



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

An investigation into the ATO's administration of JobKeeper enrolment deferral decisions

PS LA 2011/15

By the Inspector-General of Taxation

September 2021

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Executive Summary

Executive Summary

The Inspector-General of Taxation and Taxation Ombudsman (**IGTO**) has investigated, through our tax complaints investigation function, the Australian Taxation Office's (**ATO's**) administration of applicants' requests to defer the due date for lodgement of JobKeeper enrolment notices (**JobKeeper enrolment deferral**), in accordance with:

- Section 388-55 of Schedule 1 to the *Taxation Administration Act 1953 (TAA 1953)*; and
- The Commissioner of Taxation's instructions to ATO staff, practice statement *PS LA 2011/15 Lodgment obligations, due dates and deferrals (PS LA 2011/15)*.

JobKeeper enrolment deferrals allow JobKeeper applicants to enrol for JobKeeper retrospectively and receive JobKeeper payments for fortnights prior to the fortnight in which the notice of enrolment is given to the Commissioner.

The IGTO has investigated 20 taxation complaints, as at the date of this report, which raised issues concerning the ATO's administration of JobKeeper enrolment deferrals. A sample of examples to illustrate the circumstances investigated is set out below.

The community may not be aware of a clarification of the ATO's administration of JobKeeper enrolment deferrals, which surfaced during IGTO investigations. Importantly, the ATO has clarified that JobKeeper enrolment deferral requests may be granted where it is 'fair and reasonable' to do so in the circumstances, in accordance with PS LA 2011/5. Also, the ATO procedures and internal guidance, which list 4 ATO-specified circumstances in which requests would be granted, were intended to expedite decision-making by providing staff with circumstances that were clearly ascertainable by the ATO as being fair and reasonable. The ATO confirms that these procedures and guidance were not intended to restrict or narrow the granting of deferral requests to only those cases which matched the ATO-specified circumstances. Where requests for additional time did not correspond to one of these circumstances, the ATO expected the request to be escalated to more senior decision maker.

In the 20 taxation complaints that the IGTO investigated, however, this clarified ATO view was not shared by the original ATO decision makers and not shared by all ATO officers who conducted review of those decisions or assisted the IGTO with inquiries in the complaint investigations. On the contrary, these ATO staff understood that the ATO procedures and guidance did, in fact, restrict the granting of additional time to those ATO-specified circumstances. The IGTO has not verified if the clarified ATO view, as confirmed in this report, has been consistently applied to all entities who applied for JobKeeper enrolment deferral.

The ATO was provided opportunity to comment on this report and provide information, in addition to that provided during the relevant complaint investigations. The views and information provided have been carefully considered by the IGTO in finalising this report. The ATO's response to this report is reproduced in **Appendix M**.

A glossary of terms used throughout this report is set out in **Appendix A**.

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What were ATO decision-makers required to consider and what did the IGTO observe?

Essentially, ATO decisions on JobKeeper enrolment deferral requests should be made in a manner that is consistent with the Commissioner's instructions to ATO staff, which are set out in practice statement PS LA 2011/15. ATO staff have been required to follow this practice statement since 2011 and it includes the following instructions to ATO staff who may exercise discretion to defer the date for lodgement of approved forms, such as JobKeeper enrolment notices:

"Does the law allow us to defer lodgment?"

31. The law generally allows the Commissioner to defer the time for lodgment of an approved or a prescribed form.^[9]

32. The Commissioner has discretionary power to defer the time within which an approved form is to be given to the ATO or another entity. This power may be exercised individually, by way of concession for some electronic lodgments or through the lodgment program.

...

34. The purpose of deferring the due date for lodgment is to facilitate the lodgment of a document that is unable to be lodged by the due date, but has the potential to be lodged at a particular time in the future.

...

When can you defer a lodgment?

45. We can grant a lodgment deferral **where it is fair and reasonable to do so taking into account all relevant circumstances**. This approach seeks to balance our obligations to administer taxation and superannuation laws consistently and fairly but also consider an entity's individual circumstances.

46. Matters we consider when deciding whether it is fair and reasonable to grant a deferral include:

- **the reason why the entity or their representative is unable to lodge on time**
- the value of the information provided in the document
- the size and structure of the entity (large corporate entities are more likely to have the ability and resources to overcome circumstances that might affect their ability to not lodge by the due date)
- the risk to revenue

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- the entity's compliance history as a whole (that is, lodgment of taxation returns, activity statements and other documents, payments on time and previous dealings with us)
- the length of time needed to lodge the document (a deferral will usually be granted where an entity has a good compliance history and requests a short period of additional time to lodge)
- **any other relevant information that includes the individual circumstances.**

47. We generally consider it fair and reasonable to grant a deferral to entities where the inability to lodge by the due date is reasonably attributed to exceptional or unforeseen circumstances.

