

EXPOSURE DRAFT



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

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

Dated 2020

Josh Frydenberg [**DRAFT ONLY—NOT FOR SIGNATURE**]
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	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments

Schedule 1—Amendments

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

1 Subsection 4(1)

Insert:

baseline headcount has the meaning given by subsections 29(2) and (3).

baseline headcount increase amount has the meaning given by subsection 29(4).

baseline payroll amount has the meaning given by subsection 30(3).

eligible additional employee has the meaning given by section 28.

headcount increase has the meaning given by paragraph 29(1)(a).

headcount increase amount has the meaning given by paragraph 29(1)(b).

higher rate days has the meaning given by subsection 32(3).

jobmaker hiring credit payment means a jobmaker hiring credit payment payable to an entity under section 34.

Note: See section 31 for the amount of the jobmaker hiring credit payment.

jobmaker period has the meaning given by subsection 26(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 32(4).

maximum payable days has the meaning given by subsection 32(5).

payroll increase has the meaning given by subsection 30(1).

total payroll amount has the meaning given by subsection 30(2).

2 After Part 2

Insert:

Part 3—Jobmaker hiring credit payment

Division 1—Simplified outline

25 Simplified outline

<p>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.</p>
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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.

Division 2—Entitlement

26 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 27); and
 - (c) the employer has one or more eligible additional employees for the period (see section 28); and
 - (d) the employer has a headcount increase for the period (see section 29); and
 - (e) the employer has a payroll increase for the period (see section 30); and
 - (f) 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
 - (g) 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
 - (h) the employer is not entitled to a jobkeeper payment for an individual for a fortnight that starts in the period.

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*.

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Schedule 1 Amendments

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)(g).
- (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.

27 When an entity qualifies for the jobmaker scheme

- (1) For the purposes of paragraph 26(1)(b), an entity qualifies for the jobmaker scheme for a period if:
- (a) throughout so much of the period as occurs after the day the entity notifies the Commissioner that the entity elects to participate in the jobmaker scheme (as referred to in paragraph 26(1)(f)), 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 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 **jobmaker claim time**) the entity gives information to the Commissioner about the entitlement for the period (as referred to in paragraph 26(1)(g)), the entity has lodged all of the income tax returns and GST returns that the entity was required to lodge under a taxation law in the 2 years ending at the jobmaker claim time.

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

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- (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 or before the end of the period, a liquidator or provisional liquidator has been appointed in relation to the company; or
 - (d) if the entity is an individual—at or before the end of the period, a trustee in bankruptcy has been appointed to the individual's property.

28 Meaning of *eligible additional employee*

- (1) An individual is an *eligible additional employee* of an entity for a period if:
 - (a) the individual is an employee of the entity at any time in the period; and
 - (b) the individual commenced employment with the entity on or after 7 October 2020 but no later than 6 October 2021; and
 - (c) at the time the individual commenced 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 commenced employment with the entity no more than 12 months before the start of the period; and
 - (e) for each whole week (consisting of a period of 7 consecutive days) that the individual is employed by the entity during the period, the individual works an average of at least 20 hours per week; and
 - (f) the individual satisfies the requirements in subsections (3) and (5); and
 - (g) the individual is not excluded from being an eligible additional employee of the entity for the period under subsection (7).
- (2) For the purposes of paragraph (1)(e), the hours an individual works in a week are taken to include any hours of paid leave, or paid absence on public holidays, that the individual takes in the week.

Pre-employment requirement

- (3) The requirement is that, for at least 28 consecutive days during the 84 days ending on the day before the individual commenced employment with the entity, the individual was receiving one of the following under the *Social Security Act 1991*:
 - (a) parenting payment;
 - (b) youth allowance (other than on the basis that the individual was undertaking full-time study or was a new apprentice);
 - (c) jobseeker payment.
- (4) For the purposes of subsection (3), an individual is taken to have been receiving a payment or an allowance mentioned in that subsection on a day if the individual would have been receiving the payment or allowance on that day

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Schedule 1 Amendments

except that the person's payment or allowance rate under the *Social Security Act 1991* was nil.

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 (3) 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 relative of a partner in the partnership or, if a partner in the partnership is a 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; or
 - (iii) in the case of an entity that is a trust—a trustee or a beneficiary of the trust, or a relative 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 relative 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 by the entity as a contractor or subcontractor to exercise powers, or to perform functions or duties, that are substantially similar to the power exercised, or the functions or duties performed, by the individual as an employee of the entity.

29 Headcount increase

- (1) For the purposes of paragraph 26(1)(d), 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:

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- (a) the entity has a **headcount increase** for the period; and
- (b) the amount of the excess is the **headcount increase amount** for the period.

Baseline headcount

- (2) Subject to subsection (3), an entity's **baseline headcount** for a period is the greater of one and the number of employees employed by the entity at the end of 30 September 2020.

