

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. 6) 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 scheme and specify details about the scheme, including:

- the start and end date of the scheme;
- when an employer or entity 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 (Payments and Benefits) Amendment Rules (No. 6) 2020* (the Amending Rules No. 6) is to provide a mechanism to allow an Australian government agency or local governing body to confirm that notices have been provided by the Commissioner of Taxation (Commissioner) to entities concerning their election to participate in the JobKeeper scheme.

This is required because a number of states have introduced assistance programs for entities affected by the impact of COVID-19 health measures for which eligibility is conditional on the entities participating in the JobKeeper scheme. The confirmation process facilitated by the Amending Rules No. 6 enables Commonwealth, State and Territory governments and local governments to target additional support and assistance for affected entities that are receiving assistance through the JobKeeper scheme. Rather than relying on the operation of the Amending Rules No. 6, it is expected that Commonwealth bodies will use the existing framework in the taxation law instead to seek information if required to determine eligibility for any

Commonwealth assistance programs that are subject to participation in the JobKeeper scheme.

The Amending Rules No. 6 create a confirmation process so that Australian government agencies and local governing bodies are able to seek confirmation of the information about an entity's election to participate in the JobKeeper scheme. Australian government agencies and local governing bodies can request the Commissioner to provide confirmation that the information has been exchanged between the Commissioner and the entity concerning the JobKeeper scheme.

Where an Australian government agency or local governing body provides a notice to the Commissioner in the approved form, the Commissioner is required to advise the agency or body if the specified information concerning the JobKeeper payment is information that has been exchanged between the Commissioner and the entity concerning the JobKeeper scheme. This ensures that an Australian government agency or local governing body 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 concerning the JobKeeper scheme.

Details of the Amending Rules No. 6 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. 6 are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Rules No. 6 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. 6) 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. 6) 2020* (Amending Rules No. 6).

Section 2 – Commencement

Section 2 provides that the Amending Rules No. 6 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. 6 are amended as set out in the applicable items in the Schedule.

JobKeeper scheme amendments – the confirmation of information

The amendments create a confirmation process for Australian government agencies and local governing bodies to confirm with the Commissioner of Taxation (Commissioner) that information has been exchanged between the Commissioner and an entity concerning their election to participate in the JobKeeper scheme.

Under item 1 of Schedule 1 to the Amending Rules No. 6, section 18B provides that Australian government agencies and local governing bodies may notify the Commissioner of information relating to an entity's participation in the JobKeeper scheme in the approved form. This is a form approved by the Commissioner.

The information sought to be confirmed by Australian government agencies and local governing bodies must relate to an entity's election to participate in the JobKeeper scheme and must be information provided by that entity to the agency or body. The approved form will limit the extent of information that the Commissioner is required to confirm about an entity's election to participate in the JobKeeper scheme and ensure that information is sought to determine eligibility for state, territory or local government support and assistance programs.

Once an Australian government agency or local governing body has made such a notification, the Commissioner must, within a reasonable time, provide notice to the agency or body 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.

The information provided by the Commissioner under this confirmation process may be considered protected information as it identifies particular taxpayers. However, under the JobKeeper scheme, 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 taxation officers.

These provisions facilitate the efficient delivery of assistance to entities that are impacted by COVID-19 health measures and are seeking to qualify for support programs provided by the states, territories or local governments that are conditional on eligibility for the JobKeeper scheme. In these cases, Australian government agencies and local governing bodies will be able to confirm information provided by the entity to the agency or body about the information exchanged between the entity and the Commissioner when the entity elected to participate in the JobKeeper scheme. The Australian government agency or local governing body 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 details regarding information exchanged between the entity and the Commissioner about their election to participate in the JobKeeper scheme.

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 only confirms if information has been exchanged, a merits review process would generally be of limited 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 scheme.

Authority to make the Amending Rules No. 6

The Amending Rules No. 6 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. 6) 2020

The *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 6) 2020* (Amending Rules No. 6) 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 wage subsidy paid to entities 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 has been affected by the impact of the Coronavirus. As the economy recovers from the challenges posed by the Coronavirus, it is intended that the connection maintained between employer and employee will enable the entity to recommence or scale up 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. 6 is to provide a mechanism to allow Commonwealth, state, territory and local governments to confirm that notices have been provided by the Commissioner of Taxation (Commissioner) to entities concerning their election to participate in the JobKeeper scheme.

The amendments assist Commonwealth, state, territory and local governments to provide additional support to entities that are affected by the impact of the Coronavirus health measures where eligibility is subject to participation in the JobKeeper scheme.

The Amending Rules create a confirmation process so that Australian government agencies and local governing bodies are able to seek confirmation of the information about an entity's election to participate in the JobKeeper scheme. The Australian government agency or local governing body can request the Commissioner to provide confirmation that the information has been exchanged between the Commissioner and the entity.

Where an Australian government agency or local governing body provides a notice to the Commissioner in the approved form, the Commissioner is required to advise the Australian government agency or local governing body if the specified information concerning the JobKeeper scheme is information that has been exchanged between the Commissioner and the entity. This ensures that an Australian government agency

or local governing body can verify if all 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. 6 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 an entity. These amendments do not allow the Commissioner to disclose the details of any information provided by the entity to the Australian government agency or local governing body 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 their 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 assistance to affected entities; and
- rationally connected and proportionate to the objective sought as the information is required to facilitate the ability of entities to receive assistance from the Australian government agencies or local governing bodies.

For these reasons, the Amending Rules No. 6 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. 6 are compatible with human rights.