Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020

No. 38, 2020

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About this compilation

This compilation

This is a compilation of the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020* that shows the text of the law as amended and in force on 29 March 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide an economic response, and deal with other matters, relating to the coronavirus, and for other purposes

1 Short title

This Act is the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	9 April 2020
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	9 April 2020
3. Schedule 1, Part 2	29 March 2021.	29 March 2021
4. Schedule 2, Parts 1 to 3	At the same time as section 3 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* commences.	9 April 2020
5. Schedule 2, item 27	Immediately after the commencement of Schedule 11 to the *Coronavirus Economic Response Package Omnibus Act 2020*.	25 March 2020
6. Schedule 2, item 28	The day this Act receives the Royal Assent.	9 April 2020

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
7. Schedule 3	The day this Act receives the Royal Assent.	9 April 2020
8. Schedule 4, Part 1	The first day on the first CCS fortnight (within the meaning of the *A New Tax System (Family Assistance) Act 1999*) that begins after this Act receives the Royal Assent.	20 April 2020
9. Schedule 4, Part 2	The day this Act receives the Royal Assent.	9 April 2020
10. Schedule 4, Part 3	1 July 2020.	1 July 2020
11. Schedule 5	The day this Act receives the Royal Assent.	9 April 2020
12. Schedule 6	The day this Act receives the Royal Assent.	9 April 2020
13. Schedule 7, Part 1	The day this Act receives the Royal Assent.	9 April 2020
14. Schedule 7, Part 2	1 July 2023.	1 July 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendment of the Fair Work Act 2009

Part 1—Amendments

Fair Work Act 2009

1 Subsection 539(2) (at the end of the table)

Add:

Part 6-4C—Coronavirus economic response				
39	789GD	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
40	789GDA(2) 789GDB(2) 789GDB(3) 789GU 789GW	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
41	789GXA	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	600 penalty units

2 At the end of subsection 576(1)

Add:

; (r) Coronavirus economic response (Part 6-4C).

3 After paragraph 675(2)(j)

Insert:

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; (k) an order under Part 6-4C (which deals with the Coronavirus economic response).

4 At the end of subsection 716(1)

Add:

; (g) a provision of Part 6-4C (which deals with the Coronavirus economic response);

(h) a jobkeeper enabling direction (within the meaning of Part 6-4C);

(i) a provision of an agreement authorised by Part 6-4C.

5 After Part 6-4B

Insert:

Part 6-4C—Coronavirus economic response

Division 1—Introduction

789GA Guide to this Part

The purpose of this Part is to assist employers who qualify for the jobkeeper scheme to deal with the economic impact of the Coronavirus known as COVID-19.

This Part authorises an employer who qualifies for the jobkeeper scheme to give a jobkeeper enabling stand down direction to an employee (including to reduce hours of work).

This Part authorises an employer who qualifies for the jobkeeper scheme to give a direction to an employee about:

(a) the duties to be performed by the employee; or

(b) the location of the employee's work.

This Part authorises an employer who qualifies for the jobkeeper scheme and an employee to make an agreement in relation to:

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(a) the days or times when the employee is to perform work; or

(b) the employee taking annual leave, including at half pay.

This Part provides that an employer who qualifies for the jobkeeper scheme must consult an employee (or a representative of the employee) before giving a direction.

This Part provides that:

(a) a direction given by an employer who qualifies for the jobkeeper scheme to an employee does not apply to the employee if the direction is unreasonable in all of the circumstances; and

(b) a direction given by an employer who qualifies for the jobkeeper scheme to an employee in relation to the duties to be performed by the employee, or the location of the employee's work, does not apply to the employee unless the employer reasonably believes the direction is necessary to continue the employment of one or more employees of the employer.

This Part provides for other safeguards relating to directions given by employers who qualify for the jobkeeper scheme, including a rule that this Part will at all times operate subject to listed laws.

This Part provides that the FWC may deal with a dispute about the operation of this Part.

Note: The core provisions of this Part (namely, Divisions 2, 3, 4, 5, 6, 9 and 11) will be repealed on 28 September 2020.

789GB Object

The object of this Part is to:

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(a) make temporary changes to assist the Australian people to keep their jobs, and maintain their connection to their employers, during the unprecedented economic downturn and work restrictions arising from:
  (i) the COVID-19 pandemic; and
  (ii) government initiatives to slow the transmission of COVID-19; and
(b) help sustain the viability of Australian businesses during the COVID-19 pandemic, including by preparing the Australian economy to recover with speed and strength after a period of hibernation; and
(c) continue the employment of employees; and
(d) ensure the continued effective operation of occupational health and safety laws during the COVID-19 pandemic; and
(e) help ensure that, where reasonably possible, employees:
  (i) remain productively employed during the COVID-19 pandemic; and
  (ii) continue to contribute to the business of their employer where it is safe and possible for the business to continue operating.

