



Explanatory Statement

Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020

General outline of instrument

1. This instrument is made under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act) and subsection 8(6) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules).
2. The legislative instrument sets out alternative decline in turnover tests where there is not an appropriate relevant comparison period in 2019 for the purpose of an entity in the class of entities satisfying both the actual decline in turnover test in section 8B of the Rules and the decline in turnover test in section 8 of the Rules (including as modified by section 8A of the Rules).
3. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument commences the day after it is registered on the Federal Register of Legislation and applies to JobKeeper fortnights commencing on, or after, 28 September 2020.

The effect of this instrument

6. The effect of this instrument is to give certain entities or classes of entities an alternative basis on which they may satisfy the actual decline in turnover test or the decline in turnover test to be eligible for JobKeeper payments. This will ensure that entities in certain classes will still be eligible to receive assistance through JobKeeper payments where their particular circumstances are not specifically accounted for in the Rules.

Compliance cost assessment

7. Minor or Machinery – The legislative instrument is machinery in nature and any regulatory impacts from this instrument are likely to be minor.

Remaking the alternative turnover test legislative instrument – September 2020

8. This instrument repeals the *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020* (former instrument). The former instrument set out alternative decline in turnover tests for the purposes of the Rules and was made prior to the changes announced by the Government on 21 July 2020. Those changes were made by the Treasurer on 15 September 2020 in the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020*. The Commissioner has determined it is appropriate

to make a new legislative instrument. The Commissioner has also taken this opportunity to make some other minor changes to the alternative turnover tests for both purposes.

9. This instrument sets out the same alternative decline in turnover tests from the former instrument but revised to ensure the tests will apply for both the decline in turnover test in sections 8 and 8A of the Rules (often called the 'original' or 'projected' decline in turnover test) **and** the new actual turnover test in section 8B of the Rules for JobKeeper fortnights beginning on or after 28 September 2020.

10. This instrument also repeals the former instrument from the end of 27 September 2020. This does not affect the use of the alternative turnover tests in the former instrument on or before that date for the purposes of determining eligibility for the JobKeeper scheme. Where an entity has satisfied the original decline in turnover test before 28 September 2020, they do not need to apply the test again for JobKeeper fortnights starting on, or after, 28 September. According to paragraph 7(1)(b) of the Rules, the original decline in turnover test will continue to be satisfied for the remainder of the JobKeeper scheme. In such cases, the entity will only need to apply this instrument for the purposes of satisfying the actual decline in turnover test in section 8B of the Rules.

11. This instrument replaces the former instrument for the purposes of determining the decline in turnover in fortnights beginning on or after 28 September 2020.

Explanation of the Commissioner's determination power

12. The Explanatory Statement to the former instrument explains the legislative basis for the JobKeeper payment program, which is to provide payments to support entities with the potential to be adversely affected by the economic effects of the COVID-19 coronavirus disease pandemic. The information in that Explanatory Statement continues to apply in regard to this instrument as relevant. A summary of the Commissioner's determination power is below.

13. According to subsection 8(6) of the Rules:

The Commissioner may, by Legislative Instrument, determine that an alternative decline in turnover test applies to a class of entities, if the Commissioner is satisfied that there is not an appropriate relevant comparison period for the purposes of an entity in the class of entities satisfying the decline in turnover test under subsection (1).

14. This includes three conditions:

- (a) The alternative decline in turnover test has to be for a class of entities, not a particular entity but note the third point below.
- (b) the alternative decline in turnover test has to be created by Legislative Instrument, not by any other means.
- (c) the Commissioner can only determine an alternative decline in turnover test if the Commissioner is satisfied that there is not an appropriate relevant comparison period for the purpose of an **entity** in the class of entities satisfying the decline in turnover test in subsection 8(1) of the Rules (which requires satisfying section 8B of the Rules for JobKeeper fortnights beginning on, or after, 28 September 2020). This requirement means that the Commissioner has to be satisfied that the relevant comparison period in 2019¹ that is referred to in subsection 8(1) of the Rules is not appropriate *before* the Commissioner can determine an alternative decline in turnover test.

15. As a result, the Commissioner cannot determine an alternative decline in turnover test in all circumstances. It is only in those circumstances where there is an event or circumstance, be it

¹ **Relevant comparison period** is defined in paragraph 8(7)(b) of the Rules as the period in 2019 that corresponds to the turnover test period.

internal or external to an entity, that is outside the usual business setting for entities of that class which results in the relevant comparison period in 2019 not being appropriate for the purpose of an entity in the class of entities satisfying the decline in turnover test. For example, an entity being subject to a severe drought from 2018 until September 2019 that reduced the amount of its' crop that it could grow as depicted in Example 3 in the Explanatory Statement to the Rules.

