



# JobKeeper Consolidated Rules

Dated: 7 May 2020

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The JobKeeper Consolidated Rules (“Consolidated Rules”) consolidates the two legislative instruments which are quoted as follows:

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

Link: <https://www.legislation.gov.au/Details/F2020L00419>

**AND**

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

Link: <https://www.legislation.gov.au/Details/F2020L00546>

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The author has taken both legislative instruments and made changes to *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* solely pursuant to the amendments, additions and omissions outlined in *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020*. This document is therefore a compilation of the two legislative instruments but does not purport to be an authorised version.

Finally, the Commonwealth Coat of Arms has been removed in compliance with the relevant license.



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## Part 1—Preliminary

### 1 Name

This instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Rules 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.	9 April 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Note: This table relates only to the provisions of this instrument as originally made.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 Definitions

- (1) In this instrument:

**ACNC-registered charity** has the meaning given by the GST Act.

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

**Australian workers' compensation law** means a law of the Commonwealth, a State or a Territory relating to workers' compensation.

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

**dad and partner pay** has the same meaning as in the *Paid Parental Leave Act 2010*.

**decline in turnover test** means the test set out in sections 8 and 8A.

**eligible business participant** has the meaning given by section 12.

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**eligible employee** has the meaning given by section 9.

**fortnight** means a 14-day period beginning on a Monday.

**holder**, in relation to a visa, has the same meaning as in the *Migration Act 1958*.

**jobkeeper fortnight** has the meaning given by subsection 6(5).

**jobkeeper payment** means a jobkeeper payment payable to an entity under section 14.

Note: The amount of the jobkeeper payment is \$1,500: see section 13.

**jobkeeper scheme** means the scheme relating to the jobkeeper payment set out in Part 2.

**listed Australian shares** means shares in a listed public company, if the shares are listed for quotation in the official list of a stock exchange that is listed under the heading “Australia” in regulations made under the *Income Tax Assessment Act 1997* for the purposes of the definition of **approved stock exchange** in that Act.

**long term casual employee** has the meaning given by subsection 9(5).

**non-profit body** has the same meaning as in section 23-15 of the GST Act.

Note: The term **non-profit body** is not defined in the GST Act. However, this definition ensures that the meaning of the term in this instrument does not diverge from the meaning of the term in section 23-15 of that Act.

**parental leave pay** has the same meaning as in the *Paid Parental Leave Act 2010*.

**PPL period** has the same meaning as in the *Paid Parental Leave Act 2010*.

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

**school** has the meaning given by the GST Act.

**specified percentage**, for an entity, has the meaning given by subsection 8(2).

**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.

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

**religious practitioner** means:

- (a) a minister of religion; or
- (b) a full-time member of a religious order.

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**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).

- (2) Subject to subsection (1), an expression used in this instrument that is defined in the *Income Tax Assessment Act 1997* has the same meaning in this instrument as it has in that Act.

## **Part 2—Jobkeeper payment**

### **Division 1—Simplified outline**

#### **5 Simplified outline**

The jobkeeper payment is intended to assist businesses affected by the Coronavirus to cover the costs of wages of their employees.

The jobkeeper scheme starts on 30 March 2020 and ends on 27 September 2020.

A business that has suffered a substantial decline in turnover can be entitled to a jobkeeper payment of \$1,500 per fortnight for each eligible employee. It is a condition of entitlement that the business has paid salary and wages of at least that amount to the employee in the fortnight.

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.

The jobkeeper scheme is administered by the Commissioner of Taxation.

The Commissioner pays the jobkeeper payment to entities shortly after the end of each calendar month, for fortnights ending in that month.

Some of the administrative arrangements for the scheme are set out in the Act.



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## Division 2—Entitlement based on paid employees

### 6 Employer's entitlement to jobkeeper payment for an employee

- (1) An entity (the *employer*) is entitled to a jobkeeper payment for an individual for a fortnight if:
- (a) the fortnight is a jobkeeper fortnight (see subsection (5)); and
  - (b) the employer qualifies for the jobkeeper scheme at or before the end of the fortnight (see section 7); and
  - (c) the individual is an eligible employee of the employer for the fortnight (see section 9); and
  - (d) the employer has satisfied the wage condition in section 10 in respect of the individual for the fortnight; and
  - (e) the employer has notified the Commissioner in the approved form at or before the time referred to in subsection (2) that the employer elects to participate in the jobkeeper scheme; and
  - (f) the employer has given information about the entitlement for the fortnight, including details of the individual, to the Commissioner in the approved form; and
  - (g) the employer has not notified the Commissioner in the approved form that the employer 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)(e), the time at or before which the employer must notify the Commissioner that the employer elects to participate in the jobkeeper scheme is:
- (a) for an entitlement arising in the first or second jobkeeper fortnight—the end of the second jobkeeper fortnight; or
  - (b) for an entitlement arising in any other fortnight—the end of the fortnight.

