



# Frequently Asked Questions

Long-Term Reform of the First Nations Child and Family Services Program



The Assembly of First Nations, alongside the Chiefs of Ontario, Nishnawbe Aski Nation, and the Government of Canada, have negotiated \$47.8 billion in a Draft Agreement to reform the First Nations Child and Family Services (FNCFS) Program. **Here are some key questions and answers regarding this Draft Agreement**

### **What are the key features of this Draft Agreement?**

The Draft Agreement provides \$47.8 billion over ten years to ensure stable, predictable and flexible funding to address the needs of First Nations children and families. Key areas of funding include prevention, First Nations representative services, post-majority support services, operations, protection, maintenance and care, and capital. Approximately two-thirds of the funding outlined in the Draft Agreement will be provided directly to First Nations, with flexibility to allocate these resources to address the highest areas of need.

### **Will FNCFS Agencies lose funding once the Draft Agreement is implemented?**

The draft agreement provides funds to First Nations and agencies to provide services. Some funding will be directed to First Nations governments to provide services directly to their citizens. The Draft Agreement allocates approximately \$16 billion, representing one third of the total funding, specifically for FNCFS Agencies to continue their specialized and legislated intervention supports, including services provided by qualified child and family services persons. The Draft Agreement addresses the chronic underfunding found to be discriminatory by the Canadian Human Rights Tribunal (CHRT) in their landmark 2016 ruling. Funding for Agencies in the Draft Agreement are equivalent to the actual expenditures reported by Agencies in fiscal year 2022-23, adjusted for inflation and population and is based on the principles of stability, predictability, and stability.

### **How is the funding allocated among different services like prevention, housing, and legal fees?**

The Draft Agreement provides funding to First Nations and FNCFS Agencies in a funding model that is based on the principles of flexibility, predictability and stability, allowing First Nations and FNCFS Agencies to allocate funds across various activities proactively and to carry forward unused funds to the next fiscal year. This allows for First Nations and Agencies to address areas where more resources are required as needs change over time.

### **How does the Draft Agreement align with expert recommendations?**

The reforms outlined in the Draft Agreement were developed based on over two decades of First Nations-led research and engagement with First Nations and other partners to reflect best practices and expert recommendations, including the recent reports from the Institute of Fiscal Studies and Democracy, ensuring it aligns with the best interests and needs of First Nations children, youth, and families.



## **How will the Draft Agreement impact Modern Treaty and Self-Governing First Nations?**

Reforms under the Draft Agreement will apply to Modern Treaty and Self-Governing First Nations that receive services under the FNCFS Program.

## **How will the Draft Agreement impact First Nations who are exercising jurisdiction under An Act respecting First Nations, Inuit and Métis children, youth and families (the Act)?**

The draft agreement will not impact those First Nations who drafted legislation pursuant to their inherent rights. The Draft Agreement ensures that First Nations exercising jurisdiction under the framework of the Act will not receive less funding than what they would be entitled to under the FNCFS Program for comparable services.

## **How will the Draft Agreement impact proceedings on Jordan's Principle?**

The \$20 billion Agreement-in-Principle reached in December 2021 included a framework to reform Jordan's Principle and ensure its full and proper implementation. However, in October 2023, a decision was made by the parties to the negotiations with the support of the First Nations-in-Assembly to pause the negotiations regarding Jordan's Principle to ensure sufficient time for First Nations-informed research on Jordan's Principle to be completed by the Institute of Fiscal Studies and Democracy. A separate agreement on Jordan's Principle will be negotiated in the coming months.

## **Is this the most money the AFN could have negotiated for?**

The Government of Canada initially committed \$19.8 billion for reform through the 2021 Agreement-in-Principle. The current offer of \$47.8 billion significantly exceeds that initial commitment, marking this commitment historic in scope and impact.

## **Was the AFN mandated to negotiate the Draft Agreement, and were First Nations involved in the process?**

Yes, under AFN Resolutions 40/2022 and 86/2023, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, the AFN was mandated to negotiate the Draft Agreement and seek approval of the Draft Agreement from the First Nations-in-Assembly. As mandated, the AFN advocated for greater First Nations oversight of the services provided by Agencies and funding for prevention services in accordance with these Resolutions alongside the First Nations Parties (Chiefs of Ontario and Nishnawbe Aski Nation) and ensured that the negotiations for long-term reform were informed by years of research and advice from First Nations and experts. First Nations leadership were provided regular updates at AFN Assemblies by the AFN and its research partners.

