COVID-19: (AUSTRALIA) EMPLOYER GUIDE TO JOBKEEPER PAYMENTS (SECOND EDITION)

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By: Michaela Moloney, Nick Ruskin, Paul Hardman

** This information set out in this Guide is accurate as at 9.00 am on Tuesday 14 April 2020 and is subject to change as the situation evolves.*

Welcome to our employer guide to the Australian Government's JobKeeper Payment initiative.

This is an update of our earlier guide published on 3 April. This Second Edition has been updated to take account of the introduction of:

- *the Coronavirus Economic Response Package (Payments and Benefits) Act 2020* ("the Act"); and
- *the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* ("the Rules").

The Australian Tax Office (ATO) is expected to release detailed guidance on how it will administer the Act and Rules soon. We will continue to update this Guide as more information becomes available.

While this Guide sets out high level information, it is not a substitute for advice. This is particularly important at the present time as issues are evolving quickly.*

We hope you will find this Guide valuable as you navigate these important issues and we welcome your feedback on any aspect of it.

1. TURNOVER TESTS

Employers will be eligible for the subsidy if their turnover for the period has fallen below the thresholds below and they meet the other eligibility requirements set out further below.

Business Type / Size	**Turnover Reduction Threshold**
ACNC Registered Charity*	15%
For Profit: Turnover below A$1 billion**	30%
For Profit: Turnover above A$1 billion**	50%

*Includes ACNC registered charities with the exception of public or private universities and schools.

**As explained further below, the test for determining whether a business has a turnover exceeding A$1 billion is based on the entity's aggregated turnover for the income year.

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2. ELIGIBLE EMPLOYEES

Subsidy payments are restricted to eligible employees that must meet all of the requirements listed below.

Requirement	Comment
Date Cut-Off	The person must have been employed by the employer as at 1 March 2020.
Current Employment Status	The person must be currently employed. This can include employees stood down or rehired.
Age Limit	The employee must be at least 16 years of age on 1 March 2020.
Residency Status	Eligible employees fall within the following categories: ▪ Australian Citizen ▪ Australian Permanent Resident ▪ Special Category (Subclass 444) Visa Holder (New Zealand Citizen).
Multiple Employers	Eligible employees that have multiple eligible employers can only receive a JobKeeper Payment from one employer.
Employment Type	The qualifying employment types are: ▪ Full Time ▪ Part Time ▪ Long-term Casual* *Employed as a casual for more than 12 months as at 1 March 2020.
Further, eligible employees must not receive either of the following types of payments during a fortnight:	
Paid Parental Leave	Employees receiving paid parental leave (under the Paid Parental Leave Act 2010) in a fortnight are ineligible for that fortnight. Parental leave paid under arrangements outside the Paid Parental Leave Act 2010 should not impact eligibility.
Workers Compensation	Employees that are totally incapacitated for work, and receive an amount under an Australian worker's compensation law in a fortnight are ineligible for that fortnight.

3. OTHER EMPLOYER ELIGIBILITY REQUIREMENTS

In addition to satisfying the Turnover Tests, employers must:

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- Ensure eligible employees receive at least A$1,500 per fortnight
- Notify all eligible employees they are receiving JobKeeper Payments
- Obtain a written notice from each eligible employee (to confirm eligibility)
- Provide required information to the ATO on a monthly basis, including monthly turnover and the number of eligible employees

4. INELIGIBLE EMPLOYERS

Regardless of whether the above requirements are satisfied, the following employers are ineligible:

- Entities subject to the Major Bank Levy
- Australian government agencies or local governing authorities
- Entities wholly owned by an Australian government agency or local governing authority
- A sovereign entity
- A company to which a liquidator or provisional liquidator has been appointed
- An individual if a bankruptcy trustee has been appointed in respect of that individual's property

5. HOW MUCH WILL EMPLOYERS RECEIVE?

The payments will be a flat amount equivalent to A$1,500 per fortnight for each eligible employee.

