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On 30 March 2020, the Australian Government announced a wage subsidy called the JobKeeper payment for entities that have been significantly affected by the economic impacts of the Coronavirus.

The purpose of the Law is to establish the JobKeeper payment scheme and specify details about the scheme, including:

- the start and end date of the scheme;
- when an employer or business is entitled to a payment;
- the amount and timing of a payment; and
- other matters relevant to the administration of the payment.

The Law specifies that the JobKeeper payment is available in fortnightly periods between 30 March 2020 and 27 September 2020 – a period of 26 weeks.

A business that is entitled to the JobKeeper payment will receive a fixed payment of $1,500 per fortnight per eligible employee. The payment must have already been passed on to the eligible employee in full.

In addition a business may be entitled to the JobKeeper payment for the business owner or a nominated owner regardless of whether the business has eligible employees.

By temporarily offsetting wage costs, the JobKeeper scheme supports businesses to retain staff – and continue paying them – despite suffering decreased turnover during this period of downturn. The payment also supports these businesses to recommence their operations or scale up operations quickly without needing to rehire when the downturn is over.

Goods and services tax does not apply in relation to JobKeeper payments made to employers because the payments are not consideration for supplies made by employers to the Government.

JobKeeper payments are in respect of fortnightly periods, commencing on 30 March 2020 for a maximum of 13 fortnights (provided the employer was entitled to the payment for the fortnight commencing on 30 March 2020). This means the last fortnight in respect of which a JobKeeper payment may be paid is the fortnight commencing on 14 September 2020 and ending on 27 September 2020.

When is an employer entitled to a JobKeeper payment?

In general terms, an employer is entitled to a JobKeeper payment for a fortnight if:

- the fortnight is a JobKeeper fortnight;
- the employer qualifies for the scheme on or before the end of the fortnight;
- the payment is for a person who is an eligible employee of the employer;
- the employer has satisfied the wage condition by making payments to the eligible employee equal to or greater than the amount of JobKeeper payment (less PAYG withholding and salary packaging) that the employer will receive for the employee for the fortnight; and
- the employer has notified the Commissioner of a range of matters, including notification of its election to participate in the scheme.

There are tests within the Law that must have been satisfied on 1 March 2020, and other tests that must be satisfied during the fortnight in respect of which a JobKeeper payment is to be made.

What is a JobKeeper fortnight?

An employer receives a JobKeeper payment in respect of each JobKeeper fortnight in which they are entitled to the payment.

Entitlement to a JobKeeper payment is assessed in relation to a fortnightly period known as a JobKeeper fortnight. Each of the following is a JobKeeper fortnight:

- the fortnight beginning on 30 March 2020; and
- each subsequent fortnight, ending with the fortnight ending on 27 September 2020.

This means that the JobKeeper scheme commences on 30 March 2020 and ends on 27 September 2020 – a period of 26 weeks.

How does an employer qualify for the JobKeeper scheme?

An employer will qualify for the scheme for a particular fortnight if:

- it satisfies the following requirements:
  - on 1 March 2020, it carried on a business in Australia or was a non-profit body pursuing its objectives principally in Australia;
  - before the end of the fortnight, it met the decline in turnover test; and
- none of the following applies:
  - on 1 March 2020, it had been subject to the levy imposed by the *Major Bank Levy Act 2017* for any quarter ending before this date, or it was a member of a consolidated group and another member of the group had been subject to the levy;
  - it is a government body of a particular kind, or a wholly-owned entity of such a body; or
  - at any time in the fortnight, a provisional liquidator or liquidator has been appointed to the business or a trustee in bankruptcy had been appointed to the individual's property.

Once an employer decides to participate in the JobKeeper scheme and 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. This 'one in, all in' rule is a key feature of the scheme.**

Entitlement only arises for those JobKeeper fortnights and later fortnights in which eligible employers are registered under the scheme prior to the end of a JobKeeper fortnight. The only exception to this is for the month of April 2020. In April 2020 employers may register prior to the end of April and if they meet the eligibility rules receive JobKeeper payments for eligible employees for JobKeeper fortnights in the two JobKeeper fortnights commencing from 30 March 2020.

