

EXPLANATORY STATEMENT

GST-free Supply (Child Care) Determination 2017

Summary

The GST-free Supply (Child Care) Determination 2017 (the Determination) is made by the Minister for Education and Training under subsection 38-150(2) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) to specify kinds of child care, the supply of which is GST-free under the GST Act.

The Determination supports the existing operation of Subdivision 38-D of the GST Act, which ensures that supplies of child care are GST-free. Existing provisions in that Subdivision deal with supplies of child care that are provided by approved child care services under the family assistance law.

As a result of the passage of the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017* to introduce the child care subsidy, a new streamlined section 38-150 has been inserted in the GST Act to ensure that, in limited cases where child care is provided by a kind of service that may not hold approval under the family assistance law, but is nevertheless in receipt of Commonwealth funding for child care related purposes, supplies of child care made by the service remain GST-free.

This Determination supersedes the GST-free Supply (Long Day Care and In-home Care) Determination 2017, which had been made under a repealed version of section 38-150, and has the effect of maintaining the GST-free status of in-home and long day care for the limited kinds of services that do not maintain child care service approval under the family assistance law. The Determination specifies the only two kinds of child care that is funded under Commonwealth funding programs, where the service is not required to maintain approval under the family assistance law, being:

- (a) in-home care provided by a service that does not hold approval under the family assistance law under the auspices of the Interim Home Based Carer Subsidy Programme of the Commonwealth; and
- (b) centre-based child care provided by a service that does not hold approval under the family assistance law under the auspices of the Budget Based Funded program of the Commonwealth.

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

Commencement

The Determination commenced on the day after Royal Assent of the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017, to align with the commencement of new section 38-150 of the GST-Act, as inserted by Schedule 3 of that Act.

Consultation

The Treasury was consulted in the making of this Determination.

Regulation Impact Statement

The Determination will continue the existing GST-free status of supplies of child care made by services receiving funding under the programs referred to in section 5. As such, there will be no additional regulatory burden imposed by this Determination. Therefore, a Regulation Impact Statement is not required for the Determination.

Explanation of provisions

Section 1 of the Determination states the name of the Determination as the GST-free Supply (Child Care) Determination 2017.

Section 2 states that the Determination commences on the day after Royal Assent of the *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*.

Section 3 states the authority for the making of the Determination, being subsection 38-150(2) of the GST Act.

Section 4 contains definitions of terms used in the Determination.

Section 5 specifies the following kinds of child care as kinds of child care which are GST-free (but only where the supplier is eligible for Commonwealth funding in respect of the care):

- (a) in-home care provided by a service that does not hold approval under the family assistance law under the auspices of the Interim Home Carer Subsidy Programme of the Commonwealth; and
- (b) centre-based child care provided by a service that does not hold approval under the family assistance law under the auspices of the Budget Based Funded program of the Commonwealth.

Statement of Compatibility with Human Rights

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

GST-free Supply (Child Care) Determination 2017

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 gives effect to the legislative intent of section 38-150 of the GST Act by ensuring that supplies of child care provided by services that are supported by Commonwealth funding do not attract GST liability.

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 by ensuring that the specified kinds 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 she or he 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 the specified 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