

## **EXPLANATORY STATEMENT**

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

*Coronavirus Economic Response Package (Payments and Benefits) Act 2020*

*Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020*

Subsection 20(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act) provides that the Treasurer may make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The object of the Act is to provide financial support to entities to assist with the impact of the Coronavirus known as COVID-19. In particular, the Act establishes a framework for the Treasurer to make rules about one or more kinds of payments to an entity in respect of a prescribed period.

On 30 March 2020, the Australian Government announced a wage subsidy called the JobKeeper payment for entities that have been significantly affected by the economic impacts of the Coronavirus. In support of the Act, the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) establish the JobKeeper scheme and specify details about the scheme, including:

- the start and end date of the scheme;
- when an employer or entity is entitled to a payment;
- the amount and timing of a payment; and
- other matters relevant to the administration of the payment.

On 7 August 2020, the Government announced that the JobKeeper payment would be extended so that it applies to more recently engaged employees that were in an employment relationship with eligible employers on 1 July 2020.

The purpose of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020* (the Amending Rules No. 7) is to extend the scope of the wage subsidy support provided under the JobKeeper scheme so that it also benefits employers of more recently engaged employees where the employer can otherwise qualify for JobKeeper payments in respect of an employee. This recognises the ongoing impact of COVID-19 on many employers and the need for the JobKeeper scheme to support workforce flexibility.

Accordingly, under the changes to the JobKeeper scheme, for JobKeeper fortnights beginning on or after 3 August 2020, the reference date for determining certain employee eligibility conditions is changed from 1 March 2020 to 1 July 2020.

For JobKeeper fortnights beginning on or after 3 August 2020, the amendments allow qualifying employers to receive JobKeeper payments in respect of individuals who

are newly employed by the entity if these individuals meet the eligibility requirements on 1 July 2020. The amendments also allow individuals who have nominated as an eligible employee or eligible business participant with one entity to re-nominate as an eligible employee of another entity in limited circumstances. To re-nominate, the individual must have ceased their employment or business participation with the first entity before 1 July 2020, and commenced their employment with the new entity by 1 July 2020.

Further, the eligibility of existing employees is preserved for employees who are already covered by the JobKeeper scheme under the original 1 March 2020 reference date. This means that employees who were eligible for the JobKeeper scheme before these amendments commenced do not need to retest their eligibility with reference to the 1 July 2020 date for JobKeeper fortnights beginning on or after 3 August 2020 if other conditions are met.

Consistent with the overall JobKeeper scheme, a qualifying employer must meet notification requirements. These include providing notification to the Commissioner of Taxation about any employees that become eligible employees under the amendments. Further, the qualifying employer must also notify the newly eligible employee about their participation in the JobKeeper scheme. There are also notification requirements for certain circumstances when an individual is re-employed by the entity that they had previously nominated for. These notification requirements provide transparency for employers and employees about the operation of the JobKeeper scheme.

The Government announced other changes to the JobKeeper scheme on 21 July 2020 to extend the period over which JobKeeper payments are made and to introduce two tiers of payments. Those changes will be included in separate amendments.

Details of the Amending Rules No. 7 are set out in [Attachment A](#).

The Amending Rules No. 7 implement one element of changes in eligibility for the JobKeeper program announced by the Government on 21 July and 7 August 2020. The combined effect of those announced changes and the recent economic deterioration in Victoria bring the estimate of JobKeeper payments overall to \$101.3 billion.

Prior to making this instrument, consultation was undertaken with a number of stakeholders, including the Australian Taxation Office.

An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

The Amending Rules No. 7 are a legislative instrument for the purposes of the *Legislation Act 2003*. The Amending Rules No. 7 commenced the day after the Instrument was registered on the Federal Register of Legislation.

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

**Details of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020***

**Part 1 – Preliminary**

**Section 1 – Name of the Instrument**

Section 1 provides that the title of the Instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020* (Amending Rules No. 7).

**Section 2 – Commencement**

Section 2 provides that the Amending Rules No. 7 commence on the day after the Instrument was registered on the Federal Register of Legislation.

**Section 3 – Authority**

Section 3 provides that the Instrument is made under subsection 20(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act).

**Section 4 – Schedules**

Section 4 has the effect that the Rules as specified in Schedule 1 to the Amending Rules No. 7 are amended as set out in the applicable items in the Schedule.