789GC Definitions

In this Part:

designated employment provision means:
(a) a provision of this Act (other than a provision of this Part or a provision mentioned in section 789GZ); or
(b) a provision of:
  (i) a fair work instrument; or
  (ii) a contract of employment; or
  (iii) a transitional instrument (within the meaning of item 2 of Schedule 3 to the Transitional Act).

employee means a national system employee.

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

employer means a national system employer.

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fortnight means a 14-day period beginning on a Monday.

hourly rate of pay guarantee has the meaning given by section 789GDB.

jobkeeper enabling direction means a direction authorised by section 789GDC, 789GE or 789GF.

jobkeeper payment means a payment that:

(a) is payable by the Commonwealth in accordance with the jobkeeper payment rules; and

(b) is known as jobkeeper payment.

jobkeeper payment rules means rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*.

licence includes:

(a) registration; and

(b) permit.

minimum payment guarantee has the meaning given by section 789GDA.

qualifies for the jobkeeper scheme has the same meaning as in the jobkeeper payment rules.

wage condition means the wage condition set out in the jobkeeper payment rules.

Division 2—Employer payment obligations

789GD Obligation of employer to satisfy the wage condition

If:

(a) an employer qualifies for the jobkeeper scheme; and

(b) the employer would be entitled to jobkeeper payment for an employee for a fortnight if (among other things) the employer satisfied the wage condition in respect of the employee for the fortnight;

the employer must ensure that the wage condition has been satisfied in respect of the employee by the end of the fortnight.

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Note: 1 This section is a civil remedy provision (see Part 4-1).

Note 2: Under the jobkeeper payment rules, a jobkeeper payment is a payment to an employer for a particular employee for a fortnight.

789GDA Minimum payment guarantee

(1) For the purposes of this Part, the ***minimum payment guarantee*** consists of the rule set out in subsection (2).

(2) If a jobkeeper payment is payable to an employer for an employee of the employer for a fortnight, the employer must ensure that the total amount payable to the employee in respect of the fortnight is not less than the greater of the following:

(a) the amount of jobkeeper payment payable to the employer for the employee for the fortnight;

(b) the amounts payable to the employee in relation to the performance of work during the fortnight.

Note 1: This subsection is a civil remedy provision (see Part 4-1).

Note 2: Amounts referred to in this subsection (other than paragraph (a)) include the following, if they become payable in respect of the fortnight:

(a) incentive-based payments and bonuses;
(b) loadings;
(c) monetary allowances;
(d) overtime or penalty rates;
(e) leave payments.

789GDB Hourly rate of pay guarantee

(1) For the purposes of this Part, the ***hourly rate of pay guarantee*** consists of the rules set out in subsections (2) and (3).

Minimum rate of pay—jobkeeper enabling stand down

(2) If a jobkeeper enabling direction given by an employer under section 789GDC (jobkeeper enabling stand down) applies to an employee of the employer, the employer must ensure that the employee's base rate of pay (worked out on an hourly basis) is not less than the base rate of pay (worked out on an hourly basis) that would have been applicable to the employee if the direction had not been given to the employee.

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Note: This subsection is a civil remedy provision (see Part 4-1).

Minimum rate of pay—duties of work

(3) If a jobkeeper enabling direction given by an employer under section 789GE (duties of work) applies to an employee of the employer, the employer must ensure that the employee's base rate of pay (worked out on an hourly basis) is not less than the greater of the following:

(a) the base rate of pay (worked out on an hourly basis) that would have been applicable to the employee if the direction had not been given to the employee;

(b) the base rate of pay (worked out on an hourly basis) that is applicable to the duties the employee is performing.

Note: This subsection is a civil remedy provision (see Part 4-1).

Base rate of pay for certain payment arrangements

(4) If:

(a) an employee is paid otherwise than:

(i) on an hourly basis; or

(ii) by reference to an hourly rate of pay; and

(b) a workplace instrument applicable to the employee:

(i) specifies the employee's base rate of pay for the purposes of the National Employment Standards; or

(ii) sets out a method for working out the employee's base rate of pay for the purposes of the National Employment Standards;

then, for the purposes of this section, the employee's base rate of pay is:

(c) the amount specified in the workplace instrument; or

(d) the amount worked out using the method set out in the workplace instrument;

as the case requires.

