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## Explanatory Statement

# Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020

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### General outline of instrument

1. This instrument is made under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act).
2. The legislative instrument sets out alternative decline in turnover tests where there is not an appropriate relevant comparison period in 2019 for the purpose of an entity in the class of entities satisfying the decline in turnover test in subsection 8(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules).
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### Date of effect

5. This instrument commences the day after it is registered on the Federal Register of Legislation.

### What is the effect of this instrument

6. The effect of this instrument is to give certain entities or classes of entities an alternative basis on which they may satisfy the decline in turnover test to be eligible for JobKeeper payments. This will ensure that entities in certain classes will still be eligible to receive assistance through JobKeeper payments where their particular circumstances are not specifically accounted for in the Rules.

### Compliance cost assessment

7. Minor or Machinery – The Legislative Instrument is machinery in nature and any regulatory impacts from the instrument are likely to be minor.

### Explanation

8. Legislation has passed to provide for payments to support entities with the potential to be adversely affected by the economic effects of the COVID-19 coronavirus disease pandemic. In order to be eligible to receive JobKeeper payments, entities must meet the eligibility requirements to be a qualifying employer (the entity).
9. The Treasurer has made the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* under section 20 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*. Subsection 20(4) of this Act allows the Treasurer to subdelegate the making of further instruments to the Commissioner.

10. The Rules made by the Treasurer set out the eligibility requirements for JobKeeper payments. The eligibility requirements include, in section 8 of the Rules, a decline in turnover test. Subsection 8(1) of the Rules sets out the basic test.

11. Subsection 8(5) of the Rules provides for alternative tests. It provides that:

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.

12. The effect of this is that, if an entity satisfies the basic test in subsection 8(1) of the Rules it does not need to go to an alternative test determined by the Commissioner. Further, the wording 'an entity **also** satisfies the decline in turnover test' (emphasis added) means that the alternative decline in turnover test cannot supplant the basic test if the entity has met the basic test and is eligible. That is, and to avoid doubt, the alternative decline in turnover test cannot make an entity ineligible that satisfied the basic test as the wording in paragraph 7(1)(b) of the Rules states that the entity has to satisfy the decline in turnover test which requires either satisfying the basic test (in subsection 8(1) of the Rules) or the alternative test (in subsection 8(5) of the Rules). In other words, if an entity satisfies the basic test, the alternative test (if applicable) does not also need to be satisfied.

13. While subsection 8(5) of the Rules provides that an entity can satisfy the decline in turnover test in subsection 8(1) of the Rules if it satisfies an alternative decline in turnover test determined by the Commissioner, it is subsection 8(6) of the Rules that allows the Commissioner to determine an alternative decline in turnover test.

14. Specifically, subsection 8(6) of the Rules provides that:

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 purposes of an entity in the class of entities satisfying the decline in turnover test under subsection (1).

15. Firstly, the alternative decline in turnover test has to be for a class of entities, not a particular entity but note the third point below.

16. Secondly, the alternative decline in turnover test has to be created by Legislative Instrument, not by any other means.

17. Thirdly, the Commissioner can only determine an alternative decline in turnover test 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 in subsection 8(1) of the Rules. This requirement means that the Commissioner has to be satisfied that the relevant comparison period in 2019<sup>1</sup> that is referred to in subsection 8(1) of the Rules is not appropriate *before* the Commissioner can determine an alternative decline in turnover test.

18. As a result, the Commissioner cannot determine an alternative decline in turnover test in all circumstances. It is only in those circumstances where there is an event or circumstance, be it internal or external to an entity, that is outside the usual business setting for entities of that class which results in the relevant comparison period in 2019 not being appropriate for the purpose of an entity in the class of entities satisfying the decline in turnover test. For example, an entity being subject to a severe drought from 2018 until September 2019 that reduced the amount of its' crop that it could grow as depicted in Example 3 in the Explanatory Statement to the Rules.

