



Updated Advice – Australian Government JobKeeper scheme: Eligibility and structure

SUMMARY

The JobKeeper Payment (JKP) has been introduced to support employment in businesses and other organisations.

The JKP will be paid to eligible employers and the wage subsidy will be \$1,500 per fortnight for each eligible employee. Generally, businesses will be eligible if they have experienced a reduction in turnover of 30 per cent or more. Businesses in groups with an annual turnover of more than \$1 billion will be eligible if they experience a reduction in turnover of 50 per cent or more. **Tests using criteria other than turnover may be developed.** This Member Advice will be updated to inform members of any new tests.

Full-time and part-time employees are eligible as are casual employees who have been employed by the business for 12 months or more on a regular and systematic basis. **The first step however is that their employer needs to be eligible.** Regardless of the level of wage the employee is entitled to receive, the subsidy will be \$1,500 per fortnight.

The JKP is largely a reimbursement to employers of the pre-tax earnings of employees. Employers will be obliged to pay eligible employees at least \$1,500 per fortnight (pre-tax). At least part of this can be a top up amount above their earnings.

The JKP is based on self-assessment. Employers who enrol for the JKP will receive a receipt of enrolment but the ATO will not send any further confirmation of eligibility.

The JKP will be available for six months from 30 March. Payments are expected to be made to employers from the first week in May to reimburse employers for payments made to employees before then. Subsequent payments to employers will be made in arrears (i.e. after the employer has paid their employees).

The legislation for the JKP provides for an unusual degree of discretion available to the Treasurer and the Tax Commissioner to clarify and adjust arrangements. This Advice will be updated as further information becomes available.

N.B. The Tax Commissioner has extended the time to enrol for the initial JKP periods until 31 May 2020. Employers will now have until 8 May 2020 to make relevant back payments relating to the period from 30 March 2020.

Ai Group has also prepared a [Member Advice about the JKP amendments to the Fair Work Act](#).

What EMPLOYERS are eligible?

The [Treasury Fact Sheets and FAQs](#) set out eligibility requirements for employers and other information. These were last updated on 2 May 2020.

For most employers, the employer can be eligible if their business has experienced a fall or is likely to experience a fall in turnover of 30 per cent or more.

However, if their business has a turnover of \$1 billion or more (or is part of a consolidated group with aggregated turnover of \$1 billion or more) their turnover will need to have fallen, or be likely to fall, by 50 per cent or more for them to be eligible.

Also, the business cannot be eligible if it is subject to the Major Bank Levy.

An employer can be a self-employed person, a sole trader or structured through a company, partnership or trust. Not-for-profits are also eligible. Some charities will be eligible if their turnover falls by 15 per cent.

Size matters – and there’s a twist if you have connected or affiliated businesses

For businesses that are part of a small or medium-sized group of entities, each separate business in the group can be assessed separately using the 30% turnover decline test. In such a group, some businesses may satisfy the 30% turnover decline test while others may not.

Similarly, for businesses that are part of a larger group of entities, each separate business in the group will be assessed separately using the 50% turnover decline test (and only some might satisfy the 50% decline test).

For these tests of reduced revenue, turnover is calculated as it is for GST purposes and as reported on Business Activity Statements. It includes all taxable supplies and all GST free supplies.

A different test is employed to decide whether a group is a large group. This test employs the concept of “aggregated turnover” which has a specific meaning in the *Income Tax Assessment Act 1997*.

This test includes not just an entity’s own turnover but also the combined turnover of any other entities that are connected or affiliated with it **whether these other entities are based in Australia or overseas**. If aggregated turnover calculated in this way is over \$1 billion, the 50% turnover threshold will apply for each entity in the group.

This means that many medium-sized Australian businesses will have to satisfy the 50% turnover decline test to be eligible. In many cases their competitors will be eligible if their turnover declines by 30%.

