EXPOSURE DRAFT EXPLANATORY MATERIAL

Coronavirus Economic Response Package (Payments and Benefits) Act 2020

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

Section 20 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act) provides that the Treasurer may make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The object of the Act is to provide financial support to entities to assist with the impact of the Coronavirus known as COVID-19. In particular, the Act establishes a framework for the Treasurer to make rules about one or more kinds of payments to an entity.

As part of the 2020-21 Budget, the Australian Government announced the JobMaker Hiring Credit payment which will support businesses to hire additional employees where they otherwise may not have done so and expand their organisation to provide young people with access to new employment opportunities as the economy recovers from the Coronavirus.

The Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020 (Amending Rules No. 9) amend the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) to establish the JobMaker scheme and specify details about the scheme, including:

- the start and end date of the scheme;
- when an employer or business is entitled to a payment;
- the amount and timing of a payment; and
- other matters relevant to the administration of the payment.

Generally, the amount of the JobMaker Hiring Credit payment depends on the age of the eligible additional employee when they commence employment with the entity. An entity may receive up to $200 per week for each eligible additional employee aged 16 to 29 years and up to $100 per week for each eligible additional employee aged 30 to 35 years.

The Act specifies no conditions that must be met before the power to make the Rules can be exercised.

Details of the Amending Rules No. 9 are set out in <u>Attachment A</u>

The Amending Rules No. 9 are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Rules No. 9 commenced on the day after registration.

ATTACHMENT A

Details of the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020*

Section 1 – Name of the Instrument

This section provides that the name of the instrument is the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020* (Amending Rules No. 9).

Section 2 – Commencement

Schedule 1 to the Amending Rules No. 9 commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Amending Rules No. 9 are made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

JobMaker Hiring Credit payment

Schedule 1 to the Amending Rules No. 9 amends the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) to establish the JobMaker scheme, under which the 'JobMaker Hiring Credit' payment is available to qualifying employers to encourage job creation in the economic recovery from the impacts of the Coronavirus known as COVID-19. The JobMaker scheme encourages employers to engage individuals aged 16 to 35 years for long term employment.

The JobMaker scheme was announced on 6 October 2020.

All legislative references in this attachment are to the Amending Rules No. 9 unless otherwise stated.

Item 1 of Schedule 1 inserts a number of definitions into subsection 4(1) to key terms used in the Rules. Details of these terms are provided in their relevant sections below. Subsection 4(2) of the Rules already provides that where an expression is not defined in subsection 4(1) of the Rules but that expression is defined in the *Income Tax Assessment Act 1997* (ITAA 1997), the expression has the same meaning in this instrument as it has in that Act.

Entitlement to the JobMaker Hiring Credit payment

Division 2 sets outs the rules for when an employer with eligible employees is entitled to the JobMaker Hiring Credit payment. In general terms, an employer is entitled to a JobMaker Hiring Credit payment for a period if:

- the period is a JobMaker period;
- the employer qualifies for the JobMaker scheme for the period;
- the employer has one or more eligible additional employees for the period;
- the employer has a headcount increase for the period;
- the employer has a payroll increase for the period;
- the employer has notified the Commissioner of Taxation (Commissioner) of its election to participate in the scheme;
- the employer has given information about the entitlement for the period to the Commissioner in accordance with the reporting requirements determined by the Commissioner; and
- the employer is not entitled to a JobKeeper payment for an individual for a fortnight that begins during the period.

Each of these requirements is described in greater detail below.

There are also provisions in the Act that may affect whether an entity is entitled to a JobMaker Hiring Credit payment, such as the requirements relating to record keeping (section 14) and contrived schemes (section 19).

These provisions ensure the integrity of the JobMaker scheme by requiring entities to maintain sufficient records to substantiate their claim and prevent both employers and employees from entering into arrangements for the sole or dominant purpose of obtaining the JobMaker Hiring Credit payment.

The types of arrangements that would be prevented by the integrity provisions in the Act are varied but would include arrangements where an employer artificially inflates their employee headcount and/or payroll for a JobMaker period (for example, by terminating, or reducing the hours of, an existing older employee in order to make it appear that they have hired additional employees where there has been no substantive increase in their overall employment levels).

In addition to losing access to the hiring credit under the anti-avoidance provisions, employers who take adverse action against an older employee in order benefit from the scheme would also be acting unlawfully under both the *Age Discrimination Act 2004* and the *Fair Work Act 2009* which make it unlawful for an employer to discriminate against an employee on the grounds of the employee’s age by dismissing them, altering the terms and conditions of their employment or subjecting the employee to any other detriment.

