

Information Sharing Protocol between the NDIA and Australian State and Territory Agencies

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Preamble

The protocol has been developed by the National Disability Insurance Agency (**NDIA**). It sets out the processes and legislative requirements that the NDIA applies when it receives a request for information from an Australian State or Territory agency. This includes requests for information about a participant or prospective participant of the National Disability Insurance Scheme (**NDIS**). The protocol operates in conjunction with the attached Information Request Form and the NDIA's Consent Form. These are the preferred forms for information requests and will assist with timely processing of requests.

The NDIA regularly receives requests for information from Australian State and Territory agencies about participants or prospective participants of the NDIS. The sharing of information between the NDIA and State and Territory agencies only occurs in accordance with legislative requirements. This protocol is intended to provide a single, consistent and streamlined resource to assist State and Territory agencies when requesting NDIS information from the NDIA and to ensure high quality outcomes for people with disability.

Principles

Enabling information sharing between government agencies improves the experience of participants.

An NDIS participant may interact with many State and Territory agencies in their day-to-day life. Sometimes, the quality of service those State and Territory agencies provide is enhanced by knowing more about the disability specific supports funded in a participant's plan, or other relevant information.

The NDIA encourages State and Territory agencies to always seek the consent of a person or their authorised representative before requesting the person's information from the NDIA. This protocol covers instances where that consent has been provided, and circumstances where consent is not able to be obtained. How to request information under this protocol:

- If you are a State or Territory agency with the consent of a person or their authorised representative to request information – prepare correspondence requesting the required information, attach evidence of the consent, and submit to an NDIA employee (for example, a planner, National Contact Centre, or your local NDIS office).
- NDIA Consent Forms are the preferred forms to be used as evidence of consent. Note: in June 2020, the NDIA replaced its Consent to Exchange Information Form with two new forms. These forms separate different types of consent:
 - Consent for the NDIA to Share Your Information Form
 - Consent for a Third Party to Act on Behalf of a Participant Form

Both forms, and examples of how to use them, are available on the [NDIS website](#).

Other consent forms or documentation can be submitted but they must meet the NDIA's requirements for consent (see Seeking information with consent).

- If you are a State or Territory agency that is not able to obtain the consent of the person or their authorised representative – complete the [Information Request Form](#) attached to this protocol and submit to information.requests@ndis.gov.au.

Purpose and scope of the Protocol

The purpose of the protocol is to outline procedures that govern and streamline processes for requests for information made to the NDIA by Australian State and Territory agencies. It is a public-facing document.

The protocol:

- a) sets out the NDIA's standard processes for handling requests for information; and
- b) specifies the NDIA's preferred format for an information request and what supporting evidence is required.

The protocol applies to requests made to the NDIA from Australian State and Territory agencies. It does not address requests for information made by the Commonwealth Government, members of the public, or requests for information made by the NDIA to entities including State and Territory agencies. It does not address requests for information made directly to the NDIA by private organisations or individuals who are funded or contracted by a State or Territory government.

The protocol does not alter any other arrangements in place between the NDIA and State or Territory governments to facilitate information sharing.

The protocol applies only to requests for information about individuals, with requests to be assessed by the NDIA on a case-by-case basis.

Requests for information to prevent or lessen a serious threat to an individual's life, health or safety are outside the scope of this protocol. You can call the NDIA on 1800 800 110 to request this information urgently.

Legislative basis

The *National Disability Insurance Scheme Act 2013* (Cth) (**NDIS Act**) authorises the NDIA to share information with Australian State and Territory agencies in certain prescribed circumstances. The NDIS Act enables the *National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2013* which deal with the circumstances in which a State or Territory law may prevent the disclosure of information or a document by a person to the NDIA, and the ability of the CEO of the NDIA to disclose information in the public interest or to a State or Territory Department or authority. The NDIA also has obligations under the *Privacy Act 1988* (Cth) (**Privacy Act**), including the Australian Privacy Principles, which also operate in conjunction with the NDIS Act and have been considered when preparing this protocol.

Definitions

For the purposes of the protocol the following definitions apply:

Authorised representative: authorised representatives can provide consent on behalf of a participant. Authorised representatives may include plan nominees, child representatives and public guardians acting within the scope of their powers. Authorised representatives do not need a participant's consent to seek information on their behalf.

Consent: free and voluntary explicit agreement made by a person or their authorised representative for the purposes of permitting their personal information to be disclosed by the NDIA to an Australian State or Territory agency. The four key elements of consent are:

- the person is adequately informed before giving consent,
- the person gives consent voluntarily,
- the consent is current and specific, and
- the person has the capacity to understand and communicate their consent.

Consent for the NDIA to Share Your Information Form and Consent for a Third Party to Act on Behalf of a Participant Form: the NDIA's preferred consent forms for demonstrating participant consent.

Information Request Form: Appendix 1 of this Protocol, to be filled in and submitted by an Australian State and Territory agency for the purposes of submitting an information request to the NDIA where consent has not been provided.

NDIA Information Officer: NDIA staff member responsible for processing information requests received by the NDIA from an Australian State and Territory agency.

