



# Proposed Amendments to the Draft Final Settlement Agreement

## Explanatory Note

The Caring Society has drafted the following proposed amendments which will be sent to the Draft First Nations Child and Family Services Final Settlement Agreement Parties for their consideration. These amendments represent some of the key changes the Caring Society is seeking but is not an exhaustive list. The amendments will require additional definitions which the Caring Society will draft shortly. For more information on the Caring Society's positions on reforming First Nations Child and Family Services please see [here](#).

## Purpose

The purpose of a reformed approach to First Nations Child and Family Services is to ensure that First Nations children, youth, and families have access to effective and culturally based interventions to prevent and respond to child maltreatment and ensure they can thrive in a manner consistent with applicable child protection legislation and legal orders, including but not limited to *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24; the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6; the orders of the Canadian Human Rights Tribunal in *First Nations Child and Family Caring Society et al. v Attorney General of Canada*, T1340/7008; the *United Nations Declaration on the Rights of Indigenous Peoples*; and the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.

## Additional Principles

1. Honour of the Crown
2. Canada has the sole onus to cease the discrimination and prevent recurrence
3. Intergenerational equity,
4. Transparency, accountability, inclusivity

### ⊗ Current Wording of the Draft FSA

### ✔ Proposed Amendment to the Draft FSA

#### PART XIV – Governance of the Reformed FNCFS Program, Paras. 145–152

This part sets out that the Reform Implementation Committee (the “**RIC**”) shall oversee and monitor the implementation of the Reformed FNCFS Program. The RIC shall receive input, recommendations, or observations from the Parties, and the various committees under the Draft FSA:

- Expert Advisory Committee
- NAN-Canada Remoteness Quotient Table
- NARC-Canada Remoteness Quotient Table
- National Secretariat
- Systemic Review Committee (SRC)
- Technical Advisory Committee (TAC)

The RIC will also support the oversight of the Program Assessment Organization and prepare the Program Assessment Opinions and executive summaries for the Parties and the public. Meeting and work product of the RIC will be confidential and not available to the public.

Canada shall provide \$22.2 million to AFN, COO, and NAN over the term of the FSA to support their participation in the RIC.

#### **RECOMMENDATION: Replace the RIC with the Chiefs Committee**

Affirm that all First Nations Chiefs are the decision makers on the Reformed Funding Approach on National matters and that First Nations Chiefs are the decision makers on matters affecting their Nations or Region or Sub-Region.

Establish a National Children's Chiefs Committee (the “**NCCC**”) composed of regional First Nations representatives who are knowledgeable in child and family services and are chosen by the Chiefs in the Regions that operates in a transparent, inclusive and accountable manner and reports to Chiefs in Assembly and First Nations who are not members of AFN. The NCCC will bring material decisions regarding the Reformed Funding Approach to Chiefs in Assembly and First Nations who are not members of AFN for decision making. Regional Chief's processes are to be respected

Reconvene the National Advisory Committee (the “**NAC**”) with regional representation and the Parties to provide technical advice to the Chiefs' Committee and to Chiefs in Assembly and First Nations who are not member of AFN and regional Chiefs' bodies as requested. The NAC will operate in an inclusive, transparent and accountable manner.

All references to the RIC in the Draft FSA shall be replaced with the NCCC.

Dissolve the Systemic Review Committee and the Technical Advisory Committee and reallocate those funds to benefit children.

The NCCC, NAC and EAC will be presumptively public.

National Secretariat and Regional Secretariat – Para. 108–117

This part sets out the function, governance and data inputs and management. The Draft FSA states that the National Secretariat shall be independent from the Government of Canada. It shall be First Nations–led, apolitical, not-for-profit. The National Secretariat shall be established with two sectors: (i) a Best Practices and Programming sector and (ii) a Data and Evidence sector.

The membership of the National Secretariat shall be the AFN, COO and NAN. The AFN shall incorporate the National Secretariat. The draft Articles and Bylaws for the National Secretariat are found at Appendix 9.

**RECOMMENDATION: Replace National Secretariat Model with NAC oversight**

The terms of reference of the National Secretariat will be withdrawn and the NAC will develop models for the National Secretariat and regional secretariats for recommendation to the NCCC and decision making by First Nations, including in relation to membership.

The National Secretariat shall be fulfilled by one or more apolitical and independent First Nations-led non-profit organization(s) appointed by all First Nations Chiefs in consultation with the Children’s Chief’s Committee and the National Advisory Committee. Canada will provide sustained and adequate funding to ensure the National Secretariat (whether constituted of one or more organizations) can collect, analyze and disseminate First Nations child and family services data and be a national convening center for First Nations child and family services holistic policy and practice honouring Indigenous languages and publishing in English and French.

Canada will also provide sufficient and sustained funding to ensure regional secretariats can provide services to collect, analyze and disseminate regional, and when appropriate sub-regional or First Nations child and family services data and act as a regional holistic convening center for First Nations child and family services holistic policy and practice honouring Indigenous languages and publishing in one or both English and French as appropriate.

