



Coronavirus Economic Response Package (Payments and Benefits) Act 2020

No. 37, 2020

**An Act to provide an economic response, and deal
with other matters, relating to the Coronavirus,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 37, 2020

**An Act to provide an economic response, and deal
with other matters, relating to the Coronavirus,
and for related purposes**

[Assented to 9 April 2020]

The Parliament of Australia enacts:

No. 37, 2020 Coronavirus Economic Response Package (Payments and Benefits) Act 1
2020

Section 1

1 Short title

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

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	9 April 2020
2. Sections 3 to 20	The provisions do not commence at all unless Part 1 of Schedule 1 to the <i>Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020</i> has commenced, in which case they commence immediately after the commencement of that Part.	9 April 2020

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Object of this Act

The object of this Act is to provide financial support to entities directly or indirectly affected by the Coronavirus known as COVID-19.

4 Application to external Territories

This Act extends to every external Territory referred to in the definition of *Australia* (within the meaning of section 960-505 of the *Income Tax Assessment Act 1997*).

5 General administration of this Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

6 Definitions

In this Act:

approved form has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

Australia has the same meaning as in section 960-505 of the *Income Tax Assessment Act 1997*.

Commissioner means the Commissioner of Taxation.

Coronavirus economic response payment is the collective name for all of the kinds of payments provided for by the rules.

Note: Particular kinds of payments provided for by the rules may also have a particular name for that kind of payment.

entity has the meaning given by the *Income Tax Assessment Act 1997*.

general interest charge means the charge worked out under Part IIA of the *Taxation Administration Act 1953*.

income tax return has the meaning given by the *Income Tax Assessment Act 1997*.

income year has the meaning given by the *Income Tax Assessment Act 1997*.

prescribed period means the period between 1 March 2020 and 31 December 2020.

this Act includes the rules.

7 Coronavirus economic response payments

- (1) The rules may make provision for and in relation to:
- (a) one or more kinds of payments by the Commonwealth to an entity in respect of a time that occurs during the prescribed period; and
 - (b) the establishment of a scheme providing for matters relating to one or more of those payments, and matters relating to such a scheme.

Paragraphs (a) and (b) do not limit each other.

- (2) Without limiting subsection (1), the rules may make provision for and in relation to the following matters:
- (a) the eligibility criteria for a payment;
 - (b) if or how an application for a payment may or must be made;
 - (c) whether a payment is to be paid in instalments or as a lump sum;
 - (d) entitlement to a payment or an instalment of a payment;
 - (e) the amount of a payment or an instalment of a payment;
 - (f) when a payment or an instalment of a payment is payable;
 - (g) conditions applying to a payment or an instalment of a payment;
 - (h) providing information or notices;
 - (i) rights, obligations or liabilities of:

- (i) an entity that is paid a payment; or
- (ii) an entity that directly benefits from another entity being paid a payment; or
- (iii) if the entitlement of an entity to a payment relates to a relationship existing between the entity and another entity—the other entity.

Paragraphs (a) to (i) do not limit each other.

8 Method of paying Coronavirus economic response payments

- (1) If, under the rules, the Commissioner is required to pay a Coronavirus economic response payment to an entity, the Commissioner must pay the payment to the credit of:
 - (a) if the entity has nominated a financial institution account as referred to in section 8AAZLH of the *Taxation Administration Act 1953*—that account; or
 - (b) if paragraph (a) does not apply—the financial institution account nominated by the entity in the entity's most recent income tax return lodged for an income year.
- (2) However, the Commissioner may direct that the payment be paid to the entity in a different way.
- (3) If the entity has not nominated a financial institution account as mentioned in subsection (1) and the Commissioner has not directed that the payment be paid in a different way, the Commissioner is not obliged to pay the payment to the entity until the entity does so.
- (4) If the Commissioner pays a payment to the credit of a financial institution account nominated by an entity, the Commissioner is taken to have paid the payment to the entity.