**JobKeeper scheme amendments – extension to new employees in an employment relationship on 1 July 2020**

The JobKeeper scheme has been extended so that eligible entities can qualify for JobKeeper payments in respect of more recently engaged employees or existing employees that now meet eligibility requirements. Under the changes, for JobKeeper fortnights beginning on or after 3 August 2020, the reference date on which employers can qualify for JobKeeper payments in respect of eligible employees is 1 July 2020 (previously 1 March 2020). These reference date changes apply to the new *1 July 2020 requirements* (under subsection 9(2) of the Rules) as well as the new nomination requirements (under subsection 9(3) of the Rules). References to legislation are to the amendments to the Rules unless otherwise stated.

The changes do not affect any entitlements payable under the existing JobKeeper rules for JobKeeper fortnights ending on or before 2 August 2020. The changes support workforce flexibility by providing the opportunity for entities to qualify for JobKeeper payments in respect of employees that were engaged after 1 March 2020 and are in an employment relationship with a qualifying employer on 1 July 2020. These employees may be eligible under the new 1 July 2020 reference date.

The changes also allow employers to qualify for JobKeeper payments in other circumstances regarding existing employees who are not eligible *1 March 2020 employees*, but become eligible when they meet the conditions under the new 1 July 2020 reference date. These include employees who:

- were not considered eligible *1 March 2020 employees* because they did not meet the definition of a long term casual employee by 1 March 2020, but have since become long term casual employees by 1 July 2020;
- were not considered eligible *1 March 2020 employees* because they were not aged 16 years, but have since become aged 16 years and over by 1 July 2020;
- are aged 16 or 17 years and were living independently or not undertaking full-time study on 1 July 2020; and
- were residents or holders of a Subclass 444 (Special Category) visa on 1 July 2020.

Further, the amendments preserve the existing eligibility of employees in respect of qualifying employers for JobKeeper fortnights beginning on or after 3 August 2020. Under the amendments, these are the eligible *1 March 2020 employees*. In these cases, individuals that satisfied the 1 March 2020 requirements and the nomination requirements before these amendments commenced, do not need to retest (and potentially lose) their eligibility for their employer due to the introduction of the 1 July 2020 date. Employees are not excluded from eligibility if they cease employment and are later re-employed by their employers (including after 1 July 2020), provided they have not nominated as an eligible individual in relation to another entity (further detail about re-nominations is provided below).

### **For JobKeeper fortnights beginning on or after 3 August 2020**

Prior to these amendments, for an employer to qualify for JobKeeper payments for JobKeeper fortnights in respect of an employee, the employee had to meet all eligibility requirements, including the *1 March 2020 requirements*. Further, that employee must not have been nominated as an eligible employee, business participant or religious practitioner of another entity.

Under the amendments, for JobKeeper fortnights beginning on or after 3 August 2020, an individual can be an eligible employee if:

- they meet the eligibility requirements with reference to the new 1 July 2020 date; or
- their eligibility from 1 March 2020 was preserved as a *1 March 2020 employee* under the amendments.

(Items 5, 6 and 7, subsection 9(1A), heading to subsection 9(2) and subsection 9(2))

An employee that was eligible under the former *1 March 2020 requirements* and former nomination requirements is defined as a *1 March 2020 employee* (item 1, definition of 1 March 2020 employee).

Together with updating the reference date of 1 July 2020 for the former *1 March 2020 requirements*, the amendments also makes corresponding changes to the nomination requirements under subsection 9(3) of the Rules where references to the 1 March 2020 date are substituted with 1 July 2020 (items 8, and 9, subparagraph 9(3)(a)(i) and paragraph 9(3)(aa))

The former nomination notice requirements effectively prevent eligible individuals from nominating for the JobKeeper scheme for more than one entity, whether as an employee, business participant or religious practitioner. However, to provide support where new individuals have been employed by an entity by 1 July 2020, the amendments provide an exception to this restriction. Under this exception an individual who has nominated as an eligible employee or eligible business participant with one entity can re-nominate as an eligible employee of another entity in limited circumstances. To re-nominate, the individual must have ceased their employment or business participation with the first entity before 1 July 2020, and commenced their employment with the new entity by 1 July 2020 (item 12, subsection 9(3A)).