48. Exceptional or unforeseen circumstances may include:

- natural disasters or other disasters or events that may have, or have had, a significant impact on individuals, regions or particular industries
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
- the serious illness or death of a family member, tax professional or critical staff member
- considerable lack of knowledge and understanding of taxation obligations
- system issues, either with ATO online services or the entity's business system.

49. A lodgment deferral may be granted even where the circumstances leading to their inability to lodge on time continue to be beyond the entity's control so that they may not be able to meet future obligations on time. For example, if arm's length partners or beneficiaries cannot influence the preparation timeframe of the respective partnership or trust returns.

50. The fact that an entity may have a poor lodgment compliance history should not prevent granting a request for a deferral of time to lodge where the inability to lodge was caused by circumstances beyond their control or if it would be otherwise fair and reasonable to grant the deferral.

51. Each request is considered on its merits and the deferred due date will be determined considering the particular circumstances of the entity.”

It is important to note that, in PS LA 2011/15, the Commissioner has instructed ATO staff to consider a number of issues when deciding whether to grant a request to defer the date for lodging an approved or prescribed form. These include the following:

- officers “can grant a lodgment deferral where it is fair and reasonable to do so taking into account all relevant circumstances” (the **fair and reasonable threshold**) (paragraph 45);
- officers are to consider a range of factors in doing so (see paragraph 46); and
- it is “generally” considered fair and reasonable to grant a deferral “where the inability to lodge by the due date is reasonably attributed to exceptional or unforeseen circumstances” (paragraph 47), and such circumstances may include five specified examples, amongst others that may arise (paragraph 48).

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IGTO complaint investigations that were conducted up to around April 2021 did not observe the ATO applying the ‘fair and reasonable threshold’, as set out in PS LA 2011/15, in its decisions regarding JobKeeper enrolment deferral requests. Rather, the ATO sought to uphold its initial decisions, specifically on the basis that the facts did not meet an ‘exceptional circumstances threshold’ which was much narrower than the threshold set out in PS LA 2011/15. In these IGTO investigations, the ATO:

- only granted lodgement deferral of JobKeeper enrolments where there were exceptional circumstances which matched one of the circumstances on a list of ATO-specified circumstances;
- did not apply the fair and reasonable threshold, despite this threshold being set out in the Commissioner’s instructions to ATO staff (PS LA 2011/15);
- did not consider the particular facts and circumstances of each case to determine whether lodgement deferral was appropriate; and
- referred to disseminated guidance materials, including scripting for frontline staff, which confined JobKeeper enrolment deferral approvals to only those cases with circumstances that matched those on an ATO-specified list of circumstances and did not allow staff to refer requests to a more senior decision-maker unless the officer considered that the case may fall within that ATO-specified list.¹

From April 2021, the IGTO observed a marked improvement in the ATO’s decision making in the complaints the IGTO investigated, as ATO decision-making on JobKeeper enrolment deferrals in those cases started to more consistently apply a test of whether it would be ‘fair and reasonable’ to do so. For example, in these investigations, the ATO:

- overturned initial decisions in a number of JobKeeper enrolment deferral requests by applying a ‘fair and reasonable’ test; and
- advised the IGTO in writing and verbally that it is the ‘fair and reasonable threshold’ that should be applied and clarified that the list of ATO-specified circumstances only provide a basis for ATO officers to *automatically* grant JobKeeper enrolment deferrals.

Why is the IGTO reporting this?

Based on the IGTO complaint investigations, JobKeeper applicants who requested JobKeeper enrolment deferrals may have been adversely impacted by the ATO not applying the Commissioner’s instructions in PS LA 2011/15 consistently. This may also be the case with respect to IGTO complainants whose complaints were considered by the ATO prior to April 2021 as well as JobKeeper applicants who have not lodged complaints with the IGTO.

¹ Note, however, internal ATO communications on 13 August 2020 indicate that the senior ATO decision-makers, to whom such referrals would be made, had stated that no approval for deferral would be granted unless the case involved one of the ATO-specific circumstances.

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Taxpayers and their advisers who requested and have been denied JobKeeper enrolment deferrals should consider if the ATO applied the ‘fair and reasonable threshold’ to their circumstances — i.e. consistent with the Commissioner’s staff instructions in PS LA 2011/15. If not, please contact either ASBFEO or your professional organisation to follow this up, including:

Organisation	Contact information	Phone Enquiries
ASBFEO – Australian Small Business and Family Enterprise Ombudsman	www.asbfeo.gov.au/contact-us	1300 650 460
Certified Practising Accountants	www.cpaaustralia.com.au/contact-us	1300 73 73 73
Chartered Accountants in Australia and New Zealand	taxteamau@charteredaccountantsanz.com	1300 137 322
Institute of Public Accountants	www.publicaccountants.org.au/about/contact-us	(03) 8665 3100
The Tax Institute	www.taxinstitute.com.au/footer/contact-us	1300 829 338