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

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.

*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 11 or 12A to a jobkeeper payment for the individual.

*Employer must notify individual*

- (4) An employer must notify an individual in writing within 7 days of giving the Commissioner details of the individual under paragraph (1)(f).

**Part 2** Jobkeeper payment

**Division 2** Entitlement based on paid employees

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*Meaning of jobkeeper fortnight*

- (5) Each of the following is a **jobkeeper fortnight**:
- (a) the fortnight beginning on 30 March 2020;
  - (b) each subsequent fortnight, ending with the fortnight ending on 27 September 2020.

**7 When an entity qualifies for the jobkeeper scheme**

- (1) For the purposes of paragraphs 6(1)(b) and, 11(1)(c) and 12A(1)(c), an entity qualifies for the jobkeeper scheme at a time if:
- (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 the *Income Tax Assessment Act 1997* (international affairs deductible gift recipients); and
  - (b) the entity has satisfied the decline in turnover test at or before the time (see sections 8 and 8A).

Note: Qualifying entities must report monthly turnover information to the Commissioner for the duration of the scheme: see section 16.

*Exceptions*

- (2) However, an entity does *not* qualify for the jobkeeper scheme at a time if:
- (a) an amount of levy under the *Major Bank Levy Act 2017* was imposed for any quarter ending before 1 March 2020 on:
    - (i) the entity; or
    - (ii) if the entity is a member of a consolidated group—another member of the group; or
  - (b) the entity is an Australian government agency; or
  - (c) the entity is a local governing body; or
  - (d) the entity is wholly owned by an entity covered by paragraph (b) or (c); or
  - (e) the entity is a sovereign entity, or would be a sovereign entity if subparagraphs 880-15(c)(ii) and (iii) of the *Income Tax Assessment Act 1997* were disregarded; or
  - (f) if the entity is a company—a liquidator or provisional liquidator has been appointed in relation to the company; or
  - (g) if the entity is an individual—a trustee in bankruptcy has been appointed to the individual's property.

**8 Decline in turnover test**

*Basic test*

- (1) An entity satisfies the decline in turnover test at a time (the **test time**) if:

- (a) the entity's projected GST turnover for a turnover test period in which the test time occurs falls short of the entity's current GST turnover for a relevant comparison period (the *comparison turnover*); and
- (b) the shortfall, expressed as a percentage of the comparison turnover, equals or exceeds the specified percentage for the entity (see subsection (2)).

Note 1: See subsection (7) for the meanings of *turnover test period* and *relevant comparison period*.

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

Note 3: For provisions about contrived schemes, see section 19 of the Act.

Example: Patrick Enterprises assesses its eligibility for jobkeeper payments on 6 April 2020 based on a projected GST turnover for April 2020 of \$6 million. It considers that the comparable period is the month of April 2019 for which it had a current GST turnover of \$10 million. The April 2020 turnover falls short of the April 2019 turnover by \$4 million, which is 40% of the April 2019 turnover. This exceeds the specified percentage, so the decline in turnover test is satisfied.

- (2) The *specified percentage* for an entity is:
  - (a) if the lower threshold applies to the entity (see subsection (3))—15%; or
  - (b) if the higher threshold applies to the entity (see subsection (4))—50%; or
  - (c) otherwise—30%.

- (3) For the purposes of paragraph (2)(a), the lower threshold applies to an entity if the entity is an ACNC-registered charity other than:
  - (a) an entity that is a Table A provider or a Table B provider; or
  - (b) a school.

Note: Paragraph (b) affects only non-government schools, as government schools do not qualify for the jobkeeper scheme because of paragraphs 7(2)(b) to (d).