Another key element of the scheme is that qualifying employers that decide to participate in the JobKeeper scheme must, as a condition of entitlement, notify all employees in writing that they have elected to participate in the scheme and that their eligible employees will all be covered by the scheme.

Decline in turnover test

The decline in turnover test needs to be satisfied before an entity becomes eligible for the JobKeeper payment. Once this occurs there is no requirement to retest in later months. If an entity does not qualify for the month of April 2020 because its turnover has not been sufficiently affected, it can test in later months to determine if the test is met. This allows entities that only become affected part way through the six month period of operation of the JobKeeper scheme to continue to monitor for any decline in turnover until they qualify for the scheme in a later period.

The Law specifies two ways in which a business can satisfy the decline in turnover test: the basic test and the alternative test.

The basic decline in turnover test works by comparing the projected GST turnover of the entity for a period (the turnover test period) with its current GST turnover as calculated for a relevant comparison period (the comparison turnover). In effect this compares a month or quarter in the period the JobKeeper scheme applies with the corresponding period in 2019.

A business will generally satisfy the test where the GST turnover in the turnover test period falls short of the comparison turnover and the shortfall is 30 per cent or more.

The periods for the turnover test period being compared by can be periods of one month or three months, where:

- if a one month turnover test period is being used, it must be one of the following months:
  - March 2020;
  - April 2020;
  - May 2020;
  - June 2020;
  - July 2020;
  - August 2020;
  - September 2020; or
- if a three month period is being used it must be one of the following periods:
  - the quarter that starts on 1 April 2020;
  - the quarter that starts on 1 July 2020.

Businesses, individuals and entities that deliberately enter into contrived arrangements with the sole or dominant purpose of reducing their turnover in order to gain access to JobKeeper payments or increase the amount of JobKeeper payments they receive will not be entitled to the payment or the increased payment and the general interest charge will apply on the overpayment under section 19 of the Act. In addition, significant administrative as well as criminal penalties are also likely to apply to the parties involved in such schemes.

<u>Example 1: Satisfying the basic decline in turnover test</u>

Burke Industries assesses its eligibility for JobKeeper payments on 11 May 2020 based on a projected GST turnover for May 2020 of $10 million from its business activities. The corresponding period is the month of May 2019 for which it had a current GST turnover of $20 million. The alternative turnover test does not apply as the month of May 2019 is an appropriate relevant comparison period. The May 2020 turnover falls short of the May 2019 turnover by $10 million, which is 50% of the April 2019 turnover. This exceeds the specified percentage of 30% that applies to business entities with less than $1 billion aggregated annual turnover, so the decline in turnover test is satisfied.

Where the Commissioner is satisfied that there is no such period in 2019 or it is not an appropriate relevant comparison period, the Commissioner may, by legislative instrument, determine an alternative decline in turnover test applies to a class of entities.

Example 2: Failing to satisfy the basic decline in turnover test

Nguyen Industries assesses its eligibility for JobKeeper payments on 3 July 2020 based on a projected GST turnover for the quarter beginning on 1 July 2020 of $80 million from its business activities. The corresponding period is the quarter beginning on 1 July 2019 for which it had a current GST turnover of $100 million. The alternative turnover test does not apply as the quarter beginning on 1 July 2019 is an appropriate relevant comparison period. The July 2020 quarter turnover falls short of the July 2019 quarter turnover by $20 million, which is 20% of the July 2019 quarter turnover. This does not exceed the specified percentage for such entities of 30%, so the decline in turnover test is not satisfied.

Example 3: Satisfying the alternative decline in turnover test

Camille's Farms carries on a farming business and retail flower sales in Australia. It was subject to a severe drought from 2018 until September 2019 that reduced the amount of flowers it could grow. It returned to normal crop output in January 2020. Its retail flower sales became significantly affected in March 2020.

