

CLIENT ALERT

September 2020

JOBKEEPER 2.0 ENACTED ARE YOU IN?

We have previously published [here](#) the proposed rules announced by the Government that JobKeeper Payment would be extended until 28 March 2021 to provide further support for COVID-19 affected businesses and households, **with tightened eligibility rules and lowered payment rates**, from 28 September 2020.

These rules are now enacted as of 15 September 2020 with the Treasurer registering *Coronavirus Economic Response Package (Payment and Benefits) Amendment Rules (No. 8) 2020*.

There are lower payment rates and turnover conditions from 28 September 2020, however, other eligibility rules for businesses and not-for-profits and their employees remain unchanged.

Actual decline in turnover test: eligibility from 28 September 2020

To qualify for JobKeeper payments from 28 September 2020, an entity must satisfy the new actual decline in turnover test for the quarter applicable to the fortnight, as follows:

JobKeeper Fortnight	Actual decline in turnover testing period
Extension period 1: 28 September 2020 to 3 January 2021 (inclusive)	Quarter ended 30 September 2020 vs Quarter ended 30 September 2019
Extension period 2: 4 January 2021 to 28 March 2021 (inclusive)	Quarter ended 31 December 2020 vs Quarter ended 31 December 2019

The definition of actual decline in turnover has not changed and are as follows:

- 30% fall in turnover for the entity with an aggregated turnover of \$1 billion or less;
- 50% fall in turnover for the entity with an aggregated turnover of more than \$1 billion; or
- 15% fall in turnover for ACNC-registered charities other than universities and schools.

Coronavirus Economic Response Package (Payments and Benefits) (Timing of Supplies Made and Decline in Turnover Test) Rules 2020 (No. 1) was registered 16 September 2020, and effectively aligns the

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calculation of current GST turnover for the actual decline in turnover test with how entities would attribute GST payable on supplies to a tax period under the GST Act. It applies to taxable and GST-free supplies, but excludes input taxed supplies and supplies not connected with Australia.

It also require an entity to use either cash or accruals method for calculating the actual decline in turnover. Where an entity is not registered for GST, it may choose which method to be used. If an entity has always been registered for GST and have never changed their accounting method to report GST, it must use that accounting basis. Additional rules are in place for entities that have changed their accounting method, became registered during the relevant comparison period, cancelled their GST registration etc...

The Commissioner of Taxation will have the discretion to set out alternative tests that would establish eligibility in the circumstances that it is not appropriate to compare actual turnover in a quarter in 2020 with actual turnover in a quarter in 2019, in line with the Commissioner's existing discretion. We expect more information on the alternative tests to be released by the ATO shortly.

The Explanatory Statement of *Coronavirus Economic Response Package (Payment and Benefits) Amendment Rules (No. 8) 2020 (Explanatory Statement)* states, in relation to eligibility for JobKeeper payments that:

- An entity is not excluded from qualifying for JobKeeper payments for each extension period, even if they did not previously qualify prior to 28 September 2020. They just have to satisfy the actual decline in turnover test in each extension period.
- An entity can fall in and out of Jobkeeper if it qualifies for a period and not another. If it qualifies for an earlier period, fails in the next, and re-qualifies, there is no need to notify the ATO again of their election to participate in JobKeeper scheme again.

What doesn't change

To claim for fortnights in the JobKeeper Extension 1 or 2:

- You don't need to re-enrol for the JobKeeper extension if you are already enrolled for JobKeeper for fortnights before 28 September.
- You don't need to reassess employee eligibility or ask employees to agree to be nominated by you as their eligible employer if you are already claiming for them before 28 September.
- You don't need to meet any further requirements if you are claiming for an eligible business participant, other than those that applied from the start of JobKeeper relating to:
 - holding an ABN, and
 - declaring assessable income and supplies.

Reduced JobKeeper payment rate from 28 September 2020

For JobKeeper fortnights beginning on or after 28 September 2020, the rate applicable to an employee depends on the hours the employee works, has paid leave and paid absence on public holidays in the employee’s employment over an applicable reference period:

	JobKeeper fortnights beginning on or after 28 September 2020	JobKeeper fortnights beginning on or after 4 January 2021
Higher payment rate: 80 hours or more in a reference period	\$1,200 per fortnight	\$1,000 per fortnight
Lower payment rate: Less than 80 hours in a reference period	\$750 per fortnight	\$650 per fortnight

For employees, the 80 hours include actual hours the employee worked, and any hours they received paid leave (e.g. annual, long service, sick, carers and other forms of paid leave) or paid absences for public holidays. This test is designed to reflect actual circumstances of the employee, for example, where additional hours are worked above standard hours.

