

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 – Non-government Funded Supplier) Determination 2015

Paragraph 177-10 (1)(c) 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 paragraph 38-25(3)(b) of the GST Act which covers the provision of GST-free services to aged or disabled people living in privately funded residential care services.

Paragraphs 38-25(3)(a) and (c) cover the circumstances in which the provision of GST-free services to aged or disabled people living in privately funded residential accommodation can occur, while the Minister's determination under paragraph 38-25(3)(b) specifies the kinds of services which will be GST-free to eligible residents.

The intent of this determination is for aged or disabled people in like care situations, who are living in privately funded residential accommodation, to be treated similarly in terms of their access to GST-free services, as aged or disabled people living in Commonwealth funded residential aged care services under the *Aged Care Act 1997*.

This determination ensures that eligible aged or disabled residents of privately 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 or a State or Territory government funded residential aged care service under the *Aged Care Act 1997*.

The services as listed in section 6 to this determination reflect the same range of services as those in Schedule 1 to the *Quality of Care Principles 2014* as made under the *Aged Care Act 1997*, and which are GST-free to residents of Commonwealth funded residential aged care services. The services listed in subsections 6(1) and 6(2) to the determination cover the general accommodation and care services to be provided to all residents, while subsection 6(3) covers the other care needs to be provided to residents.

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

The instrument does not impose any new liabilities on individuals or organisations, and in fact reduces the tax burden on individuals. The instrument provides that various goods and services provided to various care recipients continue to be provided free of GST. This has already been occurring in practice in anticipation of this instrument being made. Consequently, there did not appear to be any circumstances where a person (other than the Commonwealth) would be disadvantaged.

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 Amending 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 – Non-government Funded Supplier) Determination 2015

Item 1 – Name

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

Item 2 - Commencement

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

Item 3 – Authority

This item states that the authority by which this instrument is made is paragraph 177-10(1)(c) 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(3)(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(3)(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 of a kind covered by Schedule 1 to the Quality of Care Principles. This item also states that this only applies if the services are provided in accordance with subitem 6(4).

General care services supplied to residents in a residential facility

Item 6(2) states that care and services that are supplied to a resident in a residential facility that are specified in Part 2 of Schedule 1 to the Quality of Care Principles, are services considered to be covered by Schedule 1 to the Quality of Care Principles for the purposes of paragraph 38-25(3)(b) of the Act. It also states that this only applies if the services are provided in accordance with subitem 6(4).

Other care services supplied to residents in a residential facility

Item 6(3) states that for the purposes of paragraph 38-25(3)(b) of the Act, care and services that are supplied to a resident in a residential facility in the circumstances set out in subitem 6(4) 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.

Circumstances

Item 6(4) states that the circumstances in which subitems 6(1) – 6(3) apply are that:

- the resident has a continued need for the services listed in item 2.1 or 3.8 of Schedule 1 to the Quality of Care Principles. That is, a continued need for assistance with daily living activities and/or nursing services; and
- via a written agreement, the services are supplied in a package consisting of the services listed in item 2.1 or 3.8 of Schedule 1 to the Quality of Care Principles, other services mentioned in the Schedule that are needed by the resident, and accommodation; and
- charges for services and accommodation are payable to the same entity.

Translation of references in Quality of Care Principles

Subitem 6(5) 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(3)(a) and (c) of the Act.

Schedule 1 – Repeals

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

Item 1 – The whole of the Determination

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

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 – Non-government Funded Supplier) Determination 2015

The *A New Tax System (Goods and Services Tax) (GST-free Supply - Residential Care – Non-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 eligible aged or disabled residents of privately 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 funded residential aged care services under the *Aged Care Act 1997*.

The services as listed in Schedule 1 to this determination reflect the same range of services as those in Schedule 1 to the *Quality of Care Principles 2014* as made under the *Aged Care Act 1997*, which are GST-free to residents of Commonwealth funded residential aged care services.

The purpose of the *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2015* is to reflect amendments made to the specified care and services listed in Schedule 1 of 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 privately 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 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**