



Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020

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

Dated 15 September 2020

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 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	The day after this instrument is registered.	16 September 2020

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Extension of scheme

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

1 Section 5 (paragraph beginning “The jobkeeper scheme starts”)

Omit “27 September 2020”, substitute “28 March 2021”.

2 Paragraph 6(5)(b)

Omit “27 September 2020”, substitute “28 March 2021”.

3 Subparagraph 8(7)(a)(i)

Omit “1 October 2020”, substitute “1 January 2021”.

4 Subparagraph 8(7)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) a quarter that ends on 30 June 2020, 30 September 2020 or 31 December 2020; and

5 Paragraph 19(a)

Omit “30 September 2021”, substitute “31 March 2022”.

Part 2—Reassessment of decline in turnover

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

6 Subsection 4(1)

Insert:

actual decline in turnover test means the test set out in section 8B.

7 Paragraph 6(1)(b)

Repeal the paragraph, substitute:

(b) the employer qualifies for the jobkeeper scheme for the fortnight (see section 7); and

8 Subsection 7(1)

Omit “at a time”, substitute “for a jobkeeper fortnight”.

9 Paragraph 7(1)(b)

Omit “the time”, substitute “the end of the fortnight”.

10 After paragraph 7(1)(b)

Insert:

; and (c) for a fortnight beginning on or after 28 September 2020—the entity also satisfies the actual decline in turnover test (see section 8B) for the fortnight.

11 Subsection 7(2)

Omit “at a time”, substitute “for a jobkeeper fortnight”.

12 Subsection 8(7)

Omit “section 8A”, substitute “sections 8A and 8B”.

13 At the end of subsection 8(7)

Add:

Note: When applying this subsection for the purposes of the actual decline in turnover test there is a different turnover test period: see paragraph 8B(1)(a).

14 Subsection 8(8)

After “8A”, insert “, 8B”.

15 After section 8A

Insert:

8B Actual decline in turnover test

- (1) An entity satisfies the actual decline in turnover test for a jobkeeper fortnight if the entity would satisfy the decline in turnover test (see sections 8 and 8A) at a time in the quarter applicable to the fortnight under subsection (2) if:
- the turnover test period were the quarter, instead of the period determined under paragraph 8(7)(a) or (aa); and
 - instead of projected GST turnover, current GST turnover were used (including in subsection 8A(3), and in applying an alternative decline in turnover test determined by the Commissioner under subsection 8(6)).

Quarter in which actual decline in turnover test must be satisfied

- (2) For the purposes of subsection (1), the quarter applicable to a jobkeeper fortnight beginning on or after 28 September 2020 is as set out in the following table.

Quarter for which actual decline in turnover test must be satisfied		
Item	If the fortnight begins:	the quarter is the quarter ending on:
1	before 4 January 2021	30 September 2020
2	on or after 4 January 2021	31 December 2020

Commissioner determination

- (3) In calculating an entity's current GST turnover for a quarter for the purposes of the actual decline in turnover test, if:
- the Commissioner has made a determination under subsection (4) requiring a class of supplies to be treated as if they had been made at a time or times different from the time at which the supplies were actually made; and
 - the determination applies to a supply made by the entity;
- then the supply is to be treated as if it had been made at the time or times applicable under the determination.
- (4) The Commissioner may, by legislative instrument, determine that the supplies in a class of supplies are to be treated as if they had been made at a time or times different from the time at which the supplies were actually made.
- (5) In considering whether to make a determination under subsection (4), the Commissioner must consider:
- the tax period to which GST payable by the entity on supplies in the class is attributable for the purposes of the GST Act; and
 - any other matter the Commissioner considers relevant.
- (6) A determination under subsection (4) may not be made in relation to a supply that is not a supply for the purposes of the GST Act.

16 Paragraph 11(1)(c)

Repeal the paragraph, substitute:

- the entity qualifies for the jobkeeper scheme for the fortnight (see section 7); and

17 Paragraph 12A(1)(c)

Repeal the paragraph, substitute:

- (c) the entity qualifies for the jobkeeper scheme for the fortnight (see section 7); and

18 Subsection 16(1)

Omit “at a time”, substitute “for a jobkeeper fortnight”.

