

CRP 2021/2 - Explanatory statement -



Explanatory Statement

Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Repeal and Transitional Arrangements Determination 2021

General Outline of Instrument

1. This instrument is made under section 370-15 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 repeals the *Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020* (principal instrument) on the later of the commencement of this instrument and immediately after the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021*.
3. This instrument also provides for transitional arrangements relating to the repeal of the principal instrument. Under these arrangements, current disability certificates issued under paragraph 38-510(1)(a), and current certificates of medical eligibility issued under the principal instrument, that were in force immediately prior to the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021* will have effect as if they were issued by a medical practitioner in the approved form under that item.
4. This instrument is repealed at the start of 1 October 2024.
5. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
6. Subsection 370-15(3) of the TAA 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

7. 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*. Sections 5 and 6 of this instrument commence on the later of the commencement of this instrument and immediately after the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021*.

What is the effect of this instrument

8. This instrument repeals the principal instrument on the later of the commencement of this instrument and immediately after the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021*. This means the modification made by the principal instrument will cease to operate at that time.
9. This instrument ensures that current disability certificates issued under paragraph 38-510(1)(a), and current certificates of medical eligibility issued under the principal instrument, that were in force immediately prior to the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021* will still be in effect after paragraph 38-510(1)(a) is amended by that item. This means that individuals that held these certificates immediately prior to the amendment of paragraph 38-510(1)(a) will be able to access GST-free supplies of cars and car

parts using the applicable certificate they have been issued provided they meet the other requirements of section 38-510.

10. This instrument will be repealed at the start of 1 October 2024. This means the transitional arrangements provided under this instrument will cease to be in effect at the start of that day.

Background

11. This instrument repeals the principal instrument and provides for transitional arrangements related to the repeal of the principal instrument.

12. The principal 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 for at least two years or 40,000 kilometres from the date of purchase or lease.

13. The modification enables paragraph 38-510(1)(a) to be satisfied where the disabled individual holds a certificate of medical eligibility issued by a medical practitioner. This is achieved by enabling a registered medical practitioner to issue a certificate, 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. '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*.

Explanation

14. This legislative instrument will repeal the principal instrument on the later of the commencement of this instrument and immediately after the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021*. Therefore, the modification made by the principal instrument will cease to operate at that time. This ensures that the principal instrument and modification remains in force until paragraph 38-510(1)(a) is amended to give effect to the modification.

15. This legislative instrument will also provide for transitional arrangements related to the repeal of the principal instrument. Under these arrangements, current disability certificates issued under paragraph 38-510(1)(a), and current certificates of medical eligibility issued under the principal instrument that were in force immediately prior to the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021* will have effect as if they were issued by a medical practitioner in the approved form under that item. These arrangements ensure that individuals who held these certificates prior to the amendment of paragraph 38-510(1)(a) are able to use those certificates to access GST-free supplies of cars and car parts under the amended provision. Disabled individuals will still need to satisfy the other requirements of section 38-510 to be eligible to access GST-free supplies of cars and car parts.

16. The transitional arrangements provided by this instrument are necessary to ensure that disabled individuals that held disability certificates and certificates of medical eligibility in force immediately prior to the amendment of paragraph 38-510(1)(a) taking effect are not disadvantaged by the change to the provision.

17. This legislative instrument will be repealed at the start of 1 October 2024, which is the usual sunset day and approximately 3 years after the commencement date of this instrument. Therefore, the transitional arrangements provided by this instrument will cease to operate at the start of that day. This ensures these arrangements remain in force for only as long as they are needed until they are legislated.

Compliance cost assessment

18. 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.

Consultation

19. The Commissioner routinely publishes draft legislative instruments seeking public feedback for a minimum period of 4 weeks. For this instrument, targeted consultation was undertaken with the CRP Advisory Panel, a body comprised of private sector specialists, Treasury and ATO representatives, and the Board of Taxation. Wider consultation was not considered necessary because this instrument repeals the principal instrument and provides for transitional arrangements that are machinery or administrative in nature.

20. In these circumstances, the Commissioner has undertaken reasonable and appropriate consultation over a shorter period than would otherwise have been used.

Legislative references

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

Acts Interpretation Act 1901

Health Insurance Act 1973

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Taxation Administration Act 1953

Treasury Laws Amendment (2021 Measures No. 5) Act 2021

Statement of compatibility with Human Rights

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

Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Repeal and Transitional Arrangements Determination 2021

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 370-15 of Schedule 1 to the TAA, known as the Commissioner's Remedial Power. It repeals the *Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020* (principal instrument) on the later of the commencement of this instrument and immediately after the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021*.

This legislative instrument also provides for transitional arrangements related to the repeal of the principal instrument. Under these arrangements, current disability certificates issued under paragraph 38-510(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* and certificates of medical eligibility issued under the principal instrument that were in force immediately prior to the commencement of item 44 of Schedule 3 to the *Treasury Laws Amendment (2021 Measures No. 5) Act 2021* will have effect as if they were issued by a medical practitioner in the approved form under that item.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights and freedoms because it merely repeals the principal instrument and provides for transitional arrangements that are machinery or administrative in nature.

Conclusion

This Legislative Instrument is compatible with human rights rights as it does not raise any human rights issues.