<u>EXPLANATORY STATEMENT</u>

<u>Issued by authority of the Treasurer</u>

Coronavirus Economic Response Package (Payments and Benefits) Act 2020

Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 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. These details included 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 21 July 2020, the Government announced that the JobKeeper payment is being extended by six months, until 28 March 2021.

The purpose of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020* (the Amending Rules No. 8) is to extend the period of wage subsidy support provided under the JobKeeper scheme until 28 March 2021, whilst ensuring that it is tapered in the December 2020 and March 2021 quarters and provides targeted assistance to entities that need assistance the most.

Eligibility for JobKeeper fortnights beginning on or after 28 September 2020 is subject to a new additional eligibility test for decline in turnover. This ensures that entities that qualify for JobKeeper payments under the extended scheme have had a recent actual decline in turnover to ensure that it is appropriately targeted. Under the changes, assistance is tapered in respect of all eligible employees, business participants and religious practitioners. The rate depends on the hours of: work and paid leave for employees, business engagement by business participants and relevant activities by religious practitioners. Eligible employers, business participants and religious institutions are able to enrol for the JobKeeper Scheme during the extension period even where they have not previously enrolled, subject to meeting the eligibility criteria.

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The first stage applies to JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021. The second stage applies to JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021. During the first stage, the higher rate of JobKeeper payment is $1,200 and the lower rate is $750. During the second stage, the higher rate is $1,000 and the lower rate is $650.

To qualify for JobKeeper payments for JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021, entities must satisfy the original decline in turnover test (now extended) and an additional test. Under this additional test, entities must demonstrate that their actual GST turnover has declined by the required percentage for the quarter ending 30 September 2020, relative to the entity's comparable quarter for this period. An entity that can demonstrate a fall in actual GST turnover in the quarter ending 30 September 2020 will also satisfy the original decline in turnover test, meaning that most entities enrolling for the first time will only have to demonstrate that their actual turnover has significantly declined in the previous quarter.

To qualify for JobKeeper payments for JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021, an entity must have met the original decline in turnover test and also had the required actual decline in turnover for the quarter ending 31 December 2020. An entity that can demonstrate a fall in actual GST turnover in the quarter ending 31 December 2020 will also satisfy the original decline in turnover test, meaning that most entities enrolling for the first time will only have to demonstrate that their actual turnover has significantly declined in the previous quarter.

The periods covered by the original decline in turnover test for most entities are also extended to include the months of October, November or December 2020, and the quarter ending on 31 December 2020 if they choose.

Given the additional requirement to test decline in actual GST turnover twice under the extended scheme, the Commissioner of Taxation (Commissioner) will have additional powers to specify how turnover is determined for the purposes of the new test to ensure compliance costs are minimised. This power does not include a discretion to determine the type of supplies, which are included in the test.

Details of the Amending Rules No. 8 are set out in <u>Attachment A</u>.

The Amending Rules No. 8 implement the remaining 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, targeted consultation on draft rules and explanatory material was undertaken with a number of stakeholders, including representative bodies of the taxation, accounting and legal professions, as well as the Australian Taxation Office. A number of issues were raised including a request for further clarification of the interaction between the original decline in turnover test and the additional test. Some amendments to the original decline in turnover test were made

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as a result of this feedback, and further explanation and examples have been provided on these issues in this Explanatory Statement.

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

The Amending Rules No. 8 are a legislative instrument for the purposes of the *Legislation Act 2003*. The Amending Rules No. 8 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.

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ATTACHMENT A

Details of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020*

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020* (the Amending Rules No. 8).

Section 2 – Commencement

Section 2 provides that the Amending Rules No. 8 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. 8 are amended as set out in the applicable items in the Schedule.

Schedule 1 – Amendments

JobKeeper scheme amendments – extension of JobKeeper scheme end date to 28 March 2021

The JobKeeper scheme has been extended and is payable for JobKeeper fortnights up until the fortnight ending on 28 March 2021. The extension applies to JobKeeper payments to qualifying entities in respect of their eligible employees, business participants or religious practitioners (items 1, 2 and 5, section 5, paragraph 6(5)(b), and paragraph 19(a)). References to legislation are to amendments to the Rules unless otherwise stated.

The changes build additional flexibility into the JobKeeper scheme, recognising that circumstances can change quickly. For an entity to qualify for JobKeeper fortnights beginning on or after 28 September 2020, the entity must satisfy an additional decline in turnover test. The JobKeeper rate for eligible entities for any JobKeeper fortnights starting on or after 28 September 2020 is also tapered, and a two-tiered payment applies based on hours of work or engagement. These changes ensure that the rate of the payment is appropriately targeted and sustainable.

The changes do not affect any entitlements payable under the JobKeeper rules prior to the amendments for JobKeeper fortnights ending on or before 27 September 2020. Similarly, the changes do not provide the opportunity for entities to now change any elections they have previously made under the JobKeeper scheme so as to apply a different election for JobKeeper fortnights ending on or after 28 September 2020.

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These include any election by ACNC-registered charities to disregard certain supplies made to the Government.

Actual decline in turnover test: eligibility from 28 September 2020

To qualify for any type of JobKeeper payments for JobKeeper fortnights beginning on or after 28 September 2020, an entity must satisfy the new actual decline in turnover test for the quarter applicable to the fortnight.

For JobKeeper fortnights between 28 September 2020 and 3 January 2021 (inclusive), the applicable quarter is the quarter ending 30 September 2020. For JobKeeper fortnights between 4 January 2021 and 28 March 2021 (inclusive), the applicable quarter is the quarter ending 31 December 2020.

Under the new test, the entity must have had an actual decline in its turnover for the applicable quarter relative to its comparable quarter in 2019. This will be the quarters ended 30 September 2019 and 31 December 2019 respectively, unless an alternative period is determined by the Commissioner) (items 10 and 15, paragraph 7(1)(c), subsection 8B(1) and subsection 8B(2)). The term actual decline in turnover test is defined to mean the test in section 8B (item 6, subsection 4(1)).

