CORONAVIRUS ECONOMIC RESPONSE PACKAGE (PAYMENTS AND BENEFITS) BILL 2020
CORONAVIRUS ECONOMIC RESPONSE PACKAGE OMNIBUS (MEASURES NO. 2) BILL 2020

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon. Josh Frydenberg MP)
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<tbody>
<tr>
<td>ABN</td>
<td>Australian Business Number</td>
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<tr>
<td>ADI</td>
<td>Authorised deposit-taking institution</td>
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<td>Bill</td>
<td>Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020</td>
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<td>Child Care Subsidy Minister’s</td>
<td>Child Care Subsidy Minister’s Rules 2017</td>
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<td>Rules</td>
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<td>Commissioner</td>
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<td>Coronavirus</td>
<td>Coronavirus known as COVID-19</td>
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<td>Coronavirus Omnibus Act</td>
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<td>Criminal Code</td>
<td>The Schedule to the Criminal Code Act 1995 called the Criminal Code</td>
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<td>Fair Work Act</td>
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<td>FWC</td>
<td>Fair Work Commission</td>
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<td>Family Assistance Act</td>
<td>A New Tax System (Family Assistance) Act 1999</td>
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<td>Family Assistance Administration</td>
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<td>Assistance) (Administration) Act 1999 and the relevant</td>
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<td>GST Act</td>
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<td>Guarantee of Lending Act</td>
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<td>Response Package) Act 2020</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ITAA 1936</td>
<td>Income Tax Assessment Act 1936</td>
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<td><strong>Abbreviation</strong></td>
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<td>NES</td>
<td>National Employment Standards</td>
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<td>Payments and Benefits Bill</td>
<td><em>Coronavirus Economic Response Package (Payments and Benefits) Bill 2020</em></td>
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<td>PPL Rules</td>
<td><em>Paid Parental Leave Rules 2010</em></td>
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<td>SME</td>
<td>Small and medium enterprise</td>
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<td>Social Security Act</td>
<td><em>Social Security Act 1991</em></td>
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<td>Social Services Minister</td>
<td>The Minister administering the <em>Social Security (International Agreement)</em> Act 1999</td>
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<td>SSAA</td>
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<td>TAA 1953</td>
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<td>Veterans’ Law</td>
<td>Means the following Acts:</td>
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<td></td>
<td>• <em>Veterans’ Entitlements Act 1986</em></td>
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<td></td>
<td>• <em>Military Rehabilitation and Compensation Act 2004</em></td>
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<td></td>
<td>• <em>Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988</em></td>
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<td></td>
<td>• <em>Australian Participants in British Nuclear Tests and British Commonwealth Occupational Force (Treatment) Act 2006</em>; and</td>
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<td>• <em>Treatment Benefits (Special Access) Act 2019</em></td>
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<tr>
<td>Veterans’ Minister</td>
<td>The Minister administering the <em>Veterans’ Entitlements Act 1986</em></td>
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General outline and financial impact

Overview

This legislative package contains a number of bills to implement the Government’s economic response to the spread of the Coronavirus.

- Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020.

Further details on the measures contained in each of these bills and the Government’s economic response to the spread of the Coronavirus are detailed below and in the subsequent chapters.

Schedule 1 – Amendment of the Fair Work Act 2009

This Schedule was prepared by the Attorney-General’s Department.

Schedule 1 to this Bill amends the Fair Work Act to support the practical operation of the JobKeeper scheme in Australian workplaces in the national workplace relations system and keep Australians employed.

Part 1 of Schedule 1 to the Bill inserts new Part 6-4C into the Fair Work Act, which temporarily enables employers to issue JobKeeper enabling directions. These can provide (subject to various safeguards) for increased flexibility around employees’ hours of work via a new JobKeeper enabling stand down direction, performance of duties and location of work. It also enables employers and employees to make agreements for increased flexibility around annual leave arrangements and days and times of work. The FWC will be able to resolve disputes, including by arbitration.

New Part 6-4C also requires JobKeeper qualifying employers to meet minimum payment obligations to employees who are subject to these arrangements, including by ensuring that at least the value of JobKeeper payments they receive through the Commissioner is passed on to such employees each fortnight, or the amount they would receive for the work they have performed if that would be greater.

New Part 6-4C also includes rules about accrual of service and calculation of benefits in certain circumstances.

Date of effect: Schedule 1 to this Bill will commence on the day after the day on which this Bill receives Royal Assent.
Proposal announced: The JobKeeper scheme was announced on 30 March 2020.

Financial impact: Nil.


Compliance cost impact: An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

Schedule 2 – Coronavirus Economic Response Package (Payments and Benefits) Bill 2020 and consequential amendments

This Schedule was prepared by the Department of the Treasury.

The Australian Government is acting decisively in the national interest to address the significant economic consequences of the Coronavirus, without a permanent or structural impact on the budget balance.

The Payments and Benefits Bill is a key part of the Commonwealth response to the potential national emergency arising from the spread of the Coronavirus. It provides a framework for financial support to be provided by the Commissioner to assist businesses and their employees through the downturn.

The Payments and Benefits Bill establishes a framework to administer the Coronavirus economic response payments. Under the framework, the Treasurer will be able to make rules to provide for payments administered by the Commissioner. This allows for flexibility of the payment arrangements and ensures the robustness of the eligibility criteria to appropriately respond to the impacts of the Coronavirus.

The design of the framework recognises that the Commissioner, through existing arrangements, makes payments to and receives payments from taxpayers as part of the administration of the tax law. Therefore, the Commissioner is well placed to administer payment programs to individuals and businesses, but requires specific legislative authority to facilitate this.

The JobKeeper Payments announced on 30 March 2020 are intended to be delivered under this framework. These payments will support businesses to keep more Australian workers in jobs through the course of the Coronavirus.

Date of effect: The Payments and Benefits Bill provides for rules to be made allowing the Commissioner to make payments on or after the day of
commencement, for the period between 1 March 2020 and 31 December 2020 (inclusive).

**Proposal announced:** The JobKeeper scheme was announced on 30 March 2020.

**Financial impact:** This measure is estimated to have the following direct financial impact, via JobKeeper payments to eligible employers and employees, over the forward estimates period in underlying cash balance terms ($ billions):

<table>
<thead>
<tr>
<th></th>
<th>2019-20</th>
<th>2020-21</th>
<th>2021-22</th>
<th>2022-23</th>
<th>2023-24</th>
<th>Total</th>
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<tr>
<td>2019-20</td>
<td>-40</td>
<td>-90</td>
<td>–</td>
<td>–</td>
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**Human rights implications:** The Payments and Benefits Bill and Schedule 2 to this Bill do not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 8.

**Compliance cost impact:** An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.

### Schedule 3 – Guarantee of lending to small and medium enterprises

*This Schedule was prepared by the Department of the Treasury.*

Schedule 3 to this Bill makes technical amendments to the Guarantee of Lending Act. The amendments ensure that certain categories of smaller non-ADI lenders will fall within the definition of *financial institution* in that Act.

**Date of effect:** Schedule 3 to this Bill will commence on the day after the day on which this Bill receives Royal Assent.

**Proposal announced:** This measure has not previously been announced.

**Financial impact:** Unquantifiable.

**Human rights implications:** Schedule 3 to this Bill does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 8.

**Compliance cost impact:** An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen events.
Schedule 4 – Amendments to support the child care sector

This Schedule was prepared by the Department of Education, Skills and Employment.

Schedule 4 to this Bill amends the Family Assistance Administration Act to:

- modify the calculation method used for Child Care Subsidy reconciliation to ensure a consistent outcome for individuals who have changed their relationship status during the financial year; and
- meet various circumstances of social and financial hardship being experienced by the child care sector and families, arising from emergency and disaster events including the Coronavirus by ensuring that payments of Additional Child Care Subsidy and certain grants can draw upon standing appropriations.

The amendments also require that the Minister make rules which prescribe the total amount that can be paid in a financial year.

Date of effect: The amendments to modify the calculation method used for Child Care Subsidy reconciliation take effect from the first Child Care Subsidy fortnight after this Bill receives Royal Assent.

The amendments which ensure that payments of Additional Child Care Subsidy and grants can draw upon standing appropriations take effect from the day after the day on which this Bill receives Royal Assent.

The requirement that a total cap must be prescribed to limit the amount that can be drawn from special appropriations will take effect from 1 July 2020.

Proposal announced: The modifications to the Child Care Subsidy reconciliation were included in the Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Bill 2020 which was introduced into Parliament on 26 February 2020.

The other amendments in Schedule 4 to this Bill have not previously been announced.

Financial impact: It is not possible to determine the financial impact of the measures in Schedule 4 to this Bill as it will depend on sector need for additional financial assistance as a result of emerging issues and impacts from the Coronavirus.
**Human rights implications:** Schedule 4 to this Bill does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 8.

**Compliance cost impact:** An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen circumstances.

**Schedule 5 – Modification of information and other requirements**

*This Schedule was prepared by the Attorney-General’s Department.*

Schedule 5 to this Bill provides a temporary mechanism for responsible Ministers to change arrangements for meeting information and documentary requirements under Commonwealth legislation in response to the challenges posed by the Coronavirus.

**Date of effect:** Schedule 5 to this Bill will commence on the day after the day on which this Bill receives Royal Assent.

**Proposal announced:** This measure has not previously been announced.

**Financial impact:** Nil.

**Human rights implications:** Schedule 5 to this Bill does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 8.

**Compliance cost impact:** An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen circumstances.

**Schedule 6 – Additional support for veterans**

*This Schedule was prepared by the Department of Veterans’ Affairs.*

Schedule 6 to this Bill allows the Veterans’ Minister to:

- increase, by legislative instrument, the amount paid to persons receiving a payment under a provision of the Veterans’ Law by the amount of the COVID-19 supplement; and
- vary the qualifications and eligibility for payments under the Veterans’ Law by legislative instrument.

These instruments may only be made after consultation with the Social Services Minister. Both the powers and any instruments made using them will end on 31 December 2020.
Date of effect: Schedule 6 to this Bill will commence on the day after the day on which this Bill receives Royal Assent.

Proposal announced: This measure has not previously been announced.

Financial impact: The financial impact of the extension to veterans and their dependents has not been separately costed. These costs, and costs of any variation to the qualifications and benefits under the Veterans’ Law, will be separately costed when the relevant legislative instrument is developed.


Compliance cost impact: An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen circumstances.

Schedule 7 – Tax secrecy

This Schedule was prepared by the Department of the Treasury.

Schedule 7 to this Bill makes amendments to the tax secrecy provisions in the TAA 1953 to allow de-identified protected information to be disclosed to the Treasury for the purposes of policy development, or analysis, in relation to the Coronavirus, including in relation to programs introduced in response to the economic impacts of the Coronavirus. The amendments allow such disclosures to be made until 30 June 2023.

Date of effect: Schedule 7 to this Bill will commence on the day after the day on which this Bill receives Royal Assent. These amendments are repealed on 1 July 2023.

Proposal announced: This measure has not previously been announced.

Financial impact: Nil.

Human rights implications: Schedule 7 to this Bill 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. See Statement of Compatibility with Human Rights — Chapter 8.

Compliance cost impact: An exemption from Regulation Impact Statement requirements was granted by the Prime Minister as there were urgent and unforeseen circumstances.
Economic Response to the Coronavirus

The Government is acting decisively in the national interest to support households and businesses and address the significant economic consequences of the Coronavirus.

While the full economic effects from the virus remain uncertain, the global and domestic outlook has deteriorated since the Government’s initial Economic Response announced on 12 March 2020.

The spread of the virus worldwide has broadened and is expected to be more prolonged. Governments, both international and domestic, have announced stricter mitigation measures to slow the spread of the virus, which are having significant economic impacts.

Since it announced its second set of economic responses on 22 March 2020, the Government has announced further support for businesses and households, including the $130 billion JobKeeper Program.

Combined with the Government’s previous actions, this totals $320 billion across the forward estimates, representing 16.4 per cent of annual Gross Domestic Product.

These actions provide timely support to affected workers, businesses and the broader community.

How the Coronavirus will affect the global and Australian economies

The outbreak of the virus has expanded and is a rapidly evolving challenge with significant health impacts. While the outbreak originated in China, significant outbreaks have occurred in almost all countries around the world. There are more than 190 countries reporting infections.

Our health system is well prepared to manage this outbreak. We have a world-class health system which has pandemic plans that are currently activated. The Government has put in place strong measures to protect Australians, including:

• activating the National Incident Room;
• releasing masks and other Personal Protective Equipment from the National Medical Stockpile;
• enhancing border controls and imposing strict travel restrictions; and
• promoting social distancing to limit the spread.

The Government will continue to respond as the situation develops.

The Government’s commitment of $3.6 billion to manage the outbreak in Australia will strengthen the health system’s ability to manage the Coronavirus in the community and protect vulnerable Australians. In addition, the Government has agreed with the States and the Territories to share the public health costs incurred by the States in treating the Coronavirus.

For aged care, temporary measures will be introduced to support the aged care sector with an additional $444.6 million. This includes funding for a retention bonus to ensure the continuity of the workforce in both residential and home care as well as funding to support the viability of residential aged care facilities. This is in addition to more than $100 million that the Government previously announced to support the aged care workforce.

The Coronavirus outbreak not only affects people’s health. The virus, along with the increasing health measures to slow its spread, will have significant economic implications.

The international economic outlook has worsened as the Coronavirus has spread.

While the initial economic impact of the outbreak was most significantly felt in the Chinese economy, this has quickly evolved to other countries and regions. Major economies including the United Kingdom, Italy and Spain have announced they are in ‘lockdown’ to contain the Coronavirus, which is expected to hinder economic activity over coming months.

In China, a range of economic indicators are showing that the Chinese economy has been severely impacted. A survey measure of activity in the manufacturing sector had its largest fall in its history in February. China also had record falls for industrial production, retail sales and fixed asset investment over January and February. Trade for this period was also significantly affected.

Given China’s interconnectedness with the world, and its key role in supply chains, this decline will have flow-on economic impacts for the world. But concerns about flow-on effects have been magnified as more countries take direct action to slow the Coronavirus spread. In particular, across the world we have seen a substantial increase in the breadth and severity of restrictions on the movement of people. And this is showing up in confidence indicators in Europe, the United States and Asia.

The global nature of the shock is evident in financial markets. Stock markets have fallen substantially around the world in recent weeks, while
corporate bond spreads have widened. The Australian dollar is 11 per cent lower on a trade-weighted basis than it was in early January.

While markets initially incorporated sharp downward revisions to the economic outlook in an orderly way with few signs of dislocation, more recently we have seen significant financial market strains. Financial authorities around the world have responded with a range of measures to support market functioning and economic activity.

Oil prices have continued to fall, and are now around 65 per cent lower than prices in early January, reflecting falling global demand and the collapse of an agreement between major producers to reduce output. While oil-linked Liquefied Natural Gas export prices will be negatively affected by these falls, consumers will benefit from lower petrol and gas prices.

In contrast, prices of key bulk commodities have remained resilient to date. This is likely due to an expectation that the Chinese authorities will move to boost domestic demand through ongoing measures, including increased investment in infrastructure.

In response to the Coronavirus outbreak, fiscal authorities in numerous countries have announced measures to support their health systems and their economies. Governments are supporting the sectors and workers most affected by the outbreak, and we are continuing to see the announcement of policies to help households and businesses cope as unprecedented shut-downs occur. Such policies have included loan arrangements, tax deferrals and relief, cash payments and income support. Monetary policy is also responding with around 70 central banks across the world easing policy in 2020 so far.

Australia’s position heading into this crisis is stronger than many, with both the International Monetary Fund and the Organisation for Economic Co-operation and Development having forecast Australia to grow faster than comparable economies, including the United Kingdom, Canada, Japan, Germany and France.

Australian governments continue to act quickly and decisively to adjust our health measures to the scale of the threat. This scaling up of measures to protect the health of our community will have negative effects on the economy. Demand for goods and services will be lowered, and this will be concentrated in some industries such as tourism, hospitality and retail trade. Some businesses will be unable to operate in the usual way owing to restrictions on large gatherings, or may face labour or supply chain challenges.

There remains considerable uncertainty around the economic implications of the Coronavirus for the June quarter and beyond, but the economic shock will be significant. There are a wide range of potential paths for the spread and containment of the virus globally and in Australia. In addition,
there is uncertainty around the impact on confidence, people’s ability to work and business cash flow. The global spread of the Coronavirus and its global economic impact will also flow through to demand for Australia’s exports and the availability of inputs into domestic production and imported consumption goods.

There are automatic mechanisms that will help to support activity. The flexible exchange rate helps to mitigate the effect of shocks to global demand, we have a sound and well-capitalised banking sector and our labour market has shown that it can flexibly respond — with firms adjusting more through hours, than the number of employees.

**How the Government is responding**

The Government’s consolidated package of $320 billion represents fiscal and balance sheet support across the forward estimates of 16.4 per cent of annual Gross Domestic Product. The support is designed to help businesses and households through the period ahead. This significant action has been taken in the national interest and has been updated in the light of the broader and more prolonged impact of the Coronavirus outbreak.

The package provides timely support to workers, households and businesses through a difficult time. Building on the previous measures, this package will support those most severely affected. It is also designed to position the Australian economy to recover strongly once the health challenge has been overcome.

The International Monetary Fund and the Organisation for Economic Co-operation and Development have indicated that Australia is one of the advanced economies in the best positions to provide fiscal support without endangering debt sustainability.
Chapter 1
Amendment of the Fair Work Act 2009

Outline of chapter

1.1 Schedule 1 to this Bill amends the Fair Work Act to support the practical operation of the JobKeeper scheme in Australian workplaces in the national system and keep Australians employed.

Context of amendments

1.2 The JobKeeper scheme will help employers who qualify for the JobKeeper scheme retain staff during the downturn caused by the Coronavirus pandemic and support business recovery when conditions improve. JobKeeper payments are payable to qualifying employers for a maximum of 13 fortnights in respect of each eligible employee on their books on 1 March 2020 who is retained by the employer. Qualifying employers will receive a payment (fortnightly in arrears) of $1,500 per fortnight for each eligible employee.

