

A top-down view of a person with dark hair, wearing a light-colored sweater, sitting at a wooden desk. They are typing on a laptop. To the left of the laptop is an open spiral notebook with a blue pen resting on it. A glass of water is visible to the right of the laptop. The person is sitting on a chair with a black and white checkered pattern. The background is dark.

Australian Government JOBKEEPER PAYMENT



COMMITTEE FOR
MORNINGTON PENINSULA

Your moderator today



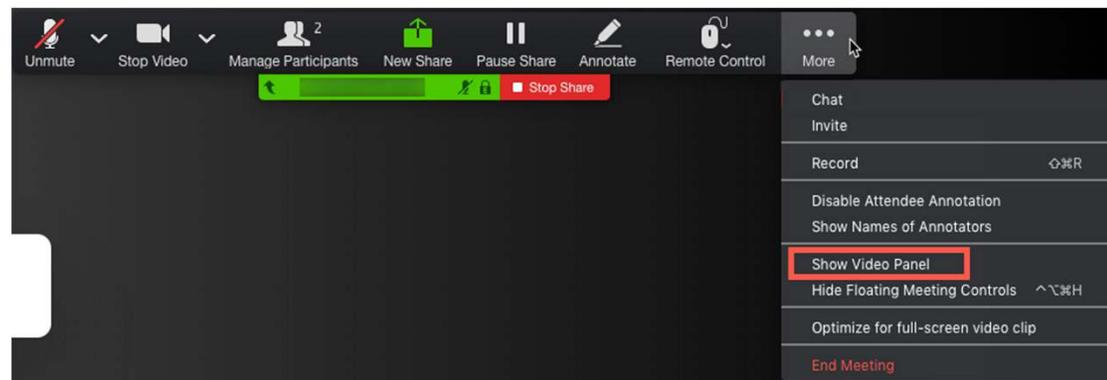
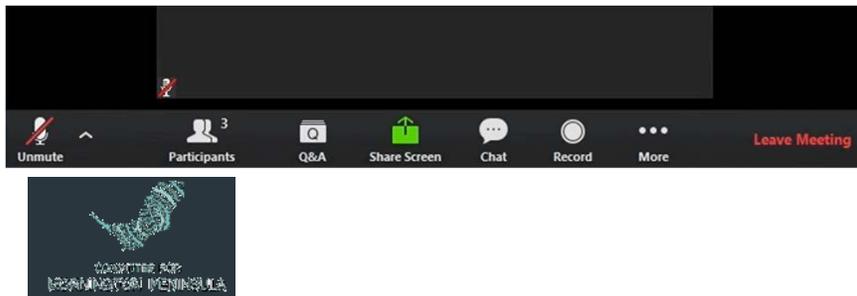
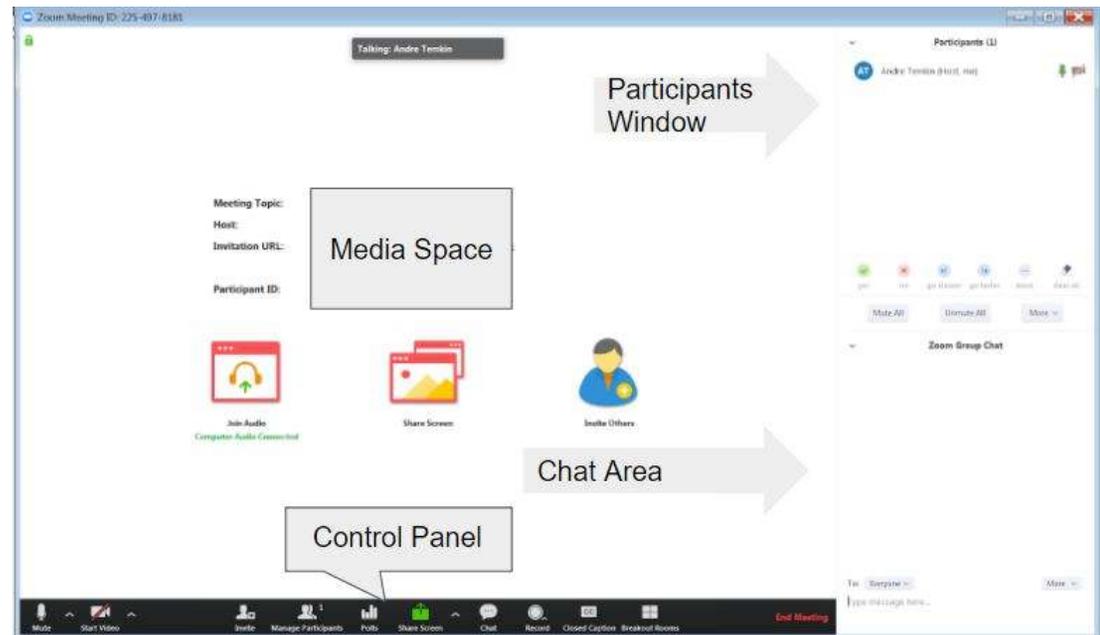
Alina Hinton-Tooley
Executive Officer

