**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Social Services

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

*A New Tax System (Goods and Services Tax) (Language Other Than English - LOTE - courses offered by ethnic schools) Determination 2017*

**Purpose**

Paragraph 195-1(b) of the definitions of primary course and secondary course in the *A New Tax System (Goods and Services Tax)* *Act 1999* (the Act) provides that the Minister may determine what a primary course or a secondary course is for the purposes of the Act.

Once a determination has been made that a course is a primary course or a secondary course, the course will be an ‘education course’ for the purposes of the definition of education course in section 195-1 of the Act.

Under section 38-85 of the Act, the supply of an education course is GST-free.

The purpose of this Determination is to determine that Language Other than English (LOTE) courses provided in accordance with this Determination are courses of study or instruction that are primary courses or secondary courses for the purposes of the Act.

This Determination will commence on 1 April 2017 following the cessation of the *A New Tax System (Goods and Services Tax) (Language Other Than English - LOTE - courses offered by ethnic schools) Determination 2004* (the 2004 Determination) on that date. The 2004 Determination ceases operation on 1 April 2017 due to the sunsetting provisions in the *Legislation Act 2003*.

This Determination is in substantially the same terms as the 2004 Determination.

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

**Commencement**

This Determination commences on 1 April 2017.

**Consultation**

Treasury has been consulted in the preparation of this Determination.

Given the beneficial nature of the Determination, and the fact that it continues arrangements that have been in place since the 2004 Determination was made, further public consultation was considered unnecessary.

**Regulation Impact Statement (RIS)**

This Determination is not regulatory in nature and will have no regulatory impact on individuals, business, activity or competition.

**Explanation of the provisions**

**Section 1** of the Determination states the name of the Determination.

**Section 2** states that the Determination commences on 1 April 2017.

**Section 3** contains an interpretation provision for the Determination which makes clear that a reference in the Determination to the word ***Act*** is a reference to the *A New Tax System (Goods and Services Tax) Act 1999*.

**Section 4** provides that the purpose of the Determination is to determine that Language Other Than English (LOTE) courses provided in accordance with this Determination are courses of study or instruction that are primary courses or secondary courses for the purposes of the Act.

A note to section 4 provides that under section 38-85 of the Act, the supply of an education course, which includes a primary course and a secondary course, is GST-free.

**Section 5** of the Determination sets out the kinds of courses determined by the Minister to be primary courses for the purposes of the definition of primary course in paragraph 195-1(b) of the Act.

Subsection 5(1) provides that a LOTE course that is provided to primary school students by an ethnic school is determined to be a primary course for the purposes of the Act.

Subsection 5(2) then provides that a LOTE course is provided by an ethnic school if it is provided by, or on behalf of, a school that:

1. is a body corporate that operates on a not-for-profit basis;
2. has as its principal aim the teaching of languages other than English;
3. has close links with a community whose first/heritage language is not English; and
4. is licensed, recognised, accredited, or in any way approved to provide such courses by a State or Territory authority responsible for that approval, in the manner applicable within the relevant State or Territory.

**Section 6** of the Determination sets out the kinds of courses determined by the Minister to be secondary courses for the purposes of the definition of secondary course in paragraph 195-1(b) of the Act.

Subsection 6(1) provides that a LOTE course that is provided to secondary school students by an ethnic school is determined to be a secondary course for the purposes of the Act.

Subsection 6(2) then provides that a LOTE course is provided by an ethnic school if it is provided by, or on behalf of, a school that:

1. is a body corporate that operates on a not-for-profit basis;
2. has as its principal aim the teaching of languages other than English;
3. has close links with a community whose first/heritage language is not English;
4. is licensed, recognised, accredited, or in any way approved to provide such courses by a State or Territory authority responsible for that approval, in the manner applicable within the relevant State or Territory.

**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) (Language Other Than English - LOTE - courses offered by ethnic schools) Determination 2017*

The *A New Tax System (Goods and Services Tax) (Language Other Than English - LOTE - courses offered by ethnic schools) Determination 2017* (the 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 Determination is made under paragraph 195-1(b) of the definitions of primary course and secondary course in the *A New Tax System (Goods and Services Tax)* *Act 1999* (the Act).

Once a determination has been made that a course is a primary course or a secondary course, the course will be an ‘education course’ for the purposes of the definition of education course in section 195-1 of the Act.

Under section 38-85 of the Act, the supply of an education course is GST-free.

The purpose of this Determination is to determine that Language Other than English (LOTE) courses provided in accordance with this Determination are courses of study or instruction that are primary courses or secondary courses for the purposes of the Act.

This Determination will commence on 1 April 2017 following the cessation of the A New *Tax System (Goods and Services Tax) (Language Other Than English - LOTE - courses offered by ethnic schools) Determination 2004* on that date. The 2004 Determination ceases operation on 1 April 2017 due to the sunsetting provisions in the *Legislation Act 2003.*

**Human rights implications**

The Determination engages the following human rights:

*Right to Education*

The Determination engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

By determining that courses are GST-free, the Determination may enable students to access education and therefore will be compatible with human rights.

**Conclusion**

The Determination is compatible with human rights as it enables students to access education.

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