

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

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

*A New Tax System (Goods and Services Tax) (Adult and Community Education Courses) Determination 2016*

### **Purpose**

Paragraph 177-10(3)(a) and section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act) have the effect of providing that the Minister may determine what is an **adult and community education course** for the purposes of the Act.

Since 1 July 2000, the Act has provided that a supply of an adult and community education course as determined by the Minister will be GST-free.

This Determination has been made to describe the kinds of courses, and the courses, that are an adult and community education course for the purposes of the Act.

This Determination will commence on 1 October 2016 following the cessation of the *A New Tax System (Goods and Services Tax) (Adult and Community Education Courses) Determination 2000* (the 2000 Determination) on that date. The 2000 Determination ceases operation on 1 October 2016 due to the sunset provisions in the *Legislation Act 2003*.

This Determination is in substantially the same terms as the 2000 Determination.

The Determination determines the kinds of adult and community education courses, and the courses, for the purposes of the definition of “adult and community education course” in section 195-1 of the Act. An adult and community education course coming within the definition in the Act will not be subject to GST.

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

### **Commencement**

This Determination commences on 1 October 2016.

### **Consultation**

Treasury has been consulted in the preparation of this Determination.

## Regulation Impact Statement (RIS)

This Determination is not regulatory in nature and will have no regulatory impact on individuals, business, activity or competition.

### Explanation of the provisions

**Section 1** of the Determination states the name of the Determination.

**Section 2** states that the Determination commences on 1 October 2016.

**Section 3** contains an interpretation provision for the Determination which makes clear that a reference in the Determination to the word **Act** is a reference to the *A New Tax System (Goods and Services Tax) Act 1999*.

**Section 4** provides that the purpose of the Determination is to determine the kinds of courses, and the courses, that are adult and community education courses for the definition of **adult and community education course** in section 195-1 of the Act.

A note to section 4 provides that under section 38-85 of the Act, the supply of an adult and community education course is GST-free. The note then refers to subsection 9-30(1) and Division 38 of the Act which set out the definition of GST-free for the purposes of the Act.

**Section 5** of the Determination sets out the kinds of courses determined by the Minister to be adult and community education courses under paragraph 195-1(a) of the Act.

Subsection 5(1) of the Determination provides that for paragraph (a) of the definition of **adult and community education course** in section 195-1 of the Act, a course of study or instruction of the kind mentioned in subsection 5(2) is determined to be an adult and community education course.

Subsection 5(2) provides that the course of study or instruction must:

- (a) not be a course mentioned, in paragraph (a), (b), (c), (d), (f), (h), (i), (j) or (k) of the definition of *education course* in section 195-1 of the Act; and
- (b) be a course that is available to adults in the general community; and
- (c) not be a course that is provided by, or at the request of an employer to the employees of that employer; and
- (d) not be a course that is provided by, or at the request of an organisation to the members of that organisation, except an organisation for which membership is open to adults in the general community; and
- (e) not be a course that is provided by way of private tuition to an individual.

A note to subsection 5(2) then refers to further requirements a course of study or instruction must satisfy that are set out in the definition of **adult and community education course** in section 195-1 of the Act.

**Section 6** of the Determination sets out the kinds of courses determined by the Minister to be adult and community education courses under paragraph 195-1(b) of the Act.

Subsection 6(1) of the Determination provides that for paragraph (b) of the definition of **adult and community education course** in section 195-1 of the Act, a course of study or instruction mentioned in subsection 6(2) is determined to be an adult and community education course.

Subsection 6(2) provides that the course of study or instruction must:

- (a) be a course of the kind described in subsection 5(2); and
- (b) be provided by, or on behalf, of a body that:
  - (i) is a body corporate that operates on a not-for-profit basis; and
  - (ii) has not been refused recognition, or disqualified, by a State or Territory authority as a provider of courses of the kind described in subsection 5(2) on the basis of failing to meet or maintain the standards required by that authority.

A note to subsection 6(2) then refers to further requirements a course of study or instruction must satisfy that are set out in the definition of **adult and community education course** in section 195-1 of the Act.

## 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) (Adult and Community Education Courses) Determination 2016*

The *A New Tax System (Goods and Services Tax) (Adult and Community Education Courses) Determination 2016* (the 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 Determination is made under paragraph 177-10 (3) (a) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act).

This Determination will commence on 1 October 2016 following the cessation of the *A New Tax System (Goods and Services Tax) (Adult and Community Education Courses) Determination 2000* on that date. The 2000 Determination ceases operation on 1 October 2016 due to the sunset provisions in the *Legislation Act 2003*.

Under section 38-85 of the Act, the supply of an adult and community education course is GST-free.

The Determination outlines the kinds of courses, and the courses, that are adult and community education courses for the definition of **adult and community course** in section 195-1 of the Act.

### Human rights implications

The Determination engages the following human rights:

#### *Right to Education*

The Determination engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

By determining that adult and community education courses are GST-free, the Determination may enable students to access education and therefore will be compatible with human rights.

### Conclusion

The Determination is compatible with human rights as it enables students to access education.

**Minister for Social Services, the Hon Christian Porter MP**