

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Social Services

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

*GST-free Supply (National Disability Insurance Scheme Supports)  
Amendment Determination 2017 (No. 2)*

Subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (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.

The *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2017* (the GST-free Supply Determination) specifies which kinds of supplies to a participant of the National Disability Insurance Scheme (NDIS) are GST-free if the supply meets the other conditions in section 38-38 of the GST Act.

This Determination amends the GST-free Supply Determination to address minor errors identified in that determination. This Determination does not make any substantive change to the operation of the GST-free Supply Determination, which is described in the Explanatory Statement to that Determination.

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

### **Commencement**

Section 3 of this Determination commences on 1 July 2017 and section 4 commences on the day after the Determination is registered on the Federal Register of Legislation.

The limited retrospective operation of section 3 of this Determination is justified to ensure that the minor errors in the GST-free Supply Determination are corrected for the full period of the operation of that Determination. This is important to avoid any confusion about the GST-free status of supports provided to NDIS participants. Having the amendments commence after the date of registration would leave a short period where the errors were unaddressed, potentially causing confusion.

The limited retrospective operation of this Determination will not affect any person's rights so as to disadvantage the person, or impose liabilities on a person in respect of anything done or omitted to be done before the day this instrument is registered.

To avoid any unnecessary retrospective operation, the instrument has a split commencement. Section 4 contains the amendments that will commence on the day after registration. These are amendments which do not need to be in place for the full period of the operation of the GST-free Supply Determination.

## **Consultation**

The GST-free Supply Determination was subject to consultation, as set out in its Explanatory Statement. Consultation on this Determination was considered unnecessary as this Determination is merely correcting errors to enable GST-free treatment to be given to certain kinds of supplies made to participants of the NDIS. This ensures that the intended operation is given effect to without disadvantaging any person. Consultation would also further delay addressing this issue.

## **Explanation of Amendments**

### Section 1

This section provides how the Determination is to be cited, that is, as the *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2017 (No. 2)*.

### Section 2

This section provides that section 3 of this Determination commences on 1 July 2017 and section 4 commences on the day after the Determination is registered on the Federal Register of Legislation.

### Section 3

Subparagraph 4(b)(iii) of the GST-free Supply Determination erroneously refers to clause 4 of the *GST-free Supply (Health Services) Determination 2017*. This has been corrected to refer to section 6 and 7 of that Determination.

Sections 3 and 4 of the GST-free Supply Determination refer to a supply of a kind described in Schedule 1 or Schedule 2. The titles of Schedules 1 and 2 refer to 'Supplies of supports that are GST-free'. For the benefit of the reader, a qualification is provided that this title is subject to the requirements in the relevant section. However, in both cases the wrong section is referenced. These errors have been corrected.

### Section 4

For consistency with the rest of the instrument, and to avoid confusion, sub-paragraph 4(b)(ii) has been amended to refer to 'section' 6 rather than 'clause' 6.

Subparagraph 4(b)(iv) of the GST-free Supply Determination refers to determinations made under sections 38-15, 38-25 and 38-30 of the GST Act. While the Determinations referred to in subparagraphs 4(b)(i)–(iii) are made for the purposes of these sections, they are made under section 177-10. This has been corrected.

An additional reference to the 'GST' Act has been removed because this term is not defined in the GST-free Supply Determination. Section 2 of that Determination provides that a reference in the Determination to 'the Act' is a reference to the GST Act.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

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*.

### **Overview of the Legislative Instrument**

The *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2017* (the GST-free Supply Determination) specifies which kinds of supplies to a participant of the National Disability Insurance Scheme (the NDIS) are GST-free if the supply meets the other conditions in section 38-38 of the GST Act.

This Determination amends the GST-free Supply Determination to address minor errors identified in that Determination. This Determination is not intended to make any substantive change to the intended operation of the GST-free Supply Determination, which is described in the Statement of Compatibility to that Determination.

### **Human rights implications**

This Determination addresses minor errors in the GST-free Supply Determination without substantively altering the operation of that Determination.

As such, this Determination does not engage human rights.

### **Conclusion**

The Determination is compatible with human rights as it does not engage any human rights.

**The Hon Christian Porter MP, Minister for Social Services**