An individual who re-nominates as an eligible employee of a new entity is excluded from being an eligible employee or eligible business participant of the old entity (items 12, 13 and 23, subsection 9(3B), paragraphs 9(4)(e) and 12(6)(d)).

Accordingly, where all other eligibility criteria are met, for JobKeeper fortnights beginning on or after 3 August 2020, the JobKeeper scheme can apply if an employer:

- employed a new employee by 1 July 2020, even if that employee has previously been an eligible individual for another entity under the JobKeeper scheme (whether as an employee or business participant) provided that the employee was not employed or actively engaged in the business of the other entity by 1 July 2020;
- had existing employees who were not eligible due to the former reference date of 1 March 2020, but become eligible employees under the new 1 July 2020 reference date;
- had existing employees who were eligible prior to the commencement of the instrument and they continue to be employed without any termination in employment and are not excluded from being eligible employees; or
- qualified for JobKeeper payments in respect of an eligible employee prior to the amendments commencing, and the employee ceased to be employed after 1 March 2020 but was later re-employed by the same employer. However, this only applies if no other entity qualified for JobKeeper payments in respect of that individual for any JobKeeper fortnight.

However, for a qualifying entity to claim the JobKeeper payment in respect of an eligible employee for a JobKeeper fortnight:

- the employee must continue to meet other eligibility criteria including being in the required employment relationship with the entity and not be excluded from eligibility; and
- the entity must continue to meet other eligibility criteria including meeting the wage condition requirements under section 10 of the Rules.

**Example 1: New employees engaged since 1 March 2020 and existing casual employee becomes a long term casual employee on 1 July 2020**

The ABG Café has qualified for the JobKeeper Scheme for the JobKeeper fortnight commencing on 30 March 2020 and later JobKeeper fortnights in respect of five employees that it employed prior to 1 March 2020 from the start of the JobKeeper scheme. However, ABG Café did not qualify for JobKeeper payments in respect of one of its employees, Tilly, who was employed on a casual basis and did not meet the definition of long term casual employee on 1 March 2020.

Two of the other employees have since left, and ABG Café employed Bonnie, a new permanent ongoing employee in June 2020.

For JobKeeper fortnights beginning on or after 3 August 2020, ABG Café determines whether Bonnie is an eligible employee for which it can qualify for JobKeeper payments. Although Bonnie was not an eligible employee for the JobKeeper fortnights ending on or before 2 August 2020 (as she was not employed by ABG Café on 1 March 2020), Bonnie is an eligible employee because she meets the *1 July 2020 requirements*. In addition to meeting other eligibility requirements, Bonnie had an ongoing employment relationship with ABG Café on 1 July 2020.

By 1 July 2020, Tilly has been employed on a regular and systematic basis for over 12 months and accordingly, ABG Café can now qualify for the JobKeeper payment in respect of Tilly for the JobKeeper fortnight starting on 3 August 2020 and later fortnights.

**Employees who have moved to a new employer by 1 July 2020 can re-nominate with a new employer**

The amendments provide support to entities where there has been a movement of employees between employers and the engagement of new employees between the reference dates of 1 March 2020 and 1 July 2020 for the purposes of the JobKeeper scheme. Where relevant conditions are met, individuals are not excluded from re-nominating their eligibility as an employee with a new employer (items 10, 11 and 12, repeal of subparagraph 9(3)(b)(ii) and subsections 9(3A) and 9(3B)).

The new requirements ensure that the wage subsidy under the JobKeeper scheme is paid to qualifying employers in respect of their eligible employees for JobKeeper fortnights beginning on or after 3 August 2020 for more recently engaged employees

by reference to their eligibility on 1 July 2020. In these circumstances, an individual who joined a new employer by 1 July 2020 can meet the *1 July 2020 requirements* as well as the new nomination requirements despite being an eligible employee or business participant of another entity for any previous JobKeeper fortnight. However, this is subject to them not being employed or actively engaged in the business of the other entity by 1 July 2020.

Therefore the individual must have ceased to be employed or actively engaged in the business (as a business participant) of the old entity after 1 March 2020 but before 1 July 2020. The reason they ceased their relationship does not matter (for example, they could have had their employment terminated, they could have resigned, or their employer may have ceased to exist). By satisfying the requirements with reference to the 1 July 2020 date, it does not matter whether the individual had previously been an eligible individual (including as an employee or business participant) of another qualifying entity.

