budget Neutrality Arrangements in the Australian Capital Territory

- a. This Appendix is to be read in conjunction with Appendix C: Continuity of Support Arrangements in the Australian Capital Territory.
21. The Parties agree that the roles and responsibilities outlined in Appendix F of the National Health Reform Agreement will be maintained. The Commonwealth will continue to have financial responsibility for aged care and specialist disability services for older people aged 65 years and over (and Indigenous Australians aged 50 years and over). In addition, the Commonwealth will progressively take over administrative responsibility for specialist disability services for older people as the National Disability Insurance Scheme (NDIS) continues to roll-out.
22. The Australian Capital Territory (ACT) will continue to have financial responsibility for disability and aged care services for younger people aged under 65 years (Indigenous Australians aged under 50), until such time as those people transition to the NDIS. This Appendix does not change existing responsibilities outside the scope of these services, including health and hospital services and the supply of aids and equipment to people not eligible for the NDIS.
23. The change in roles and responsibilities will be made cost neutral over this period through a Budget Neutral Adjustment. This Budget Neutral Adjustment will be fixed at the 2013-14 level and grown through time at 3.5 per cent per annum.
24. This Appendix covers the cross-billing and budget neutrality arrangements over the period 2013-14 to 2018-19. All cross-billing payments ceased on 30 June 2017.
25. Cross-billing and budget neutrality for 2011-12 and 2012-13 were covered in the *National Partnership Agreement on Transitioning Responsibilities for Aged Care and Disability Services*.

Cross-billing

Younger people in residential aged care and home care packages

26. The ACT agrees to pay the Commonwealth for the estimated costs of younger people aged under 65 (Indigenous Australians aged under 50 years) in residential aged care and Home Care Packages, for the period 2013-14 to 2016-17.

27. The estimated cost in each year of this Appendix will be calculated by multiplying the number of younger people in residential aged care and Home Care Packages by the average unit cost, with:

- a. The average unit cost for the 2013-14 financial year calculated by dividing the total costs in that year, by the number of people in care on 30 June 2014. The average unit cost is then grown by 3.5 per cent per annum.

28. The agreed unit costs for cross-billing are outlined at Table 1:

Table 1: Cross-billing unit costs

Cohort	2013-14	2014-15	2015-16	2016-17
Younger People in Residential Aged Care	\$66,312	\$68,633	\$71,035	\$73,521
Younger People in Home Care Packages	\$12,828	\$13,277	\$13,742	\$14,223

29. The estimated number of people subject to cross-billing arrangements is outlined at Tables 2 and 3:

Table 2: Cross-billing population (as at 30 June in each of the years)

Cohort	2013-14	2014-15	2015-16	2016-17
Younger People in Residential Aged Care	62	62	62	0
Younger People in Home Care Packages	26	26	26	0

Table 3: Cross-billing Population (full year equivalent)

Cohort	2013-14	2014-15	2015-16	2016-17
Younger People in Residential Aged Care	62	62	62	0
Younger People with Home Care Packages	26	26	26	0

30. The estimated cross-billing contributions to the Commonwealth for younger people in Aged care are outlined at Table 4 as the product of multiplying Tables 1 and 3:

Table 4: Total cross-billing ACT contributions to the Commonwealth

Cohort	2013-14 (\$m)	2014-15 (\$m)	2015-16 (\$m)	2016-17 (\$m)
Younger People in Residential Aged Care	\$4.1	\$4.3	\$4.4	\$0
Younger People in Home Care Packages	\$0.3	\$0.3	\$0.4	\$0

Older people in ACT Specialist Disability Services

31. The Commonwealth agrees to pay the ACT for the cost of delivering specialist disability services to older people (aged 65 years and over, or Indigenous Australians aged over 50), for the period 2013-14 to 2016-17, less:

- a. the estimated amount of funding provided to the ACT through the National Disability Specific Purpose Payment (NDSPP) for older people in ACT specialist disability services; and
- b. the estimated amount of funding provided to the ACT through the National Partnership Agreement on Pay Equity for the Social and Community Services Sector (SACS) for older people in ACT specialist disability services.

32. The estimated cross-billing contributions are outlined at Table 5:

Table 5: Total Commonwealth cross-billing contributions to the ACT

Cohort	2013-14 (\$m)	2014-15 (\$m)	2015-16 (\$m)	2016-17 (\$m)
Older People in Specialist Disability Services (aged 65 and over)	\$1.7	\$1.8	\$1.8	\$1.9
Older People in Specialist Disability Services (Indigenous aged 50 – 64)	\$0.2	\$0.2	\$0.2	\$0.2
Total	\$1.9	\$1.9	\$2.0	\$2.1

33. As per Clause 12, the cross-billing contributions for specialist disability services to older people is in addition to funding provided to the ACT for older people through the NDSPP, and the National Partnership Agreement on SACS. The funding for older people in these agreements is outlined at Table 6.