Part 3—Payment rate

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

19 Subsection 4(1) (definition of *jobkeeper payment*)

Repeal the note.

20 Subsection 4(1)

Insert:

pay cycle for an employee for an entity means a regular period for which the entity would usually pay the employee in relation to the performance of work by the employee.

reference period has the meaning given by section 4A.

21 At the end of Part 1

Add:

4A Meaning of *reference period*

- (1) Each of the following is a *reference period* for an individual for an entity:
- (a) a period set out in an applicable item of the following table;
 - (b) an alternative reference period determined by the Commissioner under subsection (2) that applies to the individual.

Note: The reference period is used to determine whether the higher rate or lower rate of jobkeeper payment is payable for an individual: see sections 9A, 12AA and 12BA.

Reference periods		
Item	If the individual is:	The reference period is:
1	an eligible employee of the entity	(a) the 28-day period ending at the end of the most recent pay cycle for the employee for the entity that ended before 1 March 2020; or (b) the 28-day period ending at the end of the most recent pay cycle for the employee for the entity that ended before 1 July 2020
2	the eligible business participant for the entity	the month of February 2020
3	an eligible religious practitioner for the entity	the month of February 2020

Alternative reference period determined by Commissioner

- (2) The Commissioner may, by legislative instrument, determine that an alternative reference period applies to a specified class of individuals if the Commissioner

considers that a period set out in the table in subsection (1) may not be a suitable reference period for the purpose of applying subsection 9A(1), 12AA(1) or section 12BA to individuals in the specified class.

- (3) A period determined under subsection (2) must be of the same duration as the period that the Commissioner considers may not be suitable.

22 Section 5

Omit “of \$1,500 per” (first occurring), substitute “each”.

23 Section 5

Omit “at least that amount”, substitute “at least the amount of the jobkeeper payment”.

24 Section 5

Omit “of \$1,500 per” (second and third occurring), substitute “each”.

25 After paragraph 6(1)(f)

Insert:

- (fa) for a jobkeeper fortnight beginning on or after 28 September 2020—the employer has notified the Commissioner in the approved form as to whether the higher rate or the lower rate applies to the individual (see section 9A); and

26 After subsection 6(4)

Insert:

- (4A) An employer must notify an individual in writing within 7 days of giving the Commissioner a notice under paragraph 6(1)(fa) in respect of the individual. The notice must state whether the rate notified to the Commissioner under that paragraph was the higher rate or the lower rate.

27 After section 9

Insert:

9A Eligible employee—whether higher or lower rate applies

- (1) The higher rate applies to an individual who is an eligible employee of an entity if:
- (a) the employee’s total hours of work, paid leave and paid absence on public holidays in the individual’s employment with that entity in any reference period for the individual for the entity was 80 hours or more; or
 - (b) the higher rate is taken by subsection (3) to apply to the employee.

Otherwise, the lower rate applies to the employee.

Note 1: See the definition of *reference period* in section 4A.

Note 2: For the amount of the jobkeeper payment, see section 13.

- (2) If the pay cycle for the employee for the entity is longer than 28 days, a pro-rata proportion of the total hours of work, paid leave and paid absence on public holidays of the employee in the pay cycle is to be used in applying paragraph (1)(a).

Commissioner determination

- (3) For the purposes of paragraph (1)(b), the higher rate is taken to apply to an eligible employee of an entity if:
 - (a) the Commissioner has determined specified circumstances under subsection (4); and
 - (b) the circumstances apply to the employee.
- (4) If the Commissioner is satisfied that hours of the kind referred to in paragraph (1)(a) in a period for a class of individuals are not readily ascertainable, the Commissioner may, by legislative instrument, determine specified circumstances in which the higher rate is taken to apply to individuals in the class.

28 Subsection 10(1)

Omit “\$1,500”, substitute “the amount that, assuming the employer were entitled to the jobkeeper payment for the individual for the fortnight, would be the amount of that payment (see sections 9A and 13)”.