In summary, the purpose of this report is to:

1. Inform the community (especially advisers who assist business taxpayers in the community) that the ATO has clarified its administration of requests to defer the date for lodgment of JobKeeper enrolment notices in response to IGTO complaint investigations;
2. more clearly communicate to the public that ATO decisions on such requests are expected to be made in accordance with the Commissioner’s instructions to ATO staff (PS LA 2011/15) – that is, considering the merits of each case and granting deferral where it is “fair and reasonable to do so taking into account all relevant circumstances” — and not limiting consideration to only whether the case falls within a list of 2 – 5 pre-defined exceptional circumstances; and
3. request feedback from the community to understand if there are more widespread issues in relation to the administration of:
 - a. requests to defer the lodgment date for JobKeeper enrolment notices; and/or
 - b. requests to defer the lodgment of other forms or notices, more generally, in accordance with PS LA 2011/15.

Karen Payne
 Inspector General of Taxation and Taxation Ombudsman
 September 2021

Detailed Explanation

Detailed Explanation

The IGTO has investigated, through our tax complaints investigation function, the ATO's administration of applicants' requests to defer the date of lodgement of JobKeeper enrolment notices (**JobKeeper enrolment deferrals**) in accordance with:

- Section 388-55 of Schedule 1 to the TAA 1953; and
- The Commissioner of Taxation's instructions to ATO staff, practice statement PS LA 2011/15.

Overview of Legislative provisions - Lodgment and Payment Deferral

The Commissioner has the power to defer both the time for payment and the time for lodgment of a relevant tax form under sections 255-10² and 388-55 (respectively) of Schedule 1 to the TAA 1953.

Section 388-55 is in the following terms:

388-55 Commissioner may defer time for lodgment

- (1) The Commissioner may defer the time within which an *approved form is required to be given to the Commissioner or to another entity.
- (2) A deferral under subsection (1) does not defer the time for payment of any amount to the Commissioner.

Note: Section 255-10 allows the Commissioner to defer the time for payment of an amount of a tax-related liability.

Section 388-55 commenced from 1 July 2000 and was introduced by the *A New Tax System (Tax Administration Act (No. 2) 2000*. The following explanation appears at paragraph 1.166 of the Revised Explanatory Memorandum to that Act (**EM**):

1.166 The Commissioner will have a discretion to allow taxpayers further time for lodging any approved form. This deferral power is the same as the discretion to defer the time for lodgment of an income tax return, an FBT return or a GST return.

The EM goes on to explain (at paragraph 1.167) that a deferral of the due date for lodgment does not defer the due date for the payment of tax-related liabilities notified in the relevant approved form. The Commissioner can defer the due date for payment under s. 255-10 of Schedule 1 to the TAA 1953³ which was introduced by the *A New Tax System (Tax Administration) Act 1999* and commenced from 1 July 2000.

² Set out in Appendix B

³ Refer Appendix B

Detailed Explanation

Commissioner's published guidance on the application of s. 388-55 of Schedule 1 to the *Taxation Administration Act 1953*

The ATO's practice statement, PS LA 2011/15, is the Commissioner's existing and binding instructions to ATO staff on the application of s.388-55. It relevantly provides that the date to lodge a form can be deferred where it is "fair and reasonable to do so taking into account all relevant circumstances" (paragraph 45).

PS LA 2011/5 sets out the matters the ATO will consider when deciding whether it is fair and reasonable to grant a deferral, including the following (see paragraph 46):

- the reason why the entity or their representative is unable to lodge on time,
- the value of the information provided in the document,
- the size and structure of the entity (large corporate entities are more likely to have the ability and resources to overcome circumstances that might affect their ability to not lodge by the due date),
- the risk to revenue,
- the entity's compliance history as a whole (that is, lodgment of taxation returns, activity statements and other documents as well as payments on time and previous dealings with the ATO),
- the length of time needed to lodge the document (a deferral will usually be granted where an entity has a good compliance history and requests a short period of additional time to lodge), and
- any other relevant information that includes the individual circumstances.

The practice statement goes on to explain that, where the inability to lodge the relevant form by the due date is reasonably attributed to exceptional or unforeseen circumstances, the ATO generally considers it fair and reasonable to grant the deferral (paragraph 47).

The practice statement gives a number of non-exhaustive examples of what may constitute exceptional or unforeseen circumstances, including the following (at paragraph 48):

- natural disasters or other disasters or events that may have, or have had, a significant impact on individuals, regions or particular industries,
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter),
- the serious illness or death of a family member, tax professional or critical staff member,
- considerable lack of knowledge and understanding of taxation obligations, and
- system issues, either with ATO online services or the entity's business system.

The practice statement states that "**each request is considered on its merits** and the deferred due date will be determined considering the particular circumstances of the entity" (paragraph 48, bolding added).

Detailed Explanation

The relevant paragraphs of PS LA 2011/15 are extracted at [Appendix C](#).