The percentage decline for the quarter for the entity under the new test must be equal to or greater than the required percentage decline in turnover of 15 per cent, 30 per cent or 50 percent (as applicable). Entities are required to assess which percentage applies to them using the existing tests in section 8 in relation to the quarter. These tests relate to whether an entity is a particular type of ACNC-registered charity, as well as the entity's aggregated turnover for the current income year and the previous income year. It does not matter for the purposes of the new test whether the entity was required to use a different percentage in applying the original decline in turnover test at an earlier time (for example, because it applied the original test in the previous income year, or there has been a substantial change in its turnover).

Qualifying entities that meet the required decline in their turnover for the applicable quarter are required to give information about their entitlement for a fortnight to the Commissioner in the approved form. Depending on when this information is able to be provided, the Commissioner can also treat the entity as meeting the wage condition for eligible employees at a later time using the existing discretion in subsection 10(4) of the Rules (for example, because the entity was unable to determine whether it had satisfied the decline in turnover test for the September 2020 quarter during October).

An entity that qualifies for JobKeeper payments after meeting the actual decline in turnover test must satisfy all other conditions under the scheme, including making the required election to the Commissioner to participate and notice requirements to employees about participation in the JobKeeper scheme. Generally, any existing requirements will have already been met by entities who are already participating in the scheme.

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Interaction between the actual decline in turnover test for the September and December quarters

Subject to other qualifying conditions, the new actual decline in turnover test must be satisfied separately for the two extended periods to which the JobKeeper scheme applies (28 September 2020 to 3 January 2021; and 4 January 2021 to 28 March 2021). An entity is not excluded from qualifying for JobKeeper payments for JobKeeper fortnights beginning on or after 4 January 2021 simply because the entity did not qualify for JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021.

The actual decline in turnover test for each period (i.e. 28 September 2020 to 3 January 2021; and 4 January 2021 to 28 March 2021) does not require entities to have received JobKeeper payments for any or all of the earlier periods (for example, because the entity did not apply to participate in the scheme at an earlier time).

This new feature of the JobKeeper system recognises that eligibility for later JobKeeper periods needs to take into account the most recent impacts on the turnover of affected businesses to ensure support is targeted to those businesses still significantly impacted by COVID-19.

An entity that requalifies based on turnover for the quarter ending 31 December 2020 after ceasing to qualify based on turnover for the quarter ending 30 September 2020 does not need to notify the Commissioner again that it elects to participate in the JobKeeper scheme. However, the entity must notify the Commissioner of the rate that applies to any eligible employees, business participants or religious practitioners, and also notify any employees of the applicable rate (see below for further details).

Interaction between the original decline in turnover test and the new decline in turnover test

The new actual decline in turnover test applies in conjunction with the original decline in turnover test. Entities that have already qualified for the JobKeeper scheme prior to 28 September 2020 are not required to apply the original decline in turnover test again (as they have already satisfied the test).

Entities that have not previously participated in the JobKeeper scheme are required to demonstrate that they satisfy both the original decline in turnover test and the new decline in turnover test applicable to a particular JobKeeper fortnight.

For most entities, the original decline in turnover test compares the 'projected GST turnover' in relation to any of the following:

- a calendar month that ends after 30 March 2020 and before 1 October 2020;
- the quarter ending on 30 June 2020; or
- the quarter ending on 30 September 2020.

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In addition, the amendments modify the original decline in turnover test to give entities the choice to compare the 'projected GST turnover' in relation to any of the following:

- a calendar month that ends after 30 September 2020 and before 1 January 2021; or
- the quarter ending on 31 December 2020.

(Items 3 and 4, subparagraphs 8(7)(a)(i) and (ii))

While the term 'projected GST turnover' allows an entity to forecast expected turnover for any period or part of the period that occurs in the future, it also applies to a period or part of a period that has already passed. In such cases, the amounts that count towards projected GST turnover include the value of certain supplies that were actually made during the period (that is, there is no projection or forecasting of future supplies to be done in relation to past periods). An entity that applies the original turnover test to an earlier period therefore only needs to look at the value of supplies that were made in that period in order to meet the original test.

Given the overlap between the actual decline in turnover test for the September and December 2020 quarters and the periods covered by the original decline in turnover test (which now include the period 1 October to 31 December), entities that meet the actual decline in turnover test for the quarter ending 30 September or 31 December 2020 would be expected to meet the original test in relation to the September or December quarter.

The amendments do not modify the requirement that a qualifying entity must meet the original turnover test, other than to allow testing for a relevant period from 1 October to 31 December 2020. This ensures that the extended JobKeeper scheme is open to new entrants who could have qualified under the original scheme by reference to those test periods, irrespective of whether they actually elected to participate at the time. This could include, for example, an entity that had not anticipated that its turnover would decline as much as it actually did. In addition the extended JobKeeper scheme also allows new entrants to the scheme to qualify if they satisfy the original turnover test including applying it to a calendar month or the quarter in the period 1 October to 31 December 2020.

This extension of the period over which the original JobKeeper turnover test can be applied ensures the ongoing integrity of the JobKeeper Scheme by continuing to require that the original test be met but providing additional flexibility to allow the test period to include a calendar month or quarter in the period 1 October to 31 December 2020. Retaining the test also ensures that the arrangements for entities who have already qualified for the scheme prior to the extension are not disturbed, other than in relation to the requirement to satisfy the new test. This extension of the testing period ensures that the JobKeeper Scheme can be accessed by entities that first experience a significant impact on their turnover during the December 2020 quarter.

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Example 1: An entity that starts to participate in the JobKeeper scheme for JobKeeper fortnights beginning on or after 28 September 2020

TWC Inc. did not participate in the JobKeeper scheme for JobKeeper fortnights between 30 March 2020 and 27 September 2020. This is because TWC Inc. did not expect to have a substantial decline in turnover during the original duration of the scheme and as such did not elect to participate in the scheme.

