

# **EXPLANATORY STATEMENT**

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

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

***GST-Free Supply (Care) Determination 2025***

## **Purpose and operation**

The *GST-Free Supply (Care) Determination 2025* repeals and remakes the *GST-free Supply (Care) Determination 2017*.

This Determination ensures that care services that are similar to those that are GST-free when supplied to aged or disabled people are GST-free when supplied to a targeted person. A targeted person is an individual who has a moderate, severe, or profound disability, lives at home, and is at risk of needing long term care in a hospital or other institution, or residential care. This Determination retains the existing application of the GST for these services. The amendments to the 2017 Determination are technical in nature as required due to the passage of the *Aged Care Act 2024* and are not intended to reflect a change in tax policy.

In particular, this Determination lists specific services which, when provided to targeted persons, are GST-free. It also lists specific services which, when provided to carers of targeted persons, are also GST-free.

## **Background**

The purpose of this Determination is to make minor and technical amendments to the *GST-free Supply (Care) Determination 2017* to align with language used under the new aged care legislative framework established by the *Aged Care Act 2024*.

## **Authority**

Paragraph 177-10(1)(d) 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 38-30(4)(b) of the GST Act. Subsection 38-30(4) covers the provision of government funded care services to aged or disabled people, and allows for a supply of services to be GST-free where the supplier receives funding from the Commonwealth, or a State or Territory to supply those services, and the services supplied are of a kind determined in this Determination

## **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**.

**Details of the GST-Free Supply (Care) Determination 2025.**

**Section 1 – Name**

Section 1 provides that the name of the Determination is the *GST-free Supply (Care) Determination 2025*.

**Section 2 – Commencement**

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

**Section 3 – Authority**

Section 3 provides that the Determination is made under paragraph 177-10(1)(d) 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 the Determination:

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

*care* means services to enable a targeted person to continue to live at home.

*carer* means a person who provides care to a targeted person.

*respite care* means care provided as an alternative care arrangement with the primary purpose of giving a carer or targeted person a short-term break from the usual care arrangement.

*targeted person* means a frail, older person or a younger person who:

- has a moderate, severe or profound disability (including addiction to a drug); and
- lives at home; and
- would, in the absence of services of the kind mentioned in Schedule 1, be at risk of prematurely or inappropriately needing:
  - long term care in a hospital or other institution; or
  - funded aged care services provided at an approved residential care home within the meaning of the *Aged Care Act 2024*.

## **Section 6 – Supply of care to targeted person**

Section 6 provides that for the purpose of paragraph 38-30(4)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*, the supply of care of a kind mentioned in Schedule 1 to a targeted person is of a kind determined by the Aged Care Minister.

## **Section 7 – Supply of care to carer**

Section 7 provides that for the purpose of paragraph 38-30(4)(b) of the *A New Tax System (Goods and Services Tax) Act 1999*, the supply of care of a kind mentioned in Schedule 2 to a carer that substantially enables the carer to give care to a targeted person is of a kind determined by the Aged Care Minister.

## **Schedule 1 – Care provided to targeted persons**

Schedule 1 lists the care services which will be GST-free when provided to targeted persons.

## **Schedule 2 – Care provided to carers**

Schedule 2 lists the care services which will be GST-free when provided to the carers of targeted persons.

## **Schedule 3 – Repeals**

### **Item 1 – The whole of the instrument**

Item 1 repeals the *GST-free Supply (Care) Determination 2017*.

**Statement of Compatibility with Human Rights**

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

*GST-free Supply (Care) 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 *GST-free Supply (Care) Determination 2025* repeals the *GST-free Supply (Care) Determination 2017* to reflect the commencement of the *Aged Care Act 2024* and the repeal of the *Aged Care Act 1997*. The purpose of this Determination is to provide that certain care services, when provided to aged or disabled persons that are targeted persons, or their carers, are GST-free.

**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 re-makes an existing GST-free Determination to reflect the commencement of the *Aged Care Act 2024* and the repeal of the *Aged Care Act 1997*. The Determination continues to reduce the cost of providing care services to targeted persons, as well as their carers, by making those services GST-free. By continuing to make care services more affordable to those who need them, it is promoting the right to an adequate standard of living, and the right to the enjoyment of the highest attainable standard of physical and mental health.

**Conclusion**

The Determination is compatible with human rights because it promotes the right 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**