The payments will be available to eligible employers for a maximum of 13 fortnights (six months).

6. HOW AND WHEN ARE PAYMENTS MADE TO EMPLOYERS?

Eligible employers will receive the subsidy payments from the ATO in arrears once per month.

The initial payment is expected to be made in the first week of May 2020 (ie between 4 May and 8 May 2020).

The initial payment will be backdated to 30 March 2020 (for employers entitled to receive payments for eligible employees from that date).

7. HOW MUCH WILL EACH EMPLOYEE RECEIVE?

The minimum payment to each employee (which may comprise the components set out further below) must be A$1,500 per fortnight, before tax.

The impact for employees is expected to be as set out in the table below.

Normal Salary Level (before tax)	**Minimum Payment (before tax)**

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Less than A$1,500 per fortnight	A$1,500 per fortnight
A$1,500 per fortnight	A$1,500 per fortnight
More than A$1,500 per fortnight	Normal salary. Employers may use the subsidy payment to reduce the cost of the salary payment. Employers may also voluntarily elect to pass through some or all of the payment to employees as an additional amount.

8. WHAT ARE THE COMPONENTS OF THE A$1,500 PAYMENT?

The component amounts that must total at least A$1,500 per fortnight include the following:

- Income such as salary, wages, commissions and bonuses (less PAYG withholding).
- Amounts withheld for tax and / or HECS-HELP loans.
- Contributions made to a superannuation fund under a salary sacrifice arrangement.
- Other amounts withheld under a salary sacrifice arrangement.

9. WHAT IS THE APPLICATION PROCESS?

Employers can register their interest in applying for the JobKeeper Payment via the Australian Taxation Office website.

Generally employers must register before the end of the relevant fortnight to receive a JobKeeper payment in respect of that fortnight. There is an exception in relation to the first JobKeeper fortnight (commencing on 30 March 2020). Employers may register before the end of the second JobKeeper fortnight in respect of both the first and second JobKeeper fortnights.

10. WHO DETERMINES WHICH EMPLOYEES ARE ELIGIBLE?

Employers will be responsible for identifying eligible employees and updating the ATO monthly.

For most businesses, the ATO will pre-populate the employee details using Single Touch Payroll data.

11. ARE EMPLOYEES REQUIRED TO PROVIDE A WRITTEN NOTICE?

Yes. Eligible employees must provide a notice in the approved form confirming all of the following:

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- The employee consents to be nominated by the employer as an eligible employee under the JobKeeper Scheme.
- The employee has not agreed to be nominated for the JobKeeper Scheme by any other employer.
- For casual employees, the employee does not have permanent employment (either full or part-time) with another employer.

12. ARE SELF-EMPLOYED INDIVIDUALS ELIGIBLE FOR SUBSIDY PAYMENTS?

Yes, if the Turnover Tests applying to other businesses are met.

Self-employed individuals may participate in a business through the following types of entity structures. For each type of entity, only one qualifying individual may be eligible.

Entity Type	Qualifying Individual
Sole Trader	The individual
Trust	An adult beneficiary of the trust
Company	A shareholder or director of the company
Partnership	A partner in the partnership

Information will need to be provided to the ATO, including:

- nomination of a qualifying individual to receive payment;
- the individual's Tax File Number (TFN); and
- a declaration regarding recent business activity.

The nominated individual will need to satisfy the same requirements as eligible employees in relation to age and residency status. Similarly, the nominated individual will not be eligible if the person is receiving paid statutory parental leave or workers compensation payments.

As an integrity measure, the entity must have been registered for an ABN on 12 March 2020 (or a later date if the Commissioner allows). Further, the entity must have either:

- included an amount in the entity's assessable income for the 2018-19 income year (and reported this to the Commissioner prior to 12 March 2020); or
- made a taxable supply (for GST purposes) in any tax period starting on or after 1 July 2018 and ending prior to 12 March 2020 (and reported this to the Commissioner prior to 12 March 2020).