Summary of new law

1.3 Part 1 of Schedule 1 to this Bill inserts new Part 6-4C into the Fair Work Act, which temporarily enables employers to issue JobKeeper enabling directions. These can provide (subject to various safeguards) for increased flexibility around employees’ hours of work via a new JobKeeper enabling stand down direction, performance of duties and location of work. It also enables employers and employees to make agreements for increased flexibility around annual leave arrangements and days and times of work. The FWC will be able to resolve disputes, including by arbitration.

1.4 New Part 6-4C also requires JobKeeper qualifying employers to meet minimum payment obligations to employees who are subject to these arrangements, including by ensuring that at least the value of JobKeeper payments they receive through the Commissioner is passed on to such employees each fortnight, or the amount they would receive for the work they have performed if that would be greater.

1.5 New Part 6-4C also contains:

• rules about accrual of service and calculation of benefits in certain circumstances; and
• rules about its interaction with other laws.

1.6 The amendments made by Part 1 of Schedule 1 to this Bill will enable the greatest number of workplaces in the national workplace relations system to access and make best use of the Jobkeeper scheme, with a view to preserving the greatest number of jobs.

1.7 These amendments are time-limited and will automatically be repealed by Part 2 of Schedule 1 on 28 September 2020.

Detailed explanation of new law

Schedule 1—Amendment of the Fair Work Act 2009

Item 1 – Subsection 539(2) (at the end of the table)

1.8 This item inserts new items 39, 40 and 41 into the table in subsection 539(2) of the Fair Work Act to provide rules about standing, jurisdiction and penalties for contravention of sections 789GD, 789GDA(2), 789GDB(2), 789GDB(3), 789GU, 789GW and 789GXA (explained below), which are civil remedy provisions.

1.9 Contravention of section 789GD, which is about an employer’s obligation to satisfy the wage condition set out in the JobKeeper payment rules, could amount to a serious contravention that can carry a penalty of up to 600 penalty units (see section 557A of the Fair Work Act). A maximum civil penalty of 600 penalty units also applies to an employer who knowingly misuses a purported job keeper enabling direction that is not authorised by new Part 4-6C (section 789GXA).

Item 2 – At the end of subsection 576(1)

1.10 Item 2 of Schedule 1, Part 1 amends subsection 576(1) of the Fair Work Act to provide that the FWC has functions conferred in relation to the Coronavirus economic response provided for in new Part 6-4C of the Fair Work Act.

Item 3 3 – After paragraph 675(2)(j)

1.11 Item 3 of Schedule 1, Part 1 amends subsection 675(2) of the Fair Work Act to provide that a person does not commit an offence if they contravene an FWC order under new Part 6-4C.

Item 4 – At the end of subsection 716(1)

1.12 Item 4 amends subsection 716(1) to enable an inspector to issue a compliance notice for contravention of a provision of Part 6-4C, a
Amendment of the Fair Work Act 2009

JobKeeper enabling direction or a provision of an agreement authorised by Part 6-4C.

**Item 5 – Part 6-4C—Coronavirus economic response.**

*Section 789GA (Guide to Part 6-4C)*

1.13 Item 5 of Schedule 1, Part 1 inserts new Part 6-4C into the Fair Work Act.

1.14 New section 789GA provides the Guide to Part 6-4C, which notes that the Part’s purpose is to assist employers who qualify for the Jobkeeper scheme to deal with the economic impact of the Coronavirus pandemic.

1.15 Part 6-4C also authorises an employer who qualifies for the JobKeeper scheme to give a:

- JobKeeper enabling stand down direction to an employee (including to reduce hours of work);
- direction to an employee about the duties to be performed by the employee, and
- direction to an employee about the location of the employee’s work.

1.16 The Part also authorises an employee who qualifies for the JobKeeper scheme and an employee to make agreements in relation to the days or times of work, and taking paid annual leave, including at half pay.

1.17 The Guide also notes that:

- an employer must consult the employee (or a representative of the employee) before giving a direction;
- directions must (among other things) not be unreasonable in all of the circumstances, and directions in relation to duties to be performed by an employee or their location of work must be supported by an employer’s reasonable belief this is necessary for the continued employment of one or more employees of the employer;
- safeguards apply in relation to directions, including that new Part 6-4C operates at all times subject to particular listed laws (which contain other safeguards), and
- the FWC may deal with disputes about the operation of Part 6-4C.

*Section 789GB (Object)*

1.18 Section 789GB provides the object of Part 6-4C, which is to:
make temporary changes to assist the Australian people to keep their jobs, and maintain their connection to their employers, during the unprecedented economic downturn and work restrictions arising from:

- the Coronavirus pandemic; and
- government initiatives to slow the transmission of Coronavirus;

help sustain the viability of Australian businesses during the COVID-19 pandemic, including by preparing the Australian economy to recover with speed and strength after a period of hibernation;

continue the employment of employees;

ensure the continued effective operation of occupational health and safety laws during the Coronavirus pandemic; and

help ensure that, where reasonably possible, employees:

- remain productively employed during the Coronavirus pandemic, and
- continue to contribute to the business of their employer where it is safe and possible for the business to continue operating.

Section 789GC (Definitions)

1.19 This provision sets out definitions for Part 6-4C, as follows:

- **designated employment provision** – which refers to:
  - a provision of the Fair Work Act (other than a provision of new Part 6-4C or a provision mentioned in section 789GZ);
  - a fair work instrument (see section 12);
  - a contract of employment; or
  - a transitional instrument.

- **employee** and **employer** – these are references to the definitions of *national system employer* and *national system employee* (see sections 13, 14, 30C, 30D, 30M and 30N of the Fair Work Act, which engage Commonwealth constitutional powers including the corporations power (s51(xx)) and the power to legislate with respect to matters referred by States (s51(xxxvii)).
Amendment of the Fair Work Act 2009

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

• **hourly rate of pay guarantee** – which has the meaning given by section 789GDB.

• **jobkeeper enabling direction** – which means a direction authorised by sections 789GDC, 789GE or 789GF.

• **jobkeeper fortnight** – which has the same meaning as in the jobkeeper payment rules.

• **jobkeeper payment** – which means the jobkeeper payment payable by the Commonwealth in accordance with the jobkeeper payment rules.

• **jobkeeper payment rules** – which means the rules made under the Coronavirus Economic Response Package (Payments and Benefits) Act 2020.

• **jobkeeper scheme** – which has the same meaning as in the jobkeeper payment rules.

• **licence** – which includes registrations and permits.

• **minimum payment guarantee** – which has the meaning in section 789GDA.

• **qualifies for the jobkeeper scheme** – which has the same meaning as in the jobkeeper payment rules.

• **wage condition** – which means the wage condition set out in the JobKeeper payment rules.

**Division 2—Employer payment obligations**

*Section 789GD (Obligation of employer to satisfy the wage condition)*

1.20 Sections 6(1)(d) and 10 of the JobKeeper payment rules require the sum of amounts paid (or otherwise handled in ways permitted by those rules, such as by making salary sacrifice superannuation contributions for employees or withholding tax amounts) by an employer who is entitled to a JobKeeper payment for an individual for a fortnight, to equal or exceed $1,500 in the fortnight (this is the wage condition of the JobKeeper payment rules).

1.21 New section 789GD requires an employer that qualifies for the JobKeeper scheme, and would be entitled to the JobKeeper payment for a particular employee by satisfying the wage condition in respect of that employee, to ensure the wage condition is in fact satisfied by the end of the fortnight. This effectively requires the employer to pay their employee (or otherwise deal with amounts in ways permitted by the JobKeeper payment rules) the fortnightly value of the JobKeeper payment.
1.22 Section 789GD is a civil remedy provision enforceable under Part 4-1 of the Fair Work Act, which provides access to the courts for (among other things) penalty and compensation orders to remedy contraventions upon application by an employee, employee representative or an inspector.

1.23 Note 2 to section 789GD makes it clear that under the JobKeeper payment rules, a JobKeeper payment is a payment to an employer for a particular employee for a fortnight.

Section 789GDA (Minimum payment guarantee)

1.24 Section 789GDA requires an employer who is eligible for the JobKeeper scheme to ensure the total amount payable to a particular employee in respect of a fortnight is either:

- the amount of the JobKeeper payment for the employee; or
- if a greater amount is payable to the employee for the performance of work during the fortnight, that amount (in full).

1.25 Subsection 789GDA(2) is a civil remedy provision enforceable under Part 4-1 of the Fair Work Act, which provides access to the courts for (among other things) penalty and compensation orders to remedy contraventions.

Section 789GDB (Hourly rate of pay guarantee)

1.26 A JobKeeper enabling stand down direction cannot reduce an employee’s hourly base rate of pay. Section 789GDB(2) requires an employer who is eligible for the JobKeeper scheme to ensure that where an employee is given a JobKeeper enabling stand down direction under section 789GDC, the employee’s base rate of pay worked out on an hourly basis is not less than the base rate of pay worked out on an hourly basis that would have applied to the employee if the direction had not been given.

1.27 Section 789GDB(3) similarly requires an employer who is eligible for the JobKeeper scheme to ensure that where an employee is given a direction about their work duties under section 789GE, the employee’s hourly base rate of pay is not less than the greater of:

- the base rate of pay on an hourly basis that would have applied if the direction had not been given; or
- the base rate of pay on an hourly basis applicable to the duties performed.

1.28 This effectively means that an employee’s hourly rate cannot be reduced as a result of a JobKeeper enabling direction.
1.29 Subsections 789GDB(2) and 789GDB(3) constitute the *hourly rate of pay guarantee* (subsection 789GDB(1)).

1.30 Section 789GDB(4) provides that if an employee is paid otherwise than on an hourly basis (or by reference to an hourly pay rate) and an applicable workplace instrument specifies the employee’s base rate of pay for the purposes of the NES or sets a method for working out the employee’s base rate of pay for that purpose, the employee’s base rate of pay is:

- the amount specified in that instrument, or
- the amount worked out using that method (as the case requires).

1.31 This is designed to ensure that employees paid other than by reference to hours, such as on an annualised salary arrangement, have clear rules for how their pay arrangements are treated for the purpose of the hourly rate of pay guarantee.

1.32 Subsections 789GDB(2) and 789GDB(3) are civil remedy provisions enforceable under Part 4-1 of the Fair Work Act, which provides access to the courts for (among other things) penalty and compensation orders to remedy contraventions.

**Division 3 – Jobkeeper enabling stand down**

*Section 789GDC (Jobkeeper enabling stand down)*

1.33 Sections 789GDC relates to Jobkeeper enabling standing down.

**Division 4 – Duties, location and days of work**

*Section 789GE (Duties of work)*

1.34 Sections 789GE relates to duties of work.

*Section 789GF (Location of work)*

1.35 Sections 789GF relates to location of work.

*Section 789GG (Days of work etc.)*

1.36 Sections 789GF relates to days of work.

**Division 5—Taking paid annual leave**

*Section 789GJ (Taking paid annual leave)*

1.37 Designated employment provisions may contain:

- restrictions on the type of work an employee may perform (for example, because of the employee’s classification or qualification);
• limitations on when or where work may be performed, or
requirements for minimum hours of work; or
• circumstances in which annual leave may be taken.

1.38 These conditions may prevent or restrict an employee’s capacity
to be available for necessary work in circumstances that arise because of
the Coronavirus pandemic, or an employer’s capacity to direct an
employee to work in a different location in response to those
circumstances.

1.39 If an employer qualifies for the JobKeeper scheme and is
entitled to JobKeeper payments for a particular employee, Divisions 3 and
4 of Part 6-4C temporarily authorise that employer, despite any limitations
in a designated employment provision, to:

• give a JobKeeper enabling stand down direction to work
fewer days or hours to an employee who cannot usefully be
employed for the employee’s normal days or hours during
the JobKeeper enabling stand down period because of
business changes attributable to the Coronavirus pandemic or
government initiatives (including Commonwealth, State or
Territory Government initiatives) to slow Coronavirus
transmission (section 789GDC), and

• give a direction to an employee about the nature of the
employee’s duties, within their skill and competency
(section 789GE) or to perform duties at a place different from
their normal place of work, including the employee’s home
(section 789GF).

1.40 These are JobKeeper enabling directions (definition in
section 789GC refers). To be clear, a JobKeeper enabling direction can
only be given to an employee by an employer who qualifies for the
JobKeeper payment scheme in relation to that employee. While a
JobKeeper enabling direction must inherently be given to an employee
before the period to which it relates, and a JobKeeper payment is made in
arrears, JobKeeper enabling directions are ultimately only valid if the
JobKeeper payment is ultimately made to the employer in relation to that
employee.

1.41 If an employer qualifies for the Jobkeeper scheme and is entitled
to JobKeeper payments for a particular employee, Divisions 4 and 5 of
Part 6-4C also enable that employer and employee, despite any limitations
in a designated employment provision, to agree to the employee:

• working different days or at different times compared with
the employee’s ordinary days or times of work
(section 789GG), or
• taking paid annual leave, including at half pay (section 789GJ).

1.42 The provisions would facilitate a range of flexible arrangements to support continuing business operation and the ongoing employment of employees.

1.43 A direction under sections 789GDC, 789GE or 789GF, or an agreement between an employer who qualifies for the Jobkeeper scheme and an employee under sections 789GG or 789GJ, have the effect of temporarily modifying employment rights and obligations to the extent specified in the direction or agreement. These arrangements can only be made in relation to the specific matters set out in sections 789GDC to 789GJ, and in accordance with other requirements set out in Part 6-4C.

1.44 Terms and conditions of an employee’s employment beyond the scope of any JobKeeper enabling directions or agreements that have been given or agreed to by that employee will not be affected. If no such direction or agreement is made, existing rights and obligations (which may be derived from the Fair Work Act, a fair work instrument, contract of employment or transitional instrument) continue to apply.

1.45 In other words, an employee’s terms and conditions of employment continue to apply, except to the limited extent modified by a JobKeeper enabling direction or agreement.

• For example, if an enterprise agreement permits an employer to change employee rosters following consultation, those terms continue to apply if no JobKeeper enabling direction is given about fewer days or hours of work. The employer would still be able to change rosters in accordance with the enterprise agreement.

• However, if the employer (who is eligible for the Jobkeeper scheme) gives a JobKeeper enabling direction that reduces an employee’s hours of work via a JobKeeper enabling stand down direction, the direction applies despite any otherwise applicable enterprise agreement terms for the duration of the direction.

1.46 Part 6-4C does not modify terms and conditions of employment unless an employer who is eligible for the JobKeeper payment scheme makes a JobKeeper enabling direction or agreement. This is the case even where an employer qualifies for and makes payments to an employee under the Jobkeeper scheme but does not give a direction or make an agreement. That is:

• an employer can only make a JobKeeper enabling direction or agreement if they qualify for the JobKeeper scheme and are entitled to JobKeeper payments for the employee in
respect of whom the JobKeeper enabling direction or the agreement relates; but

• if no JobKeeper enabling direction or agreement is made, existing rights and obligations are unaffected.

Section 789GDC (Requirements for JobKeeper enabling stand down direction)

1.47 Section 789GDC sets requirements for the giving of a JobKeeper enabling stand down direction by an employer (who qualifies for the JobKeeper scheme in relation to a particular employee) to that employee. A JobKeeper enabling stand down direction may require the employee not to work on particular days, or to work for a lesser period or for fewer hours than the employee would ordinarily work (including nil hours). A JobKeeper enabling stand down direction has effect despite a designated employment provision to the extent of any inconsistency.

1.48 The direction may be given if an employer qualifies for the JobKeeper scheme and is entitled to JobKeeper payments for the employee to whom the direction is given, and if:

• the employee cannot be usefully employed for their normal days or hours during the JobKeeper enabling stand down period because of changes to business attributable to the Coronavirus pandemic or government initiatives to slow Coronavirus transmission, and

• it can be implemented safely, having regard (without limitation) to the nature and spread of Coronavirus).

1.49 Changes to business could include, for example, less patronage and the closing of stores.

1.50 Subsection 789GDC(2) provides that while a JobKeeper enabling stand down direction is in place, the employer is still required to comply with:

• the wage condition in section 789GD;

• the minimum payment guarantee in section 789GDA; and

• the hourly rate of pay guarantee in section 789GDB;

but is not otherwise required to make payments to the employee in respect of the JobKeeper enabling stand down period.

1.51 An employee does not have to comply with a JobKeeper enabling stand down direction if it is unreasonable in all the circumstances (section 789GK).
Example 1.1

Jo is employed as a waiter in Anna’s restaurant. Anna’s restaurant has reduced operations to takeaway only because of Coronavirus restrictions. Anna qualifies for the JobKeeper scheme in relation to Jo, and gives Jo a JobKeeper enabling stand down direction not to attend work for 4 weeks, compared to her usual roster of 40 hours per week.

Anna is required to ensure Jo is paid the appropriate value of JobKeeper payments ($3000) during the four week JobKeeper enabling stand down period (section 789GD, which contains the wage condition obligation).

Example 1.2

Rachel works as an administrator for a manufacturing business whose retail operations have moved online as a result of significantly reduced shopfront demand and a 30 per cent reduction in turnover, following the Coronavirus outbreak. Rachel’s employer qualifies for the JobKeeper scheme in relation to Rachel and gives her a JobKeeper enabling stand down direction under section 789GDA that reduces her ordinary hours of work from 38 to 32 hours per week. Rachel’s contractual base pay rate is $30 per hour, which cannot be reduced for her hours of work, regardless of how many hours she is directed to work (section 789GDB, which contains the hourly rate of pay guarantee).

As a result of the JobKeeper enabling stand down direction reducing her hours, Rachel’s fortnightly pay has reduced from $2280 ($30/hr multiplied by 76 hours worked in a fortnight) to $1920 ($30/hr multiplied by 64 hours worked in a fortnight).

Rachel must be paid for hours she worked, and as her reduced fortnightly pay is still higher than the value of the fortnightly JobKeeper payment ($1500) she must be paid that higher amount (section 789GDA, which contains the minimum payment guarantee).

However, under the JobKeeper scheme, Rachel’s employer can apply the value of the JobKeeper payment towards her fortnightly pay.

1.52 A jobKeeper enabling stand down direction does not apply while an employee is taking paid or unpaid leave authorised by the employer (for example, annual leave), or is otherwise authorised to be absent (for example, on a public holiday).

