

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Coronavirus Economic Response Package (Payments and Benefits) Act 2020

Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020

Subsection 20(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act) provides that the Treasurer may make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The object of the Act is to provide financial support to entities to assist with the impact of the Coronavirus known as COVID-19. In particular, the Act establishes a framework for the Treasurer to make rules about one or more kinds of payments to an entity in respect of a prescribed period.

On 30 March 2020, the Australian Government announced a wage subsidy called the JobKeeper payment for entities that have been significantly affected by the economic impacts of the Coronavirus. In support of the Act, the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) establish the JobKeeper payment program and specify details about the program, including:

- the start and end date of the program;
- when an employer or business is entitled to a payment;
- the amount and timing of a payment; and
- other matters relevant to the administration of the payment.

The purpose of the *Coronavirus Economic Response Package Amendment (Payments and Benefits) Amendment Rules (No. 1) 2020* (the Amending Rules No. 1) is to provide a mechanism to allow authorised deposit-taking institutions (ADIs) to confirm that notices have been provided by the Commissioner of Taxation (Commissioner) to entities concerning their election to participate in the JobKeeper payment program.

The amendments assist ADIs in their support of employers who are entitled to receive the JobKeeper payment, which ultimately benefits their employees. Employers are required to make payments to employees in advance of receiving support under the JobKeeper payment program. Accordingly, ADIs will in some cases be providing bridging finance to businesses to assist them to pay amounts to their employees before JobKeeper payments are made by the Commissioner.

The Amending Rules No. 1 create a temporary confirmation process so that ADIs are able to seek confirmation of the information about the entity's election to participate in the JobKeeper payment program. The ADIs can request the Commissioner to

provide confirmation that the information has been exchanged between the Commissioner and the entity.

Confirmation that information has been exchanged between the Commissioner and the entity will only be provided to ADIs by the Commissioner on or before 22 May 2020.

Where an ADI provides a notice to the Commissioner in the approved form, the Commissioner is required to advise the ADI if the specified information concerning the JobKeeper payment is information that has been exchanged between the Commissioner and the entity. This ensures that an ADI can verify if all of the information specified in the approved form as having been exchanged with the Commissioner, is information either provided by an entity to the Commissioner or provided by the Commissioner to the entity.

Details of the Amending Rules No. 1 are set out in Attachment A.

Prior to making this instrument, consultation was conducted with a number of stakeholders, including the Australian Taxation Office.

An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

The Amending Rules No. 1 are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Rules No. 1 commenced immediately after the time they were registered on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights is at Attachment B.

ATTACHMENT A

Details of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020*

Part 1 – Preliminary

Section 1 – Name of the Instrument

Section 1 provides that the title of the Instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020* (Amending Rules No. 1).

Section 2 – Commencement

Section 2 provides that the Amending Rules No. 1 commence immediately after the time it is registered.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 20(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act).

Section 4 – Amendments

Section 4 has the effect that the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Rules) as specified in Schedule 1 to the Amending Rules No. 1 are amended as set out in the applicable items in the Schedule.

JobKeeper Payment amendments – temporary process for the confirmation of information

The amendments create a temporary confirmation process for authorised deposit-taking institutions (ADIs) to confirm with the Commissioner of Taxation (Commissioner) that information has been exchanged between the Commissioner and an employer concerning their election to participate in the JobKeeper payment program.

Under item 1 of Schedule 1 to the Amending Rules No. 1, section 18A provides that ADIs may notify the Commissioner of information relating to an entity's participation in the JobKeeper payment program in the approved form. This form is a form approved by the Commissioner. The information sought to be confirmed by the ADI relates to an entity's election to participate in the JobKeeper payment program and must be information provided by that entity to the ADI.

Once an ADI has made such a notification, the Commissioner must, within a reasonable time, provide notice to the ADI to confirm whether or not the information identified in the approved form as having been exchanged between the entity and the Commissioner has in fact been exchanged. This ensures that the Commissioner can use the approved form to limit the extent of information that the Commissioner is required to confirm to only the notice that the Commissioner provides to businesses that have elected to participate in the JobKeeper program.

The information provided by the Commissioner under this confirmation process may be considered protected information as it identifies particular taxpayers. However, under the JobKeeper payment program, it is information the Commissioner is required to disclose. Accordingly, subsection 355-50(1) of Schedule 1 to the *Taxation Administration Act 1953* authorises this disclosure as the disclosure is required in the performance of the duties of the Commissioner.

