

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

National Disability Insurance Scheme Act 2013

*National Disability Insurance Scheme Amendment (Participating Jurisdiction)
Specification 2019*

Purpose

The *National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2019* (the Specification) is made under section 10A of the *National Disability Insurance Scheme Act 2013* (the Act), and amends the *National Disability Insurance Scheme (Participating Jurisdiction) Specification 2018* to specify each additional host jurisdiction that is a **participating jurisdiction** for the purposes of the Act.

The Specification is made by the Minister for Families and Social Services.

Background

The NDIS Quality and Safeguards Commission (the Commission) is an independent national commission established by the Act. The Commission was established to improve the quality and safety of National Disability Insurance Scheme supports and services.

The Specification facilitates the establishment of the Commission in the Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria. These States and Territories are host jurisdictions. The concept of host jurisdiction is defined in section 10 of the Act and was used to establish the National Disability Insurance Scheme in the States and Territories. To fall under the jurisdiction of the Commission, States and Territories must be included as participating jurisdictions via an instrument made by the Minister under section 10A of the Act.

The definition of **participating jurisdiction** is found in section 10A of the Act.

Because the Specification facilitates the establishment of the Commission, it is considered appropriate that it is not subject to disallowance by the Commonwealth Parliament (see subsection 44(1) of the *Legislation Act 2003*).

Commencement

The Specification commences on 1 July 2019.

Under subsection 33(3) of the *Acts Interpretation Act 1901* where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like condition (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Consultation

The Department of Social Services has consulted with the Commission and the Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria about the inclusion of those jurisdictions as participating jurisdictions.

The Commonwealth Minister wrote to the relevant Minister of each State and Territory specified in the Specification inviting them each to become a participating jurisdiction, and each has agreed that the State or Territory be specified by legislative instrument as a participating jurisdiction under section 10A of the Act.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has been consulted and has advised that a RIS is not required (OBPR ID 24877).

Explanation of the provisions

Section 1 - Name

The instrument is the *National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2019*.

Section 2 - Commencement

The instrument commences on 1 July 2019.

Section 3 - Authority

The Specification is made under section 10A of the Act.

Schedule 1 – Participating jurisdiction

The Schedule to the instrument amends the *National Disability Insurance Scheme (Participating Jurisdiction) Specification 2018* to specify each of the Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria as a **participating jurisdiction**.

The Amendments contained in Schedule 1 to this Specification insert the above States and Territories into Schedule 1 of the *National Disability Insurance Scheme (Participating Jurisdiction) Specification 2018*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2019

The *National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2019* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2019* (the Specification) is made under section 10A of the *National Disability Insurance Scheme Act 2013* (the Act), and specifies each host jurisdiction that is a **participating jurisdiction** for the purposes of the Act and implementation of the NDIS Quality and Safeguards Commission (the Commission). Notably, the Specification specifies that the Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria are participating jurisdictions for the NDIS.

Human rights implications

Through enabling the establishment of the Commission in the Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria, the Specification promotes the rights of people with disability on the same basis as the Act does. In particular, the NDIS engages with the following human rights:

- The rights of people with disabilities in the *Convention on the Rights of Persons with Disabilities* (CRPD), especially Articles 3, 4, 8, 11, 12, 13, 16, 17, 19, 20, 21, 22, 26, 28, 30 and 31;
- The rights of children in the *Convention on the Rights of the Child*, especially Articles 23 and 34;
- Articles 6, 7(b) and 9 of the *International Covenant on Economic, Social and Cultural Rights*; and
- Article 17 of the *International Covenant on Civil and Political Rights*.

Overall, the establishment of the Commission will promote the rights of people with disabilities in Australia by protecting and preventing people with disability from experiencing harm arising from poor quality or unsafe supports or services under the National Disability Insurance Scheme (NDIS).

The Specification engages with these Articles, through enabling the establishment of the Commission in the Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria, which will provide oversight and regulation for providers delivering supports and services aligned with these Articles.

In particular, the Specification advances the aim of ensuring the application of the above rights to all individuals eligible for the NDIS within the Australian Capital Territory, Northern Territory, Queensland, Tasmania and Victoria. The Specification is therefore compatible with obligations enshrined in various Articles in the abovementioned treaties.

Conclusion

The Specification is compatible with human rights because it facilitates the establishment of the Commission in accordance with the obligations of nation states to respect and further the rights identified above.

The Hon Paul Fletcher MP
Minister for Families and Social Services