



## Explanatory Statement

### *JobMaker Hiring Credit Reporting Obligations Amendment Instrument 2021*

#### General outline of instrument

1. This instrument is made under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* and subsection 27(3) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules).
2. The legislative instrument contains changes to the *JobMaker Hiring Credit Reporting Obligations Instrument 2020* (the primary instrument) to enable employers using a software solution that does not support the reporting of all required information through Single Touch Payroll (STP) to claim JobMaker Hiring Credit (JMHC) payments. There are a small number of such software solutions that cannot be upgraded to enable required information to be reported. Employers using these software solutions will report this employee information that would otherwise be reported through STP directly through ATO Online. There are further minor amendments including clarifying that an employer can update its financial institution account details after the JobMaker claim period has closed.
3. The 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 on the day after it is registered on the Federal Register of Legislation.
6. The amendments made by Schedule 1 to this instrument apply in relation to jobmaker periods commencing on, or after, 7 October 2020.
7. Under subsection 12(2) of the *Legislation Act 2003*, this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth.

#### What is the effect of this instrument?

8. The effect of this instrument is to make minor corrections to the primary instrument as well as amend the reporting requirements to enable more employers to access JMHC payments. Certain employers are currently unable to meet the reporting requirements set out in the primary instrument due to STP software constraints and consequently, are ineligible for JMHC payments as they do not satisfy paragraph 27(1)(h) of the Rules. This instrument will enable employers to meet reporting requirements by providing information through an alternative mechanism on ATO Online.

9. In addition, this instrument allows employers to update financial institution account details after a JobMaker claim period has closed. This ensures employers can update this information after making a claim and receive payment to the correct account.

### **Compliance cost assessment**

10. Compliance Cost Impact: Minor – there will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

11. No Regulation Impact Statement required. Prime Minister's Exemption applies – COVID-19 related measures (OBPR ref ID 42600).

### **Changes to the reporting requirements under Single Touch Payroll**

12. This instrument amends the primary instrument.

13. The primary instrument requires employers to report information within set timeframes to be eligible for the JMHC scheme.

14. Employers seeking to access JMHC payments are required to provide employee details for each eligible employee as outlined in subsection 7(2) of the primary instrument (unless subsection 7(3) applies). Employers must do so in the same manner that they notify the Commissioner of amounts under section 389-5 of Schedule 1 to the *Taxation Administration Act 1953*. This is known as Single Touch Payroll (STP).

15. A small number of employers use software to fulfil their STP obligations that cannot transmit some of the information set out in subsection 7(2). This would prevent these employers from accessing the JMHC scheme, as they would not meet the requirements in the primary instrument and in paragraph 27(1)(h) of the Rules. For example, some software cannot be updated for employers to identify which employees are eligible for the JMHC scheme or to identify that an employee worked or was paid for a minimum average of 20 hours per week in a jobmaker period.

16. This instrument amends the primary instrument to modify these reporting obligations to provide an alternative mechanism for these affected employers to access the JMHC scheme. This alternative mechanism is given effect by the new subsections 7(2A), (2B) and 8(3A) with associated consequential changes.

17. This alternative option is available where, according to subsection 7(2B), the Commissioner is satisfied that the employer is unable to provide the information in paragraphs 7(2)(b), (d), (e) or (f) through the STP software solution used by employer from the start of a jobmaker period and up to the STP JobMaker Reporting Deadline. Employers will need to contact the ATO to confirm that they cannot use their available STP solution.

18. The ATO will then provide employers with an additional form within ATO Online. Employers must enter each of their employees' details directly into ATO Online, rather than the ATO pre-populating employee information from STP.

19. The amendment also relaxes the STP reporting requirement for these employers under subsection 7(2A). Instead of reporting all information set out in subsection 7(2), these employers will only need to report the full name and TFN of each eligible employee through STP before they claim. These employers will still need to use STP to provide this information by the STP JobMaker Reporting Deadline.

20. New subsection 8(3A) requires that the employer must provide the information described in subsection 8(3), being the same information that would have been reported through STP, within the claim period in order to be eligible for a JMHC payment.

## Minor amendments

21. The following minor amendments are made by this instrument:

- removing a repeated closing parenthesis in section 5.
- correcting the definition of *claim period* in section 5 of the primary instrument.
- correcting grammatical errors in subsections 7(1) and 7(3).
- substituting references to “JobMaker” with “jobmaker” in paragraphs 8(3)(d) and (e).
- repealing the redundant words inside the parentheses in paragraph 8(2)(e) as employers are required to provide confirmation that each employee met the hours requirement under paragraph 7(2)(f) or 8(3)(f).
- aligning the reference to the “hours requirement” in paragraph 8(23)(f) to reflect the wording of subsection 30(2) of the Rules.

