

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. 4) 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 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. 4) 2022* (the Declaration) is to declare additional grant programs administered by States and Territories as eligible programs for the purpose of section 59-97 of the Act, under which a payment received in the 2020-21 or 2021-22 financial year by a small or medium 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 governments of Victoria 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 (OBPR ref: 43012).

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. 4) 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. 4) 2022*.

Section 2 – Commencement

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 purpose of section 59-97 of the Act:

- Business Cost Assistance Program Round Four – Construction (Victoria)
- Business Cost Assistance Program Round Two – Top Up (Victoria)
- Business Cost Assistance Program Round Three (Victoria)
- Business Cost Assistance Program Round Four (Victoria)
- Business Cost Assistance Program Round Five (Victoria)
- Commercial Landlord Hardship Fund 3 (Victoria)
- Impacted Public Event Support Program Round Two (Victoria)
- Licensed Hospitality Venue Fund Top Up Payments (Victoria)
- Live Performance Support Program (Presenters) Round Two (Victoria)

- Live Performance Support Program (Suppliers) Round Two (Victoria)
- HOMEFRONT 3 (Australian Capital Territory)

Victoria

The Victorian Government's Business Costs Assistance Program Round Four – Construction provides one-off payments to eligible employing and non-employing businesses in the construction sector that were operating in certain local government areas at the time of the restrictions.

The Business Costs Assistance Program Round Two – Top Up provides top up payments to recipients of the Business Costs Assistance Program Round Two.

The Business Costs Assistance Program Rounds Three, Four and Five provide additional support to eligible small and medium businesses which received a grant under the Business Costs Assistance Program Round Two or the Business Costs Assistance Program Round Two – July Extension.

The Commercial Landlord Hardship Fund 3 provides grants to eligible small landlords who experienced hardship as a result of waiving rent for their tenants between 28 July 2021 and 15 January 2022 under the Commercial Tenancy Relief Scheme.

The Impacted Public Event Support Program Round Two provides grants to organisers of Tier 1 and Tier 2 events under the Public Events Framework that were approved or registered to take place between 11:59pm on 24 June 2021 and 11:59pm on 23 September 2021.

The Licensed Hospitality Venue Fund 2021 – Top Up Payments provides top up payments to venues who received Licensed Hospitality Venue Fund 2021 or Licensed Hospitality Venue Fund 2021 July Extension.

The Live Performance Support Program (Presenters) Round Two provides grants to eligible businesses that have been affected by the cancellation or postponement of events as a result of COVID-19 lockdowns and public health restrictions between 11:59pm on 27 May 2021 and 11:59pm on 2 September 2021.

The Live Performance Support Program (Suppliers) Round Two provides grants to eligible contracted suppliers affected by the cancellation or postponement of events as a result of lockdowns and public health restrictions between 11:59pm on 27 May 2021 and 11:59 on 2 September 2021.

Australian Capital Territory

The HOMEFRONT 3 program provides grants to support artists, partnerships, or small groups (including bands) in response to the impacts of COVID-19.

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. 4) 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. 4) 2022* is to declare grant programs administered by Victoria 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.