JobKeeper extension

16. Under the extension of JobKeeper, entities must satisfy the actual decline in turnover test (section 8B of the Rules), which uses the current GST turnover for the September 2020 quarter to be eligible for JobKeeper payments for JobKeeper fortnights from 28 September 2020 until 3 January 2021, or uses the current GST turnover for the December 2020 quarter to be eligible for JobKeeper payments for JobKeeper fortnights from 4 January 2021 until 28 March 2021. That is, their current GST turnover for the months of July, August and September 2020 must show a sufficient decline compared with their current GST turnover for the relevant comparison period for them to be eligible for JobKeeper for fortnights from 28 September 2020 up to 3 January 2021, and similarly using the months of October, November and December for eligibility for the JobKeeper fortnights from 4 March 2021 to 28 March 2021.

17. Entities must also still satisfy the original decline in turnover test that uses projected GST turnover. Entities already enrolled in JobKeeper before the extension have already satisfied the original decline in turnover test, and only need to carry out the actual decline in turnover test using current GST turnover.

18. Entities that were not enrolled in JobKeeper before the extension will need to satisfy both the actual decline in turnover test using current GST turnover *and* the original decline in turnover test using the projected GST turnover. Practically, if an entity satisfies the actual decline in turnover test they will generally also satisfy the original decline in turnover test (the only exception being Universities that are Table A providers whose original decline in turnover test covers a six month turnover test period). See the Rules and the Explanatory Statement to the Rules for further details.

19. The actual decline in turnover test only uses quarterly periods. The original decline in turnover test uses quarters or months (but for Table A providers). The legislative instrument provides for tests for quarters and for months, and both current GST turnover and projected GST turnover are referred to below.

The updated alternative turnover tests

20. Each of the alternative turnover tests from the former instrument have been retained and modified. In line with the above conditions, each alternative decline in turnover test for an entity is only available if there is not an appropriate relevant comparison period in 2019.

21. The alternative turnover tests may be used to determine an entity's decline in turnover under:

- (a) The decline in turnover test in sections 8 and 8A of the Rules (the original decline in turnover test); and
- (b) The actual decline in turnover test in section 8B of the Rules.

22. Entities must also satisfy the actual decline in turnover test to be eligible for a fortnight beginning on or after 28 September 2020. To satisfy the actual decline in turnover test, an entity must satisfy the original decline in turnover test (as modified) using the turnover test periods set out in section 8B:

- (a) for fortnights beginning before 4 January 2021, the period is the quarter ending on 30 September 2020
- (b) for fortnights beginning on or after 4 January 2021, the period is the quarter ending on 31 December 2020.

23. Entities must also use current GST turnover instead of projected GST turnover wherever used in sections 8 and 8A, including for the alternative turnover tests. Paragraph 8B(1)(b) states that 'instead of projected GST turnover, current GST turnover were used (including in subsection 8A(3), and in applying an alternative decline in turnover test determined by the Commissioner under subsection 8(6)).' For the purposes of the actual decline in turnover test in section 8B of the Rules, the Commissioner may make a legislative instrument that the supplies in a class of supplies are to be treated as if they had been made at a time or times different from the time at which the supplies were actually made. Any such determination by the Commissioner applies to the calculation of current GST turnover for a relevant comparison period in this instrument.

24. For entities that have previously satisfied the original decline in turnover test before 28 September 2020, the alternative turnover tests can be used to determine whether an entity has satisfied the actual decline in turnover test for the quarter ending on 30 September 2020 (the September 2020 quarter) or the quarter ending on 31 December 2020 (the December 2020 quarter).

25. For entities that have not previously satisfied the original decline in turnover test before 28 September 2020, the alternative turnover tests can be used to determine whether an entity has satisfied the original decline in turnover test (for a quarter or month) and the actual decline in turnover test for the September 2020 quarter or December 2020 quarter. This is because the turnover test periods (and relevant comparison periods) overlap for the September 2020 quarter and December 2020 quarter. Practically, entities in these circumstances need to satisfy the actual decline in turnover test for each quarter as relevant (and this will generally also satisfy the original decline in turnover test).