19. The Rules and the alternative tests in this legislative instrument are intended to apply where, due to circumstances as noted above, there is not an appropriate relevant comparison period in 2019 for the purpose of an entity in the class of entities satisfying the decline in turnover test in

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<sup>1</sup> **Relevant comparison period** is defined in paragraph 8(7)(b) of the Rules and is a calendar month that ends after 30 March 2019 and before 1 October 2019 or a quarter that starts on 1 April 2019 or 1 July 2019.

subsection 8(1) of the Rules. The legislative instrument applies to classes of entities to which the following circumstances apply:

- (i) An entity commenced business after the relevant comparison period in 2019 with the event or circumstance outside the usual business setting being that the business did not exist in the relevant comparison period and as a result there was no relevant comparison period in 2019. This applies to entities that were not operating any business, it does not apply to an entity that was operating one or more businesses and commenced a new additional business
- (ii) An entity acquired or disposed of part of their business after the relevant comparison period in 2019 including more than one acquisition or disposal and the acquisition or disposal, or acquisitions or disposals, changed their turnover. The event or circumstance outside the usual business setting being that the business was not the same business and as a result is not comparable after the acquisition(s) or disposal(s) to as it was in relevant comparison period in 2019
- (iii) An entity has restructured part or all of their business after the relevant comparison period in 2019, including more than one restructure, and that restructure, or restructures, has changed the entity's turnover. The event or circumstance outside the usual business setting being that the business was not the same business and as a result is not comparable after the restructure(s) to as it was in relevant comparison period in 2019
- (iv) An entity has had an increase in turnover by 50% or more in the 12 months immediately before the applicable turnover test period, or 25% or more in the 6 months immediately before the applicable turnover test period, or 12.5% or more in the 3 months immediately before the applicable turnover test period. The event or circumstance outside the usual business setting being that as a result of undergoing such rapid growth the business of the entity is not comparable after the growth to the business as it was in the relevant comparison period in 2019
- (v) An entity has been affected by a drought or other natural disaster in the relevant comparison period in 2019. The event or circumstance outside the usual business setting being the drought or other natural disaster which adversely affected the business and as a result the relevant comparison period in 2019 is not appropriate
- (vi) An entity has an irregular turnover that is not cyclical, such as can occur in the building and construction sector. The event or circumstance outside the usual business setting is the non-cyclical irregular turnover and as a result the relevant comparison period in 2019 is not appropriate. An entity with a cyclical turnover such as an entity that operates a seasonal business which generates most of its turnover at a particular time of year has an appropriate relevant comparison period – a cyclical turnover is within the usual business setting, and
- (vii) An entity is a sole trader or a small partnership and the sole trader or one of the partners did not work for all or part of the relevant comparison period because they were sick, injured or on leave during the relevant comparison period and those circumstances affects the turnover of the sole trader or partnership. The usual business setting is the sole trader or partner working in the business generating turnover and so their absence from work is an event or circumstance outside the usual business setting resulting in the relevant comparison period in 2019 not being appropriate.

20. If there is not an event or circumstance, be it internal or external, outside the usual business setting which results in the relevant comparison period in 2019 not being appropriate for the purpose of an entity in the class of entities satisfying the decline in turnover test, the Commissioner cannot determine an alternative decline in turnover test.

21. For instance, where an entity ordinarily undertakes activities or makes supplies that are not included in the GST turnover tests used to determine eligibility for JobKeeper payments, undertaking those activities or making those kinds of supplies is not an event or circumstance, be it internal or external, outside the usual business setting which results in the relevant comparison period in 2019 not being appropriate for the purpose of an entity in the class of entities satisfying the decline in turnover test. For example, the entity ordinarily makes input taxed supplies or undertakes activities with zero turnover.

22. This legislative instrument is intended to operate under the Rules. If the alternative decline in turnover tests stipulated in the legislative instrument are met by the entity, and they satisfy the other eligibility criteria, then they will have access to the JobKeeper payment of \$1,500 per fortnight for each eligible employee.

## **Background**

23. This instrument has been developed to ensure that an alternative decline in turnover test for an entity is provided where there is not an appropriate relevant comparison period in 2019 for the purpose of an entity in the class of entities satisfying the decline in turnover test in subsection 8(1) of the Rules.

24. The basic test for the decline in turnover is based on the entity's turnover in a relevant comparison period in 2019. Such a test would not be appropriate where there is an event or circumstance, be it internal or external to an entity, that is outside the usual business setting for entities of that class which results in the relevant comparison period in 2019 not being appropriate for the purpose of an entity in the class of entities satisfying the decline in turnover test the relevant comparison period. For example, the entity did not exist during the relevant comparison period.

