

COVID-19: (AUSTRALIA) EMPLOYER GUIDE TO THE JOBKEEPER SCHEME (THIRD EDITION)

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** This information set out in this guide is accurate as at 9:00 A.M. on Monday 27 April 2020 and is subject to change as the situation evolves.*

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

Following the release 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"), practical issues have continued to emerge in the application of the JobKeeper scheme.

This third edition of our guide addresses the release of the:

- new Australian Tax Office (ATO) guidance
- alternative turnover eligibility tests for certain businesses
- Treasurer's media release announcing additional fixes and clarifications for the Rules.

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. THE BASIC TURNOVER TEST

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.

2. ALTERNATIVE TURNOVER TEST

An alternative turnover test may apply in the circumstances listed in the table below.

Note that if an entity satisfies the basic turnover test, it is not necessary to also satisfy an alternative turnover test.

For the sake of brevity, the alternative tests are summarised below. If an entity has quarterly rather than monthly tax periods, further modification of the alternative test may be required.

Circumstance	Alternative Test (Summary Only)
New Business: The entity commenced business after the end of the relevant comparison period.	First alternative: Use average monthly GST turnover. Second alternative: Use three months' current GST turnover.
Mergers & Acquisitions: The entity acquired or disposed of part of the business after the relevant comparison period.	Use the turnover from the month immediately following the month in which the acquisition or disposal occurred.
Restructured Business: The entity undertook a restructure of the business after the relevant comparison period.	Use the turnover from the month immediately following the month in which the restructure occurred.
Substantial Increases in Turnover - The entity has experienced turnover increases, immediately before the applicable turnover test period, of: <ul style="list-style-type: none"> more than 50% in 12 months more than 25% in six months more than 12.5% in three months. 	Use three months' current GST turnover.
Natural Disaster: The entity was affected by drought or natural disaster (in a declared disaster area) during the comparison period.	Use GST turnover for the same period for the year immediately before the natural disaster declaration.
Irregular Variance: The entity had a large irregular variance in turnover in the quarters ending during the 12 months before the applicable turnover test period. Note: this does not apply for entities with regular seasonal / cyclical variances.	Use average monthly GST turnover.

Illness: Relevant for sole traders or small partnerships where sickness, injury or leave impacted a person's ability to work.	Use GST turnover from the month immediately following the sole trader or partner returning to work.
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3. 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. <i>NOTE: Employees 17 years and younger, who are full-time students and not financially independent, are ineligible.</i>
Residency Status	Eligible employees fall within the following categories: <ul style="list-style-type: none"> ▪ 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: <ul style="list-style-type: none"> ▪ Full-Time ▪ Part-Time ▪ Long-term Casual* <p>*Employed as a casual for more than 12 months as at 1 March 2020.</p>

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 <i>Paid Parental Leave Act 2010</i>) in a fortnight are ineligible for that fortnight. Parental leave paid under arrangements outside
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	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.

4. CAN EMPLOYERS CHERRY PICK THE ELIGIBLE EMPLOYEES?

No, employers cannot exclude some eligible employees while including others.

The Treasurer's media release from 24 April 2020 confirms that if an employer has elected to participate, and has received forms from eligible employees, the employer must ensure that all eligible employees (including those that are working and stood down) are covered by the scheme.

5. OTHER EMPLOYER ELIGIBILITY REQUIREMENTS

In addition to satisfying the Turnover Tests, employers must:

- 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.

6. 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.

7. 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). Accordingly, the maximum benefit is A\$19,500 per eligible employee (before tax).

8. 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 (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).

9. 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)
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.

10. 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.

11. WHAT IS THE ENROLMENT PROCESS?

Employers can enrol via the ATO [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 JobKeeper fortnights in April and May. For those fortnights, employers have until 31 May 2020 to enrol (with any payments for those initial JobKeeper periods conditional on all other requirements being satisfied).

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

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.

13. ARE EMPLOYEES REQUIRED TO PROVIDE A WRITTEN NOTICE?

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

- 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.

14. 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).

15. 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.

16. 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.

17. WILL EMPLOYERS BE LIABLE FOR TAX OR GST ON THE SUBSIDY PAYMENTS?

For income tax purposes, JobKeeper payments will be treated as income for employers. Employers should be entitled to a deduction for salary and wage payments to employees.

Employers will not be liable for GST in respect of the JobKeeper payments.

18. 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 seven days of that notice being provided to the Commissioner.

19. 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.

20. 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.

21. 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).

22. 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.

23. 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.

24. 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).

25. 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.

26. ARE THERE SPECIAL RULES FOR EMPLOYER ENTITIES (SERVICES ENTITIES)?

Some economic groups will include a central employment entity (services entity) that will employ most (if not all) staff for the group. Applying the basic turnover test to the employer entity on a stand-alone basis may mean that the group is ineligible, notwithstanding the group may have experienced a decline in turnover exceeding 30% or 50% (as the case may be).

The Treasurer's media release on 24 April 2020 confirmed that changes will be introduced to address this issue. An alternative test will apply, which will reference the combined GST turnovers of the related entities using the services of the employer entity.

It is expected that employer entities that qualify under the basic test will not be required to also satisfy the proposed alternative test.

27. DO EMPLOYERS NEED TO PAY EMPLOYEES FIRST?

Yes, employers must pay employees first. The ATO has issued guidance which confirms that payments will not be advanced in any circumstances.

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

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.

As a transition measure, the ATO will accept that employers have satisfied the payment requirement for the first two JobKeeper fortnights if staff are paid at least A\$3,000 by 30 April 2020.

28. 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.

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

No, private rulings are not available in relation to JobKeeper eligibility.

30. HAVE OTHER ISSUES BEEN CLARIFIED OR FIXED?

The Treasurer's media release of 24 April 2020 also clarified the following:

- Religious Practitioners: There will be changes to eligibility requirements for religious institutions, noting that religious practitioners may not be "employees".
- International Aid Organisations: Changes will be introduced to ensure eligibility for entities that are endorsed under the Overseas Aid Gift Deductibility Scheme or for developed country relief.
- Universities: Changes will clarify that Commonwealth Government financial assistance provided to Universities will be taken into account in the turnover tests.
- Charities and Government Revenue: Changes will all charities (other than schools and universities) that receive government revenue to elect to exclude this from their turnover for the purposes of the turnover test calculations.

31. ARE THERE ANY SPECIAL RULES FOR INPUT TAXED ENTITIES?

The GST turnover tests excludes revenue from input taxed supplies. This means that entities that make predominantly input taxed supplies may have very small turnover amounts (if any) for the purposes of the turnover tests.

Examples of businesses that may be impacted by this include retirement village operators, non-bank financial supply providers and life insurance companies.

To date no alternative turnover tests have been announced to assist these businesses.

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