9 Overpayments etc.

- (1) This section applies if:
 - (a) the Commissioner pays an amount by way of a Coronavirus economic response payment to an entity; and
 - (b) either:

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- (i) the entity was not entitled to the payment; or
 - (ii) the amount paid is more than the correct amount of the entity's payment.
- (2) The entity is liable to repay the following amount to the Commonwealth:
 - (a) if the entity was not entitled to the payment—the whole of the amount referred to in paragraph (1)(a);
 - (b) if the amount paid is more than the correct amount of the entity's payment—the amount by which the amount paid exceeds the correct amount.
- (3) An amount that an entity is liable to repay under subsection (2) is due and payable on the day on which the Commissioner pays the amount referred to in paragraph (1)(a).
- (4) The Commissioner may make a written determination that the entity is not liable to repay an amount under subsection (2), in which case the entity is not liable to repay the amount.
- (5) A determination under subsection (4) is not a legislative instrument.

10 General interest charge on overpayment debts

- (1) If:
 - (a) an entity is liable under subsection 9(2) to repay an amount; and
 - (b) the whole or a part of the amount remains unpaid after the time by which the amount is due to be paid;the entity is liable to pay general interest charge on the unpaid amount.
- (2) An entity that is liable under this section to pay general interest charge on an unpaid amount is liable to pay the charge for each day in the period that:
 - (a) started at the beginning of the day on which the unpaid amount was due to be paid; and

- (b) finishes at the end of the last day at the end of which any of the following remains unpaid:
 - (i) the unpaid amount;
 - (ii) general interest charge on any of the unpaid amount.

11 Joint and several liability for overpayment debts

- (1) This section applies if the Commissioner is satisfied that:
 - (a) an entity is liable under subsection 9(2) to repay an amount because of an overpayment of a Coronavirus economic response payment; and
 - (b) the overpayment occurred because the entity reasonably relied on a statement that was made by another entity in the approved form; and
 - (c) the statement by the other entity was false or misleading in a material particular, whether because of things in it or omitted from it; and
 - (d) the other entity did not take reasonable care in connection with making the statement; and
 - (e) the other entity directly benefitted from the entity being paid the Coronavirus economic response payment; and
 - (f) it is reasonable for the entity and the other entity to be jointly and severally liable to pay the amount and any general interest charge payable on the amount under section 10.
- (2) This section also applies if the Commissioner is satisfied that:
 - (a) an entity is liable under subsection 9(2) to repay an amount because of an overpayment of a Coronavirus economic response payment; and
 - (b) the overpayment is due to fraud of another entity (whether or not the entity was also involved in that fraud); and
 - (c) it is reasonable for the entity and the other entity to be jointly and severally liable to pay the amount and any general interest charge payable on the amount under section 10.

- (3) Despite sections 9 and 10, the entity and the other entity are jointly and severally liable to pay the amount and any general interest charge payable on the amount under section 10.

12 When the Commissioner is taken to have made a decision or given a notice

- (1) The rules may provide for:
- (a) circumstances in which a decision is taken to have been made by the Commissioner under this Act; and
 - (b) when the decision is taken to have been made.
- (2) The rules may provide for:
- (a) circumstances in which a notice of a decision made by the Commissioner under this Act is taken to have been given to an entity; and
 - (b) when the notice is taken to have been given to the entity.
- (3) If:
- (a) a decision relating to an entity is made by the Commissioner under this Act; and
 - (b) the rules do not require the Commissioner to give a notice of the decision to the entity; and
 - (c) rules are not made for the purposes of subsection (2) in relation to the decision; and
 - (d) Part IVC of the *Taxation Administration Act 1953* applies to the decision;
- then, for the purposes of that Part, the Commissioner is taken to have given a notice of the decision to the entity on the day the decision was made.
- (4) Subsection (3) applies even if the Commissioner in fact gives the entity a notice of the decision on a different day.

13 Review of the Commissioner's decision

- (1) An entity who is dissatisfied with a decision covered by subsection (2) may object against the decision in the manner set out in Part IVC of the *Taxation Administration Act 1953*.
- (2) This subsection covers the following decisions of the Commissioner under this Act:
 - (a) a decision that the entity is not entitled to a Coronavirus economic response payment for a period;
 - (b) a decision that the entity is entitled to a Coronavirus economic response payment for a period of a particular amount;
 - (c) a decision not to make a determination under subsection 9(4) (about liability of the entity for an overpayment);
 - (d) a decision under subsection 11(1) or (2) that the entity is jointly and severally liable for an amount;
 - (e) a decision under subsection 11(1) or (2) that another entity is not jointly and severally liable for an amount;
 - (f) a decision not to make a determination under subsection 14(3) (about exempting the entity from the record keeping requirements).

