

***CRP 2020/2 - Explanatory statement -***



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## Explanatory Statement

# Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020

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### General Outline of Instrument

1. This instrument is made under section 370-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). All references to legislative provisions in this Explanatory Statement are references to the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) unless otherwise stated.
2. This instrument modifies the operation of paragraph 38-510(1)(a) to ensure continued access to GST-free supplies of cars and car parts for disabled people who:
  - have lost the use of one or more limbs to such an extent that they are unable to use public transport, and
  - intend to use the car for personal transportation to or from gainful employment.
3. The modification enables a registered medical practitioner to issue a certificate, now titled 'certificate of medical eligibility', certifying that the individual has lost the use of one or more limbs to such an extent that they are unable to use public transport.
4. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. Section 370-15 of the TAA allows the Commissioner of Taxation (Commissioner) to prepare another legislative instrument to repeal this instrument. Subsection 370-15(3) states that subsection 33(3) of the *Acts Interpretation Act 1901* applies only to the extent that it allows the Commissioner to amend or vary this instrument.

### Date of effect

6. Under section 370-20 of the TAA, this instrument commences on the first day the instrument is no longer liable to be disallowed, or to be taken to have been disallowed under section 42 of the *Legislation Act 2003*.

### What is the effect of this instrument

7. The modification made by this instrument enables a registered medical practitioner to issue a certificate of medical eligibility certifying that the individual has lost the use of one or more limbs to such an extent that they are unable to use public transport.
8. The effect of this instrument is to ensure continued access to GST-free supplies of cars and car parts for disabled people who:
  - have lost the use of one or more limbs to such an extent that they are unable to use public transport, and
  - intend to use the car for personal transportation to or from gainful employment.

9. The modification made by this instrument does not apply where an individual holds a current disability certificate issued by the nominated company (within the meaning of Part 2 of the *Hearing Services and AGHS Reform Act 1997* (AGHS Reform Act)). An individual that holds this document, and who is otherwise eligible for the concession, continues to have access to GST-free supplies of cars and car parts. This means they are not required to obtain a certificate of medical eligibility.

## Explanation

10. Since it was enacted, the GST Act has provided a concession for individuals who have lost the use of one or more limbs to such an extent that they are unable to use public transport. Section 38-510 provides that a disabled individual in these circumstances can purchase or lease a car GST-free if they intend to use the car for their personal transport to or from their gainful employment for at least two years or 40,000 kilometres from the date of purchase or lease. Car parts for the car are also GST-free.

11. Prior to the operation of this instrument, the supply of the car to a disabled individual was GST-free if under paragraph 38-510(1)(a), they had a current disability certificate certifying they had lost the use of one or more limbs to such an extent they were unable to use public transport. This certificate was issued by:

- (i) the person holding the position of Managing Director of the nominated company (within the meaning of Part 2 of the AGHS Reform Act), or
- (ii) an officer or employee of that company who is authorised in writing by the Managing Director of the nominated company.

12. The 'nominated company' was Medibank Health Solutions (MHS), a government owned corporation. The company was privatised and restructured and can no longer issue disability certificates. MHS is the only entity that is authorised to issue the disability certificates and it is not possible to substitute another company or entity in the place of MHS. There is no discretion in section 38-510 which would allow the Commissioner to administratively change the nominated company issuing the certificate or to use another criterion to determine the claim.

13. As a result, disabled individuals are no longer able to obtain a disability certificate from MHS.

14. To overcome this issue, paragraph 38-510(1)(a) is modified so that the provision is satisfied where a disabled individual holds a certificate of medical eligibility issued by a medical practitioner. The medical practitioner must assess and certify that the individual meets the medical requirement of the provision that they have lost the use of one or more limbs to such an extent that they are unable to use public transport. 'Medical practitioner' is defined in section 195-1 to mean a person who is a medical practitioner for the purposes of the *Health Insurance Act 1973*.

15. Individuals who hold a current disability certificate issued by MHS, and who are otherwise eligible for the concession, can continue to use that certificate to obtain a car or car parts GST-free.

16. A medical assessment was undertaken by a medical practitioner to certify eligibility for a disability certificate issued by MHS. Accordingly, it is not a new or additional action under this instrument. As part of completing the medical assessment, where the medical practitioner determines the individual is eligible, the medical practitioner will certify the individual's medical eligibility by completing the certificate contained in the application form (available from the Australian Taxation Office website).

17. The individual must still meet the other requirements specified in section 38-510 to access the concession, namely, that they intend to use the car for travel to or from their gainful employment, for at least two years or 40,000 kilometres from the date of purchase or lease. The medical practitioner does not need to determine whether these other requirements are satisfied.

18. This instrument renames the disability certificate to the certificate of medical eligibility. The renaming of the disability certificate to the certificate of medical eligibility better aligns with the intent of the GST concession to provide disabled people with GST-free supplies of cars and car parts for

use in their personal transport to or from their gainful employment. The name, certificate of medical eligibility, clarifies that the purpose of the certificate is to verify that a disabled individual meets the medical eligibility requirement of section 38-510.

