<u>EXPLANATORY STATEMENT</u>

Issued by the authority of the Minister for Aged Care and Seniors

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

A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2025

Purpose and operation

The *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2025* repeals and remakes the *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015.*

The intent of this Determination is for aged or disabled people in like care situations, who are living in privately funded residential accommodation, to be treated similarly in terms of their access to GST-free services, as aged or disabled people living in approved residential care homes under the *Aged Care Act 2024*.

This Determination ensures that eligible aged or disabled residents of privately funded residential aged care services will receive GST-free all the residential care services that are GST-free to aged and disabled residents of approved residential care homes under the *Aged Care Act 2024*.

Background

The purpose of this Determination is to make minor and technical amendments to the *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015* to align with language used under the new aged care legislative framework established by the *Aged Care Act 2024*.

Authority

Paragraph 177-10(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) provides that the Minister for Aged Care may make a determination for the purposes of section 38-25(3)(b) of the GST Act. Subsection 38-25(3) covers the provision of government funded residential care services to aged or disabled people where:

- the services supplied are determined to be of a kind similar to those listed in the aged care service list, made under the *Aged Care Act 2024*; and
- the services supplied include, and are only provided to those who require, the services specified in regulations made for this purpose.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

Commencement

This Determination commences at the same time as the *Aged Care Act 2024*.

Consultation

Due to the nature of the consequential amendments, public consultation was not considered to be required. Consultation was undertaken between the Department of Health, Disability and Ageing, The Treasury and the Australian Taxation Office.

General

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

Details of this Determination are set out in **Attachment A**.

This Determination is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

ATTACHMENT A

Details of the *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2025*

Section 1 – Name

Section 1 provides that the name of the Determination is the *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2025.*

Section 2 – Commencement

Section 2 provides that the Determination commences at the same time as the *Aged Care Act 2024*.

Section 3 – Authority

Section 3 provides that the Determination is made under paragraph 177-10(1)(c) of the *A New Tax System (Goods and Services Tax) Act 1999*.

Section 4 – Schedules

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

Section 5 – Definitions

Section 5 provides that a number of expressions used throughout the Determination are defined in the *A New Tax System (Goods and Services Tax) Act 1999*, including the terms GST-free, aged care service list, and supply.

Throughout this Determination:

> ***Act*** has the meaning of *A New Tax System (Goods and Services Tax) Act 1999*.
>
> ***resident*** has the meaning of a person as mentioned in paragraph 38-25(2)(a) of the *A New Tax System (Goods and Services Tax) Act 1999.*

Section 6 – Kinds of services

Subsection 6(1) provides that for the purposes of paragraph s38-25(3)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*, a service specified in Division 8 of the aged care service list that is supplied to a resident in a residential facility, in the circumstances mentioned in subsection (3), is a service of a kind covered by a provision of the aged care service list specified in regulations made for the purposes of that paragraph.

Subsection 6(2) provides that, for the purpose of paragraph 38-25(3)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*, to the extent a higher everyday living fee (within the meaning of section 284 of the *Aged Care Act 2024*) is charged for a service, it is not a service of a kind covered by a provision of the aged care service list.

Circumstances

Subsection 6(3) provides that for the purposes of subsection 6(1) of the Determination, the circumstances are that:

- the resident has a continuing need for the services mentioned in:
  - Items 2(a), 2(b), 2(c), 2(d), 3, 5(a), 5(b), 5(c), or 6(a) of section 8-150 of the aged care service list; or
  - item 4 under section 8-155 of the aged care service list; and
- the services are supplied, under a written agreement with the supplier, as a package made up of:
  - the services mentioned in:
    - items 2(a), 2(b), 2(c), 2(d), 3, 5(a), 5(b), 5(c), or 6(a) of section 8-150 of the aged care service list; or
    - item 4 under section 8-155 of the aged care service list; and
  - other services mentioned in Division 8 of the aged care service list that are needed by the resident; and
  - accommodation; and
- the charges for services and for accommodation are payable to the same entity.

Translation of references in the Aged Care Rules 2025

Subsection 6(4) provides that for the purposes of that section:

- a reference to an individual in Division 8 of the aged care service list is to be read as a reference to a resident; and
- a reference to a residential care home in Division 8 of the aged care service list is to be read as a reference to a residential facility.

The note provides that subject to the requirements of paragraphs 38-25(3)(a) and (c) of the *A New Tax System (Goods and Services Tax) Act 1999*, the supply of any of the services mentioned in this section is GST-free.

Schedule 1 – Repeals

Item 1 – The whole of the instrument

Item 1 repeals the *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015*.

ATTACHMENT B

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 – Residential Care – Non-government Funded Supplier) Determination 2025

This Disallowable 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 Determination

The *A New Tax System (Goods and Services Tax) (GST-free Supply – Residential Care – Non-government Funded Supplier) Determination 2025* repeals the *A New Tax System (Goods and Services Tax) (GST-free Supply—Residential Care—Non-government Funded Supplier) Determination 2015.*

This Determination ensures that aged or disabled residents of non-government funded residential aged care services will receive GST-free all the residential care services that are GST-free to aged or disabled residents of approved residential care homes accessing Commonwealth funded aged care services under the *Aged Care Act 2024*,

The Determination maintains the existing application of the GST to residential care services while reflecting the changes in concepts and language between the *Aged Care Act 1997* and the *Aged Care Act 2024*.

Human rights implications

This Disallowable Legislative Determination engages the following human rights contained in Articles 11(1) and 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Articles 25 and 28 of the *Convention of the Rights of Persons with Disabilities* (CRPD):

- the right to an adequate standard of living, including with respect to food, clothing and housing, and the right to the continuous improvement of living conditions (Article 11(1) of ICESCR and Article 28 of CPRD); and

- the right to the enjoyment of the highest attainable standard of physical and mental health (Article 12(1) of ICESCR and Article 25 of the CPRD).

The Determination ensures that eligible aged or disabled residents of non-government funded residential aged care services will receive GST-free all the residential care services that are GST-free to aged and disabled residents of approved residential care homes accessing Commonwealth funded aged care services under the *Aged Care Act 2024*. In this way, the Determination improves peoples' access to care and promotes the right to an adequate standard of living and the highest attainable standard of physical and mental health.

Conclusion

This Disallowable Legislative Determination is compatible with human rights because it promotes the right to an adequate standard of living and the highest attainable standard of physical and mental health.

The Hon Sam Rae MP

Minister for Aged Care and Seniors