

JobKeeper: More information, uncertainty remains



Ever since the Government announced its flagship 'JobKeeper' response to the Coronavirus crisis, there have been at least as many questions raised by those in business as there have been answers. Up until last week it was a policy without any supporting provisions. The good news is that the legislation governing the new measures made it through Parliament on 8th April. The bad news is that it is little more than a framework that allows for the rules of the scheme to be developed and enforced by the

Treasurer and the Australian Taxation Office (ATO), so that means the situation continues to evolve as the rules are developed and released.

In fairness to the Government, this is a massive initiative, being implemented in an exceptionally short period of time, with mostly the best of intentions. For the sake of perspective, the total stimulus being offered in response to this crisis is many multiples more than that handed out by the Rudd Labor Government in response to the Global Financial Crisis. We've arrived in this place in just over a month. That inevitably means that there will be some scrambling, uncertainty and even some unintended inequity. This is to be expected.

Even so, there are a couple of real head-scratchers in the proposals as they currently stand, and some of these could have been avoided with a slightly different approach. For example, employees must already be receiving JobKeeper for April in order for the employer to receive the subsidy. But we are only half way through April, so how does the employer know whether it will meet the necessary turnover threshold?

For employers that are clearly ineligible, it's not an issue. Business for them could be ticking along nicely, or even better than normal (a supermarket, for example). Likewise, for those whose business has almost completely ceased, eligibility is a given (say, a travel agent). But for those in the middle, where the impact remains uncertain, what happens where they pay the employee a JobKeeper amount, only to find that the reduction in turnover has fallen slightly short of the required threshold (even though cash flow may remain tight)? Do they have to repay the subsidy and if so, can they claw it back from any employees who have not worked commensurate hours (doubtful).

Practical questions like these remain difficult to resolve with any certainty, although new information is coming to light daily. Even as we were preparing this update, a new Government Fact Sheet and a Tax Office update were released, both of which help to clarify how some of the tests and mechanisms will work. We expect this pace of change to continue through April at least, until the first round of JobKeeper is paid to employers.

What follows here is more detail about what we do know, as of right now. There's a lot here, so buckle up! And please click on the links below to quickly jump to any section you have a particular interest in.

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What is the current proposal?

By now most affected businesses would be well aware of what's on offer. Please refer to our [previous summary](#) of the measures as announced for a detailed outline.

In short, the Government will pay \$1,500 per fortnight per eligible employee to businesses and not-for-profits whose turnover has fallen by more than 30% as a result of the crisis (for businesses whose annual turnover is less than \$1 billion - for the record, that's all of our clients). It's 50% for businesses with an annual turnover of more than \$1 billion, and only 15% for ACNC registered charities.

In principle that seems pretty simple. And generous. But it's complicated by a couple of aspects of the proposal:

1. **Each employee must receive at least the full \$1,500 per fortnight** - whether they work full time, part-time, or have been stood down, every eligible employee gets a minimum of \$1,500, even if their ordinary pay amounts to less than \$1,500.
2. **Eligible employees during April must be paid from 30th March** - this is despite the first payments for the subsidy itself not being made to employers until early May.

What happens if I don't know whether my business is eligible yet?

Many business owners may know at this point in time that turnover will be down, while the question of precisely 'how much' remains difficult to quantify. And even where eligibility is clear, where does a cash-strapped business find another month's payroll to cover the subsidy in April, until it is reimbursed by the Government in May (the PM suggested they "talk to their bank")?

In its [latest FAQ sheet](#), the Government suggests that businesses can make top-up payments to employees. *"If you want to claim the subsidy for an eligible employee and they have not been paid \$1,500 per fortnight since 30 March 2020, employers must pay a 'top-up' payment to employees so that they are eligible. The ATO will provide further guidance on how this will work."*

This seems to open the door for an employer assessing eligibility later in the month, when the situation is more clear, and then back-paying employees that would be eligible. While we don't know whether, or how, this would apply in future months, [the ATO has confirmed](#) that this will certainly be the case for April. Specifically, *"For the first two fortnights (30 March – 12 April, 13 April – 26 April), we will accept the minimum \$1,500 payment for each fortnight has been paid by you even if it has been paid late, provided it is paid by you by the end of April. This means that you can make two fortnightly payments of at least \$1,500 per fortnight before the end of April, or a combined payment of at least \$3,000 before the end of April."*

This should ease the concerns of most business owners wrestling with the problem of whether to pay employees without first knowing if their business has met the necessary turnover threshold. For April at least...

How is 'turnover' determined?