26. The new legislative instrument applies to classes of entities to which the following circumstances apply:

- (a) An entity commenced business after the first day of the relevant comparison period in 2019, with the event or circumstance outside the usual business setting being that the business did not exist for the whole relevant comparison period and as a result there was no relevant comparison period in 2019. This applies to entities that were not operating any business, it does not apply to an entity that was operating one or more businesses and commenced a new additional business.
- (b) An entity acquired or disposed of part of their business at, or after, the start of the relevant comparison period in 2019 including more than one acquisition or disposal and the acquisition or disposal, or acquisitions or disposals, changed their current GST turnover. The event or circumstance outside the usual business setting being that the business was not the same business and as a result is not comparable after the acquisition(s) or disposal(s) to what it was in the relevant comparison period in 2019.
- (c) An entity has restructured part or all of their business at, or after, the start of the relevant comparison period in 2019, including more than one restructure, and that restructure, or restructures, changed the entity's current GST turnover. The event or circumstance outside the usual business setting being that the business was not the same business and as a result is not comparable after the restructure(s) to what it was in the relevant comparison period in 2019.
- (d) An entity has had an increase in current GST turnover by 50% or more in the 12 months immediately before either the applicable turnover test period or 1 March 2020, or 25% or more in the 6 months immediately before either the applicable turnover test period or 1 March 2020, or 12.5% or more in the 3 months immediately before either the applicable turnover test period or 1 March 2020. The event or circumstance outside the usual business setting being that as a result of undergoing such rapid growth, the business of the entity after the growth is not comparable to the business as it was in the relevant comparison period in 2019.

- (e) An entity has been affected by a drought or other natural disaster in the relevant comparison period in 2019. The event or circumstance outside the usual business setting being the drought or other natural disaster which adversely affected the business and as a result the relevant comparison period in 2019 is not appropriate.
- (f) An entity has an irregular current GST turnover that is not cyclical, such as can occur in the building and construction sector. The event or circumstance outside the usual business setting is the non-cyclical irregular turnover and as a result the relevant comparison period in 2019 is not appropriate. An entity with a cyclical turnover such as an entity that operates a seasonal business which generates most of its turnover at a particular time of year has an appropriate relevant comparison period – a cyclical turnover is within the usual business setting, and
- (g) An entity is a sole trader or a small partnership and the sole trader or one of the partners did not work for all or part of the relevant comparison period because they were sick, injured or on leave during the relevant comparison period and those circumstances affects the current GST turnover of the sole trader or partnership. The usual business setting is the sole trader or partner working in the business generating turnover and so their absence from work is an event or circumstance outside the usual business setting resulting in the relevant comparison period in 2019 not being appropriate.

27. Each alternative test can apply to a relevant comparison period that is a calendar month or a quarter. However, a relevant comparison period that is a month is only applicable to the original decline in turnover test under section 8 (including as modified by section 8A) of the Rules. For the actual decline in turnover test under section 8B of the Rules, entities must use a relevant comparison period that is a quarter ending on 30 September 2019 or 31 December 2019.

28. This instrument sets out specific provisions providing the alternative decline in turnover tests above, and the following commentary provides background on each test. It is focused primarily on using turnover test periods and comparison periods that are quarters.

The alternative decline in turnover tests: in detail

Business commenced

29. This instrument applies to give two alternative tests to entities that commenced business after the first day of the relevant comparison period in 2019, but before 1 March 2020. Such new businesses cannot compare with a relevant comparison period in 2019 as they do not have one. Note that it is that the entity *commenced business* after the first day of the relevant comparison period. While an entity can exist before it commences business, it is when it commences business that is relevant for this test. Entities that already operated businesses during the relevant comparison period and commenced a new additional business after the start of the relevant comparison period have a relevant comparison period, so this test does not apply to them. However, one of the other alternative decline in turnover tests may apply.

30. The first alternative test compares the entity's current GST turnover (or projected GST turnover) for the turnover test period with the average monthly current GST turnover since the entity commenced business (multiplied by three). The calculation will depend on the relevant comparison period the entity uses and how long they have been in business.

31. The second alternative test compares the entity's current GST turnover (or projected GST turnover) for the turnover test period with the current GST turnover of the 3 months immediately before 1 March 2020. This test will give a more accurate reflection of the entity's GST turnover where the business has grown throughout the period leading up to 1 March 2020.

Disposals, acquisitions and restructures

32. The legislative instrument applies to give an alternative test to entities that have undergone certain large changes in their business. Where an entity has undertaken a disposal or acquisition of part of their business, or restructure in the business, or combinations of those, this can be expected to result in a substantial change in the usual business setting of the entity. Therefore, where such an event has occurred since the start of the relevant comparison period in 2019, the relevant comparison period in 2019 is not appropriate.

