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JobKeeper 2.1: The New Rules

18 September 2020 | Online

Presenter:

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Overview of session

Part 1

- Legislative framework and overview of JobKeeper
- New 1 July 2020 employment test
- Reduced, two-tiered JobKeeper rates and the 80-hour test
- How the JobKeeper fortnights interact with payroll cycles

Part 2

- Changes to the decline in turnover test
- What is not changing from the current rules



Legislative framework: JobKeeper 1

Purpose	Act Legislative Instrument
JobKeeper legislation	<u>Coronavirus Economic Response Package (Payments and Benefits) Act 2020</u> <ul style="list-style-type: none"> ▪ Enacted 9 April 2020
JobKeeper rules	<u>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</u> <ul style="list-style-type: none"> ▪ Treasurer’s legislative instrument, registered 9 April 2020
FWA changes, consequential amendments	<u>Coronavirus Economic Response Package Omnibus (Measures No 2) Act 2020</u> <ul style="list-style-type: none"> ▪ Enacted 9 April 2020
Alternative decline in turnover test	<u>Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020</u> <ul style="list-style-type: none"> ▪ Commissioner’s legislative instrument, registered 23 April 2020
Various amendments to JobKeeper rules	<u>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020</u> <ul style="list-style-type: none"> ▪ Treasurer’s legislative instrument, registered 1 May 2020
SG amendments	<u>Superannuation Guarantee (Administration) Amendment (Jobkeeper Payment) Regulations 2020</u> <ul style="list-style-type: none"> ▪ Treasurer’s legislative instrument, registered 28 May 2020
Childcare sector	<u>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 5) 2020</u> <ul style="list-style-type: none"> ▪ Treasurer’s legislative instrument, registered 6 July 2020

Legislative framework: JobKeeper 2

Purpose	Act Legislative Instrument
Rules for 1 July 2020 relevant employment test	<i>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020</i> <ul style="list-style-type: none"> Registered 14 August 2020
Extend JobKeeper to 28 March 2021 and FWA changes	<i>Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Bill 2020</i> <ul style="list-style-type: none"> Enacted 3 September 2020
JobKeeper 2.1 rules	<i>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020</i> <ul style="list-style-type: none"> Treasurer's legislative instrument, registered 15 September 2020
Determining timing of supplies	<i>Coronavirus Economic Response Package (Payments and Benefits) (Timing of Supplies Made and Decline in Turnover Test) Rules 2020 (No. 1)</i> <ul style="list-style-type: none"> Commissioner's legislative instrument, registered 16 September 2020
Determining rate where hours not readily ascertainable	<i>Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020</i> <ul style="list-style-type: none"> Commissioner's legislative instrument, registered 16 September 2020
Determining alternative period where reference period is not suitable	<i>Coronavirus Economic Response Package (Payments and Benefits) Alternative Reference Period Determination 2020</i> <ul style="list-style-type: none"> Commissioner's legislative instrument, registered 16 September 2020

ATO guidance products

ATO guidance	Title and issue date
PCG 2020/4	Schemes in relation to the JobKeeper payment <ul style="list-style-type: none"> ▪ Issued 1 May 2020 ▪ Last updated 26 May 2020
PS LA 2020/1	Commissioner's discretion to allow further time for an entity to register for an ABN or provide notice to the Commissioner of assessable income or supplies <ul style="list-style-type: none"> ▪ Issued 1 May 2020 ▪ Last updated 16 September 2020
LCR 2020/1	JobKeeper payment – decline in turnover test <ul style="list-style-type: none"> ▪ Issued 4 May 2020 ▪ Last updated 10 May 2020 (Consolidated with Addendum)
TD 2020/D1	Income tax: notional deductions for research and development activities subsidised by JobKeeper payments <ul style="list-style-type: none"> ▪ Draft determination issued 27 July 2020

Overview of JobKeeper

- JobKeeper 1 — 30 March 2020 to 27 September 2020
- JobKeeper 2 — 28 September 2020 to 28 March 2021
- Two main categories of eligible entities:
 - Div 2 employers — eligibility based on paid employees
 - Div 3 entities — eligibility based on business participation
- All entities must satisfy a ‘decline in turnover test’
- Div 2 employers must meet a ‘wage condition’
- Div 3 entities must satisfy additional integrity provisions



New 1 July 2020 employment test

- Announced on 7 August 2020
- Applies from 3 August 2020 (FN 10)
- Eligible employees — must be **employed as at 1 July 2020** (eligibility of ‘1 March 2020 employees’ is preserved)
- Nominations:
 - Employer must have given new employees a notice by 24 August 2020
 - Employees who agree to be nominated must return the notice to their employer
 - ‘1 March 2020 employee’ of an old employer can re-nominate with their new employer
- Wage condition for FN 10 and 11 — required to be met by end of August



New 1 July 2020 employment test

Previously ineligible employees may now be eligible:

- Individuals (other than casuals) **employed after 1 March 2020** and before 1 July 2020 who meet the age and residency requirements
- Casuals who were not a *long term casual employee* on 1 March 2020 but **became a long term casual employee** by 1 July 2020
- Employees who did not qualify on 1 March 2020 due to their age or visa status but **turned 16 or 17** (and meet the independence and study conditions), **turned 18** or **obtained the necessary visa** by 1 July 2020





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New JobKeeper rates

JOBKEEPER 2.1: THE NEW RULES

JobKeeper fortnightly payment rates





JobKeeper period	Tier 1: Higher rate	Tier 2: Lower rate*
30 March 2020 to 27 September 2020	\$1,500	—
28 September 2020 to 3 January 2021	\$1,200	\$750
4 January 2021 to 28 March 2021	\$1,000	\$650