22. This instrument also amends subsection 10(2) of the primary instrument to ensure that financial institution account details covered by paragraph 8(2)(h) can be changed by an employer after the claim period to enable the JMHC payment to be made into the employer’s preferred account.

23. While the application of the amendments in this instrument are retrospective, the changes to provide an alternative mechanism to report information and change financial institution details are favourable to employers. The other minor amendments merely remove errors of a typographical nature from the instrument. In this way, the retrospectivity is not disadvantageous to affected entities.

## Availability of independent merits review

24. A decision made by the Commissioner under subsection 7(2A) of the legislative instrument is subject to independent merits review.

## ***Objecting to decisions under the Coronavirus Economic Response Package (Payments and Benefits) Act***

25. Subsection 13(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (CERP Act) states that an entity that is dissatisfied with a decision covered by subsection 13(2) of the CERP Act may object to the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953* (TAA).

26. For a decision to be covered by subsection 13(2) of the CERP Act, it must be a decision of the kind referred to in paragraphs 13(2)(a) to (f). Relevantly, paragraph (b) covers ‘a decision that the entity is entitled to a Coronavirus economic response payment for a period of a particular amount’.

27. Subsection 20(1) of the CERP Act allows the Treasurer to make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or matters that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

28. Further, subsection 20(4) of the CERP Act allows the rules to make provision in relation to a matter by conferring a power on the Commissioner to make ‘an instrument of a legislative or administrative character,’ or ‘a decision of an administrative character’. For this legislative instrument, the Rules are the relevant rules.

29. Included in the Rules is subsection 27(3) which states that:  
'The Commissioner may, by legislative instrument, determine reporting requirements for the purposes of paragraph (1)(h).'
30. As the relevant legislative instrument referred to in subsection 27(3) of the Rules is the primary instrument (as amended by this legislative instrument), a decision that the Commissioner makes under subsection 7(2A) of this legislative instrument will be a decision made under the CERP Act.
31. Further, as that decision affects whether an entity is entitled to a JMHC payment under subsection 27(1) of the Rules, if the Commissioner is not satisfied that subsection 7(2B) applies then the Commissioner may make a decision that the entity is not entitled to Coronavirus economic response payment as they have not met the requirement in paragraph 27(1)(h).
32. Therefore, a decision made by the Commissioner under subsection 7(2A) of the legislative instrument will fall under subsection 13(2) of the CERP Act and an entity can object to the decision in the manner set out in Part IVC of the TAA.

### ***Part IVC of the Taxation Administration Act 1953***

33. Part IVC of the TAA relates to taxation objections, reviews and appeals.
34. If an entity is dissatisfied with a decision in relation to whether the entity was entitled to a Coronavirus economic response payment for a period for a particular amount, the entity can lodge an objection within 60 days after the notice of the decision has been served on the person: paragraph 14ZW(1)(c) of the TAA.
35. Subsections 14ZY(1) and (2) of the TAA provide that if the objection has been lodged with the Commissioner within the required period, the Commissioner must decide whether to allow it, wholly or in part, or disallow it, and that such a decision will be an objection decision.
36. If the entity is dissatisfied with the objection decision, then the entity can apply to the Administrative Appeals Tribunal (AAT) for a review of that decision if it is a 'reviewable objection decision': subparagraph 14ZZ(1)(a)(i) of the TAA. Alternatively, though less common, the person may appeal directly to the Federal Court under subparagraph 14ZZ(1)(a)(ii) of the TAA.
37. A decision that the Commissioner makes under subsection 7(2A) of the legislative instrument will be a reviewable objection decision.

### **Consultation**

38. This amendment primarily addresses limitations highlighted by digital software providers about software constraints during consultations to implement the JMHC scheme.
39. This amendment is administrative and necessary to enable the Commissioner to offer an alternative option for employers to claim JMHC payments. The changes enable additional employers to claim JMHC payments who would otherwise be prevented from claiming.
40. To ensure that the alternative option is available at the earliest opportunity, only targeted consultation was undertaken. In these circumstances the Commissioner has undertaken reasonable and appropriate consultation over a shorter period than would otherwise have been used.
41. Copies of the draft amendment legislative instrument and explanatory statement were sent to various representatives of professional and industry associations and business representatives. Consultees suggested modifications to the draft Amendment instrument 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*

### ***JobMaker Hiring Credit Reporting Obligations Amendment Instrument 2021***

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 makes minor updates to the primary instrument and enables employers with STP software constraints to make a claim for JMHC payments.

#### **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)
- [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 minor corrections to the primary instrument and other minor amendments to enable certain employers to make a JMHC claim.

#### **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 to employ people.