Section 789GE (Requirements for duties of work direction)

1.53 Section 789GE sets requirements for an employer (who qualifies for the JobKeeper scheme in relation to a particular employee) to be able to direct that employee during a period to perform any duties within their skill and competency. A direction relating to duties of work has effect despite a designated employment provision to the extent of any inconsistency.
1.54 The direction may be given if an employer qualifies for the JobKeeper scheme and is entitled to JobKeeper payments for an employee, and if:

- the duties are safe (having regard, without limitation, to the nature and spread of Coronavirus);
- the employee is licensed and qualified to perform the duties (if a licence or qualification is necessary); and
- the duties are reasonably within scope of the employer’s business operations.

1.55 An employee does not have to comply with a direction to change duties of work if it is unreasonable in all the circumstances (section 789GK).

**Example 1.3**

Ameisa operates a warehouse in NSW. The Storage Services and Wholesale Award 2010 applies to the employees of the warehouse, including Meera. As a storeworker grade 4, Meera generally acts in a leading hand capacity, coordinating the work of other storeworkers, performs liaison duties including with customers, and controlling inventory.

Ameisa’s business is affected by the Coronavirus pandemic and qualifies for the JobKeeper scheme. Given the downturn in Ameisa’s business operations, Meera is not required to perform her usual duties in respect of customer liaison. In order to keep Meera connected to employment during the pandemic, rather than reducing Meera’s hours, Ameisa gives Meera a JobKeeper enabling direction that changes Meera’s usual duties and enables her to be retain her regularly rostered hours, albeit in other duties.

Ameisa wants Meera to drive a forklift in the warehouse. Because the duties can be performed with appropriate social distancing and in a way that is safe with respect to the nature and spread of Coronavirus, reasonably within the scope of Ameisa’s business operations, and Meera holds a current high risk work licence to operate a forklift (class LO), Ameisa is able to give a JobKeeper enabling direction authorised by s 789GE to drive the forklift.

While Meera’s duties have been modified by the JobKeeper enabling direction, the other terms and conditions relating to her employment, such as the days and hours she works, are unchanged.

**Section 789GF (Requirements for location direction)**

1.56 Section 789GF sets requirements for an employer (who qualifies for the JobKeeper scheme in relation to a particular employee) to be able to direct that employee during a period to perform duties at a place (including the employee’s home) that is different from the employee’s...
normal workplace. A direction relating to location of work has effect despite a designated employment provision to the extent of any inconsistency.

1.57 The direction may be given if an employer qualifies for the JobKeeper scheme and is entitled to JobKeeper payments for an employee, and if:

- the place is suitable for the employee’s duties;
- if the place is not the employee’s home – it does not require the employee to travel a distance that is unreasonable in all the circumstances (including those surrounding the Coronavirus pandemic); and
- performance of the employee’s duties at the place is safe, having regard (without limitation) to the nature and spread of Coronavirus, and is reasonably within scope of the employer’s business operations.

1.58 A direction to change work location does not apply to an employee if it is unreasonable in all the circumstances, including where it impacts on caring responsibilities of an employee (section 789GK).

Section 789GG (Requirements for days / time of work agreement)

1.59 Section 789GG facilitates an employer who qualifies for the JobKeeper payment scheme in relation to a particular employee and that employee to be able to agree (despite any designated employment provision) to the employee performing work on different days or at different times during a period, compared with the employee’s ordinary days or times of work.

1.60 The agreement is authorised if an employer qualifies for the JobKeeper scheme and is entitled to JobKeeper payments for the employee, and if:

- performance of the duties on different days or at different times is safe, having regard (without limitation) to the nature and spread of Coronavirus and reasonably within the scope of the employer’s business operations, and
- the agreement does not reduce the employee’s number of hours of work compared with the employee’s ordinary hours of work (reduced hours can only be effected under section 789GDC).

1.61 An employee must consider and must not unreasonably refuse the employer’s request for agreement to the changed arrangements. An agreement to work different days or times would need to be agreed by an employee, but in the absence of agreement the FWC could settle a dispute about this by arbitration (Division 10).
1.62 The circumstances of particular workplaces would inform what is reasonable in this area. For example, an employee who usually works weekends could reasonably be required to work on weekdays in a situation where their employer’s business can no longer trade on weekends as a result of the Coronavirus pandemic.

1.63 An employee’s ordinary hours of work during the period to which an agreement under subsection (2) relates are the hours of work provided for in that agreement.

Section 789GJ (Taking paid annual leave)

1.64 Section 789GJ facilitates an employee (whose employer qualifies for the JobKeeper payment scheme in relation to them) to consider their employer’s request to take paid annual leave and to agree (despite any designated employment provision) to take annual leave at half pay.

1.65 If an employer qualifies for the JobKeeper scheme and is entitled to JobKeeper payments for an employee, an employee must consider (and must not unreasonably refuse) their employer’s request to take annual leave, provided that the leave arrangement would not result in reducing the employee’s leave balance to fewer than two weeks. If the employee does not agree to the request, the FWC could settle a dispute about this by arbitration (see Division 10).

1.66 If an employer qualifies for the JobKeeper scheme and is entitled to JobKeeper payments for an employee, the employer and employee can also agree (despite any designated employment provision) to the employee taking twice as much annual leave at half the employee’s rate of pay for a period.

Division 6—Rules relating to JobKeeper enabling directions

Section 789GK (Reasonableness), section 789GL (Continuing the employment of employees), section 789GM (Consultation), section 789GN (Form of direction), section 789GP (Duration) and section 789GQ (Compliance)

1.67 Division 6 provides general rules for an employer’s JobKeeper enabling direction to an employee:

- Any direction must not be unreasonable in all the circumstances (this could, for example, depend on its impact on an employee’s caring responsibilities). If a direction is unreasonable in all the circumstances, it does not apply to an employee (section 789GK).
- In addition to the reasonableness test in section 789GK, in the case of a direction for changed duties (s 789GE) or work
location (s 789GF), the employer has information to support a reasonable belief the direction is necessary to continue the employment of one or more employees (and in this context it is immaterial that the employer could have given a similar direction to another employee) (section 789GL).

- The employer must give the employee at least three days written notice of the intention to give a direction or lesser period by genuine agreement (although this does not apply if the employer previously provided such notice of the direction and considered any views of the employee in that context), consult the employee or the employee’s representative about it, and keep a written record of the consultation (section 789GM).

- The direction must be in writing (this could include by electronic means). The regulations may prescribe a form for the direction (section 789GN).

- The direction continues in effect until withdrawn or revoked by the employer, or replaced by a new direction given to the employee – this is subject to any FWC order under Division 11 and to cessation of the direction at the start of 28 September 2020 (section 789GP).

- An employee given a JobKeeper enabling direction by their employer must comply with the direction (section 789GQ).

**Divisions 7 (Service) and Division 8 (Accrual rules)**

**Section 789GR (Service) and section 789GS (Accrual rules)**

1.68 Sections 789GR and 789GS provide that:

- during a period when an employee is subject to a JobKeeper enabling direction, the period counts as service (this is in addition to the effect of section 22 of the Fair Work Act, which provides general rules about service) (section 789GR);

- an employee who is subject to a JobKeeper enabling stand down direction under section 789GDC accrues leave entitlements as if the direction had not been given, and any entitlements to redundancy pay and payment in lieu of notice of termination are to be calculated as if the direction had not been given (subsections 789GS(1) and (2)); and

- an employee who takes annual leave at half pay in accordance with an agreement under subsection 789GJ(2) accrues leave entitlements as if the direction had not been given, and any entitlements to redundancy pay and payment
in lieu of notice of termination are to be calculated as if the direction had not been given (subsections 789GS(3) and (4)).

1.69 Periods to which agreements made under sections 789GG or 789GJ apply will count for service and accrual of entitlements as they normally would under section 22 of the Fair Work Act.

**Division 9 - Employee requests for secondary employment, training etc.**

**Section 789GU (Employee requests for secondary employment, training)**

1.70 An employee could ask their employer who qualifies for the JobKeeper payment scheme in a range of circumstances for permission to engage in reasonable secondary employment, training or professional development. If an employee who is subject to a JobKeeper enabling stand down direction under section 789GDC makes such a request, section 789GU requires the employer to consider and not unreasonably refuse such requests.

1.71 Section 789GU is a civil remedy provision enforceable under Part 4-1 of the Fair Work Act, which provides access to the courts for (among other things) penalty and compensation orders to remedy contraventions.

**Division 10 – Dealing with disputes**

**Section 789GV (FWC may deal with a dispute about the operation of this Part) and section 789GW (Contravening an FWC order dealing with a dispute about the operation of this Part)**

1.72 Division 10 enables the FWC to settle disputes about the operation of Part 6-4C. Section 789GV authorises the FWC to deal with a dispute by arbitration (in addition to its powers under section 595 to deal with disputes by mediation or conciliation etc.), and permits it to make:

- an order it considers desirable to give effect to a JobKeeper enabling direction;
- an order setting aside, or substituting, a JobKeeper enabling direction; or
- any other order it considers appropriate.

1.73 Consistent with other provisions that authorise the FWC to deal with disputes by arbitration (such as section 526 in relation to disputes about stand down), the FWC must take into account fairness between the parties to the dispute.
1.74 An application to the FWC to deal with a dispute may be made by an employee or an employee organisation, or an employer or an employer organisation.

1.75 Section 789GW provides that a person must not contravene a term of an FWC order dealing with a dispute about the operation of Part 6-4C. Section 789GW is a civil remedy provision enforceable under Part 4-1 of the Fair Work Act.

1.76 Item 3, Part 1 of Schedule 1 to the Bill amends subsection 675(2) of the Fair Work Act to extend the current list of FWC orders that do not attract liability for an offence to include FWC orders under new Part 6-4C.

**Division 11 – Exclusions**

*Section 798GX (Exclusions)*

1.77 This provision is a limited regulation making power. It only enables the Minister, by legislative instrument, to exclude one or more specified employers from the operation of any or all provisions that authorise a JobKeeper enabling direction or agreement (that is, sections 789GDC, 789GE to 789GJ inclusive). This might be done in circumstances where (for example) an employer contravenes a civil remedy provision.

**Division 12 – Protections**

*Section 789GXA (Misuse of JobKeeper enabling direction)*

1.78 Section 789GXA prohibits an employer from purporting to give a JobKeeper enabling direction if the direction is not authorised by Part 6-4C and the employer knows that the direction is not authorised.

1.79 Section 789GXA is a civil remedy provision enforceable under Part 4-1 of the Fair Work Act, and carries a maximum penalty of 600 penalty units.

*Section 789GY (Protection of workplace rights)*

1.80 Section 789GY makes clear, for avoidance of doubt, that an employee’s:

- benefit arising because of their employer’s obligation under section 789GD to satisfy the wage condition;
- agreement or disagreement to perform duties on different days or at different times in accordance with subsection 789GG(2);
- agreement or disagreement to take paid annual leave in accordance with a request subsection under
subsection 789GJ(1), or to take annual leave at half pay in accordance under subsection 789GJ(2); and

• request in relation to secondary employment, training under section 789GU;

are workplace rights within the meaning of Part 3-1 (general protections) of the Fair Work Act. Adverse action cannot be taken against an employee because of the employee’s workplace rights (see sections 340-342).

1.81 Coercion and false or misleading statements in relation to workplace rights are also prohibited (see sections 343 and 345).

Section 789GZ (Relationship with other laws)

1.82 Section 789GZ renders Part 6-4C subject to:

• Division 2 of Part 2-9 (payment of wages etc);
• Part 3-2 (unfair dismissal);
• Part 3-1 (general protections) and section 772 (employment not to be terminated on certain grounds) of the Fair Work Act;
• a Commonwealth, State or Territory anti-discrimination law;
• a Commonwealth, State or Territory law that deals with health and safety obligations of employers or employees, or with workers’ compensation; and
• a person’s right to be represented, or collectively represented, by an employee organisation or employer organisation.

Section 789GZA (Redundancy)

1.83 Section 789GZA provides that the giving of a JobKeeper enabling direction does not amount to a redundancy.

Division 13 – Review of this Part

Section 789GZB (Review of this Part)

1.84 Section 789GZB requires the Minister to cause an independent review to be conducted of the operation of Part 6-4C.

1.85 The review must start on or before 28 July 2020 and be completed and delivered to the Minister on or before 8 September 2020. These dates may be modified by regulation.

1.86 A copy of the review report must be tabled in each House of Parliament within five sitting days of that House after the report is given to the Minister.
Part 2 — Repeal of the core provisions of Part 6-4C of the Fair Work Act 2009 etc.

**Fair Work Act 2009**

1.87 Items 6, 7 and 9 of Schedule 1, Part 2 repeal:
- amendments made by Schedule 1, Part 1 to subsection 539(2);
- sections 789GA and 789GB; and
- Divisions 2, 3, 4, 5, 6, 9 and 11 of Part 6-4C;

consistent with the temporary nature of these changes.

1.88 The repeals occur at the start of 28 September 2020.

1.89 Item 8 of Schedule 1, Part 2 inserts ‘repealed’ in front of ‘section 789GC’.

**Transitional – JobKeeper enabling directions etc.**

1.90 This item makes clear, for avoidance of doubt, that the repeal of relevant Divisions of Part 6-4C means that no further JobKeeper enabling directions can be given, and any JobKeeper enabling directions in effect at the time of the repeal cease to have effect from the repeal time. This means that once the substantive provisions are repealed, and any JobKeeper enabling directions or agreements made under these provision cease, employees’ terms and conditions will revert back to what they were without the JobKeeper enabling directions or agreements in place.

**Application and Transitional Provisions**

1.91 Schedule 1 to this Bill will commence on the day after the day on which this Bill receives Royal Assent.
Chapter 2
Coronavirus Economic Response Package (Payments and Benefits) Bill 2020 and consequential amendments

Outline of chapter

2.1 The Australian Government is acting decisively in the national interest to address the significant economic consequences of the Coronavirus, without a permanent or structural impact on the budget balance.

2.2 The Payments and Benefits Bill is a key part of the Commonwealth response to the potential national emergency arising from the spread of the Coronavirus.

2.3 The Payments and Benefits Bill establishes a framework for Coronavirus economic response payments. Under the framework, the Treasurer will be able to make rules to provide for new payments administered by the Commissioner. This allows for flexibility of the payment arrangements and ensures the payments can be quickly introduced and revised to appropriately respond to the impacts of the Coronavirus.

2.4 The design of the framework recognises that the Commissioner, through existing arrangements, makes payments to and receives payments from taxpayers as part of the administration of the tax law. Therefore, the Commissioner is well placed to administer payment programs to individuals and businesses, but requires specific legislative authority to facilitate this.

2.5 The payments under the framework are intended to support entities that are directly or indirectly affected by the Coronavirus. The JobKeeper Payments announced on 30 March 2020 are intended to be delivered under this payment framework.

2.6 The payments may only be made by the Commissioner from the day of commencement and must relate to the period from 1 March 2020 until 31 December 2020 (inclusive).
Coronavirus Economic Response Package (Payments and Benefits) Bill 2020

Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020

Context of amendments

2.7 The economic impacts of the Coronavirus pose significant challenges for many businesses – many of which are struggling to retain their employees.

2.8 Under the JobKeeper Payment, businesses significantly impacted by the Coronavirus outbreak will be able to access a subsidy from the Government to continue paying their employees. This assistance will help businesses to keep people in their jobs and re-start when the crisis is over. For employees, this means they can keep their job and earn an income – even if their hours have been cut.

2.9 The JobKeeper Payment is a temporary scheme open to businesses impacted by the Coronavirus. The JobKeeper Payment will also be available to the self-employed. The Government will provide $1,500 per fortnight per employee for up to six months. The JobKeeper Payment will support employers to maintain their connection to their employees. These connections will enable business to reactivate their operations quickly – without having to rehire staff – when the crisis is over.

Summary of new law

2.10 The Payments and Benefits Bill establishes a framework for the Treasurer to make rules which provide for the Commissioner to make payments to eligible entities. Under this payment framework, the Commissioner has general administration of these payments.

2.11 The framework also sets out:

• the manner in which payments are made;
• rules for overpayments (including the application of interest);
• the process for the review of decisions about the payments; and
• the applicable record-keeping requirements.

2.12 Details of eligibility for particular payments as well as the amount of payments and the time when they are to be paid are to be set out in the rules made by the Treasurer. This allows for flexibility of the arrangements to introduce and modify payments to appropriately respond to the impacts of the Coronavirus.

2.13 The payments may only be made by the Commissioner from the day of commencement and only for the period from 1 March 2020 until 31 December 2020 (inclusive).
2.14 Schedule 2 to this Bill makes a number of consequential amendments to facilitate the Payments and Benefits Bill, including:

- technical amendments to the ITAA 1936, ITAA 1997, the Social Security Act and the Veterans’ Entitlement Act 1986 to ensure a consistent treatment of the Coronavirus economic response payments;

- amendments of a machinery nature to the Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020;

- providing a power in the Coronavirus Omnibus Act for the Minister for Families and Social Services to determine modifications to Part 5 of the SSAA. The modifications to the SSAA must be in connection with payments under the Coronavirus Economic Response Package ( Payments and Benefits) Act 2020, including applications for such payments; and

- amendments to the PPL Act to address relevant changes to paid parental leave as a result of the Coronavirus economic response payments.

### Comparison of key features of new law and current law

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<th>New law</th>
<th>Current law</th>
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<td>The Payments and Benefits Bill establishes a framework for the Treasurer to make rules to provide for Coronavirus economic response payments to be made by the Commissioner.</td>
<td>No equivalent.</td>
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### Detailed explanation of new law

2.15 The Payments and Benefits Bill is a key part of the Commonwealth response to the potential national emergency arising from the spread of the Coronavirus.

2.16 The object of the Payments and Benefits Bill is to establish a framework for the provision of financial support to entities that are directly or indirectly affected by the Coronavirus.

