



Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020

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

Dated 4 December 2020

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 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.	4 December 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

1 Subsection 4(1)

Insert:

baseline headcount has the meaning given by subsection 31(2).

baseline payroll amount has the meaning given by subsection 32(2).

close associate has the meaning given by section 4AA.

eligible additional employee has the meaning given by section 30.

headcount increase has the meaning given by paragraph 31(1)(a).

headcount increase number has the meaning given by paragraph 31(1)(b).

higher rate days has the meaning given by subsection 34(3).

jobmaker hiring credit payment means a jobmaker hiring credit payment payable to an entity under section 35.

Note: See section 33 for the amount of the jobmaker hiring credit payment.

jobmaker period has the meaning given by subsection 27(2).

jobmaker scheme means the scheme relating to the jobmaker hiring credit payment set out in Part 3.

lower rate days has the meaning given by subsection 34(4).

maximum payable days has the meaning given by subsection 34(6).

payroll amount has the meaning given by paragraph 32(1)(b).

payroll increase has the meaning given by paragraph 32(1)(a).

widely held unit trust has the meaning given by section 272-105 in Schedule 2F to the *Income Tax Assessment Act 1936*.

2 After section 4

Insert:

4AA Meaning of *close associate*

An individual is a *close associate* of an entity if the individual is:

- (a) in the case of an entity that is another individual—a relative of the other individual; or
- (b) in the case of an entity that is a partnership—a partner in the partnership, or a relative of a partner in the partnership; or

- (c) in the case of an entity that is a trustee or a beneficiary of a trust (other than a widely held unit trust)—a trustee or a beneficiary of the trust, or a relative of a trustee or a beneficiary of the trust; or
- (d) in the case of an entity that is company (other than a widely-held company)—a shareholder in or a director of the company, or a relative of a shareholder in or a director of the company.

Note: See subsection 30(7) for when an individual who is a close associate is excluded from being an eligible additional employee for the purposes of the jobmaker scheme.

3 After Part 2

Insert:

Part 3—Jobmaker hiring credit payment

Division 1—Preliminary

25 Simplified outline

The jobmaker hiring credit payment is intended to improve the prospects of individuals getting employment in Australia and increase workforce participation in Australia by encouraging employers to hire additional workers.

The jobmaker scheme starts on 7 October 2020 and ends on 6 October 2022.

An employer that creates additional employment for individuals aged 16 to 35 years during the first 12 months of the jobmaker scheme can be entitled to a jobmaker hiring credit payment in respect of the individuals' first 12 months of employment with the employer.

The amount of a jobmaker hiring credit payment is calculated on the basis that an employer will receive \$200 per week for each additional job that is filled by an individual aged 16 to 29 years at the time of starting the job, and \$100 per week if the individual is aged 30 to 35 years.

The jobmaker scheme is administered by the Commissioner of Taxation.

The Commissioner pays the jobmaker hiring credit payment in respect of each 3-month jobmaker period, for an entitlement that arises in the period.

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

26 Constitutional basis of this Part

Principal constitutional basis

- (1) This Part relies on the Commonwealth's legislative power under paragraph 51(xxix) of the Constitution to give effect to Australia's obligations under the following:
 - (a) the ILO Convention (No. 122) concerning Employment Policy, done at Geneva on 9 July 1964, as in force for Australia from time to time;

- (b) the International Covenant on Economic, Social and Cultural Rights, done at New York on 16 December 1966, as in force for Australia from time to time.

Note 1: The ILO Convention (No. 122) concerning Employment Policy is in Australian Treaty Series 1970 No. 17 ([1970] ATS 17) and could in 2020 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 2: The International Covenant on Economic, Social and Cultural Rights is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2020 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Additional operation of this Part

- (2) In addition to subsection (1), this Part also has effect as provided by subsections (3) and (4).
- (3) This Part also has the effect it would have if the employment referred to in paragraph 30(1)(a) were expressly confined to employment that constitutes a benefit of a kind to which paragraph 51(xxiiiA) of the Constitution applies.
- Note: Paragraph 30(1)(a) deals with the requirement for an individual to be employed by an entity in a period in order for the entity to be entitled to a jobmaker hiring credit payment for the period.
- (4) This Part also has the effect it would have if a reference in this Part to a jobmaker hiring credit payment for a period were expressly confined to a payment that, for that period, is a matter peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.