Baseline headcount to be increased for certain periods

- (3) However, if the period is referred to in column 1 of an item of the following table, the entity's **baseline headcount** for the period as determined under subsection (2) is increased by the greater of:
 - (a) the entity's baseline headcount increase amount (see subsection (4)) for the period (the **corresponding period**) referred to in column 2 of the table item; and
 - (b) unless the period is the period referred to in column 1 of item 1 of the table—the amount by which the entity's baseline headcount was increased under this subsection for the previous period.

Corresponding period for increasing baseline headcount

Item	Column 1 If the period begins on:	Column 2 the corresponding period begins on:
1	7 October 2021	7 October 2020
2	7 January 2022	7 January 2021
3	7 April 2022	7 April 2021
4	7 July 2022	7 July 2021

Baseline headcount increase amount for corresponding period

- (4) An entity's **baseline headcount increase amount** for a corresponding period is the lesser of:
 - (a) the entity's headcount increase amount for the corresponding period; and
 - (b) if the total counted days for the corresponding period falls short of the maximum payable days for the corresponding period—the amount (rounded up to the nearest whole number) worked out using the following formula:

$$\frac{\text{Total counted days for the corresponding period}}{\text{Maximum payable days for the corresponding period}} \times \text{Headcount increase amount for the corresponding period}$$

Note 1: See subsection 32(2) for the meaning of **total counted days**.

Note 2: See subsection 32(5) for the meaning of **maximum payable days**.

Note 3: See paragraph (1)(b) of this section for the meaning of **headcount increase amount**.

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30 Payroll increase

- (1) For the purposes of paragraph 26(1)(e), if an entity's total payroll amount for a period exceeds the entity's baseline payroll amount for the period, the entity has a **payroll increase** for the period.
- (2) An entity's **total payroll amount** for a period is the sum of the amounts covered by subsection (5) for each of the entity's employees for each pay cycle that ended in the period.
- (3) An entity's **baseline payroll amount** for a period is the sum of the amounts covered by subsection (5) for each of the entity's employees for such number of consecutive pay cycles as is equal to the number of pay cycles that ended in the period.
- (4) For the purposes of subsection (3), the consecutive pay cycles must:
 - (a) all end on or before 6 October 2020; and
 - (b) include the last pay cycle that ended on or before 6 October 2020.
- (5) The amounts covered by this subsection are:
 - (a) amounts paid by the entity to the employee in the pay cycle by way of salary, wages, commission, bonus or allowances; and
 - (b) amounts withheld by the entity from payments made to the employee in the pay cycle under section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*; and
 - (c) contributions made by the entity in the pay cycle 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
 - (d) other amounts that, in the pay cycle, are applied or dealt with in any way if the employee agreed:
 - (i) for the amount to be so applied or dealt with; and
 - (ii) in return, for amounts covered by paragraph (a) for the employee for the pay cycle to be reduced (including to nil).

Division 3—Payment

31 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:

- (a) the entity's headcount amount for the period (see section 32);
- (b) the entity's payroll amount for the period (see section 33).

32 Calculation of headcount amount

- (1) For the purposes of paragraph 31(a), an entity's headcount amount for a period is worked out as follows, subject to subsection (2):

<i>Method statement</i>

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- 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) The **higher rate days** for a period is worked out by adding together the number of days each eligible additional employee covered by subparagraph 28(1)(c)(i) was employed by the entity during the period.

Note: Subparagraph 28(1)(c)(i) covers an employee who, at the time of commencing employment with the entity, was aged 16 years or over but less than 30 years.

Lower rate days

- (4) The **lower rate days** for a period is worked out by adding together the number of days each eligible additional employee covered by subparagraph 28(1)(c)(ii) was employed by the entity during the period.

Note: Subparagraph 28(1)(c)(ii) covers an employee who, at the time of commencing employment with the entity, was aged 30 years or over but less than 36 years.

Maximum payable days

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

Note: See paragraph 29(1)(b) for the meaning of **headcount increase amount**.

33 Calculation of payroll amount

For the purposes of paragraph 31(b), an entity's payroll amount for a period is worked out by subtracting:

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Schedule 1 Amendments

- (a) the entity's baseline payroll amount for the period (see subsection 30(3));
from
- (b) the entity's total payroll amount for the period (see subsection 30(2)).

34 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.

35 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 26(1)(g)).

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

Division 4—Administration

36 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 26(1)(g)); 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, either in whole or in part, a statement 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 a jobmaker hiring credit payment for the period referred to in paragraph (1)(a).

37 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 26(1)(g)); 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, either in whole or in part, a statement 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 34 that the entity:
 - (a) is entitled to a jobmaker hiring credit payment for a period; or
 - (b) is not entitled to a jobmaker hiring credit payment for a period.

38 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.