It assesses its eligibility for JobKeeper payments on 3 July 2020 based on a projected GST turnover from its farming activities for the quarter beginning on 1 July 2020 of $2,000,000. The corresponding period is the quarter beginning on 1 July 2019 – a period in which Camille's Farms was severely affected by drought. Because of the effects of the drought, Camille's Farms had a much lower than usual current (2019) GST turnover of $2,500,000. The July 2020 quarter turnover falls short of the July 2019 quarter turnover by $500,000, which is 25% of the July 2019 quarter turnover. This does not exceed the specified percentage of 30%, so the decline in turnover test is not satisfied.

However, because of the effects of the drought on farming businesses, the Commissioner is satisfied that there is not an appropriate relevant comparison period for an entity that carried on a farming business. Instead, for these entities, the Commissioner determines an alternative test for which the relevant comparison period is the corresponding quarter in 2017. The Commissioner determines that the alternative test will be satisfied in these circumstances where the entity can show a 30% shortfall in turnover (for entities with less than $1 billion aggregated annual turnover) when compared to one of these alternative periods.

In the quarter beginning on 1 July 2017, Camille's Farms had a current GST turnover of $4,000,000. This represents a shortfall of 50% when compared to its projected GST turnover for the quarter beginning on 1 July 2020. This exceeds the specified percentage of 30%, so the alternative decline in turnover test is satisfied.

Example 4: Satisfying the alternative decline in turnover test

> Seb Tech is a start-up technology company that began carrying on a business on 1 October 2019 selling its product to a range of businesses including cafes and restaurants. Despite strong initial sales, its sales declined substantially from March 2020. It assesses its eligibility for JobKeeper payments on 15 April 2020 based on a projected GST turnover for April 2020 of $15,000 from its technology business. However, because Seb Tech did not begin to carry on a business until 1 October 2019, there is no corresponding period in 2019 that applies.
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> As there is no corresponding comparison period in 2019, the Commissioner determines an alternative test under which the relevant comparison period is the average of the actual GST turnover in all of the months in which the business was being carried on prior to the turnover test period.
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> In October 2019 to March 2020, Seb Tech had an average monthly current GST turnover of $30,000. This represents a shortfall of 50% when compared to its projected GST turnover for April 2020 of $15,000. This exceeds the specified percentage of 30%, so the alternative decline in turnover test is satisfied.

Who is an eligible employee?

An employer is only entitled to a JobKeeper payment for a person for a fortnight if the person is an eligible employee.

The Law provides that an eligible employee of an employer for a JobKeeper fortnight is a person who satisfies the following requirements:

- On 1 March 2020:
  - the person was aged 16 years or over;
  - the person was an employee other than a casual employee of the employer, or was a long term casual employee of the employer; and
  - the person was an Australian resident
- At any time during the fortnight:
  - the person is an employee of the employer;
  - the person is not excluded from being an eligible employee.

There is also a requirement that eligible employees have provided a notice to their employer agreeing:

- to be nominated by the employer as an eligible employee under the JobKeeper scheme as the employer with which the employee will participate in the JobKeeper scheme;
- that they confirm they have not agreed to be nominated by another employer; and
- that they do not have permanent employment with another employer if they are employed as a casual employee with this employer.

A person who has been stood down or is on leave is considered to be an employee of their employer under the *Fair Work Act 2009* and for the purposes of the JobKeeper payment.

The Law provides the meaning of ‘long term casual employee’ as a person who has been employed by the employer on a regular and systematic basis during the period of 12 months that ended on 1 March 2020. This definition is based on the same term in the *Fair Work Act 2009*, with adjustments to ensure it can be applied to all employees (not just ‘national system employees’). A casual employee is likely to be employed on a regular and systematic basis where the employee has a recurring work schedule or a reasonable expectation of ongoing work.

Casual employees who have not been employed on this basis between 1 March 2019 and 1 March 2020 therefore cannot be an eligible employee for the purposes of the JobKeeper scheme.

The Law provides some flexibility for any changes in ownership of a business and movement of employees within the same wholly-owned group. It means that employees are not disadvantaged if these events, which are ordinarily beyond their control, occur.