First Nations were also funded to provide regional input through their own processes to the AFN on the proposals outlined in the Agreement-in-Principle, which were consulted throughout the negotiation process.



## **What mechanisms are in place to monitor the use of funds and the outcomes of the reformed services?**

The Draft Agreement includes the responsibility of the Agency to collect data on the wellness of children in care for reporting to the First Nation. The First Nation can use this information to identify wellness areas to prioritize resources to. The Agency will also be required to collect data to provide to ISC for parliamentary and public reporting. The Reform Implementation Committee will also have an oversight role to ensure that Indigenous Services Canada are implementing the reform as detailed in the Agreement.

## **What happens after the 10-year commitment in the Draft Agreement ends?**

The FNCFS Program and funding will continue after the ten-year mark. Funding will be adjusted based on the outcomes and recommendations of two program assessments scheduled at the five-year and ten-year marks. These assessments will ensure that the reforms continue to be effective and are adaptable and responsive should the data and evidence collected reflect the need for change. The Draft Agreement also acknowledges that Canada's obligation to provide non-discriminatory services to First Nations children will also continue to exist after the expiry of the Draft Agreement.

## **What mechanisms are available if First Nations have concerns or disputes with the implementation of the reforms?**

A dispute resolution process is outlined in the Draft Agreement, including the establishment of a Dispute Resolution Tribunal to handle disputes. The tribunal is mandated to adjudicate and resolve any concerns or disputes that may arise during the implementation of the reforms. This is different than the Canadian Human Rights Tribunal, which is currently only accessible to those who are a party to the 2007 Human Rights Complaint (the AFN, Caring Society, Chiefs of Ontario, Nishnawbe Aski Nation, Amnesty International, or Canadian Human Rights Commission), or if a First Nation or individual pursues an independent complaint, which can take years to adjudicate and can be prohibitively expensive for First Nations parties.

The dispute resolution process envisioned in the Draft Agreement was designed by First Nations legal experts, including those with experience in First Nations-led dispute resolution processes. The dispute resolution process in the Draft Agreement is entirely dedicated to FNCFS reform, making it more efficient and accessible to First Nations and Agencies. The dispute resolution process will be paid for by Canada, including the legal fees for First Nations and Agencies. It will also be more culturally appropriate and may be conducted in First Nations languages at the request of the Parties. While the dispute resolution process has been crafted to be accessible and culturally appropriate, it does not displace First Nations or Agencies rights to pursue claims at the Canadian Human Rights Tribunal or by way of the courts.



## **How does the Draft Agreement address the unique challenges faced by remote and Northern First Nations?**

The funding model includes Remoteness Adjustment Funding to address the higher costs associated with service delivery in remote areas.

## **What are the next steps in the process, pending approval of the Draft Agreement from First Nations-in-Assembly at the Special Chiefs Assembly?**

The Draft Agreement, subject to any agreed upon changes derived from the regional engagements, will be brought to the Special Chiefs Assembly for approval by the First Nations-in-Assembly by way of a resolution. If the Draft Agreement is approved at the Special Chiefs Assembly, Canada, the AFN, and the First Nations Parties will execute the Final Agreement and submit a motion to the Canadian Human Rights Tribunal to endorse the Final Agreement and end its oversight of the FNCFS Program. Should the Tribunal approve the Final Agreement, the implementation of the reforms will begin on April 1, 2025.

## **What happens if the First Nations-in-Assembly reject the Draft Agreement at the Special Chiefs Assembly?**

If the Draft Agreement is rejected at the Special Chiefs Assembly, the AFN will follow the direction given by the First Nations-in-Assembly. If the Parties to the negotiations are willing, the negotiation process may be adjusted and revisited according to the direction and mandates provided by the First Nations-in-Assembly. The AFN cannot guarantee that negotiation will still remain a viable option. However, as the AFN is the only party bound to resolutions by the First Nations-in-Assembly, any future negotiations would remain subject to the other parties' mandates, which could be influenced by factors like changes in government and could result in a return to protracted litigation before the Canadian Human Rights Tribunal and possibly the courts.





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