33. These alternative tests will apply to compare the entity's current GST turnover (or projected GST turnover) for the applicable turnover test period with the current GST turnover for the month after the month in which the disposal, acquisition or restructure occurred. This will ensure the entity's current GST turnover (or projected GST turnover) for the applicable turnover test period is compared with the current GST turnover of the entity's new business setting once these disposals, acquisitions or restructures have occurred. If there is no whole month after the last acquisition, disposal or restructure, and before the applicable turnover test period, then the month immediately before the applicable turnover test period is used.

34. The former instrument included provisions requiring that entities with multiple acquisitions, disposals and restructures use the period after the last of the sequential transactions. This requirement has been removed.

35. Where an entity has had multiple acquisitions, disposals or a sequence of restructure transactions at or after the start of the relevant comparison period but before the applicable turnover test period, the entity may apply these tests to each acquisition, disposal or restructure separately. This provides flexibility and avoids entities with multiple transactions with the last ending after 1 March 2020 using a period that has been impacted by the economic disruption caused by COVID-19.

Entity had substantial increase in turnover

36. The legislative instrument applies to give an alternative test to entities that have had a substantial increase in their current GST turnover over a period in the 12 months before either the applicable turnover test period or before 1 March 2020. An increase of 50% or more over a 12-month period is a substantial increase, so the alternative test applies to entities that have 50% or more growth in the 12 months before the applicable turnover test period, or the 12 months before 1 March 2020. To cater for entities that started their growth during the 12 months before their applicable turnover test period or before 1 March 2020, the alternative decline turnover test also applies to entities with 25% or more growth in their current GST turnover in the preceding 6 months and 12.5% or more growth in the preceding 3 months. Growth of 25% or more in 6 months or 12.5% or more in 3 months reflect that the business was likely on target to have 50% growth in 12 months. Substantial growth of a business would generally mean that the business will have changed to the point where the relevant comparison period in 2019 no longer reflects the ordinary business setting for that business and so is not appropriate.

37. Entities are given the option of choosing whether to use the period immediately before either the applicable turnover test period or before 1 March 2020. This is to avoid entities needing to use a period that has been impacted by the economic disruption caused by COVID-19.

38. To test an entity's increase in current GST turnover in the 12 months before 1 March 2020, the entity compares their current GST turnover for the month of February 2019 with their current GST turnover from the month of February 2020. To test for an increase in the 6 months and 3 months before 1 March 2020 the entity compares their current GST turnover for February 2020 against their current GST turnover for the months of August 2019 and November 2019, respectively.

39. This alternative test will apply to compare the entity's current GST turnover (or projected GST turnover) for the applicable turnover test period with the average current GST turnover from the 3 months immediately before the test period or 1 March 2020 (or divided by 3 if the relevant comparison period is a calendar month).

Entity affected by drought or other natural disaster

40. The legislative instrument applies to give an alternative test to entities that were affected by a drought or another natural disaster in the relevant comparison period in 2019. Where an entity was affected by such droughts or other natural disasters, those circumstances are outside the ordinary business setting. Therefore, the relevant comparison period in 2019 is not appropriate.

41. This alternative test will apply to compare the entity's current GST turnover (or projected GST turnover) for the applicable turnover test period with the current GST turnover for the same period in the year immediately preceding the year when the drought or natural disaster was declared rather than 2019. The earlier period will be a more appropriate period to use than the relevant comparison period in 2019 due to the drought or natural disaster being an event or circumstance outside the usual business setting.

42. For the purposes of this test, a declared drought zone includes an area subject to a formal declaration of drought by a Commonwealth, State, Territory or local government agency. It also includes an area for which there has been a public identification or acknowledgment that the area is drought affected by such an agency.

43. For example, the following public information sources provide declarations, acknowledgments, statistics, maps and other guidance as to what are declared drought zones and drought affected areas for the purposes of this test:

- the National Drought Map
- Australian Government Bureau of Meteorology Monthly Drought Statements, maps, rainfall and rainfall deficiency statistics
- in Queensland – the drought situation map
- in NSW – the Combined Drought Indicator map, and
- in South Australia – the Drought Affected Areas map.