Division 2—Entitlement

27 Employer's entitlement to jobmaker hiring credit payment

- (1) An entity (the **employer**) is entitled to a jobmaker hiring credit payment for a period if:
- (a) the period is a jobmaker period (see subsection (2)); and
 - (b) the employer qualifies for the jobmaker scheme for the period (see section 28); and
 - (c) the employer is not disqualified for the jobmaker scheme for the period (see section 29); and
 - (d) the employer has one or more eligible additional employees for the period (see section 30); and
 - (e) the employer has a headcount increase for the period (see section 31); and
 - (f) the employer has a payroll increase for the period (see section 32); and
 - (g) the employer has notified the Commissioner in the approved form at or before the end of the period that the employer elects to participate in the jobmaker scheme; and
 - (h) the employer has given information about the entitlement for the period to the Commissioner in accordance with the reporting requirements determined by the Commissioner under subsection (3); and
 - (i) the employer is not entitled to a jobkeeper payment for an individual for a fortnight that begins in the period.

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- Note 1: Some provisions of the Act also affect whether an entity is entitled to a jobmaker hiring credit 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*.
- Note 3: The Commissioner may defer the time for giving the approved form: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Meaning of jobmaker period

- (2) Each of the following is a **jobmaker period**:
- (a) the period of 3 months beginning on 7 October 2020;
 - (b) each subsequent 3-month period, ending with the 3-month period ending on 6 October 2022.

Commissioner determination

- (3) The Commissioner may, by legislative instrument, determine reporting requirements for the purposes of paragraph (1)(h).
- (4) Without limiting subsection (3), the reporting requirements that the Commissioner may determine include the following:
- (a) the kinds of information that must be given to the Commissioner;
 - (b) the period within which the information must be given;
 - (c) the method by which the information must be given.

28 When an entity qualifies for the jobmaker scheme

- (1) For the purposes of paragraph 27(1)(b), an entity qualifies for the jobmaker scheme for a period if:
- (a) throughout so much of the period as occurs on or after the day the entity notifies the Commissioner that the entity elects to participate in the jobmaker scheme (as referred to in paragraph 27(1)(g)), the entity:
 - (i) carries on a business in Australia; or
 - (ii) is a non-profit body that pursues its objectives principally in Australia; or
 - (iii) is a deductible gift recipient that is, or operates, 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) throughout so much of the period as occurs on or after the day mentioned in paragraph (a), the entity:
 - (i) has an ABN; and
 - (ii) is registered in accordance with section 16-141, 16-142 or 16-147 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (c) at the time the entity gives information to the Commissioner about the entitlement for the period (as referred to in paragraph 27(1)(h)), no income tax return or GST return that the entity was required to lodge under a taxation law in the 2 years ending at the end of the period remains outstanding.

Exceptions

- (2) However, an entity does *not* qualify for the jobmaker scheme for a period if:
- (a) an amount of levy under the *Major Bank Levy Act 2017* was imposed for any quarter ending on or before 30 September 2020 on:
 - (i) the entity; or
 - (ii) if the entity is a member of a consolidated group—another member of the group; or
 - (b) at any time in the period, the entity is:
 - (i) an Australian government agency; or
 - (ii) a local governing body; or
 - (iii) wholly owned by an entity covered by subparagraph (i) or (ii); or
 - (iv) a sovereign entity; or
 - (c) if the entity is a company—at any time in the period, a liquidator or provisional liquidator has been appointed in relation to the company; or
 - (d) if the entity is an individual—at any time in the period, a trustee in bankruptcy has been appointed to the individual's property.