### **Modification is not inconsistent with the intended purpose or object of the provision**

19. The Commissioner considers the modification is not inconsistent with the intended purpose or object of paragraph 38-510(1)(a) that stipulates the medical requirement that must be met for a supply of a car or car parts for use by a disabled individual to be GST-free.

20. Paragraph 38-510(1)(a) only requires that the individual has a current disability certificate issued by the nominated company certifying their level of disability. There is nothing in that paragraph that required the nominated company to ensure the individual satisfied the remaining requirements of section 38-510.

21. Changing the responsibility for the medical eligibility certification to a medical practitioner ensures that any physical incapacity continues to be assessed by a medically qualified person.

22. The Explanatory Memorandum relating to the Bill containing the provision does not explain the intended purpose of using a nominated company to issue disability certificates. The practice is consistent with traditional government administrative practices. However, the contemporary approach is to refer to sources or services the client currently uses, including private sources or services.

### **Modification is reasonable**

23. The modification supports the intent of the provision. It ensures a person who is medically qualified is certifying that an individual meets the medical requirement in paragraph 38-510(1)(a). The modification produces a sensible and neutral outcome for disabled individuals with no additional compliance costs.

24. The disabled individual will benefit from reduced compliance costs as they will not have to pay a fee to a separate body in addition to any charge for the medical assessment.

25. The integrity of the concession in section 38-510 is maintained as evidence of the person's disability and inability to use public transport is still required.

### **Compliance cost assessment**

26. Compliance cost impact: Minor – There will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

### **Budgetary impact**

27. The Commissioner has received advice from the Department of the Treasury that the proposed exercise of the Commissioner's Remedial Power would have a negligible cost to the budget.

### **Consultation**

28. The Australian Medical Association was consulted and supports that the certificate of medical eligibility be issued by the examining medical practitioner. They also support the renaming of the certificate.

29. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.
30. For this instrument, broad public consultation was undertaken for a period of four weeks from 13 July 2020 to 10 August 2020 inclusive.
31. The draft instrument and draft explanatory statement were published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members. This ensures advice of the draft is disseminated widely across the tax professional community, and that they are in an informed position to provide comments and feedback.
32. No comments were received as a result of the consultation.
33. In addition, targeted consultation on a prospective CRP candidate is undertaken with the CRP Advisory Panel, a body comprised of private sector specialists, Treasury and ATO representatives. The Panel supported the exercise of the CRP and provided feedback on the draft determination and explanatory statement.
34. The Board of Taxation was also consulted on the use of the CRP to resolve the issue, the draft determination and explanatory statement. The Board agreed that the modification is consistent with the objects of that provision, and reasonable having regard to the provision's intended purpose. Accordingly, the Board considered it would be appropriate to exercise the power.

#### ***Legislative references***

*A New Tax System (Goods and Services Tax) Act 1999*  
*Acts Interpretation Act 1901*  
*Health Insurance Act 1973*  
*Hearing Services and AGHS Reform Act 1997*  
*Human Rights (Parliamentary Scrutiny) Act 2011*  
*Legislation Act 2003*  
*Taxation Administration Act 1953*

## **Statement of compatibility with Human Rights**

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

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This 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**

This Legislative Instrument is made under section 370-5 of Schedule 1 to the TAA, known as the Commissioner's Remedial Power. It modifies the operation of the provision for the GST-free supply of a car or car parts to an individual so that a registered medical practitioner can issue the disability certificate certifying the individual has lost the use of one or more limbs to such an extent that they are unable to use public transport.

This Legislative Instrument renames the disability certificate to the certificate of medical eligibility.

The modification ensures continued access to GST-free supplies of cars and car parts for use by eligible disabled individuals for their personal transportation to or from gainful employment.

#### **Human rights implications**

This Legislative Instrument engages the following rights.

- the rights of people with disabilities in the *Convention on the Rights of People with Disabilities* (CRPD), especially articles 4(3), 5, 9(1), 19 and 26(1).

#### ***Right to equality and non-discrimination***

This Legislative Instrument promotes the right to equality and non-discrimination under article 5 of the CRPD. This right is promoted by ensuring that disabled individuals can access GST-free supplies of cars and car parts into the future.

#### ***Rights to accessibility and live Independently and be included in the community***

This Legislative Instrument promotes the right to equal access to public facilities and services, and right to live independently and be included in the community under articles 9(1) and 19 of the CRPD. These rights are promoted by enabling disabled individuals to access GST-free supplies of cars and car parts to facilitate access and independent travel to or from their gainful employment where they are unable to use public transport.

#### ***Right to Habilitation and Rehabilitation Services***

This Legislative Instrument promotes the right to access habilitation and rehabilitation services under article 26(1) of the CRPD. This right is promoted by enabling disabled individuals to access the concession for GST-free supplies of cars and car parts to enable travel to or from their gainful employment as part of the normal care they receive from their medical practitioner. This is achieved by allowing a registered medical practitioner to issue the certificate of medical eligibility as part of an individual's normal medical consultation.

The modification proposed by this Legislative Instrument promotes article 4(3) of the CRPD. This is achieved through the public consultation on this Legislative Instrument and accompanying Explanatory Statement.

### **Conclusion**

This Legislative Instrument is compatible with human rights rights because it supports and promotes the rights of people with disabilities.