However, TWC Inc. experienced a decline in its turnover over August and September 2020 at a higher rate than it expected. On 25 September 2020, TWC Inc. realised that this decline was large enough for it to participate in the JobKeeper scheme extension. For JobKeeper fortnights beginning on or after 28 September 2020, TWC Inc. determines that it has met:

- the original decline in turnover test – TWC Inc.'s decline in projected GST turnover for the quarter ending on 30 September 2020, is greater than the required 30%; and

- the new actual decline in turnover test – TWC Inc. experienced an actual decline in turnover for the quarter ending on 30 September 2020 that was greater than the required 30% rate.

Subject to meeting all other qualifying requirements (including notification and election requirements) and eligibility conditions for its employees, TWC Inc. qualifies for the JobKeeper payment for the JobKeeper fortnights beginning on and after 28 September 2020.

However, TWC Inc. cannot qualify for JobKeeper payments for JobKeeper fortnights between 30 March 2020 and 27 September 2020 because it had not previously elected to participate in the scheme.

For JobKeeper fortnights beginning on or after 4 January 2021, TWC Inc. will need to test its actual decline in turnover with reference to the quarter ending 31 December 2020 to determine if it continues to qualify for JobKeeper payments.

Example 2: Requalifying for the JobKeeper scheme during the JobKeeper extension period

Tom Enterprises had been receiving JobKeeper payments since the commencement of the JobKeeper scheme in respect of six of its employees, from the JobKeeper fortnight beginning 30 March 2020. However, Tom Enterprises did not remain a qualifying entity for the JobKeeper extension for JobKeeper fortnights beginning on and after 28 September 2020 because it did not meet the actual decline in turnover requirements for the quarter ending 30 September 2020 by the required percentage.

Tom Enterprises assesses in early January 2021 that it had a 45 per cent decline in turnover for the quarter ended 31 December 2020 compared to the relevant comparison period (which is the corresponding quarter in 2019) and

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therefore satisfies the actual decline in turnover test for JobKeeper fortnights beginning on and after 4 January 2021. As Tom Enterprises has previously participated in the JobKeeper scheme, it does not need to specifically retest its qualification based on the original decline in turnover test (Tom Enterprises would have met this requirement previously).

Having previously qualified, Tom Enterprises does not need to notify the Commissioner that it elects to participate in the JobKeeper scheme again. However, Tom Enterprises must meet all other qualifying requirements, including the wage condition, and the new notification requirements to the Commissioner and employees regarding the rate of JobKeeper payment that applies to Tom Enterprises in respect of each the employees (these are discussed below).

Example 3: Employer first qualifies for the JobKeeper scheme for JobKeeper fortnights beginning on 4 January 2021

PXLB Enterprises has not been receiving JobKeeper payments because its business has not been significantly affected by COVID-19. However, during the December 2020 quarter the business experiences a significant decline in turnover related to COVID-19 impacts.

PXLB Enterprises determines in early January 2021 that it has had a sufficient decline in turnover to satisfy the original decline in turnover test determined by reference to its turnover for the December 2020 quarter. PXLB Enterprises also satisfies the actual decline in turnover test based on the reduction in its turnover for the same December 2020 quarter.

Accordingly, PXLB Enterprises must notify the Commissioner that it elects to participate in the JobKeeper scheme and must meet all other qualifying requirements, including the wage condition, and the notification requirements to the Commissioner and employees regarding the rate of JobKeeper payment that applies to PXLB Enterprises in respect of each the employees (these are discussed below).

Commissioner’s power to determine an alternative test and application of modifications to original decline in turnover test

The Commissioner’s existing power to specify an alternative decline in turnover test, the modified test for certain group structures, and the changes to GST turnover all apply concerning the new requirement to demonstrate an actual decline in turnover (item 15, paragraph 8B(1)(b)). If an alternative test is used then it must only be used in calculating the current GST turnover for a relevant comparison period that is a quarter.

Consistent with the other self-assessed requirements under the scheme, an entity that makes a false declaration is liable to penalties for making false and misleading statements under the *Taxation Administration Act 1953* (in addition to being liable to repay any overpaid amounts of the JobKeeper payment under section 9 of the Act).

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The existing forecast and actual monthly reporting requirements for entities regarding turnover in section 16 of the Rules continue to apply.

JobKeeper payments and wage condition for employees

Under the amendments, the amount payable for JobKeeper fortnights beginning on or after 28 September 2020 is tapered from $1,500 to one of two JobKeeper payment rates (item 35, section 13) for entities that qualify for this period. Having two rates strikes a balance between making payments more aligned with incomes prior to the impacts of COVID-19 and limiting complexity for employers that a multi-rate system introduces.

For JobKeeper fortnights beginning on or after 28 September 2020, the rate applicable to an employee depends on the hours the employee works, has paid leave and paid absence on public holidays in the employee's employment over an applicable reference period (reference periods are explained in further detail below).

Working out the rate of JobKeeper payment based on hours in a reference period

Employers must determine the number of hours that count towards the threshold for eligible employees in relation to an applicable reference period. This will generally only be relevant for part time employees or long term casual employees. In contrast, full-time employees that continue to undertake full time hours would typically be expected to have worked the required minimum number of hours required for their employer to be eligible for the higher JobKeeper payment rate.

In addition to the two rates of JobKeeper payment, the amount of the JobKeeper payment will also depend on when the JobKeeper fortnight occurs. The rates differ for JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021; and JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021 (item 35, section 13).

