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## Explanatory Statement

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### *JobMaker Hiring Credit Reporting Obligations Instrument 2020*

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#### General Outline of Instrument

1. This instrument is made under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* and subsection 27(3) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.
2. The legislative instrument describes information that must be reported under the JobMaker Hiring Credit scheme, including the information that must be reported each time a claim for a payment is made under the scheme. The instrument also explains how reporting must be undertaken, and when reports are due.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Date of effect

5. This instrument commences immediately after it is registered on the Federal Register of Legislation.
6. This instrument applies for all JobMaker periods commencing on or after 7 October 2020. While the obligations set out in the instrument only apply prospectively, it must apply retrospectively to set out the conditions employers must satisfy under paragraph 27(1)(h) of the Rules to be eligible to receive a JobMaker Hiring Credit payment for eligible additional employees who have been hired from 7 October 2020. This is consistent with the Government's announcement in the 2020-21 Budget.
7. Under section 12(2) of the *Legislation Act 2003* this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth.

#### What is the effect of this instrument

8. This instrument sets out the information that employers who seek to participate in the JobMaker Hiring Credit scheme must provide the ATO. It is necessary to obtain certain information from those employers to ensure that they are eligible to participate in the scheme, and to enable the ATO to determine the value of the payments participating employers are entitled to.

#### Compliance cost assessment

9. An exemption from Regulation Impact requirements was granted by the Prime Minister as the JobMaker Hiring Credit scheme was developed for urgent and unforeseen events. COVID-19 related measures reference, Office of Best Practice Regulation (OBPR ref ID 42600).

## **Background**

10. To satisfy the entitlement condition in paragraph 27(1)(h) of the Rules, employers must have given information about the entitlement for the period to the Commissioner in accordance with the reporting requirements determined by the Commissioner under subsection (3) of the Rules.
11. This instrument sets out the reporting requirements has been developed to ensure that employers who wish to make a claim for the JobMaker Hiring Credit are aware of what information they must provide to the ATO and how they must provide it.
12. This instrument has two parts:
  - (a) Part 1 sets out the information about eligible additional employees that employers must report prior to claiming a JobMaker Hiring Credit payment, how it is to be reported and when it must be reported.
  - (b) Part 2 sets out the information employers must report as part of the claim process, how it is to be reported, and when it must be reported.
13. An employer must meet the requirements of both parts in order to satisfy paragraph 27(1)(h).

## **Part 1: Employee Reporting (information reported about employees)**

14. Part 1 of the instrument sets out certain information employers are required to report prior to claiming a JobMaker Hiring Credit payment, how it is to be reported and when it must be reported.

### ***Required information to report***

15. Employers who are required to notify the Commissioner of amounts under section 389-5 of Schedule 1 to the *Taxation Administration Act 1953*) are required to provide information to the Commissioner about eligible additional employees. This includes all employers who are required to report to the Commissioner using Single Touch Payroll (STP).
16. To meet these employee reporting requirements in this part of the instrument, employers must provide certain employee information using STP (unless they are exempt from STP, covered by the next section).
17. Employers must notify the Commissioner of the following details for each employee they intend to claim for as an eligible additional employee using STP:
  - (a) tax file number
  - (b) date of birth
  - (c) full name
  - (d) date employment commenced (if occurring in the jobmaker period)
  - (e) date employment ceased (if occurring in the jobmaker period), and
  - (f) whether the employee met the average hours of work requirement in subsection 30(2) of the Rules for the jobmaker period
18. The ATO is developing specifications setting out the JobMaker Hiring Credit functionality for STP-enabled payroll software. Information will be located on the ATO website.

### ***Limited exemptions from Single Touch Payroll***

19. There are limited STP reporting exemptions, which are given for particular financial years or for certain types of employers, employees and payments. Further information on exemptions can be found on the ATO website.

20. Exemptions from STP apply for a limited number of reasons, for example, the employer may be located in a remote area with no internet access.

21. If employers have applied for and been given an exemption from STP (including transitional deferrals), but are otherwise eligible for the JobMaker Hiring Credit, they provide the information set out in subsection 7(2) in this instrument when claiming (pursuant to subsection 8(3)).

### ***When reports are due***

22. Employers must provide the employee information for the JobMaker period before the STP JobMaker Reporting Deadline as set out in the following table.

