Law Council
OF AUSTRALIA

16 October 2026

Rebekah Coote
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By email: Rebekah.coote@ato.gov.au

Dear Ms Coote

Draft Goods and Services Tax Ruling GSTR 2012/3DC

1. Thank you for the opportunity to provide a submission in response to the Australian Taxation Office's (**ATO**) consultation on the draft Goods and Services Tax Ruling GSTR 2012/3DC: *Goods and services tax: GST treatment of care services and accommodation in retirement villages and privately funded nursing homes and hostels* (**draft Ruling**). The proposed changes give effect to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) by the *Aged Care and Other Legislation Amendment Act 2025* (Cth).

2. The Law Council thanks the Law Society of New South Wales, the Law Council's National Elder Law and Succession Law Committee, and the Taxation Committee of the Law Council's Business Law Section for their contributions to this submission.

"Aged or disabled people"

3. The expression "aged or disabled people" in the draft Ruling—for example, in paragraph 5—reflects the terminology of the relevant GST provisions. However, the draft Ruling does not appear to explain the meaning of "disabled" for those purposes. The meaning of "disabled" differs across potentially relevant regimes, for example:

    - the *National Disability Insurance Scheme Act 2013* (Cth) applies its own impairment and functional-capacity requirements under section 24, subject to the age requirements in section 22;
    - qualification for the Disability Support Pension under section 94 of the *Social Security Act 1991* (Cth) is based on separate impairment and work-capacity requirements;
    - for a principal beneficiary aged 16 or older, section 1209M of the *Social Security Act 1991* (Cth) imposes distinct and comparatively narrow beneficiary requirements, comprising an impairment or specified pension requirement, a care or qualifying institutional-setting requirement, and a work-capacity requirement—generally, that the person is not working, and is unlikely to work, for more than seven hours a week at or above the relevant minimum wage, unless working under the supported wage system; and

- some people with disability may receive treatment, care and support under a State or Territory accident compensation scheme forming part of the National Injury Insurance Scheme framework, rather than under the National Disability Insurance Scheme (**NDIS**).

4. Given this multiplicity of terminology and eligibility criteria, it would be helpful for the ATO to state its view that "disabled" in section 38-25 of the GST Act bears its ordinary meaning, is not confined to any of the above mentioned definitions, and that a person who satisfies one of them—including a principal beneficiary of a special disability trust—will ordinarily be regarded as disabled for that purpose. This clarification is particularly important for families who have funded private residential care through such a trust, or whose relative falls outside the NDIS, including because of age. As paragraph 75 of the draft Ruling addresses evidence of a person's need for services rather than evidence of disability status, the ATO should also clarify what evidence it will accept as establishing that status.

5. The draft Ruling also does not explain the meaning of "aged" for the purposes of section 38-25 of the GST Act. It would be helpful for the ATO to state that the expression is tied neither to the threshold of at least 55 years that forms part of the GST definition of "retirement village" nor to the age criteria for eligibility for an aged care needs assessment under section 58 of the *Aged Care Act 2024* (Cth). Those thresholds serve different statutory purposes and should not determine whether a person is "aged" for the purposes of section 38-25 of the GST Act. Given the multiplicity of terminology in this area, further clarity would assist in avoiding confusion. The draft Ruling may also wish to acknowledge, as a terminology point, that the contemporary aged-care legislative framework generally refers to "older people" rather than "aged people".

Age threshold

6. Paragraph 18 of the draft Ruling states that, for the purposes of the GST Act, a retirement village must be intended to provide accommodation for people who are at least 55 years old, or who are a specified age greater than 55. We note that this threshold differs from the age criteria in section 58 of the Aged Care Act. Under that section, an individual may be eligible for an aged care needs assessment if they are aged 65 or over, or if they are aged at least 50 and are an Aboriginal or Torres Strait Islander person, or are homeless or at risk of homelessness. While these thresholds serve different statutory purposes, it may be helpful for the draft Ruling to clarify that the age requirement forming part of the GST definition of "retirement village" is distinct from, and does not determine, eligibility to access funded aged care services under the Aged Care Act.

Services provided to "all of the residents"

7. Paragraphs 15 and 15A of the draft Ruling set out the circumstances in which, under subsection 38-25(3A) of the GST Act, services provided to a resident of a serviced apartment in a retirement village are taken to be provided in a "residential setting", including the requirement for a written agreement under which the operator provides the relevant services to all of the residents of the apartment. Paragraph 15B explains that the specified services are exhaustive, so that the operator must provide both daily meals and heavy laundry services. Footnote 11 clarifies that the reference to "all of the

residents" applies to all residents of each serviced apartment, rather than to all residents of the retirement village. Paragraphs 52 to 71 provide further guidance on these requirements, setting out three principles, the first of which requires each resident to have a continuing need for daily meals and heavy laundry services. It also distinguishes between the operator making the services available and the resident's actual use of them.

8. The Law Council has received feedback that residents sharing a serviced apartment commonly have different levels of need. For example, one resident may require daily meals and heavy laundry services while another does not. Example 7 of the draft Ruling (paragraphs 55 to 55B) addresses a similar situation, but its facts also involve an operator that is not obliged to provide the services to either resident. Example 7 therefore does not show whether the requirement is met if the operator is obliged under a written agreement to provide the services to each resident, but one resident does not need or elects not to use them. We suggest that the ATO should address this scenario directly and include a worked example illustrating the application of these requirements where the operator is obliged under a written agreement to provide both services to all residents of an apartment, but one or more residents do not require or elect to use one or both services due to differing levels of need.

9. We further suggest that the ATO should provide an explanation of the statutory basis for the continuing need principle in paragraph 54, given that paragraph 38-25(3A)(b) refers only to a written agreement under which the operator provides the services to all of the residents. If the ATO considers that GST-free treatment is unavailable where only one resident needs those services, the ATO may wish to acknowledge the practical implications for retirement villages accommodating residents with differing levels of need.

Objective evidence of a resident's need for daily living activities assistance or nursing services

10. Paragraph 75 of the draft Ruling sets out a non-exhaustive list of assessment reports that the Commissioner may consider as objective evidence of a resident's requirement and continuing need for daily living activities assistance services or nursing services. Each listed report is prepared by a registered medical practitioner or another registered health professional.

11. Assessments under the Single Assessment System are a common pathway for determining an individual's aged care needs and the services for which they may be eligible under the Aged Care Act.[1] However, an assessor operating under that system may not necessarily be a member of one of the professions listed in paragraph 75. We therefore suggest that the draft Ruling clarifies whether, and in what circumstances, an assessment or report prepared by a Single Assessment System assessor may constitute objective evidence for the purposes of paragraph 75.

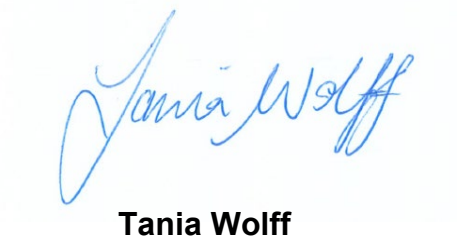
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[1] Department of Health, Disability and Ageing, About the Single Assessment System for aged care (Webpage, last updated 31 October 2025).

Contact

12. If you have any questions or wish to discuss this submission, please contact Janina Richert, Senior Policy Lawyer, [redacted]

Yours sincerely



Tania Wolff
President