These provisions facilitate the efficient delivery of the JobKeeper payments to employees in circumstances where eligible employers may require financing from ADIs to effectively participate in the JobKeeper payment program. In these cases, ADIs will be able to confirm information provided by the entity to the ADI about the information exchanged between the entity and the Commissioner when the entity elected to participate in the JobKeeper payment program. The ADI will be able to confirm this information with the Commissioner, who has general administration over the payments made under the framework in the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*.

The amendments allow the Commissioner to confirm information on or before 22 May 2020, regarding information exchanged between the entity and the Commissioner about their election to participate in the JobKeeper payment program. This amendment provides only a temporary confirmation process to allow ADIs to assist businesses with financing in order to give effect to the JobKeeper payment program.

The provision of a notice and the content of the notice provided by the Commissioner about whether information has been exchanged are not reviewable decisions. Therefore, there is no merits review available under this confirmation process. Given that this amendment applies only to 22 May 2020, and only confirms if information has been exchanged, a merits review process would not generally be of any practical benefit. The amendments allow the Commissioner to confirm information when requested, in the course of the Commissioner's duties in the general administration of the JobKeeper payment program.

Authority to make the Amending Rules No. 1

The Amending Rules No. 1 are made under subsection 20(1) of the Act. Under paragraph 7(2)(h) of the Act, the Rules may make provisions in relation to providing information or notices.

Statement of Compatibility with Human Rights

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

Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020

The *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020* (Amending Rules No. 1) are 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 Rules

The JobKeeper payment is a subsidy to businesses that is intended to keep more Australian workers in jobs through the course of the Coronavirus outbreak. The JobKeeper payment is aimed at maintaining the connection between employers and employees where the business goes into hibernation or closes down for six months. As the economy recovers from the challenges posed by the Coronavirus, it is intended that the connection maintained between employer and employee will enable business to recommence their operations quickly and productively.

The Rules establish the operation of the JobKeeper payment, including by specifying the eligibility requirements for employers and employees, the amount payable and the timing of payments, and other matters relevant to the administration of the payment.

The purpose of the Amending Rules No. 1 is to provide a mechanism to allow authorised deposit-taking institutions (ADIs) to confirm that notices have been provided by the Commissioner of Taxation (Commissioner) to entities concerning their election to participate in the JobKeeper payment program.

The amendments assist ADIs in their support of employers who are entitled to receive the JobKeeper payment, which ultimately benefits their employees. Employers are required to make payments to employees in advance of receiving support under the JobKeeper payment program. Accordingly, ADIs will in many cases be providing bridging finance to businesses to assist them to pay amounts to their employees before JobKeeper payments are made by the Commissioner.

The Amending Rules create a temporary confirmation process so that ADIs are able to seek confirmation of the information about the entity's election to participate in the JobKeeper payment program. The ADIs can request the Commissioner to provide confirmation that the information has been exchanged between the Commissioner and the entity.

Confirmation that information has been exchanged between the Commissioner and the entity will only be provided to ADIs by the Commissioner on or before 22 May 2020.

Where an ADI provides a notice to the Commissioner in the approved form, the Commissioner is required to advise the ADI if the specified information concerning the JobKeeper payment is information that has been exchanged between the Commissioner and the entity. This ensures that an ADI can verify if all of the information specified in the approved form as having been exchanged with the Commissioner, is information either provided by an entity to the Commissioner or provided by the Commissioner to the entity.

Human rights implications

The Amending Rules No. 1 may engage the following human rights or freedoms:

Privacy

Article 17 of the *International Covenant on Civil and Political Rights* (the ICCPR) provides:

- No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Participation in the JobKeeper scheme requires the provision of information to the Commissioner that may include personal information, including names, employment status, Australian residency status, and information relating to the turnover of a business. These amendments do not allow the Commissioner to disclose the details of any information provided by the entity to the ADI but rather only allow the Commissioner to confirm that the information has been exchanged with the Commissioner.

To any extent to which the provision of this confirmation of exchange of information constitutes a limitation of a person's right to be protected from interference with his or her privacy, the limitation is justified because the provision of information is:

- in pursuit of the legitimate objective identified – which is to respond to the economic downturn caused by the Coronavirus by providing a wage subsidy to affected businesses; and
- rationally connected and proportionate to the objective sought as the information is required to facilitate the ability of employer to participate in the JobKeeper scheme.

For these reasons, the Amending Rules No. 1 do not unnecessarily restrict a person's right to privacy. Many affected entities will not be individuals, but instead will be companies and other entity types.

Conclusion

The Amending Rules No. 1 are compatible with human rights. Importantly, the Amending Rules No. 1 positively engage the right to work as the JobKeeper scheme is aimed at assisting employers and keeping people in jobs.