The two-tiered JobKeeper payment in the December 2020 and March 2021 quarters is set out in the table below:

	JobKeeper fortnights beginning on or after 28 September 2020	**JobKeeper fortnights beginning on or after 4 January 2021**
Higher payment rate: 80 hours or more in reference period	$1,200 per fortnight	$1,000 per fortnight
Lower payment rate: Less than 80 hours in reference period	$750 per fortnight	$650 per fortnight

An employer's entitlement in relation to the two different JobKeeper payment rates for an employee is determined by reference to the actual hours the employee worked, and any hours for which they received paid leave (e.g. annual, long service, sick, carers and other forms of paid leave) or paid absence for public holidays. This ensures

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that the test reflects the actual circumstances that occurred in the employee's reference period by taking into account, for example, where additional hours were worked above standard hours.

It is expected that in working out whether a particular employee is eligible for the higher rate, employers will generally be able to rely on records that are already maintained in respect of that employee (for example, about their employment conditions, or pay and leave arrangements).

If an employee's total hours were 80 hours or more for the employer over any applicable reference period then the employer is entitled to the higher JobKeeper rate in respect of that employee (item 27, subsection 9A(1)). If the total hours of work and equivalent paid leave are less than 80 hours then the lower rate applies.

Eighty hours over this four week period is equivalent to an average of 20 hours per week over this period. The introduction of the lower rate of JobKeeper payment is intended to significantly limit the circumstances in which certain part-time employees or long term casual employees, who might have been paid less than the wage condition amount in the period prior to the COVID-19 impacts, receive a higher amount through the JobKeeper scheme.

Reference periods for employees

For all employees, there are two standard reference periods that are comprised of the 28 day periods ending at the end of the most recent pay cycle for the employee ending before:

- 1 March 2020 – the original reference date and is generally considered to be before COVID-19 began to have a broad impact on the Australian economy; or
- 1 July 2020 – the additional reference date for conditions that apply to newly eligible employees of qualifying employers under the JobKeeper scheme for JobKeeper fortnights beginning on or after 3 August 2020.

These two 28 day periods comprise the last two consecutive fortnightly pay periods or last 4 weekly consecutive pay periods ending prior to 1 March 2020 or 1 July 2020. For employees who are paid on a different basis (for example, a monthly basis), the 28 day period will only cover a part of the pay cycle. However, other rules ensure that average hours over the pay period are identified on a pro-rated basis (see below).

A pay cycle for an employee of an entity is defined as a regular period for which the entity would usually pay the employee in relation to the performance of work by the employee (item 20, definition of pay cycle in subsection 4(1)). The pay cycle for most employees will be fixed and readily identified by employers.

Both reference periods are applicable to all eligible employees, irrespective of whether their eligibility is based on the 1 March 2020 or 1 July 2020 requirements. As employers do not have discretion to choose the reference period, they must have regard to any applicable reference period for any employee that results in the employer receiving the higher rate of JobKeeper payment in respect of that employee (items 20 and 21, definition of reference period in subsection 4(1) and section 4A).

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The standard reference period for employees is the 28 day period ending at the end of the most recent pay cycle for the employee before 1 March 2020 or 1 July 2020 (see item 21, table item 1 of subsection 4A(1)(a)). These reference periods are intended to align with the employer's existing payroll and rostering systems for their employees. This alignment is therefore expected to reduce compliance costs for employers in determining which JobKeeper rate applies in respect of qualifying employees. Under industrial law, employers are generally required to keep records of hours worked by casual or irregular part-time employees that are paid on an hourly basis. For other types of employees, standard hours of employment would normally be stipulated in an award, enterprise agreement or employment contract and employers must keep records of the number of overtime hours worked by these employees (or starting and finishing times for overtime).

The Commissioner has a further power to determine, by legislative instrument, an alternative reference period for the hours worked test for particular employees if the standard reference period is not a suitable reference period for the purposes of determining the hours of employees that are a particular class of employees. The Commissioner can also determine an alternative reference period for a religious practitioner or business participant if the standard reference period is not a suitable reference period. The Commissioner is an appropriate delegate as the administrator of the JobKeeper scheme and has the relevant administrative expertise and information to exercise this power effectively. This power is explained further below.

Example 4: Working out hours over the reference periods

Emma has been employed by a bus company on a permanent part-time basis as a bus driver since 2010. Her standard working hours prior to the impact of COVID-19 were 15 hours per week but most weeks she worked some further paid hours at her employer's request depending on the availability of other company drivers. The pay cycles of the bus company occur fortnightly and end on Fridays.

To determine the rate of JobKeeper payment the bus company can receive in respect of Emma as an eligible employee for JobKeeper fortnights beginning on or after 28 September 2020, the bus company considers which of the reference periods for Emma is most beneficial:

- Using the 28 day period ending at the end of the most recent pay cycle before 1 March 2020 – the relevant pay cycle fortnights are from 1 February 2020 until 14 February 2020; and 15 February 2020 until 28 February 2020. During this 4 week period, Emma worked 15 hours in week 1, 22 hours in week 2, 18 hours in week 3 and in week 4 she did not work and took 15 hours of annual leave. Emma's hours of work and paid leave in this reference period total 70 hours.

- Using the 28 day period ending at the end of the most recent pay cycle before 1 July 2020 – the relevant pay cycle fortnights are from 23 May 2020 until 5 June 2020; and 6 June 2020 until 19 June 2020. During this 4 week period, Emma worked 15 hours in week 1, 20 hours in week 2, 10 hours in week 3, and 10 hours in week 4. Emma's hours for work in this reference period total 55 hours.

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Under the two reference periods, the bus company qualifies for JobKeeper payments in respect of Emma based on the most beneficial reference period. This is the 28 day period at the end of the most recent pay cycle before 1 March 2020. However, the hours Emma worked under this reference period still falls short of the required 80 hour threshold for the higher rate of JobKeeper payments.

As Emma's employer continues to be eligible for the JobKeeper scheme because the company's actual turnover has declined by 55 per cent in the quarter ending 30 September 2020, the company is entitled to receive the JobKeeper payment. The company receives the lower rate of $750 per fortnight in respect of Emma for the JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021.