For business participants, the 80 hours is counted based on “total number of hours the individual was actively engaged in the business carried on” by the entity, and would need to be declared to the ATO that their total hours of active engagement in February 2020 is 80 hours or more where a higher payment rate is claimed.

A **reference period** is defined as follows:

1. For an employee:
 - a. 28 day period ending the end of the most recent pay cycle for the employee for the entity that ended before 1 March 2020; or
 - b. 28 day period ending the end of the most recent pay cycle for the employee for the entity that ended before 1 July 2020; or
2. For an eligible business participant – the month of February 2020.

Coronavirus Economic Response Package (Payments and Benefits) Alternative Reference Period Determination 2020 was registered on 16 September 2020 and sets out alternative reference period that could apply, in certain circumstances.

Importantly, where employee’s total hour of work is < 80 hours and when compared to earlier 28 day periods at the end of a pay cycle, was not representative of the employee’s total number of hours typical in such a 28-day period, an alternative reference period can apply being a 28 day period ending at the end of the most recent pay cycle for the employee before the reference time in which the employee total number of hours worked, of paid leave and of paid absence on public holidays was representative of a typical such 28-day period.

Alternative reference period can also apply in other circumstances such as where the employee was not employed by the entity during all or part of the reference period. Further guidance is expected to be provided by the ATO where the employee is paid non-weekly or non-fortnightly and in other circumstance that general rules do not cover.

Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020 was registered 16 September 2020, in which the Commissioner will apply the higher rate of payment even if an employer has no/incomplete records of hours worked in three circumstances:

1. If an employee is already being paid \$1,500 or more in salary, wages, commission, bonus payments, allowances, and fringe benefits and superannuation contributions provided under an effective salary sacrifice agreement.
2. Under a written industrial award, enterprise agreement, individual contract, or other similar instrument governing the employment relationship, an eligible employee was required to work 80 hours or more in the reference period (including paid leave and paid absences on public holidays).
3. Although not readily ascertainable, it can be determined based on reasonable assumptions that an eligible employee's hours in the reference period was 80 hours or more (including paid leave and paid absences on public holidays).

Notification to the ATO is required for higher and lower JobKeeper payment rates for JobKeeper payments from 28 September 2020. If this is not done, the entity is not eligible for JobKeeper (until it notifies the Commissioner).

Entities must notify individuals in writing within 7 days of advising the ATO of the JobKeeper payment rate that applies to the individual.

Recap - Changes to who is an eligible employee from 3 August 2020

Previously, an eligible employee must have been employed on 1 March 2020 to be eligible for Jobkeeper payments.

From JobKeeper fortnights beginning 3 August 2020, this is now 1 July 2020. This was legislated on 14 August 2020 in *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020* and detailed in our client alert [here](#).

- This means new staff would be able to receive the payments if the business suffers. So employees are eligible for JobKeeper in the extension period if:
- They are currently employed by an eligible employerA full time, part time, fixed term, or long term casual employee (and not a permanent employee of any other employer) of that employer at 1 July 2020
- Aged 18 years or older at 1 July 2020 (if 16 or 17 can also qualify if independent and not undertaking full time study)
- An Australian resident, not in receipt of government parental leave or Dad and partner pay, or payment in accordance with workers compensation for total incapacity for work.

What you need to do

1. Consider if your business will be eligible for JobKeeper beyond 27 September 2020 based on the new rules.

From 28 September 2020, you should only continue to make JobKeeper payments to your employees if you believe you remain eligible. This will require timely review of the actual GST turnover for September 2020, and if it satisfies the actual decline in turnover test, prior to making the JobKeeper payment to employees.

Similarly, from 4 January 2021, you should only continue to make JobKeeper payments to your employees if you believe you remain eligible. This will require timely review of the actual GST turnover for December 2020, and if it satisfies the actual decline in turnover test, prior to making the JobKeeper payment to employees.

2. Identify eligible employees and eligible business participants on lower payment rates from 28 September 2020

You should review your payroll records now to determine which employees currently on JobKeeper will be subject to a lower payment rate, as this is determined based on the hours they worked in 2020 in either reference period.

Notify the ATO of the correct JobKeeper payment rate for each employee, and notify employees of their correct JobKeeper payment rate as soon as possible.

Please contact your local Hall Chadwick advisor if you require any assistance or advice with regards to application of Jobkeeper to your business, or other Covid-19 related tax measures

LEVEL 40, 2 PARK STREET

SYDNEY NSW 2000

sydney@hallchadwick.com.au

+61 2 9263 2600