

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. 4) 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 scheme and specify details about the program, including:

- the start and end date of the scheme;
- 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 (Payments and Benefits) Amendment Rules (No. 4) 2020* (the Amending Rules No. 4) is to extend the period of operation of the mechanism that allows 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 scheme.

The amendments made by the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020* 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 scheme. 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 *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020* provided that 22 May 2020 was the last day on which the Commissioner could confirm with ADIs whether relevant entities had elected to participate in the JobKeeper payment scheme. The Amending Rules No. 4 remove this end date of 22 May 2020 as the last day the Commissioner may provide a notice under the confirmation process to ADIs about an entity's election to participate in the JobKeeper scheme. This ensures that notices of confirmation can continue to be provided throughout the operation of the JobKeeper scheme. This is necessary because, although there will be fewer requests after this date, ADIs will still require confirmation from the Commissioner for entities that apply for bridging finance from them. These entities may not have been eligible to participate in the JobKeeper scheme when it first became available, but elected to participate at a later time once they were eligible.

The Amending Rules No. 4 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.

Details of the Amending Rules No. 4 are set out in [Attachment A](#).

Prior to making this instrument, consultation was conducted with a number of stakeholders, including the Australian Taxation Office and the Attorney-General's Department.

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

The Amending Rules No. 4 are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Rules No. 4 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](#).

Details of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 4) 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. 4) 2020* (Amending Rules No. 4).

Section 2 – Commencement

Section 2 provides that the Amending Rules No. 4 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 – Schedules

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. 4 are amended as set out in the applicable items in the Schedule.

JobKeeper Payment amendments – extend arrangements for the confirmation of information

Where an authorised deposit-taking institution (ADI) provides a notice to the Commissioner of Taxation (Commissioner) in the approved form, the Commissioner is required to advise the ADI if the specified information concerning an entity's election to participate in the JobKeeper scheme 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.

The amendments extend the period of operation of this process for ADIs to confirm with the Commissioner that information has been exchanged between the Commissioner and an employer concerning their election to participate in the JobKeeper scheme.

Under item 1 of Schedule 1 to the Amending Rules No. 4, subsection 18A(5) of the Rules is repealed. This ensure that ADIs may continue to seek confirmation from the Commissioner of information relating to an entity's election to participate in the JobKeeper scheme during the period of operation of the program. This allows the continuation of the confirmation process for ADIs regarding entities that did not elect to participate in the JobKeeper scheme when it first became available because they were ineligible at that time, but elected to participate at a later time once eligible.

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. 4) 2020

This Legislative Instrument is 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 Legislative Instrument

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 businesses go into hibernation or close down for some months. As the economy recovers from the challenges posed by the Coronavirus, it is intended that the connection maintained between employers and employees will enable businesses 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 *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 4) 2020* (the Amending Rules No. 4) is to extend the period of operation of the mechanism that allows 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 scheme.

The amendments made by the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 1) 2020* 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 scheme. 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.

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provided throughout the operation of the JobKeeper scheme. This is necessary because, although there will be fewer requests after this date, ADIs will still require confirmation from the Commissioner for entities that apply for bridging finance from them. These entities may not have been eligible to participate in the JobKeeper scheme when it first became available, but elected to participate at a later time once they were eligible.

Human rights implications

The Amending Rules No. 4 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 employers to participate in the JobKeeper scheme.

For these reasons, the Amending Rules No. 4 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

This Legislative Instrument is compatible with human rights.