JOBKEEPER 2.0
WHAT YOU NEED TO KNOW

What you need to know:
- *The Federal Parliament has passed legislation making changes to the JobKeeper Scheme in light of the ongoing uncertainty associated with COVID-19.*
- *The changes:*
  - *Extend the JobKeeper wage subsidy scheme (albeit in a modified form);*
  - *Make changes to payment rates, eligibility and turnover tests;*
  - *Extend most of the existing flexibility terms in the Fair Work Act for '**qualifying employers'** (being, those employers who are already eligible for JobKeeper); and*
  - *Create a new set of flexibility terms in the Fair Work Act for '**legacy employers**' (being, employers who have who have a certificate demonstrating a 10% decline in turnover, who previously qualified for JobKeeper but will not meet the new thresholds).*

Background:
- In July the Australian Government announced that, due to ongoing impacts of COVID-19, the JobKeeper scheme would be extended to 28 March 2021.
- The legislation which enacts the extension of the JobKeeper scheme was passed by the Parliament on 1 September.

Extension of JobKeeper:
- The legislation extends the period over which the JobKeeper wage subsidy programme will operate until 28 March 2021 and also extends the period over which employers may use the JobKeeper flexibilities in the *Fair Work Act* to 28 March 2021 (instead of 28 September 2020).
- In extending the JobKeeper flexibilities in the Fair Work Act, substantive changes have been made to the JobKeeper provisions by creating two broad categories of employers who can access different flexibilities after 28 September 2020:
  - **Qualifying Employers:** Employers who are eligible for JobKeeper payments after 28 September 2020 who satisfy a new actual decline in turnover test (details available here and discussed below). Qualifying employers will retain full access to all JobKeeper flexibilities (except for the provisions about taking annual leave that have been changed – see details below).
  - **Legacy Employers:** Employers who received one or more JobKeeper payments prior to 28 September 2020, but no longer qualify after 28 September 2020, but who are still experiencing a 10% decline in turnover (as determined by an eligible financial service provider). "Legacy employers" will have access to modified flexibility measures after 28 September 2020.
- Not all the JobKeeper 1.0 flexibilities have been extended. This includes the flexibilities concerning "requesting" employees take annual leave have not been extended and will be repealed on 28 September 2020 for both "qualifying" and "legacy" employers.

CHANGES TO WAGE SUBSIDY SCHEME - PAYMENT RATES, ELIGIBILITY AND TURNOVER TESTS

Payment rates
- The payment rate of $1,500 per fortnight for eligible employees and business participants will be reduced to $1,200 per fortnight from 28 September 2020, and to $1,000 per fortnight from 4 January 2021.
- From 28 September 2020, lower payment rates will apply for employees and business participants that worked fewer than 20 hours per week in the relevant fortnight.

Eligibility
- From 28 September 2020, to claim the JobKeeper Payment, businesses will be required to demonstrate that they have suffered a decline in turnover using actual reported turnover (rather than projected turnover).
- This assessment will need to be carried out with reference to actual turnover from the September quarter (i.e. businesses must demonstrate a downturn for the period of 1 July 2020 to 30 September 2020).
- From 4 January 2021, businesses and not-for-profits will need to further reassess their turnover to be eligible for the JobKeeper Payment. They will need to demonstrate that they have met the relevant decline in turnover

test with reference to their actual GST turnover in the December quarter of 2020 to be eligible for the JobKeeper payment from 4 January 2021 to 28 March 2021.

Decline in turnover percentages remain:

- While the change from assessing a forecasted downturn to instead actual reported revenue is a significant change, the relevant decline in turnover as a percentage remains the same - being:
  - 50% for those with an aggregate turnover of more than $1 billion;
  - 30% for those with an aggregate turnover of less than $1billion; and
  - 15% for Australian Charities and Not for profits Commission-registered charities (excluding schools and universities).

CHANGES TO JOBKEEPER 'FAIR WORK ACT' FLEXIBILITIES

Extension of JobKeeper flexibilities

- The temporary JobKeeper provisions in the Fair Work Act will be extended until 28 March 2021 when the scheme overall is due to finish.
- However, the temporary flexibilities around requests to take annual leave will <u>not</u> be extended and will cease on 27 September 2020.