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Division 3—Jobkeeper enabling stand down

789GDC Jobkeeper enabling stand down

(1) If:

(a) after the commencement of this section, an employer of an employee gave the employee a direction (the ***jobkeeper enabling stand down direction***) to:

(i) not work on a day or days on which the employee would usually work; or

(ii) work for a lesser period than the period which the employee would ordinarily work on a particular day or days; or

(iii) work a reduced number of hours (compared with the employee's ordinary hours of work);

during a period (the ***jobkeeper enabling stand down period***); and

(b) when the jobkeeper enabling stand down direction was given, the employer qualified for the jobkeeper scheme; and

(c) the employee cannot be usefully employed for the employee's normal days or hours during the jobkeeper enabling stand down period because of changes to business attributable to:

(i) the COVID-19 pandemic; or

(ii) government initiatives to slow the transmission of COVID-19; and

(d) the implementation of the jobkeeper enabling stand down direction is safe, having regard to (without limitation) the nature and spread of COVID-19; and

(e) the employer becomes entitled to one or more jobkeeper payments for the employee:

(i) for a period that consists of or includes the jobkeeper enabling stand down period; or

(ii) for periods that, when considered together, consist of or include the jobkeeper enabling stand down period;

the jobkeeper enabling stand down direction is authorised by this section.

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(2) If the jobkeeper enabling stand down direction applies to the employee, then, during the jobkeeper enabling stand down period, the employer is still required to comply with:
  (a) section 789GD (which deals with satisfying the wage condition); and
  (b) the minimum payment guarantee (see section 789GDA); and
  (c) the hourly rate of pay guarantee (see section 789GDB);
but is not otherwise required to make payments to the employee in respect of the jobkeeper enabling stand down period.

(3) The jobkeeper enabling stand down direction does not apply to the employee during a period when the employee:
  (a) is taking paid or unpaid leave that is authorised by the employer; or
  (b) is otherwise authorised to be absent from the employee's employment.

Note: An employee may take paid or unpaid leave (for example, annual leave) during all or part of a period during which the jobkeeper enabling stand down direction would otherwise apply to the employee.

(4) For the purposes of subparagraph (1)(a)(iii), the reduced number of hours may be nil.

(5) This section has effect despite a designated employment provision.

Division 4—Duties, location and days of work

789GE Duties of work

(1) If:
  (a) after the commencement of this section, an employer of an employee directed the employee to perform any duties during a period (the ***relevant period***) that are within the employee's skill and competency; and
  (b) when the direction was given, the employer qualified for the jobkeeper scheme; and
  (c) those duties are safe, having regard to (without limitation) the nature and spread of COVID-19; and

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(d) in a case where the employee was required to have a licence or qualification in order to perform those duties—the employee had the licence or qualification; and

(e) those duties are reasonably within the scope of the employer's business operations; and

(f) the employer becomes entitled to one or more jobkeeper payments for the employee:

(i) for a period that consists of or includes the relevant period; or

(ii) for periods that, when considered together, consist of or include the relevant period;

the direction is authorised by this section.

(2) This section has effect despite a designated employment provision.

789GF Location of work

(1) If:

(a) after the commencement of this section, an employer of an employee directed the employee to perform duties during a period (the ***relevant period***) at a place that is different from the employee's normal place of work, including the employee's home; and

(b) when the direction was given, the employer qualified for the jobkeeper scheme; and

(c) the place is suitable for the employee's duties; and

(d) if the place is not the employee's home—the place does not require the employee to travel a distance that is unreasonable in all the circumstances, including the circumstances surrounding the COVID-19 pandemic; and

(e) the performance of the employee's duties at the place is:

(i) safe, having regard to (without limitation) the nature and spread of COVID-19; and

(ii) reasonably within the scope of the employer's business operations; and

(f) the employer becomes entitled to one or more jobkeeper payments for the employee:

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(i) for a period that consists of or includes the relevant period; or

(ii) for periods that, when considered together, consist of or include the relevant period;

the direction is authorised by this section.

(2) This section has effect despite a designated employment provision.

789GG Days of work etc.

(1) If:

(a) an employer of an employee qualifies for the jobkeeper scheme; and

(b) the employer is entitled to one or more jobkeeper payments for the employee; and

(c) the employer gives the employee a request to make an agreement with the employer under subsection (2);

the employee:

(d) must consider the request; and

(e) must not unreasonably refuse the request.

(2) If:

(a) after the commencement of this section, an employer and an employee of the employer agree in writing to the employee performing duties during a period (the ***relevant period***):

(i) on different days; or

(ii) at different times;

compared with the employee's ordinary days or times of work; and

(b) when the agreement was made, the employer qualified for the jobkeeper scheme; and

(c) the performance of the employee's duties on those days or at those times is:

(i) safe, having regard to (without limitation) the nature and spread of COVID-19; and

(ii) reasonably within the scope of the employer's business operations; and

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(d) the agreement does not have the effect of reducing the employee's number of hours of work (compared with the employee's ordinary hours of work); and

(e) the employer becomes entitled to one or more jobkeeper payments for the employee:

(i) for a period that consists of or includes the relevant period; or

(ii) for periods that, when considered together, consist of or include the relevant period;

the agreement is authorised by this section.

(3) This section has effect despite a designated employment provision.