29 When an entity is disqualified for the jobmaker scheme

For the purposes of paragraph 27(1)(c), an entity is disqualified for the jobmaker scheme for a period if:

- (a) at or before the end of the period, the entity terminates the employment, or reduces the ordinary hours of work, of an employee; and
- (b) the termination or reduction is done, with one or more other actions, as part of a scheme for the sole or dominant purpose of the entity obtaining a jobmaker hiring credit payment, or increasing the amount of the entity's jobmaker hiring credit payment, for one or more periods.

Note 1: An entity that is disqualified for the jobmaker scheme for a period is also disqualified for the jobmaker scheme for all subsequent periods.

Note 2: The other actions referred to in paragraph 29(b) could include engaging one or more other employees who would be eligible additional employees of the entity.

Note 3: Generally, an agreement between an employer and an employee to vary the employee's hours would not be done for a purpose referred to in paragraph 29(b).

Note 4: Conduct referred to in paragraph 29(a) may contravene, or be unlawful under, another law (see, for example, the *Fair Work Act 2009* and the *Age Discrimination Act 2004*), whether or not it results in the entity being disqualified for the jobmaker scheme.

30 Meaning of *eligible additional employee*

- (1) An individual is an *eligible additional employee* of an entity for a period if:
- (a) the individual is employed by the entity at any time in the period; and
 - (b) the individual commenced the employment with the entity referred to in paragraph (a) on or after 7 October 2020 but no later than 6 October 2021; and
 - (c) at the time the individual commenced that employment with the entity, the individual was either:
 - (i) aged 16 years or over but less than 30 years; or
 - (ii) aged 30 years or over but less than 36 years; and
 - (d) the individual satisfies the requirement in subsection (2) for the period; and

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- (e) the individual satisfies the requirements in subsections (4) and (5); and
 - (f) the individual is not excluded from being an eligible additional employee of the entity for the period under subsection (7).

Average hours of work requirement

- (2) The requirement is that the total number of hours the individual works, or for which the individual is paid for work done, as an employee of the entity during the period is greater than or equal to the amount worked out by:
 - (a) dividing the total number of days that the individual is employed by the entity during the period by 7; and
 - (b) multiplying the result (rounded down to the nearest whole number) by 20.
- (3) For the purposes of subsection (2), the hours an individual works, or for which an individual is paid for work done, during a period are taken to include any hours of paid leave, or paid absence on public holidays, that the individual takes during the period.

Pre-employment requirement

- (4) The requirement is that, on each day of a period that consists of 28 consecutive days and falls wholly within the 84 days ending on the day before the individual commenced the employment with the entity referred to in paragraph (1)(a), either:
 - (a) the individual was receiving one of the following under the *Social Security Act 1991*:
 - (i) parenting payment;
 - (ii) youth allowance (other than on the basis that the individual was undertaking full-time study or was a new apprentice);
 - (iii) jobseeker payment; or
 - (b) the individual was qualified under the *Social Security Act 1991* for a payment or allowance mentioned in paragraph (a), but the payment or allowance was not payable to the individual.

Notice requirements

- (5) The requirements are that:
 - (a) the individual has given to the entity a notice in the approved form stating that the individual satisfies the requirements in paragraph (1)(c), subsection (4) and paragraph (b) of this subsection; and
 - (b) at the time the individual gives the entity the notice, the individual has not given any other entity a notice under this subsection (unless the notice given to the other entity has ceased to have effect under subsection (6)); and
 - (c) the notice has not ceased to have effect under subsection (6).

Note: If an overpayment results from an individual giving a notice to 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.

- (6) If an individual gives a notice to an entity under subsection (5), the notice ceases to have effect if the individual ceases to be employed by the entity.

Note: This subsection means that, if the individual recommences employment with the entity, the individual will need to give the entity another notice under subsection (5).