Agency Accountability to First Nations in Relation to the Reformed FNCFS Program – Planning and Data Collection

134. Accountability of FNCFS Agencies to the First Nations they serve is one of the principles of this Final Settlement Agreement. To uphold this principle and through its funding agreements with FNCFS Agencies under the Reformed FNCFS Program, ISC shall require FNCFS Agencies to co-develop a single child and community well-being plan with its affiliated First Nation(s) The plan must be submitted by June 30, 2025, and extend until March 31, 2009, subject to annual updates as necessary.

Para 135. At least 90 days prior to the expiry of its child and family community well-being plan, an FNCFS Agency shall submit a subsequent child and community wellbeing plan, co-developed with the First Nation(s) affiliated with that FNCFS Agency. Where the aforementioned deadlines are not met. ISC shall take any actions available to ensure Agency compliance.

Para 136. A child and community well-being plan developed by the FNCFS Agency in consultation with their affiliated First Nations must incorporate: (lists nine required topics).

Para 137. Through its funding agreements with FNCFS Agencies under the Reformed FNCFS Program. ISC shall require an FNCFS Agency to:

- a. Fund the co-development of its child and community wellbeing plans, including providing opportunities for meaningful participation of its affiliated First Nation(s) in the co-development process; and
- b. Report to ISC and its affiliated First Nation(s) on the implementation of its child and community wellbeing plan(s) on an annual basis.

Para 138 A First Nation may inform ISC of any concerns it has with its FNCFS Agency’s compliance with the child and community well-being plan. ISC shall make the FNCFS Agency aware of the scope of the concerns and consider appropriate responses, which may include individual FNCFS Agency audits.

**RECOMMENDATION: Replace with Planning**

134. ISC shall fund FNCFS Agencies to develop a holistic child, family and community well-being plan in collaboration with the First Nation(s) affiliated with that FNCFS Agency.

Where ISC splits funding for statutory First Nations child and family services it will provide sufficient resources to ensure coordination of services to meet the needs of First Nations children, youth and families in keeping with the principles in section 2. ISC shall also provide all service providers with sufficient funding for case management systems and to collect and analyze outcome data pursuant to the Measuring to Thrive Indicators.

[Strike paras. 134–135 and 137–138. ISC does not have the expertise or a transparent and accountable process to evaluate workplans submitted by First Nations or First Nations CFS Agencies or receive and execute complaints. These paragraphs also interfere with First Nations governance.

Consider revising the list of requirements in para. 136 to require review by regional experts and clarity of ISC’s expertise in analyzing this information and how it will use it.]

Scope and Jurisdiction of the EAC – Para. 202

202 The Reform Implementation Committee shall oversee the Expert Advisory Committee, including providing direction and guidance as required. The terms of reference of the Expert Advisory Committee are attached at Appendix 7, which may be updated by the Reform Implementation Committee.

[Paras. 204–218 set out the reporting structure of the EAC and their mandate]

**RECOMMENDATION: Replace para. 202 with the following:**

202 The Expert Advisory Committee shall be an independent open, and transparent committee established to respond to the reasons and guidance of the Tribunal in 2022 CHRT 8 and previous rulings including 2016 CHRT 2. The Expert Advisory Committee shall develop its own Terms of Reference, which shall be public, and Canada shall provide adequate funding to the EAC to fully discharge its responsibilities.

[Paragraphs 204–218 will require adjustment to reflect the EAC’s own approach to its work and regular reporting to the CHRT and First Nations in Assembly.]

Selection and Oversight of the Program Assessment Organization – Paras. 167, 172 and 173

167 the AFN shall initiate a separate request for proposal to select and retain the Program Assessment Organization(s) to conduct each of the Program Assessment(s), on the advice of the Reform Implementation Committee.

172 The AFN shall oversee the Program Assessment Organization and, on the advice of the Reform Implementation Committee, may provide guidance on:

- a. the design and methods of the Program Assessment;
- b. relevant information, research, reports, and experts; and
- c. the participation of First Nations service providers, knowledge holders, and experts in the Program Assessment process.

173 The Program Assessment Organization shall solicit and consider input from the following groups:

- a. FNCFS Service Providers;
- b. Provincial and Yukon governments providing child and family services for Non-Agency First Nations;
- c. The National Secretariat; and
- d. Other groups identified by the AFN, on the advice of the Reform Implementation Committee

**RECOMMENDATION: Replace paras. 167, 172 and 173 with the following:**

167 The NAC shall oversee and recommend an organization to the NCCC as the Program Assessment Organization(s) to conduct each of the Program Assessment(s). The NCCC shall consider and review the NAC’s recommendation and seek input from the Chiefs in Assembly and First Nations not affiliated with the AFN regarding the selection of the Program Assessment Organization(s).

