

## EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

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

***GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2015***

Subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) authorises the Assistant Minister for Social Services to, by legislative instrument, make a determination of which kinds of supplies may be GST-free for the purposes of paragraph 38-38(d) of the GST Act.

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 National Insurance Disability Scheme (the Scheme), government funding for some of these disability support types is not provided to the suppliers. Instead, the scheme funding is provided to the participant (that is, the person with the disability) or another person managing the funding for the participant.

This Determination specifies 22 kinds of supplies of supports which are GST-free where the supply meets the other conditions set out in section 38-38 of the GST Act. The 22 kinds of supplies are intended to reflect the kinds of supplies of disability supports that are GST-free where the supplier receives government funding for the supplies. Certain kinds of supplies listed in the determination are restricted to a list of supplies specified in three determinations, one of which is Schedule 1 to the *GST-free Supply (Residential Care – Government-Funded Supplier) Determination 2000*.

The purpose of the *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2015* is to replace the reference to the *GST-free Supply (Residential Care – Government-Funded Supplier) Determination 2000*, which is being repealed with a reference to the *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015*.

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

### Consultation

As the amendments in this Determination are a consequence of amendments that were made to another instrument, no specific consultation was undertaken in relation to this instrument.

### Regulation Impact Statement

The Office of Best Practice Regulation has advised that no RIS is required (OBPR ID 17649).

### Commencement

The Amending Determination is taken to have commenced on 1 July 2014.

**Details of the GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2015**

**Preliminary**

**Clause 1 – Name**

This clause states that the name of the amending determination is the *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2015*.

**Clause 2 – Commencement**

This clause states that this instrument is taken to have commenced on 1 July 2014.

The instrument does not impose any new liabilities on individuals or organisations, and in fact reduces the tax burden on individuals. The instrument provides that various goods and services provided to various care recipients continue to be provided free of GST. This has already been occurring in practice in anticipation of this instrument being made. Consequently, there did not appear to be any circumstances where a person (other than the Commonwealth) would be disadvantaged.

**Clause 3 – Authority**

This clause states that the authority by which this instrument is made is subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999*.

**Clause 4 – Schedules**

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

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Schedule 1 – Amendments**

**Item 1 – Schedule 1**

This item omits the words ‘Schedule 1 to the *GST-free Supply (Residential Care – Government-Funded Supplier) Determination 2000*’ and substitutes it with ‘section 6 of the *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Government Funded Supplier) Determination 2015*’.

## **Statement of Compatibility with Human Rights**

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

### ***GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2015***

The *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2015* (the 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 Legislative Instrument includes the correct reference, replacing the reference to the repealed *GST-free Supply (Residential Care – Government-Funded Supplier) Determination 2000* which is being replaced to reflect amendments made to the kinds of specified care and services outlined in Schedule 1 to the *Quality of Care Principles 2014* which came into effect on 1 July 2014.

#### **Human Rights Implications**

The Legislative Instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. The Legislative Instrument ensures that a participant of the National Disability Insurance Scheme will receive GST-free all the disability support services that are GST-free to aged and disabled residents of residential aged care services under the *Aged Care Act 1997*. In this way, the Legislative Instrument improves peoples' access to care and services and is beneficial to human rights.

#### **Conclusion**

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

**Senator the Hon Mitch Fifield**  
**Assistant Minister for Social Services**