Exclusions

- (7) An individual is excluded from being an eligible additional employee of an entity for a period if:
- (a) the individual is:
 - (i) in the case of an entity that is a sole trader—a relative of the sole trader; or
 - (ii) in the case of an entity that is a partnership—a partner in the partnership or a close associate of a partner in the partnership; or
 - (iii) in the case of an entity that is a trust (other than a widely held unit trust)—a trustee or a beneficiary of the trust, or a close associate of a trustee or a beneficiary of the trust; or
 - (iv) in the case of an entity that is a company (other than a widely-held company)—a shareholder in or a director of the company, or a close associate of a shareholder in or a director of the company; or
 - (b) the individual was, at any time in the period of 6 months ending on 6 October 2020, engaged other than as an employee to exercise powers, or to perform functions or duties, for the entity that are substantially similar to the powers exercised, or the functions or duties performed, by the individual as an employee of the entity; or
 - (c) the individual commenced the employment with the entity referred to in paragraph (1)(a) 12 months or more before the first day of the period.

Note: See section 4AA for the meaning of *close associate*.

31 Headcount increase

- (1) For the purposes of paragraph 27(1)(e), if the number of employees employed by an entity at the end of the last day of a period exceeds the entity's baseline headcount for the period:
- (a) the entity has a **headcount increase** for the period; and
 - (b) the amount of the excess is the **headcount increase number** for the period.

Baseline headcount

- (2) An entity's **baseline headcount** for a period (the **current period**) is the sum of:
- (a) the number of employees employed by the entity at the end of 30 September 2020; and
 - (b) if the current period begins on or after 7 October 2021—the increase (if any) worked out for the current period under subsection (3).
- (3) The increase for the current period is the greatest number worked out under subsection (4) for the entity for any jobmaker period that begins 12 months or more before the start of the current period.
- (4) The number worked out under this subsection for an entity for a jobmaker period is:
- (a) if the total counted days for the period is equal to or exceeds the maximum payable days for the period—the entity's headcount increase number for the period (see paragraph (1)(b) of this section); or

- (b) otherwise—the number worked out by dividing the total counted days for the period by the number of days in the period and rounding the result down to the nearest whole number.

Note 1: See subsection 34(2) for the meaning of *total counted days*.

Note 2: See subsection 34(6) for the meaning of *maximum payable days*.

32 Payroll increase

- (1) For the purposes of paragraph 27(1)(f), if the sum of the amounts covered by subsection (3) for each of the entity's employees for a period exceeds the entity's baseline payroll amount for the period:
- the entity has a *payroll increase* for the period; and
 - the amount of the excess is the entity's *payroll amount* for the period.
- (2) An entity's *baseline payroll amount* for a period (the *current period*) is the sum of the amounts covered by subsection (3) for each of the entity's employees for the period that:
- ends on 6 October 2020; and
 - consists of such number of days as is equal to the number of days in the current period.
- (3) The amounts covered by this subsection are:
- amounts paid by the entity to the employee in the period by way of salary, wages, commission, bonus or allowances; and
 - amounts withheld by the entity from payments made to the employee in the period under section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - contributions made by the entity in the period to a superannuation fund or an RSA for the benefit of the employee, if the contributions are made under a salary sacrifice arrangement (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*); and
 - other amounts that, in the period, are applied or dealt with in any way if the employee agreed:
 - for the amount to be so applied or dealt with; and
 - in return, for amounts covered by paragraph (a) for the employee for the period to be reduced (including to nil).

Division 3—Payment

33 Amount of the jobmaker hiring credit payment

The amount of an entity's jobmaker hiring credit payment for a period is the lesser of the following:

- the entity's headcount amount for the period (see section 34);
- the entity's payroll amount for the period (see section 32).

34 Calculation of headcount amount

- (1) For the purposes of paragraph 33(a), an entity's headcount amount for a period is worked out as follows, subject to subsection (2):

Method statement

- Step 1. Multiply the higher rate days for the period by \$200, divide the result by 7 and round up to the nearest cent.
- Step 2. Multiply the lower rate days for the period by \$100, divide the result by 7 and round up to the nearest cent.
- Step 3. Sum the results from steps 1 and 2.

Reduction based on maximum payable days

- (2) However, if the sum of the higher rate days for the period and the lower rate days for the period (the **total counted days** for the period) exceeds the maximum payable days for the period, then the entity's headcount amount for the period is reduced by:
- (a) first, reducing the number of lower rate days in step 2 of the method statement in subsection (1) until one of the following occurs:
 - (i) the total counted days for the period equals the maximum payable days for the period;
 - (ii) the lower rate days for the period are reduced to nil; and
 - (b) if subparagraph (a)(ii) applies—then, reducing the number of higher rate days in step 1 of the method statement for the period until the total counted days for the period equals the maximum payable days for the period.