A person can therefore be treated as an eligible employee of the same employer even if the business or non-profit body in which the person is employed changes hands after 1 March 2020. It also means that in working out if a person is a long term casual employee of an employer, employment in a business or non-profit body in the 12 month period ending on 1 March 2020 can be counted even if the business or non-profit body changed hands during that period.

Example 5: Long term casual employees

> On 1 March 2019, Sam commences employment as a casual employee at Annie's Bakery. Sam has a regular work schedule – working between 3 and 4 days each week. On 1 July 2019, ownership of Annie's Bakery changes hands. Sam continues to be employed as a casual employee of Annie's Bakery and continues to work according to their regular work schedule from that date until 10 March 2020, when Sam is stood down.
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> For the purposes of determining whether Sam is a long term casual employee and an eligible employee, the fact that the business has changed hands will not disadvantage Sam. Sam is able to demonstrate regular and systematic employment at Annie's Bakery for over 12 months. He is therefore a long term casual employee for the purposes of the JobKeeper scheme.

A person who is employed by one or more qualifying employers will need to choose one employer that will receive the JobKeeper payments for their employment.

What other entitlement criteria apply?

The rules about a JobKeeper fortnight, when an employer qualifies for the JobKeeper payment and when a person is an eligible employee are described above. These further entitlement rules are described below.

The requirement that the component amounts be at least $1,500 applies regardless of whether the employee ordinarily receives more or less than that amount. For example if an employee:

- ordinarily receives $1,500 or more in income per fortnight before PAYG withholding and other salary sacrificed amounts, and their employment arrangements do not change they will continue to receive their regular income according to their workplace arrangements. The JobKeeper payment will assist the employer to continue operating by subsidising all or part of the income of the employee;
- ordinarily receives less than $1,500 in income per fortnight before PAYG withholding and other salary sacrificed amounts, the employer must pay the employee at least $1,500 per fortnight, subject to PAYG withholding and other salary sacrificed amounts to the value of $1,500;

- has been stood down, the employer must pay the employee at least $1,500 per fortnight, before PAYG withholding and other salary sacrificed amounts to the value of $1,500; or
- was employed on 1 March 2020, subsequently ceased employment with the employer, and then has been rehired by the same eligible employer, the employer must pay the employee at least $1,500 per fortnight, before PAYG withholding and other salary sacrificed amounts to the value of $1,500.

If an employer's ordinary arrangement is to pay its employees less frequently than fortnightly, then the payment can be allocated between fortnights in a reasonable manner. For example, if an employer's ordinary arrangement is to pay an employee every four weeks, it may be reasonable for the purposes of satisfying the wage condition if the employee is paid at least $3,000 for every four week period.

The regulations will ensure that an employer will only need to make superannuation contributions for any amount payable to an employee in respect of their actual employment, disregarding any extra payments made by the employer to satisfy the wage condition for getting the JobKeeper payment.

For example, if the work actually done by an employee over a period entitled them to be paid $1,000, but the employer instead paid them $1,500 to satisfy the wage condition for a JobKeeper fortnight, then the employer will only be required to make superannuation contributions in relation to $1,000. Similarly, any liability to superannuation guarantee charge that the employer would have for not making sufficient superannuation contributions would be calculated by reference to that $1,000 base.

An employer will not be required to make superannuation contributions for an employee who is stood down. This is because employers have no obligation to pay stood down employees. If an employer pays a stood down employee $1,500 to satisfy the wage condition for receiving the JobKeeper payment, then the entire amount will be disregarded for superannuation guarantee purposes.

The employer must elect to participate

The JobKeeper scheme requires an employer to actively seek to participate in the scheme. An employer must therefore notify the Commissioner in the approved form of the employer's election to participate in the scheme before the employer can be entitled to a payment for a fortnight.

This election generally needs to be provided to the Commissioner before the end of a JobKeeper fortnight for the employer to be entitled to a payment for that fortnight.

However, there is a different timing rule where the employer wishes to participate in the scheme and receive the first or second JobKeeper payment (relating to the JobKeeper fortnights commencing on 30 March 2020 and 13 April 2020 respectively). Where this is the case, the employer has until the end of the second JobKeeper fortnight, that is, 26 April 2020, to provide the Commissioner with its election to participate.