**Committee for Mornington
Peninsula**



Using Zoom features

- Click on the control panel to use the control pane
- Submit questions via the chat area
- Make sure you mute yourself



Today's Presenter



Shannon Smit
Managing Director



Daniel McCulloch
Associate



Agenda

- Framework
- Eligibility
 - Eligibility of JobKeeper payments
 - Eligible Employer
 - Eligible Employee
 - Wage Condition
 - Notification
- Payment of the JobKeeper payment
 - Payments by the ATO
 - Payments and reporting by the Employer
- What's the risk?



Tax Agents Advice

- Tax Practitioners Board has a strong message to all Tax Agents in relation to the JobKeeper, given the \$\$'s involved, the ATO integrity measures, the reduction in turnover test calculation and analysis, and that the ATO can request a refund plus penalties & interest, tax agents have been "reminded" by the tax practitioners board that we must not forget our Code of Conduct about **reasonable care and competency**.
- Can BAS Agents provide advice? Yes confirmed last night

Get the facts straight, don't follow media reports, headlines, or assumptions, follow the law.



The legislative package

- Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020 – Chapter 2
- Legislation short on the detail
- JobKeeper payments taxable to employer but not subject to GST
- Power given to the Treasurer to implement rules to give effect
 - *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*
- ATO will also be involved in some rule design
- Scheme commences 30 March and concludes 27 September (prescribed period to 31 December)



Key considerations

Employer Eligibility

Employee eligibility

**Other entities &
contractors**

**Reporting &
payment mechanics**

Risk management

The “one in, all in” rule



Eligibility for JobKeeper payments

- **Eligible employer:** The employer is an eligible employer; and
- **Eligible Employee:** The payment is for an eligible employee of the employer; and
- **Wage condition:** The employer has paid at least \$1,500 to the employee. That is, the employer has satisfied the wage condition by making the payment to the eligible employee equal to or greater than the amount of the JobKeeper payment (less PAYG withholding and salary packaging) that the employer will receive for the employee for the fortnight; and
- **Notification:** The employer has notified the Commissioner of a range of matters, including notification of its election to participate in the scheme.



What is a JobKeeper fortnight?

- A JobKeeper fortnight is the period in which the employer receives a JobKeeper payment. Entitlement to the payment is assessed fortnightly. The JobKeeper fortnights begin on 30 March 2020 and ends on 27 September 2020.
- For the JobKeeper payment to apply, the employee had to be an employee of the employer at any time during that fortnight, i.e., the person does not need to be employed for the full fortnight (but will need to be paid at least \$1,500 if they are eligible). The employee must have been employed at 1 March 2020 as well.

