

EXPLANATORY STATEMENT

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

A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018

The *A New Tax System (Goods and Services Tax) Act 1999* (“Act”) provides the basic rules, exemptions and special rules for the application of the goods and services tax (“GST”). The GST is a broad-based consumption tax that applies to the supply of goods and services with certain exceptions. Division 38 of the Act sets out the supplies that are GST-free. If a supply is GST-free, then no GST is payable on the supply but any entitlement of the supplier to an input tax credit for anything acquired or imported to make the supply is not affected (see section 9-5 and subsection 9-30(1) of the Act).

Paragraph 177-10(4)(b) of the Act relevantly provides that the Health Minister may, by legislative instrument, make a determination for the purposes of subsection 38-47(1) of the Act. Subsection 38-47(1) of the Act relevantly provides that a supply is GST-free if it is a supply of goods of a kind that the Health Minister, by determination in writing, declares to be goods, the supply of which is GST-free. Pursuant to section 195-1 of the Act, the Health Minister means the Minister administering the *National Health Act 1953*. Consistent with the Administrative Arrangements Order in force at the time of making this Determination, the *National Health Act 1953* is administered by the Minister for Health.

The *A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018* (“Determination”) is made by the Minister for Health under paragraph 177-10(4)(b) of the Act for the purposes of declaring goods, the supply of which is GST-free. For ease of reference, the goods so declared under this Determination may be collectively described as menstrual products. Specifically, these are maternity pads, menstrual cups, menstrual pads, menstrual liners, menstrual underwear, tampons, and other similar products specifically designed to absorb or collect lochia, menses or vaginal discharge.

The effect of the declaration under the Determination is to exempt the supply of these goods from the application of GST for the purposes of the Act. The reference to these goods in the Determination covers tampons of all sizes and absorbencies (with or without applicators); disposable and reusable menstrual pads and liners of all sizes and absorbencies (with or without wings); disposable and reusable menstrual cups of all sizes; disposable and reusable maternity pads of all sizes and absorbencies; and disposable and reusable menstrual underwear of all sizes and absorbencies. The reference to “menstrual pads and liners” in the Determination covers reusable cloth or flannel pads, and disposable liners frequently described in marketing as “panty liners”.

Further, the reference to “other similar products specifically designed to absorb or collect lochia, menses or vaginal discharge” covers other goods that may be specifically characterised in this manner but are otherwise not expressly mentioned in the Determination, and goods with the same function that may be developed in the future.

In contrast, the Determination does not cover feminine washes marketed for feminine hygiene and / or vaginal washing and cleaning; feminine deodorants such as talc, powder and spray products marketed for feminine hygiene and / or to deodorise the vaginal area; intimate wipes marketed for feminine hygiene; supplements and vitamins marketed for use during menstruation and / or pregnancy; nursing pads; and pads specifically designed for incontinence.

Consultation

At a recent meeting of the Council on Federal Financial Relations (“CFFR”), the Commonwealth, States and Territories unanimously agreed to make the supply of women’s menstrual products GST-free from 1 January 2019. Following that agreement, Treasury undertook public consultation on behalf of the Government regarding the specific types of products, the supply of which should be covered by the proposal (October 2018).

Treasury received a number of submissions from members of the public and other interested bodies regarding the proposal. The submissions predominantly supported making the supply of menstrual products GST-free.

The Office of Best Practice Regulation advised Treasury that a regulation impact statement was not required for this proposal (OBPR reference: 24104). The change to existing arrangements is minor in nature, and only expected to incur minimal transitional and ongoing compliance costs.

The Department of Health consulted Treasury in preparing this Determination.

Details of this Determination are set out in **Attachment A**.

This Determination is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

This Determination is a disallowable legislative instrument for the purposes of the *Legislation Act 2003* and commences on 1 January 2019.

Details of the *A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018*

Section 1 – Name

This section provides that the name of the instrument is the *A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018*.

Section 2 – Commencement

This section provides that the instrument commences on 1 January 2019.

Section 3 – Authority

This section provides that the instrument is made under paragraph 177-10(4)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (“Act”). That paragraph relevantly provides that the Health Minister may, by legislative instrument, make a determination for the purposes of subsection 38-47(1) of the Act.

Section 4 – Definitions

This section provides a definition for the Act and includes a note that two terms used in the instrument (being, “GST-free” and “supply”) are defined in section 195-1 of the Act.

Section 5 – GST-free health goods

This section provides that the goods of the kind mentioned in Schedule 1 to this instrument are declared to be goods, the supply of which is GST-free, for the purposes of subsection 38-47(1) of the Act. The effect of this section is to exempt the supply of these goods from the application of GST for the purposes of the Act.

Schedule 1 – GST-free health goods

Schedule 1 itemises the goods the supply of which is GST-free for the purposes of subsection 38-47(1) of the Act. Item 1 includes specific reference to particular kinds of menstrual products, followed by a reference to “other similar products specifically designed to absorb or collect lochia, menses or vaginal discharge”. The latter reference covers goods with a similar function that are not expressly mentioned in the instrument.

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) (GST-free Health Goods) Determination 2018

This legislative instrument 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 legislative instrument

The *A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018* is made under paragraph 177-10(4)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (“Act”) by the Health Minister. The purpose of the instrument is to declare certain kinds of goods, the supply of which is GST-free for the purposes of subsection 38-47(1) of the Act.

For ease of reference, the goods so declared in the instrument may be collectively described as menstrual products. Specifically, these are maternity pads, menstrual cups, menstrual pads and liners, menstrual underwear, tampons, and other similar products specifically designed to absorb or collect lochia, menses or vaginal discharge. The effect of the declaration under the instrument is to exempt the supply of these goods from the application of GST for the purposes of the Act.

Human rights implications

The instrument engages the right to health in Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”).

Article 12 of the ICESCR promotes the right of all individuals to enjoy the highest attainable standards of physical and mental health. In *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (2000), the United Nations Committee on Economic, Social and Cultural Rights stated that health is a ‘fundamental human right indispensable for the exercise of other human rights’, and that the right to health is not to be understood as the right to be healthy, but includes the right to a system of health protection that provides equal opportunity for people to enjoy the highest attainable level of health.

The instrument takes positive steps to promote the right to health by removing the application of GST from the supply of menstrual products in Australia, and thereby increasing their affordability at the point of sale.

Conclusion

This instrument is compatible with human rights because it promotes the right to health in Article 12 of the ICESCR and does not raise any other human rights issues.

Minister of Health, the Hon Greg Hunt MP