Overview of Legislative provisions - Retrospective Enrolment for JobKeeper payments

To qualify for JobKeeper payments, the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (**the Rules**) require an employer or an eligible business recipient to notify the Commissioner of their election to participate in the JobKeeper scheme. For both employers and eligible business participants, the deadline for notifying the Commissioner of this election is either (ss. 6(2) and 11(2) of the Rules):

- (a) for an entitlement arising in the first or second JobKeeper fortnight – the end of the second JobKeeper fortnight; or
- (b) for an entitlement arising in any other fortnight – the end of the fortnight.

The relevant sections are extracted at [Appendix D](#).

For both employers and business recipients, a note to the relevant sections of the Rules (under ss. 6(2) and 11(2)) indicates that the time for giving the Commissioner the approved form may be deferred by the Commissioner under s. 388-55 of Schedule 1 to the TAA 1953.

Section 388-55 as noted above, is an existing provision that applies in a number of different contexts (i.e. it is not exclusive to the JobKeeper scheme); commonly, with respect to deferral requests relating to the lodgment of income tax returns.

Explanatory Statement

The Explanatory Statement to the Rules⁴ contains a brief description about the timing for giving a JobKeeper enrolment election to the Commissioner. Relevantly, it states that, “Employers that have difficulty meeting the timing requirements may seek [a s.388-55] deferral from the Commissioner.”

The relevant paragraphs of the Explanatory Statement are extracted at [Appendix E](#).

Relevant JobKeeper Guidance

The IGTO is not aware of any public guidance issued by the Commissioner that specifically relates to retrospective enrolment for the JobKeeper scheme. The Commissioner has produced internal guidance for ATO staff, ‘JobKeeper Practice Note 2020/002’ and ‘Enterprise Work Management – JobKeeper Deferral Guidelines’. As these guidelines have not been made available publicly, they are discussed further below under ‘**Further ATO Response to IGTO Investigations**’.

⁴ Explanatory Statement to the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*

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Background to IGTO Investigations

a. Complainants' experience

A number of complainants have advised the IGTO that, on requesting a JobKeeper enrolment deferral, the response from the ATO call centre and ATO complaints team was that such a deferral would only be allowed in a specific set of exceptional or unforeseen circumstances (**ATO-specified circumstances**). The list of ATO-specified circumstances, which has been revised over time, was limited to some or all of the examples of exceptional or unforeseen circumstances that are listed at para 48 of the PS LA 2011/15.

From early August 2020, the list of ATO-specified circumstances included the following:

- natural disasters or other disasters or events that may have, or have had, a significant impact on individuals, regions or particular industries,
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter),
- the serious illness or death of a family member, tax professional or critical staff member, and
- system issues, either with ATO online services or the entity's business system.

The ATO-specified list of circumstances has been narrowed over time and, as at 3 August 2021, only includes "natural disasters or other disasters or events..." and "the serious illness or death of a family member...".

According to complainants, the ATO did not give any consideration to whether it would be 'fair and reasonable' to grant a JobKeeper enrolment deferral (as contemplated by paras 45 and 46 of PS LA 2011/15) unless one of the ATO-specified circumstances applied.

The IGTO investigations confirmed that, initially in fact, this was the manner in which JobKeeper enrolment deferral requests were generally dealt with by the ATO and by the ATO complaints team when complaints were made.

Example 1

In the course of an IGTO complaint investigation, we reviewed an email that was sent from the ATO's 'Tax Advice Individuals and Small Business' unit, which gave advice to the ATO Complaints Unit that retrospective enrolment for JobKeeper payments "will not be allowed" unless one of the four

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exceptional circumstances (the ATO-specified circumstances listed above) applies.⁵ This advice was said to restate statements made by senior ATO staff who were authorised by the Commissioner to exercise the discretion to grant requests for deferral of JobKeeper enrolment lodgement dates.

Example 2

In the course of another IGTO complaint investigation, we listened to a call in which an ATO officer relayed to a complainant's tax agent the same information that was relayed in Example 1. In this call, the ATO officer indicated that they were reading from a script and that they had to do so as they "have to follow procedures" and that they had to tell callers that "a complaint would not change the outcome and their review rights can be found on [the ATO's] website."⁶

Sample of cases that IGTO has assisted

The following is a sample of cases that the IGTO has assisted through our complaint investigations:

Table 1 – Summary of issues raised through complaint investigations

Outline of the case	ATO Initial Response	ATO response to IGTO Investigation
Case 1 The complainant, who is legally blind, mistakenly applied for JobSeeker payments through Centrelink	The ATO did not grant lodgment deferral of the enrolment notice because his circumstances did not fall within one of the ATO-specified circumstances.	The ATO upheld its initial decision and did not allow lodgment deferral because it considered that there were no exceptional or unforeseen circumstances (pre April 2021).
Case 2 The tax agent advised that the JobKeeper enrolment notification had been delayed due to the serious illness of a family member and staff shortages.	The ATO did not grant lodgment deferral of the enrolment notice because the tax agent's circumstances did not fall within one of the ATO-specified circumstances.	The ATO upheld its initial decision and did not allow lodgment deferral because it considered that there were no exceptional or unforeseen circumstances (pre April 2021).
Case 3 The complainant was a small business with no employees and an 81-year old eligible business participant, who operated a travel agency with his elderly wife. He was not aware that JobKeeper payments were available to businesses without employees until advised by	The ATO did not grant lodgment deferral of the enrolment notice because the business' circumstances did not fall within one of the ATO-specified circumstances.	The ATO reversed its initial decision and granted lodgment deferral because it considered it was fair and reasonable to do so, in accordance with PS LA 2011/15.

⁵ ATO internal communication, 13 August 2020.

⁶ ATO, call recording, 28 September 2020.

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Outline of the case	ATO Initial Response	ATO response to IGTO Investigation
<p>his bookkeeper in July 2020 and the deferral request was made in the following days.</p>		
<p>Case 4</p> <p>The complainant was overseas, caring for a sick relative, when the JobKeeper scheme was introduced. Due to border restrictions he was unable to return until October 2020 and then had to complete hotel quarantine. The lodgment deferral request was made once he completed hotel quarantine.</p>	<p>The ATO did not grant lodgment deferral of the enrolment notice because his circumstances did not fall within one of the ATO-specified circumstances.</p>	<p>The ATO reversed its initial decision and granted lodgment deferral because it considered it was fair and reasonable to do so, in accordance with PS LA 2011/15.</p>
<p>Case 5</p> <p>The complainant was overseas when the JobKeeper scheme was introduced and only returned to Australia after trying 4 times to do so, with 3 of his flights having been cancelled due to the pandemic. He was not aware of his eligibility for JobKeeper until his return to Australia.</p>	<p>The ATO did not allow lodgment deferral of the enrolment notice because his circumstances did not fall within one of the ATO-specified circumstances.</p>	<p>The ATO reversed its initial decision and granted lodgment deferral because it considered it was fair and reasonable to do so, in accordance with PS LA 2011/15.</p>
<p>Case 6</p> <p>The complainant (a company) engaged a tax agent to enrol the company for JobKeeper and was advised by the tax agent that they had been enrolled within time - but this was false. The enrolment was not processed by the tax agent until August 2020.</p>	<p>The ATO did not allow lodgment deferral of the enrolment notice because the business' circumstances did not fall within one of the ATO-specified circumstances.</p>	<p>The ATO reversed its initial decision and granted lodgment deferral because it was fair and reasonable to do so, in accordance with PS LA 2011/15.</p>

Please note that the IGTO will contact taxpayers who had raised complaints before April 2021 and who may benefit from the ATO reconsidering whether the fair and reasonable threshold had been correctly applied in their case (for example – Cases 1 and 2).

b. ATO's initial responses to IGTO complaint investigations

Initially, the IGTO received responses from the ATO in our complaint investigations that were consistent with the responses the ATO had given to complainants when they lodged complaints with the ATO

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directly — namely, that JobKeeper enrolment deferrals will only be granted if the complainant's circumstances matched one of the ATO-specified circumstances (which are set out above).⁷

In early August 2020, the ATO provided the IGTO with its list of ATO-specified circumstances. The IGTO observed that this list was consistent with the examples in paragraph 48 of PS LA 2011/15, other than the fact that the list of examples in PSLA 2011/15 was stated to be a non-exhaustive list of such circumstances and the ATO's list omitted the PL SA 2011/15 example of "considerable lack of knowledge and understanding of taxation obligations". When the IGTO queried why this particular example of an exceptional circumstance was omitted from the ATO's response to the IGTO and why applicants would not be granted JobKeeper enrolment deferrals on this basis, the IGTO was provided with the following explanation:

"For JobKeeper purposes, we do not consider that considerable lack of knowledge and understanding of taxation obligations is an exceptional circumstance where we would automatically grant deferral though it is not our position that it would never be relevant. However, the JobKeeper Rules are not part of Australia's taxation system; it is a temporary measure and understanding your JobKeeper obligations is not considered to be equivalent to navigating the taxation system which is considerably more complex.⁸

The ATO maintained this view up until 6 April 2021 in cases the IGTO investigated. The ATO did reverse its initial decision in one case, however, in that case the ATO determined the request did fall within one of the ATO-specified categories and should not have been disallowed at first instance.⁹ The ATO also did not agree that confining the grounds for JobKeeper enrolment deferrals to the handful of ATO-specified circumstances was an approach that was inconsistent with the approach in PS LA 2011/15 which ATO staff were required to follow.

