Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020

I, Josh Frydenberg, Treasurer, make the following rules.

Dated 1 May 2020

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	Immediately after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020.*

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Part 1—Main amendments

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

1 Subsection 4(1)

Insert:

eligible religious practitioner has the meaning given by section 12B.

registered religious institution means an institution that is:

(a) a registered charity; and

(b) registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the subtype of entity mentioned in column 2 of item 4 of the table in subsection 25-5(5) of that Act.

relevant employee has the meaning given by section 10A.

religious practitioner means:

(a) a minister of religion; or

(b) a full-time member of a religious order.

2 Section 5

Omit:

> A business can also be entitled to a jobkeeper payment of $1,500 per fortnight for one business participant who is actively engaged in operating the business.

substitute:

> A business that has suffered a substantial decline in turnover can also be entitled to a jobkeeper payment of $1,500 per fortnight for one business participant who is actively engaged in operating the business.
>
> A registered religious institution that has suffered a substantial decline in turnover can also be entitled to a jobkeeper payment of $1,500 per fortnight for each eligible religious practitioner who is active as a member of the institution.

3 Paragraph 7(1)(a)

Repeal the paragraph, substitute:

(a) on 1 March 2020, the entity:

(i) carried on a business in Australia; or

(ii) was a non-profit body that pursued its objectives principally in Australia; or

(iii) was a deductible gift recipient that was, or operated, a public fund covered by item 9.1.1 or 9.1.2 of the table in subsection 30-80(1) of

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the *Income Tax Assessment Act 1997* (international affairs deductible gift recipients); and

4 Paragraph 7(2)(e)

After "sovereign entity", insert ", or would be a sovereign entity if subparagraphs 880-15(c)(ii) and (iii) of the *Income Tax Assessment Act 1997* were disregarded".

5 Paragraph 8(7)(a)

Before "the", insert "unless paragraph (aa) applies—".

6 After paragraph 8(7)(a)

Insert:

(aa) if the entity is a Table A provider or a Table B provider—the ***turnover test period*** must be the period of 6 months starting on 1 January 2020; and

7 After paragraph 8(8)(e)

Insert:

(ea) for an entity that is a Table A provider or a Table B provider—subsection 9-17(3) of the GST Act is to be disregarded in its application to a payment covered by an appropriation under the *Higher Education Support Act 2003* or the *Australian Research Council Act 2001*;

8 At the end of subsection 8(8)

Add:

; (h) for an entity that is an ACNC-registered charity (other than a Table A provider, a Table B provider, or a school)—a supply made by the entity is to be disregarded, if:

(i) the consideration for the supply is provided by an Australian government agency, a local governing body, the United Nations, or an agency of the United Nations; and

(ii) the ACNC-registered charity elects, in accordance with subsection (9), for this paragraph to apply.

9 At the end of section 8

Add:

(9) The election referred to in subparagraph (8)(h)(ii) must be:

(a) in the approved form; and

(b) given to the Commissioner within 7 days of notifying the Commissioner of the entity's election to participate in the jobkeeper scheme (see paragraph 6(1)(e) and 12A(1)(f)), or such later time as the Commissioner allows.

The election cannot be revoked.

10 After section 8

Insert:

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8A Decline in turnover test—modified test for certain group structures

(1) This section applies, in addition to section 8, to an entity (an ***employer entity***) if:
  (a) the employer entity is a member of a consolidated group, consolidatable group, or a GST group; and
  (b) the employer entity's principal activity is supplying other members of the group with services (***employee labour services***) consisting of the performance of work by individuals the employer entity employs; and
  (c) the Commissioner has not made a determination under subsection (5) in relation to the employer entity.

Modified test

(2) The employer entity satisfies the decline in turnover test at a time (the ***test time***) if:
  (a) in a turnover test period in which the test time occurs, the employer entity:
    (i) supplies employee labour services to one or more members of the group (each of which is a ***test member***) that have as their principal activity the making of supplies to entities other than members of the group; and
    (ii) does not supply employee labour services to entities that are not members of the group (disregarding supplies that are merely incidental to the principal activity of the employer entity); and
  (b) the employer entity would satisfy the decline in turnover test in subsection 8(1) at the test time if the modifications in subsection (3) of this section were made.

Note 1: An entity that satisfies the decline in turnover test under this subsection may be entitled to a jobkeeper payment under this Division or Division 3.

Note 2: See subsection 8(7) for the meaning of ***turnover test period***.

