

Australia enacts JobKeeper Payments wage subsidy law

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Executive summary

On 8 April 2020, the Federal Government passed two Bills as part of a package to enact the AU\$130 billion¹ JobKeeper Payments wages subsidy. The legislation received Royal Assent on 9 April 2020.

The Coronavirus Economic Response Package (Payments and Benefits) Bill 2020 (Payments Bill - [link](#)) establishes a *framework* to deliver the JobKeeper Payments measures through rules made by the Treasurer in a legislative instrument. The legislative instrument was signed by the Treasurer on 9 April 2020 (on Treasury website [here](#)).

The Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020 (Omnibus Bill - [link](#)) includes changes to the *Fair Work Act* to support the JobKeeper Payments and a series of other stimulus related provisions and amendments.

The JobKeeper Payments wage subsidy scheme is designed to assist businesses, not-for profit entities and charities impacted by the Coronavirus (COVID-19) to continue to operate and pay their employees. It is expected to apply to six million workers. The payment is also available to the self-employed and some other businesses without direct employees.

Affected employers will be able to claim a fortnightly payment of \$1,500 per eligible employee from 30 March 2020, for a maximum period of six months. The first payment will be received from the Australian Taxation Office (ATO) in the first week of May.

The JobKeeper Payments law is targeted broadly. There will be benefits and challenges for both employers and employees and the prospect that technical and practical issues will be identified over time. The law requires detailed analysis by businesses to confirm eligibility.

Employers can register interest in *JobKeeper* on the ATO's website [here](#) and a detailed application form is expected to follow. Reporting to the ATO will be required monthly.

EY will analyze the law and a detailed EY Tax Alert will follow.

Businesses must also consider how the JobKeeper Payments scheme interacts with other business issues including their employment law obligations.

The JobKeeper eligibility rules also affect the National Cabinet mandatory code of conduct and commercial leasing principles applying to landlords leasing to tenants which are small to medium enterprises with turnovers under \$50 million.

The key provisions of the Jobkeeper Payments scheme are summarized below.

Detailed discussion

Overview

Businesses and non-profit employers are eligible for JobKeeper Payments to compensate them for wages and salaries paid to an individual for a fortnight if they:

- ▶ Have aggregated turnover of less than \$1 billion and they estimate their Goods and Services Tax (GST) turnover has declined by 30% or more; **or**
- ▶ Have aggregated turnover of \$1 billion or more and they estimate their GST turnover has declined by 50% or more; **and they:**
- ▶ Are not subject to the Major Bank Levy.
- ▶ Are not otherwise ineligible - including Australian, State, Territory, local and foreign governments and their agencies and wholly-owned corporations; businesses that are in liquidation; a partnership, trust or sole trader in bankruptcy.
- ▶ Have one or more individuals who are eligible employees of the employer for the fortnight.

- ▶ Notify the Commissioner of Taxation (Commissioner) in the approved form that they elect to participate in the Jobkeeper Payments scheme.
- ▶ Have given information about the entitlement for the fortnight, including details of the individual(s), to the Commissioner in the approved form.

Certain charities are eligible if they estimate their turnover has declined by 15% or more relative to a comparable period.

An entity will determine if it applies a 30% or 50% test based on its aggregated turnover as defined in the income tax law. This definition includes the worldwide turnover of the entity and that of its connected entities and affiliates.

Key condition - decline in GST turnover

Turnover for the test is defined according to the GST concepts of "current" and "projected" turnover, which includes taxable supplies and GST free supplies but not input taxed supplies. The test is done on an entity by entity basis so disaggregation will be required for entities that are members of a GST group. Under the GST law only Australian-based turnover is relevant.

The business or not-for-profit must establish that their projected turnover falls short in the relevant month or quarter by the relevant percentage relative to their turnover in a corresponding period in 2019.

The Commissioner has the discretion to set out alternative decline in turnover tests that would establish eligibility where there is not an appropriate relevant comparison period for the purpose of an entity in the class of entities satisfying the decline in turnover test.

Employee conditions

The employer must have been in an employment relationship with eligible employees as at 1 March 2020.

Employers must pay their eligible employees a minimum of \$1,500 in respect of each 14-day period covered by the scheme.