- (4) For the purposes of paragraph (2)(b), the higher threshold applies to an entity if:
  - (a) the lower threshold does not apply to the entity (see subsection (3)); and
  - (b) either:
    - (i) the entity's aggregated turnover for the income year in which the test time referred to in subsection (1) occurs is likely to exceed \$1 billion; or
    - (ii) the entity's aggregated turnover for the previous income year exceeds \$1 billion.

*Alternative test determined by Commissioner*

- (5) An entity also satisfies the decline in turnover test if:
  - (a) an alternative decline in turnover test determined by the Commissioner under subsection (6) applies to the entity; and
  - (b) the entity satisfies the alternative test.
- (6) The Commissioner may, by legislative instrument, determine that an alternative decline in turnover test applies to a class of entities, if the Commissioner is satisfied that there is not an appropriate relevant comparison period for the purpose of an entity in the class of entities satisfying the decline in turnover test under subsection (1).

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*Meaning of turnover test period and relevant comparison period*

- (7) For the purposes of this section and section 8A:
- (a) unless paragraph (aa) applies—the **turnover test period** must be:
    - (i) a calendar month that ends after 30 March 2020 and before 1 October 2020; or
    - (ii) a quarter that starts on 1 April 2020 or 1 July 2020; and
  - (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
  - (b) the **relevant comparison period** must be the period in 2019 that corresponds to the turnover test period.

*Modifications relating to GST turnover*

- (8) In calculating an entity's current GST turnover, and projected GST turnover, for a period for the purposes of this section and sections 8A and 16 the following apply:
- (a) sections 188-15 and 188-20 of the GST Act apply as if a reference to a month were a reference to the period;
  - (b) subsections 188-15(2) and 188-20(2) of that Act (about members of GST groups) are to be disregarded;
  - (c) for calculating current GST turnover:
    - (i) subsection 188-15(1) of that Act is to be applied at the end of the period; and
    - (ii) subsection 188-15(1) of that Act has effect as if the reference in that subsection to “, or are likely to make, during the 12 months ending at the end of that month,” were instead a reference to “during that period”;
  - (d) for calculating projected GST turnover—subsection 188-20(1) of that Act has effect as if the reference in that subsection to “during that month and the next 11 months” were instead a reference to “during that period”;
  - (e) each external Territory is treated as forming part of the indirect tax zone (within the meaning of that Act);
  - (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*;
  - (f) for an entity that is a deductible gift recipient—each gift described in an applicable item of the table in section 30-15 of the *Income Tax Assessment Act 1997* and received, or likely to be received, by the entity in the period (other than from an associate) results in the following treatment:
    - (i) the entity is treated as making, or as likely to make (as the case requires), a supply in the period for consideration;
    - (ii) the value (within the meaning of the GST Act) of the supply is treated as being equal to the amount of the gift (if the gift is money) or the market value of the gift (if the gift is not money);
  - (g) for an entity that is an ACNC-registered charity (other than a deductible gift recipient)—each gift received, or likely to be received, by the entity in

- the period (other than from an associate) also results in the treatment set out in paragraph (f) if the gift is:
- (i) a gift of money; or
  - (ii) a gift of property with a market value of more than \$5,000; or
  - (iii) a gift of listed Australian shares.
- ; (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) 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.

### **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.

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**Division 2** Entitlement based on paid employees

**Section 8A**

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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.

*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.

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## 9 Meaning of *eligible employee*

- (1) An individual is an *eligible employee* of an entity for a fortnight if:
- (a) the individual is employed by the entity at any time in the fortnight; and
  - (b) the individual satisfies the requirements in subsections (2) and (3); and
  - (c) the individual is not excluded from being an eligible employee of the entity for the fortnight under subsection (4).

### *1 March 2020 requirements*

- (2) The requirements are that, on 1 March 2020:
- (a) the individual was aged 16 years or over; and
  - (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
  - (b) the individual was:
    - (i) an employee (other than a casual employee) of the entity; or
    - (ii) a long term casual employee of the entity; and
  - (c) 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.

Note: See subsection (5) for the meaning of *long term casual employee*.