29 After paragraph 11(1)(f)

Insert:

- (fa) for a jobkeeper fortnight beginning on or after 28 September 2020—the entity has notified the Commissioner in the approved form as to whether the higher rate or the lower rate applies to the individual (see section 12AA); and

30 After subsection 11(5)

Insert:

- (5A) Unless the entity is a sole trader, the entity must notify an individual in writing within 7 days of giving the Commissioner a notice under paragraph 11(1)(fa) in respect of the individual. The notice must state whether the rate notified to the Commissioner under that paragraph was the higher rate or the lower rate.

31 At the end of Division 3 of Part 2

Add:

12AA Eligible business participant—whether higher or lower rate applies

- (1) The higher rate applies to an individual who is an eligible business participant for an entity if:
 - (a) the total number of hours the individual was actively engaged in the business carried on by the entity in any reference period for the individual for the entity is 80 hours or more; and
 - (b) the individual has given a notice to that effect in the manner set out in subsection (2).

Otherwise, the lower rate applies to the individual.

Note 1: See the definition of *reference period* in section 4A.

Note 2: For the amount of the jobkeeper payment, see section 13.

- (2) The notice must be given, in the approved form, to:

- (a) unless paragraph (b) applies—the entity; or
- (b) if the individual is a sole trader—the Commissioner.

32 After paragraph 12A(1)(g)

Insert:

- (ga) for a jobkeeper fortnight beginning on or after 28 September 2020—the entity has notified the Commissioner in the approved form as to whether the higher rate or the lower rate applies to the individual (see section 12BA); and

33 After subsection 12A(4)

Insert:

- (4A) The entity must notify an individual in writing within 7 days of giving the Commissioner a notice under paragraph 12A(1)(ga) in respect of the individual. The notice must state whether the rate notified to the Commissioner under that paragraph was the higher rate or the lower rate.

34 After section 12B

Insert:

12BA Eligible religious practitioner—whether higher or lower rate applies

The higher rate applies to an individual who is an eligible religious practitioner for an entity if:

- (a) the total number of hours the individual spent doing activities covered by paragraph 12B(2)(b) in any reference period for the individual for the entity was 80 hours or more; and
- (b) the individual has given the entity a notice to that effect in the approved form.

Otherwise, the lower rate applies to the individual.

Note 1: See the definition of *reference period* in section 4A.

Note 2: For the amount of the jobkeeper payment, see section 13.

35 Section 13

Repeal the section, substitute:

13 Amount of the jobkeeper payment for a fortnight

The amount of an entity's jobkeeper payment for an individual for a fortnight is:

- (a) for a fortnight beginning before 28 September 2020—\$1,500; or
- (b) for a fortnight beginning on or after 28 September 2020—the amount determined under the following table.

Jobkeeper payment rate		
Item	If the fortnight begins:	The amount of a jobkeeper payment for an individual is:
1	before 4 January 2021	(a) if the higher rate applies to the individual—\$1,200; or

Schedule 1 Amendments
Part 3 Payment rate

Jobkeeper payment rate		
Item	If the fortnight begins:	The amount of a jobkeeper payment for an individual is:
		(b) if the lower rate applies to the individual—\$750
2	on or after 4 January 2021	(a) if the higher rate applies to the individual—\$1,000; or (b) if the lower rate applies to the individual—\$650

Note: For whether the higher rate or the lower rate applies to the individual, see section 9A (for an eligible employee), 12AA (for an eligible business participant) or 12BA (for an eligible religious practitioner).

Part 4—Application provisions

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

36 In the appropriate position in Part 10

Insert:

Division 5—Application provisions relating to the Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020

112 Definitions

In this Division:

amending instrument means the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020*.

113 Application

- (1) Subject to subsection (2), the amendments made by Parts 1, 2 and 3 of Schedule 1 to the amending instrument apply in relation to jobkeeper fortnights beginning on or after the commencement of this section.
- (2) Subsections 8B(3), (4), (5) and (6), as inserted by Part 2 of Schedule 1 to the amending instrument, apply in relation to quarters ending on or after the commencement of this section.