

ARA SUBMISSION

GSTD 2024/D1: GOODS AND SERVICES TAX: SUPPLIES OF FOOD OF A KIND MARKETED AS A PREPARED MEAL

MAY 2024

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments to the Australian Taxation Office (ATO) in relation to the draft determination *GSTD 2024/D1: Goods and services tax: supplies of food of a kind marketed as a prepared meal*.

The ARA is the oldest, largest and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

In principle, the ARA welcomes the proposal and guidance provided by the ATO in the GSTD 2024/D1 but we do have concerns about inconsistencies within the provisions proposed in this draft determination in response to the Federal Court's decision in *Simplot Australia Pty Ltd v Commissioner of Taxation FCA 1115 (2023)*.

The commentary by the court in the *Simplot* decision points to the fact that the legislation is not effective and is not productive, as below.

"The legislative scheme with its arbitrary exemptions is not productive of cohesive outcomes... It may be doubted whether this is a satisfactory basis on which taxation liabilities ought to be determined."

This is consistent with the sector's long held position that the legislation lacks clarity and consistency. There is no dispute that business has a responsibility to comply with their obligations in respect of GST but inconsistencies, lack of clarity and constant changes present an unreasonable compliance risk for retailers.

With this in mind, the industry would urge the ATO to make a recommendation to Treasury to amend the relevant provisions to improve clarity and certainty for the Commissioner and businesses, following the commentary in the *Simplot* decision pointing to the subjective and arbitrary nature of the current classification.

To highlight how subjective the process is for a retailer, one of our members has provided the following commentary.

"By way of example, in practice, the question a supplier must consider is not whether the product itself is marketed as a prepared meal, but whether the product is a member of a class or genus of foods that are marketed as prepared meals (so this would necessitate some form of analysis/comparison between the product in question and all products that are marketed as a prepared meal).

"This analysis needs to be conducted by reference to the potentially subjective attributes of Quantity, Composition and Presentation.

"Then in addition the actual marketing undertaken by that supplier of that product may not be relevant but rather consideration needs to be given to the activities of the sellers of that kind of food in the market."

On that basis, our members call for a simplification of the associated provisions to alleviate the subjective and open-ended nature of this process.

Our members also have concerns that it is proposed that the determination will apply both before and after its date of issue. Retrospective application is not appropriate and the determination should only have prospective application given the subjective nature of determining which products GST applies to and a lack of specific guidance from the ATO.

We also believe that the ATO's position on the definition of "meal" with reference to snack products needs to be clarified. We believe that the market views "snacks" and "light meals" as two different categories, and if the ATO believe differently they should specifically clarify this to ensure certainty amongst all retailers.

Upon discussions with our members, the concern regarding the potential overreach has also been raised. We believe that only those products specifically mentioned in the Simplot decision should be referenced in the determination, and it should not be carried across other products.

We look forward to working further with the ATO to assist with a more detailed approach to these issues.

Thank you again for the opportunity to provide a submission on these matters. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.