[Clause 3 of the Payments and Benefits Bill]
2.17 The framework applies to Australia within the meaning in section 960-505 of the ITAA 1997. This definition includes Australia’s external Territories. [Clause 4 of the Payments and Benefits Bill]

2.18 Under the framework, the Commissioner has general administration over the Act established by the Payments and Benefits Bill and of payments established under the rules made by the Treasurer. As a consequence, the general confidentiality provisions that apply to the Commissioner in relation to taxpayer information (under Division 355 of the TAA 1953) also apply in relation to information under this framework. [Clause 5 of the Payments and Benefits Bill]

2.19 The Payments and Benefits Bill includes a number of definitions, including general definitions and specific definitions relating to schemes. The following definitions apply generally:

- The term approved form is used. This term has the meaning given in section 388-50 in Schedule 1 to the TAA 1953, and means, broadly, a document approved in writing by the Commissioner for a particular purpose provided in the manner and with such information as the Commissioner may require.

- The term Australia is used. This term is given the same meaning used in section 960-505 of the ITAA 1997. This definition includes Australia’s external Territories.

- The term Commissioner is used. This refers to the Commissioner of Taxation.

- The term Coronavirus economic response payment is used. This refers to all payments administered under the rules of the payment framework established by the Payments and Benefits Bill.

- The term entity is used. This term is given the meaning used in the ITAA 1997. This is a broad definition that covers generally any individual, body corporate, body politic, partnership, trust, superannuation fund, approved deposit fund and unincorporated association or body of persons.

- The term general interest charge is used. This term refers to the charges worked out under Part IIA of the TAA 1953.

- The terms income tax return and income year are used. These terms are given the meaning used in section 995-1 of the ITAA 1997.
• The term prescribed period is used. This term describes the period to which Coronavirus economic response payments under the framework must relate. The prescribed period is the period between 1 March 2020 and 31 December 2020 (inclusive).

• The term this Act is used. This term refers to both:
  – the Act established by the Payments and Benefits Bill;
  and
  – the rules made under the framework.

[Clause 6 of the Payments and Benefits Bill]

2.20 This framework is intended to deliver the JobKeeper Payments, announced on 30 March 2020. These payments will support businesses to keep more Australian workers in jobs through the course of the Coronavirus outbreak. These payments are aimed at maintaining the connection between employers and employees. This will allow businesses to recommence their operations quickly and productively.

2.21 Rules will be made by Treasurer to establish the JobKeeper Payment, including setting out:

  • which employers are eligible for the payment;
  • the employee to which the payments relate;
  • the amount payable and the timing of payments; and
  • the obligations for recipients of the JobKeeper Payment.

The Coronavirus economic response payment framework

2.22 Under the payment framework set out in the Payments and Benefits Bill, the Treasurer may make rules that provide for payments to be made by the Commissioner. The rules may also provide for the establishment of arrangements dealing with matters relating to such payments and related administrative matters (such as obligations to notify the Commissioner or to hold particular records).

[Clause 7 of the Payments and Benefits Bill]

2.23 The matters the rules may deal with include, but are not limited to, the following:

  • the eligibility criteria for a payment;
  • if or how an application for a payment may or must be made;
  • whether a payment is to be paid in instalments or as a lump sum;
  • entitlement to a payment or an instalment of a payment;
• the amount of a payment (including the amount of any instalments);
• when a payment or an instalment of a payment is payable;
• conditions applying to a payment or an instalment of a payment;
• providing information or notices; and
• the rights, obligations and liabilities under the payment scheme of payment recipients, and other entities that directly benefit from payments or in relation to which a payment is made.

2.24 Effectively, the rules may establish particular payments programs and deal with matters that are specific to the payment programs, such as entitlement, amount and timing. Any payments must relate to the prescribed period – that is, the period from 1 March 2020 to 31 December 2020. Although earlier events may affect payment entitlements, payments can only be made prospectively after the commencement of both the Bill and the rules providing for the payment.

**Method of payment**

2.25 Payments under the framework will generally be paid to the entity by the Commissioner by crediting the amount of the payment to the financial institution account nominated under subsection 8AAZLH(2) of the TAA 1953 (where tax refunds are generally administered). If no such account has been nominated, payments will generally be made to the financial institution account nominated in the entity’s most recent income tax return. [*Clause 8 of the Payments and Benefits Bill*]

2.26 The Commissioner may also direct that a payment is to be made to an entity in another way, including by crediting an amount to the running balance account of the entity. Circumstances where the Commissioner may choose to direct that the payment is made as a credit within the meaning of section 8AAZA of the TAA 1953 include where the Commissioner wishes to delay the payment to verify the entitlement to the payment under section 8AAZLGA of the TAA 1953 (which allows the Commissioner to delay payments while verifying information). [*Subclause 8(2) of the Payments and Benefits Bill*]

2.27 Where an account has not been nominated, and the Commissioner has not directed the payment to be made in another way, the Commissioner is not obliged to make the payment until:

• an account is so nominated; or
• the Commissioner directs that the payment is to be made in another way.
2.28 This ensures that payments can be made through existing processes, minimising administrative and compliance costs. These payments will not be offset against tax liabilities or other amounts owing to the Commissioner, unless the Commissioner directs that a payment is to be made in a manner subject to offsetting.

Where there is overpayment

2.29 Where the Commissioner has overpaid an entity a payment under the framework, the entity must repay the overpaid amount to the Commissioner. This can arise where:

- the entity is not entitled to the whole or part of a payment that is made; or
- the entity is paid more than the correct amount.

[Clause 9 of the Payments and Benefits Bill]

2.30 However, the requirement to repay overpayments does not apply if the Commissioner makes a written determination to this effect. This ensures that the Commissioner has flexibility to address issues that might otherwise arise where entities may have made an honest mistake and not retained any personal benefit from a payment they have received.

2.31 Where there has been an overpayment which the entity is required to repay, the entity is liable to general interest charges for the overpaid amounts that have not been repaid. These general interest charges apply automatically. [Clause 10 of the Payments and Benefits Bill]

2.32 The Commissioner has existing powers to remit general interest charges in particular circumstances. The overpayment and the interest charge are also tax-related liabilities and are subject to the administrative regime under Part 4-15 in Schedule 1 to the TAA 1953, including the discretions to remit amounts under that regime.

Joint and several liability to repay overpayment

2.33 The Payments and Benefits Bill also provides that in some circumstances, another entity may be jointly and severally liable for an overpayment (and any associated interest) with the entity that received the payment. [Clause 11 of the Payments and Benefits Bill]

2.34 Where an entity is liable to repay an overpaid amount, and if that payment was made in reliance on information provided by another entity, then the Commissioner may determine that both the entity and the other entity are jointly and severally liable to repay the amount. The Commissioner may only make such a determination if the Commissioner is satisfied that:
• the overpayment was a result of the entity acting in reasonable reliance on written information provided by the other entity in the approved form;

• the information was materially false or misleading;

• the other entity did not take reasonable care in making the statement;

• the other entity received a direct benefit from the payment;

and

• the Commissioner is satisfied that joint and several liability is reasonable in the circumstances.

2.35 These provisions recognise that some payments made under the payment framework may be made to the ultimate benefit of another entity (such as an employee) and may rely on the provision of accurate and truthful information by that other entity. In cases where an entity makes a careless or deliberately false statement and receives a direct benefit, this allows recovery of the payment from the other entity in addition to the entity who received the payment.

2.36 Similarly, the Commissioner may determine that an entity and another entity are jointly and severally liable to make a repayment if the Commissioner is satisfied that:

• the entity is liable to repay an overpaid amount;

• the overpayment was because of the fraud of another entity;

and

• it is reasonable for the other entity to be jointly and severally liable.

2.37 These powers allow the Commissioner to recover amounts obtained by the Commonwealth as a result of fraud, even where the entity that undertakes the fraud may do so as part of a scheme under which the direct payments go to another entity.

2.38 An entity that engages in fraud about payments made under the framework is also potentially liable for a wider range of administrative and criminal sanctions under the tax law and general criminal law, some of which are set out in the table below.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Penalty</th>
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<tbody>
<tr>
<td>Section 284-75 in Schedule 1 to the TAA 1953 – administrative penalties for false and misleading statements</td>
<td>A financial penalty of up to 75 per cent of the amount of any overpayment</td>
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<tr>
<td>Section 8C of the TAA 1953 –</td>
<td>Imprisonment for up to 12 months</td>
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<tr>
<td>Provision</td>
<td>Penalty</td>
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<tr>
<td>criminal offence for a failure to comply with requirements under the</td>
<td>and a fine of up to 50 penalty units (250 penalty units for corporate</td>
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<td>taxation law</td>
<td>entities)</td>
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<tr>
<td>Section 8K and 8N of the TAA 1953 – criminal offence for making false</td>
<td>Imprisonment for up to 12 months</td>
</tr>
<tr>
<td>or misleading statements to taxation officers</td>
<td>and a fine of up to 50 penalty units (250 penalty units for corporate</td>
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<td>entities)</td>
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<tr>
<td>Section 134.2 of the Criminal Code – obtaining financial advantage by</td>
<td>Imprisonment for up to 10 years</td>
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<tr>
<td>deception</td>
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<tr>
<td>Section 135.2 of the Criminal Code – obtaining financial advantage</td>
<td>Imprisonment for up to 12 months</td>
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<tr>
<td>Section 135.4 of the Criminal Code – conspiracy to defraud</td>
<td>Imprisonment for up to 10 years</td>
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**Review of decisions made by the Commissioner**

2.39 The rules made by the Treasurer may specify:

- if and when a decision is taken to be made by the Commissioner; and

- when a decision that is made is taken to have been given by the Commissioner.

[Clause 12 of the Payments and Benefits Bill]

2.40 In some cases, the rules may provide for payments to be made without requiring applications by entities or notice by the Commissioner. This provision ensures that, in such cases, the rules may set out when a decision is taken to be made and notice is taken to be given. However, if the rules do not provide that actual notice of a decision must be given, or that notice of the decision is taken to be given at a particular time, then, if the decision is one to which an entity could object, notice of the decision is taken to have been given at the time of the decision for the purposes of section 14ZW of the TAA 1953.

2.41 The provisions ensure that the objection process under Part IVC of the TAA 1953 can operate appropriately for such payments, allowing appropriate review.

**Right to review**

2.42 Review under Part IVC of the TAA 1953 applies to decisions made by the Commissioner under the framework, including:

- whether an entity is entitled to a Coronavirus economic response payment for a period (whether an entity’s
entitlements are altered as a result of a contrived scheme (see paragraphs 2.61 to 2.67);

• whether an entity is entitled to a particular amount of a Coronavirus economic response payment for a period;

• whether an entity is relieved from repaying the overpayment amount (see paragraph 2.30);

• whether another entity (that is not the recipient of a payment) is jointly and severally liable to repay an overpayment amount; and

• whether an entity is exempt from record keeping requirements (see paragraph 2.50).

[Clause 13 of the Payments and Benefits Bill]

2.43 This allows affected entities to object to and seek review of decisions about payments (including review by the Administrative Appeals Tribunal), consistent with the general review framework applying to decisions about liabilities and entitlements under laws administered by the Commissioner.

Record keeping requirements

2.44 The Payments and Benefits Bill requires that entities create and retain records substantiating information provided to the Commissioner in relation to payments unless the Commissioner provides otherwise.

2.45 There are record keeping requirements both prior to payment and post-payment. [Clause 14 of the Payments and Benefits Bill]

2.46 Requirements for the keeping of records prior to payment are referred to as the pre-payment record keeping requirements. If an entity does not satisfy the pre-payment record keeping requirements then, despite any other eligibility criteria or provisions in the rules, an entity is not entitled to a Coronavirus economic response payment.

2.47 If an entity does not meet the post-payment record keeping requirements, the entity is taken to have never been entitled to the payment.
2.48 Where an entity gives the Commissioner a statement in an approved form to the effect that they will undertake to comply with the record keeping requirements, the Commissioner may assume that there is compliance with the record keeping requirements. This assumption is to facilitate the Commissioner’s decision regarding the entity’s entitlement to a payment.

2.49 However, if the record keeping requirements are in fact not met, the Commissioner may, taking into account available evidence:

- revoke the decision about the entity’s entitlement to a payment so that the entity is no longer entitled to a payment;
- vary the decision to pay the entity a reduced amount.

2.50 Despite the general record-keeping obligations, the Commissioner has the power to make a determination that an entity is not required to comply with a record keeping requirement. This will allow the Commissioner to reduce compliance costs in situations where records are not required given the circumstances of the entity and the payment.

**Record keeping requirements prior to payment – pre-payment record keeping**

2.51 To satisfy the pre-payment record keeping obligations, the entity must keep records to substantiate all information provided in their application. These records must be either kept in English, or are readily accessible and easily convertible to English.

*Clause 15 of the Payments and Benefits Bill*

2.52 The Commissioner may determine how records should be kept for the purposes of these pre-payment record keeping requirements. Where an entity complies with this determination, the entity is taken to have satisfied the pre-payment record keeping requirements. Under this determination, the Commissioner may specify:

- the kinds of records that must be kept; and
- the manner in which they must be kept.

2.53 The Commissioner’s determination about pre-payment record keeping is a legislative instrument.
Post-payment record keeping requirements

2.54 To satisfy the post-payment record keeping obligations, the entity must:

- if record keeping provisions are made in the rules by the Treasurer – retain records according to the rules;
- retain all records for five years after the payment was made;
- specifically retain their pre-payment records for five years after the payment was made; and
- comply with a written notice from the Commissioner to produce their records (when asked to do so).

[Clause 16 of the Payments and Benefits Bill]

2.55 The Commissioner may make a determination about the types of records to keep and the manner in which to keep them for the purposes of the obligation on an entity to retain records under the rules. Where such a determination has been made, an entity is taken to have satisfied the obligation to retain records according to the rules if they comply with the Commissioner’s determination.

2.56 The records must be kept by the entity in English, or be readily accessible and easily convertible to English.

2.57 A written notice from the Commissioner to produce records must allow the entity at least 28 days to comply. A longer period may be given by the Commissioner. [Clause 17 of the Payments and Benefits Bill]

2.58 However, unlike a failure to comply with taxation notices to produce records, a failure to comply with the notice to produce records under the payment framework is not a criminal offence.

2.59 An entity may stop retaining records if the Commissioner notifies the entity that the entity is not required to do so.

Lost or destroyed records

2.60 If records that are required to be kept are lost or destroyed, then:

- if a copy of the original record that is lost or destroyed exists – the copy is taken to be the original; or
- if the original record is lost or destroyed but the Commissioner is satisfied that the entity took reasonable precautions to prevent the loss or destruction of the record – the entity’s entitlement to a payment under the framework is not affected by the failure to produce the document.

[Clause 18 of the Payments and Benefits Bill]
Contrived schemes and consequences

2.61 If one or more entities (these entities are referred to as participants) enter into or carry out a scheme for the sole or dominant purpose of obtaining a Coronavirus economic response payment or an increased amount of a Coronavirus economic response payment for an entity (whether or not a participant), then the Commissioner may make a determination regarding the scheme.

[Clause 18 of the Payments and Benefits Bill]

2.62 The Commissioner may determine that the entity was never entitled to a payment or the amount to which the entity was entitled was always the amount specified by the Commissioner in the determination. Under the payment framework, the term scheme is given the meaning used in the GST Act. Under subsection 165-10(2) of the GST Act, a scheme includes a broad range of arrangements.

2.63 The Commissioner may make the determination by having regard to:

• the manner in which the scheme was entered into or carried out;

• the form and substance of the scheme;

• the time at which the scheme was entered into and the length of the period during which the scheme was carried out;

• the result in relation to the operation of the Coronavirus payment framework that, but for this provision, would be achieved by the scheme;

• any change in the financial position of the recipient that has resulted, will result, or may reasonably be expected to result, from the scheme;

• any change in the financial position of any entity that has, or has had, any connection (whether of a business, family or other nature) with the recipient, being a change that has resulted, will result or may reasonably be expected to result, from the scheme;

• any other consequence for the recipient, or for any connected person, of the scheme having been entered into or carried out; and

• the nature of any connection (whether of a business, family or other nature) between the recipient and any connected person.
2.64 These rules protect the integrity of the payment framework. They ensure that entities that enter into contrived schemes do not obtain a payment (including an increased amount of payment) they would otherwise not be entitled to.

2.65 The scheme does not need to be criminal in nature. For example, the Commissioner could make a determination to deny an entity an assistance payment, such as the JobKeeper Payment, if the entity has deliberately altered its business arrangements to reduce its turnover in order to allow the entity to meet the turnover requirements to receive the payment.

2.66 The Payments and Benefits Bill provides that a determination of the Commissioner in relation to a scheme is not a legislative instrument. This provision is purely declaratory, as the instrument, being an administrative decision relating to a single entity, is not legislative in character and would not otherwise have been a legislative instrument.

2.67 In addition to the scheme provisions, there is an extensive existing framework of penalties in the Criminal Code and the TAA 1953 that can apply in circumstances where individuals and entities make false, misleading or reckless statements to the Commonwealth or engage in arrangements or assist others to defraud the Commonwealth.

The rules under the framework

2.68 The rules made by the Treasurer for the purposes of the payment framework are a legislative instrument. [Clause 19 of the Payments and Benefits Bill]

2.69 The power to make these rules is provided to the Treasurer because they allow for a flexible way to provide for new payments by the Commissioner. This allows the framework to be modified and updated so that the payments respond appropriately to rapidly changing circumstances. This flexibility and responsiveness is necessary in order to effectively address the impacts of the Coronavirus in a situation of considerable uncertainty.

2.70 The use of rules rather than regulations enhances flexibility and responsiveness, which is central to achieving the purpose of the Payments and Benefits Bill to provide financial support to address the economic impacts of the Coronavirus. It is also consistent with the general approach of the Office of Parliamentary Counsel as set out in Drafting Direction No. 3.8.

2.71 Any rules made by the Treasurer using this power are subject to the full process of Parliamentary scrutiny including disallowance as set out in the Legislation Act 2003.
2.72 Consistent with general principles for legislative instruments, these rules may not:

- create a criminal office or civil penalty;
- provide for powers of arrest, detention, entry, search or seizure;
- impose a tax;
- set an amount of appropriation from the Consolidated Revenue Fund; or
- directly amend the text of the primary Act.