Example 1.1 – a scheme which inflates headcount

Oscar is 53 years old and has been employed by Titan Co for 14 months. Oscar's hours can vary depending on the shifts he is allocated each fortnight but he typically works 4 days per week and works an average of 26 hours per week.

On 10 October 2020, Titan Co hires Bella. Bella is 26 years old and satisfies the other requirements to be an eligible additional employee.

On 17 October 2020, Titan Co provides Oscar with his roster for the fortnight which shows Oscar has not been allocated any shifts in the coming fortnight. Oscar does not get allocated any shifts for the remainder of the JobMaker period.

Titan Co instead allocates Bella similar shifts to those previously worked by Oscar. To offset the fact that Bella is receiving the wages that Oscar would have ordinarily received in the period, Titan Co increases the wages of its managing director, Douglas, who is also employed as an employee of Titan Co.

Titan Co submits a claim to the Commissioner for the JobMaker Hiring Credit payment. In doing so, Titan Co claims that Oscar is still an employee and that, as a result, employing Bella has caused Titan Co to have a headcount increase for the period. Titan Co also claims that it has had a payroll increase for the period because of the additional amount of wages it has paid to Douglas.

The Commissioner calculates Titan Co's entitlement for the period based on this information and pays an amount of the JobMaker Hiring Credit payment to Titan Co.

A short time after paying the JobMaker Hiring Credit payment to Titan Co, the Commissioner reviews Titan Co's entitlement to the Jobmaker Hiring Credit payment. The Commissioner identifies that Titan Co reduced Oscar's hours and made additional payments to Douglas for the sole or dominant purpose of obtaining the Jobmaker Hiring Credit payment for Bella. The Commissioner therefore determines that Titan Co was not entitled to the JobMaker Hiring Credit payment.

Titan Co is liable to repay all amounts of JobMaker Hiring Credit payment that it received in the period for Bella. Titan Co is also subject to general interest charges in relation to the overpayment of hiring credits and administrative penalties for making false or misleading statements to the Commissioner.

JobMaker periods

Entitlement to a JobMaker Hiring Credit payment is assessed in relation to three month periods known as JobMaker periods. The JobMaker scheme commences on 7 October 2020 and ends on 6 October 2022, with each period being 3 months. Accordingly, each of the following is a JobMaker period (inclusive):

- 7 October 2020 to 6 January 2021;
- 7 January 2021 to 6 April 2021;
- 7 April 2021 to 6 July 2021;
- 7 July 2021 to 6 October 2021;
- 7 October 2021 to 6 January 2022;

- 7 January 2022 to 6 April 2022;
- 7 April 2022 to 6 July 2022; and
- 7 July 2022 to 6 October 2022.

Participation and general notification requirements in the JobMaker scheme

To be entitled to the JobMaker Hiring Credit payment in relation to a JobMaker period, the entity must have notified the Commissioner in the approved form of its election to participate in the scheme by the end of the period that the entity first elects to participate.

For example, for an entity that elects to participate for the JobMaker period of 7 October 2020 to 6 January 2021, the notice must be provided to the Commissioner by 6 January 2021.

The entity must also comply with all reporting obligations of the scheme as determined by the Commissioner. A legislative instrument issued by the Commissioner may specify the types of information that must be reported, the timing of that reporting and how the entity is required to provide that information to the Commissioner.

The reporting requirements specified by the Commissioner will include information required by the Commissioner to calculate the entity's entitlement for a period. This will include the details of employees that have commenced or ceased employment during a JobMaker period and the entity's payroll amount. The Commissioner will also specify that the information must be provided through the single touch payroll reporting regime.

An entity cannot participate in the JobMaker scheme if they are entitled to receive a JobKeeper payment in respect of an individual for a JobKeeper fortnight that begins during the JobMaker period. This ensures that an entity cannot participate in both the JobKeeper scheme and JobMaker scheme simultaneously.

The prohibition on JobKeeper fortnights that begin during a JobMaker period allows an entity to have a single JobKeeper fortnight end at the start of a JobMaker period. Permitting this overlap allows an entity to cease its participation in the JobKeeper scheme and begin its participation in the JobMaker scheme without requiring a 'gap' between the two schemes. Preventing a JobKeeper fortnight from starting in a JobMaker period ensures that any such overlap is always limited to a part of a single JobKeeper fortnight. This reflects that any transition between the two schemes must be limited and temporary in nature.

