

## EXPLANATORY STATEMENT

Issued by authority of the Minister for the National Disability Insurance Scheme

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

### ***A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Amendment (Application Period) Determination 2025***

- 1 The instrument, *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Amendment (Application Period) Determination 2025*, is made under subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (**the GST Act**).
- 2 Subsection 177-10(5) of the GST Act provides that the Disability Services Minister may, by legislative instrument, make a determination for the purposes of paragraph 38-38(d) of the GST Act. Section 195-1 of the GST Act provides that the Disability Services Minister means the Minister administering the *National Disability Insurance Scheme Act 2013*.
- 3 Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 4 The instrument commences on the day after registration on the Federal Register of Legislation and is a legislative instrument for the *Legislation Act 2003* (**the Legislation Act**).

#### ***Purpose***

- 5 The instrument amends the *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Determination 2021* (**the Determination**) to extend the effect of the application period under section 7 to 30 June 2027.
- 6 The Determination specifies which kinds of supplies to a participant of the National Disability Insurance Scheme (**NDIS**) are GST-free, subject to the supply meeting the other conditions prescribed by section 38-38 of the GST Act. Broadly, section 38-38 also requires that the supply is of one or more reasonable and necessary supports specified in the participant's plan and that the supply meets certain substantiation requirements. The operation of section 38-38 of the GST Act is outlined in the Explanatory Memorandum to the Tax Laws Amendment (2013 Measures No. 2) Bill 2013.
- 7 Extending the application period of the Determination will ensure NDIS participants are able to continue to access GST-free NDIS supports beyond 30 June 2025. The amendment ensures that the Determination applies to supplies made on or after 1 July 2021 which are made on or before 30 June 2027.
- 8 Supplies of various disability supports are GST-free under provisions in Subdivision 38-B of the GST Act where the supplier receives government funding for the supplies. However, under the NDIS, government funding for some of these disability support types is not provided to the suppliers. Instead, funding is provided to the NDIS participant or another person managing the funding for the participant.

- 9 If a supply of disability support made to a participant is not GST-free under section 38-38 of the GST Act, it may still be GST-free under another section of the GST Act, for example, under the GST-free health related sections in Subdivision 38-B.

***Details of the instrument***

- 10 Details of the instrument are included at **Attachment A**.

***Consultation***

- 11 The instrument has been prepared in consultation with Department of the Treasury, which is the portfolio agency responsible for administering the GST Act.
- 12 As any law which affects the administration of GST binds each of the states and territories, consultation was also undertaken with all states and territories through established governance forums managed by the Department of the Treasury. Consultation was also undertaken with the Australian Taxation Office.
- 13 As the GST-free treatment of NDIS supports are not changing, wider consultation was not considered to be necessary.
- 14 The Department of Social Services, Department of the Treasury, states and territories and affected agencies will continue to monitor the impact of the Determination.
- 15 The Office of Impact Analysis (**OIA**) was consulted and considered that a detailed analysis is not required under the Australian Government's Policy Impact Analysis Framework and no regulatory impact statement was required. The OIA reference number is OIA25-09104.

***Parliamentary scrutiny etc.***

- 16 The instrument is subject to disallowance under section 42 of the Legislation Act.
- 17 A Statement of Compatibility with Human Rights has been prepared in relation to the instrument and provides that the instrument is compatible with human rights as it promotes the right to social security. The Statement is included at **Attachment B**.

**Details of the *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Amendment (Application Period) Determination 2025***

**Section 1      Name**

This section provides that the name of the instrument is the *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Amendment (Application Period) Determination 2025*.

**Section 2      Commencement**

This section provides that the instrument commences on the day after registration on the Federal Register of Legislation.

**Section 3      Authority**

Section 3 of the instrument provides that it is made under subsection 177 10(5) of the GST Act. That provision states that the Disability Services Minister may, by legislative instrument, make a determination for the purposes of paragraph 38-38(d) of the GST Act.

Paragraph 38-38(d) of the GST Act allows the Disability Services Minister to specify which kind of supplies to a participant of the NDIS are GST-free, subject to the supply meeting the other conditions prescribed by subsection 38-38.

Section 195-1 of the GST Act provides that the Disability Services Minister means the Minister administering the *National Disability Insurance Scheme Act 2013*.

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

**Section 4      Schedules**

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

**Schedule 1—Amendments**

**Item [1]      Section 7**

Section 7 provides that the instrument applies to supplies made on or after 1 July 2021 which are made on or before 30 June 2025.

This item extends the effect of the Determination by another two years until 30 June 2027.

It reflects the Government's commitment to provide important assurance to NDIS participants and the disability sector about the ongoing GST treatment of supports under the NDIS.

## 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 Supply—National Disability Insurance Scheme Supports) Amendment (Application Period) Determination 2025**

This Disallowable Legislative Instrument (the 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 Disallowable Legislative Instrument**

The instrument is made under subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999 (the GST Act)* and amends the *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Determination 2021 (the Determination)* to extend the effect of the application period under section 7 to 30 June 2027.

The Determination specifies which kinds of supplies to a participant of the National Disability Insurance Scheme (NDIS) are GST-free, subject to the supply meeting the other conditions prescribed by section 38-38 of the GST Act.

Extending the application period of the Determination will ensure NDIS participants are able to continue to access GST-free NDIS supports beyond 30 June 2025. The amendment ensures that the Determination applies to supplies made on or after 1 July 2021 which are made on or before 30 June 2027.

Supplies of various disability supports are GST-free under provisions in Subdivision 38-B of the GST Act where the supplier receives government funding for the supplies. However, under the NDIS, government funding for some of these disability support types is not provided to the suppliers. Instead, funding is provided to the NDIS participant or another person managing the funding for the participant.

If a supply of disability support made to a participant is not GST-free under section 38-38 of the GST Act, it may still be GST-free under another section of the GST Act, for example, under the GST-free health related sections in Subdivision 38-B.

#### **Human rights implications**

The instrument engages the right to social security.

The amendment promotes Article 9 of the *International Covenant on Economic, Social and Cultural Rights* and Article 28 of the *Convention on the Rights of Persons with Disabilities* through the reduction of tax burdens on NDIS participants in purchasing disability supports and on disability support providers in their provision of services.

The instrument promotes the right to social security by ensuring that supplies of these kinds of supports are not taxed. This will support participants to maximise the benefits of their NDIS funding to increase their social and economic participation and pursue their goals and aspirations.

#### **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to social security.

**The Honourable Amanda Rishworth MP**  
**Minister for the National Disability Insurance Scheme**