* Part time workers

Timeline



JobKeeper fortnightly payment rates

 Hours worked by the individual in the reference period	 30 Mar 2020 to 27 Sep 2020	 28 Sep 2020 to 3 Jan 2021	 4 Jan 2021 to 28 Mar 2021
<p>80+ hours</p>	<p>\$1,500 per fortnight</p>	<p>\$1,200 per fortnight</p>	<p>\$1,000 per fortnight</p>
<p>< 80 hours</p>		<p>\$750 per fortnight</p>	<p>\$650 per fortnight</p>

80-hour reference period

Individual	Higher rate applies if, in the reference period:	Reference period
Eligible employee	Total hours of work, paid leave/absence was 80 hours or more	2 standard periods — 28-day period ending at the end of the most recent pay cycle that ended before 1 March 2020 or 1 July 2020
Eligible business participant	Total number of hours the individual was actively engaged in the business carried on by the entity was 80 hours or more — must give a notice to that effect to the entity (or the Commissioner if a sole trader)	1 standard period — February 2020
Eligible religious practitioner	Total number of hours the individual spent doing activities covered by s 12B(2)(b) was 80 hours or more	1 standard period — February 2020

Reference period: Example 1 (fortnightly)

28-day period ending at the end of the most recent fortnightly pay cycle before 1 March 2020	Hours worked	28-day period ending at the end of the most recent fortnightly pay cycle before 1 July 2020	Hours worked
24–30 January 2020	20 hours	23–29 May 2020	20 hours
31 January–6 February 2020	17 hours	30 May–5 June 2020	15 hours
7–13 February 2020 (on leave)	15 hours	6–12 June 2020	5 hours
14–20 February 2020	23 hours	13–19 June 2020	10 hours
Total hours in reference period	75 hours	Total hours in reference period	50 hours

Outcome

- Can choose most beneficial reference period → **1 March 2020** — but still falls short of required 80-hour threshold for higher rate
- DIT in September 2020 quarter is 45% so eligible for JobKeeper, but at the lower rate of **\$750**
- Employee worked 25 hours per week in FN 15 (12–25 October) and was paid more than \$750 for the fortnight, but employer only entitled to claim \$750 for FN 15, based on hours worked in the reference period

Reference period: Example 2 (monthly)

28-day period ending at the end of the most recent monthly pay cycle before 1 March 2020	Hours worked	28-day period ending at the end of the most recent monthly pay cycle before 1 July 2020	Hours worked
21 January–20 February 2020 (31 days)	75 hours + 65 hours (leave)	21 May–20 June 2020 (31 days)	84 hours
	140 hours × $\frac{28}{31}$ days		84 hours × $\frac{28}{31}$ days
Total hours in reference period	126.5 hours	Total hours in reference period	75.9 hours

Outcome

- Can choose most beneficial reference period → **1 March 2020** — meets required 80-hour threshold for higher rate
- DIT in September 2020 quarter is 40% so eligible for JobKeeper at the higher rate of **\$1,200**
- Employee took 8 days leave without pay and worked 15 hours in FN 15 (12–25 October) so paid less than \$1,200 (top-up will be necessary) for the fortnight, but employer entitled to claim \$1,200 for FN 15, based on the hours worked in the reference period

Higher rate of JobKeeper applies

Where hours are not readily ascertainable, the Commissioner has determined that the higher rate applies in 3 circumstances

In the reference period:

- Eligible payments totalled \$1,500 or more;
- Under an industrial award, enterprise agreement, individual contract or similar instrument, the eligible employee was required to work 80 hours or more; or
- It can be determined based on reasonable assumptions that an eligible employee's hours were 80 hours or more



Alternative reference period: eligible employee

Alternative reference period (alternative 28-day period) applies for the employee where:	Alternative reference period for the employee is:
<ol style="list-style-type: none"> <li data-bbox="103 600 1406 743">1 Total hours of work or paid leave/absence in the reference period was less than 80 hours — not representative of the employee’s hours in a typical 28-day period 	<p data-bbox="1429 600 2112 903">The 28-day period ending at the end of the employee’s most recent pay cycle before 1 March 2020 or 1 July 2020 in which the employee’s total hours of work and paid leave/absence was representative of a typical 28-day period</p>
<ol style="list-style-type: none"> <li data-bbox="103 943 1240 983">2 Employee not employed during all or part of the reference period 	<p data-bbox="1429 1062 2112 1214">The first 28-day period ending on or after 1 March 2020 or 1 July 2020 that wholly occurs during consecutive pay cycles</p>
<ol style="list-style-type: none"> <li data-bbox="103 1023 1368 1110">3 Employee’s employment started before 1 March 2020 or 1 July 2020 but their first pay cycle ended on or after 1 March 2020 or 1 July 2020 	
<ol style="list-style-type: none"> <li data-bbox="103 1142 1397 1342">4 Business changed hands and employee treated as having been employed at earlier time, but employee was not employed by the entity for all or part of the reference period (hours worked for previous employer do not count towards 80-hour threshold for new employer) 	

Alternative reference period: eligible business participant (EBP)

Alternative reference period for EBP applies where:	Alternative reference period for EBP is:
<p>5 Total hours the EBP was actively engaged in February 2020 was less than 80 hours — not representative of the hours in a typical 29-day period</p>	<p>The most recent 29-day period ending before 1 March 2020 in which any circumstances that caused the number of hours of active engagement not to be representative of the total hours in a typical 29-day period did not exist</p>
<p>6 EBP commenced participation in February 2020 (but after 1 February 2020)</p>	<p>The 29-day period starting on the day the individual first began to be a sole trader, partner, beneficiary, shareholder or director in relation to the entity</p>
<p>7 Entity conducted business in a declared drought zone or declared natural disaster zone during February 2020</p>	<p>The most recent 29-day period (wholly within a calendar month) ending before 1 March 2020 during which the entity did not conduct business in a declared drought zone or declared natural disaster zone</p>