As a result, a number of IGTO complaints investigations did not result in the ATO agreeing to reverse its decision to refuse to grant a JobKeeper enrolment deferral. This included a complaint where the small business owner, hindered by the fact that he is legally blind, mistakenly applied for JobSeeker payments through Centrelink and a complaint where the tax agent advised that he had been delayed in lodging the JobKeeper enrolment notice due to the serious illness of a family member and staff shortages.

c. April 2021 ATO response to IGTO complaint investigations

The IGTO queried how the ATO's initial responses which outlined its approach to administering s. 388-55 of Schedule 1 to the TAA were consistent with the approach set out in PS LA 2011/15. This was because the threshold for granting a deferral in PS LA 2011/15 was "fair and reasonable ... taking into account all relevant circumstances" and was not confined to a specific set of exceptional circumstances.

⁷ ATO communication to IGTO, 5 February 2021 (redacted copy reproduced in **Appendix F**).

⁸ ATO communication to IGTO, 3 March 2021.

⁹ In this case, the ATO reversed its decision to refuse JobKeeper enrolment deferral during the IGTO complaint investigation. This ATO reversal was made on the basis that the case fell within one of the ATO-specified circumstances as two of the complainant's family members had died from COVID-19.

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On 6 April 2021, the ATO reversed a lodgement deferral decision and granted the applicants deferral on the basis that it was 'fair and reasonable' to do so, consistent with the guidance with the Commissioner's instructions to ATO staff in PS LA 2011/15. This was the first in a series of such decisions.

Following these reversal decisions, the IGTO took steps to understand why it took a number of IGTO complaint investigations for the ATO to reverse its decisions and why such decisions could not have been made earlier, for example, during the ATO's handling of the initial complaints. The IGTO also sought to explore whether this was symptomatic of a systemic failure in the way section 388-55 of Schedule 1 to the TAA had been administered by the ATO in the context of enrolment for the JobKeeper scheme, generally. These steps included discussion between IGTO and ATO officers on 20 May 2021. Following this meeting, the ATO provided the IGTO with a number of written responses and documents on 7 June 2021, including the following:

- JobKeeper Practice Note 2020/002 (PN 2020/002), which is an internal guide for ATO staff setting out the relevant policy and practices, enclosed at **Appendix G**;
- Enterprise Work Management – JobKeeper Deferral Guidelines, which are internal guidelines for ATO staff and which states that it should be used in conjunction with PS LA 2011/15 and PN 2020/002, enclosed at **Appendix H**;
- instructions and scripting for frontline staff assisting applicants who are seeking to register retrospectively for JobKeeper, titled 'JobKeeper form deferral requests' (**the SMART Instructions**), enclosed at **Appendix I**;
- change log for the 'JobKeeper form deferral requests' instructions, enclosed at **Appendix J**; and
- a JobKeeper power point presentation, entitled 'Deferrals', which was developed to train ATO staff and contractors, relevant extracts enclosed at **Appendix K**.

d. ATO's 7 June 2021 explanation

The ATO's cover email to the material received on 7 June 2021¹⁰ sets out the following explanation regarding the ATO's approach to JobKeeper enrolment deferral requests over time:

"If an entity hasn't enrolled by the deferred due date, the Commissioner can exercise this discretion to further defer lodgment of the enrolment form where it is fair and reasonable to do so. For such JobKeeper enrolment deferral requests our approach aligns with PSLA 2011/15: Lodgment obligations, due dates and deferrals, and we will generally consider it fair and reasonable where there are exceptional or unforeseen circumstances that directly impacted the clients ability to enrol by the due date.

We will automatically grant deferral where the client demonstrates one of the following circumstances occurred proximate to the relevant due date –

¹⁰ ATO communication to the IGTO, 7 June 2021.

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- natural disasters or other disasters or events that may have, or have had, a significant impact on individuals, regions or particular industries
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
- the serious illness or death of a family member, tax professional or critical staff member
- system issues, either with ATO online services or the entity's business system.

Where there are circumstances outside the 4 listed above that caused the client to miss the relevant enrolment date, our approach is to only grant deferral **where it is fair and reasonable taking into account all the relevant facts and circumstances.”**

(Bolding added.)

Both the written response quoted above, and the feedback provided to us at the meeting on 20 May 2021, indicate that the purpose for the list of ATO-specified circumstances was to clarify when JobKeeper enrolment deferral would be *automatically* granted. They also suggest that, if these ATO-specified circumstances did not apply, there was a process for determining whether it would otherwise be fair and reasonable to grant the deferral.

Unfortunately, however, this ATO approach was not supported by the documents that the ATO provided. Our reasons follow.

ATO's internal staff guidance PN2020/002

The ATO's internal staff guide, PN 2020/002, is an ATO business line-specific policy and/or practice which ATO staff are generally required to follow:

ATO personnel, including non-ongoing personnel and relevant contractors, must comply with this practice note unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

PN 2002/002 states:

“Section 388-55 of Schedule 1 to the Taxation Administration Act 1953 provides the Commissioner with the power to defer the time for the giving of an approved form. The Commissioner can defer lodgment where it is fair and reasonable to do so, taking into account all the relevant circumstances.