172 The NAC shall oversee the Program Assessment Organization and, on the advice of the NCCC, may provide guidance on:

- a. the design and methods of the Program Assessment;
- b. relevant information, research, reports, and experts; and
- c. the participation of First Nations service providers, knowledge holders, and experts in the Program Assessment process.

173 The review conducted by the Program Assessment Organization shall be transparent, inclusive, and accountable including publicly posting the study methods, sample sizes and criteria, findings and recommendations. The Program Assessment Organization shall solicit and consider input from the following groups:

- a. FNCFS Service Providers;
- b. Provincial and Yukon governments providing child and family services for Non-Agency First Nations;
- c. the NAC; and
- d. other groups identified by the NCCC

Dispute Resolution Regarding Initial Program Assessment – Para. 231

In a Parties’ Dispute concerning Canada’s decision about whether or how any recommendations contained in the Initial Program Assessment Opinion will be implemented, the Dispute Resolution Tribunal shall assess the reasonableness of Canada’s decision and may order any remedy that could at common law be awarded on judicial review, subject to the limitations contained in paragraph 241. In conducting its review, the Dispute Resolution Tribunal shall consider, among other factors:

**RECOMMENDATION: Replace para. 231 with the following:**

In a Parties’ Dispute concerning Canada’s decision about whether or how any recommendations contained in the Initial Program Assessment Opinion, there shall be a presumption that the findings and recommendations of the Initial Program Assessment Opinion ought to be implemented. The Dispute Resolution Tribunal may order any remedy that could be made in accordance with section 53(2) of the *Canadian Human Rights Act*, RSC 1985, c. H-6. In conducting its review of a Parties’ Dispute regarding the Initial Program Assessment Opinion. The Dispute Resolution Tribunal shall consider, among other factors:

Dispute Resolution Regarding Initial Program Assessment – Para. 231

- a. whether the recommendations contained in the Initial Program Assessment Opinion are consistent with the principles and limitations in paragraph 186;
- b. whether the recommendations contained in the Initial Program Assessment require an amendment to this Final Settlement Agreement;
- c. the Program Assessment Report; and
- d. Canada’s reasons for its decision, if any.

- a. whether the recommendations contained in the Initial Program Assessment Opinion are consistent with the principles of *An Act Respecting First Nations, Inuit and Métis children, youth and families* and other applicable legislation including First Nations legislation;
- b. whether Canada’s refusal to implement the recommendations contained in the Initial Program Assessment Opinion demonstrate beyond a reasonable doubt that its decision is evidence based and in the best interest of the child, substantive equality, is culturally appropriate, non-regressive and takes into full consideration the unique circumstances of the community. Canada’s intentions or reasons shall not be considered in the analysis and shall be provided in a timely manner; and
- c. the Program Assessment Report.

Jurisdiction of the Dispute Resolution Tribunal – Paras. 240 and 241

**RECOMMENDATION: Replace Paras. 240 and 241 with the following:**

240 The Dispute Resolution Tribunal has jurisdiction to:

- a. process, adjudicate, and resolve Disputes, including by making procedural and substantive decisions;
- b. on request of a party to a dispute, order any party to a Dispute to take any reasonable interim measure in relation to the health or safety of a child as the Dispute Resolution Tribunal may consider necessary in respect of the subject matter of a Dispute;
- c. order such remedies as are permitted under this Final Settlement Agreement, having regard to the parameters of the Parties’ Dispute Process and Claimant Dispute Process and the limitations and remedies set out in paragraphs 231 and 241;
- d. order funding to a particular FNCFS Service Provider as set out in this Final Settlement Agreement;
- e. order that interest be paid on amounts ordered to be paid on the same basis as in the *Federal Courts Act*, RSC, 1985, c. F-7; and
- f. order Canada to pay the legal costs of any party to a Dispute on such terms as are just and in accordance with rates for counsel funded by Canada at the rates provided for by the Department of Justice’s external agent counsel rates.

241 The Dispute Resolution Tribunal does not have jurisdiction to:

- a. amend any provision of this Final Settlement Agreement;
- b. award general damages, punitive damages, or damages for discrimination;
- c. determine a claim as described in paragraph 384;
- d. expand the jurisdiction of the Dispute Resolution Tribunal;
- e. reduce the existing funding of any FNCFS Service Provider or the funding entitlement of an FNCFS Service Provider under this Final Settlement Agreement;
- f. reduce the level of the overall funding commitment provided for in paragraphs 5 and 9 of this Final Settlement Agreement;