NOTE: Where more than one alternative reference period can apply to an EBP, each of those periods can apply to determine the hours of active engagement

Alternative reference period: eligible religious practitioner (ERP)

Alternative reference period for ERP applies where:	Alternative reference period for ERP is:
<p>8 Total hours the ERP spent doing activities covered by s 12B(2)(b) in February 2020 was less than 80 hours — not representative of the hours in a typical 29-day period</p>	<p>The most recent 29-day period ending before 1 March 2020 during which the total number of hours doing activities covered by s 12B(2)(b) was representative of the total hours in a typical 29-day period</p>
<p>9 ERP commenced doing activities covered by s 12B(2)(b) in February 2020</p>	<p>The 29-day period starting on the day the ERP first commenced doing activities covered by s 12B(2)(b)</p>

JobKeeper payment rate issues

- No interchange between higher and lower rates — rate based on hours worked in reference period or alternative reference period
- Notify once — no further testing from 4 January to 28 March 2021 required (same reference period as 28 September 2020 to 3 January 2021)
- Entity must **notify the Commissioner** whether they are claiming the higher or lower rate for each of their eligible individuals
- Failure to notify Commissioner of higher or lower rate — not eligible for payments until valid notification is made
- Entity (other than sole trader) must give a **notice to each eligible individual** (within 7 days of notifying the Commissioner) advising whether the higher or lower rate applies to them



Employee's perspective: receiving JobKeeper payments

- Every eligible employee must receive a minimum amount per fortnight
- Assessable to employee ('other allowances' in STP) and subject to PAYG withholding
- SG optional on JobKeeper payments



Example below: assume FN 14 ending 11 October 2020

Employee earnings without JobKeeper	Payment to employee with JobKeeper		JobKeeper received by employer from ATO	OTE subject to SG
\$3,000 full-time	\$3,000 \$0	OTE JobKeeper top-up	\$1,200 Net benefit: \$1,200	\$3,000
\$600 part-time	\$600 \$150*	OTE JobKeeper top-up	\$750 Net benefit: \$600	\$600 Optional on \$150
\$0 full-time (stood down)	\$0 \$1,200*	OTE JobKeeper top-up	\$1,200 Net benefit: \$0	No mandatory SG Optional on \$1,200

* Generally exempt from payroll tax

Employer's perspective: receiving JobKeeper 1 payments

JobKeeper fortnight		Wage condition deadline for every eligible employee	Month of payment by ATO (once turnover reported)	Monthly JobKeeper payment per eligible employee
1	30 March–12 April	8 May 2020 (transitional)	May 2020	\$3,000
2	13–26 April			
3	27 April–10 May	10 May 2020	June 2020	\$3,000
4	11–24 May	24 May 2020		
5	25 May–7 June	7 June 2020	July 2020	\$3,000
6	8–21 June	21 June 2020		
7	22 June–5 July	5 July 2020	August 2020	\$3,000
8	6–19 July	19 July 2020		
9	20 July–2 August	2 August 2020	September 2020	\$4,500
10 ²	3–16 August	16 August 2020 ¹		
11	17–30 August	30 August 2020 ¹		
12	31 August–13 September	13 September 2020	October 2020	\$3,000
13	14–27 September	27 September 2020		

¹ 31 August 2020 for newly eligible employees





² New 1 July 2020 relevant employment test applies from FN 10

Employer's perspective: receiving JobKeeper 2 payments

JobKeeper fortnight	Wage condition deadline for every eligible employee	Month of payment by ATO (once turnover reported)	Monthly JobKeeper payment per eligible employee	
			Higher rate	Lower rate
14 28 September–11 October 15 12–25 October	31 October 2020 (transitional)	November 2020	\$2,400	\$1,500
16 26 October–8 November 17 9–22 November	8 November 2020 22 November 2020	December 2020	\$2,400	\$1,500
18 23 November–6 December 19 7–20 December	6 December 2020 20 December 2020	January 2021	\$2,400	\$1,500
20 21 December–3 January 21 4–17 January 22 18–31 January	3 January 2021 To be advised To be advised	February 2021	\$3,200	\$2,050
23 1–14 February 24 15–28 February	To be advised	March 2021	\$2,000	\$1,300
25 1–14 March 26 15–28 March	To be advised	April 2021	\$2,000	\$1,300





Payroll cycle: Weekly

Minimum amounts that employers need to pay to meet the wage condition

 Hours worked by the individual in the reference period	 30 Mar 2020 to 27 Sep 2020	 28 Sep 2020 to 3 Jan 2021	 4 Jan 2021 to 28 Mar 2021
<p>80+ hours</p>	<p>\$750 per week</p>	<p>\$600 per week</p>	<p>\$500 per week</p>
<p>< 80 hours</p>		<p>\$375 per week</p>	<p>\$325 per week</p>

Payroll cycle: Fortnightly

Minimum amounts that employers need to pay to meet the wage condition

 Hours worked by the individual in the reference period	 30 Mar 2020 to 27 Sep 2020	 28 Sep 2020 to 3 Jan 2021	 4 Jan 2021 to 28 Mar 2021
<p>80+ hours</p>	<p>\$1,500 per fortnight</p>	<p>\$1,200 per fortnight</p>	<p>\$1,000 per fortnight</p>
<p>< 80 hours</p>		<p>\$750 per fortnight</p>	<p>\$650 per fortnight</p>