For the JobKeeper fortnight beginning on 28 September 2020, Emma worked 30 hours a week for both weeks. Although the bus company pays Emma remuneration that exceeds $750 for the fortnight, the bus company is only entitled to claim the lower JobKeeper rate of $750 for that JobKeeper fortnight in respect of Emma by reference to the JobKeeper rate calculated based on her hours worked in the reference period.

The bus company will need to undertake a further test of its actual decline in turnover for the quarter ending 31 December 2020 to work out if it qualifies for JobKeeper payments for JobKeeper fortnights starting on or after 4 January 2021. If the bus company qualifies for JobKeeper payments for this later period, it can receive the lower JobKeeper rate of $650 a fortnight in respect of Emma if it meets the wage condition, and Emma remains an eligible employee.

Where the relevant pay cycle for an employee is longer than the 28 day reference period (such as a monthly pay cycle) then a pro-rated calculation is used to determine the applicable hours of the longer pay cycle that are attributable to the 28 day period (item 27, subsection 9A(2)).

Example 5: Working out hours for employees on monthly pay cycle

Employees of Lai Industries Inc. are paid on a monthly pay cycle that ends on the 15th of each month. Antonio has been a permanent employee of the company since 2006.

To determine the rate of JobKeeper payment Lai Industries Inc. can receive in respect of Antonio as an eligible employee for JobKeeper fortnights beginning on or after 28 September 2020, Lai Industries Inc. considers which of the reference periods for Antonio is most beneficial:

- Using 28 day period ending at the end of the most recent pay cycle before 1 March 2020 – the relevant pay cycle is from 16 January 2020 until 15 February 2020 (31 days). During this period, Antonio worked for 85 hours and took 80 hours of combined annual and long service leave. For the purposes of the JobKeeper payment, Antonio's hours of work

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(pro-rated) for this reference period is just over 149 hours, worked out as follows: 28/31 x (80 + 85) hours = approx. 149 hours.

- Using the 28 day period ending at the end of the most recent pay cycle before 1 July 2020 – the relevant pay cycle is from 16 May 2020 until 15 June 2020 (31 days). During this period, due to the impacts of COVID-19, Antonio only worked for 85 hours. For the purposes of the JobKeeper payment, Antonio's hours of work (pro-rated) for this reference periods is 76.8 hours, worked out as follows: 28/31 x 85 hours.

Lai Industries Inc. qualifies for JobKeeper payments in respect of Antonio based on the most beneficial reference period, which is the 28 day period at the end of the most recent pay cycle before 1 March 2020. Under the hours worked for this reference period, Antonio meets the required 80 hour threshold for the higher rate of JobKeeper payments.

Accordingly, Antonio's employer is entitled to the higher JobKeeper payment rate in respect of Antonio for JobKeeper fortnights beginning on or after 28 September 2020 provided that the other conditions are met.

Employees of businesses that have changed hands

In some cases, an individual can be an eligible employee of an employer despite not having been employed by them on 1 March 2020 or 1 July 2020. In such cases, the employee would not have been employed at any time during the related reference periods. Despite this, these individuals can be eligible employees of the employer by relying on the existing provision in the Rules that allow an employee of an entity to be treated as having been employed by that entity at an earlier time in certain circumstances. This rule is contained in existing subsection 9(6) of the Rules and is limited to circumstances in which the individual was employed by another entity in the same wholly-owned group as their current employer, or where they were employed in a business that has changed hands. To qualify for the JobKeeper scheme, the other entity must also satisfy the applicable eligibility conditions (for example, the requirement that on 1 March 2020 the entity carried on a business in Australia etc.).

For employees covered by this rule, the relevant hours in a reference period in respect of their previous employer do not count towards the 80 hour threshold for the new employer. This is because while subsection 9(6) of the Rules is limited to deeming an employee to have been employed at an earlier time, it does not extend to the things that the employee actually did at that time (such as the hours they worked or where paid leave was taken). However, in these circumstances, the Commissioner may consider it appropriate to determine an alternative reference period for such employees which could allow the employer to determine relevant hours worked for them (and paid leave taken) over a different period.

This approach reflects that there are a large range of factual circumstances that affect businesses that changes hands, including which employees would remain eligible, changes in work hours, what reference period would be appropriate, and what methodologies would be consistent with the intended policy of the two-tiered system. Given the potential variety of circumstances, the Amending Rules No. 8 do not

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specifically provide for how the reference period applies for businesses that change hands.

Commissioner's power to determine higher rate of JobKeeper payment applies

The Commissioner has the power to determine, by legislative instrument, methods for identifying if a class of employees qualify for the higher JobKeeper rate where the Commissioner is satisfied that the total hours that count towards the threshold are not readily ascertainable (item 27, subsections 9A(3) and (4)). This would apply, for example, if an employer does not have any record or has incomplete records of the hours worked or paid leave or paid absences on public holidays by its employee in that period. The power would not be exercised by the Commissioner if a class of employees was only employed for part of the reference period or took unpaid leave during part of this period. This would be addressed by the Commissioner separately determining an alternative reference period.

By setting out methods in a legislative instrument, the Commissioner can provide certainty to businesses and other entities that there is a legislative basis upon which they can meet the requirements and access the JobKeeper scheme if they otherwise meet the eligibility criteria.

The instrument making power available to the Commissioner recognises that employers are more likely to have issues working out the number of hours worked for those employees whose remuneration is not tied to an hourly rate or contracted number of hours. This includes employees who undertake duties principally on a commission, stipend, piece rate or similar basis over the reference period, and their remuneration is not necessarily proportional to their actual hours of work in a particular period.

Under the instrument making power, the Commissioner can set out methodologies to work out if the higher rate of the JobKeeper payment should apply. This may involve the making of rules about circumstances in which 80 hours of work, paid leave or paid absences on public holidays would be expected to have occurred in the reference period. However, the instrument making power also allows the Commissioner to provide methodologies that do not require the calculation of the number of hours but instead have other criteria that if met demonstrate that the threshold amount has been met or exceeded.

