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## Legislative Instrument

# Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020

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I, Christopher David Jordan, Commissioner of Taxation, make this determination under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* and subsection 9A(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.

**Christopher David Jordan AO**  
Commissioner of Taxation  
Dated: 16 September 2020

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### 1. Name of instrument

This determination is the *Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020*.

### 2. Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

### 3. Application

This instrument applies if the Commissioner is satisfied that the hours of the kind referred to in subsection 9A(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) for a class of individuals in the reference period are not readily ascertainable.

If the Commissioner is so satisfied, this instrument determines the specified circumstances in which the higher rate under section 13 of the Rules is taken to apply to individuals in that class.

### 4. Determination

This determination applies to the classes of individuals covered by section 6 of this instrument.

## 5. Definitions

Subject to any addition or change contained in another paragraph, an expression used in this instrument that is defined in section 4 of the Rules (including, for the avoidance of doubt, subsection 4(2) of the Rules) has the same meaning in this instrument as it has in the Rules.

## 6. Employees in respect of whom there are no records or incomplete records of hours including where remuneration is not tied to hourly or contracted rates

(1) Where an employer does not have any record, or has incomplete records, of the identified employee's total hours of work, paid leave and paid absence on public holidays in the individual's employment with that entity in the reference period, including where the amounts paid by the employer to an employee or class of employees are by way of salary, wages, commission, bonus or allowances that are not tied to an hourly rate or contracted rate in the reference period, the Commissioner is satisfied that those hours for that class of employees are not readily ascertainable.

(2) If subsection (1) applies and the individual employee within the class referred to in that subsection falls within one or more of the determined specified circumstances in section 7, then the higher rate under section 13 of the Rules will apply to that employee.

## 7. Determination of the specified circumstances

(1) In accordance with subsection 9A(4) of the Rules, the higher rate under section 13 of the Rules is taken to apply to the class of employees under subsection 6(1) in the following circumstances:

- (a) in the reference period, the sum of the amounts covered by subsection 10(2) of the Rules totalled \$1,500 or more in respect of an eligible employee (if all references to 'fortnight' in that subsection were instead to 'reference period');
- (b) under a written industrial award, enterprise agreement, individual contract or other similar instrument governing the employment relationship, an eligible employee was required to work 80 hours or more (including paid leave and paid absence on public holidays) in the reference period; or
- (c) although not readily ascertainable, it can be determined based on reasonable assumptions that an eligible employee's hours in the reference period was 80 hours or more (including paid leave and paid absence on public holidays).

(2) For the purposes of paragraph (1)(a), exclude any amount paid that:

- (a) exceeds the sum of the amounts covered by subsection 10(2) of the Rules which the employer was required to pay the eligible employee in the reference period in relation to the performance of work by the eligible employee (including taking leave); and
- (b) is reasonably attributable to amounts paid for the purpose of satisfying the wage condition in section 10 of the Rules in respect of the eligible employee for a jobkeeper fortnight.

**Note:** This is similar to the amount of salary and wages prescribed under section 12A of the *Superannuation Guarantee (Administration) Regulations 2018*.