Employer must be a qualifying entity

The JobMaker Hiring Credit payment is only available to qualifying entities. An entity is a qualifying entity in respect of a JobMaker period if:

- From the time the entity elected to participate in the scheme it:
  - carries on a business in Australia; or

- is a non-profit body pursuing its objectives principally in Australia; or
- is a deductible gift recipient that is, or operates, a public fund covered by item 9.1.1 or 9.1.2 of the table in subsection 30-80(1) of the ITAA 1997 (international affairs deductible gift recipients); and
- has an ABN; and
- is registered as a withholder in accordance with section 16-141, 16-142 or 16-146 in Schedule 1 to the Taxation Administration Act 1953; and

• at the time the entity gives information to the Commissioner about its entitlement for the period, the entity does not have any outstanding income tax or GST returns that have become due in the past 2 years.

As noted above, the Commissioner will also specify that the information that must be provided in relation to an entity's entitlement is to be provided through the single touch payroll reporting regime. This will mean that entities must be enrolled in single touch payroll reporting in order to qualify for the JobMaker scheme.

Carrying on a business or pursuing objectives as a non-profit body or certain public funds

To be a qualifying entity, the entity must be carrying on a business, be a non-profit body that pursues its objectives principally in Australia or be a public fund covered by items 9.1.1 or 9.1.2 of the table in subsection 30-80(1) of the ITAA 1997 (international affairs deductible gift recipients).

The term 'business' is defined in section 995-1 of the ITAA 1997. As noted in the dictionary for the Rules, the term 'non-profit body' takes the same meaning as given to the term in section 23-15 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Items 9.1.1 and 9.1.2 of the table in subsection 30-80(1) of the ITAA 1997 broadly apply to public funds that are declared to be developing country relief funds and developing country disaster relief funds.

ABN registration, withholding obligations and tax lodgements up to date

To provide for efficient administration of the scheme, at the time they nominate to participate in the JobMaker scheme the entity must have an ABN and be registered to withhold Pay As You Go.

At the time the entity provides information to the Commissioner about their entitlement under the scheme, the entity must not have any outstanding income tax or business activity statement lodgments that become due in the two years before that time.

Exclusions

An entity is excluded from being a qualifying entity if any of the following applies:

- it is an entity that has been subject to the levy imposed by the *Major Bank Levy Act 2017* for any quarter ending before 1 October 2020, or it was a member of a consolidated group and another member of the group had been subject to the levy;
- it is an Australian government agency, local governing body or a wholly-owned entity of those;
- a sovereign entity; or
- at any time in the fortnight, a provisional liquidator or liquidator has been appointed to the business or a trustee in bankruptcy had been appointed to the individual's property.

Each of these exclusions is described in more detail below.

Entities subject to the major bank levy

A qualifying entity cannot be an employer that was subject to the major bank levy in a quarter ending prior to 1 March 2020. The major bank levy is imposed by the *Major Bank Levy Act 2017* and is payable by authorised deposit-taking institutions with total liabilities of more than $100 billion on a quarterly basis.

The Rules further provide that an employer is not a qualifying entity if the major bank levy was imposed on another member of a consolidated group that it is a member of for any quarter ending before 1 March 2020. For example, if an employer is a small bank that is part of a consolidated group that includes an authorised deposit-taking institution that is subject to the major bank levy, then the small bank cannot be a qualifying employer.

Government entities

An Australian government agency is not a qualifying entity for the purposes of the JobMaker scheme. 'Australian government agency' is defined in section 995-1 of the ITAA 1997 as the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory. A 'local governing body', which is also defined in that Act, is also excluded from being a qualifying employer for the purposes of JobMaker scheme.

An entity that is wholly-owned by an Australian government agency or a local governing body is not a qualifying entity for the purposes of JobMaker scheme.

Australian universities may participate in the JobMaker Hiring Credit scheme.

A sovereign entity is not a qualifying employer for the purposes of JobMaker Hiring Credit payment. The term 'sovereign entity' takes its meaning from the ITAA 1997 and, generally, includes a body politic of a foreign country or a foreign government agency.

Wholly-owned resident subsidiaries of a body politic of a foreign country or foreign government agency may, subject to other exclusions, be qualifying a qualifying entity.

Liquidators and bankruptcy

For the purposes of JobMaker scheme, an employer is not a qualifying entity if a liquidator or trustee in bankruptcy had been appointed. This reflects the intention that the JobMaker Hiring Credit payment is intended to support entities as they recover from the impacts of the Coronavirus.

Employer must have eligible additional employees

Under the JobMaker scheme, qualifying entities can only receive the payment for a JobMaker period in respect of eligible additional employees.