	Job Keeper fortnight
1	30 March 2020 – 12 April 2020
2	13 April 2020 – 26 April 2020
3	27 April 2020 – 10 May 2020
4	11 May 2020 – 24 May 2020
5	25 May 2020 – 7 June 2020
6	8 June 2020 – 21 June 2020
7	22 June 2020 – 5 July 2020
8	6 July 2020 – 19 July 2020
9	20 July 2020 – 2 August 2020
10	3 August 2020 – 16 August 2020
11	17 August 2020 – 30 August 2020
12	31 August 2020 – 13 September
13	14 September – 27 September



Employer eligibility

- Businesses <\$1b in annual revenue need to be able to prove a 30% reduction in revenue over test period
- Includes not for profits, although lower eligibility threshold for charities



Ineligible employer classes

- Federal, State & Local government
- Government agencies
- Wholly owned corporation of Government bodies
- Entities subject to the Major Bank Levy
- Entities in liquidation or bankruptcy



Test period – key concepts

- Turnover test period
 - *any month between March '20 and September '20; or*
 - *either quarter commencing 1 April '20 or 1 July '20*
- Turnover reduction based on GST Turnover and Projected GST Turnover
 - *s. 188-15 and 188-20, GST Act*
- Comparison Turnover = GST Turnover for the comparison period
- Alternative decline in turnover test
 - *Can be applied by the Commissioner where he determines that a PCP test cannot be reasonably applied (Start-Up, Extreme situation)*



How does the test period work?

- Prove reduction in business by comparing revenue with a corresponding prior period in 2019
- Designed to mirror BAS reporting periods
 - *e.g., June qtr '20 compared to June qtr '19*
- ATO update (14.04.20) allows comparison irrespective of GST reporting periods between:
 - *March '20 and March '19*
 - *April '20 and April '19*
 - *June qtr '20 and June qtr '19*
- Once tested and qualified, no need to re-test



What is projected GST turnover?

Section 188-20: Your projected GST turnover at a time during a particular period is the sum of the supplies that **you have made** (taxable and GST free) **or are likely to make**, during that period

GSTR 2001/7: meaning of GST turnover

16. ... An '**objective assessment**' is one that a **reasonable person** could be expected to arrive at having regard to the facts and circumstances which apply to your enterprise at the relevant time. The Commissioner **will accept your assessment** of these turnovers unless **he has reason to believe** that your **assessment was not reasonable**.

23. ... the expressions, 'likely to make', and 'likely to be made', mean that **on the balance of probabilities**, it can be predicated that the supply is more likely than not to be made.

24. When a supply is made, is determined in each case by reference to the terms of the particular contract, if applicable, and the nature of the supply. For the purpose of calculating supplies likely to be made, we will accept a calculation based on a **bona fide business plan, accounting budget or some other reasonable estimate**.



Practical implication of registration

- Most SMEs will be on quarterly BAS reporting
- Irrespective of this you can:
 - *calculate GST turnover for March 20 (compare with March 19); or*
 - *estimate GST Turnover for April 20 (compare with April 19); or*
 - *estimate GST Turnover for the June '20 quarter (compare with June qtr 19)*
- Employer eligibility will fall into three categories
 - *Yes*
 - *No*
 - *Maybe*
- The Maybe's are the challenge – need to resolve by April 26



The yes & maybes

- Assuming the majority of businesses are registered for GST on a quarterly basis:
 - *And they want to be registered effective April 2020*
 - *They will need to calculate or forecast their GST turnover to establish their turnover test decline*
 - *Period selected will vary depending on facts of each business*
- Projected GST turnover needs to be:
 - *Based on facts*
 - *All known information allowed for*
 - *Detailed documentation*
- Allowance to be made where the estimate is wrong at the margin
 - *e.g., revenue reduced by 28% rather than required 30% (tolerance level not fixed)*



Can you register during the life of the scheme?

