

## Australia extends JobKeeper program to March 2021

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The Australian Treasurer has released rules to extend JobKeeper (JKP 2) to 28 March 2021 with changes to payment rates and certain eligibility tests.<sup>1</sup>

The JobKeeper Payments wage subsidy scheme, enacted in April 2020, 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. The payment is also available to the self-employed and some other businesses without direct employees.

As implemented, affected employers were 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 was received from the Australian Taxation Office (ATO) in the first week of May. The program is now extended to March 2021.

The key features of JKP 2 in comparison to the current JobKeeper are defined in the table below.

	Requirement	Period		
		To 27 September 2020	Extension 1: 28 September 2020 to 3 January 2021	Extension 2: 4 January 2021 to 28 March 2021
Entity eligibility	Turnover decline percentage	Continues to be: <ul style="list-style-type: none"> <li>▶ 30% for businesses with a turnover (revenue) of AU\$1 billion<sup>2</sup> or less</li> <li>▶ 50% for those with turnover of more than \$1 billion</li> <li>▶ 15% for certain charities</li> </ul>		
	Turnover test	Projected or actual; Monthly or June or September quarters	Actual only; September quarter 2020 vs September quarter 2019 <sup>3</sup>	Actual only; December quarter 2020 vs December quarter 2019 <sup>3</sup>
Employee eligibility	Wage condition - eligible employees with an average of 80 hours per 28 days or more before either 1 March or 1 July 2020 <sup>4</sup>	\$1,500 per JKP fortnight	\$1,200 per JKP 2 fortnight [Tier 1]	\$1,000 per JKP 2 fortnight [Tier 1]
	Wage condition - other eligible employees	\$1,500 per JKP fortnight	\$750 per JKP 2 fortnight [Tier 2]	\$650 per JKP 2 fortnight [Tier 2]
	Effective date to make first wages payments for JKP 2	N/A	31 October 2020	15 January 2021

## Essential information: Frequently Asked Questions (FAQs)

### Employer is already in JobKeeper – How do I apply for JKP 2 from 28 September?

You do not need to re-enroll with the Australian Taxation Office (ATO) for JKP 2 if you are already enrolled for JobKeeper for fortnights before 28 September.

However, businesses must have information to demonstrate that the actual fall in turnover test is passed for the September quarter before completing the November monthly declaration.

The Employer must notify the ATO (via the ATO Portal) of each employee's wage rate. The Portal may link to Single Touch Payroll (STP) reporting in the same way that reporting of employees eligible for top-up payments has occurred to date. We expect further information to be released if STP updates are required to payroll systems.

### What are the key dates to claim JKP2?

Employers need to notify the ATO of the applicable rate for each employee and submit October claims between 1 November and 14 November 2020.

### What are the key actions and dates in relation to employees?

There is no requirement to obtain new nomination notices.

The main requirement is to test the hours of work in accordance with the new 80-hour test. The 80-hour test determines whether an employee is entitled to the Tier 1 or Tier 2 rate.

Employees must be notified of the relevant rate within seven days of notifying the ATO.

### How do employers apply the 80hour test?

If at least 80 hours of work or paid leave occurred in either reference period, the higher (Tier 1) rate applies. The reference periods are the 28 days ending at the end of the last pay cycle before 1 March and 1 July 2020.

The ATO has provided alternative tests where the reference periods are not representative of the employee's usual hours.

Employers are required to apply the alternative tests if it is more favorable for the employee.

### Do I need to test hours in both February and June?

Yes. However, if the employee meets the 80-hour test in one period, you do not need to test the other period.

### Employer is in JobKeeper but does not qualify for JKP 2 – is there anything I need to do?

While not required, it would be prudent to inform your employees that you are not eligible for 28 September 2020 to 3 January 2021.

We also recommend monitoring your December 2020 quarter turnover as it may be possible to re-qualify.

If turnover declines by at least 10% in the relevant quarter, obtain a certificate to retain certain Fair Work flexibilities. See *Fair Work Act* section below.

### Employer first time eligible based on September actual turnover – How do I apply for JKP 2?

The employer must complete an ATO online enrollment form by 31 October 2020. This involves providing turnover details and the expected number of eligible employees.