An eligible additional employee is an individual who:

- was employed by the qualifying entity at any time during the JobMaker period;
- commenced employment between 7 October 2020 and 6 October 2021;
- was aged between 16 and 35 years at the time they commenced employment;
  - employers are eligible for the 'higher rate' of credit for individuals aged 16 to 29 (inclusive) at the commencement of their employment; and
  - employers are eligible for the 'lower rate' of credit for individuals aged 30 to 35 (inclusive) at the commencement of their employment;
- commenced employment no more than 12 months before the start of the JobMaker period;
- has worked an average of 20 hours a week for each whole week the individual was employed by the qualifying entity during the JobMaker period;
- meets the pre-employment conditions;
- meets the notice requirement; and
- is not excluded as an eligible additional employee.

The requirement that an employee must commence employment between 7 October 2020 and 6 October 2021 means that the JobMaker Hiring Credits payment is available for additional employment that occurs within this 12 month period. The requirement that an employer commenced employment no more than 12 months before the start of a particular JobMaker period meets a different purpose which is that employers can only claim the JobMaker Hiring Credit payment for a given employee for up to 12 months from the time they commence employment. After 12 months, the employer can no longer receive payments in relation to that employee, but they can continue to qualify for payments in relation to another eligible additional employee who commenced their employment at a later time.

The pre-employment condition is that for at least 28 of the 84 days (i.e. for 4 out of 12 weeks) immediately before the commencement of employment of the individual, the individual was receiving the following payments under the *Social Security Act 1991*:

- parenting payment;
- youth allowance (except if the individual was receiving thus payment on the basis that they were undertaking full time study or was a new apprentice); or
- JobSeeker payment.

The policy intent of the JobMaker scheme is to encourage additional employment by providing a payment to qualifying entities who hire eligible additional employees.

In satisfying the pre-employment condition, where an individual was entitled to and receiving the relevant payment but received a nil payment for a time (for example, due to a change in the calculations based on their circumstances), the duration for which a nil payment was received does not in itself disqualify the individual from meeting the pre-employment condition and continues to count as part of the minimum requirement of 28 days. However, the number of days to the entitlement to the relevant payments must still constitute at least 28 out of the 84 days immediately preceding their employment by the entity.

The notice requirement for an eligible additional employee is that the individual must give written notice to the employer in the approved form that the individual:

- met one of the applicable age requirement at the time they commenced employment (that is, they were either aged between 16 and 29, or between 30 and 35);
- meets the pre-employment condition; and
- has not provided a similar notice to another entity.

This notice requirement allows qualifying entities to rely on declarations made by the employee regarding their satisfaction of the pre-employment condition and that they are not nominated by another entity to receive the JobMaker Hiring Credit payment. These facts are not expected to be known by the employer and therefore, it is a requirement that they are provided to the employer by the individual.

The notification ceases to have effect once the individual ceases employment with the employer. This ensures that an employee can provide a further nomination to a new employer if they have ceased employment with an employer that they have already provided the nomination notice to. Under no circumstances are employees permitted to have valid notices with multiple employers at the same time.

Individuals who provide a false or misleading statement may be liable to criminal and administrative penalties under the *Taxation Administration Act 1953*. Individuals may also be jointly and severally liable for any overpayments made to an entity under the JobMaker scheme where the overpayment occurred because the entity reasonably relied on a statement that was made by the individual in the approved form (see section 11 of the Act).

Exclusions from being an eligible additional employee

An individual is excluded from being an eligible additional employee if the individual is, where applicable, any of the following persons, or a relative of any of the following persons:

- if the entity is a sole trader – the sole trader;
- if the entity is a partnership – a partner of the partnership;
- if the entity is a trust – the trustee or beneficiary of that trust; or
- if the entity is a company (other than a widely-held company as defined in subsection 995-1(1) of the ITAA 1997) – a shareholder in the company or a director of the company.

For the purposes of the exclusion, the term 'relative' has the same meaning as in the ITAA 1997. Subsection 995-1(1) of the ITAA 1997 defines the relative of a person as:

- the person's spouse; or
- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse; or
- the spouse of the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse.

This provides that a qualifying entity cannot claim an amount of the JobMaker Hiring Credit payment in relation to a person who is related to the entity even if the employee would otherwise meet all other eligibility requirements.

The exclusion of relatives applies on a look-through basis, where interposed entities are disregarded for the purposes of the test. For example, where a trust with a corporate trustee is the entity carrying on the business, a person is excluded from being an eligible additional employee of the qualifying entity (the trust), if that person is the child of the director of the company that is the corporate trustee.