25. The legislative instrument sets out specific provisions providing the alternative decline in turnover tests, the following commentary provides background on each provision.

### ***Entity is new to business***

i. The legislative instrument applies to give alternative tests to entities that commenced business after the relevant comparison period in 2019, but not on or after 1 March 2020. Such new business cannot compare with a relevant comparison period in 2019 as they do not have one. See Example 4 in the Explanatory Statement to the Rules. Note it is that the entity commenced the business after the relevant comparison period. While an entity can exist before it commenced business, it is when it commenced business that is relevant for this test. Entities that already operated business during the relevant comparison period and commenced a new additional business after the relevant comparison period have a relevant comparison period, so this test does not apply to them. However, one of the other alternative decline in turnover tests may apply.

ii. The first alternative test compares the entity's projected GST turnover for the relevant 2020 period with the average turnover since the entity commenced business. The calculation will depend on the relevant comparison period the entity uses and how long they have been in business.

iii. The second alternative test compares the entity's projected GST turnover for the relevant 2020 period with the average turnover of the 3 months immediately before the applicable turnover test period. This test will use the most recent 3 months, which give a more accurate reflection of the entity's GST turnover where the business has grown throughout the course of the year and the turnover in the earlier months is not reflective of the current business.

iv. As discussed below, multiple alternative decline in turnover tests given in the legislative instrument could apply to an entity but an entity only has to satisfy one.

### ***Disposals, acquisitions and restructures***

- i. The legislative instrument applies to give an alternative test to entities that have undergone certain large changes in their business. Where an entity has undertaken a disposal or acquisition of part of their business, or restructure in the business, or multiples or combinations of those, this can be expected to result in a substantial change in the usual business setting of the entity. Therefore, where such an event has occurred since the relevant comparison period in 2019, the relevant comparison period in 2019 is not appropriate.
- ii. These alternative tests will apply to compare the entity's projected GST turnover for the applicable turnover test period with the current GST turnover for the month after the month in which the disposal, acquisition or restructure occurred. Where there are multiple acquisitions, disposals or restructures, the entity's projected GST turnover will be compared with the GST turnover for the whole month after the last acquisition, disposal or restructure has taken place. This will ensure the projected turnover is compared with the turnover of the entity's new business setting once these disposals, acquisitions or restructures have ended. If there is no whole month after the last acquisition, disposal or restructure, then the month immediately before the applicable turnover test period is used.

### ***Entity had substantial increase in turnover***

- i. The legislative instrument applies to give an alternative test to entities that have had a substantial increase in their turnover over a period in the 12 months before the applicable turnover test period. An increase of 50% or more over a 12 month period is a substantial increase, so the alternative test applies to entities that have 50% or more growth in the 12 months before the turnover test period they use (the applicable turnover test period). To cater for entities that started their growth during the 12 months before their turnover test period, the alternative decline turnover test also applies to entities with 25% or more growth in turnover in the 6 months before the applicable turnover test period and 12.5% or more growth in the 3 months before the applicable turnover test period. Growth of 25% or more in 6 months or 12.5% or more in 3 months reflect the business was likely on target to have 50% growth in 12 months. Substantial growth of a business would generally mean that the business will have changed to the point where the relevant comparison period in 2019 no longer reflects the ordinary business setting for that business and so is not appropriate.
- ii. This alternative test will apply to compare the entity's projected GST turnover for the applicable turnover test period with the average turnover from the 3 months immediately before the test period. The calculation will depend on the relevant comparison period the entity uses and how long they have been in business.

### ***Entity affected by drought or other natural disaster***

- i. The legislative instrument applies to give an alternative test to entities that were affected by a drought or another natural disaster in the relevant comparison period in 2019. Where an entity was affected by such droughts or other natural disasters, those circumstances are outside the ordinary business setting. Therefore, the relevant comparison period in 2019 is not appropriate.
- ii. This alternative test will apply to compare the entity's projected GST turnover for the applicable turnover test period with the current GST turnover for the same period in the year immediately preceding the year when the drought or natural disaster was declared rather than 2019. The earlier period will be a more appropriate period to use than the relevant comparison period in 2019 due to the drought or natural disaster being an event or circumstance being outside the usual business setting.