The amendments do not allow an individual to be eligible if they either stay in employment or continue to actively engage in the business as a business participant in respect of another entity, and attempt to switch their eligibility with reference to a second employer if they have not ceased their employment or business engagement with the first qualifying entity. The requirement that the relationship must have ceased after 1 March 2020 but before 1 July 2020 prevents this from occurring.

### **Example 2: New employee joins from a former employer who was eligible for JobKeeper payments**

Lee joins NewJob Inc on 27 June 2020 as a full time employee after leaving his former employer. His former employer qualified for JobKeeper payment in respect of Lee for the JobKeeper fortnight beginning on 30 March 2020 and later fortnights until he left in June. As Lee has left his former employer, his former employer no longer qualifies for the JobKeeper payment in respect of Lee as an eligible employee.

For JobKeeper fortnights beginning on or after 3 August 2020, NewJob Inc can qualify for JobKeeper payments in respect of Lee as an eligible employee because he satisfies the *1 July 2020 requirements*. Further, Lee is not excluded from being nominated under the JobKeeper scheme because he left his former employer before 1 July 2020 and was employed by NewJob Inc on 1 July 2020.

### **Notification requirement for eligible employees under the 1 July 2020 reference date**

The existing notification requirements for entities that first start to participate in the JobKeeper scheme continue to apply. Similar to the existing requirements to give notice to employees, the amendments require employers that have already elected to participate in the JobKeeper scheme to give a notice to all employees other than:

- employees that the entity has previously given a notice in writing advising that the entity has elected to participate in the JobKeeper scheme;
- employees that had previously provided the employer with a nomination form in relation to the JobKeeper scheme;

- individuals who the entity reasonably believes does not satisfy the *1 July 2020 requirements*; and
- for employers that are ACNC-registered charities that have elected to disregard certain government and related supplies and the individual's wages and benefits are funded from such government and related sources.

(Items 17 and 18, paragraph 10A(5)(c), and subsections 10A(6) and (7))

This notice must be provided within seven days from commencement of the Instrument. The notice must state that the individual must give the employer a nomination notice if they agree to be nominated by the employer under the JobKeeper scheme (item 18, subsection 10A(8)). A failure to provide a statement that is required to be provided may also constitute an offence, or give rise to administrative penalties, under the *Taxation Administration Act 1953*.

Further, under the requirements, to be eligible for the JobKeeper payment for any newly eligible employees under the 1 July 2020 reference date, the qualifying entity must provide notice to the Commissioner of Taxation (Commissioner), in the approved form, of information about that individual and their nomination. Where an employer has provided this notification to the Commissioner for entitlement to receive JobKeeper payments in respect of the eligible employee, the employer must notify the individual within seven days under subsection 6(4) of the Rules.

**Individuals whose eligibility are preserved by these amendments: *1 March 2020 employees***

As an alternative to meeting the new 1 July 2020 reference date, the amendments preserve the eligibility of individuals who met the requirements under the 1 March 2020 reference date as in force prior to the commencement of the instrument with respect to that qualifying employer. An individual covered by this preservation rule is a *1 March 2020 employee* under the definitions in the Rules. The former conditions that must be met includes both the *1 March 2020 requirements* (under former subsection 9(2) of the Rules) and the previous nomination requirements (under former subsection 9(3) of the Rules).

In practical terms, for JobKeeper fortnights beginning on or after 3 August 2020, individuals that were already eligible employees for their employer for any JobKeeper fortnight under the former rules do not need to retest their eligibility with reference to the new 1 July 2020 date under the *1 July 2020 requirements* (under new section 9(2) of the Rules) or satisfy any new nomination requirements (under new section 9(3) of the Rules).

Despite the rules that preserve an employee's status with reference to meeting the requirements under the 1 March 2020 date, to be an eligible employee for a JobKeeper fortnight, the employee must continue to meet other requirements under the Rules, including that they are:

- employed by the entity; and



- not excluded from being an eligible employee (under subsection 9(4) of the Rules).