Division 5—Taking paid annual leave

789GJ Taking paid annual leave

(1) If:

(a) the employer of an employee qualifies for the jobkeeper scheme; and

(b) the employer is entitled to one or more jobkeeper payments for the employee; and

(c) the employer gives the employee a request to take paid annual leave; and

(d) complying with the request will not result in the employee having a balance of paid annual leave of fewer than 2 weeks;

the employee:

(e) must consider the request; and

(f) must not unreasonably refuse the request.

(2) If:

(a) after the commencement of this section, an employer and an employee of the employer agree in writing to the employee taking twice as much paid annual leave, at half the employee's rate of pay, for a period (the ***relevant period***); and

(b) when the agreement was made, the employer qualified for the jobkeeper scheme; and

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(c) the employer becomes entitled to one or more jobkeeper payments for the employee:
(i) for a period that consists of or includes the relevant period; or
(ii) for periods that, when considered together, consist of or include the relevant period;

the agreement is authorised by this section.

(3) This section has effect despite a designated employment provision.

Division 6—Rules relating to jobkeeper enabling directions

789GK Reasonableness

A jobkeeper enabling direction given by an employer to an employee of the employer does not apply to the employee if the direction is unreasonable in all of the circumstances.

Note: A direction may be unreasonable depending on the impact of the direction on any caring responsibilities the employee may have.

789GL Continuing the employment of employees

(1) A jobkeeper enabling direction given by an employer to an employee of the employer under section 789GE (duties of work) or 789GF (location of work) has no effect unless the employer has information before the employer that leads the employer to reasonably believe that the direction is necessary to continue the employment of one or more employees of the employer.

(2) In determining whether a jobkeeper enabling direction given by an employer to an employee of the employer (the ***relevant employee***) is necessary to continue the employment of one or more employees of the employer, it is immaterial that a similar jobkeeper enabling direction could have been given by the employer to an employee of the employer other than the relevant employee.

789GM Consultation

(1) A jobkeeper enabling direction given by an employer to an employee of the employer does not apply to the employee unless:

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(a) the employer gave the employee written notice of the employer's intention to give the direction; and

(b) the employer did so:

(i) at least 3 days before the direction was given; or

(ii) if the employee genuinely agreed to a lesser notice period—during that lesser notice period; and

(c) before giving the direction, the employer consulted the employee (or a representative of the employee) about the direction.

(2) The regulations may require that a notice under paragraph (1)(a) must be in a prescribed form.

(3) Subsection (1) does not apply to a jobkeeper enabling direction (the ***relevant direction***) given by an employer to an employee of the employer under a particular section of this Part if:

(a) the employer previously complied with paragraphs (1)(a), (b) and (c) in relation to a proposal to give the employee another direction under that section; and

(b) in the course of consulting the employee (or a representative of the employee) about the proposal, the employee (or the representative of the employee) expressed views to the employer; and

(c) the employer considered those views in deciding to give the relevant direction.

(4) An employer must keep a written record of a consultation under paragraph (1)(c):

(a) with an employee of the employer; or

(b) with a representative of an employee of the employer.

789GN Form of direction

(1) A jobkeeper enabling direction must be in writing.

(2) The regulations may require that a jobkeeper enabling direction must be in a prescribed form.

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789GP Duration

(1) A jobkeeper enabling direction given by an employer to an employee of the employer under a particular section of this Part continues in effect until:
  (a) it is withdrawn or revoked by the employer; or
  (b) it is replaced by a new jobkeeper enabling direction given by the employer to the employee under that section.

(2) Subsection (1) has effect subject to:
  (a) subsection (3); and
  (b) an order made by the FWC under Division 10.

(3) A jobkeeper enabling direction ceases to have effect at the start of 28 September 2020.

789GQ Compliance

If a jobkeeper enabling direction given by an employer applies to an employee of the employer, the employee must comply with the direction.

Division 7—Service

789GR Service

(1) For the purposes of this Act, if an employee is subject to a jobkeeper enabling direction during a period, that period counts as service.

(2) Subsection (1) has effect in addition to section 22.

Division 8—Accrual rules

789GS Accrual rules

(1) If a jobkeeper enabling direction under section 789GDC (jobkeeper enabling stand down) applies to an employee, the employee accrues leave entitlements as if the direction had not been given.

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(2) If a jobkeeper enabling direction under section 789GDC (jobkeeper enabling stand down) applies to an employee, the following are to be calculated as if the direction had not been given:
  (a) redundancy pay;
  (b) payment in lieu of notice of termination.

(3) If an employee takes paid annual leave in accordance with an agreement under subsection 789GJ(2), the employee accrues leave entitlements as if the agreement had not been made.

(4) If an employee takes paid annual leave in accordance with an agreement under subsection 789GJ(2), the following are to be calculated as if the agreement had not been made:
  (a) redundancy pay;
  (b) payment in lieu of notice of termination.

Division 9—Employee requests for secondary employment, training etc.

789GU Employee requests for secondary employment, training etc.

