

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

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

*A New Tax System (Goods and Services Tax) Amendment (Transition)
Regulations 2019*

The *A New Tax System (Goods and Services Tax Transition) Act 1999* (the GST Transition Act) sets out transitional goods and services tax (GST) rules including for long-term contracts entered into prior to the enactment of the GST.

Section 25 of the GST Transition Act provides that the Governor-General may make regulations prescribing matters required or permitted by the GST Transition Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the GST Transition Act.

The purpose of the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019* (the Amending Regulations) is to remake provisions in the *A New Tax System (Goods and Services Tax Transition) Regulations 2000* (GST Transition Regulations) that may continue to have some operation before they sunset. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments progressively sunset according to the timetable in section 50 of that Act. Legislative instruments generally cease to have effect after ten years (other than some transitional arrangements) unless their operation is extended such as by remaking the instrument.

Rather than remaking the GST Transition Regulations, the provisions which may have some further operation have been included in the *A New Tax System (Goods and Services Tax) Regulations 2019*. As a result, the Amending Regulations also repeal the GST Transition Regulations from 1 October 2019.

The Amending Regulations amend the GST Regulations to prescribe a number of bodies and the members of those bodies as arbitrators for the purposes of the GST Transition Act. The Amending Regulations also prescribe other changes to Commonwealth, State and Territory laws as matters that can be taken into account in working out an arbitrated offer concerning price agreements to account for GST and other related tax system reforms.

The prescribed arbitrator and the prescribed additional taxes and charges that can be taken into account in determining price changes for arbitrated offers have been replicated from the GST Transition Regulations with only minor changes to numbering and notes as well as updates to the names of entities to account for name changes by prescribed arbitrator bodies.

Further details of the Amending Regulations are set out in [Attachment A](#).

The GST Transition Act does not specify any conditions that need to be met before the power to make the Amending Regulations may be exercised.

Exposure Drafts of the Amending Regulations and accompanying Explanatory Materials were released for public consultation from 30 July 2019 to 13 August 2019. One public submission was received during the consultation process that did not raise any substantive issues about the amending Regulations and accordingly, no changes were made in response to public consultation.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulations commence on 1 October 2019.

Prior to the repeal of the GST Transition Regulations and in accordance with the Office of Best Practice Regulation's Guidance Note on sunseting instruments, the Department of the Treasury self-assessed that the 1999 Regulations were largely redundant other than the potential for prescribed arbitrators and relevant taxes and fees being still required and operating effectively. This assessment was informed by the public consultation on the exposure draft Amending Regulations.

A Statement of Compatibility with Human Rights is at [Attachment B](#). The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Details of the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019*

This attachment sets out further details of the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019* (the Amending Regulations). All references are to the Amending Regulations unless otherwise stated.

Chapter 1—Introduction

Part 1—Preliminary

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019*.

Section 2 - Commencement

This section provides that the Amending Regulations commence on 1 October 2019.

Section 3 - Authority

This section provides that the Amending Regulations are made under the GST Transition Act.

Section 4 - Schedules

This section provides that the instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule and that any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1: Amendments to the *A New Tax System (Goods and Services Tax) Regulations 2019*

Authority

Section 3 of the GST Regulations is amended to provide that, whilst the GST Regulations are made generally under the *A New Tax System (Goods and Services Tax) Act 1999*, the provisions included by the Amending Regulations are made under the authority of the GST Transition Act.

Arbitrated prices for certain contracts entered into prior to GST enactment

Background

From 1 July 2005, suppliers and recipients of supplies under long-term non-reviewable contracts entered into prior to the date of Royal Assent of the GST law were required to:

- agree to price adjustments under the contract to account for GST and tax system reforms made at a similar time to the introduction of the GST; or
- accept an arbitrated revision to the contract price.

If no agreement was reached or the arbitrated price was not accepted by the recipient of the supply under the long-term contract then the recipient became liable to pay the GST to the Australian Taxation Office rather than the supplier.

Where a long-term contract was entered into prior to the date of Royal Assent of the GST Transition Act and the full consideration was paid before this time, then supplies made under it are GST-free until the first opportunity to review the contract arises, whether this is before or after 1 July 2005.

Meaning of arbitrator

Section 220-1.01 of the GST Regulations replicates the corresponding provision in the former GST Transition Regulations to prescribe the bodies and persons belonging to those bodies that satisfy the definition of arbitrator in the GST Transition Act. These bodies and persons can arbitrate with suppliers and recipients that have entered into long-term contracts prior to the enactment of the GST.

The name of bodies that are prescribed arbitrators have been updated because of changes to the names of bodies that were prescribed in the former GST Transition Regulations and also the merger of two of the previously prescribed bodies. The prescribed arbitrators are now the Resolution Institution, the Australian Disputes Centre and the Chartered Institute of Arbitrators Australia.

Meaning of new tax system changes

Sections 220-5.01 to 220-5.14 of the Amending Regulations replicate the corresponding provisions in regulations 9 to 22 of the former GST Transition Regulations, with some minor changes made to formatting and numbering. Consistent with the prior regulations, the sections prescribe the additional changes to relevant taxes and charges that can be taken into account in working out the arbitrated change to the price of supplies made under long-term contracts entered into prior to the enactment of the GST that were subject to a review opportunity. The prescribed changes to taxes and charges are:

- certain tobacco excise and excise-equivalent customs duty increases (section 220-5.02 of the Amending Regulations);
- the introduction and imposition of luxury car tax (section 220-5.03 of the Amending Regulations);

- the introduction and imposition of wine equalisation tax (section 220-5.04 of the Amending Regulations);
- the abolition of accommodation levy in NSW in 2000 (section 220-5.05 of the Amending Regulations);
- certain alcohol excise and excise-equivalent customs duty increases (section 220-5.06 of the Amending Regulations);
- certain petroleum excise and excise-equivalent duty increases (section 220-5.07 of the Amending Regulations);
- certain diesel fuel rebate changes (section 220-5.08 of the Amending Regulations);
- the introduction of the diesel and alternative fuels grants scheme (section 220 5.09 of the Amending Regulations);
- the introduction of fuel sales grants (section 220-5.10 of the Amending Regulations);
- wholesale sales tax equivalency payments—liability to pay abolished for certain government business enterprises (section 220-5.11 of the Amending Regulations);
- the abolition of Northern Territory tourism marketing duty (section 220-5.12 of the Amending Regulations);
- the abolition of state and territory financial institutions duty (section 220-5.13 of the Amending Regulations); and
- the abolition of liability to pay stamp duty on quoted marketable securities (section 220-5.14 of the Amending Regulations).

The notes to the regulations in the GST Transition Regulations have also been replicated, with updates made where required to identify where the relevant legislation referred to in the provisions can now be accessed.

Schedule 2: Repeal of the *A New Tax System (Goods and Services Tax Transition) Regulations 2000*

Schedule 2 to the Amending Regulations repeals the GST Transition Regulations effective from 1 October 2019.

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) Amendment (Transition) Regulations 2019

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 the Legislative Instrument

The *A New Tax System (Goods and Services Tax) Amendment (Transition) Regulations 2019* (Amending Regulations) repeal the *A New Tax System (Goods and Services Tax Transition) Regulations 1999*. The Amending Regulations remake provisions concerning prescribed arbitrators and taxes and fees that can be taken into account in working out arbitrated price changes to reflect GST in the contract price in the *A New Tax System (Goods and Services Tax) Regulations 2019*.

These changes are not intended to affect the substantive meaning or operation of the provisions that have been retained.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.