2.73 The rules may apply differently for different classes of entities, or for different kinds of payments.

2.74 The rules may also:

- sub-delegate a power to the Commissioner to make an administrative or legislative instrument for the purposes of the rules; and
- incorporate other instruments or documents by disregarding the rule in subsection 14(2) of the Legislation Act 2003.

2.75 It is anticipated that there may be administrative matters for which it may be appropriate for the Commissioner to make general provision by making legislative instruments (for example, exempting a class of entities from reporting requirements) or for the rules to operate by reference to other instruments or documents (such as international treaties or World Health Organisation documents).

2.76 Together these provisions enable the rules to remain responsive and appropriate to the rapidly evolving climate. The legislative instrument made by the Commissioner can be used to supplement the rules made by the Treasurer. This sub-delegation is intended to further promote the policy objectives of this measure and to ensure its responsiveness. Given that the Commissioner is administering the payments, the Commissioner is a suitable delegate with firsthand knowledge about how the administration of the payment framework can remain robust over time.

2.77 The collective use of these legislative instruments is necessary to allow the framework to achieve its policy outcome of quickly and more effectively supporting those impacted by the Coronavirus. They ensure that the law and the administration can remain robust and responsive, while giving a high degree of certainty to relevant entities by incorporating other documents that can be more easily updated outside of Parliamentary processes.
2.78 The Payments and Benefits Bill makes clear that the rules may prescribe matters required or permitted to be prescribed in these rules by other laws of the Commonwealth, such as is set out in the consequential amendments made in Schedule 2 to this Bill.

2.79 The Payments and Benefits Bill also makes clear that the provision of specific rules in framework set out on the Payments and Benefits Bill on matters such as record keeping does not prevent the rules from providing additional or supplementary requirements about those matters that may be appropriate in the context of particular payments.

Consequential amendments

2.80 Schedule 2 to this Bill makes amendments to a number of Acts to implement measures to address the potential economic impacts of the Coronavirus.

2.81 For the Coronavirus payment framework measure, Schedule 2 to this Bill amends:

- the objects provision regarding the establishment of tax file numbers under of paragraph 202(s) of the ITAA 1936 to include for the purposes of the Coronavirus economic response payments.
- the list of exempt income provisions in section 11-15 of the ITAA 1997 to include certain payments received under the Coronavirus payment framework;
- the list of non-assessable non-exempt income provisions in section 11-55 of the ITAA 1997 to include certain payments received under the Coronavirus payment framework;
- Division 53 of the ITAA 1997 to provide that the payments received under the Coronavirus payment framework are exempt income where the rules specify that those payments are exempt income;
- Division 59 of the ITAA 1997 to provide that the payments received under the Coronavirus payment framework are non-assessable non-exempt income where the rules specify that those payments are non-assessable non-exempt income;
- the index of provisions dealing with liability to the general interest charge in subsection 8AAB(4) of the TAA 1953 to include the provision applying the general interest change to all wrong or overpaid payments received under the Coronavirus payment framework;
• the definition of credit in section 8AAZA of the TAA 1953 so that payments made under the framework are not automatically a credit for the purposes of the running balance account rules, ensuring that the payments are not automatically offset against tax liabilities;

• the provision for payments under the framework to be treated as credits where relevant by including section 8AAZAA of the TAA 1953;

• the list of exclusions in section 8WA of the TAA 1953 from which tax file numbers cannot be requested to also exclude tax file numbers quoted for the purposes of payments under the Coronavirus payment framework;

• the index of tax-related liabilities under other Acts administered by the Commissioner in subsection 250-10(2) to Schedule 1 to the TAA 1953 to include wrong or overpaid amounts received under the Coronavirus payment framework; and

• the Social Security Act and the Veterans’ Entitlement Act 1986 to exclude payments received under the Coronavirus payment framework from the income testing arrangements under those Acts (where the rules specify that those types of payments are excluded) – this ensures that the relevant payments made under the framework do not count as income for the purposes of income tests under those Acts.

[Schedule 2, items 1 to 14, paragraph 202(sa) of the ITAA 1936, sections 11-15, 11-55, 53-25 and 59-95 of the ITAA 1997, paragraph 8(8)(zu) of the Social Security Act, item 19B of the table in subsection 8AAB(4), sections 8AAZA and 8AAZAA, and paragraphs 8WA(1A)(b) and 8WBA(1A)(a) and (b) of the TAA 1953, item 143 of the table in subsection 250-10(2) in Schedule 1 to the TAA 1953 and paragraph 5H8(zzd) of the Veterans’ Entitlements Act 1986]

2.82 Schedule 2 to this Bill also makes minor amendments to the Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020 to:

• ensure that the payments under that Act are available to businesses and non-profit entities operating in the external territories; and

• allow the Commissioner to provide further time for an entity to first hold an ABN if it does not hold one on 12 March 2020.

[Schedule 2, items 22 to 26, sections 2A, 5 and 6 of the Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020]
2.83 This discretion is only able to be exercised by the Commissioner for unintended situations where the entity was running an active business prior to 12 March 2020 but was not required to have an ABN to operate it.

2.84 This will occur only in limited circumstances, such as for businesses that are conducted in the external Territories. Businesses that only operate in the external Territories are not required to have an ABN as GST does not apply within the external Territories. In order to be eligible for the business boost payment these businesses will need to obtain an ABN. However as they are unlikely to hold an ABN on 12 March 2020, this provision provides the Commissioner with a limited discretion to allow these businesses to hold an ABN later, and still be entitled to the business boost payment. It is envisaged that the Commissioner will release guidance outlined the limited circumstances that this discretion is able to be used.

2.85 This amendment is retrospective but is entirely beneficial to affected entities. It enables the Commissioner to allow for a later time for these entities to obtain an ABN. This can allow relevant entities to become entitled to benefits under the Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020.

**Modifications of information management provisions in social security law**

2.86 Schedule 2 to this Bill also makes a minor amendment to item 40A of the Coronavirus Omnibus Act to specify that the Minister referred to in these provisions is the Minister for Families and Social Services. This amendment is purely for avoidance of doubt. The context of this provision has always made it clear that the Minister referred to was the Minister for Families and Social Services. However, this amendment has been made to ensure that the clearer drafting approach adopted in other contexts did not make the past approach confusing. Similarly, the amendment applies retrospectively so this drafting clarification does not itself create doubt.

**Summary**

2.87 Schedule 2 to this Bill provides a power for the Minister for Families and Social Services to determine modifications to Part 5 of the SSAA. The modifications to the SSAA must be in connection with payments under the Payments and Benefits Bill, including applications for such payments.

2.88 A determination made under the power included in Schedule 7 to this Bill may be necessary to ensure that information is able to be provided by the Australian Taxation Office to Services Australia in connection with payments under the Payments and Benefits Bill,
including applications for such payments. This flexibility is particularly important as the data sharing arrangements between the Australian Taxation Office and Services Australia for payments under the Payments and Benefits Bill have not yet been finalised.

**Detailed amendment**

2.89 The term *Social Services Minister* is defined. Under the current Administrative Arrangements Order, the Social Services Minister is the Minister for Families and Social Services.

2.90 A power is conferred on the Social Services Minister to make a determination that modifies and provision in Part 5 of the SSAA. Part 5 of the SSAA relates to information management. This Part of the SSAA includes provisions relating to the collection, use, recording and disclosure of information, including provisions requiring that information be provided in certain circumstances. Section 2B of the Acts Interpretation Act 1901 provides that the word *modifies* includes additions, omissions and substitutions.

2.91 A determination may only be made in connection with payments under the Payments and Benefits Bill, including applications for such payments.

2.92 In addition, the Social Services Minister may only make a determination if the Minister is satisfied that that the determination is in response to circumstances relating to the Coronavirus.

2.93 It is intended that a circumstance where the Social Services Minister may make a determination is to permit the Australian Taxation Office to provide information to Services Australia about payments under the Payments and Benefits Bill, to facilitate the efficient assessment of claims for social services payments by Services Australia.

2.94 A determination is a legislative instrument that is subject to disallowance.

2.95 The Social Services Minister’s power to make determinations is temporary in nature. The power to make determinations will be repealed at the end of 31 December 2020. Any determinations made by the Minister will cease to have any effect after 31 December 2020.

**Paid parental leave amendments**

**Summary**

2.96 Schedule 2 to this Bill also amends the PPL Act to provide that a person in receipt of the JobKeeper Payment will be considered to be
performing qualifying work for the purpose of the paid parental leave work test. This will mean that the period the person receives the JobKeeper Payment will count toward the paid parental leave work test.

2.97 As a result of the Coronavirus, many people who would otherwise have qualified for paid parental leave may no longer meet the requirements of the work test. For example, where a person has been stood down, had their hours of work reduced or ceased work entirely.

2.98 Eligibility for paid parental leave is provided for in Division 3 of Part 2-3 of the PPL Act. To be eligible for paid parental leave, a person must meet all of the following:

- satisfy the work, income and residency tests;
- be the primary carer of the child,
- not return to work until the end of the 18 week paid parental leave period (or if they do, relinquish any remaining entitlement to parental leave pay); and
- not be subject to the Newly Arrived Residents Waiting Period.

2.99 The work test requires that the person:

- perform qualifying work for at least 10 of the 13 months prior to the expected birth date of the child;
- work at least 330 hours during those 10 months; and
- not have a gap in work days of more than 12 weeks.

2.100 Qualifying work involves a person performing at least one hour of paid work on a day or using at least one hour of paid leave of a day. Currently, unpaid leave and being stood down from work would not be considered qualifying work and the person would not satisfy the work test as a result of the impact of the Coronavirus on the economy.

2.101 The amendments to the PPL Act contained in Schedule 2 to this Bill will enable a person or an employer of the person who is entitled to one or more Coronavirus economic response payments for the person for a period, to be considered to be performing qualifying work for the purposes of the paid parental leave work test.

2.102 The amendments also provide for matters pertaining to hours of qualifying work and similar matters to be addressed in the PPL Rules.

Detailed explanation

2.103 Schedule 2 to this Bill amends section 6 of the PPL Act to insert definitions for JobKeeper payment and JobKeeper payment period
referring to new subsections 34(4) and 34(3) respectively, which provide the detailed definitions. [Schedule 2, item 15, section 6 of the PPL Act]

2.104 It also amends the guide to Part 2-3 of the PPL Act, dealing with eligibility for paid parental leave. The amendment includes the words ‘Any JobKeeper payment period for the person may also be taken into account’ after the existing words ‘subsequent child’. This amendment is made to the paragraph of the guide beginning with ‘Division 3’ which explains the paid parental leave work test. [Schedule 2, item 16, section 30 of the PPL Act]

2.105 Note 3 to section 32 of the PPL Act is amended to insert the words ‘and does not also perform qualifying work on that day because of paragraph (e) of that definition,’ after ‘subsection 34(1)’. [Schedule, item 17, note 3 to section 32 of the PPL Act]

2.106 Further, a fourth note is added at the end of the method statement in section 32 of the PPL Act to provide where a person performs qualifying work on a day as a result of receiving the JobKeeper Payment, the hours of qualifying work can be worked out with reference to section 35B of the PPL Act. New section 35B of the PPL Act provides for this to be dealt with via the PPL Rules. More details on the new section 35B of the PPL Act are provided below. [Schedule 2, item 18, note 4 to section 32 of the PPL Act]

2.107 Schedule 2 of this Bill inserts a new paragraph 34(1)(e) to provide that a person will perform qualifying work on a day if the day is in a JobKeeper payment period for the person. [Schedule 2, item 19, paragraph 34(1)(e) of the PPL Act]

2.108 A further amendment is made to add new subsections 34(3) and 34(4) to the PPL Act. [Schedule 2, item 20, subsections 34(3) and (4) to the PPL Act]

2.109 New subsection 34(3) of the PPL Act defines *jobseeker payment period* for a person to be a period for which:

- an employer of the person is entitled to one or more JobKeeper Payments (not concurrently) for the person; or
- the person themselves is entitled to one or more JobKeeper Payments.

2.110 New subsection 34(4) of the PPL Act defines *JobKeeper payment* as a payment that is payable by the Commonwealth in accordance with rules made under the Payments and Benefits Bill and is known as the JobKeeper Payment.

2.111 Schedule 2 to this Bill also inserts new section 35B into the PPL Act to provide for working out the hours of qualifying work that a person has performed on a day if that day is in a JobKeeper payment
period. New section 35B is made for the purposes of step 5 of the method statement contained in section 32 of the PPL Act.

[Schedule 2, item 21, section 35B of the PPL Act]

2.112 Step 5 of the method statement in section 32 of the PPL Act requires the person to have performed at least 330 hours of qualifying work during 10 of the 13 months preceding their paid parental leave claim to satisfy the work test.

2.113 Subsection 35B(1) of the PPL Act provides for the calculation of the number of hours for the work test, for a person who does not perform paid work or take paid leave in a JobKeeper payment period is to be worked out in accordance with the PPL Rules.

2.114 The PPL Rules are made under section 298 of the PPL Act and are a legislative instrument. Section 298 of the PPL Act enables the Minister for Families and Social Services to make rules providing for matters necessary or convenient to give effect to the relevant Act. This extends to the calculations of hours in relation to the work test.

2.115 The PPL Rules already provide for matters pertaining to the work test. For example, Division 2.3.2 sets the parameters of what is considered to be paid leave and paid work for the purposes of the work test.

2.116 Subsection 35B(2) of the PPL Act provides that new subsection 35B(1) of the PPL Act has effect:

- even if the person also performs qualifying work on that day due to paragraphs 34(1)(a), (b), (c) or (d); and
- despite section 35A of the PPL Act.

Application and transitional provisions

2.117 The Payments and Benefits Bill commences immediately after the commencement of Part 1 of Schedule 1 to this Bill. [Clause 2 of the Payments and Benefits Bill]

2.118 Payments may only be made under this framework from the day of commencement and in relation to the period from 1 March 2020 to 31 December 2020 (inclusive). This ensures that the payment framework is only in place for a temporary period when needed to provide financial support concerning the Coronavirus.

2.119 Parts 1, 2 and 3 of Schedule 2 to this Bill (that is, all of the amendments other than the modifications of provisions relating to the social security law in Part 4 of Schedule 2 to this Bill) commence at the same time as the Payments and Benefits Bill. [Clause 2 of this Bill]
2.120 The amendments to the Coronavirus Omnibus Act made by Part 4 of Schedule 2 to this Bill commence immediately after the commencement of Schedule 11 to that Act. [Clause 2 of this Bill]

2.121 The other amendments made by Part 4 of Schedule 2 to this Bill commence on the day after the day on which this Bill receives the Royal Assent. [Clause 2 of this Bill]
Chapter 3
Guarantee of lending to small and medium enterprises

Outline and context of chapter

3.1 Schedule 3 to this Bill makes technical amendments to the Guarantee of Lending Act. The amendments ensure that certain categories of smaller non-ADI lenders will fall within the definition of financial institution in that Act.

3.2 The Guarantee of Lending Act gives effect to the Government’s commitment to enter into risk-sharing agreements with financial institutions to ensure that credit continues to flow to SMEs so that SMEs can continue to meet their immediate financing needs during uncertain economic conditions caused by the Coronavirus. The Guarantee of Lending Act commenced on 25 March 2020.

Summary of new law

3.3 The amendments made by Schedule 3 to this Bill provide that exclusions in the Financial Sector (Collection of Data) Act 2001 of certain corporations from the meaning of registrable corporation, which are relevant in determining who is a non-ADI lender, are disregarded for the purposes of the definition of financial institution in the Guarantee of Lending Act.

Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th>New law</th>
<th>Current law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certain non-ADI lenders fall within the definition of financial institution in the Guarantee of Lending Act.</td>
<td>Certain non-ADI lenders do not fall within the definition of financial institution in the Guarantee of Lending Act.</td>
</tr>
</tbody>
</table>
Detailed explanation of new law

3.4 Schedule 3 to this Bill makes amendments to the Guarantee of Lending Act to clarify that paragraphs 7(2)(i), 7(2)(ia) and 7(2)(j) of the Financial Sector (Collection of Data) Act 2001 are disregarded for the purposes of paragraph (b) of the definition of financial institution in section 4 of the Guarantee of Lending Act.

[Schedule 3, item 1, section 4A of the Guarantee of Lending Act]

3.5 The amendments allow corporations that are excluded from the definition of registrable corporation by paragraphs 7(2)(i), 7(2)(ia) and 7(2)(j) of the Financial Sector (Collection of Data) Act 2001 to be eligible for a guarantee under the Guarantee of Lending Act. These include corporations that:

- do not meet the monetary thresholds in subsection 7(2A) of the Financial Sector (Collection of Data) Act 2001;
- are covered by paragraph 7(2)(ia) of that Act – that is, corporations that are specified in a determination under subsection (2F), or is in a class of corporations specified in a determination under subsection (2F); or
- are covered by paragraph 7(2)(j) of that Act – that is, corporations that are covered by an order given by the Australian Prudential Regulation Authority.

Application and transitional provisions

3.6 Schedule 3 to this Bill will commence on the day after the day on which this Bill receives Royal Assent.
Chapter 4
Amendments to support the child care sector

Outline of chapter

4.1 Schedule 4 to this Bill amends the Family Assistance Administration Act to:
   • modify the calculation method used for Child Care Subsidy reconciliation to ensure a consistent outcome for individuals who have changed their relationship status during the financial year; and
   • meet various circumstances of social and financial hardship being experienced by the child care sector and families, arising from emergency and disaster events including the Coronavirus by ensuring that payments of Additional Child Care Subsidy and certain grants can draw upon standing appropriations.

4.2 The amendments also require that the Minister make rules which prescribe the total amount that can be paid in a financial year.

Context of amendments

4.3 Part 1 of Schedule 4 to this Bill make amendments to modify the calculation method used for Child Care Subsidy Reconciliation to better reflect an individual’s income capacity when the person is partnered for part of the year.

4.4 This provides a fairer more consistent outcome and assists families who are already struggling due to the financial impacts of the Coronavirus.

4.5 The amendments also ensure that payments of Additional Child Care Subsidy and certain grants that are prescribed in the Child Care Subsidy Minister’s Rules can draw upon the standing appropriation under the Family Assistance Law.