Deferment will only be available in exceptional circumstances for the following reasons:

- the Commissioner has already put in place broad deferrals, giving taxpayers more time to submit JobKeeper approved forms;
- the purposes of the JobKeeper approved forms are elections to participate and the satisfying of monthly reporting obligations;

Commissioner's administration of s. 388-55 of Schedule 1 to the TAA in relation to JobKeeper enrolment deferrals

- the scheme is only of a short duration.

Consistent with PSLA 2011/15: Lodgment obligations, due dates and deferrals, exceptional circumstances will arise where:"

[PN 2020/002 lists the four ATO-specified circumstances set out above and then states:]

Such circumstances do not commonly occur and there would be few others that would give rise to a business qualifying for a deferral."

The PN 2002/002 goes on to state that:

"If an entity has missed lodging the approved form for enrolment for specific JobKeeper fortnights for reasons not outlined in this practice note, the Commissioner will not generally exercise his discretion to defer enrolment. If there are additional facts and circumstances that resulted in the entity missing the relevant enrolment due date and warrant further consideration, the request for deferral will need to be escalated and considered in a decision of whether it is appropriate for the Commissioner to grant a deferral of the due date to lodge the approved form outside the reasons outlined above."

There is no explanation in the PN of how limiting the granting of deferrals to "exceptional circumstances" aligns with the 'fair and reasonable threshold' in PS LA 2011/15.

In addition, PN 2020/002 states that there are limits placed on the authorisation of ATO officers making JobKeeper enrolment deferral decisions, particularly the maximum adjustment that may be made to the lodgement date. For all levels of ATO staff this limit is 14 business days, with the exception of Senior Executive Staff where the maximum adjustment period is unlimited. Effectively, this means that even if a case met one of the ATO-specified circumstances, non-SES ATO staff could only effectively backdate the JobKeeper enrolment 14 business days at most. PN 2020/002 suggests that the rationale for such limitations are:

the JobKeeper Payment Program is a short-term wage subsidy scheme that requires participants to provide information on a monthly basis to the Commissioner. Any deferral should only be for a short amount of time unless there are exceptional circumstances.

This rationale for the limited timeframe for JobKeeper enrolment deferrals is confusing, as the exception to these limitations is the existence of exceptional circumstances. However, the ATO's basis for granting a deferral at all is that it considers there are exceptional circumstances.

Commissioner's administration of s. 388-55 of Schedule 1 to the TAA in relation to JobKeeper enrolment deferrals

JobKeeper Deferral Guidelines

The guidance in the JobKeeper Deferral Guidelines is similarly confined, as follows:

Reasonable basis to exercise discretion outside of the 4 limited exceptional circumstances

Assessed case by case as there is scope in the PSLA to approve outside of the 4 reasons listed in SMART/the practice note where the Commissioner considers it reasonable to do so. There are *very few circumstances* that would warrant exercise of the discretion outside of the 4 in the practice note. [Emphasis Added] These include –

- Domestic violence – case by case.
- Evidence of ATO error/incorrect advice
- Client was waiting for ATO to make a section 11 discretion decision (for certain EBPs who require section 11 discretion to be eligible, they are not able to enrol until we make a decision. When we do exercise s11 discretion, they should be allowed to enrol back to the fortnight they first requested the s11 discretion).

ATO frontline officer scripting - the SMART Instructions

The scripting that was provided to ATO frontline officers (SMART Instructions) also confirms that applicants would be told that no JobKeeper enrolment deferral request would be granted if they did not fall within one of the ATO-specified circumstances (step 3). This is demonstrated in the extract below:

Determine if any of the following exceptional circumstances apply to the client:

- natural disasters: how was the client prevented from enrolling on time or contacting the ATO earlier

COVID-19 is not a natural disaster on its own. It is a circumstance that led to the implementation of JobKeeper.

- serious illness or death: when did the illness happen and/or what prevented the client or their representative from contacting the ATO for assistance.

Determine if the information provided by the client clearly *meets the exceptional circumstance to consider a deferral request*. [emphasis added]

Clients must advise of how the circumstance impeded them from enrolling on time.

If one of the reasons above is not provided, with sufficient information to support the request, the deferral may not meet the exceptional circumstances and cannot be considered for approval.

Commissioner's administration of s. 388-55 of Schedule 1 to the TAA in relation to JobKeeper enrolment deferrals

If:

- yes,
 - add a note to the inbound phone activity including eligibility has been met for JobKeeper or JobKeeper extension (or both)
 - update the activity with the following classifications
 - Capability: Operations
 - Category: Processing
 - Type: JobKeeper deferral
 - complete template JobKeeper deferral, stating the period/s that require a deferral, and detailing how the client has met the deferral criteria

The note must state one of the reasons for deferral listed above. Specifically, your note must primarily state the circumstance and the reason supported by how the client was prevented from enrolling.