### ***Business has an irregular turnover***

- i. The legislative instrument applies to give an alternative test to entities that have a large irregular variance in their turnover for the quarters ending in the 12 months before the applicable turnover test period. Where an entity has large irregular variance in their turnover, the relevant comparison period in 2019 is outside the ordinary business setting and hence not appropriate. An entity that has cyclical turnover will not be able to apply this alternative test. For example, entities with regular seasonal variance in their turnover have an appropriate relevant comparison period in 2019, being the relevant comparison period used for the basic test. That period is the same time in 2019 as 2020, and hence in the same season, so the relevant comparison period in 2019 is not outside the usual business setting for the entity.
- ii. This alternative test will apply to compare the entity's projected GST turnover for the applicable turnover test period with the average turnover from the 12 months immediately before the applicable turnover test period. This is intended to compensate for the irregularities in turnover the entity experiences.

### ***Sole trader or small partnership with sickness, injury or leave***

- i. The legislative instrument applies to give an alternative test to a sole trader or small partnership if the turnover of the sole trader or partnership was affected by the sole trader or a partner not working for all or part of that period due to sickness, injury or leave. Where an entity was affected by such change, those circumstances are outside the ordinary business setting. Therefore, the relevant comparison period in 2019 is not appropriate. The test is intended to address the situation where it is the individual, the sole trader or partner, who works in the business to generate turnover, and hence only applies to those sole traders and small partnerships which do not have employees. Similarly, the test only applies to small partnerships as small partnerships would have more difficulty in compensating for the absence from work of one of the partners, and larger partnerships can expect absences as a usual business setting.
- ii. If the relevant comparison period is one calendar month, the entity uses the current GST turnover for the month immediately after the month in which sole trader or partner returned to work instead of the current GST turnover of the relevant comparison period. If the relevant comparison period is a quarter, the entity multiplies the current GST turnover for the month immediately after the month in which the sole trader or partner returned to work by three and use that figure instead of the current GST turnover of the relevant comparison period for the purposes of the basic test in section 8 of the Rules.

### ***If more than one alternative decline in turnover test applies***

As noted above, the alternative decline in turnover tests in the legislative instrument are additional to the basic test. If an entity is eligible under the basic test it does not need to consider the application of alternative tests. Similarly, if more than one alternative decline in turnover test applies to an entity it only has to satisfy one of the alternative decline in turnover tests.

Subsection 8(5) of the Rules provides for alternative tests. It provides that:

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.

Notably, subsection 8(5) provides that an entity satisfies the decline in turnover test if 'an alternative decline in turnover test' applies and the entity satisfies that test. If more than one alternative decline in turnover test applies and the entity satisfies one of them, then there is 'an alternative test' that applies to the entity that it has satisfied. It does not matter that there are other tests that apply that it

has not satisfied. Similarly, if an entity satisfies more than one test, it has satisfied the decline in turnover test.

### **Adjustments to the alternative tests**

Allowances are made within the alternative tests in situations where:

- i. Entities qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals. The months which were affected by the bushfires will be excluded from the calculation of turnover on the assumption the entities had a decline in turnover from the bushfires, and inclusion of those months would unfairly reduce the turnover with which the projected GST turnover for the turnover test period is compared<sup>2</sup>; unless there are no other appropriate months, or
- ii. Entities that received Drought Help concessions provided by the ATO. The months which were affected by the drought will be excluded from the calculation of turnover on the assumption they had a decline in turnover from the drought already, and inclusion of those months would unfairly reduce the turnover with which the projected GST turnover for the turnover test period is compared, unless there are no other appropriate months.<sup>3</sup>

### **Examples**

#### *Example 1 – New to Business and bushfire affected*

The Berry Fresh Enterprise Company (BFEC) was affected by the January 2020 bushfires. The ATO's Bushfires 2019–2020 lodgment and payment deferrals applied to BFEC because it was in one of the identified affected postcodes. The deferrals were available from 1 January 2020 to 1 March 2020. The relevant comparison period is not appropriate because BFEC began operating on 1 October 2019. BFEC assesses its eligibility for JobKeeper payments on 3 April 2020 based on a projected GST turnover for April 2020 of \$2 million. The following monthly current GST turnovers have been recorded by BFEC:

| <b>Month</b>  | <b>GST Turnover recorded by BFEC</b> |
|---------------|--------------------------------------|
| October 2019  | \$4 million                          |
| November 2019 | \$5 million                          |
| December 2019 | \$3 million                          |
| January 2020  | \$1 million                          |
| February 2020 | \$2 million                          |

The average monthly current GST turnover figure for these months is \$4 million (this figure excludes the months of 1 January 2020 to 2 March 2020 because the ATO's Bushfires 2019–2020 lodgment and payment deferrals applied to BFEC during this time). The projected GST turnover for the month of April 2020 falls short of the average monthly current GST turnover by \$2 million, which is more than 30%. The alternative decline in turnover test is satisfied.