4.6 This ensures that such payments are able to meet increased sector need and can provide much needed additional financial assistance for the child care sector during times of emergency and disaster, such as during the Coronavirus.
Summary of new law

4.7 The Family Assistance Administration Act is amended to modify how child care subsidy entitlements are reviewed when:

- an individual is a member of a couple for some but not all of the Child Care Subsidy fortights in an income year; and
- that individual meets the Child Care Subsidy reconciliation conditions.

4.8 The Family Assistance Administration Act is also amended to ensure that payments of Additional Child Care Subsidy and funding agreements for certain grant programs (as prescribed by the Child Care Subsidy Minister’s Rules) occur under the existing standing appropriation for payments made under Family Assistance Law.

4.9 New provisions inserted into the Family Assistance Administration Act require the Child Care Subsidy Minister’s Rules to prescribe the total amount of funding that may be allocated for each of the grants programs that are prescribed in the Child Care Subsidy Minister’s Rules.

Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th>New law</th>
<th>Current law</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Child Care Subsidy reconciliation calculation is modified for individuals that have a partner for only part of the financial year.</td>
<td>No equivalent</td>
</tr>
<tr>
<td>Payments of Additional Child Care Subsidy and grants prescribed in the Child Care Subsidy Minister’s Rules can draw upon the standing appropriation in Family Assistance Law and require a total cap be prescribed in those rules for any grants.</td>
<td>No equivalent</td>
</tr>
</tbody>
</table>
Detailed explanation of new law

Amendments relating to the treatment of part year partner income in reviewing an individual’s Child Care Subsidy entitlements

4.10 Currently a Child Care Subsidy claimant’s entitlement to Child Care Subsidy is calculated using the methodology in Schedules 2 and 3 of the Family Assistance Act.

4.11 An individual’s adjusted taxable income is one of the inputs used to calculate the individual’s entitlement to Child Care Subsidy. During the year, an individual provides estimates of his or her adjusted taxable income (where it is not known) and, on this basis, the individual’s estimated Child Care Subsidy entitlement is paid throughout the year.

4.12 Child Care Subsidy reconciliation occurs after the income year, when the individual meets the Child Care Subsidy reconciliation conditions, which in simple terms, is when the individual lodges their income tax return or notifies the relevant Departmental Secretary that they are not required to lodge an income tax return.

4.13 At that point, the relevant Departmental Secretary reviews all entitlement determinations made throughout the year in respect of that individual, using the person’s actual adjusted taxable income (and other information relevant to the individual’s entitlement), and remakes all entitlement determinations. This can result in individuals owing a debt or being paid more Child Care Subsidy (See sections 103A – 103C and 105E of the Family Assistance Administration Act).

4.14 Currently, as set out in clause 3AA(2)(b) of Schedule 3 to the Family Assistance Administration Act, the adjusted taxable income of an individual with a part year partner is determined by:

- calculating a percentage of the partner’s income for the year that corresponds to the period of time the couple was together; and

- adding that to the individual’s own adjusted taxable income.

4.15 This methodology has had unfair consequences for individuals in the annual cap result and applicable percentage result that is reached for these individuals throughout the year, resulting in some cases where these individuals owe debts at Child Care Subsidy reconciliation. The concepts of annual cap and applicable percentage are explained below.

4.16 The annual cap (currently $10,373) applies to an individual for an income year if their adjusted taxable income for the income year exceeds the annual cap income threshold (currently $188,163).
4.17 Where the individual’s adjusted taxable income exceeds the annual cap income threshold (that is where the annual cap applies to the individual), the individual can only be paid up to the Child Care Subsidy annual cap amount in an income year. Any amounts in excess of the annual cap are recovered as debts at Child Care Subsidy reconciliation.

4.18 Where the individual’s adjusted taxable income is below the annual cap income threshold (that is where the annual cap does not apply to the individual), there is no upper limit of Child Care Subsidy that can be paid to the individual in an income year.

4.19 An individual’s applicable percentage is an input used in determining the hourly rate of Child Care Subsidy the person is entitled to for a session of care. An individual’s applicable percentage will generally be either 0 per cent, 20 per cent, 50 per cent or 85 per cent determined by reference to the individual’s adjusted taxable income. The higher the individual’s adjusted taxable income, the lower their applicable percentage.

4.20 The hourly rate of Child Care Subsidy the individual is entitled to for a session of care is the lower of the two amounts, when the individual’s applicable percentage is applied to:

- the hourly session fee for the individual (as set by the child care provider); or
- the Child Care Subsidy hourly rate cap for the session (a legislated limit set out in clause 2 of Schedule 2 to the Family Assistance Act).

4.21 This means that an individual’s adjusted taxable income for the income year is artificially inflated on account of the current calculation of their adjusted taxable income when they have a part year partner. As a result, the annual cap may apply to them when it should not have and they may have received a lower hourly rate of Child Care Subsidy.

4.22 The amendments made by Schedule 4 to this Bill to section 105E of the Family Assistance Administration Act have the following effect:

- The annual cap will not apply to Child Care Subsidy fortnights where the individual was single and their actual personal adjusted taxable income was under the annual cap income threshold.

- This applies regardless of:
  - when in the year the individual was single and their adjusted taxable income was under the annual cap income threshold;
Amendments to support the child care sector

– whether the annual cap income threshold applied to other Child Care Subsidy fortnights in the year; or
– whether the annual cap was reached in those fortnights where the individual’s adjusted taxable income when combined with their part year partner’s adjusted taxable income (combined adjusted taxable income) exceeded the annual cap income threshold.

• The annual cap will apply to Child Care Subsidy fortnights where the individual’s actual personal, or combined adjusted taxable income, exceeds the annual cap income threshold.

• When during Child Care Subsidy fortnights where the annual cap applied an individual is paid up to the annual cap amount, no more Child Care Subsidy is payable to them:
  – for the remainder of that period; or
  – during any subsequent periods that the individual’s personal or combined adjusted taxable income exceeds the annual cap income threshold.

4.23 For the purpose of determining the individual’s applicable percentage, their adjusted taxable income will also be considered across Child Care Subsidy fortnights, depending on whether or not the individual was single or in a relationship with a part year partner.

4.24 New subsections 105E(4) to (7) of the Family Assistance Administration Act provide for fairer outcomes at Child Care Subsidy reconciliation for individuals with part year partners.

4.25 For the purposes of the new subsections, whether or not the individual was a member of a couple in a Child Care Subsidy fortnight is determined based on whether the individual was a member of a couple on the first Monday in the Child Care Subsidy fortnight.

4.26 New subsection 105E(4) of the Family Assistance Administration Act provides that if an individual is a member of a couple on one or more, but not all, of the first Mondays in Child Care Subsidy fortnights that start in an income year then, when reviewing child care decisions about the individual under subsection 105E(1) to (3) of the Family Assistance Administration Act, the Secretary must review those decisions in accordance with new subsections 105E(5) and (6) of the Family Assistance Administration Act.

4.27 Part 1 of Schedule 2 to the Family Assistance Act sets out the methodology for determining the amounts of Child Care Subsidy an individual is entitled to for a session of care provided in a week.
4.28 New subsection 105E(5) of the Family Assistance Administration Act provides that the relevant Departmental Secretary must apply Part 1 of Schedule 2 to the Family Assistance Act to an individual with a part year partner, for each Child Care Subsidy fortnight that starts in an income year, as if paragraph 3AA(2)(b) of Schedule 3 to the Family Assistance Act had not been enacted.

4.29 Paragraph 3AA(2)(b) of Schedule 3 to the Family Assistance Act provides that the adjusted taxable income of an individual with a part year partner is determined by calculating a percentage of the partner’s income for the year that corresponds to the period of time the couple was together, and adding that to the individual’s own adjusted taxable income.

4.30 The effect of applying Part 1 of Schedule 2 to the Family Assistance Act to an individual with a part year partner as if paragraph 3AA(2)(b) of Schedule 3 to that Act had not been enacted is that for the purpose of calculating the individual’s adjusted taxable income for the income year:

- in those Child Care Subsidy fortnights that the individual was single, only their own personal adjusted taxable income counts towards their adjusted taxable income for the income year; and
- as per new subparagraph 105E(6)(a) of the Family Assistance Administration Act, in those Child Care Subsidy fortnights where the individual was a member of the couple with the part year partner, the individual’s adjusted taxable income for the year includes both their own adjusted taxable income as well as the other member of the couple’s adjusted taxable income for the income year.

4.31 The individual’s adjusted taxable income will be used to determine whether the annual cap applies to the individual in each Child Care Subsidy fortnight and the individual’s applicable percentage.

4.32 Subsection 105E(6) of the Family Assistance Administration Act amends paragraph 1(3)(b) of Schedule 2 to the Family Assistance Act, with the amendments applying in those Child Care Subsidy fortnights that start in an income year where the individual had a part year partner. It has the effect that, for those Child Care Subsidy fortnights where the annual cap applies to the individual, the annual cap is reached for a child for an income year if the following amounts together equal the annual cap:

- the amount of Child Care Subsidy the individual is entitled to be paid for sessions of care provided to the child in Child Care Subsidy fortnights starting in the income year; and
• the amount of Child Care Subsidy the other member of the
couple is entitled to be paid for sessions of care provided to
the same child in those fortnights.

4.33 The intention of subclause 1(3) of Schedule 2 to the Family
Assistance Act is to avoid couples ‘double dipping’ and switching who is
the Child Care Subsidy claimant in respect of the child in order to
circumvent the annual cap limit. The amendment ensures that this
provision continues to apply to individuals with part year partners, as
appropriate.

4.34 New subsection 105E(7) of the Family Assistance
Administration Act states that subsections 105E(5) and 105E(6) of the
Family Assistance Administration Act have effect despite Part 1 of
Schedule 2 to the Family Assistance Act. This is to ensure that these
subsections have effect when the relevant Departmental Secretary reviews
entitlement decisions of individuals with part year partners at Child Care
Subsidy reconciliation.

4.35 For the avoidance of doubt, the effect of the amendments is that,
at Child Care Subsidy reconciliation, for individuals with part year
partners:

• paragraph 3AA(2)(b) of Schedule 3 to the Family Assistance
Act is taken to not have been enacted; and

• when determining the amounts of Child Care Subsidy the
individual was entitled to:
  – for the Child Care Subsidy fortnights the individual was a
    member of the couple – Part 1 of Schedule 2 to the Family
    Assistance Act applies subject to the few amendments in
    subsection 105E(6) of the Family Assistance
    Administration Act; and
  – for the Child Care Subsidy fortnights the individual was
    single – Part 1 of Schedule 2 to the Family Assistance Act
    continues to apply unamended.

Amendments relating to Additional Child Care Subsidy and funding
agreement appropriations

4.36 Subsection 233(2) of the Family Assistance Administration Act
is amended to ensure that payments of Additional Child Care Subsidy and
funding agreements for certain grant programs (as prescribed by the
Child Care Subsidy Minister’s Rules) occur under the existing standing
appropriation for payments made under Family Assistance Law (pursuant
to subsection 233(1) of the Family Assistance Administration Act).
4.37 The amendments enable Additional Child Care Subsidy to be fully demand-driven and to ensure there is sufficient funding to meet the various circumstances of social and financial hardship being experienced by families arising from the Coronavirus.

4.38 The amendments also enable relevant grant programs which are designed to support child care services experiencing hardship in various circumstances to have access to sufficient funding to support the child care sector during the Coronavirus.

4.39 In particular, it is envisaged that the amendment will enable the Community Child Care Fund – Special Circumstances grant program to meet increased demand from child care services during the Coronavirus.

4.40 The Community Child Care Fund – Special Circumstances grant program will be prescribed in the Child Care Subsidy Minister’s Rules as soon as possible after the amendments receive Royal Assent.

4.41 Notwithstanding these amendments, a child care service’s eligibility to access Community Child Care Fund – Special Circumstances funding will continue to be set out in the program guidelines which are updated from time to time and publicly available on the Department of Education, Skills and Employment’s website.

**Requirement to prescribe total amount of money that may be paid for grants programs under a standing appropriation**

4.42 New subsection 233(3) in the Family Assistance Administration Act requires the Child Care Subsidy Minister’s Rules to prescribe the total amount of funding appropriated under subsection 233(1) of the Family Assistance Administration Act that may be allocated for each grants program that is prescribed in the Child Care Subsidy Minister’s Rules for the purposes of subsection 233(2) of the Family Assistance Administration Act.

4.43 New subsection 233(4) of the Family Assistance Administration Act requires that the amount referred to in subsection 233(3) of that Act must be prescribed before the start of the relevant financial year, but may be varied at any time before the financial year ends.

4.44 New subsection 233(5) of the Family Assistance Administration Act provides the Minister with the discretion to further prescribe total standing appropriation funding limits for specific grants programs that are prescribed in the Child Care Subsidy Minister’s Rules. This is intended to ensure that the allocation of funding for certain grants programs may be appropriately capped in accordance with Budget decisions.
4.45 This is an accountability measure intended to ensure that decisions on annual funding amounts for prescribed grants programs established under section 85GA of the Family Assistance Act may continue to be subject to Parliamentary scrutiny (through its inclusion in a legislative instrument).

4.46 These amendments do not commence until 1 July 2020. This means that the Child Care Subsidy Minister’s Rules will be required to begin annually prescribing a cap for the total of all grants to be paid under the standing appropriation in subsection 233(1) of the Family Assistance Administration Act from the start of the 2020-21 financial year onwards.

Application and transitional provisions

4.47 Subitem 2(1) states that the amendments made by item 1 to Schedule 4 to this Bill apply to reviews, at Child Care Subsidy reconciliation, of child care decisions made for sessions of care provided in Child Care Subsidy fortnights starting in the 2019-2020 income year, and in later income years.

4.48 This enables the fairer amended entitlement methodology to be applied for Child Care Subsidy payable for sessions of care provided in the 2019-2020 income year and thereafter.

4.49 Subitem 2(2) states that the amendment made by item 1 Schedule 4 to this Bill has no effect to the extent (if any) to which it would:

• result in an acquisition of property (within the meaning of paragraph 51 (xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph); or

• impose taxation (within the meaning of section 55 of the Constitution).

4.50 These Constitutional application provisions are included as a precautionary measure, in case they may be needed.

4.51 Item 5 to Schedule 4 to this Bill is a transitional provision which provides that paragraph 233(5)(a) of the Family Assistance Administration Act applies in relation to a financial year beginning on or after 1 July 2020.
Chapter 5
Modification of information and other requirements

Outline of chapter

5.1 Schedule 5 to this Bill provides a temporary mechanism for responsible Ministers to change arrangements for meeting information and documentary requirements under Commonwealth legislation in response to the challenges posed by the Coronavirus.

Context of amendments

5.2 The social distancing measures and the restrictions on movement and gatherings introduced in response to the Coronavirus are expected to cause difficulties with meeting information and documentary requirements under Commonwealth legislation.

5.3 In recognition of the importance of continued business transactions and government service delivery during the Coronavirus, this measure provides flexibility to temporarily adjust legal obligations and provide certainty about the appropriate ways to meet information and documentary requirements.

Summary of new law

5.4 Schedule 5 to this Bill allows the responsible Minister for an Act or legislative instrument that requires or permits certain matters (including the giving of information and the signature, production and witnessing of documents) to temporarily alter or adjust these requirements or permissions in response to circumstances relating to the Coronavirus.

5.5 A determination under this mechanism may apply retrospectively. However, a determination will be beneficial to individuals and business by retrospectively validating approaches to providing information or meeting documentary and witnessing requirements that may otherwise have been invalid.

5.6 This mechanism is necessary to respond flexibly to the unprecedented challenges of the Coronavirus, particularly the challenges posed by social distancing measures.
5.7 The mechanism is temporary and will cease to have effect after 31 December 2020.

Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th>New law</th>
<th>Current law</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Minister responsible for an Act or legislative instrument that requires or permits certain matters relating to information and documentation may determine that different arrangements apply in response to the Coronavirus.</td>
<td>No equivalent.</td>
</tr>
</tbody>
</table>

Detailed explanation of new law

5.8 Item 1 applies in relation to a provision of an Act or legislative instrument (known as an affected provision) that requires or permits any of the following matters (known as relevant matters):

- the giving of information in writing;
- the signature of a person;
- the production of a document by a person;
- the recording of information;
- the retention of documents or information;
- the witnessing of signatures;
- the certification of matters by witnesses;
- the verification of the identity of witnesses; and
- the attestation of documents.

[Schedule 5, item 1]

5.9 The responsible Minister for an affected provision may determine by legislative instrument that, for a specified time period:

- the affected provision is varied or does not apply; or
- another provision specified in the determination applies.

[Schedule 5, subitem 1(2)]

5.10 A determination must only alter the application of the affected provision to the extent it relates to any of the relevant matters outlined above. [Schedule 5, subitem 1(2)]
5.11 The time period specified in a determination can be a period that starts before Schedule 5 to this Bill commences. Applying the determination retrospectively will be beneficial to individuals and business as it will retrospectively validate approaches to providing information or meeting documentary and witnessing requirements that may otherwise have been invalid. [Schedule 5, subitem 1(3)]

5.12 The responsible Minister must not make a determination unless they are satisfied that the determination is in response to circumstances relating to the Coronavirus. [Schedule 5, subitem 1(4)]

5.13 A responsible Minister is defined as:

- any Minister who administers the Act which is being varied;
- or
- if the affected provision is a provision of a legislative instrument – any Minister who administers the enabling legislation under which a legislative instrument is made. [Schedule 5, subitem 1(5)]

5.14 A determination made by a responsible Minister has effect accordingly and will not operate after 31 December 2020. Likewise, the instrument-making power is intended to be temporary. The provisions inserted by Schedule 5 to this Bill will be repealed at the end of 31 December 2020. [Schedule 5, subitems 1(6), (7) and (8)]

**Application and transitional provisions**

5.15 Schedule 5 to this Bill will commence on the day after the day on which this Bill receives Royal Assent. Determinations made under the powers provided for by Schedule 5 to this Bill can apply retrospectively.

5.16 The provisions inserted by Schedule 5 to this Bill will be repealed at the end of 31 December 2020. Any determination made under the new mechanism will also cease to operate after 31 December 2020.
Chapter 6
Additional support for veterans

Outline of chapter

6.1 Schedule 6 to this Bill allows the Veterans’ Minister to:

• Increase, by legislative instrument, the amount paid to persons receiving a payment under a provision of the Veterans’ Law by the amount of the COVID-19 supplement; and

• vary the qualifications and eligibility for payments under the Veterans’ Law by legislative instrument.