Further, an individual is also excluded from being an eligible additional employee if at any time between 6 April 2020 and 6 October 2020, the individual was engaged by the entity as a contractor or a subcontractor where they worked in a substantially similar role or performed substantially similar functions or duties. This provision discourages entities from changing their existing relationship with the contractor in order to obtain a benefit from the JobMaker scheme.

Employer must have a headcount increase for the JobMaker period

To be entitled to the JobMaker Hiring Credit payment for a period, an entity must have at least one employee who the entity is not entitled to the JobMaker Hiring Credit payment for. As a result, an entity cannot be a sole trader and employ themselves to receive the JobMaker Hiring Credit payment.

In addition, the entity must have created additional employment during the period. Additional employment is measured by reference to the number of employees that were employed by the entity on 30 September 2020.

Ensuring that the entity has created additional employment prevents an employer from replacing their existing employees with eligible additional employees.

An entity has a headcount increase for a period if the number of employees employed by the entity at the end of the last day of the JobMaker period is greater than the entity's baseline headcount for the period. This excess or increase in employees in comparison to baseline headcount is the '*headcount increase amount'*.

The baseline headcount for the first four JobMaker periods

For the first four JobMaker periods (7 October 2020 to 6 January 2021, 7 January 2021 to 6 April 2021, 7 April 2021 to 6 July 2021, and 7 July 2021 to 6 October 2021), the entity's baseline headcount will be the greater of one and the number of employees employed by the entity at the end of 30 September 2020.

Increasing the baseline headcount for the fifth and subsequent JobMaker periods

For the fifth to eighth JobMaker periods (7 October 2021 to 6 January 2022, 7 January 2022 to 6 April 2022, 7 April 2022 to 6 July 2022, and 7 July 2022 to 6 October 2022) the entity will need to increase its baseline headcount by the aggregate number of eligible additional employees that the entity was entitled to the JobMaker Hiring Credit payment for the earlier corresponding period twelve months prior or the increase of the previous period, whichever is higher.

The baseline headcount increase means that the entity may only receive the JobMaker Hiring Credit payment in respect of each additional headcount for a period of twelve months. This ensures that an entity does not have an incentive to separate from an eligible additional employee at the end of twelve months and hire a new eligible employee in order to claim for a further twelve month period.

For the fifth JobMaker period, the baseline headcount increase is worked out as the lesser of:

- the headcount increase amount in the first JobMaker period; and
- the proportion of total counted days from the maximum payable days in the corresponding period in relation to the headcount increase amount in the first JobMaker period (the concepts of *total counted days* and *maximum payable days* are explained further below).

For the sixth, seventh and eighth JobMaker periods, the baseline headcount increase is again calculated with reference to the headcount increase amount, total counted days and maximum payable days in the corresponding period (second, third and fourth periods) as explained above for the fifth period.

However, for these periods, there is an additional step and the entity needs to compare the result from the above calculation with the baseline headcount increase amount for the previous period (the period that ended immediate before the current period). The entity must take the greater of the above step and this step in working out the baseline headcount increase amount for these periods.

The purpose of the additional step in the sixth, seventh and eighth JobMaker periods it to provide that the baseline headcount only increases by any marginal increase in headcount over the corresponding periods.

After working out the baseline headcount for the JobMaker period, the entity must compare the baseline headcount for the period against the number of employees employed at the end of the JobMaker period to determine if it has a headcount increase in the period and if so, its headcount increase amount for the period.

<u>Example 2.1: Headcount increase for the first JobMaker period</u>

TBT Co has elected to participate in the JobMaker scheme. To be entitled to the JobMaker Hiring Credit payment for the first JobMaker period (between 7 October 2020 and 6 January 2021), TBT Co must have a headcount increase.

At the end of 30 September 2020, TBT Co had 8 employees. Therefore TBT Co's baseline headcount is 8.

During the first JobMaker period, 1 of the 8 employees ceased employment and TBT Co employed 3 new employees during the period. This meant that at the end of the last day in period 1, TBT Co had 10 employees.

TBT Co has had a headcount increase for the period because at the end of the last day of the period, its headcount of 10 exceeds its 30 September 2020 headcount of 8.

TBT Co's headcount increase amount for the first period is 2.

<u>Example 2.2: Headcount increase for the sixth JobMaker period</u>

Following on from Example 2.1, TBT Co continues to be a qualifying entity under the JobMaker scheme for the sixth JobMaker period (7 January 2022 to 6 April 2022).

TBT Co's baseline headcount increase amount for the sixth JobMaker period is worked out as the greater of the baseline headcount increase amount for the corresponding period and the amount by which TBT Co's baseline headcount was increased by in the fifth period.