Business has an irregular turnover

44. The legislative instrument applies to give an alternative test to entities that have a large irregular variance in their current GST turnover for the consecutive 3-month periods in the 12 months before the applicable turnover test period or before 1 March 2020. Where an entity has large irregular variance in their current GST turnover, the relevant comparison period in 2019 is outside the ordinary business setting and hence not appropriate. An entity that has cyclical turnover will not be able to apply this alternative test. For example, entities with regular seasonal variance in their current GST turnover have an appropriate relevant comparison period in 2019, being the relevant comparison period used for the actual decline in turnover test and the ordinary decline in turnover test. That period is the same time in 2019 as 2020, and hence in the same season, so the relevant comparison period in 2019 is not outside the usual business setting for the entity.

45. The words 'consecutive 3-month periods' replace the words 'the quarter' from the former instrument for clarity.

46. Further, consistent with the substantial increase in turnover test, entities can use the period immediately before the applicable turnover test period or before 1 March 2020. This is to avoid entities needing to use a period that has been impacted by the economic disruption caused by COVID-19.

47. This alternative test will apply to compare the entity's current GST turnover (or projected GST turnover) for the applicable turnover test period with the average current GST turnover from the

12 months immediately before the applicable turnover test period or 1 March 2020. This is intended to take into account any irregularities in current GST turnover the entity experiences.

Sole trader or small partnership with sickness, injury or leave

48. The legislative instrument applies to give an alternative test to a sole trader or small partnership if the current GST turnover of the sole trader or partnership was affected by the sole trader or a partner not working for all or part of that period due to sickness, injury or leave. Where an entity was affected by such change, those circumstances are outside the ordinary business setting. Therefore, the relevant comparison period in 2019 is not appropriate. The test is intended to address the situation where it is the individual, the sole trader or partner, who works in the business to generate turnover, and hence only applies to those sole traders and small partnerships which do not have employees. Similarly, the test only applies to small partnerships as small partnerships would have more difficulty in compensating for the absence from work of one of the partners, and larger partnerships can expect absences as part of their usual business setting.

49. If the relevant comparison period is a quarter, the entity multiplies the current GST turnover for the month immediately before the month in which the sole trader or partner did not work due to sickness, injury or leave by three and uses that figure instead of the comparison turnover. If the relevant comparison period is one calendar month, the entity uses the current GST turnover for the month immediately before the month in which sole trader or partner did not work due to sickness, injury or leave instead of the current GST turnover for the relevant comparison period.

50. The change to this test from the former instrument, to use an earlier comparison period rather than a later comparison period, is to avoid entities needing to use a period that has been impacted by the economic disruption caused by COVID-19.

If more than one alternative decline in turnover test applies

51. As noted above, the alternative decline in turnover tests in the legislative instrument are additional to the actual decline in turnover test and the ordinary decline in turnover test. If an entity is eligible under the actual decline in turnover test or the ordinary decline in turnover test it does not need to consider the application of alternative tests. Similarly, if more than one alternative decline in turnover test applies to an entity it only has to satisfy one of the alternative decline in turnover tests.

52. Subsection 8(5) of the Rules provides for alternative tests. It provides that:

An entity also satisfies the decline in turnover test if:

- (a) an alternative decline in turnover test determined by the Commissioner under subsection (6) applies to the entity; and
- (b) the entity satisfies the alternative test.

53. Notably, subsection 8(5) of the Rules provides that an entity satisfies the decline in turnover test if 'an alternative decline in turnover test' applies and the entity satisfies that test. If more than one alternative decline in turnover test applies and the entity satisfies one of them, then there is 'an alternative test' that applies to the entity that it has satisfied. It does not matter that there are other alternative tests that apply that it has not satisfied. Similarly, if an entity satisfies more than one alternative test, it has satisfied the decline in turnover test.

Adjustments to the alternative tests

54. Allowances can be made within the alternative tests in situations where:

- (a) Entities qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals. The months which were affected by the bushfires can be excluded from the calculation of turnover on the assumption the entities had a decline in turnover from the bushfires, and inclusion of those months would unfairly reduce the turnover with

which the projected or current GST turnover for the turnover test period is compared²; unless there are no other appropriate months, or

- (b) Entities that received Drought Help concessions provided by the ATO. The months which were affected by the drought can be excluded from the calculation of turnover on the assumption they had a decline in turnover from the drought already, and inclusion of those months would unfairly reduce the turnover with which the projected or current GST turnover for the turnover test period is compared, unless there are no other appropriate months.³

55. In a change from the former legislative instrument providing for alternative decline in turnover tests, the exclusion of these months from the calculation is optional unless there are no appropriate months.