240 The Dispute Resolution Tribunal has jurisdiction to:

- a. process, adjudicate, and resolve Disputes, including by making procedural and substantive decisions;
- b. make any order or give any direction that could be made in accordance with the *Canadian Human Rights Act*, RSC, 1985, c. H-6, including in relation to claims alleging retaliation and injunctive orders to stop Canada from retaliating;
- c. on request of a party to a dispute, order Canada to take any reasonable interim measure in relation to the health or safety of a child as the Dispute Resolution Tribunal may consider necessary in respect of the subject matter of a Dispute;
- d. order such remedies as are permitted under Final Settlement Agreement, having regard to the parameters of the Parties’ Dispute Process and Claimant Dispute Process and the limitations and remedies set out in paragraphs 231 and 241;
- e. order funding to a particular First Nation, FNCFS Service Provider or group of FNCFS Service Providers as set out in this Final Settlement Agreement;
- f. order that interest be paid on amounts ordered to be paid on the same basis as in the *Federal Courts Act*, RSC, 1985, c. F-7; and
- g. order Canada to pay the legal costs of any party to a Dispute on such terms as are just and in accordance with rates for counsel funded by Canada at the rates provided for by the Department of Justice’s external agent counsel rates.
- h. order Canada to increase funding to the Reformed FNCFS Funding Approach when systemic issues arise
- i. orders to stop and prevent retaliation by the Government of Canada including injunctive relief.
- j. order that this Final Settlement Agreement be amended as necessary to ensure Canada stops any discrimination found by the Dispute Resolution Tribunal and to prevent its recurrence.

**Jurisdiction of the Dispute Resolution Tribunal – Paras. 240 and 241 (continued)**

- g. make orders in the Claimant Dispute Process that requires or results in systemic change;
- h. order Canada to fund new components of the Reformed FNCFS Funding Approach or increase funding for existing components of the Reformed FNCFS Funding Approach, unless otherwise set out in this Final Settlement Agreement; or
- i. introduce additional indexation factors (for example, new methods of calculation of population growth or inflation).

241 The Dispute Resolution Tribunal does not have jurisdiction to:

- a. expand the jurisdiction of the Dispute Resolution Tribunal;
- b. reduce the existing funding of any First Nation, FNCFS Service Provider or the funding entitlement of an FNCFS Service Provider under this Final Settlement Agreement;
- c. reduce the level of the overall funding commitment provided for in paras. 4, 5 and 9 of this Final Settlement Agreement;

**Confidentiality of Dispute Resolution Process – Para. 254**

On application of a party to any Dispute, the Dispute Resolution Tribunal may order that all or some of the Dispute Resolution Tribunal’s procedures, hearings, and documents or interim orders and decisions shall remain strictly confidential between the parties to the Dispute.

**RECOMMENDATION: Replace para. 254 with the following:**

With the exception of requirements under the *Privacy Act* or the confidentiality provisions of provincial or federal legislation or regulation, only a First Nations litigant may request the confidentiality of procedures, hearings, documents or decisions when it is in the best interest of the child.

**Appointment of the Dispute Resolution President – Para. 266**

The President shall be appointed by the Governor in Council, on the recommendation of the Minister of ISC following consultation with the Parties. The President may be appointed for a second term.

**RECOMMENDATION: Replace para. 266 with the following:**

The President shall be appointed by the Governor in Council, on the recommendation of the Minister of ISC following a recommendation received from First Nations in Assembly in collaboration and consultation with First Nations that have no affiliation to AFN, or limited affiliation with AFN and with the advice of the NCCC, EAC, and the NAC.

**Appendices – Para. 399**

399. ISC can revise the following appendices in consultation with the Parties and may take into account the recommendations of the Reform Implementation Committee in doing so:

- a. Appendix 10
- b. Appendix 2

**RECOMMENDATION: Replace para. 399 with the following:**

ISC may revise the following appendices to this Final Settlement Agreement on the approval of the First Nations in Assembly in consultation with First Nations that have no affiliation with AFN or a limited affiliation with the AFN and with the advice of the NCCC, EAC and NAC:

- a. Appendix 2
- b. Appendix 4
- c. Appendix 5
- d. Appendix 6
- e. Appendix 3
- f. Appendix 7
- g. Appendix 12
- h. Appendix 10

**Discussions on Regional Modifications – Para. 45**

45 The Parties acknowledge that a First Nation or a regional or sub-regional organization may seek to discuss with Canada modifications to the Reformed FNCFS Program and the allocations thereunder, but Canada shall not be obligated to provide any additional funding to that First Nation or regional or sub-regional organization beyond what is provided by the Reformed FNCFS Funding Approach.

**RECOMMENDATION: Replace para. 45 with the following:**

45 Consistent with the Tribunal’s orders that First Nations children must have access to and receive substantively equal, culturally appropriate services that account for the distinct circumstances of their communities, First Nation(s) in consultation with their child and family service providers may request in writing that Canada vary the approach under the Reformed FNCFS Funding Approach and the allocations for those First Nations, regional or sub-regional organizations be increased consistent with the principles set out in paragraph 2 of this Final Settlement Agreement and/or to ensure First Nations children can fully enjoy the benefits of *An Act Respecting First Nations, Métis, Inuit children, youth and families* and other applicable legislation. Any such variation and the associated agreement will be publicly posted within 30 days on ISC’s website and social media.