The corresponding period for the sixth JobMaker period is the second JobMaker period (7 January 2021 to 6 April 2021). The baseline headcount for the second JobMaker period was 8. The baseline headcount increase for the fifth period was 2.

TBT Co's baseline headcount increase for this corresponding period is worked out as the lesser of:

- the headcount increase amount for the corresponding period; and

- the proportion of total counted days from the number maximum payable days multiplied by the headcount increase amount for that period – this formula calculates the proportion of the claim in relation to the headcount increase in the corresponding period where the maximum payable days has not capped the total counted days (the concepts of *total counted days* and *maximum payable days* are explained further below and at Example 4).

TBT Co applies the formula using the following information:

- the headcount increase amount for the second JobMaker period was 3;
- total counted days for the second JobMaker period was 210;
- maximum payable days for the first JobMaker period was 273; and
- (210/273) × 3 = 2.3, rounded up to 3.

Further, TBT Co's baseline headcount increase for the sixth JobMaker period (3) is greater than TBT Co's baseline headcount increase amount in the fifth JobMaker period (2) and therefore TBT Co's baseline headcount increase for the sixth JobMaker period is 3.

This means that TBT Co's baseline headcount for the sixth JobMaker period is 11 (the baseline headcount for the second JobMaker period, which is the 30 September 2020 headcount of 8, plus the baseline increase amount of 3 as worked out above).

At the end of the sixth JobMaker period (6 April 2022), TBT Co had a total of 14 employees. This number is greater than the increased baseline headcount of 11 (as worked out above) and therefore, TBT Co has satisfied the headcount increase for the sixth JobMaker period.

Employer must have a payroll increase for the JobMaker period

An entity satisfies the payroll increase condition for a JobMaker period if the entity's total payroll amount for the period is greater than the entity's baseline payroll for that period. For the purposes of the JobMaker scheme:

- an entity's total payroll amount for a JobMaker period is the sum of payroll amounts (see below) for each of the entity's employees for each pay cycle that ended during the JobMaker period; and

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

The payroll amount is worked out as the excess of the entity's payroll amount for a JobMaker period from the baseline payroll amount.

This is used in working out the amount of payment. Where the payroll amount for a JobMaker period is less than or equal to the reference period payroll amount, the entity may not claim a JobMaker Hiring Credit for that JobMaker period. This reflects that in such cases, the entity has not had a substantive increase in their overall employment levels, irrespective whether it has nominally increased the number of its employees.

When comparing the total payroll amount and baseline payroll amount between the JobMaker period and the reference period, the number of pay cycles that ended within the JobMaker period (e.g. weekly, fortnightly or monthly) will determine the number of equivalent pay cycles used in comparison to the reference period. To ensure that businesses can have regard to their existing pay cycles, it does not matter if the actual work was conducted outside of the JobMaker period, so long as that pay cycle's end date occurred within the JobMaker period.

The number of payroll cycles used in a reference period in relation to a JobMaker period may differ from one JobMaker period to the next. However, the number and duration of pay cycles in a JobMaker period and the corresponding reference period must match.

<u>Example 3.1: Payroll increase for the first JobMaker period</u>

Continuing on from Example 2.1, TBT Co operates on a fortnightly pay cycle ending on every second Wednesday. For the first JobMaker period of 7 October 2020 to 6 January 2021, the first pay cycle in this period ended on 14 October 2020 and the last pay cycle ended on 6 January 2021. There were 7 fortnightly pay cycles that ended in this JobMaker period.

Number	**TBT Co's fortnightly pay cycle end dates between 7 October 2020 and 6 January 2021**	**Payroll amount**
1	14 October 2020	$14,000
2	28 October 2020	$14,000
3	11 November 2020	$12,500
4	25 November 2020	$15,000
5	9 December 2020	$17,000
6	23 December 2020	$17,000
7	6 January 2021	$13,000
Total payroll amount in the first JobMaker period:		**$102,500**

To establish the reference period for the purposes of working out the baseline payroll amount for this JobMaker period, the entity sums up the total payroll amounts based on the 7 consecutive fortnightly pay cycles ending on or immediately before 6 October 2020. For TBT Co, these include the pay cycles that ended on 8 July 2020 through to 30 September 2020.

Number	TBT Co's fortnightly pay cycle end dates on or immediately before 6 October 2020	Payroll amount
1	30 September 2020	$12,500
2	16 September 2020	$12,500
3	2 September 2020	$9,000
4	19 August 2020	$12,000
5	5 August 2020	$15,300
6	22 July 2020	$17,000
7	8 July 2020	$10,000
	Total payroll amount in the reference period:	**$88,300**

TBT Co sums up the payroll amounts for the JobMaker period and compares that to the corresponding reference period. TBT Co satisfies the payroll increase as their actual payroll amount in the JobMaker period is greater than the baseline payroll amount in the corresponding reference period.