(3) For the purposes of paragraph (2)(b), the modifications are that, in applying subsection 8(1):
  (a) instead of the employer entity's projected GST turnover for the turnover test period, the sum of the projected GST turnovers for that period of each test member is to be used; and
  (b) instead of the employer entity's current GST turnover for a relevant comparison period, the sum of the current GST turnovers for that period of each test member is to be used.

Note 1: See subsection 8(7) for the meaning of ***relevant comparison period***.

Note 2: Current GST turnover and projected GST turnover are modified for the purposes of this section: see subsection 8(8).

(4) However, if:
  (a) an alternative decline in turnover test determined by the Commissioner under subsection 8(6) applies to a test member; and
  (b) the alternative test involves applying subsection 8(1) to the test member for the turnover test period, but using a different amount instead of the test member's current GST turnover for a relevant comparison period;

then in applying paragraph (3)(b) of this section, that different amount is to be used instead of the test member's current GST turnover for the period.

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Determination that section does not apply

(5) The Commissioner may determine in writing that this section does not apply to an entity if the Commissioner is satisfied, having regard to the purpose of the jobkeeper scheme and any other matter the Commissioner considers to be relevant, of either or both of the following:
  (a) that the test in this section is unsuitable, in the circumstances of the group, for measuring the extent to which employees within the group are performing work in operations that have suffered a relevant decline in turnover;
  (b) that the application of this section to the entity might, in the circumstances of the group (including the group's history of compliance with its obligations under taxation laws), risk the integrity of the Commissioner's administration of the jobkeeper scheme.

Membership of more than one group

(6) To avoid doubt, if an entity is a member of one or more of the following:
  (a) a consolidated group;
  (b) a consolidatable group;
  (c) a GST group;

it satisfies the decline in turnover test in subsection (2) if it satisfies that test in relation to its membership of any of those groups.

11 After paragraph 9(2)(a)

Insert:

(aa) if the individual was aged 16 or 17 years—the individual was:
  (i) independent within the meaning of section 1067A of the *Social Security Act 1991*; or
  (ii) not undertaking full-time study (within the meaning of the *Social Security Act 1991*); and

12 After paragraph 9(3)(a)

Insert:

(aa) if the individual was aged 16 or 17 years on 1 March 2020—the nomination notice includes:
  (i) a statement that the individual was independent within the meaning of section 1067A of the *Social Security Act 1991* on 1 March 2020; or
  (ii) a statement that the individual was not undertaking full-time study (within the meaning of the *Social Security Act 1991*) on 1 March 2020; and

13 At the end of Division 2 of Part 2

Add:

10A Requirement to give employees notice of election to participate

(1) If, for the purposes of paragraph 6(1)(e), an entity notifies the Commissioner that the entity elects to participate in the jobkeeper scheme, the entity must give notice, in writing, of the entity's election to each individual who is a relevant employee of the entity.

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Note: This section does not apply to an entity in respect of an election to participate in the jobkeeper scheme that the entity makes for the purposes of paragraph 11(1)(e) or 12A(1)(f).

(2) The notice must:
  (a) be given within 7 days of the entity notifying the Commissioner of the entity's election to participate, or such later time as the Commissioner allows; and
  (b) state that the individual must give the entity a nomination notice referred to in paragraph 9(3)(a) if the individual agrees to be nominated by the entity as an eligible employee of the entity; and
  (c) include information about the steps the individual can take to give the entity the nomination notice.

Note: Refusal or failure to give a notice to an individual as required by this section is an offence under section 8C of the *Taxation Administration Act 1953*.

(3) An individual is a ***relevant employee*** of an entity if the individual is an employee of the entity on the day the entity notifies the Commissioner of the entity's election to participate.

(4) However, an individual is not a ***relevant employee*** of an entity if the entity reasonably believes that the individual does not satisfy the requirements in subsection 9(2).

Note: The requirements in subsection 9(2) are the requirements that an individual must have satisfied on 1 March 2020 to be an eligible employee of an entity.

(5) An individual is also not a ***relevant employee*** of an entity if:
  (a) the entity is an ACNC-registered charity; and
  (b) the entity has made an election under paragraph 8(8)(h); and
  (c) it is reasonable to conclude that amounts covered by subsection 10(2) in respect of the individual for the fortnight in which the election is made are fully funded by consideration of the kind referred to in subparagraph 8(8)(h)(i) (about consideration provided by an Australian government agency, a local governing body, the United Nations, or an agency of the United Nations).