Notifications required for higher and lower JobKeeper payment rates

Employers must notify the Commissioner in the approved form of relevant information, including eligible employees and the rate for which they are eligible to receive JobKeeper payments in respect of their employees (item 25, paragraph 6(1)(fa)). The requirement to determine the rate at which JobKeeper payments are made to employers in respect of their employees forms part of the conditions that are required to be met under the Rules. The requirement for qualifying employers to notify the Commissioner of the relevant rate for an employee applies for JobKeeper fortnights beginning on or after 28 September 2020. There is no requirement for the entity to notify the Commissioner a second time for JobKeeper fortnights beginning on or after 4 January 2021 as no further testing of the hours of work apply from this date to determine the rate of JobKeeper payments.

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However, if an entity does not notify the Commissioner if the higher or lower rate of JobKeeper payment applies in respect of their employee for a JobKeeper fortnight beginning on or after 28 September 2020 then the employer is not eligible for JobKeeper payments in respect of this period until a valid notification (if any) is made. This applies regardless of whether the qualifying employer has been receiving JobKeeper payments in respect of the employee prior to the JobKeeper fortnight beginning on 28 September 2020.

Entities must notify individuals in writing within seven days of advising the Commissioner of the JobKeeper payment rate that applies to the individual (item 26, subsection 6(4A)). This ensures that there is appropriate transparency for employees and they can engage with their employer and have the matter examined under the *Fair Work Act 2009* by the Fair Work Commission if they consider that the incorrect payment rate has been applied.

JobKeeper payments: business participants

The same two JobKeeper payment rates apply to qualifying entities that have nominated an eligible business participant. However, the test to determine eligibility is instead based on the hours of active engagement in the business carried on by the entity. This requires an assessment of the hours that the business participant was actively operating the business or undertaking specific tasks in business development and planning, regulatory compliance or similar activities in an applicable reference period.

This is a similar concept to the test for hours applying to employees. As business participants are not employees, reference periods for business participants are not based on pay cycles. Instead, the calendar month of February 2020 is used as the standard reference period (item 21, paragraph 4A(1)(a) and table item 2 of the table under subsection 4A(1)). The Commissioner can also set an alternative reference period where the month of February is not an appropriate reference period (item 21, table item 2 of subsection 4A(1)).

For JobKeeper fortnights beginning on or after 28 September 2020, qualifying entities are entitled to the higher JobKeeper rate in respect of an eligible business participant if:

- the total hours of active engagement by the business participant in the business of the entity over any applicable reference period were 80 hours or more (item 31, paragraph 12AA(1)(a)); and
- the business participant has made a declaration in the approved form to the entity (or to the Commissioner if the business participant is a sole trader) that their total hours of active engagement are 80 hours or more for the applicable reference period (item 31, paragraph 12AA(1)(b)) and subsection 12AA(2)).

Eligible entities are entitled to receive the lower JobKeeper payment rate in respect of eligible business participants that:

- have hours of active engagement in the business of less than 80 hours for all applicable reference periods; or

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- do not provide a declaration to the entity regardless of the hours of active engagement.

To qualify for JobKeeper payments for a business participant for JobKeeper fortnights commencing on or after 28 September 2020, entities must notify the Commissioner in the approved form about whether the higher or lower rate applies to the business participant (item 29, paragraph 11(1)(fa)). Unless the entity is a sole trader, it must also notify the eligible business participant within seven days once such a notice is provided to the Commissioner (item 30, subsection 11(5A)). This requirement ensures that there is appropriate transparency between the business participant and the entity.

Although, the requirement to give a declaration in the approved form to the Commissioner specifying whether the higher or lower rate applies is a condition of eligibility for business participants, there is no obligation to provide the declaration within a specified period of time. This is consistent with the nominations that must already be provided by business participants under existing subsection 12(4). An eligible entity is entitled to the JobKeeper payment in respect of a business participant once the declaration has been provided in the approved form.

Existing records of engagement may not be held by business participants, but if an entity has not been active during the reference period or had all duties and other activities carried out instead by employees, or if the business participant held a separate full-time job then it would be likely that they would not satisfy this test. Business participants and entities must be in a position to reasonably demonstrate the basis on which they determined that a business participant was actively engaged in the business for the required number of hours in February 2020.

Consistent with the other self-assessed requirements under the scheme, an individual who makes a false declaration is liable to penalties for making false and misleading statements under the *Taxation Administration Act 1953* (in addition to the business having to repay any overpaid amounts of the JobKeeper payment under section 9 of the Act). Individuals may also be jointly and severally liable for overpayments that occur because an entity (such as the business) reasonably relied on a statement by the individual that the entity then made in the approved form (see section 11 of the Act). An entity that incorrectly reported a business participant as being eligible for the higher rate may remain liable for any overpayments that occur in relation the business participant where it was not reasonable for the entity to have been unaware that the lower rate applied to the business participant.

JobKeeper payments: religious practitioners

The same two rates of payments apply to qualifying religious institutions in respect of their eligible religious practitioners for JobKeeper fortnight commencing on or after 28 September 2020. The payment rates are based on the number of hours they spent doing an activity, or series of activities, in pursuit of their vocation as a religious practitioner as a member of the religious institution in the reference period.

Under existing subsection 12B(2), such activities must already be done by an individual in order for them to be an eligible religious practitioner. Whether particular activities undertaken by an individual religious practitioner count towards the new threshold will depend on the nature of their vocation. However, generally activities

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done in pursuit of their vocation as a practitioner as a member of a religious institution would include (but are not limited to) the:

- performance of the rituals or practices of the religious institution (including participation in services, prayer, contemplation or meditation, insofar as they constitute such rituals or practices); and
- furtherance of the objectives of the religious organisation (including missionary or charitable work, insofar as they constitute such an objective).

The standard reference period for eligible religious practitioners is the month of February 2020 (item 21, paragraph 4A(1)(a) and item 3 of the table in subsection 4A(1)). The Commissioner can also set an alternative reference period in circumstances where the month of February is not an appropriate reference period (item 21, paragraph 4A(1)(b)).