6.2 These instruments may only be made after consultation with the Social Services Minister. Both the powers and any instruments made using them will end on 31 December 2020.

Context of amendments

6.3 Any additional payments would form part of the Government’s commitment to provide financial assistance to those who are financially impacted by the Coronavirus.

Summary of new law

6.4 Schedule 6 to this Bill provides powers to the Veterans’ Minister to increase, by legislative instrument, the amount paid to a person receiving a payment under a provision of the Veterans’ Law by the amount of the COVID-19 supplement specified in the legislative instrument.

6.5 It also provides the Veterans’ Minister with the power to vary the qualifications and payments under the Veterans’ Law by legislative instrument. These determinations may only be made after consultation with the Social Services Minister.

6.6 The powers and any determinations made using them will end on 31 December 2020.
Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th><strong>New law</strong></th>
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</tr>
</thead>
<tbody>
<tr>
<td>The Veterans’ Minister may increase payments to veterans and their dependents by legislative instrument by the amount of the COVID-19 supplement.</td>
<td>No equivalent</td>
</tr>
<tr>
<td>The Veterans’ Minister may amend qualification or eligibility requirements for payments to veterans and their dependents by legislative instrument in response to the Coronavirus.</td>
<td>No equivalent</td>
</tr>
</tbody>
</table>

Detailed explanation of new law

6.7 Item 1 of Schedule 6 to this Bill sets out definitions used within Schedule 6. The defined terms are: Social Services Minister, veterans’ law and Veterans’ Minister. The definition of veterans’ law is intended to encompass all primary legislation under which benefits or assistance are paid to veterans and their dependents. [Schedule 6, item 1]

6.8 Payments to certain veterans and their dependents may be increased by the amount of the COVID-19 supplement. The payment of the COVID-19 supplement (currently $550 per fortnight) is extended to social services recipients receiving:

- JobSeeker Payment (formerly known as Newstart Allowance);
- Youth Allowance;
- Sickness Allowance;
- ABSTUDY (Living Allowance);
- Austudy;
- Parenting Payment;
- Partner Allowance;
- Widow Allowance;
- Farm Household Allowance; or
- Special Benefit.

[Schedule 6, item 2]
6.9 These people receive this additional payment either through amendments contained in Part 1 of Schedule 11 to the Coronavirus Omnibus Act or through one of the determinations made by the Social Services Minister made under section 1210B of the Social Security Act. These Determinations include:

- the Social Security (Coronavirus Economic Response – 2020 Measures No. 1) Determination 2020; and

6.10 The Veterans’ Minister receives powers similar to those of the Social Services Minister under section 1210B of the Social Security Act. The principal difference is the requirement for the Veterans’ Minister to consult with the Social Services Minister prior to increasing payments. [Schedule 6, subitem 2(3)]

6.11 If a veteran or dependent is receiving a pension, an income support supplement, a payment, compensation, an allowance, or any other pecuniary benefit under the Veterans’ Law that person’s payment will be increased by the rate of the COVID-19 supplement determined in an instrument for the period specified in the instrument. [Schedule 6, subitem 2(1)]

6.12 In making a legislative instrument determining the kind of payment, the rate of the COVID-19 supplement and the period for which the payment will be increased, the Veterans’ Minister (like the Social Services Minister under subsection 1210B(2) of the Social Security Act) must be satisfied that the determination is in response to the circumstances relating to the Coronavirus. [Schedule 6, subitem 2(2)]

6.13 It is intended that these powers would only be exercised by the Veterans’ Minister where the Social Services Minister had extended, or was intending to extend, payments of the COVID-19 supplement to an equivalent group of social security recipients. For this reason, the Veterans’ Minister must consult with the Social Services Minister prior to exercising these powers. [Schedule 6, subitem 2(3)]

6.14 Item 2 of Schedule 6 to this Bill ceases to apply at the end of the period covered by subsection 646(2) of the Social Security Act. This period is six months from 25 March 2020, unless the period is extended. [Schedule 6, subitem 2(4)]

6.15 Item 3 of Schedule 6 to this Bill provides the Veterans’ Minister with the flexibility and legislative instrument-making power to deal with necessary amendments to the qualifications and payments under the Veterans’ Law. [Schedule 6, item 3]
6.16 The Veterans’ Minister receives powers similar to those of the Social Services Minister under Item 40A of Schedule 11 to the Coronavirus Omnibus Act. The principal difference is the requirement for the Veterans’ Minister to consult with the Social Services Minister prior to modifying a qualification or payment. [Schedule 6, item 3]

6.17 This will ensure that payments and assistance for veterans and their dependents can be changed in line with future changes to payments and assistance for equivalent social security recipients. It means the Government can undertake comprehensive measures to address the effects of the Coronavirus without distinction between whether a person receives social security benefits or benefits in recognition of their (or a member of their family’s) military service.

6.18 The amendments allow the Veterans’ Minister to provide, if necessary, additional economic support payments to persons receiving payments or benefits under Veterans’ Law in line with any additional economic support payments to persons receiving payments or benefits under social security legislation.

6.19 The Veterans’ Minister may vary, suspend, or impose provisions of Veterans’ Law relating to the qualification or eligibility for a pension, an income support supplement, a payment, compensation, an allowance, or any other pecuniary benefit under the Veterans’ Law. The Veterans’ Minister may also vary provisions applying to the rate of these payments or specify different payment rates. [Schedule 6, subitem 3(1)]

6.20 The Veterans’ Minister must be satisfied that the use of these powers is in response to the circumstances relating to the Coronavirus. This is the same requirement which applies to the Social Services Minister under subitem 40A(2) of Schedule 11 to the Coronavirus Omnibus Act. [Schedule 6, subitem 3(2)]

6.21 Instruments made under this item have no operation after 31 December 2020. [Schedule 6, subitem 3(5)]

6.22 The power given to the Veterans’ Minister will end when Item 3 of Schedule 6 to this Bill is repealed at the end of 31 December 2020. [Schedule 6, subitem 3(6)]

Application and transitional provisions

6.23 Schedule 6 to this Bill will commence on the day after the day on which this Bill receives Royal Assent.
Chapter 7
Tax secrecy

Outline of chapter

7.1 Schedule 7 to this Bill makes amendments to the tax secrecy provisions in the TAA 1953 to allow de-identified protected information to be disclosed to the Treasury for the purposes of policy development, or analysis, in relation to the Coronavirus, including in relation to any programs introduced in response to the economic impacts of the Coronavirus.

7.2 The amendments allow such disclosures to be made until 30 June 2023.

Context of amendments

7.3 The Coronavirus has required quick, efficient and effective policy responses to deal with its economic impacts. The collating and analysing of available information to monitor economic conditions and inform policy development will be vital as Australia enters into the recovery phase of the pandemic.

7.4 For example, data on the number and types of entities accessing the Government’s recent economic response packages and information on the recovery across regions, industries, firms and households can assist and better inform the Government in determining whether additional policy responses are required or desirable.

7.5 Analysis of past experiences of economic shocks and subsequent recoveries such as the 1990s recession, and other economic phenomenon, may also yield insights that can inform the response to the Coronavirus pandemic.

7.6 The data will also allow analysis of the economic impact of the Government’s response to the Coronavirus.

7.7 In order to support such analyses, the Government has proposed to allow the Commissioner to disclose de-identified information held about the affairs of an entity to the Treasury Secretary for the purposes of policy development or analysis in relation to the Coronavirus, including in relation to any programs introduced in response to the economic impacts of the Coronavirus.
7.8 The ability to make disclosures is time limited to reflect the intention that disclosures will be made for the purposes of policy development, or analysis, in relation to the Coronavirus pandemic, and as Australia recovers from the pandemic.

Summary of new law

7.9 Schedule 7 to this Bill makes amendments to subsection 355-65(8) of Schedule 1 to the TAA 1953 to include an additional purpose for which protected information can be disclosed, and to whom.

7.10 A taxation officer will be permitted to disclose de-identified protected information to the Treasury Secretary for the purposes of policy development, or analysis, in relation to the Coronavirus, including in relation to any programs introduced in response to the economic impacts of the Coronavirus.

7.11 Disclosures can be made until 30 June 2023, after which the law will self-repeal.

Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th>New law</th>
<th>Current law</th>
</tr>
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<tbody>
<tr>
<td>A taxation officer will be permitted to disclose de-identified protected information to the Treasury Secretary for the purposes of policy development, or analysis, in relation to the Coronavirus, including in relation to any programs introduced in response to the economic impacts of the Coronavirus. Such disclosures can be made until 30 June 2023.</td>
<td>No equivalent.</td>
</tr>
</tbody>
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Detailed explanation of new law

7.12 Schedule 7 to this Bill inserts new table item 11 into the table in subsection 355-65(8) of Schedule 1 to the TAA 1953 to include an additional purpose for which protected information can be disclosed. [Schedule 7, item 1, table item 11 of the table in subsection 355-65(8) of Schedule 1 to the TAA 1953]
7.13 Section 355-25 of Schedule 1 to the TAA 1953 makes it an offence for a taxation officer to make a record of, or disclose, protected information. Protected information is generally information that relates to the affairs of an entity and identifies, or is reasonably capable of being used to identify, that entity.

7.14 An exception to the offence is contained in section 355-65 of Schedule 1 to the TAA 1953. That section permits a taxation officer to make a disclosure of protected information if an item in a table in the section covers the making of the disclosure.

7.15 The amendments to the table in subsection 355-65(8) of Schedule 1 to the TAA 1953 will allow de-identified protected information to be disclosed to the Secretary of the Department for the purposes of policy development, or analysis, in relation to the Coronavirus, including for programs introduced in response to the economic impacts of the Coronavirus. Analysis can include economic analysis in relation to the Coronavirus.

7.16 The amendment expands on the existing provisions that allow disclosure of de-identified information to the Secretary of the Department such as for the design and amendment of a taxation law or the purpose estimating or analysing taxation revenue or estimating the cost of policy proposals.

7.17 The Secretary of the Department is the Secretary of the Department of State that is administered by the Minister administering these provisions. Currently, this is the Secretary of the Department of the Treasury.

7.18 A defendant bears the evidential burden in relation to the matters in this exception. The reversal of the burden of proof is consistent with the Attorney-General’s Department’s A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011 edition.

7.19 It is appropriate that the evidential burden be reversed in this situation. Matters relating to the disclosure of protected information and for which purposes (such as what information is being disclosed, whether it is de-identified and for what purpose the disclosure is being made) are peculiarly within the knowledge of the person making the disclosure and can be raised in making their defence. It would be significantly more difficult and costly for the prosecution to disprove these facts.

7.20 The amendment self-repeals after 30 June 2023. Disclosures can only be made under these provisions up until 30 June 2023. This ensures that information can be collated and analysed to inform policy development as Australia enters into the recovery phase of the Coronavirus. [Schedule 7, item 3, table item 11 of the table in subsection 355-65(8) of Schedule 1 to the TAA 1953]
Commencement and application of the amendments

7.21 Part 1 of Schedule 7 to this Bill commences on the day after the Bill receives Royal Assent.

7.22 The amendments made by item 1 of Part 1 of Schedule 7 to this Bill apply to information disclosed on or after the day after this Act receives Royal Assent. [Schedule 7, item 2]

7.23 Part 2 of Schedule 7 to this Bill commences on 1 July 2023.
Chapter 8
Statement of Compatibility with Human Rights

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

Schedule 1 – Amendment of the Fair Work Act 2009

8.1 Schedule 1 to this Bill 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

8.2 Part 1 of Schedule 1 to this Bill inserts new Part 6-4C into the Fair Work Act, which temporarily enables employers to issue JobKeeper enabling directions. These can provide (subject to various safeguards) for increased flexibility around employees’ hours of work via a new JobKeeper enabling stand down direction, performance of duties and location of work. It also enables employers and employees to make agreements for increased flexibility around annual leave arrangements and days and times of work. The FWC will be able to resolve disputes, including by arbitration.

8.3 New Part 6-4C also requires JobKeeper qualifying employers to meet minimum payment obligations to employees who are subject to these arrangements, including by ensuring that at least the value of JobKeeper payments they receive through the Commissioner is passed on to such employees each fortnight, or the amount they would receive for the work they have performed if that would be greater.

8.4 New Part 6-4C also includes rules about accrual of service and calculation of benefits in certain circumstances, and contains rules about its interaction with other laws.

8.5 The amendments made by Part 1 of Schedule 1 to the Bill will enable the greatest number of workplaces in the national workplace relations system to access and make best use of the JobKeeper scheme, with a view to preserving the greatest number of jobs.

8.6 These amendments are time-limited and will automatically be repealed by Part 2 of Schedule 1 on 28 September 2020.
Human rights implications

8.7 Schedule 1 to this Bill engages the following rights:

- the right to work and rights in work including the right to just and favourable conditions of work – Articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights;

- the right of everyone to social security in Article 9, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions in Article 11 of the International Covenant on Economic, Social and Cultural Rights, and

- The criminal process rights contained in Articles 14 and 15 of the International Covenant on Civil and Political Rights.

The right of everyone to social security and an adequate standard of living

8.8 The objective of facilitating the new JobKeeper payment to employees through employers promotes Article 9 and 11 by providing further payment to assist in achieving an adequate standard of living. The pursuit of this objective also promotes human rights by supporting the Convention on the Rights of Persons with Disabilities.

8.9 The measure is compatible with and promotes the right to social security and an adequate standard of living.

Right to work and rights in work

8.10 The measure engages the right to work and rights in work in Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

8.11 Article 6(1) recognises the right to work and obliges States Parties to take appropriate steps to safeguard this right. The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to work in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights encompasses the need to provide the worker with just and favourable conditions of work.

8.12 Article 7 requires that States Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, remuneration that provides all workers with fair wages, a decent living and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
8.13 The measures also support implementation of a range of ILO instruments that Australia has ratified, including the *Unemployment Convention 1919 (No. 2)*, which was adopted with regard to the ‘question of preventing or providing against unemployment’.

8.14 Australia has also ratified the ILO’s *Employment Policy Convention 1964 (No. 122)* (ILO Convention 122) which the ILO considers a ‘priority’ governance convention. The measures support Article 1 of ILO Convention 122:

8.15 With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.

8.16 Part 1 of Schedule 1 will help sustain the viability of Australian businesses during the unprecedented Coronavirus pandemic. It will only apply to employers who are accessing the Government’s JobKeeper scheme, which will assist businesses affected by the Coronavirus pandemic to cover the cost of the wages of their employees and ensure employees receive a minimum payment even if they are working reduced hours. It will enable employers to temporarily alter a range of conditions of employment of their employees, including to direct employees to work reduced or no hours (referred to as a *JobKeeper enabling stand down direction*); to work at different locations, including at home; and to perform a broader or different range of duties. Employers will also be able to request that employees take paid annual leave or perform their duties on different days or at different times, and employees must consider and not unreasonably refuse these requests.

8.17 These amendments are subject to a range of safeguards, including mandatory consultation, agreement by the employee for certain changes and a requirement that directions by the employer must not be unreasonable in all of the circumstances. Furthermore, JobKeeper enabling stand down directions can only be used during periods in which the employee cannot be usefully employed for their normal days or hours because of changes to business attributable to the Coronavirus pandemic or government initiatives to slow the transmission of Coronavirus. Changes can only be made to an employee’s duties where the new duties are safe, including having regard to the nature and spread of Coronavirus, and all existing work health and safety protections continue to apply.

8.18 Part 1 of Schedule 1 creates a dispute resolution mechanism for when employees disagree with this assessment. Failure to comply with an FWC order dealing with a dispute attracts a civil penalty of 60 penalty units for an individual and 300 penalty units for a body corporate. An employer who knowingly purports to give a JobKeeper enabling direction when they are not authorised to do so faces a civil penalty of 600 penalty
units for an individual or 3,000 penalty units for a body corporate. Finally, Fair Work Inspectors will be able to exercise their compliance powers under the Fair Work Act to investigate any suspected contraventions of these provisions.

8.19 The amendments seek to balance the impact on employees by providing that employees who are working reduced hours as a result of a JobKeeper enabling direction have a right to request to engage in reasonable secondary employment or undertake training or professional development. Employers must consider and not unreasonably refuse any such requests. To minimise the impact on employees the amendments provide that employers must ensure that affected employees’ hourly rates of pay are not reduced from their previous level if they are working reduced hours.

8.20 Critically, where an employee is eligible to receive a JobKeeper payment, the employer must ensure the person’s salary is the greater of the JobKeeper payment or the amount that is payable to the employee in relation to the work performed during the fortnight. Employers who fail to comply with these new requirements face civil penalties of 60 penalty units for an individual and 300 penalty units for a body corporate. Finally, the giving of a JobKeeper enabling direction does not amount to a redundancy. This safeguards the ongoing employment relationship that is critical for a person’s eligibility for the JobKeeper payment.

8.21 These amendments engage the right to work and rights in work because they will temporarily supersede arrangements that have been collectively bargained at workplaces. The legitimate objective of these measures is to facilitate ongoing employment and support the Australian economy during the Coronavirus pandemic. These time limited measures are designed to support employers to manage their workplace during the Coronavirus pandemic and maximise employee retention rates.

8.22 These measures are reasonable, necessary and proportionate in the context of the extreme economic impacts of the Coronavirus pandemic. The additional capacity for employers to issue directions relating to duties of work and location of work will not only be time limited but will also only be able to be used where the employer reasonably believes that the JobKeeper enabling direction is necessary to continue the employment of the employee.

8.23 In any event, these powers are temporary and are subject to a range of safeguards such as consultation requirements and the ability of parties to have disputes settled by the FWC. Importantly, this measure is implemented in the context of a new JobKeeper payment, which will subsidise wages during this period to facilitate keeping people in work, and is subject to a number of safeguards designed to minimise the impact on employees.
8.24 The measure is compatible with and promotes the right to work.