Changes to Duties and Location of Work

- <u>Qualifying employers</u> can issue a JobKeeper enabling direction in relation to duties and location of work to an employee for whom they are entitled to a JobKeeper payment.
- <u>Legacy employers</u> can also issue a JobKeeper enabling direction in relation to duties and location of work to an employee for whom they previously received a JobKeeper payment. These directions can only take effect for a period beginning on or after 28 September 2020.
- It remains the case that a direction to perform other duties or work from a different location does not apply if the direction is unreasonable in the circumstances. There is an additional note which clarifies that directions reducing hours given by an employer to a category of employees may be unreasonable if they have an unfair effect on some of those employees compared to others of those employees who are also subject to those directions.

Changes to Days and Hours of Work

- <u>Qualifying employers</u> can reach agreements in relation to days and times of work with an employee for whom they are entitled to a JobKeeper payment.
- <u>Legacy employers</u> can also reach agreements in relation to days and times of work with an employee for whom they previously received a JobKeeper payment. However, for legacy employers, there is a new requirement to ensure that such an agreement does not result in the employee's ordinary hours of work being reduced to less than 60% and them working less than 2 consecutive hours in a day. Any agreement reached can only take effect for a period beginning on or after 28 September 2020.

JobKeeper Enabling Stand Down Directions

- <u>Qualifying employers</u> can continue to issue a JobKeeper enabling stand down direction (Stand Down Direction) to an employee for whom they are entitled to a JobKeeper payment to reduce that employee's ordinary hours, including to zero, provided the relevant criteria for issuing the direction are met.
- <u>Legacy employers</u> can also issue a Stand Down Direction to an employee for whom they previously received a JobKeeper payment. These directions can only take effect for a period beginning on or after 28 September 2020.
- For <u>legacy employers</u> the Stand Down Direction can only reduce that employee's ordinary hours to a minimum of 60% of the employee's "ordinary hours of work" as assessed on 1 March 2020, provided the relevant criteria for issuing the direction are met. Also, an additional new requirement requires that the direction cannot result in the employee working less than 2 consecutive hours in a day.
- The same limitations apply where a Stand Down Direction is unreasonable, like with JobKeeper enabling directions about duties and location as outlined above.

Wage Condition

- <u>Qualifying employers</u> must ensure employees for whom they will receive the JobKeeper payment are paid the fortnightly JobKeeper amount or the amount they earned for work performed, whichever is greater.
- <u>Legacy employers</u> will not receive the JobKeeper payment.
- There is no change to the current law that an employee's hourly rate cannot be reduced as a result of a JobKeeper enabling direction concerning changes to duties or a Stand Down Direction.

Safeguards

- A range of safeguards continue to apply to changes to JobKeeper enabling directions or agreements.
- Legacy employers will be required to give a longer period of notice than qualifying employers before giving a JobKeeper enabling direction. For legacy employers, there will be a 7 day notice/consultation period whereas for qualifying employers the existing 3 day notice/consultation period will continue to apply. Legacy employers will also have expanded consultation requirements.

Secondary employment, training, or professional development

- Employees working reduced hours under a Stand Down Direction can continue to request to engage in reasonable secondary employment, training, or professional development.

Disputes

- The Fair Work Commission continues to have jurisdiction to resolve disputes about the operation of the JobKeeper provisions, including by arbitration.

Annual Leave

- As outlined above, the annual leave provisions will be repealed from 28 September 2020. Until that time, employers who qualify for the JobKeeper scheme can request employees agree to take annual leave so long as at least two weeks of annual leave remain, and employers and employees can agree to the employee taking annual leave at half pay. Beyond this time, annual leave is to be taken in accordance with the applicable industrial instrument that governs annual leave including a modern award (which in the case of the construction awards, temporary leave flexibilities will apply until 30 September 2020), enterprise agreement, or the Fair Work Act.

What does this mean for employers?

