

## EXPLANATORY STATEMENT

### GST-free Supply (Long Day Care and In-home Care) Determination 2017

#### Summary

The *GST-free Supply (Long Day Care and In-home Care) Determination 2017* (the Determination) is made by the Minister for Education and Training under paragraph 38-150(e) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act).

#### Purpose

The purpose of the Determination is to repeal and consolidate the *GST-free Supply (In-home Care) Determination 2001* and the *GST-free Supply (Long Day Care) Determination 2002* (the old instruments). In doing so, the Determination relies on subsection 33(3) of the *Acts Interpretation Act 1901*, which states that, 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.

The previous instruments were made in 2001 and 2002 and, at the time of making this Determination, were due to sunset under section 50 of the *Legislation Act 2003*. The Determination seeks to continue the current effect of the old determinations and consolidate them into a single instrument. The Determination will ensure that supplies of child care will remain GST-free where funding is provided by the Commonwealth for In-home care or Long day care services. The Determination will not cover supplies of child care by services approved under the *A New Tax System (Family Assistance) (Administration) Act 1999*, as supplies of child care provided by approved services are already GST free because of section 38-145 of the Act.

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

#### Commencement

The Determination commenced on the day after it was registered on the Federal Register of Instruments

#### Consultation

The Treasurer and his Department were consulted in the making of this Determination.

#### Regulation Impact Statement

The Office of Best Practice regulation was consulted in the preparation of the Determination and advised that a Regulation Impact Statement is not required for the Determination as the measure is not regulatory.

## **Explanation of provisions**

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

**Section 2** states that the Determination commences on the day after it is registered.

**Section 3** states the authority for the making of the Determination.

**Section 4** contains interpretation provisions.

“In-home care” is defined in section 3 as child care provided to one or more children that takes place in the home of one of the children being cared for. This term is intended to cover nannies and other kinds of care provided by an educator who visits the home of the children they are caring for to provide care.

“Long day care” is defined as all-day or part-time child care provided to predominantly below school age children in premises other than a home of any of the children being cared for.

**Section 5** (along with the Schedule) provides for the repeal of the old instruments.

**Section 6** determines, under paragraph 38-150(e) of the Act, In-home care and Long-day care as types of care. This means that supplies of these care types (fees for services provided by these care types) are GST-free where the funding for these care types is provided under guidelines made by the Child Care Minister (the Minister for Education and Training).

## **Statement of Compatibility with Human Rights**

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

### **Child Care Benefit (Session of Care) Determination 2016**

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*.

The Determination maintains the existing law by ensuring that supplies of child care provided by certain child care services that are supported by Commonwealth funding are GST-free.

#### **Human rights implications**

The Determination engages the following rights:

- rights of the child under the *Convention on the Rights of the Child (CRC)*, particularly Article 18(2);
- right to work under the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

#### *Rights of the child*

Article 3 of the CRC requires that in all actions concerning children, the best interests of the child shall be a primary consideration and Article 18(2) of the CRC requires State Parties to provide appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and ensure the development of institutions, facilities and services for the care of children.

The Determination furthers the best interests of the child by promoting access to child care in ensuring that particular types of care remain GST-free.

#### *Right to work*

Article 6 of the ICESCR requires that a person has a right to work, which includes the right of everyone to have the opportunity to gain his/her living by work which he/she freely chooses or accepts, and appropriate steps are taken to safeguard this right.

The Government is maintaining its commitment to support workforce participation and assist working families with the cost of child care by maintaining the GST-free status of these types of child care.

#### **Conclusion**

The Determination is compatible with human rights, particularly the rights of the child and the right to work.

**Senator the Hon Simon Birmingham, Minister for Education and Training**