# 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. 5) 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 state or territory 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 state or territory 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. 5) 2022* (the Declaration) is to declare an additional grant program administered by the Australian Capital Territory as an eligible program 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 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 provided 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 the grant program as an eligible program, enabling payments received under the program 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 government of the Australian Capital Territory, whose program has 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 sunsetting 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.

**ATTACHMENT A**

**Details of the *Income Tax Assessment (Eligible State and Territory COVID-19 Economic Recovery Grant Programs) Amendment Declaration (No. 5) 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. 5) 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 COVID-19 Small Business Hardship Scheme as an eligible grant program for the purpose of section 59-97 of the Act.

The COVID-19 Small Business Hardship Scheme provided reimbursement, by way of a grant, for eligible businesses for costs incurred and paid with selected utilities (gas, water and electricity), commercial rates and commercial vehicle registrations up to the value of $10,000 per business.

**ATTACHMENT B**

### 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. 5) 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. 5) 2022* is to declare a grant program administered by the Australian Capital Territory as an eligible program 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.