56. In certain alternative tests, a separate alternative test is provided for such affected entities.

Examples

57. The following examples are based on examples from the former instrument. These examples have generally been updated to apply to turnover test periods that are relevant for JobKeeper fortnights commencing on or after 28 September 2020.

Example 1 – New to Business and bushfire affected

58. The Berry Fresh Enterprise Company (BFEC) was affected by the January 2020 bushfires. The ATO's Bushfires 2019–20 lodgment and payment deferrals applied to BFEC because it was in one of the identified affected postcodes. The deferrals were available from 1 January 2020 to 1 March 2020. The relevant comparison period is not appropriate because BFEC began operating on 1 October 2019. BFEC assesses its eligibility for JobKeeper payments based on a current GST turnover for the quarter ending 30 September 2020 of \$7 million. The following monthly current GST turnovers have been recorded by BFEC:

Month	Current GST Turnover recorded by BFEC
October 2019	\$4 million
November 2019	\$5 million
December 2019	\$3 million
January 2020	\$1 million
February 2020	\$2 million

59. BFEC applies the first alternative test under section 7 of this instrument. The average monthly current GST turnover figure for these months is \$4 million (this figure excludes the months of 1 January 2020 to 2 March 2020 because the ATO's Bushfires 2019–20 lodgment and payment deferrals applied to BFEC during this time and BFEC has chosen to exclude these months from the calculation). BFEC multiplies the \$4 million by three to get \$12 million and compares this with the current GST turnover for the quarter ending 30 September 2020 of \$7 million. BFEC finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the first alternative test by \$5 million, which is greater than 30%. The alternative decline in turnover test is satisfied.

² Australian Taxation Office, Bushfires 2019–20 lodgment and payment deferrals <https://www.ato.gov.au/General/Dealing-with-disasters/In-detail/Specific-disasters/Bushfires-2019-20/#Lodgmentandpaymentdeferrals>.

³ Australian Taxation Office, Drought Help <https://www.ato.gov.au/General/Financial-difficulties-and-serious-hardship/In-detail/Help-for-drought-affected-taxpayers/?page=1#Helpforindividualsandbusinesses>.

Example 2 – New to Business

60. On 3 October 2019, the Enterprise Company (TEC) was incorporated and commenced business and hence, the relevant comparison period is not available. The Enterprise Company (TEC) assesses its eligibility for JobKeeper payments based on a current GST turnover for the quarter ending 30 September 2020 of \$8.5 million. The following monthly current GST turnovers have been recorded by TEC:

Month	Current GST Turnover recorded by TEC
November 2019	\$4 million
December 2019	\$6 million
January 2020	\$2 million
February 2020	\$2 million

61. TEC applies the first alternative test under section 7 of this instrument. The average monthly current GST turnover figure for these months is \$3.5 million. TEC multiplies the \$3.5 million by three to get \$10.5 million and compares this with the current GST turnover for the quarter ending 30 September 2020 of \$8.5 million. TEC finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the first alternative test by \$2 million, which is less than 30%. The first alternative decline in turnover test is not satisfied.

62. TEC also uses the second alternative test. The 3 months' current GST turnover figure for these months is \$10 million. TEC compares this with the current GST turnover for the quarter ending 30 September 2020 of \$8.5 million. TEC finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the second alternative test by \$1.5 million, which is less than 30%. The second alternative decline in turnover test is not satisfied.

Example 3 – New to Business

63. On 6 November 2019, the Creative Enterprise Company (CEC) was incorporated and commenced business. As such, the relevant comparison period is not available.

64. The Creative Enterprise Company (CEC) assesses its eligibility for JobKeeper payments based on a current GST turnover for the quarter ending 30 September 2020 of \$5 million. The following monthly current GST turnovers have been recorded by CEC during the 3-month period immediately before 1 March 2020:

Month	Current GST Turnover recorded by CEC
December 2019	\$3 million
January 2020	\$3 million
February 2020	\$3 million

65. CEC applies the second alternative test under section 7 of this instrument. The 3 months' current GST turnover is \$9 million. CEC compares this with the current GST turnover for the quarter ending 30 September 2020 of \$5 million and finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the second alternative test by more than 30%. The second alternative decline in turnover test is satisfied.

Example 4 – New to Business and bushfire affected months are the only months before 1 March 2020 since commencement

66. On 1 December 2019 the Citrus Orange Enterprise Company (COEC) was incorporated and commenced business and hence the relevant comparison period is not available. It was affected by the December 2019 – January 2020 bushfires. The COEC qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals for the period 1 December 2019 to 1 March 2020 because it is in one of the identified affected postcodes.