The amendments set out how to determine which rate of JobKeeper payment applies to religious institutions for their eligible religious practitioners (item 34, section 12BA). The institution is entitled to the higher JobKeeper payment for an eligible religious practitioner if:

- the religious practitioner spent 80 hours or more doing the relevant activities in pursuit of their vocation as a religious practitioner and as a member of the religious institution over any applicable reference period; and
- the religious practitioner has made a declaration in the approved form to the religious institution that their hours of activity were 80 hours or more over an applicable reference period.

Similarly, religious institutions receive the lower JobKeeper payment rate in respect of religious practitioners (other than as employees) that:

- have hours of activity in pursuit of their vocation as a religious practitioner for the religious institution of less than 80 hours for all applicable reference periods; or
- do not provide a declaration to the institution regardless of their hours of activity.

The declaration by a religious practitioner about their hours must be provided to the religious institution. Requiring the declaration to be made in the approved form ensures that a practitioner is responsible for confirming that the correct number of hours of engagement is reported. A religious practitioner who makes a false declaration is liable to penalties for making a false and misleading statement under the *Taxation Administration Act 1953* in addition to the religious institution having to repay any overpaid amounts of the JobKeeper payment under section 9 of the Act). Individuals may also be jointly and severally liable for overpayments that occur because an entity (such as the religious institution) reasonably relied on a statement by a religious practitioner that the institution then made in the approved form (see section 11 of the Act). An entity that incorrectly reported a religious practitioner as being eligible for the higher rate may remain liable for any overpayments that occur in relation the practitioner where it was not reasonable for the institution to have been unaware that the lower rate applied to the religious practitioner.

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To qualify for JobKeeper payments for JobKeeper fortnights commencing on or after 28 September 2020, religious institutions must notify the Commissioner in the approved form about whether the higher or lower rate applies to each of their eligible religious practitioners (item 32, paragraph 12A(1)(ga)). The institution must also notify each eligible religious practitioner within seven days once such notices are provided to the Commissioner in relation to the practitioner (item 33, subsection 12A(4A)). This requirement ensures that there is appropriate transparency between the religious practitioner and the entity. An entity that makes a false declaration is liable to penalties for making false and misleading statements under the *Taxation Administration Act 1953* (in addition to having to repay any overpaid amounts of the JobKeeper payment).

Commissioner's power to determine alternative reference periods

The Commissioner has the power to determine, by legislative instrument, an alternative reference period for working out if the higher or lower JobKeeper rate applies in respect of eligible employees, business participants and religious practitioners (item 21, subsection 4A(2)).

The Commissioner's power operates in a broadly similar manner to the alternative turnover test for determining eligibility of entities for the JobKeeper payment. Accordingly, to determine an alternative reference period, the Commissioner must consider that the standard reference period is not a suitable reference period before an alternative period can be specified under the determination power. This alternative period must be 28 days for employees or otherwise be the same duration as the number of days in February 2020 (i.e. 29 days) for business participants and religious practitioners (that are not employees) (item 21, subsection 4A(3)).

If an individual in the capacity of an employee, business participant or religious practitioner already qualifies under the standard reference period, they do not lose eligibility if they would not meet the relevant threshold under an alternative reference period determined by the Commissioner. Conversely, an entity must always consider whether the higher rate applies under an alternative reference period where an employee, business participant or religious participant is not eligible for the higher rate under a standard reference period.

The Commissioner is an appropriate delegate as the administrator of the JobKeeper scheme and has the relevant administrative expertise and information to exercise this power effectively. It is expected that the Commissioner will specify alternative reference periods for the following scenarios for employees that:

- worked less hours in the reference period despite generally working on average 80 hours or more over earlier periods so that the hours worked in the reference period were not typical of their established work pattern;

- have taken some form of unpaid leave or unpaid absence during part or all of the reference period making it not representative of their usual work hours in earlier periods (for example, they were receiving parental leave pay, dad or partner pay, workers compensation or emergency service leave during the bushfires);

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- were only employed for a part of the reference period (for example, because they commenced employment during the reference period); or
- were not employed at any time during the reference period (for example, an employee who commenced employment after the reference period but is still an eligible employee because they were treated as having been employed on 1 March 2020 or 1 July 2020 because of the change in business rule in subsection 9(6)).

Technical amendment: Commissioner's attribution rule making power

The amendments also provide the Commissioner with an additional power in relation to the new actual decline in turnover test. As the new test is based on actual decline in turnover rather than projections, a more specific power is delegated to the Commissioner to ensure that the legislation can deliver the intended policy outcomes. The Commissioner may, by legislative instrument, determine that certain supplies or classes of supplies are to be treated as being wholly or partly made at a particular time for the purposes of the actual decline in turnover test (item 15, subsections 8B(3) to (6)).

This power ensures that the Commissioner has flexibility to address any compliance costs or other issues that may arise under the testing required for the actual decline in turnover test. This flexibility is required as time of supply, that applies for the turnover test to identify which period supplies are made in, is an imprecise concept. Also the wide range of different kinds of supplies for which it may now need to be considered means that there needs to be a power for the Commissioner, informed by a detailed understanding of the practical context, to adjust how supplies are treated as being attributable to a particular time. Accordingly, the power can be used, both generally and in specific contexts, in order to avoid anomalies and unnecessary compliance costs.

For example, currently, GST turnover is determined based on when supplies are made, not the period to which any tax payable on the supplies is attributable. However, the GST return usually contained in Business Activity Statements requires reporting of supplies on the basis of attribution. While this distinction often does not matter over the medium term, in the context of quarterly testing of current GST turnover, it could increase compliance costs for some taxpayers.

It is expected the Commissioner will determine that most or all supplies will be treated as being made at a time in the period to which they are attributable for GST reporting purposes to align the information reported by entities to the Commissioner in GST returns with how current GST turnover is worked out for the actual decline in turnover test.