If:
  (a) a jobkeeper enabling direction given by an employer under section 789GDC (jobkeeper enabling stand down) applies to an employee of the employer; and
  (b) the employee gives the employer any of the following requests:
    (i) a request to engage in reasonable secondary employment;
    (ii) a request for training;
    (iii) a request for professional development;

the employer:
  (c) must consider the request; and
  (d) must not unreasonably refuse the request.

Note: This section is a civil remedy provision (see Part 4-1).

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Division 10—Dealing with disputes

789GV FWC may deal with a dispute about the operation of this Part

(1) The FWC may deal with a dispute about the operation of this Part.

(2) The FWC may deal with a dispute by arbitration.

Note: The FWC may also deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

(3) The FWC may deal with a dispute only on application by any of the following:
(a) an employee;
(b) an employer;
(c) an employee organisation;
(d) an employer organisation.

(4) The FWC may make any of the following orders:
(a) an order that the FWC considers desirable to give effect to a jobkeeper enabling direction;
(b) an order setting aside a jobkeeper enabling direction;
(c) an order:
(i) setting aside a jobkeeper enabling direction; and
(ii) substituting a different jobkeeper enabling direction;
(d) any other order that the FWC considers appropriate.

(5) The FWC must not make an order under paragraph (4)(a) or (c) on or after 28 September 2020.

(6) An order made by the FWC under paragraph (4)(a) ceases to have effect at the start of 28 September 2020.

(7) In dealing with the dispute, the FWC must take into account fairness between the parties concerned.

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789GW Contravening an FWC order dealing with a dispute about the operation of this Part

A person must not contravene a term of an FWC order dealing with a dispute about the operation of this Part.

Note: This section is a civil remedy provision (see Part 4-1).

Division 11—Exclusions

789GX Exclusions

The Minister may, by legislative instrument, exclude one or more specified employers from the operation of any or all of the following provisions:

(a) section 789GDC;
(b) section 789GE;
(c) section 789GF;
(d) section 789GG;
(e) section 789GJ.

Division 12—Protections

789GXA Misuse of jobkeeper enabling direction

An employer must not purport to give a jobkeeper enabling direction if:

(a) the direction is not authorised by this Part; and
(b) the employer knows that the direction is not authorised by this Part.

Note: This section is a civil remedy provision (see Part 4-1).

789GY Protection of workplace rights

For the avoidance of doubt, each of the following is a workplace right within the meaning of Part 3-1:

(a) the benefit that an employee of an employer has or derives because of an obligation of the employer under section 789GD to satisfy the wage condition;

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(b) agreeing, or not agreeing, to perform duties:
(i) on different days; or
(ii) at different times;
in accordance with subsection 789GG(2);
(c) agreeing, or not agreeing, to take paid annual leave in compliance with a request under subsection 789GJ(1);
(d) agreeing, or not agreeing, to take paid annual leave in accordance with subsection 789GJ(2);
(e) making a request under section 789GU (secondary employment, training etc.).

789GZ Relationship with other laws etc.

(1) This Part will at all times operate subject to the following:
(a) Division 2 of Part 2-9 (payment of wages etc.);
(b) Part 3-1 (general protections);
(c) Part 3-2 (unfair dismissal);
(d) section 772 (employment not to be terminated on certain grounds);
(e) an anti-discrimination law;
(f) a law of the Commonwealth, a State or a Territory, so far as the law deals with health and safety obligations of employers or employees;
(g) a law of the Commonwealth, a State or a Territory, so far as the law deals with workers' compensation.

(2) This Part has effect subject to a person's right to be represented, or collectively represented, by an employee organisation or employer organisation.

789GZA Redundancy

The giving of a jobkeeper enabling direction does not amount to a redundancy.

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Division 13—Review of this Part

789GZB Review of this Part

(1) The Minister must cause an independent review to be conducted of the operation of this Part.

(2) The review must start on or before:
  (a) 28 July 2020; or
  (b) if a later day is specified in the regulations—that later day.

(3) The persons who conduct the review must:
  (a) complete the review; and
  (b) give the Minister a written report of the review;
  on or before:
  (c) 8 September 2020; or
  (d) if a later day is specified in the regulations—that later day.

(4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 5 sitting days of that House after the report is given to the Minister.

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Part 2—Repeal of the core provisions of Part 6-4C of the Fair Work Act 2009 etc.

Fair Work Act 2009

6 Subsection 539(2) (table items 39, 40 and 41)

Repeal the items (including the heading).

7 Sections 789GA and 789GB

Repeal the sections.

8 Section 789GC (definition of *jobkeeper enabling direction*)

Before "section", insert "repealed".

9 Divisions 2, 3, 4, 5A, 6, 9 and 11 of Part 6-4C

Repeal the Divisions.