<sup>2</sup> Australian Taxation Office, Bushfires 2019–2020 lodgment and payment deferrals <<https://www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/Bushfires-2019-20/#Lodgmentandpaymentdeferrals>>.

<sup>3</sup> Australian Taxation Office, Drought Help <<https://www.ato.gov.au/General/Financial-difficulties-and-serious-hardship/In-detail/Help-for-drought-affected-taxpayers/?page=1#Helpforindividualsandbusinesses>>.

### *Example 2 – New to Business*

The Enterprise Company (TEC) assesses its eligibility for JobKeeper payments on 3 April 2020 based on a projected GST turnover for April 2020 of \$4 million. The relevant comparison period is not available because TEC was incorporated and commenced business on 3 October 2019. The following monthly current GST turnovers have been recorded by TEC:

| <b>Month</b>  | <b>GST Turnover recorded by BFEC</b> |
|---------------|--------------------------------------|
| October 2019  | \$2 million                          |
| November 2019 | \$4 million                          |
| December 2019 | \$10 million                         |
| January 2020  | \$2 million                          |
| February 2020 | \$2 million                          |
| March 2020    | \$4 million                          |
| April 2020    | \$4 million                          |

The average monthly current GST turnover figure for these months is \$4 million. The projected GST turnover for the month of April 2020 does not fall short of the average monthly current GST turnover. The first alternative decline in turnover test is not satisfied.

### *Example 3 – New to Business*

The Creative Enterprise Company (CEC) assesses its eligibility for JobKeeper payments on 6 April 2020 based on a projected GST turnover for April 2020 of \$1 million. The relevant comparison period is not available because CEC was incorporated and commenced business on 6 November 2019. The second alternative test compares the entity's projected GST turnover for the relevant 2020 period with the average turnover of the 3 months immediately before the applicable turnover test period. The following monthly current GST turnovers have been recorded by CEC during the three month period:

| <b>Month</b>  | <b>GST Turnover recorded by CEC</b> |
|---------------|-------------------------------------|
| January 2020  | \$3 million                         |
| February 2020 | \$3million                          |
| March 2020    | \$3 million                         |

The average monthly current GST turnover figure for these months is \$3 million. The projected GST turnover for the month of April 2020 falls short of the average monthly current GST turnover by more than 30%. The second alternative decline in turnover test is satisfied.

### *Example 4 – New to Business and bushfire affected months are the only months since commencement*

The Citrus Orange Enterprise Company (COEC) was affected by the December 2019 – January 2020 bushfires. The COEC qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals for the period 1 December 2019 to 1 March 2020 because it is in one of the identified affected postcodes. The COEC assesses its eligibility for JobKeeper payments on 3 April 2020 based on a projected GST turnover for April 2020 of \$2 million. The relevant comparison period is not available because COEC was incorporated and commenced business on 1 December 2019. Therefore, for the purposes of calculating the average monthly current



GST turnover, the months which the ATO’s Bushfires 2019–2020 lodgment and payment deferrals were available to COEC have to be included. The following monthly current GST turnovers have been recorded by COEC:

| Month         | GST Turnover Recorded by COEC |
|---------------|-------------------------------|
| December 2019 | \$5 million                   |
| January 2020  | \$1 million                   |
| February 2020 | \$2 million                   |
| March 2020    | \$4 million                   |

The average monthly current GST turnover figure for these months is \$3 million. The projected GST turnover for the month of April 2020 falls short of the average monthly current GST turnover by more than 30%. The alternative decline in turnover test is satisfied.