Eligibility: further issues

Basic turnover test: The Treasury Fact Sheets and FAQs contain the following guidance about the basic turnover test:

To establish that a business or not-for-profit has, or is likely to, face the relevant fall in their turnover, most would be expected to establish that their turnover has or will likely fall in the relevant month or quarter (depending on their Business Activity Statement reporting period) relative to their turnover in a corresponding period a year earlier. Turnover is calculated as it is for GST purposes, and is reported on Business Activity Statements. It includes all taxable supplies and all GST free supplies but not input taxed supplies.

Alternative turnover tests: The Tax Commissioner has been given the discretion to substitute alternative tests. On 23 April, specific alternate tests were set out in a Legislative Instrument and an Explanatory Statement (see [Alternative Decline in Turnover Tests](#)).

They apply in a range of circumstances where the basic turnover test which employs the corresponding period a year earlier does not serve as an appropriate point of comparison for the decline in turnover.

Alternative tests have been developed for the following circumstances:

- for businesses that commenced business before 1 March 2020 but after the corresponding period a year earlier;
- where there has been one or more business acquisitions or disposals that changed the entity’s turnover;
- where there has been a business restructure that changed the entity’s turnover;
- where there has been a substantial increase in turnover;
- where the business was affected by bushfire or natural disaster;
- where the business has irregular turnover; or,
- for sole traders or small partnerships with no employees and affected by sickness, injury or leave.

Businesses in these categories do not need to also satisfy the relevant alternative test if they have satisfied the basic test.

Tolerance in relation to estimated fall in turnover: This is from the Treasury Fact Sheets:

There will be some tolerance where employers, in good faith, estimate a 30 per cent or more or 50 per cent or more fall in turnover but actually experience a slightly smaller fall.

Service entities: The Treasury Fact Sheets and FAQs provide the following guidance in relation to service entities:

An alternate decline in turnover test will apply to special purpose employment entities. In circumstances where an employment entity is utilised within a group of companies, and that employment entity is unable to demonstrate a decline in its own turnover because, for example, it has had its full year of staffing fees paid in advance, the employment entity will be able to refer to the decline in turnover of the operating entities it services. This will provide for eligibility of special purpose service entities that provide employee labour to group members and that have not met the basic test for decline in turnover.

Liquidation or bankruptcy: The JKP cannot be paid to businesses that are in liquidation or to a partnership, trust or sole trader in bankruptcy.

Government or government agency owned entities: A business that is wholly owned by an Australian or foreign government or an agency of an Australian or foreign government will not be eligible.

Ai Group will update this Advice as the Tax Commissioner and the Treasurer issue further information updating or clarifying these requirements.

What EMPLOYEES are eligible?

For an employee to be eligible, they must be employed by an eligible employer. *This is not widely appreciated, and members are strongly encouraged to discuss this requirement with their staff.*

To be eligible, employees must have been on the employer's books on 1 March 2020 and be retained or continue to be engaged by that employer.

Full-time and part-time employees are eligible as are people on fixed term employment contacts and long-term casuals (a casual employed on a regular and systematic basis for at least 12 months prior to 1 March 2020). However, long-term casual employees cannot be eligible if they are also employed on a permanent basis by another employer.

In addition, (except for full-time students who are 17 years old and younger and are not financially independent) employees must be at least 16 years of age.

Employees who meet other requirements and who are stood down before or after 1 March will be eligible. Employees made redundant since 1 March and subsequently re-engaged will be eligible.

New employees of the business (i.e. those first employed after 1 March 2020) will not be eligible employees.

This appears to exclude from eligibility employees who are converted from casual to permanent after 1 March 2020 (unless they had been employed by the business as a casual on a regular and systematic basis for at least 12 months on 1 March 2020).

To be eligible for the JKP, an employee must be an Australian citizen, the holder of a permanent visa, or a Special Category (Subclass 444) Visa Holder at 1 March 2020. The employee also must have been a resident for Australian tax purposes on 1 March 2020.