10 Transitional—jobkeeper enabling directions etc.

(1) To avoid doubt, the repeal of Divisions 2, 3, 4, 5A, 6, 9 and 11 of Part 6-4C of the *Fair Work Act 2009* by this Part has the effect that:

(a) no further jobkeeper enabling directions can be given; and

(b) any jobkeeper enabling directions that were in effect at the time of the repeal cease to have effect from the time of the repeal; and

(c) an agreement under subsection 789GG(2) or 789GJD(2) of that Act ceases to have effect from the time of the repeal.

(2) To avoid doubt, if an employee:

(a) was subject to a jobkeeper enabling direction under Part 6-4C of the *Fair Work Act 2009*; or

(b) was a party to an agreement under repealed subsection 789GG(2) or 789GJD(2) of the *Fair Work Act 2009*;

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the giving of the direction, or the making of the agreement (as the case requires) does not, after the time of the repeal mentioned in subitem (1), affect any of the following matters:

(c) the day or days on which the employee is to work;
(d) the period for which the employee is to work on a particular day or days;
(e) the employee's hours of work;
(f) the employee's duties;
(g) the place at which the employee is to work;
(h) the times when the employee is to work.

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Schedule 2—Payment Acts consequential amendments

Part 1—Coronavirus economic response payments

Income Tax Assessment Act 1936

1 After paragraph 202(s)

Insert:

(sa) to facilitate the administration of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

2 Application

The amendment of section 202 of the *Income Tax Assessment Act 1936* made by this Part applies, from the commencement of this Part, in relation to information obtained or created before, on or after that commencement.

Income Tax Assessment Act 1997

3 Section 11-15 (after table item headed "copyright collecting societies")

Insert:

Coronavirus economic response payment	
certain payments in accordance with the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*	53-25

4 Section 11-55 (after table item headed "cash flow boost")

Insert:

Coronavirus economic response payment	
certain payments in accordance with the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*	59-95

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5 At the end of Division 53

Add:

53-25 Coronavirus economic response payment

A payment is exempt from income tax if:

(a) the payment is paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(b) those rules state that the payment is exempt from income tax.

6 At the end of Division 59

Add:

59-95 Coronavirus economic response payment

A payment is not assessable income and is not *exempt income if:

(a) the payment is paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(b) those rules state that the payment is not assessable income and is not exempt income.

Social Security Act 1991

7 At the end of subsection 8(8)

Add:

; (zu) a payment:

(i) paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(ii) stated, in those rules, not to be income in relation to the person for the purposes of this Act.

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Taxation Administration Act 1953

8 Subsection 8AAB(4) (after table item 19A)

Insert:

19B	10	*Coronavirus Economic Response Package (Payments and Benefits) Act 2020*	wrong payment or overpayment of a Coronavirus economic response payment

9 Section 8AAZA (paragraph (a) of the definition of *credit*)

Repeal the paragraph, substitute:

(a) an amount that the Commissioner must pay to a taxpayer under a taxation law, whether or not described as a credit, other than the following amounts:

(i) an amount paid under the *Product Grants and Benefits Administration Act 2000*;

(ii) an amount paid under Division 18 (refunds) of the *A New Tax System (Luxury Car Tax) Act 1999*;

(iii) an amount paid under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* to an entity, unless a determination of the Commissioner under section 8AAZAA specifies that the amount is a credit for the purposes of this subparagraph; and

10 After section 8AAZA

Insert:

8AAZAA Amounts relating to Coronavirus economic response payments

(1) The Commissioner may make a written determination that specifies that an amount paid under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* to an entity is a credit for the purposes of subparagraph (a)(iii) of the definition of ***credit*** in section 8AAZA.

(2) A determination under subsection (1) is not a legislative instrument.

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11 Paragraphs 8WA(1AA)(b) and 8WB(1A)(a) and (b)

After "(s)", insert ", (sa)".

12 Application

The amendment of sections 8WA and 8WB of the *Taxation Administration Act 1953* made by this Part apply, from the commencement of this Part, in relation to information obtained or created before, on or after that commencement.

13 Subsection 250-10(2) in Schedule 1 (at the end of the table)

Add:

143	overpayments of Coronavirus economic response payments	subsection 9(3)	*Coronavirus Economic Response Package (Payments and Benefits) Act 2020*

Veterans' Entitlements Act 1986

14 At the end of subsection 5H(8)

Add:

; (zzd) a payment:

(i) paid in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(ii) stated, in those rules, not to be income in relation to the person for the purposes of this Act.

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Part 2—Paid Parental Leave

Paid Parental Leave Act 2010

15 Section 6

Insert:

jobkeeper payment: see subsection 34(4).

jobkeeper payment period: see subsection 34(3).

16 Section 30 (paragraph beginning "Division 3")

After "subsequent child.", insert "Any jobkeeper payment period for the person may also be taken into account.".

17 Section 32 (note 3)

After "subsection 34(1),", insert "and does not also perform qualifying work on that day because of paragraph (e) of that definition,".