67. The COEC assesses its eligibility for JobKeeper payments based on a current GST turnover for the quarter ending 30 September 2020 of \$2 million. The following monthly current GST turnovers have been recorded by COEC:

Month	Current GST Turnover Recorded by COEC
January 2020	\$1 million
February 2020	\$2 million

68. COEC applies the first alternative test under section 7 of this instrument. For the purposes of calculating the average monthly current GST turnover, the months which the ATO's Bushfires 2019-2020 lodgment and payment deferrals were available to COEC have to be included because they are the only months since COEC commenced business.

69. The average monthly current GST turnover figure for these months is \$1.5 million. COEC multiplies the \$1.5 million by three to get \$4.5 million and compares this to the current GST turnover for the quarter ending 30 September 2020 of \$2 million. COEC finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the first alternative test by \$2.5 million, which is greater than 30%. The alternative decline in turnover test is satisfied.

Example 5 – Disposal or acquisition

70. In December 2019, First Co acquired another business. First Co uses its current GST turnover of \$200,000 for the turnover test period of the quarter ending 30 September 2020. The current GST turnover in January 2020, being the first whole month after the acquisition, was \$100,000.

71. First Co applies the alternative test under section 8 of this instrument, as it acquired part of its business after the start of relevant comparison period and the acquisition changed their turnover. First Co multiplies the current GST turnover in January of \$100,000 by three to get \$300,000 and compares that with the current GST turnover for the quarter ending 30 September 2020 of \$200,000. First Co finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the alternative test by \$100,000, which is greater than 30%. The alternative decline in turnover test is satisfied.

Example 6 – Restructure

72. In November 2019, Business Enterprises restructured its business operations by merging the operations of two of its businesses.

73. On 15 March 2020, it completed a further restructure by separating out the managerial and human resources operations of those newly merged businesses into a separate division.

74. Business Enterprises uses its current GST turnover of \$300,000 for the turnover test period of the quarter ending on 30 September 2020. The current GST turnover for the month of December 2019 was \$150,000 and the current GST turnover for the month of April 2020 was \$100,000.

75. Business Enterprises applies the alternative test under section 9 of this instrument as there was a restructure of their business after the start of the relevant comparison period quarter ending on 30 September 2019 and the restructuring changed its turnover.

76. Business Enterprises multiplies the current GST turnover for December 2019 of \$150,000 by three to get \$450,000 and compares that with the current GST turnover of the quarter ending 30 September 2020 of \$300,000. Business Enterprises finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the alternative test by \$150,000, which is greater than 30%. The alternative decline in turnover test is satisfied.

77. Business Enterprises could also use its current GST turnover from April 2020 of \$100,000 when applying the alternative decline in turnover test. Multiplied by three, to get \$300,000 and compared to the current GST turnover of the quarter ending 30 September 2020 of \$300,000 the alternative decline in turnover test would not have been satisfied.

Example 7 – Substantial increase in turnover

78. Before 1 March 2020, Blue Co had an increase in current GST turnover and wants to ascertain whether it can apply, and satisfy, the alternative test under section 10 of this instrument.

79. Blue Co uses its current GST turnover of \$150,000 for the turnover test period of the quarter ending 30 September 2020. Blue Co's current GST turnover for the month of February 2019 was \$50,000 and its' current GST turnover for the month of February 2020 was \$80,000.

80. Blue Co applies the alternative test under section 10 of this instrument as its current GST turnover for the month of February 2020 increased by \$30,000 from the current GST turnover for the month of February 2019 of \$50,000 and \$30,000 is more than 50% of \$50,000.

81. The following monthly current GST turnovers were recorded by Blue Co:

Month	Current GST Turnover recorded by Blue Co
December 2019	\$70,000
January 2020	\$75,000
February 2020	\$80,000

82. Blue Co's 3 months' current GST turnover is \$225,000 and compares this with the current GST turnover for the quarter ending 30 September 2020 of \$150,000. Blue Co finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the 3 months' current GST turnover by \$75,000, which is greater than 30%. The alternative decline in turnover test is satisfied.

Example 8 – Irregular turnover

83. Red Co has an irregular current GST turnover which is not cyclical and wants to ascertain whether it can apply, and satisfy, the alternative test under section 11 of this instrument.