Amendment Process – Paras. 230 and 390

230 A Parties' Dispute is a dispute, controversy, disagreement, or claim of a Party that arises out of, relates to, or is in connection with:

- a. this Final Settlement Agreement, including any question regarding its existence, validity, termination, implementation, application, and interpretation and/or breach, other than a Complaint Dispute;
- b. a decision by Canada as to whether or how any recommendations of the Reform Implementation Committee will be implemented.

390 The terms of this Final Settlement Agreement may only be amended by the Parties upon their unanimous consent in writing.

**RECOMMENDATION: paras. 230 and 390 with the following:**

230 A Parties' Dispute is a dispute, controversy, disagreement, or claim of a Party that arises out of, relates to, or is in connection with:

- a. this Final Settlement Agreement, including any question regarding its existence, validity, termination, implementation, application, and interpretation and/or breach, other than a Complaint Dispute;
- b. a dispute regarding a proposed amendment wherein the Parties cannot agree following the process set out in paragraph 390.

390 The terms of this Final Settlement Agreement, except for those contained in paras. 1–2 (purpose and principles), may be amended to ensure non-discrimination and ensure the fulfillment of the funding purpose and principles set out in this Final Settlement Agreement, including in response to unforeseen circumstances or in response to evidence that the measures in this Final Settlement Agreement are not having their intended effect. Such amendments can be made by the Parties upon their unanimous consent in writing, or on order of the Dispute Resolution Tribunal pursuant to paragraphs 230 and 240(j), and shall be evidence informed, consistent with the principles set out in paragraph 2 in this Final Settlement Agreement. The Parties agrees to the following amending process:

- a. any Party seeking to amend this Final Settlement Agreement shall give notice to all other Parties, setting out the specific amendment sought, the rationale of the amendment and any evidence demonstrating that the amendment will benefit First Nations children, youth and families (the "**Amendment Notice**");
- b. the Amendment Notice shall be provided to all First Nations and service providers, including information related to the specific nature of the proposed change, the evidence supporting the change and any positive, neutral or adverse affects on each of the principles guiding the agreement and in C92
- c. the other Parties shall respond to the Amendment Notice within 90 days with their position on the proposed amendment, including the rationale for that response and the evidence on which that response is founded ("**Amendment Response**");
- d. the Parties shall meet within 45 days of receipt of the last Amendment Response. The Party seeking the amendment shall organize and facilitate the meeting;
- e. where the Parties consent to the amendment, such amendment shall be added to the Final Settlement Agreement as an addendum;
- f. where the Parties do not agree regarding the proposed amendment, such amendment shall be referred to the Dispute Resolution Tribunal for determination pursuant to paragraphs 230 and 240(j); and
- g. any addendum or amendment agreed to by the Parties shall be submitted to the Tribunal for its approval.

Principles – Para. 2

The principles guiding the Reformed FNCFS Program to be implemented by way of this Final Settlement Agreement shall include:

- a. the cultural safety and well-being of First Nations children, youth, young adults, and families;
- b. substantive equality;
- c. addressing the needs of First Nations children, youth, young adults, and families;
- d. the best interests of children;
- e. prioritizing keeping children in the home;
- f. holistic and culturally informed programming, having regard for the current realities of distinct First Nations, including historical and contemporary disadvantage and contextual differences, including remoteness;
- g. recognition of Indigenous legal traditions and principles, if applicable;
- h. addressing the Structural Drivers that place First Nations children, youth, and families at higher risk of involvement with the child welfare system;
- i. respect for the inherent right of self-government, which is recognized and affirmed by section 35 of the *Constitution Act, 1982*, and which includes jurisdiction, in relation to child and family services;
- j. respect for the right to self-determination of Indigenous peoples, which is a right recognized and affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (the “**Declaration**”);
- k. that the *United Nations Declaration on the Rights of Indigenous Peoples Act* affirms the *Declaration* as a universal international human rights instrument with application in Canadian law and also provides a framework for the Government of Canada’s implementation of the *Declaration*;
- l. the rights in the *Declaration*, including the rights of children and youth, and the *United Nations Convention on the Rights of the Child*, including the right to be free from discrimination;
- m. accountability of FNCFS Service Providers and provincial and Yukon governments to the First Nation governments they serve; and
- n. guidance from First Nations-led and/or endorsed evidence.

**RECOMMENDATION: Add intergenerational equity to the principles:**

The principles guiding the Reformed FNCFS Program to be implemented by way of this Final Settlement Agreement shall include:

- a. the cultural safety and well-being of First Nations children, youth, young adults, and families;
- b. substantive equality and intergenerational equity;
- c. addressing the needs of First Nations children, youth, young adults, and families;
- d. the best interests of children;
- e. prioritizing keeping children in the home;
- f. holistic and culturally informed programming, having regard for the current realities of distinct First Nations, including historical and contemporary disadvantage and contextual differences, including remoteness;
- g. recognition of Indigenous legal traditions and principles, if applicable;
- h. addressing the Structural Drivers that place First Nations children, youth, and families at higher risk of involvement with the child welfare system;
- i. respect for the inherent right of self-government, which is recognized and affirmed by section 35 of the *Constitution Act, 1982*, and which includes jurisdiction, in relation to child and family services;
- j. respect for the right to self-determination of Indigenous peoples, which is a right recognized and affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (the “**Declaration**”);
- k. that the *United Nations Declaration on the Rights of Indigenous Peoples Act* affirms the *Declaration* as a universal international human rights instrument with application in Canadian law and also provides a framework for the Government of Canada’s implementation of the *Declaration*;
- l. the rights in the *Declaration*, including the rights of children and youth, and the *United Nations Convention on the Rights of the Child*, including the right to be free from discrimination;
- m. accountability of FNCFS Service Providers and provincial and Yukon governments to the First Nation governments they serve; and
- n. guidance from First Nations-led and/or endorsed evidence.

**Definition of Child – Para. 3(I)**

“child” means a First Nations person who, under applicable provincial or territorial law, is under the age of which an individual ceases to be a child.

**RECOMMENDATION: Replace para. 3(I) with the following:**

“child” means a First Nations person who, under applicable provincial or territorial law, is under the age of which an individual ceases to be a child, and includes the following:

- a. The child is registered or eligible to be registered under the *Indian Act*, as amended from time to time;
- b. The child has one parent/guardian who is registered or eligible to be registered under the *Indian Act*;
- c. The child is recognized by their Nation; or
- d. The child is ordinarily resident on reserve.

**Definition of FNCFS Agency – Para. 3(II)**

“FNCFS Agency” means an agency established by and affiliated with one or more First Nations and delegated or authorized pursuant to provincial or other authorities to provide legislated child welfare services.

**RECOMMENDATION: Replace para. 3(II) with the following:**

“FNCFS Agency” means an agency established by and affiliated with one or more First Nations and delegated or authorized pursuant to provincial or other authorities to provide legislated child welfare services, and also includes any service provider that was recognized as an agency by ISC under the FNCFS program in fiscal 2023-2024.

**Prevention Allocation – Para. 42(d)(i)**

42(d)(i) As of April 1, 2026, outside of Ontario, ISC shall allocate all prevention funding to First Nations. FNCFS Agencies shall draw from their respective Baseline Funding to conduct least disruptive measures as required under provincial legislation. However, a First Nation may decide to have its affiliated FNCFS Agency receive a portion or all of the prevention funding attributable to the First Nation. A First Nation shall provide written notice to ISC advising of such a decision by the December 1<sup>st</sup> prior to the fiscal year to which the prevention funding is applicable. Once written notice is provided by the First Nation, the direction contained therein persists until further notice is given.

**RECOMMENDATION: Replace Para. 42(d)(ii) with the following and add 42(d)(i)(A):**

42(d)(i) As of April 1, 2026, ISC shall allocate all prevention funding to FNCFS Agencies in keeping with the legislative requirements of section 14 of *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24. However, First Nations and FNCFS Agencies may decide that certain prevention programming shall be delivered by the First Nation. A First Nation and its affiliated FNCFS Agency shall provide notice to ISC advising of such a decision in the child and community well-being plan, including a budget for capacity funding, as set out in paragraphs 134 -136 of the Final Settlement Agreement. Once such notice is provided in the child and community well-being plan, ISC shall allocate the required prevention capacity and/or service funding to the First Nation.

42(d)(i)(A) As of April 1, 2026, where a First Nation plans to ultimately deliver prevention programming but requires time to build capacity, the First Nation shall give notice to ISC in its multi-year plan set out in paragraphs 43 and 44 of this Final Settlement Agreement, indicating its suggested budget for capacity building and its estimated timeline. ISC shall provide the First Nation with its requested capacity funding at actuals.

**Discussions on Regional Modifications – Para. 45**

45. The Parties acknowledge that a First Nation or regional or sub-regional organization may seek to discuss with Canada modifications to the Reformed FNCFS Program and the allocations thereunder, but Canada shall not be obligated to provide any additional funding to that First Nation or regional or sub-regional organization beyond what is provided by the Reformed FNCFS Funding Approach.

**RECOMMENDATION: Replace Para. 45 with the following:**

The Parties acknowledge that a First Nation or regional or sub-regional organization may seek to discuss with Canada modifications to the Reformed FNCFS Program and the allocations thereunder. In assessing a modification request by a First Nation, region or sub-region, Canada shall in good faith consider the Principles set out in section 2 of this Final Settlement Agreement.



**First Nation Representative Service Funding – Outside of Ontario – Para. 25**

25 For First Nations except those in Ontario, total funding for First Nation Representative Services in fiscal year 2024-2025 shall be calculated by multiplying the amount of \$294.72 by the total population for all First Nations eligible to receive funding under the Reformed FNCFS Program, according to the approach for determining population as set out in paragraph 35, then adding to that product the amount necessary to provide each First Nation a minimum of \$75,000. This amount shall be adjusted for inflation in subsequent years. This funding shall be upwardly adjusted in the manner set out in paragraph 32 and Appendix 12 to account for the increased costs of delivery services in remote communities, subject to the transition provision for fiscal year 2024-2025 set out in paragraph 52(h)(i).