### **Example 3: Ongoing eligible employees**

TLC Consulting Inc continues to employ three permanent employees for which it has qualified for the JobKeeper scheme for the JobKeeper fortnight beginning on 30 March 2020 and later JobKeeper fortnights as they met the definition of eligible employee on 1 March 2020. Under the Rules, these employees are considered *1 March 2020 employees* for TLC Consulting Inc.

TLC Consulting Inc continues to qualify for JobKeeper payments in respect of its ongoing employees that it had in its employment on 1 March 2020 for JobKeeper fortnights commencing on and after 3 August 2020. This is because the entity was eligible for JobKeeper payments for these employees for the JobKeeper fortnights ending on or before 2 August 2020, as long as all other eligibility requirements are met.

### **Re-employing former employees**

By preserving the eligibility of *1 March 2020 employees*, the amendments allow those employees to be re-employed by the same entity without the need to re-test their eligibility under the new 1 July 2020 reference date, if certain conditions are met.

If an employer qualified for JobKeeper payments for an eligible employee for a JobKeeper fortnight ending on or before 2 August 2020, that individual may still be an eligible employee for JobKeeper fortnights beginning on or after 3 August 2020 even if they terminate their employment and are later re-employed by that employer. Provided that these individuals have not become an eligible individual (whether as an employee, business participant, or religious practitioner) under the JobKeeper scheme for another entity at any time, they do not need to retest their eligibility with reference to the new 1 July 2020 date since their eligibility under the former *1 March 2020 requirements* and nomination requirements continues to be preserved. This ensures that the JobKeeper scheme can provide support to employers that have re-employed their former employees who have been let go because of the impacts of COVID-19.

Under the rules, where there is a break in the employment relationship between the employer and an individual who was an eligible employee for any JobKeeper fortnight ending on or before 2 August 2020, the eligibility of that individual is generally preserved for JobKeeper fortnights beginning on or after 3 August 2020. Once an individual is no longer employed by their former employer, the former employer is no longer entitled to receive the JobKeeper payment in relation to the individual (because the payment only applies to employees). When that individual is re-employed by the same employer, the eligibility of that individual is not preserved if the individual re-nominated for another entity.

### **Example 4: Eligible employee rejoining a qualifying employer**

HHLT Pty Ltd qualified for JobKeeper payments for four eligible employees for the JobKeeper fortnight beginning 30 March 2020 and later fortnights.

After the end of the third JobKeeper fortnight, one of the eligible employees, Rosie, left HHLT Pty Ltd due to the lack of business for HHLT Pty Ltd and to

pursue another opportunity. During this later time, HYL T Pty Ltd qualified for JobKeeper payments for only three eligible employees.

On 28 July 2020, Rosie returned to HYL T Pty Ltd and resumed ongoing full-time employment. Further, Rosie was not eligible to renominate as an eligible employee of another qualifying entity.

For JobKeeper fortnights beginning on or after 3 August 2020, despite Rosie not meeting the *1 July 2020 requirements*, HYL T Pty Ltd can qualify for the JobKeeper payment in respect of Rosie as a *1 March 2020 employee* under the Rules. This is because Rosie's eligibility based on the *1 March 2020 requirements* was preserved since she was an eligible employee of HYL T Pty Ltd for a JobKeeper fortnight ending on or before 2 August 2020 and she did not qualify as an eligible individual of another qualifying entity.

#### Notification requirement for individuals re-employed after 1 July 2020

Under the amendments, there are new notification requirements for *1 March 2020 employees* where their employment ceased before 1 July 2020 and they are re-employed by an entity after 1 July 2020 (item 12, subsections 9(9) and (10)). This is because where eligible *1 March 2020 employees* are re-employed by the qualifying entity on or before 1 July 2020, that individual would not have the opportunity to be nominated as an eligible individual for another entity under the new 1 July 2020 reference date or the former 1 March 2020 reference date. Similarly, a *1 March 2020 employee* that ceased employment with an entity on or after 1 July 2020 but was re-employed later would not have an opportunity to become an eligible individual for another entity under the new 1 July 2020 reference date.

As qualifying entities are not entitled to claim the JobKeeper payment in relation to returning eligible employees that have at any time been eligible individuals in respect of another entity, the amendments require individuals to provide a notice to the re-employing entity if all of the following circumstances apply:

- The individual was an eligible employee of the qualifying entity (as a *1 March employee* of the entity);
- The individual had ceased to be employed by the qualifying entity after 1 March 2020 but before 1 July 2020; and
- The individual was re-employed by the qualifying entity after 1 July 2020.