<b>No</b>	<b>JobMaker Period</b>	<b>STP JobMaker reporting deadline</b>
1	7 October 2020 – 6 January 2021	27 April 2021
2	7 January 2021 – 6 April 2021	28 July 2021
3	7 April 2021 – 6 July 2021	28 October 2021
4	7 July 2021 – 6 October 2021	28 January 2022
5	7 October 2021 – 6 January 2022	27 April 2022
6	7 January 2022 – 6 April 2022	28 July 2022
7	7 April 2022 – 6 July 2022	28 October 2022
8	7 July 2022 – 6 October 2022	28 January 2023

23. It is the responsibility of employers to provide this information to be able to make a claim for JobMaker Hiring Credit payments. As the information is used to populate the claim form and in calculating the employer's claim, a JobMaker Hiring Credit payment claim cannot be made until it is provided to the ATO through STP.

24. This information will be populated in the claim form within 72 hours and used to calculate the employer's claim – there is no additional requirement to provide this information separately to the ATO if it is provided through STP.

25. Ordinary STP reporting due dates will not change. The JobMaker Hiring Credit does not impact ordinary STP reporting obligations.

26. Employers with an exemption from STP must be up to date with their Pay-As-You-Go withholding obligations due in the two years ending on the last day of the JobMaker period. Employers need to be up to date with these obligations before the JobMaker Hiring Credit claim time. Generally, this will mean that the employer's Business Activity Statement lodgments will need to be up to date.

27. These employers will need to provide more information about their eligible additional employees when claiming.

### **Part 2: Information to be provided as part of the JobMaker Hiring Credit payment claim**

28. Part 2 of the instrument sets out what information employers are required to report as part of the claim process, how it is to be reported, and when it must be reported by. This is for each claim period for which the employer wishes to make a JobMaker Hiring Credit payment claim.

### ***Required information to report***

29. The following information (claim information) must be reported:

- (a) the total payroll expenses for the JobMaker period
- (b) the baseline payroll amount for the period
- (c) the total headcount at the end of the JobMaker period
- (d) the baseline headcount for the JobMaker period
- (e) confirmation that each employee included in the claim calculation is an eligible additional employee (including that the minimum hours test has been satisfied)
- (f) a declaration which meets specific requirements
- (g) a signature which meets specific requirements, and
- (h) financial institution account details.

30. Further information about each of these requirements follows. There is more detailed explanation of the conditions in paragraphs (a) to (e) above in the Explanatory Statement to the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020*, as well as on the ATO website.

**(a) *Total payroll expenses for the JobMaker period:***

31. An employer's total payroll expenses for a JobMaker period is the sum of the payroll amounts for the jobmaker period.

**(b) *The baseline payroll amount for the period:***

32. An employer's baseline payroll amount is sum of those amounts for a reference period that ended on or immediately before 6 October 2020 (by reference to an equivalent number of days as the number of days in the JobMaker period).

33. Employers will report the baseline payroll amount at registration in the approved form pursuant to paragraph 27(1)(h). This amount will be pre-filled in the employer's claim form by the ATO but where the baseline payroll for a JobMaker period is different to the amount provided at registration, it will be editable.

**(c) *Total headcount at the end of the JobMaker period:***

34. The headcount for each JobMaker period is the employer's headcount on the last day of the relevant JobMaker period.

**(d) *The baseline headcount for the period:***

35. The baseline headcount increase means that the employer may only receive the JobMaker Hiring Credit payment in respect of each additional headcount for a period of twelve months.

36. Employers will report the baseline headcount at registration in the approved form pursuant to paragraph 27(1)(g). This amount, including any adjustments in the fifth and subsequent JobMaker periods, will be pre-filled into the employer's claim form by the ATO and not editable.

**(e) *Confirmation that each employee included in the claim calculation is an eligible additional employee (including that the minimum hours test has been satisfied)***

37. To be eligible for the JobMaker Hiring Credit, employees hired under the scheme must meet certain eligibility requirements including that they have worked or been paid for an average of 20 hours per week across the JobMaker period.

38. Employers must confirm that each employee they wish to claim the JobMaker Hiring Credit for is eligible.

**(f) Declaration meeting specific requirements**

39. The claim will include a declaration that the information is true and correct. Declarations will be made by the lodger, whether the employer or an agent.

**(g) Signature meeting specific requirements**

40. The claim will include either an electronic signature, for verification of identity using the ATO's online services, or proof of record ownership for verification if providing information via phone (for those exempt from reporting via STP).

**(h) Financial institution account details**

41. The employer will need to provide details of their financial institution, including account name, BSB code and account number. If the employer already has a JobKeeper role, these details may be prefilled and editable.

42. If the employer does not have a JobKeeper role the financial institution details will be blank but mandatory to complete. Financial institution details from the first claim will be saved to the JobMaker Hiring credit role. Details for subsequent claims will be prefilled from JobMaker Hiring Credit role and editable.

