



Explanatory Statement

Taxation Administration – Single Touch Payroll – Amounts to be Notified Amendment (Australian Apprenticeships Incentives) Determination 2022

General outline of instrument

1. This instrument is made under subsection 389-5(3) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).
2. This instrument amends the *Taxation Administration – Single Touch Payroll – Amounts to be Notified Determination 2021* (F2021L00094). That instrument determines the information which the approved form may require to be reported through Single Touch Payroll (STP) for the purposes of paragraph 389-5(2)(b) of Schedule 1 to the TAA.
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 1 July 2022.
6. This instrument applies retrospectively to provide certainty, by ensuring the amendments made by this instrument apply to complete financial years.
7. Under section 12(2) of the *Legislation Act 2003* this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth. It only relates to the reporting of information by the Commonwealth.

What is the effect of this instrument

8. This instrument amends the existing determination to enable the Commissioner of Taxation to require STP be used for the reporting of support payments made to an 'Australian Apprentice' by the Department responsible for administering programs with the purpose of encouraging training and continued development of skills within the Australian apprenticeships system. On 1 August 2022, the responsible Department was the Department of Employment and Workplace Relations (DEWR).
9. The instrument defines an 'Australian Apprentice' as a person who is employed as an apprentice or trainee under a training contract approved by the government body responsible for the operation of the vocational education and training system within a State or Territory.
10. This instrument does not affect the existing structure, function, or obligations of STP reporting for employers.

Compliance cost assessment

11. Compliance cost impact: Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature (OBPR22-03001).

Background

12. Division 389 of Schedule 1 to the TAA provides for STP reporting. It requires employers (unless they are exempt) to report certain amounts to the Commissioner.

13. Section 389-5 of Schedule 1 to the TAA provides that STP reporting must be in the approved form. It also provides that the approved form may only require information about an amount if it is either:

- (a) an amount to be notified under subsection 389-5(1) of Schedule 1 to the TAA, or
- (b) an amount of a kind that is determined by the Commissioner by legislative instrument.

14. Various government departments have administered programs which aim to encourage training and continued development of a highly skilled Australian workforce by connecting industries and occupations traditionally associated with the apprenticeships system.

15. An eligible Australian apprentice who is undertaking an Australian Apprenticeship in a priority occupation receives:

- (a) salary or wages for their work paid by their employer, and
- (b) support payments made by the DEWR.

16. Salary or wages paid by employers are reported to the Australian Taxation Office (ATO) through STP.

17. DEWR is required to report the support payments to the ATO but is not currently required to do so through STP. Instead, DEWR provides a payment summary to each Australian Apprentice and must provide a report of those payment summaries to the ATO.

18. As a result, participating Australian Apprentices receive information from their employers and DEWR about their income and tax withheld in different ways, despite the payments relating to the same Australian Apprenticeship.

19. As the DEWR-administered support payments are not currently required to be notified under subsection 389-5(1) of Schedule 1 to the TAA, they could only be required to be reported through STP if determined by legislative instrument made under subsection 389-5(3) of Schedule 1 to the TAA.

20. The amendment in this instrument will ensure that the DEWR-administered payments relating to an Australian Apprenticeship can be reported through STP, to ensure consistency with the way employers report payments made in relation to the same Australian Apprenticeship.

21. Employers of Australian Apprentices are not affected by the amendments made by this instrument. Those employers should already be reporting salary and wages using STP.

22. There is no change required to the existing structure and function of STP reporting, as these support payments made to Australian Apprentices already align with existing reporting requirements for STP.

Consultation

23. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before he makes a determination.

24. Consultation was undertaken with the Commonwealth Department affected by this instrument (currently known as DEWR).

Legislative references

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Taxation Administration Act 1953

Statement of compatibility with Human Rights

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

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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

This instrument amends the *Taxation Administration – Single Touch Payroll – Amounts to be Notified Determination 2021* (F2021L00094). That instrument determines the information which the approved form may require to be reported through Single Touch Payroll (STP) for the purposes of paragraph 389-5(2)(b) of Schedule 1 to the *Taxation Administration Act 1953*. The amendment effectively brings support payments made by the Commonwealth to Australian Apprentices within STP reporting.

Human rights implications

This legislative instrument interacts with the right to privacy to the extent that it facilitates the Commissioner of Taxation collecting personal information about Australian Apprentices who are in receipt of payments under Commonwealth programs administered for the purpose of encouraging training and continued development of skills within the apprenticeships system.

However, no information in addition to that which is already being collected will be collected as a result of this legislative instrument. This information is already collected under reporting required by the payment summary and payment summary annual report system in the tax law. Once relevant information is reported via STP (as enabled by this instrument), the ATO will no longer collect information through the payment summary and payment summary annual report system.

Collection of this personal information through the STP reporting system improves compatibility with the right to privacy, as it facilitates a greater ability for the payee to have easy and timely access to the information held about them.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that ‘no one shall be subjected to arbitrary or unlawful interference with their privacy’. The Human Rights Committee has said that the right to privacy includes respect for information privacy, including collection, storage, security, use, disclosure or publication of personal information.¹ It has further indicated that the right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order not to be arbitrary, any limitation must be reasonable and necessary in the particular circumstances, as well as proportionate to the objectives it seeks to achieve.²

¹ Human Rights Committee, *General Comment No 16: Article 17 (Right to privacy)*, 32nd sess UN Doc HRI/GEN/1/Rev 6 (8 April 1988), [10].

² Human Rights Committee, *General Comment No 16: Article 17 (Right to privacy)*, 32nd sess UN Doc HRI/GEN/1/Rev 6 (8 April 1988). See also Manfred Nowak, *UN Covenant of Civil and Political Rights: CCPR Commentary* (Engel Services, 2nd ed, 2005), 383.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues. To the extent that it interacts with Article 17 of the ICCPR, this instrument is compatible on the basis that the interaction is reasonable and proportionate to support the administration of relevant taxation laws and is neither unlawful nor arbitrary. The ATO would not collect any additional information under the instrument; it would just collect information via a different reporting system.