

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

#### *Income Tax Assessment Act 1997*

#### *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 2) 2021*

Subsection 59-97(3) of the *Income Tax Assessment Act 1997* (the Act) provides that the Treasurer must, by legislative instrument, declare a grant program an eligible program if the Treasurer is satisfied that:

- the program was first publicly announced on or after 13 September 2020 by the State, Territory or authority administering it;
- the program is, in effect, responding to the economic impacts of the Coronavirus;
- the program is, in effect, directed at supporting businesses who are the subject of a public health directive applying to a geographic area where the business operates, and whose operations have been significantly disrupted as a result of the public health directive; and
- the State, Territory or authority has requested the program be declared.

The purpose of the *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 2) 2021* (the Declaration) is to declare grant programs administered by the States of New South Wales and Victoria as eligible programs for the purposes of section 59-97 of the Act, under which a payment received by a small business entity (as defined in that provision) from an eligible program is non-assessable non-exempt income.

As part of ongoing responses to the Coronavirus pandemic, State and Territory governments are providing grants to certain businesses to help them manage the impacts of the pandemic on their business. The Act provides that payments received by eligible businesses under grant programs, which have been declared as eligible programs by the Treasurer, are non-assessable non-exempt income. The effect of this is that these payments are not subject to income tax by the Commonwealth.

The Declaration declares grant programs as eligible programs, enabling payments received under the programs to be treated as non-assessable non-exempt income and not be subject to income tax by the Commonwealth.

The Act specifies no conditions that need to be met before the power to make the Declaration may be exercised, other than the matters for which the Treasurer must be satisfied, which are detailed above. The Treasurer was satisfied that the declared programs satisfied the requirements as set out in the Act.

Consultation was undertaken with the Australian Taxation Office as the administering agency, and the New South Wales and Victorian Governments, whose programs have been declared in the Declaration.

Details of the instrument are set out in [Attachment A](#).

The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The instrument commenced on the day after it was registered.

The Office of Best Practice Regulation considers that the proposal is unlikely to have a more than minor regulatory impact. Therefore, a Regulation Impact Statement is not required.

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

## ATTACHMENT A

### Details of the *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 2) 2021*

#### Section 1 – Name of the instrument

This section provides that the name of the instrument is the *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 2) 2021* (the Declaration).

#### Section 2 – Commencement

This section provides for the commencement of the Declaration.

#### Section 3 – Authority

The Declaration is made under the *Income Tax Assessment Act 1997* (the Act).

#### Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

#### Schedule 1 – Amendments

Item 1 amends the table in section 5 of the *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Declaration 2020* to declare the following New South Wales grant programs as eligible grant programs:

- the 2021 COVID-19 business grant;
- the 2021 COVID-19 JobSaver payment;
- the 2021 COVID-19 micro-business grant; and
- the NSW Performing Arts COVID Support Package.

Items 2 to 6 amend the same table to declare the following Victorian grant programs as eligible grant programs:

- the Alpine Resorts Support Program (Streams 1, 2 and 3);
- the Business Continuity Fund;
- the Business Costs Assistance Program Round Two - July Extension;
- the Licenced Hospitality Venue Fund 2021 – July Extension; and
- the Small Business COVID Hardship Fund.

#### **New South Wales programs**

The 2021 COVID-19 business grant provides cash flow support to businesses impacted by public health directives such as those that restrict movement, gatherings and the ability of certain businesses to operate. The program provides support to

eligible businesses until the 2021 COVID-19 JobSaver payment commences. Under the program, eligible businesses are entitled to a one-off payment to help with business costs.

The 2021 COVID-19 JobSaver payment similarly provides cash flow support to businesses impacted by public health directives. The program aims to help businesses save jobs to support the economy after restrictions in New South Wales are lifted. Under the program, eligible businesses are entitled to fortnightly payments to help with business costs.

The COVID-19 micro business grants provides cash flow support to micro businesses impacted by public health directives. The program captures businesses that do not meet the minimum turnover requirements of the 2021 COVID-19 JobSaver payment. Under the program, eligible businesses are entitled to fortnightly payments to help with business costs.

The NSW Performing Arts COVID Support Package provides support to performing arts venues, producers and promoters impacted by the cancellation or postponement of performances because of public health directives. Under the program, eligible businesses are entitled to monthly payments based on ticket prices, venue capacity and specified percentage tied to the prevailing public health directive.

### **Victorian programs**

The Victorian Government has established the Alpine Resorts Support Program to assist businesses in Victoria's alpine regions manage the impacts of COVID-19. Stream 1 of the Alpine Resorts Support Program was previously declared as part of the Alpine Support Program. Streams 2 and 3 have been additionally declared.

Stream 2 provided grants to non-head lessee commercial operators within Victoria's alpine resorts and commercial operators located at Dinner Plain.

Stream 3 provides additional grants to eligible businesses who are critical to the economies of Victoria's alpine regions. Under Stream 3, eligible businesses are entitled to grants that may be used to assist the business.

The Business Continuity Fund provides support to business who have been affected by capacity limits because of COVID-19 restrictions. Eligible businesses are those who were recipients of the Business Costs Assistance Program Round Two and the Business Costs Assistance Program Round Two – July Extension, and who are in the sectors affected by capacity limits.

The Business Costs Assistance Program Round Two – July Extension provides support to small and medium businesses in sectors most affected by COVID-19 restrictions and who have not previously received funding through the Business Costs Assistance Program Round Two. Under the program, eligible businesses are entitled to a payment to be used to assist the business.

The Licenced Hospitality Venue Fund 2021 – July Extension provides support to the licensed hospitality venues affected by COVID-19 restrictions who did not previously apply for the Licensed Hospitality Venue Fund 2021. Under the program, eligible businesses are entitled to a payment to be used to assist the business.

The Small Business COVID Hardship Fund provides support to small businesses whose operations have been severely impacted by COVID-19 restrictions and who have not been eligible for support under existing business support funds. Under the

program, eligible businesses are entitled to a payment to be used to assist the business.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 2) 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 purpose of the *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 2) 2021* (the Declaration) is to declare grant programs administered by the States of New South Wales and Victoria as eligible programs for the purposes of section 59-97 of the *Income Tax Assessment Act 1997*, under which a payment received by an entity from an eligible program is non-assessable non-exempt income.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.