



Legislative Instrument

Coronavirus Economic Response Package (Payments and Benefits) Alternative Reference Period Determination 2020

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 4A(2) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.

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

1. Name of instrument

This determination is the *Coronavirus Economic Response Package (Payments and Benefits) Alternative Reference Period 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 to provide an alternative reference period for a specified class of individuals in determining whether the higher or lower rate of a JobKeeper payment amount applies to an individual who is an eligible employee, an eligible business participant, or an eligible religious practitioner, if the Commissioner considers that the period set out in the table in subsection 4A(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) may not be a suitable reference period for the purpose of applying subsection 9A(1) and 12AA(1) or section 12BA of the Rules to individuals in the specified class.

4. Determination

This determination applies to individuals in the classes of individuals described in this determination, covered by sections 6 to 8 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.

For the purposes of this instrument, **reference time** means 1 March 2020 or 1 July 2020, as applicable.

Alternative reference periods

6. Eligible employees

- (1) For the purposes of applying subsection 9A(1) of the Rules, an alternative reference period under this section applies to an individual who is an eligible employee of an entity if:
 - (a) the 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:
 - (i) was less than 80 hours; and
 - (ii) when compared to earlier 28-day periods ending at the end of a pay cycle for the employee, was not representative of the employee's total number of those hours in a typical such 28-day period;
 - (b) the employee was not employed by that entity during all or part of the reference period;
 - (c) the start of the employee's employment with that entity was on or before the reference time but their first pay cycle ended on or after the reference time; or
 - (d) the employee, by operation of subsection 9(6) of the Rules, is treated as having also been employed by that entity at an earlier time but (disregarding subsection 9(6)) the employee was not employed by the entity for all or part of the reference period.

Note: Paragraph (a) would cover, but is not limited to, scenarios such as:

- (a) an eligible employee taking various types of unpaid leave during the reference period, for example, sick leave, parental leave and leave to be on emergency services leave duty during bushfires; or
 - (b) a scenario where the eligible employee's total number of hours of work, of paid leave and of paid absence on public holidays, in the reference period was affected due to the employee's employer entity conducting business or some business in a declared drought zone or declared natural disaster zone.
- (2) For the purposes of applying subsection 9A(1) of the Rules, the alternative reference period under this section that applies to an individual who is an eligible employee of an entity is:
 - (a) where paragraph (1)(a) applies, the 28-day period ending at the end of the most recent pay cycle for the employee for that employer before the reference time in which the employee's total number of hours of work, of paid leave and of paid absence on public holidays was representative of a typical such 28-day period; or
 - (b) where paragraphs (1)(b), (1)(c) or (1)(d) apply, the first 28-day period ending on or after the reference time that wholly occurs during consecutive pay cycles, or a pay cycle, of the employee for that employer (if such an employee was stood down in the first 28-day period, then use the first 28-day period starting on the first day of a pay cycle on or after the reference time in which they were not stood down).
 - (3) In subsection (1), **the reference period** means each of the 28-day periods specified in Item 1 of the table in subsection 4A(1) of the Rules.

7. Eligible business participants`

- (1) For the purposes of applying subsection 12AA(1) of the Rules, an alternative reference period under this section applies to an individual who is an eligible business participant for an entity if:
- (a) the total number of hours the eligible business participant was actively engaged in the business carried on by the entity in February 2020:
 - (i) was less than 80 hours; and
 - (ii) when compared to earlier 29-day periods (each wholly within a calendar month), was not representative of the total number of those hours in a typical such 29-day period;
 - (b) the individual first began to be an individual covered by column 2 of the applicable item in the table in subsection 12(2) of the Rules for the entity on or before 1 March 2020 but after 1 February 2020; or
 - (c) the entity conducted business or some of its business in a declared drought zone, or declared natural disaster zone, during February 2020.

Note: Paragraph (a) would cover, but is not limited to, scenarios such as the eligible business participant not being actively engaged in the business for all or part of February 2020 due to sickness, injury or leave.

- (2) For the purposes of applying subsection 12AA(1) of the Rules, the alternative reference period under this section that applies to an individual who is an eligible business participant for an entity is:
- (a) where paragraph (1)(a) applies, the most recent 29-day period, wholly within a calendar month, ending before 1 March 2020 in which any circumstances that cause the eligible business participant's total number of hours of active engagement not to be representative of the eligible business participant's total number of those hours in a typical such 29-day period did not exist;
 - (b) where paragraph (1)(b) applies, the 29-day period starting on the day the individual first began to be an individual covered by column 2 of the applicable item in the table in subsection 12(2) of the Rules for the entity; or
 - (c) where paragraph (1)(c) applies, the most recent 29-day period, wholly within a calendar month, ending before 1 March 2020 during which the entity did not conduct business or some of its business in a declared drought zone, or declared natural disaster zone.

8. Eligible religious practitioners

- (1) For the purposes of applying section 12BA of the Rules, an alternative reference period under this section applies to an individual who is an eligible religious practitioner for an entity if:
- (a) the total number of hours the eligible religious practitioner spent doing activities covered by paragraph 12B(2)(b) of the Rules in February 2020:
 - (i) was less than 80 hours; and

- (ii) when compared to earlier 29-day periods (each wholly within a calendar month), was not representative of the total number of those hours in a typical such 29-day period;
- (b) the eligible religious practitioner first commenced doing activities covered by paragraph 12B(2)(b) of the Rules as a religious practitioner on or before 1 March 2020 but after 1 February 2020.

Note: Paragraph (a) would cover, but is not limited to, scenarios such as the eligible religious practitioner not doing the relevant activities for all or part of February 2020 due to sickness, injury or leave.

- (2) For the purposes of applying section 12BA of the Rules, the alternative reference period under this section that applies to an individual who is an eligible religious practitioner for an entity is:
 - (a) where paragraph (1)(a) applies, the most recent 29-day period, wholly within a calendar month, ending before 1 March 2020 during which the eligible religious practitioner's total number of hours of doing activities covered by paragraph 12B(2)(b) of the Rules was representative of the eligible religious practitioner's total number of those hours in a typical such 29 day period; or
 - (b) where paragraph (1)(b) applies, the 29-day period starting on the day the eligible religious practitioner first commenced doing those activities covered by paragraph 12B(2)(b) of the Rules.