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13. ARE SUPERANNUATION PAYMENTS REQUIRED?

Present guidance from Treasury states that it will be up to employers to decide if they will pay superannuation on any additional payment made to an employee because of a JobKeeper Payment. These issues are not addressed in the Act or Rules and will instead need to be addressed through separate legislation or regulations relating to the *Superannuation Guarantee (Administration) Act 1992*.

Treasury guidance suggests that for employees who have been stood down, and who would not otherwise receive any payment, employers are not required to pay superannuation in respect of the A$1,500 fortnightly salary payment (unless they choose to do so).

For employees who are topped up to A$1,500, employers will have normal superannuation obligations for the employee's usual salary but are not required to pay superannuation on the top-up amount (unless they choose to do so).

For employees that continue to receive their usual salary (and no additional amount), normal superannuation payment obligations will continue to apply.

14. WILL EMPLOYERS BE REQUIRED TO WITHHOLD TAX?

The JobKeeper Payments will be passed through to eligible employees as salary and wages.

Accordingly, employers will be required to withhold PAYG tax amounts prior to making payments to eligible employees. These withheld amounts will make up a component of the A$1,500 payment to eligible employees each fortnight.

15. WILL EMPLOYERS BE LIABLE FOR TAX ON THE SUBSIDY PAYMENTS?

There is presently no express guidance on this issue. Generally when the Government makes grants for natural disasters these are stated to be non-assessable non-exempt income and we would expect this to be the case for JobKeeper Payments.

Alternatively, if the JobKeeper Payments are treated as assessable income, the employer should be entitled to a deduction for the wage payments made to eligible employees.

16. ARE EMPLOYERS REQUIRED TO NOTIFY EMPLOYEES?

Yes. If an employer has included details of an eligible employee in a notice to the Commissioner under the JobKeeper Scheme, the employer must notify the employee of this fact within 7 days of that notice being provided to the Commissioner.

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17. WILL THE JOBKEEPER PAYMENTS IMPACT PAYMENTS FROM SERVICES AUSTRALIA?

Employees who are receiving payments from Services Australia will need to notify Services Australia if they receive a JobKeeper Payment. The payment will form part of the employee's notifiable income. This may affect the employee's eligibility for payments from Services Australia.

18. HOW IS "TURNOVER" DETERMINED?

For the purposes of the determining whether there has been a decline in turnover, the term "turnover" adopts the same meaning as set out in the *A New Tax System (Goods and Services Tax) Act* (GST Act), with some important modifications.

Generally speaking, this means "turnover" will include all consideration from "taxable supplies" and "GST-free supplies" that are "connected with the indirect tax zone [Australia]".

Further, it also means that "turnover" will not include consideration from input taxed supplies. Input taxed supplies include "financial supplies" (such as loans and equity transactions) and residential leasing supplies.

The important modifications noted above include the following (amongst others):

- The turnover test is applied to each entity separately, regardless of whether the entity may be a member of a GST group.
- If the entity is a member of a GST group, intra-group supplies are generally ignored. However, it is expected that such supplies will be taken into account for the purposes of the JobKeeper Scheme.
- Gifts paid or provided to charities may be treated as consideration for a supply.

19. WHICH BUSINESSES WILL HAVE MONTHLY TAX PERIODS?

All GST registered businesses with a GST turnover exceeding A$20 million are required to lodge a Business Activity Statement (BAS) on a monthly basis.

Entities with a GST turnover below A$20 million generally lodge on a quarterly basis, unless they have elected to have monthly tax periods.

If an employer previously had quarterly tax periods, but recently changed to monthly tax periods to improve cash flow, it is likely the employer will need to compare three months of data (to align with the previous quarterly tax periods).

20. OVER WHAT PERIOD DO EMPLOYERS NEED TO TEST ELIGIBILITY?

To be eligible, employers only need to be able to demonstrate that they have met, or will meet, the Turnover Tests for one month.