(Items 19 and 24, subsection 10B(1))

The notice that must be provided to the entity is a notice that states if the individual had provided a nomination notice to another entity under the new 1 July 2020 reference date. The notice must be in the approved form and provided within seven days of being re-employed by the entity (or, if that was before the Instrument commenced, within seven days of the Instrument's commencement) (items 19 and 24, subsection 10B(2), and section 111).

This notice will enable an employer that re-employs a *1 March 2020 employee* to determine whether or not they are able to rely on the original nomination notice that

was provided to them before the individual ceased their employment. Individuals who provide a false or misleading statement may be liable to criminal and administrative penalties under the *Taxation Administration Act 1953*. Individuals may also be jointly and severally liable for any overpayments made to an entity under the JobKeeper scheme where the overpayment occurred because the entity reasonably relied on a statement that was made by the individual in the approved form (see section 11 of the Act).

In the event that an individual does not comply with the obligation to notify, the employer is cautioned to obtain a statement from the individual before claiming an entitlement to the JobKeeper payment in relation to the employee. A failure of the individual to provide a statement that is required to be provided may also constitute an offence, or give rise to administrative penalties, under the *Taxation Administration Act 1953*.

### **The ‘one in all in’ principle**

Under the amendments, for JobKeeper fortnights beginning on or after 3 August 2020, an individual can be an eligible employee if:

- they meet the eligibility requirements with reference to the new 1 July 2020 date; or
- their eligibility from 1 March 2020 was preserved as a *1 March 2020 employee* under the amendments.

Accordingly, a qualifying entity that has some eligible employees that were in an employment relationship with the entity on 1 March 2020 and other employees that are newly eligible by applying the *1 July 2020 requirements* cannot choose to exclude any eligible employees if the entity participates in the JobKeeper scheme.

Therefore, for JobKeeper fortnights beginning on or after 3 August 2020, where an individual is not an eligible employee for any JobKeeper fortnight ending on or before 2 August 2020 under the *1 March 2020 requirements*, the employer must determine whether that individual is an eligible employee by reference to the *1 July 2020 requirements* and vice versa. This ensures the consistent application of the ‘one in, all in’ principle and is a key feature of the JobKeeper scheme.

### **Consequential amendments**

The Instrument makes the following consequential amendments:

- The amendments clarify the policy that no more than one qualifying entity may receive a JobKeeper payment in respect of an eligible individual for a JobKeeper fortnight (items 2, 3, 4, 20, 21 and 22, heading before subsection 6(3), subsection 6(3), heading before subsection 11(4), and subsection 11(4));
- The amendments also specifically exclude individuals from being an eligible individuals in respect of an old entity if they have nominated to be eligible for a new entity (items 13 and 23, paragraph 9(4)(e) and paragraph 12(6)(d)); and

- The amendments make updates to headings and notes (items 14, 15 and 16, note 1 to subsection 9(6), heading to subsection 10A(1) and repeal of note to subsection 10A(4)).

### **Application of amendments**

The amendments commence on the day after the instrument is registered.

However, the amendments that alter the reference date of 1 March 2020 to 1 July 2020 only apply to JobKeeper fortnights beginning on or after 3 August 2020 (item 24, sections 109 and 110).

While the employment reference date of 1 July 2020 and application to JobKeeper fortnights beginning on or after 3 August 2020 are retrospective in application at the time of the Instrument's commencement, the amendments do not disadvantage qualifying employers and eligible employees. This is because the amendments recognise labour mobility and wholly benefit employers and individuals that become eligible employees by allowing qualifying employers to receive JobKeeper payments in respect of those individuals who meet the *1 July 2020 requirements*. For JobKeeper fortnights beginning on or after 3 August 2020, the amendments also preserve the eligibility of employees for the JobKeeper fortnights ending on or before 2 August 2020 (using the former 1 March 2020 reference date) as *1 March 2020 employees*.