Employees on paid or unpaid leave from their employer are eligible (but note the next point in relation to parental leave).

Employees on parental leave from their employer will be eligible. However, employees receiving Parental Leave Pay from Services Australia are not eligible for the JKP. Employees on Parental Leave Pay (PLP) from Services Australia will not be eligible for the JKP in any fortnight in which they received PLP.

Employees receiving workers compensation will be eligible for the JKP if they are working, for example, on reduced hours. Employees receiving workers compensation who are not working will generally not be eligible.

Employees can only receive the payment from one employer (and see above in relation to casuals who have a permanent position with another employer).

Self-employed people will be eligible to receive the JKP where they have experienced or expect to experience a 30 per cent decline in turnover relative to a comparable period a year ago.

Generally, employers who receive the JKP in respect of wages paid to a trainee or apprentice will not also be able to receive assistance under the Supporting Apprentices and Trainees measure. The exception relates to wages paid to trainees and apprentices in respect of the period before 31 March 2020.

Ai Group continues to liaise with members about the JKP and will seek to have the JKP changed in the light of discrepancies or anomalies.

How much will eligible employers need to pay eligible employees? What about superannuation?

The JKP is a flat \$1,500 per fortnight paid to eligible employers to at least partly reimburse amounts paid to each of their eligible employees. The relevant payments from the employer to their employees are set out below.

For an eligible employee who continues to work and who, in the absence of the JKP, would have earnings of **AT LEAST \$1,500 per fortnight (pre-tax)**:

- the employer would pay the employee the amount they are entitled to receive under the agreement between them including wages for hours worked, allowances, salary sacrifice amounts, paid leave and overtime;
- the employer would retain the \$1,500 JKP as partial reimbursement; and
- superannuation would be payable on the amount paid to the employee in accordance with the agreement between the employer and the employee.

For an eligible employee who continues to work and who, in the absence of the JKP, would have earnings of **LESS than \$1,500 per fortnight (pre-tax)**:

- the employer would pay the employee a total of \$1,500 (pre-tax) composed of the amount they are entitled to receive under the agreement between them including wages for hours worked, allowances, salary sacrifice amounts, paid leave and overtime PLUS a top up component which is the difference between the amount they are entitled to receive under the agreement between them and \$1,500 per fortnight;
- the employer will be reimbursed for the total \$1,500 (pre-tax) paid to the employee; and
- superannuation is only paid on the amount paid to the employee in accordance with the agreement between the employer and the employee (not the top-up component) unless the employer wants to pay more super than required.

If the *employee is stood down* without pay and was on the eligible employer's books on 1 March 2020 and is an eligible employee, the employer would pay the stood down worker the full \$1,500 per fortnight. No super is required to be paid on the JKP paid to stood down employees.

Several members have raised questions and concerns about how these arrangements will work in practice. Ai Group has already obtained a large number of clarifications which are reflected in this Member Advice.

We are continuing to make representations and seek clarification in relation to ongoing areas of unfairness and uncertainty. We encourage members to email jobkeeper@aigroup.com.au with their concerns and issues so we can make representations and help refine and clarify the measures.

Also, our [Member Advice on JKP Amendments to the Fair Work Act](#) contains important information about employer rights to request eligible employees to work during the JobKeeper period.

How will the JobKeeper scheme work for employers?

The JKP will be administered through the Australian Tax Office (ATO). Employers must elect to participate in the scheme if they want to be considered as eligible. Employers who want to participate can enrol through the ATO (see [Enrol for the JobKeeper Payment](#)).

Employers are required to notify all employees (other than employees the employer reasonably believes do not satisfy the eligibility requirements) that the employer is receiving or applying to receive the JKP and provide each employee with a [nomination form](#) for the employee to complete if they agree to be nominated by the employer.

Once their eligible employees have agreed to be nominated by the employer, the employer must ensure that all of these eligible employees are covered by their participation in the scheme. This includes all eligible employees who are undertaking work for the employer or have been stood down. The employer cannot select which eligible employees will participate in the scheme.