84. Red Co uses its current GST turnover of \$100,000 for the turnover test period of the quarter ending 30 September 2020. Red Co had the following current GST turnovers for the 4 consecutive 3-month periods in the 12 months before 1 March 2020:

3-month periods pre-1 March 2020	Current GST Turnover recorded by Red Co
March, April and May 2019	\$150,000
June, July and August 2019	\$100,000

September, October and November 2019	\$75,000
December 2019, January and February 2020	\$200,000

85. Red Co applies the alternative test under section 12 of this instrument as Red Co's lowest current GST turnover 3-month period of \$75,000 is less than 50% of the highest current GST turnover 3-month period of \$200,000.

86. The average monthly current GST turnover is the total current GST turnover from the 12 months before 1 March 2020 (\$525,000) divided by 12. This gives Red Co an average monthly current GST turnover of \$43,750. Red Co multiplies this number by three to get \$131,250 and compares it to the current GST turnover for the quarter ending 30 September 2020 of \$100,000. Red Co finds that its current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the alternative test by \$31,250, which is less than 30%. The alternative decline in turnover test is not satisfied.

Example 9 – Sole trader or small partnership with sickness, injury or leave

87. In September 2019, Alex, who is a sole trader and has no employees, had a sickness and could not work for most of the month which greatly affected Alex's current GST turnover for that period.

88. Alex uses the current GST turnover of \$150,000 for the turnover test period of the quarter ending on 30 September 2020.

89. In September 2019, Alex was very sick and could not work for most of the month, which greatly affected Alex's current GST turnover for that period.

90. Alex applies the alternative test under section 13 of this instrument, as Alex is a sole trader with no employees, who was sick for part of the relevant comparison period, and the sickness changed his current GST turnover.

91. Alex's current GST turnover in August 2019, being the month immediately before the month in which Alex was sick, was \$75,000. Alex multiplies this figure by three to get \$225,000 and compares that with the current GST turnover for the quarter ending 30 September 2020 of \$150,000. Alex finds that his current GST turnover for the quarter ending 30 September 2020 falls short of the figure worked out using the alternative test by \$75,000, which is greater than 30%. The alternative decline in turnover test is satisfied.

Consultation

92. The Commissioner routinely publishes draft legislative instruments seeking public feedback for a minimum period of 4 weeks. This legislative instrument was prepared in response to the COVID-19 coronavirus disease pandemic. To avoid the detrimental effects for employers and employees that delays in making the legislative instrument would cause, the Commissioner undertook targeted consultation to ensure it could be made as quickly as possible. In these circumstances the Commissioner has undertaken reasonable and appropriate consultation over a shorter period than would otherwise have been used.

93. Consultation was undertaken with various representatives of professional and industry associations and business representatives. Consultees suggested modifications to various draft alternative decline in turnover tests and explanatory materials. Most, but not all, of these suggestions have been adopted or otherwise addressed.

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) Alternative Decline in Turnover Test Rules (No. 2) 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 legislative instrument applies to provide alternative bases for an entity in a class of entities to satisfy the decline in turnover tests for the purposes of receiving JobKeeper payments, when the Commissioner is satisfied that there is not a relevant comparison period for the purposes of an entity in a class of entities satisfying the decline in turnover test under subsection 8(1) and the actual decline in turnover test in section 8B of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*. This instrument is intended to keep more Australian workers in jobs through the course of the COVID-19 coronavirus disease pandemic by creating alternative decline in turnover tests for classes of entities where the relevant comparison period is not appropriate.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms listed in the following covenants:

- [the International Covenant on Civil and Political Rights](#) (ICCPR)

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 Alternative tests requires the provision of information to the Commissioner that may include personal information such as the turnover of a business. To any extent to which the provision of this 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:

- contingent on the affected person giving consent to the disclosure of information by nominating to participate in the JobKeeper scheme, or in the case of an employee, agreeing to be nominated
- 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 determine eligibility for the JobKeeper scheme and to ensure that it is administered according to the policy objective.

For these reasons, the Rules do not unnecessarily restrict a person's right to privacy.

- [the International Covenant on Economic, Social and Cultural Rights](#) (ICESCR)
- [the International Convention on the Elimination of All Forms of Racial Discrimination](#) (CERD)
- [the Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW)

- [the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT)
- [the Convention on the Rights of the Child](#) (CRC), and
- [the Convention on the Rights of Persons with Disabilities](#) (CRPD).

This disallowable legislative instrument does not engage with any human rights because it merely provides additional opportunities for business entities to obtain Government assistance where the entities have experienced a decline in business turnover as a consequence of the COVID-19 pandemic.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues. Importantly, this instrument positively engages the right to work as it is aimed at assisting employers and keeping people in jobs.