### *Nomination requirements*

- (3) The requirements are that:
- (a) the individual has given to the entity a notice (the *nomination notice*) in the approved form stating that:
  - (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
  - (i) the individual satisfies the requirements in subsection (2) 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 employee of the entity for the purposes of the jobkeeper scheme; and
  - (b) at the time the individual gives the entity the nomination notice:

**Part 2** Jobkeeper payment

**Division 2** Entitlement based on paid employees

**Section 9**

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- (i) the individual is not excluded under subsection (4) from being an eligible employee of the entity for the fortnight in which the time occurs; and
- (ii) if the individual is a long term casual employee of the entity—the individual is not also an employee (other than a casual employee) of another entity; and
- (iii) the individual has not given any other entity, or the Commissioner, a nomination notice under this subsection or subsection 12(4) or 12B(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*

- (4) An individual is excluded from being an eligible employee of 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.

*Meaning of long term casual employee*

- (5) An individual is a **long term casual employee** of an entity at a time if:
  - (a) at that time, the individual was a casual employee of the entity; and
  - (b) the individual had been employed by the entity on a regular and systematic basis during the period of 12 months that ended at that time.

*Businesses that change hands etc.*

- (6) For the purposes of this section, treat an entity (the **later entity**) that employs an individual at a time (the **later time**) as having also employed the individual at an earlier time if:
  - (a) the individual was employed at the earlier time by another entity in the same wholly-owned group as the later entity; or
  - (b) both of the following apply:
    - (i) at the later time, the individual is employed in a business carried on by the later entity or in a non-profit body the purposes of which are carried on by the later entity;



- (ii) at the earlier time, the individual was employed in the same business or non-profit body, but that business was, or the purposes of that non-profit body were, carried on by a different entity.

Note 1: Paragraph (b) means that an individual can be an eligible employee of an entity even if the business or non-profit body in which the individual is employed changes hands after 1 March 2020.

Note 2: Paragraph (b) also means that, in working out if an individual is a long term casual employee of an entity at a time, employment in a business or non-profit body during the period of 12 months that ended at that time can be counted even if the business or non-profit body changed hands during that period.

## 10 Wage condition

- (1) For the purposes of paragraph 6(1)(d), an employer satisfies the wage condition in respect of an individual for a fortnight if the sum of the amounts covered by subsection (2) equals or exceeds \$1,500.
- (2) The amounts covered by this subsection are:
  - (a) amounts paid by the employer to the individual in the fortnight by way of salary, wages, commission, bonus or allowances; and
  - (b) amounts withheld by the employer from payments made to the individual in the fortnight under section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*; and
  - (c) contributions made by the employer in the fortnight to a superannuation fund or an RSA for the benefit of the individual, if the contributions are made under a salary sacrifice arrangement (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*); and
  - (d) other amounts that, in the fortnight, are applied or dealt with in any way if the individual agreed:
    - (i) for the amount to be so applied or dealt with; and
    - (ii) in return, for amounts covered by paragraph (a) for the individual for the fortnight to be reduced (including to nil).
- (3) If there is a regular period for which the employer would usually pay employees in relation to the performance of work by the employees, 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.
- (4) 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.

### 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.

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).

**Part 2** Jobkeeper payment

**Division 2** Entitlement based on paid employees

**Section 10A**

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- (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).

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## **Division 3—Entitlement based on business participation**

### **11 Entity's entitlement to jobkeeper payment for a business participant**

- (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 not a non-profit body; 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 the eligible business participant for the entity for the fortnight (see section 12); and
  - (e) 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
  - (f) the entity has given information about the entitlement for the fortnight, including details of the individual, to the Commissioner in the approved form; and
  - (g) 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)(e), 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 or second jobkeeper fortnight—the end of the second 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*.

*Only one eligible business participant per entity*

- (3) An entity cannot be entitled under this section to a jobkeeper payment for more than one individual (whether for the same fortnight or a different fortnight).

*No other entity to be entitled for the same individual*

- (4) An entity cannot be entitled under this section to a jobkeeper payment for an individual if another entity is entitled under either this section or section 6 or 12A to a jobkeeper payment for the individual.

*Entity must notify individual*

- (5) Unless the entity is a sole trader, the entity must notify an individual in writing within 7 days of giving the Commissioner details of the individual under paragraph (1)(f).

**Part 2** Jobkeeper payment

**Division 3** Entitlement based on business participation

**Section 12**

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Note: In the case of a sole trader, the entity and the individual are the same: see item 1 of the table in subsection 12(2).

