

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.3) 2022

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 for the purposes of section 59-97 of the Act, 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.3) 2022* (the Declaration) is to declare additional grant programs administered by States and Territories 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, governments of States and Territories 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 governments of New South Wales, Queensland, South Australia and the Australian Capital Territory, whose programs have been declared in the Declaration.

Details of the Declaration are set out in Attachment A.

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*. It is not exempt from sunseting and disallowance.

The Declaration commenced on the day after registration.

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.

Details of the *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No.3) 2022*

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.3) 2022*.

Section 2 – Commencement

Schedule 1 to the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The instrument 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 programs as eligible grant programs for the purposes of section 59-97 of the Act:

- NSW Accommodation Support Grant (New South Wales)
- Commercial Landlord Hardship Grant (New South Wales)
- NSW Performing Arts Relaunch Package (New South Wales)
- NSW Festival Relaunch Package (New South Wales)
- 2022 Small Business Support Program (New South Wales)
- 2021 COVID-19 Business Support Grants (Queensland)
- COVID-19 Business Support Grant – July 2021 (South Australia)
- COVID-19 Additional Business Support Grant (South Australia)
- COVID-19 Tourism and Hospitality Support Grant (South Australia)
- COVID-19 Business Hardship Grant (South Australia)
- COVID-19 Business Support Grant (Australian Capital Territory)

New South Wales

The NSW Accommodation Support Grant provides funding to accommodation providers in NSW who experienced cancellations for stays between 25 June and 11 July 2021.

The Commercial Landlord Hardship Grant provides financial support to smaller landlords whose main source of income is impacted by providing rental relief to retail or commercial tenants who have been financially impacted by NSW COVID-19 lockdowns in 2021.

The NSW Performing Arts Relaunch Package provides financial support to the performing arts sector to help it relaunch following major disruptions caused by COVID-19 public health restrictions imposed in 2020 and 2021.

The NSW Festival Relaunch Package provides the music, screen and arts industry with a one-off cash injection to stabilise businesses who have been financially affected by the COVID-19 public health restrictions imposed in 2020 and 2021.

The 2022 Small Business Support Program provides cashflow support to eligible businesses whose recovery from the NSW lockdowns over the period of June 2021 and October 2021 was impacted by the acute labour shortage and supply chain disruptions from the spread of the Omicron variant.

Queensland

The 2021 COVID-19 Business Support Grants provide funding to sole traders, businesses and not-for-profit organisations that were headquartered in Queensland and were impacted by lockdown events in Queensland during August 2021.

South Australia

The COVID-19 Business Support Grant – July 2021 provides funding to small and medium businesses that suffered a significant loss of income or were forced to close as a result of the COVID-19 public health restrictions imposed in South Australia from 20 July 2021.

The COVID-19 Additional Business Support Grant provides funding to small and medium businesses in eligible industry sectors that are significantly impacted by the density and other trading restrictions as a result of the COVID-19 public health restrictions imposed in South Australia from 28 July 2021.

The COVID-19 Tourism and Hospitality Support Grant provides funding to eligible businesses in the tourism and hospitality sectors that have been significantly impacted by the COVID-19 public health restrictions.

The COVID-19 Business Hardship Grant provides assistance to small and medium businesses that have been significantly impacted by COVID-19 public health restrictions and have not received financial support through their existing COVID-19 financial assistance funds.

Australian Capital Territory

The COVID-19 Business Support Grant provides funding to small and medium businesses whose turnover has significantly declined as a result of COVID-19 public health restrictions in place in the ACT from 12 August 2021.

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.3) 2022

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.3) 2022* is to declare grant programs administered by the States of New South Wales, Queensland and South Australia, and the Australian Capital Territory, 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.