14 After paragraph 12(3)(a)

Insert:

(aa) if the individual was aged 16 or 17 years—the individual was:
  (i) independent within the meaning of section 1067A of the *Social Security Act 1991*; or
  (ii) not undertaking full-time study (within the meaning of the *Social Security Act 1991*); and

15 After paragraph 12(4)(a)

Insert:

(aa) if the individual was aged 16 or 17 years on 1 March 2020—the nomination notice includes:
  (i) a statement that the individual was independent within the meaning of section 1067A of the *Social Security Act 1991* on 1 March 2020; or

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(ii) a statement that the individual was not undertaking full-time study (within the meaning of the *Social Security Act 1991*) on 1 March 2020; and

16 After Division 3 of Part 2

Insert:

Division 3A—Entitlement based on paid religious practitioners

12A Entity's entitlement to jobkeeper payment for a religious practitioner

(1) An entity is entitled to a jobkeeper payment for an individual for a fortnight if:
  (a) the fortnight is a jobkeeper fortnight (see subsection 6(5)); and
  (b) the entity is a registered religious institution; and
  (c) the entity qualifies for the jobkeeper scheme at or before the end of the fortnight (see section 7); and
  (d) the individual is an eligible religious practitioner for the entity for the fortnight (see section 12B); and
  (e) the entity has satisfied the payment condition in section 12C in respect of the individual for the fortnight; and
  (f) the entity has notified the Commissioner in the approved form at or before the time referred to in subsection (2) that the entity elects to participate in the jobkeeper scheme; and
  (g) the entity has given information about the entitlement for the fortnight, including details of the individual, to the Commissioner in the approved form; and
  (h) the entity has not notified the Commissioner in the approved form that the entity no longer wishes to participate in the jobkeeper scheme.

Note 1: Some provisions of the Act also affect whether an entity is entitled to a jobkeeper payment: see section 14 of the Act (about record keeping) and section 19 of the Act (about contrived schemes).

Note 2: The approved form may require further information: see paragraph 388-50(1)(c) in Schedule 1 to the *Taxation Administration Act 1953*.

(2) For the purposes of paragraph (1)(f), the time at or before which the entity must notify the Commissioner that the entity elects to participate in the jobkeeper scheme is:
  (a) for an entitlement arising in the first, second or third jobkeeper fortnight—the end of the third jobkeeper fortnight; or
  (b) for an entitlement arising in another fortnight—the end of the fortnight.

Note: The Commissioner may defer the time for giving an approved form: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

No other entity to be entitled for the same individual

(3) An entity cannot be entitled under this section to a jobkeeper payment for an individual if another entity is entitled under this section or section 6 or 11 to a jobkeeper payment for the individual.

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Entity must notify individual

(4) The entity must notify an individual in writing within 7 days of giving the Commissioner details of the individual under paragraph (1)(g).

Integrity rule

(5) An entity is *not* entitled to a jobkeeper payment under this section unless the entity was a registered religious institution on 12 March 2020.

12B Meaning of *eligible religious practitioner*

(1) An individual is an ***eligible religious practitioner*** for an entity that is a registered religious institution for a fortnight if:
  (a) the individual is *not* employed by the institution at any time in the fortnight; and
  (b) the individual satisfies the requirements in subsection (2) at a time in the fortnight; and
  (c) the individual satisfies the requirements in subsections (3) and (4); and
  (d) the individual is not excluded from being an eligible religious practitioner for the institution for the fortnight under subsection (5).

Fortnightly requirements

(2) The requirements are satisfied at a time if, at that time:
  (a) the individual is a religious practitioner; and
  (b) the individual is doing an activity, or a series of activities:
    (i) in pursuit of the individual's vocation as a religious practitioner; and
    (ii) as a member of the registered religious institution.

1 March 2020 requirements

(3) The requirements are that, on 1 March 2020:
  (a) the individual was aged 16 years or over; and
  (b) if the individual was aged 16 or 17 years—the individual was:
    (i) independent within the meaning of section 1067A of the *Social Security Act 1991*; or
    (ii) not undertaking full-time study (within the meaning of the *Social Security Act 1991*); and
  (c) the individual satisfied the requirements in subsection (2); and
  (d) the individual:
    (i) was an Australian resident (within the meaning of section 7 of the *Social Security Act 1991*); or
    (ii) was a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* and was the holder of a special category visa referred to in the regulations under the *Migration Act 1958* as a Subclass 444 (Special Category) visa.