Payroll cycle: Monthly

Minimum amounts that employers need to pay to meet the wage condition

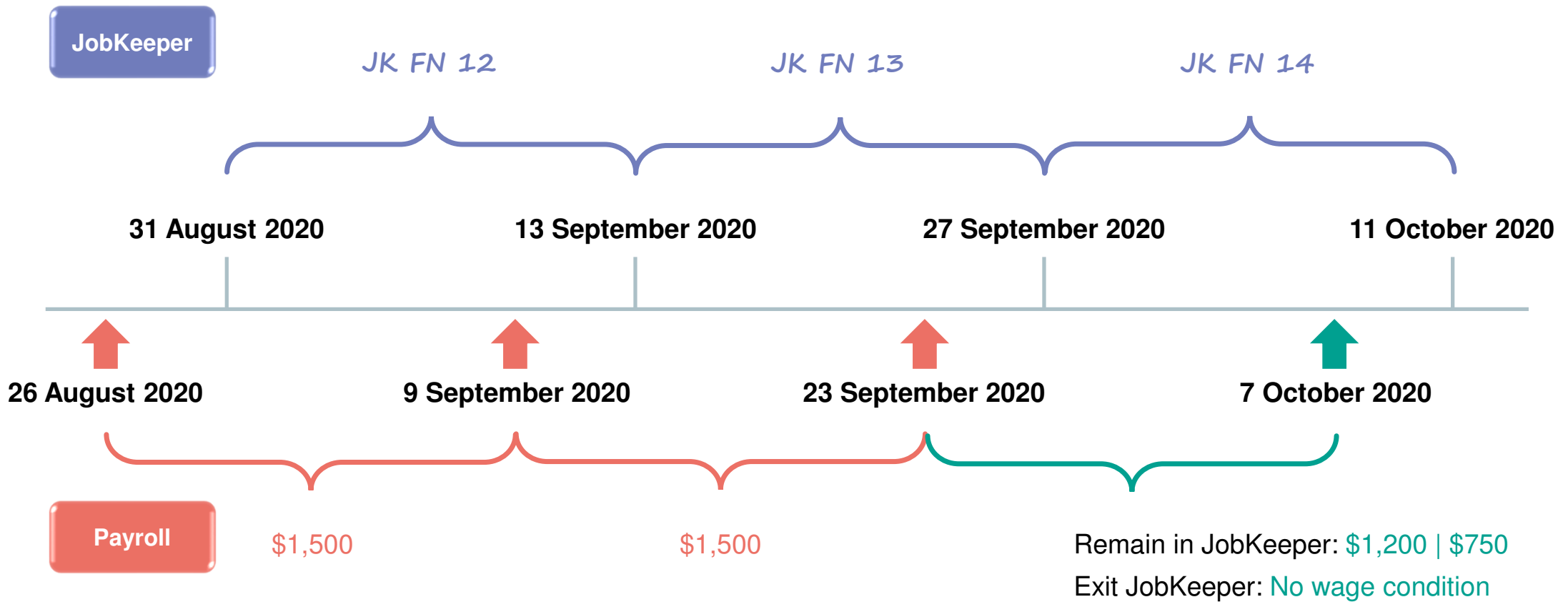
 Hours worked by the individual in the reference period	 30 Mar 2020 to 27 Sep 2020	 28 Sep 2020 to 3 Jan 2021	 4 Jan 2021 to 28 Mar 2021
<p>80+ hours</p>	<p>\$3,000¹ per month if based on actual JobKeeper entitlement for the month</p>	<p>\$2,400 per month (actual)</p> <p>\$2,400 per month (average)</p>	<p>\$2,000² per month (actual)</p> <p>\$2,400 per month (average)</p>
		<p>\$1,500 per month (actual)</p> <p>\$1,525 per month (average)</p>	<p>\$1,300³ per month (actual)</p> <p>\$1,525 per month (average)</p>
<p>< 80 hours</p>	<p>\$3,250 per month if based on average over period</p>		

¹ August 2020: **\$4,500**

² January 2021: **\$3,200**

³ January 2021: **\$2,050**

JobKeeper fortnights v Payroll cycle



Further analysis: monthly payroll

ATO accepts two methods to allocate monthly payroll to JobKeeper fortnights:

1. Equivalent to JobKeeper entitlement for the month (spikes in August and January)
2. Based on average over whole period (but risk of discrepancies if employee leaves or the employer is not eligible in a future JobKeeper fortnight)

Example — 30 March 2020 to 31 January 2021 (FN 1–22)

Actual: JK1: $(\$1,500 \times 13) + \text{JK2: } (\$1,200 \times 7) + (\$1,000 \times 2) = \$29,900$

Average: JK1: $(\$3,250 \times 6) + \text{JK2: } (\$2,400 \times 4) = \$29,100$... does this require a top-up of \$800?

or JK1: $\$19,500 + \text{JK2: } (\$2,600 \times 4 \text{ months}) = \$29,900?$

No ... unless the employer chooses to exit JobKeeper before the end of the program

Cannot receive JobKeeper payments from the ATO that exceed the amount paid to employees, but monthly average is acceptable



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New decline in turnover test

Revisiting the concepts: JobKeeper 1

- An entity satisfies the decline in turnover test (JobKeeper 1) if its **projected GST turnover** for a **turnover test period** falls short of the entity's **current GST turnover** for a **relevant comparison period** by a specified percentage
- Test only needs to be satisfied once — does not have to be retested



Aggregated turnover ¹	Specified percentage ²
More than \$1 billion	GST turnover must decline by at least 50%
No more than \$1 billion	GST turnover must decline by at least 30%
ACNC-registered entities	GST turnover must decline by at least 15%

¹ In the income year in which the JobKeeper fortnight occurs, or in the previous income year

