

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services
A New Tax System (Goods and Services Tax) Act 1999

*GST – free Supply (National Disability Insurance Scheme Supports) Amendment
Determination 2016 (No. 1)*

Purpose

The *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013* (the Determination) made under subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) specifies which kinds of supplies to a participant of the National Disability Insurance Scheme (the NDIS) are GST-free in accordance with section 38-38(d) of the GST Act.

The purpose of the *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2016 (No. 1)* (the Amendment Determination) is to extend the operation of the Determination by a further 12 months.

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

Supplies of various disability supports are GST-free under provisions in Subdivision 38-B of the GST Act where the supplier receives government funding for the supplies. However, under the NDIS, government funding for some of these disability support types is not provided to the suppliers. Instead, the NDIS funding is provided to the participant (that is, the person with a disability) or another person managing the funding for the participant.

Section 38-38 of the GST Act provides that certain supports supplied to a participant under the *National Disability Insurance Scheme Act 2013* (NDIS Act) are GST-free supplies, if they meet the specified criteria. This includes the supplies being of a kind specified in a determination made under section 38-38(d) of the GST Act.

Subsection 177-10(5) of the GST Act provides that the Minister responsible for the NDIS Act may, by legislative instrument, make a determination as to which kinds of supplies may be GST-free for the purposes of paragraph 38-38(d) of the GST Act.

The Determination specifies 22 kinds of supplies of NDIS supports which are GST-free, where the supply also meets the conditions set out in section 38-38 of the GST Act.

The current application of the Determination ends on 30 June 2016. The Amendment Determination is required to extend the operation of the Determination by 12 months until 30 June 2017. This will enable a full review of the Determination to establish any changes that need to be made to the kinds of supplies specified in the Determination.

Commencement

The Amendment Determination commences on the day after it is registered.

Consultation

In accordance with Section 17 of the *Legislation Act 2003*, consultation has taken place with the Treasury and the National Disability Insurance Agency by the Department of Social Services.

Regulation Impact Statement (RIS)

Office of Best Practice Regulation (OBPR) has advised a Regulation Impact Statement (RIS) is not required.

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Explanation of the provisions

Section 1 states the title of the instrument.

Section 2 provides that the instrument will commence the day after it is registered.

Section 3 provides that the instrument is made under subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Section 4 provides that Schedule 1 amends the *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013*.

Schedule 1- Amendments

Item 1 amends the period within which supplies can be considered to be GST-free to extend the application of the instrument for a further 12 months.

Statement of Compatibility with Human Rights

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

GST –free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2016 (No. 1)

This Determination 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 purpose of the *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2016 (No. 1)* (the Amendment Determination) is to extend the operation of the *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013* (the Determination) made under Subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) by a further 12 months.

Supplies of various disability supports are GST-free under provisions in Subdivision 38-B of the GST Act if the supplier receives government funding for the supplies.

Section 38-38 of the GST Act provides that certain supports supplied to a participant under the *National Disability Insurance Scheme Act 2013* (NDIS Act) are GST-free, if they meet the specified criteria, which includes being a kind of supply specified in a determination made under section 38-38(d) of the GST Act.

Subsection 177-10(5) of the GST Act provides that the Minister responsible for the NDIS Act may, by legislative instrument, make a determination of which kinds of supplies may be GST-free for the purposes of paragraph 38-38(d) of the GST Act.

The Determination specifies 22 kinds of supplies of supports which are GST-free where the supply meets the conditions set out in section 38-38 of the GST Act.

The application of the Determination ends on 30 June 2016. The Amendment Determination is required to extend the operation of the Determination by 12 months until 30 June 2017. This will enable a full review of the Determination to establish whether any changes need to be made to the kinds of supplies specified in the Determination.

Human rights implications

This Amendment Determination engages the right to social security.

Article 9 of the International Covenant on Economic, Social and Cultural Rights recognises the right to social security for all persons, while Article 28 of the Convention on the Rights of Persons with Disabilities requires countries to recognise the right of people with disabilities to social protection and to take appropriate steps

to ensure access by people with disabilities to social protection and poverty reduction programmes and to retirement benefits and programmes.

The Amendment Determination gives effect to the framework established in the GST Act, ensuring that the supply to a participant of a reasonable and necessary support of a kind listed in the Determination, as specified in the participant's plan, can be GST-free.

The Amendment Determination promotes the right to social security by ensuring that supplies of these kinds of supports are not taxed.

Conclusion

The Amendment Determination is compatible with human rights as it promotes the right to social security.

Minister for Social Services

Christian Porter