

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme (Host Jurisdiction) Specification 2016

Purpose

The *National Disability Insurance Scheme (Host Jurisdiction) Specification 2016* (the Specification) is made under section 10 of the *National Disability Insurance Scheme Act 2013* (the Act), and specifies each State and Territory that is a **host jurisdiction** for the purposes of the Act. The Specification revokes the *National Disability Insurance Scheme (Host Jurisdiction) Specification 2013* (the revoked instrument) and provides a complete and up to date listing of each State and Territory that has agreed to become a host jurisdiction.

The Specification is made by the Minister for Social Services.

Background

The National Disability Insurance Scheme (NDIS) is a significant disability reform initiative established by the Act. The Act also establishes the National Disability Insurance Scheme Launch Transition Agency (the Agency) to administer the NDIS.

In addition to the current NDIS trial sites in the Australian Capital Territory, New South Wales, Northern Territory, South Australia, Tasmania, Victoria and Western Australia, the NDIS will commence early transition in three sites across Queensland from January 2016. With the inclusion of Queensland, there will be NDIS sites in all of the States and in the Australian Capital Territory and Northern Territory of Australia. The Specification gives effect to the agreement of each of these States and Territories to become a host jurisdiction for the purposes of section 10 of the Act.

All States, and the Australian Capital Territory and the Northern Territory, signed an Intergovernmental Agreement for the National Disability Insurance Scheme Launch on 7 December 2012.

In addition, New South Wales, Victoria, South Australia, Tasmania, Queensland and the Australian Capital Territory and the Northern Territory have now signed agreements with the Commonwealth, which confirm the operational and funding details for the roll-out of the NDIS in trial and early transition sites, and their status as host jurisdictions.

The Specification facilitates the commencement of the NDIS, as agreed to between the Commonwealth and the specified States and Territories. Because the Specification facilitates these agreements, it is considered appropriate that it is not subject to disallowance by the Commonwealth Parliament (see subsection 44(1) of the *Legislative Instruments Act 2003*).

Commencement

The Specification commences on the day after registration.

Power to revoke

The revocation of the *National Disability Insurance Scheme (Host Jurisdiction) Specification 2013* made by this Specification relies on subsection 33(3) of the *Acts Interpretation Act 1901*. Under subsection 33(3), 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 conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

The Commonwealth has worked extensively with the States and Territories in the development of the NDIS. The Commonwealth has entered into a multilateral agreement with all States, the Australian Capital Territory and the Northern Territory, and agreements with each host jurisdiction for trials or early transition sites.

The Commonwealth Minister wrote to the relevant Minister of each State and Territory specified in the Specification as new sites were announced, and each has agreed to their State or Territory being specified, by legislative instrument, as a host jurisdiction as required by section 10 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 19840).

Explanation of the provisions

Section 1

Section 1 provides how the Specification is to be cited, that is, as the *National Disability Insurance Scheme (Host Jurisdiction) Specification 2016*.

Section 2

Section 2 provides that the Specification commences on the day after registration.

Section 3

Section 3 provides that the Specification revokes the *National Disability Insurance Scheme (Host Jurisdiction) Specification 2013*. A note to this section clarifies that section 7 of the *Acts Interpretation Act 1901* applies to the Specification, which means that the previous operation of the revoked instrument in relation to the previously specified host jurisdictions is not affected by the revocation. Given that

every State and the Australian Capital Territory and the Northern Territory has now agreed to become a host jurisdiction to the NDIS, including Queensland, the Specification is intended to provide a complete consolidated listing of host jurisdictions.

Section 4

Section 4 specifies that each State and Territory mentioned in Schedule 1 is a **host jurisdiction** for the purposes of section 10 of the Act. Specification as a host jurisdiction gives a State or Territory a right to be consulted in relation to a number of matters arising under the Act including:

- charging of fees by the Agency (section 120);
- directions (section 121) or statements of strategic guidance (section 125) that may be given by the Commonwealth Minister to the Agency or its Board;
- granting leave of absence to the Chair of the Board (section 131) and the Principal Member of the Advisory Council (section 151), termination of Board members (section 134) or members of the Advisory Council (section 155) and the terms and conditions of the appointment of Board members (section 135) or members of the Advisory Council (section 156); and
- the National Disability Insurance Scheme rules and regulations made under the Act (sections 209 and 210).

Schedule 1

Schedule 1 specifies the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia as host jurisdictions. Each host jurisdiction has agreed to be specified in this manner.

Statement of Compatibility with Human Rights

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

National Disability Insurance Scheme (Host Jurisdiction) Specification 2016

The *National Disability Insurance Scheme (Host Jurisdiction) Specification 2016* 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 (Host Jurisdiction) Specification 2016* (the Specification) is made under section 10 of the *National Disability Insurance Scheme Act 2013* (the Act), and specifies each State and Territory that is a **host jurisdiction** for the purposes of the Act and implementation of the NDIS. Notably, the Specification establishes that all States, and the Australian Capital Territory and the Northern Territory of Australia, are host jurisdictions for the NDIS.

The Specification revokes the *National Disability Insurance Scheme (Host Jurisdiction) Specification 2013*, as the specified States and Territories have now given agreement to be host jurisdictions. The making of the Specification provides for a complete consolidated list of host jurisdictions.

Human rights implications

Through enabling the implementation of the NDIS in all States, and the Australian Capital Territory and the Northern Territory, 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, 5, 7, 8, 12, 13, 19, 20, 21, 22, 23, 26, 28, 30 and 31;
- The rights of children in the *Convention on the Rights of the Child*, especially Articles 12 and 23;
- Articles 9 and 10 of the *International Covenant on Economic, Social and Cultural Rights*; and
- Articles 14 and 17 of the *International Covenant on Civil and Political Rights*.

Overall, the establishment of the NDIS will promote the rights of people with disabilities in Australia by providing access to nationally consistent funding and support to help them realise their aspirations, and to participate in the social and economic life of the community.

The Specification engages with these Articles, through enabling the delivery of the NDIS in all Australian jurisdictions, which will deliver supports 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 Australia's territory without geographic distinction. The Specification is therefore compatible with obligations enshrined in various Articles in the abovementioned treaties, such as Article 2 of the *International Covenant on Civil and Political Rights*.

Conclusion

The Specification is compatible with human rights because it facilitates the implementation of supports for people with disability through the NDIS in accordance with the obligations of nation states to respect and further the rights identified above.

The Hon. Christian Porter MP
Minister for Social Services