² Relative to the comparable period in 2019

Aggregated turnover v GST turnover

Aggregated turnover	GST turnover
Defined in s 328-115 (see also s 328-120) of the <i>ITAA 1997</i>	Defined in s 188-15 and s 188-20 of the <i>GST Act</i>
Ordinary income derived in the ordinary course of carrying on a business	Value of supplies made, or likely to be made
Includes turnovers of certain entities (i.e. affiliates of, and entities connected with , the entity)	No grouping rules apply (other than for service entity arrangements)
Includes business income derived by certain entities located overseas	Excludes supplies not connected with the indirect tax zone (Australia)
Includes income such as interest if derived in the ordinary course of carrying on a business	Excludes input taxed supplies

Decline in turnover test

Step 1	Work out the entity's aggregated turnover
Step 2	Determine specified percentage by which the entity's GST turnover must decline
Step 3	<p><i>JK1:</i> Work out the entity's projected GST turnover for the turnover test period</p> <p><i>JK2:</i> Work out the entity's actual GST turnover* for the turnover test period</p>
Step 4	Work out the entity's current GST turnover for the relevant comparison period (or alternative test period)
Step 5	Has the Step 3 amount fallen short of the Step 4 amount by at least the specified percentage?

* Includes proceeds from the sale of capital assets

Turnover test period

To be eligible:	Must suffer decline in turnover in:	DIT test	GST turnover	Ref.
30 March 2020 to 27 September 2020	<ul style="list-style-type: none"> Month between March and September 2020 (inclusive) or June or September 2020 quarter 	Original	Projected	s 8
28 September 2020 to 3 January 2021	<ul style="list-style-type: none"> Month between March and December 2020 (inclusive) or June, September or December 2020 quarter; and September 2020 quarter 	Original	Projected	s 8
		Additional	Actual	s 8B
4 January 2021 to 28 March 2021	<ul style="list-style-type: none"> Month between March and December 2020 (inclusive) or June, September or December 2020 quarter; and December 2020 quarter 	Original	Projected	s 8
		Additional	Actual	s 8B

Key points

Entity has previously participated in JobKeeper	Entity has NOT previously participated in JobKeeper
Not required to enrol again	Need not have previously enrolled in JobKeeper to apply original DIT test after 27 September 2020
Additional actual DIT test does not affect any JobKeeper entitlements arising before 28 September 2020	Need not have received JobKeeper payments in an earlier period
Not required to apply original DIT test again but required to satisfy additional actual DIT test from 28 September 2020	Required to satisfy both original DIT test and the additional actual DIT test from 28 September But, in practice, if demonstrate a decline in actual GST turnover in the September or December quarter, entity will also satisfy the original DIT test

Decline in turnover test: Example 1

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
April 2020	125,000	340,000	180,000	525,000	35.24%
May 2020	115,000		170,000		
June 2020	100,000		175,000		
July 2020	90,000	290,000	175,000	530,000	45.28%
August 2020	105,000		190,000		
September 2020	95,000		165,000		

Decline in turnover test: Example 1

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
October 2020	105,000	350,000	165,000	490,000	28.57%
November 2020	120,000		170,000		
December 2020	125,000		155,000		

Outcome

- Eligible from 28 September 2020 to 3 January 2021 (FN 14–20)
- Ineligible from 4 January 2021 (FN 21–26)



Decline in turnover test: Example 2

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
April 2020	130,000	370,000	180,000	525,000	
May 2020	125,000		170,000		
June 2020	115,000		175,000		
July 2020	90,000	135,000	175,000	530,000	74.53%
August 2020	30,000		190,000		
September 2020	15,000		165,000		

Decline in turnover test: Example 2

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
October 2020	55,000		165,000		
November 2020	80,000		170,000		
December 2020	95,000		155,000		
		230,000		490,000	53.06%

Outcome

- Eligible from 28 September 2020 (FN 14–26) 

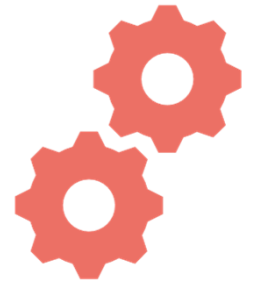
Supply v Cash/accruals

- JobKeeper Rules refer to ‘GST turnover’:
defined in Div 188 of the *GST Act*:
 - Value of all the supplies that [the entity] has made,
or [is] likely to make
- May be difficult to determine the time of supply — likely differs to how an entity records supplies for GST attribution purposes
- Attribution methods (**cash** or **accruals**) — determine when the GST liability arises, and is reported and paid
- Must apply Commissioner’s determination about time of supply in calculating an entity’s *current GST turnover* for a quarter



Rules: Timing of supplies

- Supplies are allocated to a **test period** to the extent the GST payable is attributable to that test period
- **Test period:**
 - Turnover test period (September or December 2020 quarter)
 - Relevant comparison period
 - Another period determined under the alternative DIT test rules
- **Deeming rules:**
 - GST-free supplies and supplies within GST group treated as taxable supplies
 - Members of GST groups and unregistered entities treated as reporting entity
 - GST attribution 'tax periods' treated as test period



Rules: Timing of supplies

Determination does not apply to:

- Input taxed supplies
- Supplies not connected with Australia
- Certain government grants received by ACNC-registered charities
- Gifts and donations — allocated to the period in which they were received
- Increasing and decreasing adjustments — ignored in determining the time a supply is made
- Bad debts — ignored in determining the value of the supply made