Protected Agency information: has the definition in section 9 of the *National Disability Insurance Scheme Act 2013* (Cth). Protected Agency information includes:

- information about a person that is or was held in the records of the NDIA; and
- information to the effect that there is no information about a person held in the records of the NDIA.

Public Interest Certificate: a certificate issued by the CEO of the NDIA (or their delegate) under section 66 of the *National Disability Insurance Scheme Act 2013* (Cth).

State or Territory agency: any State or Territory government department or statutory authority, however described.

NDIA Information Officers

The NDIA will appoint one or more Information Officer/s who will be responsible for processing requests for information from Australian State and Territory agencies where consent has not been obtained.

Information Officers are responsible for:

- a) receiving and processing requests for information where consent has not been obtained;
- b) liaising with requesting parties to ensure all necessary information is received by the NDIA to consider the request; and
- c) promoting knowledge of, and compliance with, the protocol within the NDIA.

Requests for information where consent has not been obtained can be sent to NDIA Information Officers for processing by email to information.requests@ndis.gov.au. Such requests can be made with the Information Request Form.

Training and education

The NDIA and Australian State and Territory agencies are responsible for regularly informing and training their respective staff about the operation of this Protocol.

Seeking information with consent

The NDIA is committed to the principles in section 4 of the NDIS Act, including that people with disability should have their privacy and dignity respected.

The NDIA may disclose information to a requesting party with the consent of the person to whom the information relates (or their authorised representative) under section 60(2)(d)(iii) of the NDIS Act.

A State or Territory agency can request information with the relevant person's consent or the consent of their authorised representative. In this situation, a request for information should be submitted together with evidence of the consent to an NDIA employee (for example, a planner, National Contact Centre or local NDIS office).

Wherever possible, a person's express consent or the consent of their authorised representative should be sought before requesting information about the person. Express consent can be given verbally or in writing. This could include a handwritten signature, an oral statement, or use of an electronic medium or voice signature to signify an agreement.

If consent is provided by a person who has the authority to act on a participant's behalf, whether a guardian, nominee, child representative or otherwise, this must be clearly identified.

The NDIA's two consent forms are the preferred forms for demonstrating participant consent.

It is the responsibility of the State or Territory agency to seek the person's consent or the consent of their authorised representative and, if it is not reasonably practicable for consent to be provided, to explain why this is the case.

For consent to be valid it must be clear that:

- the person has the capacity to understand and communicate that they are giving their consent
- the person is adequately informed before giving consent about what it is they are consenting to
- the person gives that consent voluntarily
- the consent is current and specifically describes the extent and scope of the consent
- consent has not been withdrawn.

Express consent from the person or their authorised representative must include:

- that the consent is given to a named individual or organisation.
- a description of the scope, limits and purpose of the consent. For example, to make appointments only or to assist with plan development or implementation.
- the period for which the consent is given. For example, for the single occasion, indefinitely or until the expiration of a certain event.

Seeking information without consent

If it is not possible to obtain a person's consent, a State or Territory agency can request information using the Information Request Form. An explanation should be provided as to why consent could not be reasonably obtained. The NDIA will only disclose information about a person without that person's consent or the consent of their authorised representative where it is not reasonably practicable for the consent to be provided, and the disclosure is authorised by law.

Requests for information held by the NDIA, where consent has not been provided, can be made in accordance with the Information Request Form in **Appendix 1**. Requests must be specific with respect to the information that is sought and should provide as much detail as possible to facilitate the identification of the person about whom the information is requested.

How to use the Information Request Form

The Information Request Form at **Appendix 1** to this protocol is the NDIA's preferred form for Australian State and Territory agencies to use when requesting information about a person held by the NDIA, where that person's consent cannot be reasonably obtained. The Information Request Form is available for download on the NDIA's website.

The Form is divided into three parts:

- Part 1: Overview of your request
- Part 2: Personal details
- Part 3: Particulars of your request

Part 1: Overview of your request

Australian State and Territory agencies must complete the appropriate section/s in Part 1, depending on the nature of the request.

Part 1 should be completed by the State or Territory agency who is the requesting party. The requesting party should consider each of the boxes in Part 1 and tick one or more that relate to the request for information being made. If any of the following apply, the requesting party must fill out the corresponding section in Part 3:

- the information is required for the purposes of a State or Territory Department, Agency or Authority → go to Part 3
- the information is necessary for the enforcement of a law → go to Part 4A
- the information is necessary to correct a mistake of fact in relation to the administration of the NDIS → go to Part 4B
- the information is necessary to brief a State or Territory Minister → go to Part 4C
- the information is about a person who is, or has been reported to be missing or dead → go to part 4D
- the information is necessary to assist a child welfare agency to carry out its responsibilities relating to the safety, welfare or wellbeing of a child → go to Part 4E
- the information is otherwise necessary for the public interest → go to Part 4F.

Part 2: Personal details

Australian State and Territory agencies should complete **each section** in Part 2 of the Form with as much information as possible relevant to the request being made. Part 2 of the Information Request Form as it sets out:

- who is requesting the information;
- who the information is being requested about;
- what information is being requested including any applicable timeframes; and
- why the information is sought.