For all subsequent JobKeeper fortnights, the employer will need to notify the Commissioner of the employer's election to participate in the scheme before the end of the particular fortnight.

The employer must provide information about eligible employees and the wage condition

To be entitled to a JobKeeper payment for a fortnight, the employer must have provided the following information to the Commissioner in the approved form:

- the details of each eligible employee; and
- other information about their entitlement to the JobKeeper payment.

It is anticipated that the Commissioner may require the following details for each eligible employee in the approved form:

- the name of the employee;
- the type of the employee's employment; and
- the employee's citizenship or residency status.

Once an employer has provided details of its eligible employees to the Commissioner, the employer must also notify each eligible employee within 7 days. This requirement is intended to keep eligible employees informed about the process.

If the information provided to the Commissioner does not subsequently change in the following JobKeeper fortnights, an employer is not required to provide the same information to the Commissioner again.

Only one employer is entitled to JobKeeper payment for a person

An entity is not entitled to the JobKeeper payment for an individual who is an employee (or business owner) if another employer is entitled (either as an employer or as a business owner) to a JobKeeper payment for the individual.

When is a business owner entitled to the JobKeeper payment?

The JobKeeper payment established in the Law entitles an employer to the JobKeeper payment with respect to its eligible employees. This could include a business owner who is an employee, including a sole trader, adult beneficiary of a trust, or a director or shareholder of a company. However, it will not include owners who are not employees such as sole traders, partners, adult beneficiary of trusts, or a director or shareholder of a company.

However, the JobKeeper scheme recognises that certain participants in a business, such as a sole trader, are also affected by the economic downturn caused by the Coronavirus. Accordingly, in order to provide a benefit to such business participants, the Law extends the availability of the JobKeeper payment to certain participants in a qualifying business. The entitlement to the JobKeeper payment applies to businesses and is not available to non-profit entities.

No more than one individual and one entity

A business is not entitled to a JobKeeper payment for more than one individual. If a business has more than one eligible participant, the business can only be entitled to receive the JobKeeper payment in relation to one of the individuals. It is up to the business to determine which individual is nominated as the eligible business participant.

Similarly, an individual can only create an entitlement for one entity.

Eligible business participant

The individual for whom a business is entitled to the JobKeeper payment must be an individual that is an eligible business participant. Under the Law, an individual is an eligible business participant where the individual:

- is not employed by the business at any time in the fortnight (that is, because the individual is the owner of the business ie a nominated business participant not an employee of the business);
- satisfies the business participation requirements at any time in the fortnight;
- satisfies the 1 March 2020 requirements; and

- satisfies the nomination the requirements.

The business participation requirements are that, at any time in the fortnight, the individual is actively engaged in the business carried on by the entity. The individual must be actively engaged in the operations and activities of the body. Further, depending on the type of entity the business is, the individual must have a particular role within the business. In the case of an entity that is a:

- sole trader—the individual must be the entity;
- partnership—the individual must be a partner in the partnership;
- trust—the individual must be an adult beneficiary of the trust; and
- company—either a director or shareholder in the company.

Under the Law, the Commissioner must make the payment for a fortnight no later than the later of:

- 14 days after the end of the calendar month in which the fortnight ends; and
- 14 days after the Commissioner is satisfied that the employer or business is entitled to the payment for the fortnight.

<u>Monthly reporting</u>

Under the Law, participation in the JobKeeper scheme requires monthly reporting. An entity that is entitled to a JobKeeper payment for a fortnight must notify the Commissioner of:

- its current GST turnover for the reporting month; and
- its projected GST turnover for the following month.

The information provided as part of this report does not affect an entity's eligibility, including in respect of the decline in turnover test (which only needs to be satisfied once). It is also not intended to verify whether the projection given as part of the decline in turnover test was accurate. Rather, it is intended to ensure that there is good information on which to assess the economic impact of the Coronavirus on a monthly basis across Australia.