

EXPLANATORY STATEMENT

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

GST-free Supply (Health Services) Determination 2017

Authority

Paragraph 177-10 (4)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act) provides that the Health Minister may determine particular kinds of health services for paragraph 38-15(c) of the Act.

Purpose

The purpose of the *GST-free Supply (Health Services) Determination 2017* (the Determination) is to ensure that a range of ancillary services such as accommodation and meals provided in the context of the delivery of certain residential psychiatric hostel care, and residential substance abuse programs for Aboriginal and Torres Strait Islander populations, remain free from GST.

The Determination replaces the *GST-free Supply (Health Services) Determination 2000* (the previous Determination), which sunsets on 1 April 2007 due to the operation of Part 4 of the *Legislation Act 2003*.

Background

Sections 38-7 and 38-10 of the Act provide for supplies of certain medical and health goods and services to be free from GST.

These include the supply of:

- medical services for which a Medicare benefit is payable and goods provided to a patient at the same location and in the course of the GST-free supply of the Medicare service (see subsections 38-7(1) and (3) of the Act); and
- health services provided by practitioners in certain professions, if the service is necessary for the treatment of the patient, of the type normally supplied in that profession, and the practitioner is a 'recognised professional' for the profession (see subsection 38-10(1) of the Act).

Section 38-15 of the Act provides for an additional category of government funded health services that are GST-free. Section 38-15 will apply to the supply of a health service where:

- the service is a service of a kind determined by the Health Minister;
- it is in connection with a supply that is GST-free because of section 38-7 or section 38-10 of the Act; and

- the supplier receives funding from the Commonwealth or a State or a Territory (*a State*) in connection with the supply of the service.

The Determination specifies kinds of health services for the purposes of section 38-15 of the Act.

The supply of services such as accommodation, meals and refreshments, laundry, and supervision and daily living assistance (*associated health services*) are integral services in the context of the treatment of residents of psychiatric hostels and residential substance abuse facilities.

The populations making use of such facilities are vulnerable populations. If the previous Determination is allowed to cease without replacement, even where a person is being supplied Commonwealth or State funded medical and other health goods and services GST-free, they would be required to pay GST in relation to the associated health services. This would impose additional costs that could result in some members of these populations failing to access the treatments that they require.

Provision of the associated health services GST-free therefore has a direct benefit to the health outcomes of the target populations. It also plays an important role in meeting the Government's agenda around improving mental health outcomes and improving the health outcomes of Aboriginal and Torres Strait Islander peoples.

Details of the Determination are at [Attachment A](#).

Consultation

This Determination is made as a result of the sunseting of the previous Determination on 1 April 2017. The previous Determination provided the same GST-free treatment to the same range of health services. The Department consulted with the Department of Treasury (Treasury), which administers the Act. Treasury supported the remaking of the previous Determination in substantially the same form. The Department also consulted with the Department of Prime Minister and Cabinet, who supported the continuation of the existing taxation treatment.

Noting that no change has been made to the scope of services covered by the Determination, no further consultation was engaged in prior to making this Determination.

This Determination commences on 1 April 2017.

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

Details of the *GST-free Supply (Health Services) Determination 2017*

Section 1 – Name of Determination

Section 1 of the Determination provides that it is the *GST-free Supply (Health Services) Determination 2017*.

Section 2 - Commencement

Section 2 of the Determination provides that it commences on 1 April 2017.

Section 3 - Authority

Section 3 of the Determination provides that it is made under paragraph 177-10 (4)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (the Act).

Section 4 - Schedules

Section 4 of the Determination provides that any instrument specified in a Schedule to the Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule has effect according to its terms.

Section 5 - Definitions

Section 5 of the Determination defines two terms used in the Determination. *Act* is defined as the *A New Tax System (Goods and Services Tax) Act 1999*.