Employees are eligible if they:

- ▶ Are currently employed by the eligible employer (including those stood down or re-hired)
- ▶ Were employed by the employer at 1 March 2020
- ▶ Are full-time, part-time, or long-term casuals (a casual employed on a regular and systemic basis for longer than 12 months as at 1 March 2020)

- ▶ Are at least 16 years of age at 1 March 2020
- ▶ Are an Australian citizen, the holder of a permanent visa or a Special Category (Subclass 444) Visa Holder
- ▶ A resident for Australian tax purposes on 1 March 2020
- ▶ Are not in receipt of a JobKeeper Payment from another employer

Individuals must confirm to employers that they meet these conditions.

Employers must notify employees that they have notified the ATO that they are entitled to JobKeeper payments.

An employee is ineligible if they are supported by a workers' compensation scheme or are in receipt of government Paid Parental Leave or Dad and Partner Pay through Services Australia.

Employees ordinarily receiving \$1,500 or more per fortnight before tax will continue to receive their regular income according to prevailing workplace arrangements.

Employees ordinarily receiving less than \$1,500 income per fortnight before tax will be paid a top-up so they receive a minimum of \$1,500 per fortnight, before tax.

Employers' employee-related obligations continue, including tax withholding on all payments.

The receipt of wages funded by the JobKeeper payment may affect an individual's eligibility for payments from Services Australia as it is included in their reportable income.

Self-employed and other businesses

This Alert does not address the rules for self-employed persons and for a non-employee business participant (payments through a partnership or trust or to a shareholder in a company) to access JobKeeper payments.

Integrity rules and ATO compliance

There are integrity rules designed to prevent employers from entering into artificial schemes in order to get inappropriate access to payments.

The JobKeeper Payments measures will be subject to ATO compliance and audit activities.

Other measures

The Omnibus Bill includes these following government stimulus related measures:

- ▶ Amendment of the *Fair Work Act 2009* - to support the practical operation of the JobKeeper scheme
- ▶ Guarantee of lending to small and medium enterprises amendment to ensure that certain categories of smaller non-ADI lenders will fall within the definition of financial institution
- ▶ Amendments to support the childcare sector - modifies the calculation method used for the Child Care Subsidy reconciliation and to meet various circumstances of social and financial hardship
- ▶ Additional support for veterans - increases the amount paid to persons receiving a payment under a provision of the Veterans' Law and varies the qualifications and eligibility for payments.

Changes to the *Fair Work Act*

The Omnibus Bill also amends the *Fair Work Act* to support the practical operation of the JobKeeper scheme and to facilitate a range of flexible arrangements intended to support continuing business operation and the ongoing employment of employees.

The amendments include the insertion of a new Part 6-4C into the *Fair Work Act*, which:

- ▶ Authorizes an employer who qualifies for the JobKeeper scheme to (subject to various safeguards) give a:
 - JobKeeper enabling stand down direction to an employee (including to reduce hours of work)
 - Direction to an employee about the duties to be performed by the employee
 - Direction to an employee about the location of the employee's work
- ▶ Enables employers and employees to make agreements for increased flexibility around annual leave arrangements, including at half pay, and days and times of work.
- ▶ Requires JobKeeper qualifying employers to meet minimum payment obligations to employees who are subject to these arrangements, including by ensuring that at least the value of JobKeeper payments they receive is passed on to such employees each fortnight, or the amount they would receive for the work they have performed if that would be greater.
- ▶ Includes rules about accrual of service and calculation of benefits in certain circumstances.

An employee's terms and conditions of employment continue to apply, except to the limited extent modified by a JobKeeper enabling direction or agreement.

The Fair Work Commission will be able to resolve disputes about the operation of Part 6-4C, including by arbitration.

The new Part 6-4C JobKeeper provisions are to be repealed at the start of 28 September 2020, consistent with the temporary nature of the changes.

Mandatory code of conduct for commercial leasing principles applying to Small and Medium Enterprise tenants

The JobKeeper eligibility rules also affect the National Cabinet mandatory code of conduct for commercial leasing principles applying to tenants which are small to medium businesses with turnovers under \$50 million. The code was released on 7 April ([link](#)).

The key elements of the code include:

- ▶ Eligible tenants are businesses eligible for JobKeeper, with turnovers of less than \$50m group-wide
- ▶ Landlords are expected to provide an appropriate rental waiver of at least 50% of rent plus potential additional rental deferral for at least the period of the JobKeeper
- ▶ Landlords are to pass on the benefit of any reduced inputs including government charges.

Endnote

1. Currency references in this Alert are to the AU\$.

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