14 No entitlement to payment unless record keeping requirements are met*No entitlement if non-compliance with requirements*

- (1) An entity is not entitled, and is taken never to have been entitled, to a Coronavirus economic response payment in respect of a period unless the entity has complied with:
 - (a) the pre-payment record keeping requirements set out in section 15 that apply to the payment for the period; and
 - (b) the post-payment record keeping requirements set out in section 16 that apply to the payment for the period.

Exemption from requirements

- (2) However, subsection (1) does not apply to an entity in relation to the payment in respect of the period if a determination under subsection (3) provides that the requirements in section 15 and 16 do not apply to the payment in respect of the period.
- (3) The Commissioner may make a written determination that an entity is not required to comply with the record keeping requirements set out in sections 15 and 16 in relation to a specified Coronavirus economic response payment in respect of a period. The determination may take effect from a time before the determination is made.
- (4) A determination under subsection (3) is not a legislative instrument.

Undertakings as to compliance

- (5) If an entity gives the Commissioner a statement in the approved form to the effect that the entity undertakes to comply with the record keeping requirements set out in sections 15 and 16, then the Commissioner may assume that the entity will comply with those requirements for the purposes of making a decision under this Act about entitlement to, or the amount of, the payment.
- (6) However, if:
 - (a) the Commissioner makes a decision under this Act that the entity is entitled to the payment; and
 - (b) the entity does not comply with the requirements referred to in subsection (5);then:
 - (c) the Commissioner may revoke the decision; and
 - (d) if the Commissioner revokes the decision under paragraph (c)—the entity is not entitled, and is taken never to have been entitled, to the payment.

15 Pre-payment record keeping requirements

Scope of this section

- (1) This section sets out the pre-payment record keeping requirements that apply to an entity in relation to a Coronavirus economic response payment in respect of a period.

Records to be kept

- (2) The entity must keep records that enable the entity to substantiate any information that the entity provided to the Commissioner in relation to the payment before the entity was paid the payment.

Note: Section 16 provides that the entity must continue to retain those records for 5 years after the entity is paid the payment.

- (3) The records must be:
 - (a) in English; or
 - (b) readily accessible, and easily convertible into English.

When entity is taken to have met the record keeping requirements

- (4) The entity is taken to have met the requirement set out in subsection (2) if the entity keeps records of a kind, and in a manner, specified in a written determination made by the Commissioner under subsection (5).

Note: Sections 8L, 8Q and 8T of the *Taxation Administration Act 1953* deal with keeping records incorrectly.

- (5) For the purposes of subsection (4), the Commissioner may, by legislative instrument, specify:
 - (a) the kinds of records that an entity must keep for the purposes of that subsection; and
 - (b) the manner in which those records must be kept.

16 Post-payment record keeping requirements

Scope of this section

- (1) This section sets out the post-payment record keeping requirements that apply to an entity in relation to a Coronavirus economic response payment in respect of a period.

Records to be kept

- (2) If the rules require the entity to keep records that substantiate any information that the entity provides to the Commissioner in relation to the payment after the entity was paid the payment, then the entity must keep those records.
- (3) The records must be:
 - (a) in English; or
 - (b) readily accessible, and easily convertible into English.

When entity is taken to have met the record keeping requirements

- (4) The entity is taken to have met the requirement set out in subsection (2) if the entity keeps records of a kind, and in a manner, specified in a written determination made by the Commissioner under subsection (5).

Note: Sections 8L, 8Q and 8T of the *Taxation Administration Act 1953* deal with keeping records incorrectly.

- (5) For the purposes of subsection (4), the Commissioner may, by legislative instrument, specify:
 - (a) the kinds of records that an entity must keep for the purposes of that subsection; and
 - (b) the manner in which those records must be kept.

Period for retaining records

- (6) The entity must retain the records for the period of 5 years after the payment was paid.

- (7) The entity must continue to retain, for the period of 5 years after the payment was made, the records that the pre-payment record keeping requirements set out in section 15 required the entity to retain.
- (8) Despite subsections (6) and (7), it is not necessary for the entity to continue to retain records if the Commissioner notifies the entity that it does not need to retain them.

