

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*

Purpose

The *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013* (the Determination) made under subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) specifies which kinds of supplies to a participant of the National Disability Insurance Scheme (the NDIS) are GST-free under paragraph 38-38(d) of the GST Act.

The purpose of the *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2017* (the Amendment Determination) is to make the supply of Specialist Disability Accommodation GST-free for participants in the NDIS from 1 July 2016. This is in addition to accommodation and tenancy assistance which is currently GST-free supplies for participants of the NDIS under the Determination.

Specialist Disability Accommodation is accommodation provided to NDIS participants who require specialist housing solutions to assist with the delivery of supports that cater for their significant functional impairment or very high support needs.

The Amendment Determination has effect for supplies made for a one year period. The operation of the Amendment Determination ceases on 30 June 2017 because the Determination is being replaced and the replacement determination will also make supplies of specialist disability accommodation and accommodation and tenancy assistance GST-free from 1 July 2017.

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

Background

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

Section 38-38 of the GST Act provides that certain supports supplied to a participant under the *National Disability Insurance Scheme Act 2013* (NDIS Act) are GST-free supplies, if they meet the specified criteria. This includes supplies of a kind specified in a determination made under paragraph 38-38(d) of the GST Act.

Subsection 177-10(5) of the GST Act provides that the Minister responsible for the NDIS Act may, by legislative instrument, make a determination of which types of supplies are GST-free for the purposes of paragraph 38-38(d) of the GST Act.

The Determination specifies 22 categories of supplies of NDIS supports that are GST-free, where the supply also meets the other conditions set out in section 38-38 of the GST Act. The Amendment Determination amends the GST-free treatment for one of these 22 kinds of supplies, to clarify that GST is not payable on Specialist Disability Accommodation support, which is a specific kind of reasonable and necessary support with reference to subsection 34(1) of the NDIS Act and the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016*.

Prior to 1 July 2016, Specialist Disability Accommodation was administered through State and Territory programs and was GST-free under section 38-40 of the GST Act. From 1 July 2016, Specialist Disability Accommodation moved to being administered under the NDIS. The Amendment Determination is required to ensure the continuation of the GST-free treatment of Specialist Disability Accommodation on and after 1 July 2016.

Commencement

The Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

Retrospective application

The Amendment Determination has the effect of specifically providing that the supply of Specialist Disability Accommodation is GST-free from 1 July 2016. This date is before this Amendment Determination will commence. However, the changes to accommodation and tenancy assistance are not retrospective in operation as the Determination currently ensures that they are GST-free and will continue to have GST-free status following commencement of the Amending Determination.

In accordance with section 12 of the *Legislation Act 2003*, a legislative instrument may apply retrospectively where this will not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to the extent that it disadvantages them and where no liabilities would otherwise be imposed on a person prior to the commencement of the instrument.

The Amendment Determination will not adversely affect a person's rights or impose liabilities retrospectively. The Amendment Determination ensures that NDIS participants and their providers are instead provided with reassurance that no GST is included in the cost of providing reasonable and necessary supports consisting of Specialist Disability Accommodation from 1 July 2016.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Department of Social Services has consulted with the Australian Taxation Office and the Department of the Treasury in making the Amendment Determination, in response to concerns

raised by the Australian disability sector. Consultation has also been undertaken with the States and Territories.

Regulation Impact Statement

Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required.

Explanation of the provisions

Clause 1 states the title of the instrument.

Clause 2 provides that the instrument commences the day after it is registered.

Clause 3 provides that the instrument is made under subsection 177-10(5) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Clause 4 provides that expressions in the instrument have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*, including the term “supply”.

Clause 5 provides that Schedule 1 amends the *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013*.

Clause 6 provides that the instrument applies to supplies made on or after 1 July 2016 which are made on or before 30 June 2017. This ensures that the amendments made in Schedule 1 apply to these kinds of supplies.

Schedule 1- Amendments

Item 1 amends table item 1 in Schedule 1 of the *GST-free Supply (National Disability Insurance Scheme Supports) Determination 2013* to specifically include Specialist Disability Accommodation.

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 2017

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 purpose of the *GST-free Supply (National Disability Insurance Scheme Supports) Amendment Determination 2017 (No. 1)* (the Amendment Determination) is to provide that the supply of Specialist Disability Accommodation is GST-free from 1 July 2016 until 30 June 2017.

Supplies of various disability supports are GST-free under provisions in Subdivision 38-B of the GST Act if the supplier receives government funding for the supplies.

Section 38-38 of the GST Act provides that certain supports supplied to a participant under the *National Disability Insurance Scheme Act 2013* (NDIS Act) are GST-free, if they meet the specified criteria, which includes being a kind of supply specified in a determination made under paragraph 38-38(d) of the GST Act.

Subsection 177-10(5) of the GST Act provides that the Minister responsible for the NDIS Act may, 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.

Human rights implications

This Amendment Determination engages the right to social security.

Article 9 of the International Covenant on Economic, Social and Cultural Rights recognises the right to social security for all persons, while Article 28 of the Convention on the Rights of Persons with Disabilities requires countries to recognise the right of people with disabilities to social protection and to take appropriate steps to ensure access by people with disabilities to social protection and poverty reduction programmes and to retirement benefits and programmes.

The Amendment Determination gives effect to the framework established in the GST Act, ensuring that the supply to a participant of Specialist Disability Accommodation is GST-free. The inclusion of Specialist Disability Accommodation as a specific GST-free supply ensures that this type of reasonable and necessary support is not subject to GST and provides clarity to NDIS participants, providers and others involved in the supply of Specialist Disability Accommodation in Australia.

The Amendment Determination promotes the right to social security by ensuring that supplies of Specialist Disability Accommodation under the NDIS are not taxed and therefore assisting recipients of such supplies to access accommodation suited to their needs.

Conclusion

The Amendment Determination is compatible with human rights as it promotes the right to social security.

Minister for Social Services

Christian Porter