

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the National Disability Insurance Scheme

National Disability Insurance Scheme Act 2013

*National Disability Insurance Scheme Amendment (Participating Jurisdiction)
Specification 2020*

Purpose

The National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2020 (the Specification) is made under section 10A of the *National Disability Insurance Scheme Act 2013* (the Act) and specifies Western Australia as a “participating jurisdiction” for the purposes of the Act, with effect from 1 November 2020.

Background

The NDIS Quality and Safeguards Commission (the Commission) was established under the Act to improve the quality and safety of National Disability Insurance Scheme supports and services.

The Specification expands the role of the Commission to Western Australia. To fall under the jurisdiction of the Commission, States and Territories must be specified as participating jurisdictions by a legislative instrument made by the Minister under section 10A of the Act.

Because the Specification facilitates the operation of the Commission and the National Disability Insurance Scheme, and the National Disability Insurance Scheme is a scheme involving the Commonwealth and States and Territories, section 44(1) of the *Legislation Act 2003* provides that the Specification is not subject to disallowance.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make a legislative instrument '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'. In making the amendments in Schedule 1 to the Specification, the Minister is relying upon this subsection in conjunction with the power in section 10A of the Act.

Commencement

The Specification commences on 1 December 2020.

Consultation

The Department of Social Services has consulted with Western Australia about its inclusion in NDIS as a participating jurisdiction.

The Western Australian Minister for Disability Services has agreed on behalf of Western Australia that the State may be specified as a participating jurisdiction under section 10A of the Act.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation (OBPR) has been consulted. A Regulatory Impact Statement is not required (OBPR ID 26473).

Explanation of the provisions

Section 1 - Name

The instrument is the *National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2020*.

Section 2 - Commencement

The instrument commences on 1 December 2020.

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 Western Australia as a “participating jurisdiction” for the purposes of the Act.

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 2020

The National Disability Insurance Scheme Amendment (Participating Jurisdiction) Specification 2020 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 2020 (the Specification) is made under section 10A of the *National Disability Insurance Scheme Act 2013* (the Act) and specifies that Western Australia is a “participating jurisdiction” for the purposes of the Act.

Human rights implications

Through enabling the jurisdiction of the Commission in Western Australia, 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 Western 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 jurisdiction of the Commission in Western Australia, 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 Western Australia. 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 operation of the Commission in Western Australia, which is in accordance with the obligations of nation states to respect and further the rights identified above.

The Hon Stuart Robert MP
Minister for the National Disability Insurance Scheme