Example 3.2: Payroll increase for the second JobMaker period

Continuing on from Example 3.1, TBT Co remains a qualifying entity for the second JobMaker period, from 7 January 2021 to 6 April 2021. TBT Co, continued to operate on fortnightly pay cycles ending on every second Wednesday. For the second JobMaker period, there were 6 pay cycles that ended in this period, with the first on 20 January 2021 and the last ending on 30 March 2021.

To establish the reference period used for the purposes of the payroll increase for the second JobMaker period, TBT Co sums up the payroll amounts for the 6 pay cycles that ended on or immediately before 6 October 2020 (i.e. the pay cycles that ended on 22 July 2020 to 30 September 2020).

Where an entity does not have one or more equivalent pay cycles to establish the required reference period, the pay cycle amounts for those times is nil (this could occur, for example, if the business was created after 6 October 2020).

The payroll amount is equivalent to the amount worked out under the concept of the 'wage condition' used in the JobKeeper scheme. However, they do not apply only on a fortnightly basis as per the JobKeeper scheme, and instead apply according to the pay cycles of the entity for the purposes of the JobMaker scheme. These amounts generally include:

- salary, wages, commission, bonuses and allowances;
- amounts withheld under the Pay As You Go withholding regime;
- salary sacrifice superannuation contributions; and
- amounts applied or dealt with in any way where the employee has agreed for the amount to be so dealt with in return for salary and wages to be reduced – generally, this means amounts forming part of salary sacrifice arrangements.

Working out the amount of JobMaker Hiring Credit payment for a period

The JobMaker Hiring Credit is intended to support entities in creating additional employment. The amount of payment a qualifying entity may receive in relation to a JobMaker period is worked out as the lesser of:

- the headcount amount for the period; and
- the payroll amount for the period.

It is expected that the ATO will establish systems to automate these two calculations for most employers. This is possible because the calculations only rely on inputs relating to start and cessation times, the age of eligible employees at the time they commenced employment, the entity's baseline headcount and payroll on 30 September 2020 and the entity's headcount and payroll at the end of the period.

Working out the headcount amount

The headcount amount is worked out on a daily basis for the JobMaker period and has been designed to ensure that the scheme recognises periods of partial employment during the period to optimise the maximum amount payable to an employer without requiring the employer to track and claim for the most efficient combination of eligible employees within their headcount for the period.

In working out the headcount amount, different calculations apply based on whether an eligible additional employee is aged from 16 to 29, and from 30 to 35. For these two groups, the higher rate of payment is $200 per week, and the lower rate of payment is $100 per week. The headcount amount based on the total counted days in a period is capped by the maximum payable days as worked out below.

To calculate the headcount amount for a period under the formula, the entity should:

1. count the number of *higher rate days* for the JobMaker period by adding together the number of days each higher rate eligible additional employee was employed in the period – these individuals are those who were aged 16 to 29 years (inclusive) at the commencement of their employment.

2. count the number of *lower rate days* for the JobMaker period by adding together the number of days each lower rate eligible additional employee was employed in the period – these individuals are those who were aged 30 to 35 years (inclusive) at the commencement of their employment.

3. count the number of *maximum payable days* for the JobMaker period by subtracting the entity's baseline headcount from the number of employees employed by the entity at the end of the last day of the period, and multiply this by the number of days in the period. For example, for the JobMaker period of 7 October 2020 to 6 January 2021 (dates inclusive), there are 92 days.

Where the sum of steps 1 and 2 (*total counted days*) is equal to or less than the maximum payable days for the period, the headcount amount in a JobMaker period is the sum of:

- the amount derived by multiplying the higher rate days for the period by $200, dividing the result by 7 (for the number of days in a week) and rounded up to the nearest cent; and

- the amount derived by multiplying the lower rate days for the period by $100, dividing the result by 7 (for the number of days in a week) and rounded up to the nearest cent.

However, if the total counted days (sum of the higher rate days and the lower rate days) exceeds the cap imposed by the maximum payable days, the counted days are reduced to the number of maximum payable days by:

- reducing the lower rate days; then

- reducing the higher rate days.

Accordingly, it is possible for the maximum payable days to cap the total counted days for a JobMaker period to the effect that there are only higher rate days used for the calculation and no lower rate days. After applying the cap imposed by the maximum payable days, the headcount amount is worked out according to the above formula.