Table 6: Funding for older people in the NDSPP and the National Partnership Agreement for SACS

Cohort	2013-14 (\$m)	2014-15 (\$m)	2015-16 (\$m)	2016-17 (\$m)
NDSPP - Older People in Specialist Disability Services (aged 65 and over)	\$0.205	\$0.221	\$0.237	\$0.253
NDSPP - Older People in Specialist Disability Services (Indigenous aged 50-64)	\$0.008	\$0.008	\$0.009	\$0.009
National Partnership Agreement for SACS - Older People in Specialist Disability Services (aged 65 and over)	\$0.005	\$0.009	\$0.013	\$0.018
National Partnership Agreement for SACS - Older People in Specialist Disability Services (Indigenous aged 50-64)	-	-	-	\$0.001

34. In recognition that cross-billing arrangements cease on 30 June 2017, but older people in specialist disability services are not due to transition to Commonwealth administration until 1 January 2018, the Commonwealth agrees to pay the ACT a one-off transition payment in 2017-18 for the cost of delivering continuity of support to older people in specialist disability services during this period.

Budget Neutral Adjustment

35. Both parties agree that the Budget Neutral Adjustment is calculated in 2013-14 to offset the additional cost to the Commonwealth of net additional financial responsibilities taken on as part of the National Health Reform Agreement (i.e. the additional cost to the Commonwealth of Home and Community Care (HACC) for older people, and the cost of specialist disability services for older people, less the costs of responsibilities transferred to the ACT for younger people in aged care).

36. Both parties agree that from 2013-14, the Budget Neutral Adjustment is fixed at the 2013-14 amount and grown at 3.5 per cent per annum.

Table 7: Budget Neutral Adjustment to the Commonwealth:

Amounts	2013-14 (\$m)
Younger people in residential aged care	-\$4.1
Younger people in Home Care Packages	-\$0.3
Older people in specialist disability services (aged 65 years and over)	\$1.7
Older people in specialist disability services (Indigenous aged 50 – 64)	\$0.2
Additional cost to the Commonwealth for HACC	\$3.0
Budget Neutral Adjustment	\$0.4
Total	\$0.0

Funding Arrangements: 2013-14 to 2015-16

37. With respect to the 2013-14 costs, the ACT will pay the Commonwealth the balance of all payments in a single payment of \$3.0 million.

38. With respect to the 2014-15 costs, the ACT will pay the Commonwealth the balance of all payments in a single payment of \$3.1 million.

39. With respect to the 2015-16 costs, the ACT will pay the Commonwealth the balance of all payments in a single payment of \$3.2 million.

Table 8: Calculation of net payments to the Commonwealth for 2013-14, 2014-15 and 2015-16:

Amounts	2013-14 (\$m)	2014-15 (\$m)	2015-16 (\$m)
Younger People in Residential Aged Care	\$4.1	\$4.3	\$4.4
Younger People in Home Care Packages	\$0.3	\$0.3	\$0.4
Older People in Specialist Disability Services (aged 65 and over)	-\$1.7	-\$1.8	-\$1.8
Older People in Specialist Disability Services (Indigenous aged 50 – 64)	-\$0.2	-\$0.2	-\$0.2
Budget Neutral Adjustment	\$0.4	\$0.5	\$0.5
Total payment from the ACT to the Commonwealth	\$3.0	\$3.1	\$3.2

Funding Arrangements: 2016-17 to 2018-19

40. The Commonwealth will pay the ACT \$3.0 million in 2017-18 for the cost of older people in specialist disability services, with:
- a. \$2.112 million provided for the Commonwealth's cross-billing contribution for 2016-17, to be paid upon signing of this agreement; and
 - b. \$0.855 million provided as a one-off contribution for the period 1 July 2017 to 31 December 2017, to be paid once all older people in ACT specialist disability services have transitioned to Commonwealth administration.
41. The Commonwealth will have administrative as well as funding responsibility for older people in specialist disability services from 1 January 2018, as outlined in Appendix B: Continuity of Support Arrangements in the Australian Capital Territory. The ACT will have the responsibility to deliver services until 31 December 2017.
42. The Budget Neutral Adjustment over the period 2016-17 to 2018-19, which reflects a net contribution to the Commonwealth, is outlined in Table 9.

Table 9: Budget Neutrality Adjustment to the Commonwealth:

Amounts	2016-17 (\$m)	2017-18 (\$m)	2018-19 (\$m)
Budget Neutral Adjustment	\$0.5	\$0.5	\$0.5

43. The Parties agree that for 2016-17, the ACT will provide the Budget Neutral Adjustment to the Commonwealth as an additional repayment of the NDSPP.
44. As the NDSPP will have fully transitioned to the NDIS by the end of 2016-17, the parties agree that, from 1 July 2017, the ACT will increase its contribution to the NDIS by \$0.5 million (indexed 3.5 per cent per year). This will be in addition to the ACT fixed per client contribution to the National Disability Insurance Scheme (NDIS).