Part 3: Disclosure for the purposes of a State or Territory Department, Agency or Authority – Particulars of your request

Part 3 should only be filled out where the relevant reason for the disclosure applies (i.e. it relates to the option selected in Part 1). If Part 3 is applicable, sufficient information should be provided in the space available to satisfy the Information Officer or delegate that the disclosure of information is justified.

Part 4: Disclosure in the public interest – Particulars of your request

Parts 4A to 4F should only be filled out where the relevant reason for the disclosure applies (i.e. it relates to the option selected in Part 1). If a section in Part 4 is applicable, sufficient information should be provided in the space available to satisfy the Information Officer or delegate that the disclosure of information is justified.

Processing an Information Request

Consent

The NDIA will generally disclose information to a requesting party with the consent of the person to whom the information relates (or their authorised representative) under section 60(2)(d)(iii) of the NDIS Act.

Evidence of the consent should be provided with the information request. Where consent has been obtained, it is not necessary to complete the Information Request form.

Public interest disclosures or disclosures for purposes of the State or Territory agency

Public interest requests or requests that are for the purposes of a State or Territory agency are processed individually on a case-by-case basis.

Once all relevant information has been received – including the details of the information requested, the reasons disclosure is required, any timeframes or urgencies associated with the request and the requesting party's relationship, consent or authority to receive the protected Agency information – the NDIA will assess if the release of information meets the NDIA's legislative obligations for disclosure.

Public interest disclosures are only made when authorised by a delegate of the CEO of the NDIA. If the disclosure requirements are met under the NDIS Act, the CEO or delegate may in their discretion approve the disclosure of the information.

Declining to disclose information

NDIA Information Officers and delegates must decline to provide information if the disclosure is not permitted by law. If the NDIA Information Officer or delegate declines to disclose information, the requesting Australian State and Territory agency's contact officer will be provided with a written statement outlining the reason/s for this decision.

The NDIA will not permit access, or release information, to an Australian State or Territory agency unless lawfully required or enabled to do so by statute.

Timeframes for responding to requests

The NDIA will use its best endeavors to respond to information requests under this protocol within 28 days from receipt of the request. This timeframe may need to be extended where an information request is complex or due to NDIA operational requirements. If an information request is time sensitive, a State or Territory agency should alert the NDIA to the reason why the request is time sensitive and can ask the NDIA to provide the anticipated timeframe for responding to the request. This will be assessed on a case-by-case basis.

Dispute Resolution

Any disputes in relation to this protocol will be resolved by NDIA Information Officers where possible. If the dispute cannot be resolved, the Australian State and Territory agency contact officer may request a fresh decision by the NDIA. The reasons for requesting a fresh decision must be provided with the request, and may include further evidence or reasons to be considered by the NDIA's CEO or delegate. The CEO or delegate will decide whether or not to make a new decision on a case-by-case basis.

Requests for information to lessen a threat to an individual's life, health or safety

Requests for information to prevent or lessen a serious threat to an individual's life, health or safety are outside the scope of this protocol. You can call the NDIA on 1800 800 110 to request this information urgently.

The NDIS Act expressly allows for the recording, use or disclosure of protected Agency information where a person believes on reasonable grounds that the making of the record, or the disclosure or use of the information, is necessary to prevent or lessen a serious threat to an individual's life, health or safety (section 60(2)(e)).

If the urgent disclosure of protected Agency information is necessary to prevent or lessen a serious threat to an individual's life, health or safety, the NDIA will carefully consider the matter and proceed with the urgency required by the circumstances.

A serious threat to life, health or safety could arise when a person is subject to, or at risk of, harm, abuse, neglect or exploitation. Such threats could be physical or emotional, such that the person has suffered or is likely to suffer physical or psychological injury that jeopardises, or is detrimental to their wellbeing.

Harm, abuse, neglect or exploitation may also involve a reasonable likelihood of a person being killed, injured, abused or neglected by a person they live with, a person who has threatened to kill or injure them before or a person who has killed, abused or neglected another person in the past.

Whether a serious threat exists, and whether there are reasonable grounds to believe that the disclosure is necessary to prevent or lessen the threat to an individual's health, life or safety are questions of fact to be determined in the individual circumstances of each case. Careful consideration and judgement by the NDIA is required, and if appropriate the NDIA may request supporting evidence on which to form the belief required.

Protocol Variation

Any variation to the protocol, including to the Information Request Form at **Appendix 1** and the NDIA's Consent Forms, will be advised via the NDIS website at www.ndis.gov.au and recorded in the version control section of this protocol.

Record Management

The NDIA complies with record management legislation, policies and practices with respect to information requests made under this protocol.

Protocol Operation

The protocol will take effect from 18 December 2019. The protocol will remain in operation until concluded by the NDIA.

Version Control

Version No	Amended by	Brief Description of Change:	Status	Date
1.0	NDIA	Creation of document	Publication	18/12/19
2.0	NDIA	New consent forms and links	Publication	01/06/20
2.1	NDIA	New timeframe for disclosure	Publication	15/10/2025