17 Commissioner may require records to be produced

- (1) If the Commissioner gives the entity a written notice telling the entity to produce records that subsection 16(6) or (7) requires the entity to retain, then the entity must comply with the notice.
- (2) A notice under subsection (1) must give the entity 28 days or more to comply, starting on the day after the notice is given. The Commissioner may allow the entity more time to comply with the notice.
- (3) Despite section 8C of the *Taxation Administration Act 1953*, the entity does not commit an offence merely by not complying with a notice under subsection (1) of this section.

Note: Sections 8L, 8Q and 8T of the *Taxation Administration Act 1953* deal with keeping records incorrectly.

18 Records that are lost or destroyed

- (1) This section applies to an entity if:
 - (a) section 15 or 16 requires the entity to retain a particular record; and
 - (b) the record is lost or destroyed.
- (2) If the entity has a complete copy of the record that is lost or destroyed, it is treated as the original from the time of the loss or destruction.
- (3) If the entity does not have such a copy, but the Commissioner is satisfied that the entity took reasonable precautions to prevent the loss or destruction, the entity's entitlement to a Coronavirus

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economic response payment is not affected by the entity's failure to retain or produce the original record.

- (4) This section has effect despite anything in section 14, 15, 16 or 17.

19 Contrived schemes

- (1) If the Commissioner is satisfied that:
- (a) one or more entities (a **participant**) entered into or carried out a scheme (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*); and
 - (b) it would be concluded (having regard to the matters in subsection (3)) that any of the participants entered into or carried out the scheme, or any part of the scheme, for the sole or dominant purpose of achieving either of the following:
 - (i) making an entity (the **recipient**) entitled to a Coronavirus economic response payment in respect of a period;
 - (ii) increasing the amount of the Coronavirus economic response payment to which an entity (also the **recipient**) is entitled for the period;(whether or not any of the participants is the recipient and whether or not any of them carried out the scheme or any part of the scheme); and
 - (c) the scheme or part of the scheme has achieved, or apart from this section would achieve, that purpose;
- then the Commissioner may determine that this Act has, and is taken always to have had, effect as if:
- (d) the recipient never became entitled to the payment; or
 - (e) the amount of the payment was always the amount specified by the Commissioner in the determination.
- (2) A determination under subsection (1) has effect accordingly.
- (3) For the purposes of subsection (1), the matters are as follows:
- (a) the manner in which the scheme was entered into or carried out;
 - (b) the form and substance of the scheme;

- (c) the time at which the scheme was entered into and the length of the period during which the scheme was carried out;
 - (d) the result in relation to the operation of this Act that, but for this section, would be achieved by the scheme;
 - (e) any change in the financial position of the recipient that has resulted, will result, or may reasonably be expected to result, from the scheme;
 - (f) 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;
 - (g) any other consequence for the recipient, or for any person referred to in paragraph (f), of the scheme having been entered into or carried out;
 - (h) the nature of any connection (whether of a business, family or other nature) between the recipient and any person referred to in paragraph (f).
- (4) This section applies whether or not the scheme has been or is entered into or carried out in Australia or outside Australia, or partly in Australia and partly outside Australia.
- (5) A determination under subsection (1) is not a legislative instrument.

20 Rules

Power to make rules

- (1) The Treasurer may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:

- (a) create an offence or civil penalty;
- (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
- (c) impose a tax;
- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- (e) directly amend the text of this Act.

Rules may make different provision

- (3) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the rules may make different provision in relation to:
 - (a) different kinds of entities; or
 - (b) different kinds of payments.

Rules may subdelegate to the Commissioner

- (4) The rules may make provision in relation to a matter by conferring a power on the Commissioner to make:
 - (a) an instrument of a legislative or administrative character; or
 - (b) a decision of an administrative character.

Rules may incorporate matters in other instruments

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Rules may prescribe matters for the purposes of other laws

- (6) The rules may prescribe matters that are required or permitted by another law of the Commonwealth to be prescribed by the rules.

Rules not limited because certain topics dealt with in this Act

- (7) Sections 8 to 11 and 13 to 19 do not limit the rules that may be made.

*[Minister's second reading speech made in—
House of Representatives on 8 April 2020
Senate on 8 April 2020]*

(53/20)