Appendix B

Continuity of Support Arrangements in the Australian Capital Territory

- a. This Appendix is to be read in conjunction with Appendix A: Cross-billing and Budget Neutrality Arrangements in the Australian Capital Territory.
- 45. The Parties agree that it is important that the roll-out of the National Disability Insurance Scheme (NDIS) in the Australian Capital Territory (ACT) is managed so that people are not disadvantaged during the transition to the full roll-out of the NDIS.

Continuity of Support: Definition and Principles

- 46. People with disability, their families and carers will be provided with continuity of support that will ensure that the support they receive once the NDIS is introduced will enable them to achieve same or similar outcomes to the outcomes they were aiming to achieve prior to the introduction of the NDIS.
- 47. The Parties agree that continuity of support will apply for people resident in an area or part of a cohort that is transitioning to the NDIS if:
 - a. they receive support but do not meet the access requirements outlined in the *National Disability Insurance Scheme Act 2013* (NDIS Act 2013), or who are eligible participants receiving supports that do not meet the definition of reasonable and necessary support in the NDIS Act 2013; and
 - b. the funding for this support is attributed to a programme/service, that will cease when the NDIS is introduced.
- 48. The assistance provided to people through continuity of support will aim to support people to live as independently as possible by working with them to reduce their need for supports or to access supports from other systems, where appropriate. Where a person's support needs are reduced through capacity building work, or are met by other service systems, the assistance through continuity of support will be phased out.
- 49. The Parties agree that people with significant ongoing needs will be provided with assistance to prevent hardship where this would significantly undermine the person's wellbeing, or social and economic participation.
- 50. The types of assistance provided through continuity of support should be flexible because the assistance that best builds the person's capacity to live independently may be different from the supports the person was previously accessing. The flexibility could, for example, include up-front investments that assist people to live more independently. If a person receiving continuity of support is under 65 years of age and has had a change in their circumstances which means they may meet NDIS access requirements, the person can make an access request to the National Disability Insurance Agency (NDIA) to become a participant at any time.

Continuity of Support: People Aged 65 and over and Aboriginal and Torres Strait Islander People Aged 50 – 64 years

51. The Parties agree that:

- a. administrative responsibility for people aged 65 and over receiving specialist disability services will transfer to the Commonwealth; and
- b. administrative responsibility for Indigenous Australians aged 50 and over receiving specialist disability services, and ineligible to participate in the NDIS, will transfer to the Commonwealth.

52. The Parties agree that the Commonwealth will, in consultation with the ACT, determine the administrative arrangements for providing continuity of support for people aged 65 and over (Indigenous Australians aged 50 and over) referred to in clause 4 above as soon as possible. This will include the ACT maintaining its existing quality and safeguard arrangements until the National Quality and Safeguard arrangements are in place. In developing these arrangements, the Commonwealth and the ACT will confirm current service delivery data including the number of in scope clients.

53. In the ACT, all older people receiving specialist disability services will transfer to Commonwealth continuity of support arrangements from 1 January 2018 consistent with the arrangements set out in clauses 21 and 22 of Appendix A to the Bilateral Agreement between the Commonwealth and the Australian Capital Territory – Cross Billing and Budget Neutrality Arrangements in the Australian Capital Territory

54. The Parties agree that detailed planning of transfers will be finalised as soon as practical.

55. Consistent with the number of people identified in clause 10, the estimated cost to the Commonwealth of providing continuity of support for people aged 65 and over, and Indigenous people aged 50 to 64 ineligible to participate in the NDIS, currently in ACT specialist disability systems, is outlined at Table 1 below.

Table 1: Estimated Cost to the Commonwealth – Continuity of Support for People Aged 65 and Over and Indigenous Australians Aged 50 and Over

	2016-17 (\$m)	2017-18 (\$m)	2018-19 (\$m)
Estimated cost of Continuity of Support for older people in ACT specialist disability services	\$0.0	\$0.9	\$2.0

Table 1 reflects the estimated cost of continuity of support for the people identified in clause 10. If the actual cost to the Commonwealth of providing continuity of support for existing clients in territory-managed services exceeds the estimate outlined at Table 1 above, the Commonwealth will provide access to existing programmes on the same basis as other people with a need for support who are aged 65 and over.

Continuity of support: People aged under 65 and Indigenous Australians aged under 50 ineligible for the NDIS

56. The parties agree that, for people that are receiving disability services, but do not meet the access requirements outlined in the NDIS Act 2013:

- a. the Commonwealth will be responsible for administration arrangements for providing continuity of support to people under the age of 65 and under the age of 50 for Indigenous Australians (younger people), in receipt of Commonwealth funded disability programs/services; and
- b. the ACT will be responsible for administration and service provision arrangements for providing continuity of support to younger people in receipt of ACT funded disability programs/services which will cease as the NDIS is introduced and may include the ACT entering into a separate arrangement to pay the NDIA on a standard fee-for-service basis.

Cash and In-Kind Contributions

57. The Parties agree that, from 1 January 2018, the ACT will not provide any in-kind services as part of continuity of support arrangements.