This is another issue that has been clouded by uncertainty since the new JobKeeper measure was announced. While we know the reduction factor is 30% (for businesses with annual turnover of less than \$1 billion), how is the reduction measured? And what exactly is 'turnover' for these purposes?

Once again, this question is being gradually resolved in real time, as more information is released. 'Turnover' is defined as GST turnover - essentially the same number used for GST purposes and reported on a BAS. It includes all taxable supplies and GST free supplies, but not input taxed supplies. In addition, this definition excludes any income derived from overseas operations. But over what period of time is it measured for this purpose, and what is a 'decline' in the current period referenced against?

This has been a point of significant confusion. It was always clear that a decline in turnover would require a comparison against the equivalent period last year. We also knew this would be a minimum of a month. But in other contexts it was referred to in quarters. To make matters worse, at times the 'current' period seemed to be the one just past (say for April, reported in May) while at other times reference was made to 'projected' turnover.

As best we can tell right now, this has seemingly been clarified by an [update](#) on the Tax Office website. Being the official administrator of the scheme, we take this as being relatively definitive now, and thankfully the uncertainty appears to have derived from the test for eligibility being relatively generous. This statement notes:

To work out your fall in turnover, you can compare either:

- *GST turnover for March 2020 with GST turnover for March 2019;*
- *projected GST turnover for April 2020 with GST turnover for April 2019; or*
- *projected GST turnover for the quarter starting April 2020 with GST turnover for the quarter starting April 2019.*

In essence, this allows for a choice, based on what an employer thinks will best reflect the impact the current crisis is having on operations.

There is also discretion provided for the Commissioner to determine and accept alternative tests in specific cases where the effect on turnover is not an accurate reflection of an adverse impact experienced by a business as a result of Coronavirus restrictions.

Importantly too, once eligibility has been determined based on one of these tests, an employer remains eligible and doesn't have to keep testing after that. There are, however, ongoing reporting requirements.

What are the ongoing reporting requirements?

Within 7 days after the end of a month where an employer has received a JobKeeper amount, it must report:

1. The GST turnover for the relevant month; and
2. The projected GST turnover for the following month.

While we can understand (or at least tolerate) the requirement to report on historical turnover, the requirement to project turnover for the coming month, in such an uncertain time, seems unnecessarily burdensome and of little real benefit to anyone, especially when it is required in such a short time after end of month.

I'm self employed...am I eligible?

A person who is self-employed and meets the turnover criteria is eligible to receive JobKeeper, but significantly, cannot be employed as a permanent employee by an employer elsewhere. This may be unlikely in some industries, but can be common in others. Medical practitioners for example may be predominately self-employed but do some hospital work. Any income earned from that work as a permanent salaried employee, however small, immediately renders them ineligible for JobKeeper in their own capacity, even if the majority component of their income, from self-employment, has all but dried up.

What about trusts, partnerships and companies?

Where a person earns income as a share of a partnership, only one partner can be nominated to receive a JobKeeper amount. Naturally however, where the partnership is also an employer, additional JobKeeper amounts can be received for eligible employees.

In a situation where a person only receives a trust distribution for work performed, instead of a salary or wage, one individual beneficiary can be nominated to receive a JobKeeper payment. This precludes corporate beneficiaries from being eligible.

Likewise, one director of company who is paid only through a director's fee may be eligible. That director cannot be an employee in this case. Alternatively (and not in addition to) one shareholder who is remunerated for work in the form of dividends may also be eligible.

What's next?

At this stage, a business employer can still only register an interest in receiving the JobKeeper payment. This can be done through the [Tax Office website](#). The Government aims to have the official enrolment process ready to go by 20th April and at this stage, the application needs to be done by 26th April if you want it to apply for the month of April. It's worth noting here too that even if you don't qualify in April, you can apply later if your circumstances change sufficiently enough to make your business eligible.

Importantly, the employer must also have eligible employees complete a nomination form, whereby they agree to be nominated as an eligible employee by the business for JobKeeper. That form is available now and can be downloaded [here](#). This part may seem like red tape but is part of the process of ensuring firstly that the employee wants to receive the payment (they may not if, for example, it is likely to affect some other benefit) and secondly, that they want to receive it from you, since it can only be received from one employer and a person may have another job. If you own a business and are already fairly confident you will be eligible, you should start preparing now by distributing this form and asking employees to return it to you.

We know there are likely to be many more questions. Some of them may have answers but have not been covered here. Others may still remain unresolved.

Please [contact us](#) for further information or assistance.

We're here to help and are continuing to offer complimentary phone calls to support you and your business during this time.

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