*Integrity rule*

- (6) An entity is *not* entitled to a jobkeeper payment under this section unless the entity had an ABN on 12 March 2020 (or a later time allowed by the Commissioner), and the requirement in subsection (7) or (8) is satisfied.
- (7) For the purposes of subsection (6), the requirement in this subsection is satisfied if:
  - (a) an amount was included in the entity's assessable income for the 2018-19 income year in relation to it carrying on a business; and
  - (b) the Commissioner had notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the amount should be so included.
- (8) For the purposes of subsection (6), the requirement in this subsection is satisfied if:
  - (a) the entity made a taxable supply in a tax period that applied to it that:
    - (i) started on or after 1 July 2018; and
    - (ii) ended before 12 March 2020; and
  - (b) the Commissioner had notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the entity had made the taxable supply.
- (9) For the purposes of subsection (8), in determining whether the entity made a supply (within the meaning of the GST Act) that is a taxable supply:
  - (a) assume that the entity is registered (within the meaning of that Act); and
  - (b) assume that the supply is neither GST-free (within the meaning of that Act) nor input taxed (within the meaning of that Act); and
  - (c) for an entity carrying on business solely in the external Territories—assume that the external Territories are part of the indirect tax zone (within the meaning of that Act).

**12 Meaning of *eligible business participant***

- (1) An individual is the *eligible business participant* for an entity for a fortnight if:
  - (a) the individual is *not* employed by the entity 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 the eligible business participant for the entity for the fortnight under subsection (6).

*Business participation requirements*

- (2) The requirements are satisfied at a time if, at that time:
  - (a) the individual is actively engaged in the business carried on by the entity; and
  - (b) the individual is covered by column 2 of the applicable item of the following table.

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<b>Item</b>	<b>Column 1 If the entity is a ...</b>	<b>Column 2 The individual must be ...</b>
1	Sole trader	The entity
2	Partnership	A partner in the partnership
3	Trust	An adult beneficiary of the trust
4	Company	A shareholder in or a director of the company

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*1 March 2020 requirements*

- (3) The requirements are that, on 1 March 2020:
- (a) the individual was aged 16 years or over; and
  - (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
  - (b) the individual satisfied the requirements in subsection (2); and
  - (c) 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:
- (a) the individual has given a notice (the ***nomination notice***) in the manner set out in subsection (5) 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 the eligible business participant for the entity for the purposes of the jobkeeper scheme; and
  - (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
  - (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; and
    - (ii) the individual is not an employee (other than a casual employee) of another entity; and

**Part 2** Jobkeeper payment

**Division 3A** Entitlement based on paid religious practitioners

**Section 12A**

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- (iii) the individual has not given any other entity, or the Commissioner, a nomination notice under this subsection or subsection 9(3) or 12B(4); and
- (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.

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.

- (5) For the purposes of subsection (4), 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.

*Exclusions*

- (6) An individual is excluded from being the eligible business participant 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.

**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.

*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

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**Division 3A** Entitlement based on paid religious practitioners

**Section 12B**

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- (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:
  - (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).



Section 12C

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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*);
    - (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.

Section 13

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## Division 4—Payment

### 13 Amount of the jobkeeper payment for a fortnight

The amount of an entity's jobkeeper payment for an individual for a fortnight is \$1,500.

### 14 Payment of jobkeeper payment

- (1) If the Commissioner is satisfied that an entity is entitled under section 6, 11 or 12A to a jobkeeper payment for a fortnight, the Commissioner must pay the entity the jobkeeper payment in accordance with this Division and the Act.
- (2) The Commissioner may, for the purposes of determining whether the Commissioner is satisfied under subsection (1) in relation to an entity, accept, either in whole or in part, a statement in the approved form lodged with the Commissioner by the entity under this Part.

*Transitional rule for first 2 jobkeeper fortnights*

- (3) The Commissioner may pay an entity a jobkeeper payment for a fortnight in accordance with this Division and the Act without being satisfied that the entity is entitled under section 6 or section 11 to the jobkeeper payment if:
  - (a) the fortnight is the first or second jobkeeper fortnight; and
  - (b) the entity has notified the Commissioner in the approved form that the entity elects to participate in the jobkeeper scheme (as referred to in paragraph 6(1)(e) or 11(1)(e)); and
  - (c) the Commissioner is satisfied, on the basis of information provided in the approved form, that it is reasonable in the circumstances to pay the jobkeeper payment.

*Overpayment*

- (4) To avoid doubt, the fact that the Commissioner pays an entity a jobkeeper payment under this section does not mean the entity is entitled under section 6, 11 or 12A to the jobkeeper payment.