Additionally, *psychiatric hostel* is defined as premises licensed as a private psychiatric hostel under the *Private Hospitals and Health Services Act 1927* (WA). This definition has been changed from that in the *GST-free Supply (Health Services) Determination 2000* (the previous Determination) to update the legislative reference and also improve drafting. These do not affect the meaning of the definition.

A Note to the section indicates to readers that the terms ‘GST-free’ and ‘supply’ are defined in the Act.

Section 6 - GST-free supply of a health service - resident under treatment at a psychiatric hostel

Section 6 of the Determination replaces subsection 4(1) of the previous Determination. While the opportunity has been taken to modernise drafting, these changes do not alter the scope of health services determined under section 6 of the Determination as compared to subsection 4(1) of the previous Determination.

Subsection 6(1) determines the following kinds of supply for paragraph 38-15(c) of the Act: accommodation; meals and refreshments; laundry; 24 hours supervision (including supervision and assistance with medications); and assistance with daily living activities, where the supply is made to residents being treated at psychiatric hostels. A Note to subsection 6(1) indicates to readers that examples of assistance with daily living activities include bathing, showering, personal hygiene, grooming, dressing, undressing and communication.

Subsection 6(2) provides that for section 6 of the Determination, *resident* has the same meaning as in section 26P of the *Private Hospitals and Health Services Act 1927* (WA).

A Note to section 6 indicates to readers that subject to the requirements of paragraphs 38-15 (a) and (b) of the Act, the supply of any of the health services mentioned in the section is GST-free.

Section 7 - GST-free supply of a health service - prevention and control of substance abuse by Aboriginal and Torres Strait Islander people

Section 7 of the Determination replaces subsection 4(2) of the previous Determination. Changes to drafting have been made to increase ease of reading, however these changes do not alter the scope of health services determined under section 7 of the Determination as compared to subsection 4(2) of the previous Determination.

Subsection 7(1) provides that a supply of a health service of a kind specified in subsection 7(2) is determined for paragraph 38-15(c) of the Act. The service must be supplied in an institutional full-time residential setting and for the primary purpose of the prevention and control of substance abuse by Aboriginal and Torres Strait Islander people.

Subsection 7(2) specifies the relevant services as: accommodation; meals and refreshments; laundry; and supervision (including supervision and assistance with medications).

Section 7 contains a similar Note to that included in section 6.

Schedule 1 – Repeals

Item 1 of Schedule 1 repeals the previous Determination.

Statement of Compatibility with Human Rights

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

GST-free Supply (Health Services) Determination 2017

The *GST-free Supply (Health Services) Determination 2017* (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*.

The Determination replaces the *GST-free Supply (Health Services) Determination 2000*, which sunsets on 1 April 2007 due to the operation of Part 4 of the *Legislation Act 2003*.

The Determination maintains the existing law and ensures that a range of ancillary services, such as accommodation and meals, provided in the context of the delivery of certain residential psychiatric hostel care, and residential substance abuse programs for Aboriginal and Torres Strait Islander populations, remain free from GST.

Human rights implications

The Determination engages Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the right to health.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the highest attainable standard of health takes into account the country's available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

The *A New Tax System (Goods and Services Tax) Act 1999* provides for the GST-free supply of a range of health-related goods and services.

The Determination continues the GST-free supply of certain ancillary services, such as accommodation, meals, laundry and supervision, where supplied in association with other GST-free health-related goods and services:

- to residents being treated at certain psychiatric hostels; or
- in an institutional full-time residential setting, for the primary purpose of the prevention and control of substance abuse by Aboriginal and Torres Strait Islander people.

The populations making use of such facilities are particularly vulnerable.

The supply of the ancillary services is integral in the context of the treatment of residents of psychiatric hostels and residential substance abuse facilities. The continued provision of these ancillary services free from GST will keep down their cost and assist members of affected populations to access the treatments that they require, improving mental health outcomes and the health outcomes of Aboriginal and Torres Strait Islander peoples.

Conclusion

The Determination is compatible with human rights, particularly the right to health.

The Hon Greg Hunt MP, Minister for Health