Example 4: Working out the headcount amount for the first JobMaker period

Continuing from Example 2.1, at the end of the first JobMaker period, TBT Co had 3 eligible additional employees but a headcount increase amount of 2. This is because there was one employee who left TBT Co before the end of the first JobMaker period.

During the first JobMaker period, two of the eligible employees who were aged 21 and 26 years when they commenced employment on 10 October 2020 generally worked 5 days per week in the period with some additional shifts, and overall worked 67 days each during the period.

The other eligible employee who was aged 35 when they commenced employment on 13 October 2020 generally worked 4 days per week in the period, and overall worked 60 days.

For the first JobMaker period:

- the *total counted days* for the period were 194 (134 higher rate days and 60 lower rate days); and
- the *maximum days payable* was 184 (headcount increase amount of 2 multiplied by 92 days in the period).

Because TBT Co's total counted days exceeded its maximum payable days for the JobMaker period, TBT Co must reduce the total counted days to its maximum payable days. To ensure TBT Co obtains the highest payment possible, this is done by reducing its number of lower rate days from 60 to 50. For the purposes of the calculation of the headcount amount for the first JobMaker period, TBT Co has 134 higher rate days and 50 lower rate days.

TBT Co calculates its headcount amount as the sum of:

- the amount derived from multiplying the 134 higher rate days by $200, divide the result by 7 and round up to the nearest cent, which is $3,828.58; and
- the amount derived from multiplying the 50 lower rate by $100, divide the result by 7 and round up to the nearest cent, which is $714.29.

TBT Co's headcount amount for the first JobMaker period (between 7 October 2020 and 6 January 2021) is $4,542.87.

Working out the payroll amount

The payroll amount is the excess of the total payroll amount for a JobMaker period compared to the reference period payroll amount worked out according to the payroll increase condition.

Example 5: Working out the payroll amount and the amount of JobMaker Hiring Credit payment for the first JobMaker period

Following on from Examples 3.1 and 4, TBT Co had a payroll increase because its total payroll amount for the first JobMaker period ($104,500) exceeded its baseline payroll amount in the corresponding reference period ($88,000) by $14,200.

The amount of the JobMaker Hiring Credit payment TBT Co may claim for the first JobMaker period is the lesser of:

- the headcount amount, $4,542.87; and
- the payroll amount, $14,200.

TBT Co claims the JobMaker Hiring Credit in the amount of $4,542.87 for the first JobMaker period (between 7 October 2020 and 6 January 2021).

Payment by the Commissioner and administration

For a qualifying entity to receive the JobMaker payment, it must meet the entitlement conditions and give the Commissioner information about their entitlement for a JobMaker period in the approved form (i.e. lodge a claim for the JobMaker Hiring Credit payment for the period).

If the Commissioner is satisfied that an entity is entitled to a JobMaker Hiring Credit payment for a period, the Commissioner must, as soon as practicable, pay the entity in accordance with Rules and the Act.

Where the Commissioner has paid the entity for the JobMaker period and that amount is consistent with the Commissioner being satisfied that the entity is entitled to the full amount of JobMaker Hiring Credit payment for the period, the Commissioner is taken to have given notice of decision to the entity on the same day the payment is made unless notice was provided at an earlier time.

However, if the Commissioner has paid the entity (including of a nil amount) for the JobMaker period and that amount is not consistent with the Commissioner being satisfied that the entity is entitled to the full amount of the JobMaker Hiring Credit payment for the period, the Commissioner must give a notice to the entity as soon as practicable after the decision is made.

Where the Commissioner has overpaid an entity a payment, the entity must repay the overpaid amount to the Commissioner under section 11 of the Act. This can arise where the entity is not entitled to the whole or part of a payment that is made, or where the entity is paid more than the correct amount. Therefore, the payment itself does not mean that the entity is entitled to the JobMaker scheme.

Later legislation

The operation of the JobMaker scheme will be closely monitored to ensure that it provides an effective incentive to the entities that it is intended to assist in the period of economic recovery from the impacts of the Coronavirus. Compliance with the rules of the JobMaker scheme will also be monitored. If it is determined that changes to the JobMaker scheme are necessary, relevant amendments will be made. Such changes may be necessary, for example, to remove an entitlement from an entity where it is determined that the entity has acted in a way which means that it should not receive or should not continue to receive the JobMaker Hiring Credit payment.

Any entitlement to JobMaker Hiring Credit payment may be cancelled, revoked, terminated, varied or made subject to conditions by or under later legislation.