This power does not apply if a supply is treated as having been made under subsection 8(8) of the Rules, such as donations to charities, as these provisions already specify the time at which such supplies are taken to be made (schedule 1, item 15, subsection 8B(6)).

The Commissioner is an appropriate delegate to exercise this instrument making power as the administrator of the JobKeeper scheme and the GST law. This is because

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the Commissioner has the relevant expertise and information to appropriately evaluate how and when the determination will apply.

Application of amendments

The Amending Rules No. 8 apply in relation to JobKeeper fortnights beginning on or after the commencement of the Amending Rules No. 8 (item 36, sections 112 and 113). However, the two tiered JobKeeper payment rates and testing of actual decline in turnover apply only for JobKeeper fortnights beginning on or after 28 September 2020.

Consequential amendments

The time limit for the Commissioner making JobKeeper payments is extended by six months to reflect the extension to the scheme. The new date is 31 March 2022 (previously 30 September 2021) (item 5, paragraph 19(a)). This new end date is just over one year after the end of the last JobKeeper fortnight on 28 March 2021.

References to the new actual decline in turnover test have been updated throughout the Rules where appropriate (items 12 and 14, subsections 8(7) and 8(8)). Item 13 adds a note to subsection 8(7) of the Rules that highlights when subsection 8(7) is applied for the purposes of the actual decline in turnover test, a different turnover test period must be used because of the operation of new paragraph 8B(1)(a).

The note in the definition of JobKeeper payment in subsection 4(1) of the Rules (item 19) is repealed as it refers to the JobKeeper payment being a fixed $1,500 amount. A consequential amendment modifies the simplified outline so that it does not refer to the JobKeeper payment of $1,500 but instead refers to each JobKeeper payment, consistent with multiple payment rates applying over the course of the JobKeeper scheme (items 22, 23, and 24, section 5). Similarly, a consequential amendment updates the reference to the JobKeeper rate for business participants from $1,500 to the applicable JobKeeper rate worked out under sections 9A and 13 (item 28, subsection 10(1)).

Consequential amendments are made to ensure that the timing rules in the JobKeeper scheme are consistent and apply for a JobKeeper fortnight rather than at a particular time or at or before the end of a particular JobKeeper fortnight (items 7, 8, 11, 16, 17, and 18, paragraph 6(1)(b), subsections 7(1) and 7(2), paragraphs 11(1)(c), 12A(1)(c) and subsection 16(1)). These amendments are consequential to the actual decline in turnover test applying ‘for a fortnight’, and are necessary to ensure that particular fortnights are linked to the relevant quarter for the turnover test. The changes do not alter the effect of any existing provisions. For example, the changes to paragraph 6(1)(b) and subsection 7(2) do not change the current timing considerations for determining whether an entity qualifies or is excluded from being eligible for a particular JobKeeper fortnight. Under either approach, these requirements are tested fortnightly (i.e. an entity can qualify, or not qualify, for a particular fortnight based on changes that occur from one fortnight to the next).

The amendments make a consequential amendment so that an entity must have satisfied the decline in turnover test at or before the end of the fortnight for which eligibility is claimed for JobKeeper fortnights ending on or before 27 September 2020

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(item 9, paragraph 7(1)(b)). This is because the turnover test in such cases is projected turnover and need not continue to be tested after the end of the time the test is first met.

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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. 8) 2020

The *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020* (Amending Rules No. 8) 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 Legislative Instrument

The purpose of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020* (the Amending Rules No. 8) is to extend the period of wage subsidy support provided under the JobKeeper scheme until 28 March 2021, whilst ensuring that it is tapered in the December 2020 and March 2021 quarters and provides targeted assistance to entities that need assistance the most.

Eligibility for JobKeeper fortnights beginning on or after 28 September 2020 is subject to a new additional eligibility test for decline in turnover. This ensures that entities that qualify for JobKeeper payments under the extended scheme have had a recent actual decline in turnover to ensure that it is appropriately targeted. Under the changes, assistance is tapered in two stages in respect of all eligible employees, business participants and religious practitioners. The rate depends on the hours of: work and paid leave for employees, business engagement by business participants and relevant activities by religious practitioners.

The first stage applies to JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021. The second stage applies to JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021. During the first stage, the higher rate of JobKeeper payment is $1,200 and the lower rate is $750. During the second stage, the higher rate is $1,000 and the lower rate is $650.

To qualify for JobKeeper payments for JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021, entities must satisfy the original decline in turnover test and an additional test. Under this additional test, entities must demonstrate that their actual GST turnover has declined by the required percentage for the quarter ending 30 September 2020, relative to the entity's comparable quarter for this period.

To qualify for JobKeeper payments for JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021, an entity must have met the original decline in turnover test and also had the required actual decline in turnover for the quarter ending 31 December 2020.

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The periods covered by the original decline in turnover test for most entities are also extended to include the months of October, November or December 2020, and the quarter ending on 31 December 2020 if they choose.

Given the additional requirement to test decline in actual GST turnover twice under the extended scheme, the Commissioner of Taxation (Commissioner) has additional powers to specify how turnover is determined for the purposes of the new test to ensure compliance costs are minimised. This power does not include a discretion to determine the type of supplies which are included in the test.

Human rights implications

The Amending Rules No. 8 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.

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.

The amendments provide for entitlement to the JobKeeper payment based on hours worked by employees, hours actively engaged in activities in pursuit of their vocation as a religious practitioner, or hours actively engaged in a business by a business participant. Participation in the JobKeeper scheme requires disclosure to the Commissioner by an entity concerning the relevant JobKeeper payment rate that applies to such a person. The amendments also require an individual to disclose the extent of downturn of their actual sole trader turnover to the Commissioner. 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 individual agreeing to be nominated;

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- 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. 8 do not unnecessarily restrict a person's right to privacy.

Conclusion

This Legislative Instrument is compatible with human rights.

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