**April 1, 2025–March 31, 2026**

58(a) For First Nations except those in Ontario, First Nation Representative Services funding shall be funded in accordance with paragraph 25.

**From April 1, 2026, Onward**

62 As of April 1, 2026, the transition to the Reformed FNCFS Funding Approach shall be complete.

**RECOMMENDATION: Replace Paras. 25, 58(a) and 62 with the following:**

25 For the Initial Five Years, First Nations, except for First Nations in Ontario, shall have access to reimbursement for their actual costs for First Nation Representative Services equivalent to the actual costs available pursuant to 2018 CHRT 4, including but not limited to:

- a. salaries, benefits, and costs to support the delivery of services;
- b. human resources recruitment, training or professional development;
- c. paraprofessional and professional fees;
- d. general program delivery costs such as non-medical travel costs, accommodations, transportation or meals for First Nations Representatives to support the delivery of services;
- e. program delivery costs and family support services including prevention services and services for those involved with the child and family services system.
- f. overhead, administrative costs (office rent, computer, information technology, utilities, insurance to help support FNRS services).

**April 1, 2029–March 31, 2030**

58(a) Funding for First Nation Representative Services following the Initial Five-Year terms shall be determined in accordance with the Initial Program Assessment Opinion.

**Operations and maintenance funding – Para. 53**

Commencing April 1, 2025, FNCFS Agencies' access to the reimbursement at their actual costs for intake and investigations, legal fees, building repairs, child service purchase, and small agency costs shall cease.

Outside of Ontario, ISC shall reimburse claims for FNCFS Agencies' actual costs for intake and investigations, legal fees, building repairs, child service purchase, and small agency costs incurred in fiscal year 2024-2025, submitted on or before September 20, 2025.

In Ontario, ISC shall reimburse claims of FNCFS Agencies' actual costs for intake and investigations, legal fees, and building repairs incurred in fiscal year 2024-2025, submitted on or before September 20, 2025.

**RECOMMENDATION: Replace paras. 53 with the following:**

Commencing April 1, 2030, FNCFS Agencies' access to the reimbursement at their actual costs for child in care (including but not limited to alternative care, customary care and/or kinship care), intake and investigations, legal fees, building repairs, child service purchase, and small agency costs may cease if recommended in the Initial Program Assessment and approved by First Nations in Assembly.

Outside of Ontario, ISC shall reimburse claims for FNCFS Agencies' actual costs for intake and investigations, legal fees, building repairs, child service purchase, and small agency costs incurred in fiscal year 2027-2028, submitted on or before September 20, 2028.

In Ontario, ISC shall reimburse claims of FNCFS Agencies' actual costs for child in alternative care maintenance intake and investigations, legal fees, and building repairs incurred in fiscal year 2027-2028, submitted on or before September 20, 2028.

**FNCFS Capital Funding – Para. 59**

Commencing April 1, 2025, ISC shall no longer accept funding requests under the 2021 CHRT 41 process. ISC shall instead providing capital funding in the manner described in subparagraph 42(e)

For greater clarity, ISC shall continue to process capital funding requests that are received on or before March 31, 2025, and fund those requests that are approved, pursuant to 2021 CHRT 41. Requests received shall include requests that are paused or pending approval from ISC as of March 31, 2025.

**RECOMMENDATION: Replace paras. 59 with the following:**

Under the term of this Final Settlement Agreement, capital funding and requests shall continue at actuals pursuant to 2021 CHRT 41 and consistent with the principles of best interests of the child, culturally appropriate, substantive equality and taking into full account the distinct circumstances of the child’s First Nations community. The parties shall update and streamline the process for capital claims to ensure efficiency, effectiveness and timelines of processing claims.

**Post-majority support services funding – Para. 60**

Commencing on April 1, 2025, FNCFS Service Providers shall no longer have access to reimbursement of their actual costs for post-majority support services, ISC shall instead provide post-majority support services funding in the manner outlined in subparagraph 42(f).

From April 1, 2026, Onward

62 As of April 1, 2026, the transition to the Reformed FNCFS Funding Approach shall be complete.

**RECOMMENDATION: Replace paras. 59 with the following:**

Under the term of this Final Settlement Agreement, for the Initial Five-Year term post-majority support services shall continue at actuals pursuant to 2022 CHRT 8.

**FNCFS Capital Funding – Para. 42(e)**

**FNCFS capital funding:** Prior to September 1, 2024, the Parties shall develop an implementation plan for this capital funding that leverages existing and new community capital planning processes. ISC, with the advice of the Reform Implementation Committee, shall also develop guidance documents to support FNCFS Service Providers in seeking capital funding.