The employer must confirm each employee's eligibility, obtain employee nomination notices and pay the relevant wage amount. Nomination notices should be obtained in advance of paying additional top-up amounts.

### Which decline in turnover rate to apply

The percentage decline in turnover has not changed and is:

- ▶ 50% for employers that are part of very large groups with aggregated turnover greater than \$1bn
- ▶ 15% for certain not for profit charities
- ▶ 30% for everyone else

In assessing the \$1bn aggregated turnover, employers need to consider both the current income year and the prior income year.

The commencement of a new financial year may change the outcome for the employer. For example, as 30 June employers have now moved into a new income year, in assessing which decline in turnover test to apply, it is now necessary to consider the current 30 June 2021 year and FY20 (the immediately prior year) while previously FY20 and FY19 would have been examined.

### Actual decline in turnover test

The actual decline in turnover is based on current turnover made in the September and December quarters. This means the use of forecasts drops away and you now need to wait until the end of the September and December quarters to make the necessary assessment.

Some key points to note:

- ▶ Transfers of capital assets are included in the actual decline in turnover test.
- ▶ The Commissioner has determined that supplies will be treated as being made at a time in the period to which they are “attributable” for Goods and Services Tax (GST) reporting purposes. In short, this means that you are required to allocate turnover based on the accounting basis you use for GST purposes (be that cash or accruals).
- ▶ For charities, the use of the attribution rules does not apply to gifts and donations, these are allocated based on the time they are received. If a charity previously elected to exclude government grants from turnover, the grants must continue to be excluded.

### Fair Work Act

Employers who are eligible for JKP 2 from 28 September 2020 (qualifying employers) generally retain access to the current JobKeeper flexibility measures apart from annual leave agreements.

Employers who claimed JobKeeper prior to 28 September 2020, but do not qualify for JKP 2 (legacy employers) may be eligible to access a modified and reduced range of Fair Work flexibility measures.

The legacy employer must have a certificate stating that they have experienced a 10% decline in turnover at the time of issuing the JobKeeper enabling directions or agreements.

### Legacy employers' 10% decline in turnover test

The decline in turnover test mirrors the JKP test with some modifications:

- ▶ Comparison is only on a quarterly basis
- ▶ Different quarters must be tested for different periods of application

<b>28 September 2020 to 27 October 2020</b>	<b>28 October 2020 to 27 February 2021</b>	<b>28 February 2021 to 28 March 2021</b>
Compare the June 2020 quarter to the June 2019 quarter	Compare the September 2020 quarter to the September 2019 quarter	Compare the December 2020 quarter to the December 2019 quarter

### Certificate for 10% decline in turnover

Legacy employers must obtain the certificate for each quarter other than where an exception for small businesses applies (broadly an employer with fewer than 15 employees), who can instead choose to make a statutory declaration that they meet the test.

A 10% decline in turnover certificate can only be issued by one of the following:

- ▶ A registered tax agent or BAS agent
- ▶ A qualified accountant that is independent of and external to the employer

### JobKeeper enabling directions provide legacy employers with important flexibilities

Legacy employers will be able to issue or seek JobKeeper enabling directions or agreements. However, these will be more limited than employers who continue to be eligible for JKP 2 (qualifying employers). In summary the flexibilities include the ability to issue:

- ▶ JobKeeper enabling stand down directions to reduce legacy employee ordinary hours by 60% of their ordinary hours calculated from 30 March 2020
- ▶ JobKeeper enabling directions for legacy employees to perform duties within their skills and competencies and to perform duties at a different work location
- ▶ Requests to change the legacy employees' days and times of work

A new reasonableness requirement will apply (to both legacy employers and qualifying employers) in relation to JobKeeper enabling directions.

There are also specific consultation requirements that a legacy employer must comply with.

If a legacy employer does not hold a certificate for the relevant quarter, any JobKeeper enabling direction will cease to have effect immediately after the relevant test time, being 28 October 2020 or 28 February 2021.

## Endnotes

1. *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020.*
2. Currency references in this Alert are to the AU\$.
3. The Australian Taxation Office (ATO) is expected to provide alternative periods to test where the comparison in the rules is not appropriate.
4. The ATO has provided alternative 80-hour tests for atypical working months.

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