## **ATTACHMENT B**

### **Statement of Compatibility with Human Rights**

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

*Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020*

The *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020* (Amending Rules No. 7) are 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 Rules**

The purpose of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020* (the Amending Rules No. 7) is to extend the scope of the wage subsidy support provided under the JobKeeper scheme so that it also benefits employers of more recently engaged employees where the employer can otherwise qualify for JobKeeper payments in respect of an employee. This recognises the ongoing impact of COVID-19 on many employers and the need for the JobKeeper scheme to support workforce flexibility.

Accordingly, under the changes to the JobKeeper scheme, for JobKeeper fortnights beginning on or after 3 August 2020, the reference date for determining certain employee eligibility conditions is changed from 1 March 2020 to 1 July 2020.

For JobKeeper fortnights beginning on or after 3 August 2020, the amendments allow qualifying employers to receive JobKeeper payments in respect of individuals who are newly employed by the entity if these individuals meet the eligibility requirements on 1 July 2020. The amendments also allow individuals who have nominated as an eligible employee or eligible business participant with one entity to re-nominate as an eligible employee of another entity in limited circumstances. To re-nominate, the individual must have ceased their employment or business participation with the first entity before 1 July 2020, and commenced their employment with the new entity by 1 July 2020.

Further, the eligibility of existing employees is preserved for employees who already covered by the JobKeeper scheme under the original 1 March 2020 reference date. This means that employees who were eligible for the JobKeeper scheme before these amendments commenced do not need to retest their eligibility with reference to the 1 July 2020 date for JobKeeper fortnights beginning on or after 3 August 2020 if other conditions are met.

Consistent with the overall JobKeeper scheme, a qualifying employer must meet notification requirements. These include providing notification to the Commissioner of Taxation about any employees that become eligible employees under the amendments. Further, the qualifying employer must also notify the newly eligible employee about their participation in the JobKeeper scheme. There are also

notification requirements for certain circumstances when an individual is re-employed by the entity that they had previously nominated for. These notification requirements provide transparency for employers and employees about the operation of the JobKeeper scheme.

### **Human rights implications**

The Amending Rules No. 7 may engage the following human rights or freedoms:

#### *Right to work*

The measure engages the right to work in Article 6 of the International Covenant on Economic, Social and Cultural Rights.

Article 6(1) recognises the right to work and obliges States Parties to take appropriate steps to safeguard this right.

The JobKeeper scheme that is being extended under these amendments helps to support the viability of Australian businesses by providing a wage subsidy during the economic disruption caused by the COVID-19 pandemic. A new employment reference date of 1 July 2020 is intended to provide a wage subsidy to protect the jobs of more eligible employees that would not have met the former reference date of 1 March 2020. Employers of individuals who were eligible employees at a time prior to the application of amendments continue to retain their eligibility following the amendments.

The measure is compatible with human rights and positively engage the right to work as the JobKeeper scheme is aimed at assisting employers and keeping people in jobs.

#### *Privacy*

Article 17 of the International Covenant on Civil and Political Rights provides that:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

Participation in the JobKeeper scheme requires the provision of information to the Commissioner that may include personal information, including names, employment status, Australian residency status, and information relating to the turnover of a business. To any extent to which the provision of this information constitutes a limitation of a person's right to be protected from interference with his or her privacy, the limitation is justified because the provision of information is:

- contingent on the affected person giving consent to the disclosure of information by nominating to participate in the JobKeeper scheme, or in the case of an employee, agreeing to be nominated;
- in pursuit of the legitimate objective identified—which is to respond to the economic downturn caused by the Coronavirus by providing a wage subsidy to affected businesses; and

- rationally connected and proportionate to the objective sought as the information is required to determine eligibility for the JobKeeper scheme and to ensure that it is administered according to the policy objective.

For these reasons, the Amending Rules No. 7 do not unnecessarily restrict a person's right to privacy.

#### *Right to work*

The measure engages the right to work in Article 6 of the International Covenant on Economic, Social and Cultural Rights.

Article 6(1) recognises the right to work and obliges States Parties to take appropriate steps to safeguard this right.

The JobKeeper scheme that is being extended under these amendments helps to support the viability of Australian businesses by providing a wage subsidy during the economic disruption caused by the COVID-19 pandemic.

The measure is compatible with human rights and positively engage the right to work as the JobKeeper scheme is aimed at assisting employers and keeping people in jobs.

#### **Conclusion**

The Amending Rules No. 7 are compatible with human rights.



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