Rules: Accounting method

Circumstance	Accounting method for test period
1 Unregistered entity	May choose to account on a cash basis or non-cash basis
2 Always been registered for GST and never changed accounting basis	Must use that same accounting basis
3 Is registered for GST at the beginning of the relevant comparison period (RCP)	Must use the same accounting basis that applied to the entity in the first tax period of the RCP
4 Became registered for GST during the RCP	
5 Changed accounting basis during or after the start of the RCP	
6 Cancelled GST registration during or after the RCP	
7 Registered for GST after the end of the RCP	Must use the same accounting basis that the entity has at the beginning of its turnover test period

Summary of accounting methods for working out GST turnover in test period

Circumstance	Accruals basis*	Cash basis
1 Unregistered entity (may choose to account on a cash basis or non-cash basis)	✓	✓
2 Entity has always been registered for GST and always used: <ul style="list-style-type: none"> ▪ accruals basis ▪ cash basis 	<p>✓</p> <p>x</p>	<p>x</p> <p>✓</p>
3 Entity either: <ul style="list-style-type: none"> ▪ is registered for GST, and before the beginning of, during, or after the start of the RCP, the entity changed its attribution basis; or ▪ became registered for GST during the RCP, or cancelled its GST registration during or after the RCP, and in the first tax period of the RCP the entity was using: <ul style="list-style-type: none"> ▪ accruals basis ▪ cash basis 	<p>✓</p> <p>x</p>	<p>x</p> <p>✓</p>
4 Entity registered for GST after the end of the RCP, and at the beginning of the entity's turnover test period the entity was using: <ul style="list-style-type: none"> ▪ accruals basis ▪ cash basis 	<p>✓</p> <p>x</p>	<p>x</p> <p>✓</p>

* Earlier of issuing invoice or receiving all or part of the consideration

Fair Work: 10% DIT certificate

- Temporary changes made to FWA to allow employers to make *JobKeeper enabling directions* to vary working arrangements for employees on JobKeeper
- **Qualifying employers** — continue to access FWA provisions (other than annual leave provisions)
- **Legacy employers** — exited JobKeeper, may choose to access modified FWA provisions from 28 September 2020 if they obtain a **10% decline in turnover certificate**
- Employer must satisfy 10% DIT test for the quarter below for a direction given:
 - before 28 October 2020 — **June 2020 quarter** (compared to the June 2019 quarter)
 - 28 October 2020 to 27 February 2021 — **September 2020 quarter** (compared to the September 2019 quarter)
 - on or after 28 February 2021 — **December 2020 quarter** (compared to the December 2019 quarter)



Fair Work: 10% DIT certificate

- Must be issued by an **eligible financial service provider** (qualified accountant, or a registered tax or BAS agent) — no prescribed form, but a [template](#) is available
- Small employers (fewer than 15 employees) may make a statutory declaration — must use Commonwealth [statutory declaration form](#)
- Impact on accounting profession:
 - Additional workload
 - Accountants will be required to operate under the FWA — area of legislation with which most accountants would be unfamiliar
 - PI insurance and commercial risks for practitioners
 - Will clients see value in paying for this work?





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Other JobKeeper issues

JOBKEEPER 2.1: THE NEW RULES

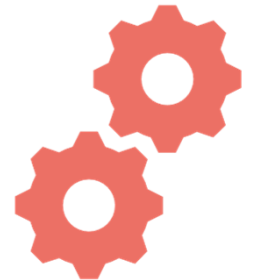
No change to ineligibility issues

- Entity not eligible under Div 3 where commenced business on or after 1 July 2019 and reports GST annually
- Entity not eligible under Div 3 where commenced business on or after 1 January 2020 and reports GST quarterly
- Business sold to new entity after 1 March 2020 and new entity did not carry on business on 1 March 2020 (even though employees may be eligible)
- Restructure (e.g. rollover of business) after 1 March 2020 and new entity did not carry on business on 1 March 2020



No change to other rules

- Meaning of ‘eligible employee’ (noting new 1 July 2020 employment test) and ‘eligible business participant’
- Requirement for employers to meet the wage condition
- Specified percentage (DIT test) — 15% | 30% | 50%
- Special rules relating to service entity arrangements
- Ability of ACNC-registered charities to elect to exclude government grants from turnover



No change to other rules

- Integrity rules, including pre-12 March 2020 reporting requirement for Div 3 entities
- Enrolment process
- Timing of monthly payment by the ATO in arrears
- Monthly reporting of turnover
- Rule that prevents more than one employer claiming for same employee
- Tax treatment of JobKeeper payments





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Thank you

Please complete your evaluation form.



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Appendix 1:

Alternative decline in turnover tests

Alternative decline in turnover tests

The Commissioner's current legislative instrument (issued 23 April 2020) sets out 7 alternative decline in turnover tests where there is no appropriate *relevant comparison period*

1. Business commenced
 2. Business acquisition or disposal
 3. Business restructure
 4. Business had substantial increase in turnover
 5. Business affected by drought or natural disaster
 6. Business has an irregular turnover
 7. Sole trader or small partnership with sickness, injury or leave
- + Treasurer's legislative instrument — modified test in s 8A for service entity arrangements



Key points

- Alternative basis on which to satisfy the DIT test when the Commissioner is satisfied that there is not an appropriate relevant comparison period
- If an entity satisfies the basic test, no need to apply an alternative DIT test
- Alternative DIT test cannot make an entity that satisfied the basic test ineligible
- Turnover calculated under alternative DIT test is compared with the *projected GST turnover* for the *turnover test period*
- All alternative DIT tests contain modifications to deal with bushfires and drought



1. Business commenced

Circumstance — First alternative test

- Entity commenced business after the *relevant comparison period* and before 1 March 2020
- If comparing a month — entity uses the *average monthly current GST turnover*
- If comparing a quarter — entity uses the *average monthly current GST turnover × 3*