- Yes, you will be able to register during the life of the scheme
- However your claim will only commence from the time you register – tested against fortnightly reporting periods
- No backdating of your claim, other than for April
- Uncertainty about eligibility causes a problem



Employer eligibility under the Commissioner's discretion

- Where an employer does not meet the reduction in business turnover test they can apply for registration as an eligible employer through the exercise of the Commissioner of Taxation's discretion
- Commissioner can by legislative instrument determine an alternate test for a class of entities
- Evidentiary requirement on the employer



Where the Commissioner may exercise his discretion

**ATO to provide
alternate tests to
PCP turnover test**

**Simple measures
such as business
closure expected to
be included**

**Difficult to
contemplate all
possible scenarios**

**May be a general
representation
option**

**Important to have
facts to support a
position**



Assessing employer eligibility

- Should be fairly easy for many businesses, e.g.,
 - *business forced to close – hospitality, entertainment, tourism*
- Challenge with businesses with irregular revenue cycles, large contracts, where time period between activity down turn and monetisation
- Even where employer eligibility easy to assess, employee eligibility can still be a challenge



Employees who are eligible

- All employees, employed at 1 March 2020, other than those employees who are ineligible
 - *Eligibility on an 'one in, all in' basis*
- Do not assume..... You need to test on an employee basis



Employees who are not eligible

Employees under 16 years of age	X
Casuals with less than 12 months regular service or were a permanent employee of another employer	X
Employees on non prescribed visas	X
Foreign employees (other than NZs on sub class 444 visa)	X
Employee nominated for JobKeeper by another Employer	X
Paid less than \$1500 per fortnight gross	X
Were not employed by you at 1 March 2020	X



Casuals

Example:

David worked as a casual for XYZ Pty Ltd. He worked for them in March 2020 and had worked for them since December 2018. His employment records indicated that he worked for XYZ during 2019

Jan – 1 week; Feb – 3 weeks; May – 2 weeks; August – 1 week; Nov – 2 weeks; December – 1 week

Test

Employed on 1 March 2020



Long term casual > 12 months



Regular & systemic



Impact on employees on leave

- Assuming the employee meets the general eligibility criteria, they are not precluded because they are:
 - On personal leave
 - On workers compensation and working a reduced load/hours – but not eligible if not working
 - On parental leave from their employer – but not if they are being paid Parental Leave by Services Australia



What about contractors?

- Genuine contractors are not employees
- They may be eligible to claim in their own right as a sole trader
- Contractors trading through an entity are likely to be able to claim through their entity
- Do not include them by error
- Risk of exposing the employer to other employee liabilities
- Employees on fixed term contracts still employees



Requirement for the employee to be paid

Employees must be paid at least \$1,500 per fortnight before tax

If employee paid less than \$1,500 per fortnight – there is no claim

This may result in an employee being paid more than otherwise might be the case

Employer must pay in advance of claim



What if an employee was stood down after 1 March?

- They can still be eligible for payment under JobKeeper providing they are paid a minimum \$1,500 per fortnight
- Employer must pay \$1,500 per fortnight for periods commencing 30 March
- A back payment to 30 March can be made during the April month
- No requirement for payment for period between stand down and 30 March



What if an employee was terminated after 1 March due to CV

- The employer can re-hire them
- Assuming they meet the other employee eligibility tests and are paid a minimum \$1,500 per fortnight from 30 March, then
- Employer can nominate them for JobKeeper payment



Action for employees

- JobKeeper Employee Nomination Notice now available
 - covered later in presentation & it will be provided
- For potentially eligible employees
 - Who have been stood down
 - Who earn less than \$1500 per fortnight
 - Who have been terminated
- Have them complete and return asap
- They need to have been paid 2 x \$1,500 by end April for employer to be able to claim
- Need to be certain of eligibility



Interaction with SG

- Where an employee is not working but receiving the \$1,500 JobKeeper payment – SG does not have to be paid
- Where employee is working and receiving \$1,500 per fortnight or more – SG payable
- Where the employee is working and being paid less than \$1,500 per fortnight but receiving the additional top up payment to \$1,500 – SG payable on the amount attributed to work. Employer has the option to pay SG on all.



