

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

A New Tax System (Goods and Services Tax) Act 1999

A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015

Paragraph 177-10(1)(b) of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) authorises the Assistant Minister for Social Services to make a determination for the purposes of section 38-25(2)(b) of the GST Act.

Subsection 38-25(2) covers the provision of government funded residential care services to aged or disabled people, and allows for a supply of services to be GST-free where:

- the services supplied are of a kind similar to those listed in Schedule 1 to the *Quality of Care Principles 2014*, made under the *Aged Care Act 1997*; and
- the supplier of those services receives funding from the Commonwealth, a State or Territory to supply those services.

This Determination ensures that aged or disabled residents of residential aged care services funded by a State or Territory government will receive GST-free all the residential care services that are GST-free to aged or disabled residents of Commonwealth government funded residential aged care services under the *Aged Care Act 1997*.

This Determination sets out in subsection 6(1), the hotel type services which will be GST-free to residents of government funded residential aged care services. Subsection 6(2) sets out the general care services which are to be provided GST-free to all residents, while subsection 6(3) sets out other care services to be provided GST-free to residents.

The purpose of the *A New Tax System (Goods and Services Tax) (GST-free Supply - Residential Care - Government Funded Supplier) Determination 2015* is to reflect amendments made to the specified care and services listed in Schedule 1 to the *Quality of Care Principles 2014* that came into effect on 1 July 2014.

This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

As the amendments in this Determination are a consequence of amendments that were made to another instrument, no specific consultation was undertaken in relation to this instrument.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 17649).

Commencement

The Determination is taken to have commenced on 1 July 2014.

Details of the A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015

Item 1 – Name

This item states that the name of the determination is the *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Government Funded Supplier) Determination 2015*.

Item 2 - Commencement

This item states that this instrument is taken to have commenced on 1 July 2014.

The instrument does not impose any new liabilities on individuals or organisations. It ensures that care and services provided since the 1 July 2014 changes to the *Quality of Care Principles 2014* remain exempt from GST, and thus reduces the tax burden on individuals. There do not appear to be any circumstances where a person (other than the Commonwealth) would be disadvantaged.

Item 3 – Authority

This item states that the authority by which this instrument is made is paragraph 177-10(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Item 4 – Schedules

This item states that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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 conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Item 5 – Definitions

This item notes that a number of expressions used throughout this instrument are defined in the GST Act, including the terms GST-free, Quality of Care Principles and supply.

Throughout this instrument:

Act has the meaning of *A New Tax System (Goods and Services Tax) Act 1999*.

resident has the meaning of a person as mentioned in paragraph 38-25(2)(a) of the Act.

Item 6 – Kinds of services

Hotel services supplied to residents in a residential facility

Item 6(1) states that for the purposes of paragraph 38-25(2)(b) of the Act, hotel services that are supplied to a resident in a residential facility, as specified in Part 1 of Schedule 1 to the Quality of Care Principles, are services covered by Schedule 1 to the Quality of Care Principles.

General care services supplied to residents in a residential facility

Item 6(2) states that for the purposes of paragraph 38-25(2)(b) of the Act, care and services that are supplied to a resident in a residential facility, as specified in Part 2 of Schedule 1 to the Quality of Care Principles, are services covered by Schedule 1 to the Quality of Care Principles.

Other care services supplied to residents in a residential facility

Item 6(3) states that for the purposes of paragraph 38-25(2)(b) of the Act, care and services that are supplied to a resident in a residential facility, as specified in Part 3 of Schedule 1 to the Quality of Care Principles, are services covered by Schedule 1 to the Quality of Care Principles.

Translation of references in Quality of Care Principles

Item 6(4) states that for the purposes of this section, a reference in Schedule 1 to the Quality of Care Principles to a care recipient is to be read as a reference to a resident and a reference to a residential care service is to be read as a reference to a residential facility.

This item notes that the supply of any of the services mentioned in this section is GST-free, subject to the requirements of paragraphs 38-25(2)(a) and (c) of the Act.

Schedule 1 – Repeals

GST-free Supply (Residential Care — Government-Funded Supplier) Determination 2000

Item 1 – The whole of the Determination

This item repeals the *GST-free Supply (Residential Care — Government-Funded Supplier) Determination 2000*.

Statement of Compatibility with Human Rights

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

A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015

The *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Government Funded Supplier) Determination 2015* (the Legislative Instrument) 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

This Legislative Instrument ensures that aged or disabled residents of other government funded residential aged care services will receive GST-free all the residential care services that are GST-free to aged or disabled residents of Commonwealth funded residential aged care services under the *Aged Care Act 1997*.

This Legislative Instrument sets out in subsection 6(1), the hotel type services which will be GST-free to residents of government funded residential aged care services. Subsection 6(2) sets out the general care services which are to be provided GST-free to all residents, while subsection 6(3) sets out other care services to be provided GST-free to residents.

The Legislative Instrument makes amendments that reflect amendments made to the specified care and services listed in Schedule 1 to the *Quality of Care Principles 2014* that came into effect on 1 July 2014.

Human Rights Implications

The Legislative Instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. The Legislative Instrument ensures that eligible aged or disabled residents of State or Territory government funded residential aged care services will receive GST-free all the residential care services that are GST-free to aged and disabled residents of Commonwealth government funded residential aged care services under the *Aged Care Act 1997*. In this way, the Legislative Instrument improves peoples' access to care and services and is beneficial to human rights.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services