Business commenced before 1 February 2020

Average monthly current GST turnover

Sum of the turnover for each whole month after the entity commenced business and before 1 March 2020

The number of whole months

Business commenced in February 2020

Average monthly current GST turnover

The turnover before 1 March 2020

Number of days the entity was in business in February 2020 × 29

1. Business commenced

Circumstance — Second alternative test

- Entity commenced business after the *relevant comparison period* and at least 3 months before 1 March 2020, i.e. business commenced before 1 December 2019

If comparing a month

3 months' current GST turnover ÷ 3
Total turnover in the 3 months immediately before 1 March 2020 (i.e. December 2019, January 2020 and February 2020) <hr style="width: 50%; margin: 0 auto;"/> 3

If comparing a quarter

3 months' current GST turnover
Total turnover in the 3 months immediately before 1 March 2020 (i.e. December 2019, January 2020 and February 2020)

2. Business acquisition or disposal

s 7 of ADITT Rules

Circumstance

- Entity acquired or disposed of part of their business after the *relevant comparison period* and before the applicable *turnover test period*, and this changed the entity's *current GST turnover*
- If more than one acquisition/disposal occurs sequentially after the *relevant comparison period* and before the applicable *turnover test period*, then use the whole month immediately after the last acquisition/disposal
- If no whole month after last acquisition/disposal and before the applicable *turnover test period*, use the month immediately before the applicable *turnover test period*

If comparing a month

Use the **current GST turnover** from the month immediately after the month in which the acquisition/disposal occurred

If comparing a quarter

Use the **current GST turnover** from the month immediately after the month in which the acquisition/disposal occurred **× 3**

3. Business restructure

Circumstance

- Entity restructured all or part of their business after the *relevant comparison period* and before the applicable *turnover test period*, and this changed the entity's *current GST turnover*
- If more than one restructure occurs sequentially after the *relevant comparison period* and before the applicable *turnover test period*, then use the whole month immediately after the last restructure
- If no whole month after last restructure and before the applicable *turnover test period*, use the month before the applicable *turnover test period*

If comparing a month

Use the **current GST turnover** from the month immediately after the month in which the restructure occurred

If comparing a quarter

Use the **current GST turnover** from the month immediately after the month in which the restructure occurred **× 3**

4. Substantial increase in turnover

Circumstance

Entity had an increase in turnover of:

- 50% or more in the 12 months immediately before the applicable *turnover test period*; or
- 25% or more in the 6 months immediately before the applicable *turnover test period*; or
- 12.5% or more in the 3 months immediately before the applicable *turnover test period*

If comparing a month

3 months' current GST turnover ÷ 3
$\frac{\text{Total turnover in the 3 months immediately before the applicable } \textit{turnover test period}}{3}$

If comparing a quarter

3 months' current GST turnover
$\text{Total turnover in the 3 months immediately before the applicable } \textit{turnover test period}$

5. Drought or natural disaster

s 10 of ADITT Rules

Circumstance

- Entity conducted business in a declared drought zone, or declared natural disaster zone, during the *relevant comparison period*
- This changed the entity's *current GST turnover*

Alternative test

Use the **current GST turnover** for the same period in the year immediately before the declaration

6. Business has irregular turnover

Circumstance

- For the quarters ending in the 12 months immediately before the applicable *turnover test period*, the entity's lowest turnover quarter is no more than 50% of the highest turnover quarter
- Entity's turnover is not cyclical

If comparing a month

Average monthly current GST turnover
Sum of the turnover for each whole month in the 12 months immediately before the applicable <i>turnover test period</i>
<hr style="width: 80%; margin: auto;"/> 12

If comparing a quarter

Average monthly current GST turnover × 3
Sum of the turnover for each whole month in the 12 months immediately before the applicable <i>turnover test period</i>
<hr style="width: 80%; margin: auto;"/> 12

7. Sole trader or small partnership with sickness, injury or leave

Circumstance

- Entity is a sole trader or small partnership (4 or fewer partners) that has no employees
- Sole trader or at least one of the partners did not work for all or part of the *relevant comparison period* due to sickness, injury or leave
- This affected the turnover of the sole trader or partnership

If comparing a month

Use the **current GST turnover** from the month immediately after the month in which the sole trader or partner returned to work

If comparing a quarter

Use the **current GST turnover** from the month immediately after the month in which the sole trader or partner returned to work **× 3**



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Appendix 2: Conditions for eligibility

Conditions for eligibility: Div 2 (paid employees)

Entity is entitled to a JKP for an individual for a fortnight if:

1. Fortnight is a JobKeeper fortnight s 6(1)(a) and s 6(5) of Rules

- Between 30 March 2020 and 28 March 2021

2. Employer qualifies for JobKeeper for the fortnight s 6(1)(b) and s 7 of Rules

- Carries on business in Australia on 1 March 2020 (or NFP); **and** s 7(1)(a)
- Satisfies the decline in turnover test at or before the end of the fortnight; **and** s 7(1)(b)
- For a fortnight starting on or after 28 September 2020 — satisfies the actual decline in turnover test for the fortnight s 7(1)(c)
- Entity is not excluded — i.e. major bank, government entity, company in liquidation and individual in bankruptcy s 7(2)



Conditions for eligibility: Div 2 (paid employees)

Entity is entitled to a JKP for an individual for a fortnight if:

3. Individual is an 'eligible employee' of the employer for the fortnight

s 6(1)(c) and s 9 of Rules

4. Employer satisfies the wage condition for the fortnight

s 6(1)(d) of Rules

- The employer must pay every eligible employee the minimum amount (of specified income types) in each JobKeeper fortnight s 10 of Rules and QC 62135