Note: If the entity was in fact not entitled to a jobkeeper payment paid under this section, the provisions about overpayments would apply: see sections 9, 10 and 11 of the Act.

### 15 When the Commissioner must pay jobkeeper payments

The Commissioner must pay the jobkeeper payment no later than the later of:

- (a) 14 days after the end of the calendar month in which the fortnight ends; and
- (b) 14 days after the requirements in section 14 for the Commissioner to make the payment are met.

Note: For the method of paying the payment, see section 8 of the Act.

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## Division 5—Administration

### 16 Reporting requirement relating to qualification

- (1) An entity that has qualified for the jobkeeper scheme (see section 7) at a time must notify the Commissioner in the approved form of the matters set out in subsection (2) or (3) within 7 days of the end of a calendar month (the **reporting month**) if the entity is entitled to a jobkeeper payment for a fortnight that ends in the month.
- (2) Unless subsection (3) applies, the matters are:
  - (a) the entity's current GST turnover for the reporting month; and
  - (b) the entity's projected GST turnover for the following month.

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

- (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).

### 17 When payment constitutes notice

- (1) Subsection (2) applies if:
  - (a) an entity has notified the Commissioner in the approved form that the entity elects to participate in the jobkeeper scheme (as referred to in paragraph 6(1)(e), 11(1)(e) or 12A(1)(f)); and
  - (b) the entity has given the Commissioner, in the approved form, details of one or more individuals for fortnights ending in a calendar month (as referred to in paragraph 6(1)(f), 11(1)(f) or 12A(1)(g)); and
  - (c) the Commissioner has paid jobkeeper payments to the entity for those fortnights; and
  - (d) the sum of the amounts paid by the Commissioner is consistent with the Commissioner being satisfied that the entity is entitled to a jobkeeper payment for each individual covered by paragraph (b) of this subsection for each of the fortnights referred to in that paragraph.
- (2) The Commissioner is taken to have given the entity notice, on the day the last jobkeeper payment covered by paragraph (1)(c) of this section is paid, that the Commissioner is satisfied the entity is entitled to a jobkeeper payment for each individual covered by paragraph (1)(b) of this section for each of the fortnights referred to in paragraph (1)(b).
- (3) However, this section does not apply in relation to the calendar month in which the first 2 jobkeeper fortnights end.

Section 18

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**18 Notice of decision on entitlement**

- (1) This section applies if:
  - (a) an entity has notified the Commissioner in the approved form that the entity elects to participate in the jobkeeper scheme (as referred to in paragraph 6(1)(e), 11(1)(e) or 12A(1)(f)); and
  - (b) the entity has given the Commissioner, in the approved form, details of one or more individuals for fortnights ending in a calendar month (as referred to in paragraph 6(1)(f), 11(1)(f) or 12A(1)(g)); and
  - (c) the sum of the amounts paid by the Commissioner (including nil) is *not* consistent with the Commissioner being satisfied that the entity is entitled to a jobkeeper payment for each individual covered by paragraph (b) of this subsection for each of the fortnights referred to in that paragraph.
- (2) The Commissioner must give the entity notice in writing of a decision covered by subsection (3) as soon as practicable after making the decision.

Note: The Act provides for a review of certain decisions: see section 13 of the Act.
- (3) This subsection covers a decision of the Commissioner under section 14 that the entity:
  - (a) is entitled to a jobkeeper payment for an individual for a fortnight; or
  - (b) is not entitled to a jobkeeper payment for an individual for a fortnight.
- (4) The Commissioner may combine in one notice given under subsection (2) decisions made in relation to more than one individual.

**19 Time limit for jobkeeper scheme**

Despite anything in this Part:

- (a) the Commissioner must not pay an amount by way of a jobkeeper payment after 30 September 2021; and
- (b) if:
  - (i) an entity is entitled to a jobkeeper payment for a fortnight (disregarding this paragraph); and
  - (ii) the Commissioner would contravene paragraph (a) by paying that jobkeeper payment;the entity is not entitled to the jobkeeper payment for the fortnight.

**20 Later legislation may limit jobkeeper scheme**

An entitlement to jobkeeper payment under this Part may be cancelled, revoked, terminated, varied or made subject to conditions by or under later legislation.

## **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”.

#### **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”.

**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

**Section 105**

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- (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.