The Explanatory Statement that accompanies the rules confirms eligibility only needs to be satisfied once in respect of one period.

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21. DOES THE COMMISSIONER HAVE ANY DISCRETION REGARD ELIGIBILITY?

If there is no appropriate relevant comparison period from the prior year, the Commissioner has the discretion to determine an alternative eligibility test. For example, this may be relevant if:

- An agricultural business was severely impacted by drought in the prior year.
- A business has only newly commenced and does not have a comparable prior period.
- The business has changed or grown as a result of mergers or acquisitions.

The alternative tests will be set out in a legislative instrument.

22. HOW WILL THE EMPLOYER ELIGIBILITY TESTS APPLY TO ECONOMIC GROUPS?

In relation to the A$1 billion turnover threshold (used to determine whether a 30% or 50% turnover decline is required for eligibility), an entity's "aggregated turnover for the income year" will be taken into account. This means that turnover from related or connected entities will be combined and taken into account. It ensures that a small entity within a larger group of related or connected entities (that has aggregated turnover exceeding A$1 billion on a group wide basis) is required to have a turnover decline of at least 50% to be eligible.

However, as explained above, for the purposes of determining whether an entity has experienced a turnover decline that exceeds the relevant threshold (30% or 50% as the case may be), the turnover for each entity must be considered on a stand-alone basis. This is regardless of the fact the entity may be part of a GST group (or consolidated group for income tax purposes).

23. HOW WILL THE EMPLOYER ELIGIBILITY TESTS APPLY TO BUSINESS DIVISIONS WITHIN ONE ENTITY?

Each entity will be assessed on a stand-alone basis as explained above. The Rules do not permit separate divisions within one entity to be considered separately.

24. DO EMPLOYERS NEED TO PAY EMPLOYEES FIRST?

In most cases, employers are required to pay eligible employees the A$1,500 per fortnight before the end of the relevant fortnight.

However, for employers that have a monthly pay cycle, the Commissioner has a discretion to treat monthly payments of A$3,000 as satisfying this requirement.

The impact of these requirements is that employers will need to pay employees first and prior to receiving reimbursement from the ATO. Employers will not be able to wait to receive payment from the ATO before making back dated payments to eligible employees.

As a transition measure, the ATO may treat an employer as eligible for the JobKeeper payments if it is reasonable to do so in respect of the first two JobKeeper fortnights. It may be that the ATO will accept that if an initial A$1,500

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payment was not made to eligible employees prior to 12 April 2020 (the end of the first fortnight), and this is subsequently back paid, the employer is eligible for the JobKeeper payments. The ATO is yet to release any guidance on such issues.

25. ARE THERE ANY RISKS FOR EMPLOYERS THAT CLAIM A SUBSIDY PAYMENT?

Yes. The legislation governing the JobKeeper Scheme includes an anti-avoidance provision similar to that set out in the GST Act.

For example, if an employer enters a scheme to manipulate its turnover so as to qualify for JobKeeper Payments, the anti-avoidance provisions may apply so that the employer is ineligible.

If any overpayments are made to an employer, the employer may be required to repay those amounts, together with interest.

Depending on the circumstances, penalties and criminal sanctions may also apply.

26. CAN EMPLOYERS SEEK THE PROTECTION OF A PRIVATE RULING?

No, private rulings are not available.

KEY CONTACTS



MICHAELA MOLONEY
PRACTICE GROUP COORDINATOR - LABOR, EMPLOYMENT, AND WORKPLACE SAFETY

MELBOURNE
+61.3.9640.4430
MICHAELA.MOLONEY@KLGATES.COM



NICK RUSKIN
PARTNER

MELBOURNE
+61.3.9640.4431
NICK.RUSKIN@KLGATES.COM



PAUL HARDMAN
PARTNER

BRISBANE
+61.7.3233.1248
PAUL.HARDMAN@KLGATES.COM

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