5. Employer notifies the Commissioner of their participation (i.e. enrolls)

s 6(1)(e) and s 6(2) of Rules, and QC 62130

- Entitlement for fortnights ending in April or May 2020 — by 31 May 2020
- Entitlement for later fortnights — by the end of the fortnight (ATO allows until the end of the month)



Conditions for eligibility: Div 2 (paid employees)

Entity is entitled to a JKP for an individual for a fortnight if:

6. Employer notifies the Commissioner of required information for the fortnight s 6(1)(f) and (fa) of Rules

- Details of entitlement for the fortnight
- Details of the eligible employees
- Higher or lower rate for the employee

7. Employer has **not** notified the Commissioner that they no longer wish to participate in JobKeeper s 6(1)(g) of Rules

8. Integrity rule s 19 of Act

- Entity that entered into or carried out a scheme for the **sole or dominant purpose** of obtaining or increasing the amount of JobKeeper can be treated as if they were never entitled



Eligible employees, relevant employees, and 'one in all in'

Relevant employee s 9(2) and s 10A of Rules

- An employer who enrolls in JobKeeper must notify (via a nomination notice) every one of their *relevant employees* — 'one in all in' rule s 10A(1) of Rules
- Nomination notice must be given to all *relevant employees* within 7 days of the employer enrolling in JobKeeper
- An individual is a **relevant employee** if they were:
 - employed by the employer on 1 July 2020, and they must also be employed by the entity on the day the employer enrolls in JobKeeper
 - if a casual — a **long term casual employee**, i.e. must have been employed on a 'regular and systematic' basis for at least 12 months ending on 1 July 2020



Eligible employees, relevant employees, and 'one in all in'

Relevant employee s 9(2) of Rules

An individual is a **relevant employee** if, on 1 July 2020:

- they were 18 years or older; or
- if they were 16 or 17 years:
 - the fortnight ended before 11 May 2020 (i.e. first 3 JobKeeper fortnights); or
 - for later fortnights — they are independent or not undertaking full time study
- they met prescribed residency requirements (broadly excludes temporary resident visa holders)



Eligible employees, relevant employees, and 'one in all in'

Eligible employee s 9(3) and s 9(4) of Rules

An individual is an **eligible employee** for a fortnight if they:

- are a **relevant employee** of the entity on 1 July 2020
- are a **1 March 2020 employee**
- are employed by the entity at any time in the fortnight
- are not a permanent employee of any other entity (casual okay)
- **agree to be nominated** by the employer as an **eligible employee**
- have not nominated to be an **eligible employee** of any other entity
- are not excluded from being an eligible employee (i.e. receives paid parental leave, dad or partner pay or worker's compensation payments at any time in the fortnight, or is a bankrupt)



Conditions for eligibility: Div 3 (business participation)

Entity is entitled to a JKP for an individual for a fortnight if:

1. Fortnight is a JobKeeper fortnight [s 11\(1\)\(a\) and s 6\(5\) of Rules](#)

- Between 30 March 2020 and 28 March 2021

2. Entity is not a non-profit body [s 11\(1\)\(b\) of Rules](#)

3. Entity qualifies for JobKeeper for the fortnight [s 11\(1\)\(c\) and s 7 of Rules](#)

- Carries on business in Australia on 1 March 2020; **and** [s 7\(1\)\(a\)](#)
- Satisfies the decline in turnover test at or before the end of the fortnight; **and** [s 7\(1\)\(b\)](#)
- For a fortnight starting on or after 28 September 2020 — satisfies the actual decline in turnover test for the fortnight [s 7\(1\)\(c\)](#)
- Entity is not excluded — i.e. major bank, government entity, company in liquidation and individual in bankruptcy [s 7\(2\)](#)



Conditions for eligibility: Div 3 (business participation)

Entity is entitled to a JKP for an individual for a fortnight if:

4. Individual is an 'eligible business participant' for the entity for the fortnight s 11(1)(d) and s 12 of Rules

5. Entity notifies the Commissioner of their participation (i.e. enrolls) s 11(1)(e) of Rules and QC 62130

- Entitlement for fortnights ending in April or May 2020 — by 31 May 2020
- Entitlement for later fortnights — by the end of the fortnight (ATO allows until the end of the month)

6. Entity notifies Commissioner of required information for the fortnight s 11(1)(f) and (fa) of Rules

- Details of entitlement for the fortnight and the eligible business participant
- Higher or lower rate for the individual



Conditions for eligibility: Div 3 (business participation)

Entity is entitled to a JKP for an individual for a fortnight if:

7. Entity has **not** notified the Commissioner that they no longer wish to participate in JobKeeper s. 11(1)(g) of Rules

8. Integrity rule s. 19 of Act

- Enter into or carry out a scheme for the **sole or dominant purpose** of obtaining or increasing the amount of JobKeeper
- Entity must have had an ABN on 12 March 2020 s. 11(6) of Rules
- By 12 March 2020, must have notified the Commissioner of either:
 - assessable income from business in 2018–19; or
 - a supply made in a tax period that started on or after 1 July 2018 and ended before 12 March 2020



Eligible business participant

An individual is an **eligible business participant** for an entity for a fortnight if the individual: *s 12 of Rules*

- is not employed by the entity at any time in the fortnight
- meets the age and residency requirements
- at a time in the fortnight, was ‘actively engaged’ in the business carried on by the entity
- at a time in the fortnight, is a sole trader, partner, adult beneficiary, or shareholder in or director of a company
- **agrees to be nominated** by the entity as the **eligible business participant**
- is not a permanent employee of any other entity (casual okay)



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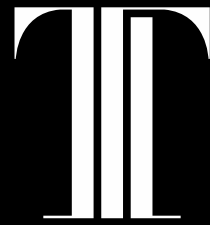
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