Eligible business participants (EBP)

- Designed to extend scheme to persons actively engaged in a business through a sole trader, partnership, company or trust – but not employed
- All of the other eligibility criteria apply
- Not eligible if they are the permanent employee of an employer
- Can only nominate as an EBP for one business



Sole Traders

- Are eligible to participate in the scheme. Must provide:
 - Their ABN
 - Name of person to receive the payment
 - Tax file number
- Need to meet the same business revenue reduction test (30%)
- Eligible sole traders can also receive \$1,500 per fortnight in respect of themselves providing they are actively engaged in the business



Other entities

- A claim can be made for one eligible business participant, who is actively engaged in the business, but there are limitations. Entity cannot be a not-for-profit

Entity	Claim for a Working Owner Limitation
Company	<ul style="list-style-type: none">• Claim limited to one active shareholder, or• Claim limited to one director
Trust	<ul style="list-style-type: none">• Claim limited to one beneficiary of the Trust (not a corporate beneficiary)
Partnership	<ul style="list-style-type: none">• Claim limited to one partner



Registration process

- Online application (not just expression of interest) available through ATO
 - *from 20 April*
 - *complete by 26 April for May payment*
- Determine employee eligibility
- Provide all employees with a JobKeeper Employee Nomination Notice for them to complete & return to employer by end of April
 - *No need to lodge, but hold on file and with RTA*
- Apply for JobKeeper payment on ATO Business Portal
 - *from 4 May 2020*
 - *Need to confirm eligible employees*
- Eligible employer must advise eligible employees in writing that they have nominated them under JobKeeper
 - *no later than 7 days after application*



Ongoing eligible employee reporting

- Eligible employee reporting can be completed:
 - Selecting employees from prefilled STP payment report
 - Manually entering details online with ATO
 - Through a Registered Tax Agent
- Reconfirmation each month that eligible employees have not changed
- Can be completed on line or through Registered Tax Agent
- Monthly *JobKeeper Declaration Report* will be medium to advise on any change in eligible employees



Payment mechanics

**Paid by the ATO
within 14 days of
month end**

**Will commence in
May 2020**

**Eligible payroll
periods every 14
days, commencing
30 March**

**Monthly employer
reporting required
to trigger payment -
Single Touch Payroll**



Transitional payment rule for April

- Provision for Commissioner to make an advance payment in May, in respect of the month of April
- Advance payment made where eligibility has not been determined by the Commissioner
- Where an advance payment is made there is ability to claw back or vary payment based on determined facts



Monthly reporting

- Ongoing reporting requirement for employers – JobKeeper Declaration Report
- **Every month** the employer must report
 - *GST turnover for the reporting month*
 - *Projected GST turnover for the following month*
- This does not affect turnover test eligibility
- It does however provide updated information to test the reasonableness of projected turnover at the time of nomination
- This will be a real time source of data for audit activity



What's the risk?

- Employer certifies the facts provided and the claim made
- Significant \$\$'s involved over a 6 month period
 - Employer with 10 employees = \$195k
 - Employer with 20 employees = \$390k
- If the employer gets it wrong and turnover is not down by 30% - they may have to repay
- An employee ceases to be eligible if they cease employment during the period of the scheme



Get it wrong and the ATO is likely to come calling

- Give me the money back!
- Joint & several liability
- Integrity Provisions
 - Positive obligations
 - Employer must certify information
 - Obligation to assess employee eligibility
 - Obligation to advise ATO of change in circumstances
 - Audit & Compliance
 - Audit reviews
 - Cross match to Services Australia
 - Data matching with other agencies to identify false claims or ineligible employees
- Penalty Provisions
 - Administrative penalties – up to 75%
 - Failure to comply with tax law – up to 12 month imprisonment
 - Breach of the Criminal Code, obtaining financial advantage by deception – up to 10 years imprisonment



Record Keeping requirements

- Pre-payment requirements
 - Must be kept in English or readily convertible to English
 - Must substantiate all information provided
 - ATO to determine format
- Post-payment requirements
 - Retain all records including pre-payment records for a 5 year period
 - Where prescribed records not maintained the entity can be deemed ineligible



Key actions

By the end of next week!

- Are you an Eligible employer? **FILE: 1. JOBKEEPER - Checklist JobKeeper Employer Eligibility**
- Are your Employee's Eligible? **FILE: 2. JOBKEEPER – Workpaper Employee Eligibility**
- Register with the ATO (from 20 April) this is not the expression of interest





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Questions