Nomination requirements

(4) The requirements are that:

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(a) the individual has given to the entity a notice (the ***nomination notice***) in the approved form stating that:
  (i) the individual satisfies the requirements in subsection (3) and in paragraph (b) of this subsection in relation to the entity; and
  (ii) the individual agrees to be nominated by the entity as an eligible religious practitioner for the entity for the purposes of the jobkeeper scheme; and

(b) at the time the individual gives the entity the nomination notice:
  (i) the individual satisfies the requirements in subsection (2) in relation to the entity for the fortnight in which the time occurs; and
  (ii) the individual is not an employee (other than a casual employee) of another entity; and
  (iii) the individual is not excluded under subsection (5) from being an eligible religious practitioner for the entity for the fortnight in which the time occurs; and
  (iv) the individual has not given any other entity, or the Commissioner, a nomination notice under this subsection or subsection 9(3) or 12(4).

Note: If an overpayment results from an individual nominating with more than one entity, the individual may be jointly and severally liable to pay the overpayment and any general interest charge on the overpayment: see section 11 of the Act.

Exclusions

(5) An individual is excluded from being an eligible religious practitioner for an entity for a fortnight if:
  (a) parental leave pay is payable to the individual and the individual's PPL period overlaps with, or includes, the fortnight; or
  (b) at any time during the fortnight, the individual is paid dad and partner pay; or
  (c) all of the following apply:
    (i) the individual is totally incapacitated for work throughout the fortnight;
    (ii) an amount is payable to the individual under, or in accordance with, an Australian workers' compensation law in respect of the individual's total incapacity for work;
    (iii) the amount is payable in respect of a period that overlaps with, or includes, the fortnight.

12C Payment condition

(1) For the purposes of paragraph 12A(1)(e), an entity satisfies the payment condition in respect of an individual for a fortnight if:
  (a) in the fortnight, the entity makes one or more payments to the individual from which an amount must be withheld under section 12-47 in Schedule 1 to the *Taxation Administration Act 1953*; or
  (b) in the fortnight, the entity provides either or both of the following to the individual:
    (i) a fringe benefit (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*);

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(ii) a benefit (within the meaning of the *Fringe Benefits Tax Assessment Act 1986*) that is an exempt benefit for the purposes of that Act.

(2) If there is a regular period for which the entity would usually pay religious practitioners, and that period is longer than a fortnight, then in applying this section those payments are to be allocated to a fortnight or fortnights in a reasonable manner.

(3) For the purposes of this section, the Commissioner may treat a particular event that happened in a fortnight as having happened in a different fortnight or fortnights, if, or to the extent that, it is reasonable to do so in the Commissioner's opinion.

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Part 2—Minor and consequential amendments

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

17 Subsection 4(1)

Insert:

current GST turnover has a meaning affected by subsection 8(8).

18 Subsection 4(1) (definition of *decline in turnover test*)

Omit "section 8", substitute "sections 8 and 8A".

19 Subsection 4(1) (definition of *projected GST turnover*)

Repeal the definition, substitute:

projected GST turnover has the meaning given by the GST Act (as affected by subsection 8(8) of this instrument).

20 Subsection 4(1)

Insert:

relevant comparison period has the meaning given by subsection 8(7).

Table A provider has the same meaning as in the *Higher Education Support Act 2003*.

Table B provider has the same meaning as in the *Higher Education Support Act 2003*.

turnover test period has the meaning given by subsection 8(7).

21 Subsection 6(2) (note)

Omit "Note", substitute "Note 1".

22 At the end of subsection 6(2)

Add:

Note 2: See section 10A of this instrument for requirements that apply if an employer notifies the Commissioner that the employer elects to participate in the jobkeeper scheme.

23 Subsection 6(3)

After "section 11", insert "or 12A".

24 Subsection 7(1)

Omit "and 11(1)(c)", substitute ", 11(1)(c) and 12A(1)(c)".

25 Paragraph 7(1)(b)

Omit "section 8", substitute "sections 8 and 8A".

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26 Subsection 8(1) (note 2)

After "this section", insert "and section 8A".

27 Paragraph 8(3)(a)

Omit "(within the meaning of the *Higher Education Support Act 2003*)".

28 Paragraph 8(3)(a)

Omit "(within the meaning of that Act)".

29 Subsection 8(5) (heading)

Repeal the heading, substitute:

Alternative test determined by Commissioner

30 Before subsection 8(7)

Insert:

Meaning of ***turnover test period*** *and* ***relevant comparison period***

31 Subsection 8(7)

After "this section", insert "and section 8A".