*Example 5 – Disposal or acquisition*

First Co estimates its projected GST turnover for the month of April 2020 will be \$90,000. In October 2019, First Co acquired another business. The GST turnover in November, being the first whole month after the acquisition, was \$130,000. The alternative decline in turnover test will apply to First Co, as it acquired part of its business after the relevant comparable period and the acquisition changed their turnover. For the purposes of the basic test in section 8 of the Rules, First Co compares the projected GST turnover for April 2020 of \$90,000 with the current GST turnover for November 2019 of \$130,000 and finds it falls short by \$40,000, which is more than 30%. The alternative decline in turnover test is satisfied.

*Example 6 – Restructure*

Business Enterprises estimates its projected GST turnover for the month of April 2020 will be \$80,000. Business Enterprises restructured its business operations by merging the operations of two of its businesses in August 2019 to increase efficiency and sales, it then continued restructuring in November 2019 by merging a third of the businesses it operates with the two businesses it merged in May. In March 2020 it completed that phase of its restructure by separating out the managerial and human resources operations of those now merged three businesses into a separate division to improve efficiency, reducing staff undertaking those roles. As it was still restructuring in the month before its turnover test period of April 2020, it uses the turnover for the month immediately before its turnover test period, being March 2020. The current GST turnover in March 2020 was \$100,000. The alternative decline in turnover test will apply to Business Enterprises, as it underwent restructuring since the relevant comparison period month of April 2019 and the restructuring changed its turnover. For the purposes of the Basic test in section 8 of the Rules, Business Enterprises’ compares the projected GST turnover for April 2020 of \$80,000 with the current GST turnover of March 2020 of \$100,000, and finds it falls short by \$20,000, which is less than 30%. The alternative decline in turnover test is not satisfied.

**Consultation**

26. The Commissioner routinely publishes draft legislative instruments seeking public feedback for a minimum period of 4 weeks. This legislative instrument was prepared in response to the COVID-19 coronavirus disease pandemic. To avoid the detrimental effects for employers and employees that delays in making the legislative instrument would cause, the Commissioner undertook targeted consultation to ensure it could be made as quickly as possible. In these

circumstances the Commissioner has undertaken reasonable and appropriate consultation over a shorter period than would otherwise have been used.

27. Consultation was undertaken with various representatives of professional and industry associations and business representatives. Consultees suggested additional circumstances in which there might not be an appropriate relevant period for a class of entities and suggested amendments to various draft alternative decline in turnover tests. Most, but not all, of these suggestions have been adopted or otherwise addressed.

## Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the legislative instrument

The legislative instrument applies to provide alternative bases for an entity in a class of entities to satisfy the decline in turnover test for the purposes of receiving JobKeeper payments, when the Commissioner is satisfied that there is not a relevant comparison period for the purposes of an entity in a class of entities satisfying the decline in turnover test under subsection 8(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*. This instrument is intended to keep more Australian workers in jobs through the course of the COVID-19 coronavirus disease pandemic by creating alternative decline in turnover tests for classes of entities where the relevant comparison period is not appropriate.

#### Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms listed in the following covenants:

- [the International Covenant on Civil and Political Rights](#) (ICCPR)

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) provides:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Participation in the Alternative tests requires the provision of information to the Commissioner that may include personal information such as the turnover of a business. To any extent to which the provision of this information constitutes a limitation of a person's right to be protected from interference with his or her privacy, the limitation is justified because the provision of information is:

- contingent on the affected person giving consent to the disclosure of information by nominating to participate in the JobKeeper scheme, or in the case of an employee, agreeing to be nominated
- in pursuit of the legitimate objective identified—which is to respond to the economic downturn caused by the Coronavirus by providing a wage subsidy to affected businesses, and
- rationally connected and proportionate to the objective sought as the information is required to determine eligibility for the JobKeeper scheme and to ensure that it is administered according to the policy objective.

For these reasons, the Rules do not unnecessarily restrict a person's right to privacy.

- [the International Covenant on Economic, Social and Cultural Rights](#) (ICESCR)
- [the International Convention on the Elimination of All Forms of Racial Discrimination](#) (CERD)
- [the Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW)

- [the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT)
- [the Convention on the Rights of the Child](#) (CRC), and
- [the Convention on the Rights of Persons with Disabilities](#) (CRPD).

This disallowable legislative instrument does not engage with any human rights because it merely provides additional opportunities for business entities to obtain Government assistance where the entities have experienced a decline in business turnover as a consequence of the COVID-19 pandemic.

## **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues. Importantly, this instrument positively engages the right to work as it is aimed at assisting employers and keeping people in jobs