18 At the end of section 32

Add:

Note 4: If the person performs qualifying work on a day because of paragraph (e) of the definition of ***qualifying work*** in subsection 34(1), the number of hours of qualifying work the person is taken to have performed on that day is determined in accordance with the PPL rules (see section 35B).

19 At the end of subsection 34(1)

Add:

; (e) the day is in a jobkeeper payment period for the person.

20 At the end of section 34

Add:

(3) A ***jobkeeper payment period*** for a person is a period for which:

(a) an employer of the person is entitled to one or more jobkeeper payments for the person; or

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(b) the person themselves is entitled to one or more jobkeeper payments.

(4) A ***jobkeeper payment*** is a payment that:

(a) is payable by the Commonwealth in accordance with rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*; and

(b) is known as jobkeeper payment.

21 After section 35A

Insert:

35B Hours of qualifying work on a day in a jobkeeper payment period

(1) For the purposes of step 5 of the method statement in section 32, if a person performs qualifying work on a day because the day is in a jobkeeper payment period for the person, the person is taken to have performed on that day the number of hours of work determined in accordance with the PPL rules.

(2) Subsection (1) has effect:

(a) even if the person also performs qualifying work on that day because of paragraph 34(1)(a), (b), (c) or (d); and

(b) despite section 35A.

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Part 3—Cash flow boosts

Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020

22 After section 2

Insert:

2A Application to external Territories

This Act extends to every external Territory referred to in the definition of ***Australia*** (within the meaning of section 960-505 of the *Income Tax Assessment Act 1997*).

23 Subparagraph 5(1)(f)(ii)

After "2020", insert "(or a later time allowed by the Commissioner)".

24 At the end of subsection 5(7)

Add:

; and (c) for an entity carrying on business solely in the external Territories—assume that the external Territories are part of the indirect tax zone (within the meaning of that Act).

25 Subparagraph 6(1)(d)(ii)

After "2020", insert "(or a later time allowed by the Commissioner)".

26 At the end of subsection 6(7)

Add:

; and (c) for an entity carrying on business solely in the external Territories—assume that the external Territories are part of the indirect tax zone (within the meaning of that Act).

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Part 4—Modifications of provisions relating to the social security law

Coronavirus Economic Response Package Omnibus Act 2020

27 Subitem 40A(4) of Schedule 11

Insert:

Minister means the Minister administering the *Social Security (International Agreements) Act 1999*.

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Schedule 3—Guarantee of lending to small and medium enterprises

Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020

1 After section 4

Insert:

4A Non-ADI lender

For the purposes of paragraph (b) of the definition of ***financial institution*** in section 4, disregard paragraphs 7(2)(i), (ia) and (j) of the *Financial Sector (Collection of Data) Act 2001*.

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Schedule 4—Amendments to support the child care sector

Part 1—Review of certain CCS decisions

A New Tax System (Family Assistance) (Administration) Act 1999

1 At the end of section 105E

Add:

Member of a couple for part of a year

(4) Subsections (5) and (6) apply to the review, under this section, by the Secretary of a child care decision that relates to an individual who is a member of a couple on one or more, but not all, of the first Mondays in CCS fortnights that start in an income year.

(5) The Secretary must apply Part 1 of Schedule 2 to the Family Assistance Act in relation to each CCS fortnight that starts in the income year as if paragraph 3AA(2)(b) of Schedule 3 to the Family Assistance Act had not been enacted.

(6) If the individual is a member of a couple on the first Monday in a CCS fortnight that starts in the income year, the Secretary must apply Part 1 of Schedule 2 to the Family Assistance Act in relation to the fortnight as if:

(a) the individual's adjusted taxable income for the year included the adjusted taxable income for the year for the other member of the couple; and

(b) paragraph 1(3)(b) of Schedule 2 to the Family Assistance Act were replaced with the following paragraph:

"(b) if the individual is a member of a couple on the first Monday in one or more CCS fortnights that start in the income year—CCS the other member of the couple is entitled to be paid for sessions of care provided to the same child in those fortnights.".

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(7) To avoid doubt, subsections (5) and (6) have effect despite Part 1 of Schedule 2 to the Family Assistance Act.

2 Application

(1) The amendment made by item 1 applies in relation to reviews of child care decisions in relation to sessions of care provided in CCS fortnights starting in the 2019-2020 income year, and later income years.

(2) The amendment made by item 1 has no effect to the extent (if any) to which it would:

(a) result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph); or

(b) impose taxation (within the meaning of section 55 of the Constitution).

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Part 2—Appropriation

A New Tax System (Family Assistance) (Administration) Act 1999

3 Subsections 233(2) and (3)

Repeal the subsections, substitute:

(2) However, subsection (1) does not apply to a payment of an amount under an agreement entered into under section 85GA (funding agreements) of the Family Assistance Act unless the payment is for a purpose prescribed by the Minister's rules.