- If you are eligible for JobKeeper and want your staff to take annual leave, you need to give this direction as soon as possible, as there will be no ability under JobKeeper to make this request after 27 September 2020. After 28 September 2020 if you want employees to take annual leave, businesses will need to rely on other mechanisms such as those in Awards or employment contracts.
- Qualifying employers can take some comfort in knowing that they will continue to receive JobKeeper payments for their eligible employees, and that they will continue to have access to the JobKeeper flexibilities until 28 March 2021. In most cases, JobKeeper enabling directions given by or agreements made with qualifying employers that are in place on 27 September 2020 will automatically carry over from 28 September 2020 if the employer remains eligible to give that direction or make that agreement in those terms.
- Legacy employers, who no longer qualify for JobKeeper payments from 28 September 2020, can also continue to access some of the JobKeeper flexibility measures, although more limited than what they could do previously. JobKeeper enabling directions or agreements to employees for whom employers previously received a JobKeeper payment can only take effect for a period beginning on or after 28 September 2020. Legacy employers should contact their registered tax agent or BAS agent, or qualified accountant to ascertain whether they have experienced a 10% decline in turnover in order to obtain a certificate.

Questions? More information?

- Please refer to the attached:
  - List of FAQ’s;
  - JobKeeper 2.0 payment and turnover charts, or
  - Contact your local Master Builders office on:
    - (XX) XXXX XXXX

JOBKEEPER 2.0 – FAQs

Will businesses currently using JobKeeper need to requalify for JobKeeper 2.0?

- Yes. To be eligible after 27 September 2020, businesses will need to re-establish their eligibility.
- Businesses and not-for-profits seeking to claim the JobKeeper Payment will be required to demonstrate that they have suffered an ongoing significant decline in turnover using actual GST turnover (rather than projected GST turnover) in the June and September quarters 2020 to be eligible for the December quarter.
- Businesses will again need to reassess their eligibility for the March 2021 quarter.

Which employers are eligible or JobKeeper 2.0?

- Eligible employers are businesses carrying on business in Australia (including companies, partnerships, trusts, sole traders, partnerships, unincorporated associations and individuals) and not- for-profits:
    - With an aggregated turnover of less than $1billion (for income tax purposes), whose ongoing decline in turnover has fallen by more than 30% (in the relevant quarters); or
    - With an aggregated turnover of $1billion or more (for income tax purposes), whose ongoing decline in turnover has fallen by more than 50% (in the relevant quarters).
- Registered charities with the Australian Charities and Not-for-profit Commission (excluding universities and schools) are eligible employers if their ongoing decline in turnover has fallen by more than 15% in the relevant quarter.

Which employees are qualified for JobKeeper payments?

- JobKeeper payments will be available for all employees that are employed by an eligible employer and who were employed on 1 July 2020. This includes full-time, part-time and long-standing casual employees. To be qualified, employees must meet the following criteria:
    - Employees must currently be employed by an eligible employer. This includes employees who have been stood-down, or employees who were terminated but have been re-hired by the employer.
    - Employees must have been employed by the employer on or before 1 July 2020 (i.e. an employee employed after 1 July is not eligible).
    - Employees must be employed full-time, part-time or as a ‘long-term’ casual (being a casual employee that had been employed on a regular and systematic basis for longer than 12 months as at 1 July 2020).
    - Employees must be an Australian citizen or permanent resident, or hold other specified classes of visa; and
    - An employee can only have one employer receive JobKeeper Payments with respect to them (i.e. multiple employers cannot receive JobKeeper payments for one individual, even if the individual is employed by multiple employers).

Employees are not qualified for JobKeeper payments:

- For periods in which they are in receipt of parental leave pay under the Paid Parental Leave Act 2010 (Cth) (Note that employees may receive JobKeeper payments if they are in receipt of paid parental leave from their employer pursuant to an enterprise agreement, contract of employment or similar instrument).
- For periods in which they are totally incapacitated for work and an amount is payable to them under workers’ compensation laws.

How does an employer establish the % ongoing decline in turnover (30%, 50% or 15%) for JobKeeper 2.0?

- There will be two periods during which an employer will need to be able to prove that their turnover has declined by the relevant percentage in order to be eligible to continue to receive JobKeeper.
    - *First requalification period*: From 28 September 2020, businesses and not-for-profits will be required to reassess their eligibility with reference to their actual GST turnover in the June and September quarters 2020. They will need to demonstrate that they have met the relevant decline in turnover test in both of those quarters to be eligible for the JobKeeper Payment from 28 September 2020 to 3 January 2021.
    - *Second requalification period*: From 4 January 2021, businesses and not-for-profits will need to reassess their turnover to be eligible for the JobKeeper Payment. They will need to demonstrate that they have met the relevant decline in turnover test with reference to their actual GST turnover in each of the June, September and December quarters 2020 to remain eligible for the JobKeeper Payment from 4 January 2021 to 28 March 2021.