The Tax Commissioner has extended the time to enrol for the initial JKP periods until 31 May 2020. Employers will now have until 8 May 2020 to make relevant back payments relating to the period from 30 March 2020.

In making the application to the ATO employers will be asked to provide supporting information demonstrating an actual or prospective downturn in their business.

The scheme is based on an employer's self-assessment of their own eligibility. The ATO will provide enrolling employers with a receipt of enrolment. The ATO will not send employers any further confirmation of their eligibility. Once an employer receives their receipt of enrolment, they should make any relevant back payments so they can then receive the JKPs from the ATO.

Eligible employers should inform each eligible employee that they (i.e. the employer) will receive the JKP in respect of that employee. Eligible employers should pay each eligible employee at least \$1,500 per fortnight (pre-tax).

Once an employer is assessed as eligible, there is no need to retest – they will remain eligible for the remainder of the six-month period.

Employers will receive a payment from the ATO equal to \$1,500 per fortnight per eligible employee. The first payment to employers will be made from the first week in May. The ATO payments will at least partly reimburse pre-tax amounts paid by eligible employers to eligible employees.

Amounts employers receive as JobKeeper reimbursements are included in the taxable income of the employer. Amounts paid to employees (including any JobKeeper top ups) are deductions for the employer for the purposes of determining taxable income.

Ai Group is working to ensure that payroll tax and WorkCover premia are not affected by the top up components of amounts paid to employees. We will update our Member Advice as more information comes to light on this.

The Government's initial announcement referred to forthcoming increases in cash flow support for businesses and the Australian Bankers Association [has announced](#) that Australia's banks will make available additional short-term credit in relation to JKPs to employees at least for the initial JKP fortnights. The ATO will be able to share Employer Notifications of Eligibility with the banks. This notice is the receipt of enrolment the ATO provides to employers.

The Australian Bankers Association has indicated that banks will push loan applications related to JobKeeper to the front of the queue and deal with them promptly. Banks may want to further discuss eligibility for these loans with individual employers. Please keep Ai Group informed of any difficulties you experience in obtaining these loans.

The JKP commences in respect of wages paid from 30 March and will continue for six months.

Further details about the timing of JKP payments to employers and employees are available in the latest version of the Treasury's ['JobKeeper payment – Frequently asked questions'](#).

Employers should back pay any eligible employees they have paid less than \$1,500 per fortnight (pre-tax) once they have received a receipt of enrolment from the ATO. The amount of back pay will generally be the difference between what the employee was paid before the employer received the receipt of enrolment and \$1,500. For example, an eligible employee who earned \$1,200 in the fortnight (pre-tax), the top up would be \$300 (pre-tax). For an eligible employee stood down without pay, the back pay would be \$1,500 (pre-tax).

Subsequently, eligible employers should pay their eligible employees least \$1,500 per fortnight until the JobKeeper scheme ends or until they or the employee ceases to be eligible.

Look out for updates to this Advice

Ai Group will update this Advice as further information becomes available.

Do you require further advice?

Ai Group has set up a special [section on our website](#) to provide access to advice and assistance relating to the COVID-19 pandemic.

As mentioned above, Ai Group encourages members to email jobkeeper@aigroup.com.au with inquiries relating to the eligibility and structure of the JKP.

For information in relation to the workplace relations issues related to the JKP see our Member Advice: [Australian Government JobKeeper scheme: Amendments to the Fair Work Act](#).

For further information or assistance with workplace relations issues, please contact the Ai Group Workplace Advice Line on 1300 55 66 77.

Treasury's Fact Sheets are being regularly updated and can be accessed [here](#).

A handwritten signature in black ink, appearing to read 'Peter Burn'.

Peter Burn
Head of Influence and Policy

FURTHER INFORMATION

For further information or assistance, please contact the Ai Group Workplace Advice Line on 1300 55 66 77.