

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. 10) 2021

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.

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.

On 11 March 2021, the Australian Government announced the SME Recovery Loan Scheme to support the flow of credit to small and medium enterprises that received the JobKeeper payment in the first quarter of 2021.

The purpose of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2021* (the Amending Rules) is to allow financial institutions participating in the SME Recovery Loan Scheme to confirm that notices have been provided by the Commissioner of Taxation (Commissioner) to entities concerning their election to participate in the JobKeeper payment program.

The amendments build on the existing confirmation process in the Rules for authorised-deposit taking institutions (ADIs) and allow both ADIs and non-ADIs to seek confirmation of the information about an entity's election to participate in the JobKeeper payment program.

Where a financial institution provides a notice to the Commissioner in the approved form, the Commissioner is required to advise the financial institution if the specified information concerning the JobKeeper payment is information that has been exchanged between the Commissioner and the entity. This ensures that a financial institution 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 Amending Rules also include minor miscellaneous amendments to the Rules that ensure the payment and notice requirements under Division 4 and 5 of the Rules appropriately and accurately reflect the two-tiered JobKeeper payment system. These changes do not affect the operation of the Scheme and are consistent with the intended policy.

Targeted consultation was undertaken on the instrument.

The Amending Rules are a legislative instrument for the purposes of the *Legislation Act 2003*. The Amending Rules commenced on the day after the instrument was registered.

A statement of Compatibility with Human Rights is at [Attachment A](#).

ATTACHMENT A

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. 10) 2021

The *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2020* (the Amending Rules) 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 purpose of the Amending Rules is to allow financial institutions to confirm that notices have been provided by the Commissioner of Taxation (Commissioner) to entities concerning their election to participate in the JobKeeper payment program.

Human rights implications

The Amending Rules No. 10 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 SME Recovery Loan Scheme may require the provision of information to the Commissioner by participating financial institutions about an entity's election to participate in the JobKeeper payment program. These amendments do not allow the Commissioner to disclose the details of any information provided by the entity to the Commissioner but rather only allow the Commissioner to confirm to a participating financial institution that certain information has been exchanged by an entity 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 provide continued and targeted support to deal with the ongoing economic impacts of the Coronavirus; and
- rationally connected and proportionate to the objective sought as the information is required to facilitate the ability of a financial institution to meaningfully participate in the SME Recovery Loan Scheme.

For these reasons, the Amending Rules 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

To the extent that this legislative instrument engages rights under the ICCPR, it is compatible with human rights.