32 Subsection 8(8)

Omit "this section and section 16", substitute "this section and sections 8A and 16".

33 Subparagraph 9(3)(b)(iii)

After "subsection 12(4)", insert "or 12B(4)".

34 Paragraph 11(1)(f)

Omit "employer", substitute "entity".

35 Subsection 11(4)

Omit "either this section or section 6", substitute "this section or section 6 or 12A".

36 Subparagraph 12(4)(b)(iii)

After "subsection 9(3)", insert "or 12B(4)".

37 Subparagraph 12(4)(b)(iv)

Repeal the subparagraph, substitute:

(iv) the individual is not excluded under subsection (6) from being the eligible business participant for the entity for the fortnight in which the time occurs; and

(c) at the time the individual gives the entity the nomination notice, no other individual has already satisfied the requirements in this subsection in relation to the entity.

38 Subsections 14(1) and (4)

Omit "section 6 or section 11", substitute "section 6, 11 or 12A".

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39 Subsection 16(1)

After "(2)", insert "or (3)".

40 Subsection 16(2)

Omit "The matters", substitute "Unless subsection (3) applies, the matters".

41 At the end of section 16

Add:

(3) If the entity relied on subsection 8A(2) (modified decline in turnover test for certain group structures) to qualify for the jobkeeper scheme, the matters are:

(a) the sum of the current GST turnovers for the reporting month of each test member of the group referred to in subparagraph 8A(2)(a)(i); and

(b) the sum of the projected GST turnovers for the following month of each of those members.

Note: Current GST turnover and projected GST turnover are modified for the purposes of this section: see subsection 8(8).

42 Paragraph 17(1)(a)

Omit "6(1)(e) or 11(1)(e)", substitute "6(1)(e), 11(1)(e) or 12A(1)(f)".

43 Paragraph 17(1)(b)

Omit "6(1)(f) or 11(1)(f)", substitute "6(1)(f), 11(1)(f) or 12A(1)(g)".

44 Paragraph 18(1)(a)

Omit "paragraph6(1)(e) or 11(1)(e)", substitute "paragraph 6(1)(e), 11(1)(e) or 12A(1)(f)".

45 Paragraph 18(1)(b)

Omit "6(1)(f) or 11(1)(f)", substitute "6(1)(f), 11(1)(f) or 12A(1)(g)".

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Part 3—Application and transitional provisions

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

46 At the end of the instrument

Add:

Part 10—Application, saving and transitional provisions

Division 1—Application and transitional provisions relating to the Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020

100 Definitions

In this Division:

amending instrument means the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020*.

commencement time means the time when the amending instrument commences.

101 Application

Subject to sections 102 and 103, the amendments made by Parts 1 and 2 of Schedule 1 to the amending instrument apply in relation to jobkeeper fortnights beginning on or after 30 March 2020.

102 Application—individuals aged 16 or 17 years on 1 March 2020

The amendments of sections 9 and 12 made by items 11, 12, 14 and 15 of Schedule 1 to the amending instrument apply in relation to jobkeeper fortnights beginning at or after the commencement time.

103 Application—nomination requirements for business participants

The amendment of subsection 12(4) made by item 37 of Schedule 1 to the amending instrument applies in relation to nomination notices given at or after the commencement time.

104 Transitional—time required for election

If an entity notifies the Commissioner that the entity elects to participate in the jobkeeper scheme before the commencement time, paragraph 8(9)(b) applies to the entity as if a reference in that paragraph to “within 7 days of notifying the Commissioner of the entity’s election to participate in the jobkeeper scheme” were instead a reference to “within 7 days of the commencement of this subsection”.

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105 Transitional—requirement to give employees notice of election to participate

(1) If an entity notifies the Commissioner that the entity elects to participate in the jobkeeper scheme before the commencement time, paragraph 10A(2)(a) applies to the entity as if a reference in that paragraph to "within 7 days of the entity notifying the Commissioner of the entity's election to participate" were instead a reference to "no later than 7 days after the commencement of this section".

(2) An entity is not required to give a notice to an individual under section 10A if the entity reasonably believes that, on 1 March 2020:
   (a) the individual was aged 16 or 17 years; and
   (b) the individual was:
      (i) undertaking full-time study (within the meaning of the *Social Security Act 1991*); and
      (ii) not independent within the meaning of section 1067A of that Act.

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