Note: The purposes that may be prescribed by the Minister's rules are limited by subsection 85GA(1) of the Family Assistance Act.

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Part 3—Limits on grant payments made out of standing appropriation

A New Tax System (Family Assistance) (Administration) Act 1999

4 At the end of section 233

Add:

(3) The Minister's rules must prescribe the total amount that may be paid in respect of a financial year under subsection (1) because of subsection (2).

(4) Minister's rules for the purposes of subsection (3) for a financial year:

(a) must be made before the start of the financial year; and

(b) may be varied at any time before the financial year ends.

(5) The Minister's rules may prescribe the total amount that may be paid in respect of a financial year under subsection (1) because of subsection (2) for a purpose prescribed by the Minister's rules made for the purposes of subsection (2).

5 Transitional—Minister's rules for the financial year beginning on 1 July 2020

Despite paragraph 233(4)(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as inserted by this Part, Minister's rules for the purposes of subsection 233(3) of that Act for the financial year beginning on 1 July 2020 may be made during that financial year.

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Schedule 5—Modification of information and other requirements

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Schedule 6—Additional support for veterans etc.

1 Definitions

In this Schedule:

Social Services Minister means the Minister administering the *Social Security (International Agreements) Act 1999*.

veterans' law means the following:

(a) the *Veterans' Entitlements Act 1986*;

(b) the *Military Rehabilitation and Compensation Act 2004*;

(c) the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

(d) the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*;

(e) the *Treatment Benefits (Special Access) Act 2019*.

Veterans' Minister means the Minister administering the *Veterans' Entitlements Act 1986*.

2 COVID-19 supplement

(1) If:

(a) a person is receiving a payment of the following kind under the veterans' law:

(i) a pension;

(ii) income support supplement;

(iii) a payment;

(iv) compensation;

(v) an allowance;

(vi) any other pecuniary benefit; and

(b) the payment is determined in an instrument under subitem (2);

then:

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(c) the rate of the person's payment is increased by the amount of the COVID-19 supplement for the period determined in that instrument in relation to that payment; and

(d) the amount of the COVID-19 supplement is the fortnightly amount determined in that instrument in relation to that payment.

(2) The Veterans' Minister may, by legislative instrument, make a determination for the purposes of paragraphs (1)(b), (c) and (d). The Veterans' Minister must be satisfied that the determination is in response to circumstances relating to the coronavirus known as COVID-19.

(3) The Veterans' Minister must consult the Social Services Minister before making a determination under subitem (2).

(4) This item ceases to apply at the end of the period covered by subsection 646(2) of the *Social Security Act 1991*.

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Schedule 7—Tax secrecy

Part 1—Tax secrecy exception

Taxation Administration Act 1953

1 Subsection 355-65(8) in Schedule 1 (at the end of the table)

Add:

11	the Secretary of the Department	(a) is of information that does not include the name, contact details or *ABN of any entity; and (b) is for the purpose of policy development or analysis in relation to the coronavirus known as COVID-19 (including policy development or analysis in relation to any programs introduced in response to the economic impacts of the coronavirus).

2 Application

The amendment made by item 1 of this Schedule applies in relation to records and disclosures of information made at or after the commencement of that item, whether the information was obtained before, at or after the commencement of that item.

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Part 2—Repeal of tax secrecy exception

Taxation Administration Act 1953

3 Subsection 355-65(8) in Schedule 1 (table item 11)

Repeal the item.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020	38, 2020	9 Apr 2020	Sch 1 (items 6–10): 29 Mar 2021 (s 2(1) item 3) Sch 2 (item 27): 25 Mar 2020 (s 2(1) item 5) Sch 4 (items 1, 2): 20 Apr 2020 (s 2(1) item 8) Sch 4 (items 4, 5): 1 July 2020 (s 2(1) item 10) Sch 7 (item 3): 1 July 2023 (s 2(1) item 14) Remainder: 9 Apr 2020 (s 2(1) items 1, 2, 4, 6, 7, 9, 11–13)	
Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020	81, 2020	3 Sept 2020	Sch 1 (items 2, 3): 3 Sept 2020 (s 2(1) item 2) Sch 2 (item 1): 27 Sept 2020 (s 2(1) item 3) Sch 2 (items 47–51): 29 Mar 2021 (s 2(1) item 6)	Sch 1 (item 3)

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Endnote 4—Amendment history

Provision affected	How affected
s 2	ed C1
	am No 81, 2020
Schedule 1	
Part 2	
item 9	am No 81, 2020
item 10	am No 81, 2020
Schedule 2	
Part 4	
item 28	am No 81, 2020
	rep end of 28 Mar 2021 (Sch 2 subitem 28(5))
Schedule 5	
item 1	rep end of 31 Dec 2020 (Sch 5 subitem 1(8))
Schedule 6	
item 3	rep end of 31 Dec 2020 (Sch 6 subitem 3(6))

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