Will JobKeeper 2.0 be open to new recipients or is it only for those already using JobKeeper?

- JobKeeper 2.0 payments will continue to remain open to new recipients, provided that both employers and employees meet the eligibility requirements and the decline in turnover tests during the extension period. Other eligibility rules for businesses and not-for-profits and their employees remain unchanged.

What if there are circumstances making it difficult to compare actual turnover?

- The Commissioner of Taxation will have discretion to set out alternative tests in specific circumstances where it is not appropriate to compare actual turnover in a quarter in 2020 with actual turnover in a quarter in 2019.

My BAS statement for the September quarter is due to be lodged in late October. Do I have to assess eligibility and pay my employees before the BAS deadline?

- Treasury has advised that as the deadline to lodge a Business Activity Statement (BAS) for the September quarter is late October, and the December quarter (or monthly) BAS deadline is in late January 2020 for monthly lodgers or late February 2020 for quarterly lodgers, business will need to assess their eligibility in advance of the BAS deadline in order to meet the wage condition.
- The 'wage condition' requires employers to pay their eligible employees in advance of receiving the JobKeeper payment in arrears from the ATO.
- The Commissioner of Taxation will have discretion to extend the time a business has to pay their employees in order to meet the wage condition, so that they first have time to confirm their eligibility for the JobKeeper 2.0 payments.

My business has met the current decline in turnover test. Will the new requirements for JobKeeper 2.0 affect my business prior to 28 September?

- No. If a business or not-for-profit does not meet the additional turnover tests for the extension period, this does not affect their eligibility prior to 28 September 2020.

JobKeeper 2.0

JobKeeper 1.0: 30 March 2020 to 27 September 2020

JobKeeper 2.0: 28 September 2020 to 28 March 2021

For JobKeeper fortnights from 3 August 2020, the relevant date of employment will move from 1 March 2020 to 1 July 2020

JobKeeper rates and modified decline in turnover test

Hours worked by individual in the 4 wks before 1 Mar 2020 or 1 Jul 2020	30 Mar 2020 to 27 Sep 2020	28 Sep 2020 to 3 Jan 2021	4 Jan 2021 to 28 Mar 2021
20+ HOURS	$1,500 PER FORTNIGHT	$1,200 PER FORTNIGHT	$1,000 PER FORTNIGHT
<20 HOURS	$1,500 PER FORTNIGHT	$750 PER FORTNIGHT	$650 PER FORTNIGHT
GST turnover	Projected	Actual	Actual
Turnover test period	Month (Mar to Sep 2020) or Jun or Sep 2020 quarter	September 2020 quarter only	December 2020 quarter only
% Specified decline in GST turnover percentage	• If aggregated turnover < $1b — at least **30%** • If aggregated turnover > $1b — at least **50%** • ACNC / NFPs— at least **15%**		

Payroll Cycles

The table below sets out the minimum amounts that employers need to pay to meet the wage condition element of JobKeeper 2.0, according to whether their payroll cycle is weekly or fortnightly.

<table>
<tr><th>Hours worked by individual in the 4 wks before 1 Mar 2020 or 1 Jul 2020</th><th>30 Mar 2020 to 27 Sep 2020</th><th>28 Sep 2020 to 3 Jan 2021</th><th>4 Jan 2021 to 28 Mar 2021</th></tr>
<tr><td colspan="4">Weekly payroll cycle</td></tr>
<tr><td>20+ HOURS</td><td rowspan="2">$750 PER WEEK</td><td>$600 PER WEEK</td><td>$500 PER WEEK</td></tr>
<tr><td><20 HOURS</td><td>$375 PER WEEK</td><td>$325 PER WEEK</td></tr>
<tr><td colspan="4">Fortnightly payroll cycle</td></tr>
<tr><td>20+ HOURS</td><td rowspan="2">$1,500 PER FORTNIGHT</td><td>$1,200 PER FORTNIGHT</td><td>$1,000 PER FORTNIGHT</td></tr>
<tr><td><20 HOURS</td><td>$750 PER FORTNIGHT</td><td>$650 PER FORTNIGHT</td></tr>
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