**Criminal process rights**

8.25 The Parliamentary Joint Committee on Human Rights Practice Note 2 provides that civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the International Covenant on Civil and Political Rights, regardless of the distinction between criminal and civil penalties in domestic law. When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a criminal penalty for the purposes of International Covenant on Civil and Political Rights.

8.26 Schedule 1 to this Bill creates new civil penalties. The first applies where an employer fails to satisfy jobseeker payment rules in relation to an eligible employee. This attracts a maximum penalty of 60 penalty units for an individual and 300 penalty units for a body corporate, or 600 penalty units for an individual and 3,000 penalty units for a body corporate if the contravention is a ‘serious contravention’ where a person knowingly contravened the provision as part of a systematic pattern of conduct (section 557A of the Fair Work Act).

8.27 Civil penalties also apply where a person:

- fails to comply with an FWC order dealing with a dispute about the operation of the new Part;
- fails to pay an employee a wage that is the greater of the amount of the JobKeeper payment payable to the employer for the employee for the fortnight, or the amount that is payable to the employee in relation to the performance of work during that fortnight;
- reduces the hourly rate of pay of an employee who is working reduced hours as a result of a JobKeeper enabling direction; or
- fails to consider or unreasonably refuses a request from an employee who is working reduced hours for secondary employment or training.

8.28 Contravening these requirements attracts a maximum civil penalty of 60 penalty units for an individual and 300 penalty units for a body corporate.

8.29 Finally, civil penalties will apply to employers who purport to give a JobKeeper enabling direction where they knew the direction was not authorised by new Part 6-4C of the Fair Work Act. This attracts a maximum civil penalty of 600 penalty units for individuals and 3,000 penalty units for bodies corporate to reflect the seriousness of this conduct.
8.30 The penalty provisions of the Fair Work Act are expressly classified as civil penalties (section 549). These provisions create pecuniary penalties in the form of a debt payable to the Commonwealth or other person. The civil penalty provisions do not impose criminal liability, and do not lead to the creation of a criminal record. There is no possibility of imprisonment for failing to pay a penalty (section 571).

8.31 The purpose of these penalties is to encourage compliance with the Fair Work Act, which supports the implementation of a number of Australia's obligations under international law. These penalties will generally apply to a defined class of employers (that is, those qualifying or purporting to qualify for the JobKeeper scheme) and not the public in general. While the Fair Work Ombudsman has enforcement powers, proceedings may also be brought by an affected employee or union. These factors all suggest that the civil penalties imposed by the Fair Work Act are civil rather than criminal in nature.

8.32 The severity of the relevant civil penalties should be considered low. They are pecuniary penalties (rather than a more severe punishment like imprisonment) and there is no sanction of imprisonment for non-payment of penalties.

8.33 As the proposed new civil penalties may reasonably be characterised as not being criminal in nature, the specific criminal process guarantees in Articles 14 and 15 will not apply. In any event, however, new civil penalties comply with the requirements of Articles 14 and 15 in that they would not apply retrospectively (Article 15(1)), the normal standard of proof applies (Article 14(2)), and there is no risk of double punishment as there is no comparable criminal penalty (Article 14(7)).

8.34 On this basis, the proposed new penalties should not be considered criminal for the purposes of human rights law. In any event, the proposed penalties and the civil penalty regime in the Fair Work Act more broadly comply with the requirements of Article 14 and 15 of the International Covenant on Civil and Political Rights.

**Conclusion**

8.35 Schedule 1 to this Bill is compatible with human rights.

**Schedule 2 – Coronavirus Economic Response Package (Payments and Benefits) Bill 2020 and consequential amendments**

8.36 The Payments and Benefits Bill and Schedule 2 to this Bill are 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

8.37 The Payments and Benefits Bill establishes a framework for the Treasurer to make rules to provide for the Commissioner to make payments to eligible entities. Under this payment framework, the Commissioner has general administration of these payments.

8.38 The framework also sets out:

- the manner in which payments are made;
- rules for overpayments (including the application of interest);
- the process for the review of decision relating to the payments; and
- the applicable record-keeping requirements.

8.39 Details of eligibility for particular payments as well as the amount of payments and the time when they are to be paid are to be set out in the rules made by the Treasurer. This allows for flexibility of the arrangements to introduce and modify payments to appropriately respond to the impacts of the Coronavirus.

8.40 The payments may only be made by the Commissioner from the day of commencement and only in respect of the period from 1 March 2020 until 31 December 2020 (inclusive).

8.41 Schedule 2 to this Bill makes a number of consequential amendments to facilitate the Payments and Benefits Bill, including:

- technical amendments to the ITAA 1936, ITAA 1997, the Social Security Act and the Veterans’ Entitlement Act 1986 to ensure a consistent treatment of the Coronavirus economic response payments;

- amendments of a machinery nature to the Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020;

- providing a power in the Coronavirus Omnibus Act for the Minister for Families and Social Services to determine modifications to Part 5 of the SSAA – the modifications to the SSAA must be in connection with payments under the Coronavirus Economic Response Package (Payments and Benefits) Act 2020, including applications for such payments; and
• amendments to the PPL Act to address relevant changes to paid parental leave as a result of the Coronavirus economic response payments.

Human rights implications

8.42 The Payments and Benefits Bill does not engage any of the applicable rights or freedoms.

8.43 Schedule 2 to this Bill engages the following human rights or freedoms:

The right to protection and assistance for families

8.44 The right to protection and assistance to families, particularly mothers during a reasonable period before and after childbirth in Article 10(2) of the International Covenant on Economic, Social and Cultural Rights, recognises protection should be accorded to mothers. During such a period, working mothers should be accorded paid leave or leave with adequate social security benefits.

8.45 Schedule 2 to this Bill engages these rights by broadening the eligibility criteria under the PPL Act to allow more women to access paid parental leave.

8.46 The United Nations Committee on Economic, Social and Cultural Rights has commented that Article 7 of the International Covenant on Economic, Social and Cultural Rights requires State Parties to take steps to ‘reduce the constraints faced by men and women in reconciling professional and family responsibilities by promoting adequate policies for childcare and care of dependent family members’.

The right to maternity leave

8.47 The right to maternity leave is contained within Article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women and Article 10(2) of the International Covenant on Economic, Social and Cultural Rights. Article 11(2)(b) of the Convention requires States Parties ‘to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances’.

8.48 The amendments in Schedule 2 to this Bill do not interfere with the existing rights under the Fair Work Act 2009, including access to 12 months of unpaid parental leave, noting that Australia has a reservation in relation to Article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women.
The right to social security

8.49 Article 9 of the *International Covenant on Economic, Social and Cultural Rights* recognises the right of everyone to social security, and Article 26 of the *Convention on the Rights of Children* recognises the right of every child to benefit from social security. Schedule 2 to this Bill engages these rights by broadening the eligibility criteria under the PPL Act and increasing the number of claimants who can receive the entitlement to paid parental leave during the COVID-19 pandemic.

The right to privacy

8.50 The amendments made by Schedule 2 to this Bill engage the prohibition on arbitrary or unlawful interference with privacy contained in Article 17 of the *International Covenant on Civil and Political Rights* by widening the purposes for which tax file numbers can be shared between the Commissioner and other Commonwealth agencies to include purposes related to the JobKeeper payment in order to permit sharing in order to address issues of fraud and overpayment.

8.51 Schedule 2 to this Bill is compatible with Article 17 of the *International Covenant on Civil and Political Rights*, as its engagement with the prohibition on interference with privacy will neither be unlawful nor arbitrary. The amendments are not arbitrary as the amendments are aimed at a legitimate objective and constitute an effective and proportionate means of achieving that objective.

8.52 This Schedule’s engagement with the prohibition on interference with privacy is lawful as the amendments authorise the disclosure of only in relation to the administration of the JobKeeper payment. The amendments constitute an effective and proportionate means of achieving these objectives.

8.53 Schedule 2 to this Bill also provides a power for the Minister for Families and Social Services to determine modifications to Part 5 of the SSAA. The modifications to the SSAA must be in connection with payments under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*, including applications for such payments. This part of the Schedule does not engage with the right to privacy because it does not itself make any substantive amendment to the SSAA.

Conclusion

8.54 The Payments and Benefits Bill and Schedule 2 to this Bill are compatible with human rights as it does not raise any human rights issues.
Schedule 3 – Guarantee of lending to small and medium enterprises

8.55 Schedule 3 to this Bill 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

8.56 Schedule 3 to this Bill amends the definition of *financial institution* in section 4 of the Guarantee of Lending Act. The amendment ensures that exclusions in the *Financial Sector (Collection of Data) Act 2001* of certain corporations from the meaning of registrable corporation, which are relevant in determining who is a non-ADI lender, are disregarded for the purposes of the definition of *financial institution* in section 4 of the Guarantee of Lending Act.

Human rights implications

8.57 Schedule 3 to this Bill does not engage any of the applicable rights or freedoms.

Conclusion

8.58 Schedule 3 to this Bill is compatible with human rights as it does not raise any human rights issues.

Schedule 4 – Amendments to support the child care sector

8.59 Schedule 4 to this Bill 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

8.60 New subsections 105E(4) to (7) of the Family Assistance Administration Act modify how Child Care Subsidy entitlements are reviewed when an individual who is a member of a couple for some but not all of the Child Care Subsidy fortights in an income year.

8.61 There are no changes to how Child Care Subsidy is calculated and paid during the income year based on estimates for the individual’s adjusted taxable income. These amendments only affect the review of determinations made in the previous income year once the individual meets the Child Care Subsidy reconciliation conditions and accurate information about their actual adjusted taxable income is available.
Statement of Compatibility with Human Rights

8.62 Subsection 233(2) of the Family Assistance Administration Act is amended to ensure that payments of Additional Child Care Subsidy and funding agreements for certain grants programs (as prescribed by the Child Care Subsidy Minister’s Rules) occur under the existing standing appropriation for payments made under the Family Assistance Law (pursuant to subsection 233(1) of the Family Assistance Administration Act).

8.63 New subsection 233(3) of the Family Assistance Administration Act requires the Child Care Subsidy Minister’s Rules to prescribe the total amount of funding appropriated under subsection 233(1) of that Act that may be allocated for each of the grants programs prescribed in the Child Care Subsidy Minister’s Rules for the purposes of subsection 233(2) of the Family Assistance Administration Act.

8.64 This is an accountability measure intended to ensure that decisions on annual funding amounts for prescribed grants programs established under section 85GA of the Family Assistance Act may continue to be subject to Parliamentary scrutiny (through its inclusion in a legislative instrument).

Human rights implications

Ensuring the rights of parents and children

8.65 Article 3 of the Convention on the Rights of the Child recognises that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 19 of the Convention requires that appropriate measures are taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

8.66 Early learning and child care play a vital role in the development of Australian children. Their preparation for school and access to this care is also one of the most effective early intervention strategies to break the cycle of poverty. The amendments in Schedule 4 to this Bill facilitate families’ continued access to quality child care services and therefore safeguard the best interests of children to be educated and cared for in safe and healthy environments, particularly where there is increased demand for higher levels of government support in times of national emergency or other exceptional circumstances.

8.67 Schedule 4 to this Bill achieves this by removing restrictions around the requirements for the annual appropriation of Additional Child Care Subsidy payments, as well as payments made for child care-related grant programs, so that these payments are linked instead to a special appropriation already established under the Family Assistance Administration Act. This measure ensures that the Government is able to
respond effectively to periods of increased demand for government support by child care services and the families relying on those serviced, for example during times of national emergency or disaster.

**Right to an adequate standard of living**

8.68 Article 27 of the *Convention on the Rights of the Child* requires that State Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

8.69 Schedule 4 to this Bill advances this right by helping to ensure that children, particularly those in vulnerable and disadvantaged situations (that would in most cases be eligible for Additional Child Care Subsidy), may continue to access quality early childhood education and care even in the face of increased demand for additional support and subsidy, such as during the Coronavirus.

8.70 In particular, the amendments ensure the payment of Additional Child Care Subsidy occurs under a standing appropriation (rather than capped and annual appropriation) and ensures that children (and their families) who are experiencing financial hardship or are otherwise in vulnerable positions in times of generally increased demand for government support and subsidies may continue to benefit from a high standard of education and care.

**Right to social security**

8.71 Article 9 of the *International Covenant on Economic, Social and Cultural Rights* recognises the right of everyone to social security.

8.72 Schedule 4 to this Bill allows individuals whose partnership status changes throughout the year to receive fairer determinations of their Child Care Subsidy entitlements at Child Care Subsidy reconciliation due to a modified calculation of the individual’s adjusted taxable income, which incorporates their partner’s adjusted taxable income throughout the year in a manner that is fairer and more consistent.

**Conclusion**

8.73 Schedule 4 to this Bill is compatible with human rights as it does not raise any human rights issues.
Statement of Compatibility with Human Rights

Schedule 5 – Modification of information and other requirements

8.74 Schedule 5 to this Bill 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

8.75 Schedule 5 to this Bill provides a temporary mechanism to change arrangements for meeting information and documentary requirements under Commonwealth legislation, in response to circumstances relating to the Coronavirus. In particular, social distancing measures are expected to cause difficulties with meeting information and documentary requirements, including signature, witnessing and production of documents.

8.76 Under this mechanism, a responsible Minister may determine that provisions in Commonwealth legislation containing particular information or documentary requirements are varied, do not apply or that another provision specified in the determination applies, for a specified time period. The mechanism must not be exercised by a responsible Minister unless the Minister is satisfied that the determination is in response to circumstances relating to the Coronavirus.

8.77 The mechanism is temporary and will be repealed at the end of 31 December 2020. Any determination made under the mechanism will also cease to operate after 31 December 2020.

Human rights implications

8.78 Schedule 5 to this Bill does not engage any of the applicable rights or freedoms.

8.79 Each instrument made under the power provided for in Schedule 5 to this Bill will be disallowable and will include a human rights compatibility statement assessing the impact of the instrument on human rights and freedoms.

Conclusion

8.80 Schedule 5 to this Bill is compatible with human rights as it does not raise any human rights issues.
**Schedule 6 – Additional support for veterans**

8.81 Schedule 6 to this Bill 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**

8.82 Schedule 6 to this Bill allows the Veterans’ Minister to:

- increase, by legislative instrument, the amount paid to persons receiving a payment under a provision of the Veterans’ Law by the amount of the COVID-19 supplement (currently $550 per fortnight); and
- vary the qualifications and eligibility for payments under the Veterans’ Law by legislative instrument.

8.83 These instruments may only be made after consultation with the Social Services Minister. Both the powers and any instruments made using them will end on 31 December 2020.

**Human rights implications**

8.84 Schedule 6 to this Bill engages the right of everyone to social security in article 9 of the *International Covenant on Economic, Social and Cultural Rights*, and the right of everyone to an adequate standard of living for an individual and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions in Article 11 of the Covenant; and

8.85 Articles 9 and 11 are promoted by providing further payment to assist in achieving an adequate standard of living. This is achieved by creating a new category of supplementary payment in response to the Coronavirus pandemic.

**Conclusion**

8.86 Schedule 6 to this Bill is compatible with human rights as it does not raise any human rights issues.

**Schedule 7 – Tax secrecy**

8.87 Schedule 7 to this Bill 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

8.88 Schedule 7 to this Bill makes amendments to subsection 355-65(8) of Schedule 1 to the TAA 1953 to include an additional purpose for which protected information can be disclosed, and to whom.  

8.89 A taxation officer will be permitted to disclose de-identified protected information to the Treasury Secretary for the purposes of policy development, or analysis, in relation to the Coronavirus, including in relation to any programs introduced in response to the economic impacts of the Coronavirus.

8.90 Disclosures can be made until 30 June 2023, after which the law will self-repeal.

Human rights implications

8.91 The amendments made by Schedule 7 to this Bill engage:

- the right to be presumed innocent until proven guilty according to the law in Article 14(2) of the International Covenant on Civil and Political Rights; and

- the prohibition on arbitrary or unlawful interference with privacy contained in Article 17 of the International Covenant on Civil and Political Rights.

8.92 The amendments made by Schedule 7 to this Bill engage Article 14(2) of the International Covenant on Civil and Political Rights as the amendments provide for an exception to the prohibition of a taxation officer disclosing protected information. The prohibition is a criminal offence. A taxation officer wishing to rely on the exception bears the evidential burden in relation to the matters.

8.93 It is appropriate that the evidential burden be reversed in this situation as matters relating to the disclosure and for which purposes (such as what information is being disclosed, whether it is de-identified and for what purpose the disclosure is being made) are peculiarly within the knowledge of the person making the disclosure and can be raised in making their defence. It would be significantly more difficult and costly for the prosecution to disprove these facts.

8.94 The amendments made by Schedule 7 to this Bill are compatible with Article 17 of the International Covenant on Civil and Political Rights as its engagement will neither be unlawful or arbitrary.

8.95 In order for an interference with the right to privacy to be permissible, the interference must:

- be authorised by law;
be for a reason consistent with the International Covenant on Civil and Political Rights; and
be reasonable in the particular circumstances.

8.96 The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

8.97 The engagement with the prohibition on the interference with privacy is lawful as the amendments authorise the disclosure of de-identified information for the purposes of policy development, or analysis, in relation to the Coronavirus, including for programs introduced in response to the economic impacts of the Coronavirus. De-identified information does not include the name, contact details or Australian Business Number of the entity. Therefore appropriate safeguards are in place.

8.98 The amendments are not arbitrary as they are aimed at a legitimate objective, and are reasonable and proportionate in achieving that objective. The Coronavirus pandemic has required quick, efficient and effective policy responses to deal with its economic impacts. The collating and analysing of available information to inform policy development will be vital as Australia enters into the recovery phase of the pandemic.

8.99 The amendments are also proportionate. The amendments will self-repeal after 30 June 2023. This reflects the intention that disclosures will be made for the purposes of policy development, or analysis, in relation to the Coronavirus pandemic, and as Australia recovers from the pandemic.

8.100 The amendments are reasonable in achieving this objective as they allow the disclosure de-identified information about the affairs of an entity held by the Commissioner to the Treasury Secretary for certain purposes. They are also proportionate in achieving this objective as they only allow the disclosure of de-identified information and are time limited.

Conclusion

8.101 Schedule 7 to this Bill is compatible with human rights as it does not limit any applicable human rights or freedoms.