Higher rate days

- (3) Subject to subsection (5), the **higher rate days** for a period is worked out by adding together the number of days each eligible additional employee covered by subparagraph 30(1)(c)(i) was employed by the entity during the period.

Note: Subparagraph 30(1)(c)(i) covers an employee who, at the time of commencing the employment with the entity referred to in paragraph 30(1)(a), was aged 16 years or over but less than 30 years.

Lower rate days

- (4) Subject to subsection (5), the **lower rate days** for a period is worked out by adding together the number of days each eligible additional employee covered by subparagraph 30(1)(c)(ii) was employed by the entity during the period.

Note: Subparagraph 30(1)(c)(ii) covers an employee who, at the time of commencing the employment with the entity referred to in paragraph 30(1)(a), was aged 30 years or over but less than 36 years.

Certain days do not count

- (5) A day (the **relevant day**) on which an eligible additional employee is employed by the entity does not count for the purposes of subsection (3) or (4) if:
- (a) the eligible additional employee has been continuously employed by the entity for more than 12 months (beginning on the day the eligible additional employee commenced the employment with the entity referred to in paragraph 30(1)(a)); and
 - (b) the relevant day falls after the end of that 12-month period.

Note: If the 12-month period ends during a jobmaker period, the individual is excluded from being an eligible additional employee of the entity from the first day of the next jobmaker period: see paragraph 30(7)(c).

Maximum payable days

- (6) The **maximum payable days** for a period is worked out by multiplying the entity's headcount increase number for the period by the number of days in the period.

Note: See paragraph 31(1)(b) for the meaning of **headcount increase number**.

35 Payment of jobmaker hiring credit payment

- (1) If the Commissioner is satisfied that an entity is entitled to a jobmaker hiring credit payment for a period, the Commissioner must pay the entity that jobmaker hiring credit 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 made to the Commissioner by the entity under this Part.

Overpayment

- (3) To avoid doubt, the fact that the Commissioner pays an entity a jobmaker hiring credit payment under this section does not mean the entity is entitled to that jobmaker hiring credit payment.

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

36 When the Commissioner must pay jobmaker hiring credit payments

The Commissioner must pay the jobmaker hiring credit payment for a period as soon as practicable after the entity gives information to the Commissioner about the entitlement for the period (as referred to in paragraph 27(1)(h)).

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

Division 4—Administration

37 When payment constitutes notice

- (1) This section applies if:
- (a) an entity has given the Commissioner information about the entitlement for a period (as referred to in paragraph 27(1)(h)); and
 - (b) the Commissioner has paid an amount of jobmaker hiring credit payment to the entity for the period; and
 - (c) the amount paid by the Commissioner is consistent with the Commissioner:
 - (i) being satisfied that the entity is entitled to a jobmaker hiring credit payment for the period; and
 - (ii) having accepted, in whole, statements made to the Commissioner by the entity under this Part.

- (2) The Commissioner is taken to have given the entity notice, on the day the jobmaker hiring credit payment covered by paragraph (1)(b) is paid, that the Commissioner is satisfied the entity is entitled to the jobmaker hiring credit payment for the period.

38 Notice of decision on entitlement

- (1) This section applies if:
 - (a) an entity has given the Commissioner information about the entitlement for a period (as referred to in paragraph 27(1)(h)); and
 - (b) the amount paid by the Commissioner (including nil) is *not* consistent with the Commissioner:
 - (i) being satisfied that the entity is entitled to a jobmaker hiring credit payment for the period; or
 - (ii) having accepted, in whole, statements made to the Commissioner by the entity under this Part.

- (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 35 that the entity:
 - (a) is not entitled to a jobmaker hiring credit payment for a period; or
 - (b) is entitled to a jobmaker hiring credit payment for a period of a particular amount.

39 Later legislation may limit jobmaker scheme

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