**RECOMMENDATION: Replace para. 42(e) with the following:**

**FNCFS capital funding:** Within three (3) years of the Tribunal’s approval of this Final Settlement Agreement and subject to the development of an evidence based approach approved by the NCCC, the Parties, the Caring Society and the Commission, with direct input from the NAC, shall develop an implementation plan for this capital funding, including an approach that addresses urgent requests, requirements that Canada not engage in administrative delays and required timelines for Canada to determine capital funding requests.

**Post-majority support services funding – Para. 42(f)(i)**

42(f)(i) Save for the funding noted in subparagraph 42(f)(ii), ISC shall allocate all post-majority support funding to First Nations. Prior to September 1, 2024, the Parties shall co-develop the approach by which ISC shall allocate post-majority support services funding among First Nations. That approach shall align with the principles of needs-based funding and recognition of the distinct realities of First Nations.

**RECOMMENDATION: Replace para. 42(f)(i) with the following:**

42(f)(i) Post-majority support funding following the Initial Five Year term shall be determined in accordance with the Initial Program Assessment Opinion, but shall not be less than the highest amount received in any given fiscal year. That approach shall align with the principles of needs-based funding, be culturally appropriate and recognition of the distinct realities of First Nations.

**Superseding Tribunal's Orders – Paras. 385 and 386**

385 Within 30 days following the signing of the Final Settlement Agreement, the Parties shall file a joint Notice of Motion with the Tribunal in which they shall seek an order from the Tribunal that the Final Settlement Agreement is approved and that the Tribunal's jurisdiction over the complaint and all associated proceedings has ended save for those relating to Jordan's Principle, and that the terms of the Final Settlement Agreement supersede and replace all order of the Tribunal related to the discrimination found by the Tribunal concerning the FNCFS Program and the 1965 Agreement.

386 For clarity, the terms of this Final Settlement Agreement shall supersede, and render void all previous orders of the Tribunal concerning the 1965 Agreement and the FNCFS Program provided by Canada through ISC and any previous entities, unless an Order or part of an Order of the Tribunal is specifically identified as surviving and still in force following this Final Settlement Agreement.

**RECOMMENDATION: Replace para. 385 and 386 with the following:**

385 Subject to the approval of the Final Settlement Agreement by First Nations in Assembly and within 30 days following the signing of the Final Settlement Agreement, the Parties shall file a joint Notice of Motion with the Tribunal in which they shall seek an order from the Tribunal that the Final Settlement Agreement is approved and that the Tribunal shall retain jurisdiction over the complaint in relation to the FNCFS Program and the 1965 Agreement for a minimum of five (5) years from the date of approval of the Final Settlement Agreement. The Parties shall only return to the Tribunal for assistance following the full adjudication of a Parties' Dispute.

386 Following the five (5) year supervision role of the Tribunal, the Parties to the complaint shall report to the Tribunal regarding the Initial Five-Year term and seek guidance and direction regarding the Tribunal's ongoing jurisdiction in relation to the FNCFS Program and the 1965 Agreement. For clarity, the Tribunal's reasons and findings made in all existing orders shall continue and this Final Settlement Agreement has no impact on any of the Tribunal's orders in relation to Jordan's Principle.

**Enforcement of Funding Commitment – Para. 384**

384 Notwithstanding paragraph 383, if the Parliament of Canada does not appropriate sufficient funding to satisfy Canada's commitment in PART IV – FUNDING COMMITMENT of this Final Settlement Agreement, a Party may seek an order from a court of competent jurisdiction that the Parties are substantially deprived of the benefit of the FSA. The Party seeking such an order need not have suffered monetary loss nor shall it be necessary for a Party to prove that it is unable to perform its obligations under this Final Settlement Agreement as a result of Parliament's decision not to appropriate sufficient funding. If a court makes such an order, a Party may seek to re-open the complaint at the Canadian Human Rights Tribunal bearing file number T1340/7008, or to initiate a new complaint at the Canadian Human Rights Tribunal. For clarity, nothing in this clause is intended to foreclose any other cause of action or remedy which may be available to the Parties.

**RECOMMENDATION: Replace para. 384 with the following:**

384 Notwithstanding paragraph 383, if the Parliament of Canada does not appropriate sufficient funding to satisfy Canada's commitment in PART IV – FUNDING COMMITMENT of this Final Settlement Agreement, a Party may seek an order or direction from the Tribunal. Any First Nation, First Nations service provided or FNCFS Agency may initiate a new complaint at the Tribunal. For clarity, nothing in this clause is intended to foreclose any other cause of action or remedy which may be available to the Parties.

Nothing in this agreement shall affect, cancel or supersede any Treaty between Canada and First Nations or any existing agreement between Canada and any other First Nation.

Canada recognizes that all relations with Indigenous peoples be based on the recognition and implementation of their right of self-government.

The release does not settle, compromise, release or limit in any way whatsoever any claims by the releasors, in any action, claim or complaint regarding a declaration of Aboriginal or Treaty rights, a breach of Treaty rights, a breach of fiduciary duty or the constitutionality of any provision of the Constitution Act, 1982