**Additional requirements for those with a Single Touch Payroll exemption:**

43. For those employers who have an exemption from reporting using STP, the information provided at claim time must also include the following details for each employee they intend to claim for as an eligible additional employee:

- (a) tax file number
- (b) date of birth
- (c) full name
- (d) confirmation each employee is an eligible additional employee for each JobMaker period (including that the employee has satisfied the minimum hours test)
- (e) date employment commenced (if occurring in the jobmaker period)
- (f) date employment ceased (if occurring in the jobmaker period), and
- (g) whether the employee met the average hours of work requirement in subsection 30(2) of the Rules for the jobmaker period.

**How to report claim information**

44. This information is to be reported via ATO Online services for Individuals, ATO Online Services for Business, Business Portal or Online Services for Agents or the Business Portal as part of the claims process, unless the employer is exempt from reporting through STP.

45. Those employers who have been granted an exemption from STP can submit a claim by contacting the ATO by phone.

46. However, if an employer has been granted an exemption and subsequently transitions to STP reporting, the employer may report claim information in accordance with paragraph 43 above.

The employer will need to meet the STP reporting obligations in subsections 7(1) and (2) of this instrument before the STP JobMaker Reporting Deadline.

**When claim information needs to be reported**

47. Claims can only be made during the claim period. No exemptions or extensions are available. There are strict dates by which claims for a period must be reported by. These dates are shown in the table below:

No	JobMaker Period	Claim Period
1	7 October 2020 – 6 January 2021	1 February 2021 – 30 April 2021
2	7 January 2021 – 6 April 2021	1 May 2021 – 31 July 2021
3	7 April 2021 – 6 July 2021	1 August 2021 – 31 October 2021
4	7 July 2021 – 6 October 2021	1 November 2021 – 31 January 2022
5	7 October 2021 – 6 January 2022	1 February 2022 – 30 April 2022
6	7 January 2022 – 6 April 2022	1 May 2022 – 31 July 2022
7	7 April 2022 – 6 July 2022	1 August 2022 – 31 October 2022
8	7 July 2022 – 6 October 2022	1 November 2022 – 31 January 2023

48. Once the claim period has ended, an employer can no longer make a claim for the JobMaker period. However, they can make claims for future periods (assuming all other eligibility criteria are met and the claim is within the next claim period).

49. No amendments can be made to claims after the claim period has ended. Amendments can however be made during the claim period, for example, if an error is made.

**Consultation**

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

51. Copies of the draft legislative instrument and explanatory statement were sent to various representatives of professional and industry associations and business representatives. Meetings were also held with these stakeholders. Consultees suggested one minor clarification to the Explanatory Statement, which has been adopted.

**Legislative references**

- Acts Interpretation Act 1901*
- Coronavirus Economic Response Package (Payments and Benefits) Act 2020*
- Legislation Act 2003*

## Statement of compatibility with Human Rights

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

### ***JobMaker Hiring Credit Reporting Obligations Instrument 2020***

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

#### **Overview of the Legislative Instrument**

This instrument sets out the information that entities who seek to participate in the JobMaker Hiring Credit scheme must provide to the ATO. It is necessary to obtain certain information from those entities to ensure that they are eligible to participate in the scheme, and to enable the ATO to determine the value of the payments participating entities are entitled to.

#### **Human rights implications**

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

- [the International Covenant on Civil and Political Rights](#) (ICCPR)
- [the International Covenant on Economic, Social and Cultural Rights](#) (ICESCR)
- [the International Convention on the Elimination of All Forms of Racial Discrimination](#) (CERD)
- [the Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW)
- [the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT)
- [the Convention on the Rights of the Child](#) (CRC), and
- [the Convention on the Rights of Persons with Disabilities](#) (CRPD).

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

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

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

- contingent on the affected employer giving consent to the disclosure of information by nominating to participate in the JobMaker scheme.
- in pursuit of the legitimate objective identified – which is to respond to the economic downturn caused by the Coronavirus by providing a wage subsidy to affected businesses to accelerate growth in the employment of young people, and
- rationally connected and proportionate to the objective sought as the information is required to determine eligibility for the JobMaker Hiring Credit scheme and to ensure that it is administered according to the policy objective.

For these reasons, the Legislative Instrument does not unnecessarily restrict a person's right to privacy.

### **Conclusion**

This Legislative Instrument is compatible with human rights. Importantly, this instrument positively engages the right to work as it is aimed at assisting employers and helping young people gain jobs.