- proceed to step 2
- no, go to step 3 in this table.

Step 3 states, “Advise the client no deferral is available ... This is the end of the procedure.” However, if the client advises that they received incorrect advice from the ATO which led to the late lodgement and there is a confirming record on the ATO system which indicates that incorrect advice was given, then the ATO officer may seek further advice from a support officer.

These instructions, which are primarily relied on by the ATO staff who receive telephone calls from the public (ATO front line staff), do not apply the fair and reasonable threshold. They also do not outline any process for escalating or transferring the matter to another decision maker to consider in situations where the client is not automatically granted deferral because of ATO-specified circumstances. This is inconsistent with the ATO’s 7 June 2021 advice to the IGTO.

ATO JobKeeper Training PowerPoint - ‘Deferrals’

The approach in the training PowerPoint is arguably somewhat broader, in that it explains to ATO officers that businesses can claim for an earlier period where there are “extenuating circumstances preventing them from enrolling by the monthly due date”. It states that “extenuating circumstances **include**” and goes on to list the four ATO-specified circumstances outlined above as examples. However, it then suggests the following wording for ATO frontline officers:

“Unfortunately, to be eligible for deferred enrolment you need to have specific extenuating circumstances that prevented you from enrolling. The circumstances you have described don’t meet the criteria”.

Commissioner's administration of s. 388-55 of Schedule 1 to the TAA in relation to JobKeeper enrolment deferrals

The training goes on to state:

"If they do not accept your decision you should explain that they can apply to the Federal Court or the Federal Circuit Court of Australia for a review under the Administrative Decisions (Judicial Review) Act 1977. This application must be lodged within 28 days from the day they called.

Escalating deferral requests for clients who don't meet the criteria will not produce a different result and will instead delay their ability to go through the correct appeal process. This is not a good client experience."

This does not align with the explanation in the 7 June 2021 email that circumstances that fell outside the specified categories might still be considered 'fair and reasonable' albeit that they did not automatically qualify for lodgement deferral.

The training PowerPoint also indicates an ATO expectation that cases falling outside of the specified categories will be considered by more senior decision makers:

If a client meets all the eligibility criteria for a deferral you must ensure you check your authorisation and take action accordingly. Requests that are within your authorisation do not need to be escalated.

Requests that are outside your authorisation but meet all other eligibility criteria require the following actions.

- Assist the client to enrol
- Create a JobKeeper application form in ICP but do not submit the form. This will be saved and suspended.
- Ensure there are sufficient notes in your escalation for the person making the decision to assess the clients' relevant circumstances fully.
- Escalate your activity.

However, the training materials also state:

"Sometimes clients will insist they are eligible even when the circumstances they describe don't meet the strict criteria for a deferral. You should do everything to help them claim for the periods where they have met the deadline.

If they do not accept your decision you should explain that they can apply to the Federal Court or the Federal Circuit Court of Australia for a review under the Administrative Decisions (Judicial Review) Act 1977. This application must be lodged within 28 days from the day they called.

Escalating deferral requests for clients who don't meet the criteria will not produce a different result and will instead delay their ability to go through the correct appeal process. This is not a good client experience." [Emphasis added]

Commissioner's administration of s. 388-55 of Schedule 1 to the TAA in relation to JobKeeper enrolment deferrals

The IGTO notes that there is no mention in the training material that the taxpayer has an opportunity to lodge a complaint with the IGTO, as the Taxation Ombudsman.

The ATO advised that this training was conducted with staff in September and October 2020.

However, it appears that the ATO expectation of escalation, as set out in some parts of the training, was not followed in the complaint cases which the IGTO investigated as original requests were not 'escalated' to another decision maker. On this basis, it appears that this aspect of the training was either forgotten by staff or overridden by other instructions. For example, the IGTO was advised that from 1 August 2020 JobKeeper enrolment deferral requests were required to be escalated to ATO Executive Level 2 and Senior Executive Staff officers for approval. However, those EL2 and SES staff had instructed other staff that:¹¹

"Procedure for requests from 1 August 2020

Late enrolment by an EBP will generally not be allowed unless there are exceptional circumstances as set out in Practice Note 2020/002.

Can the EBP demonstrate any of the following four (4) exceptional circumstances which resulted in them failing to enrol by the due date? ..." [emphasis in original]

¹¹ ATO internal communication, 13 August 2020.

Conclusions

Conclusions

The IGTO is unable to explain why the ATO internal instructions would seek to restrict the application of s. 388-55 of Schedule 1 to the TAA in the context of JobKeeper enrolment, when the JobKeeper measures were introduced to mitigate a period of profound economic pressure and difficulty for many in the community who were impacted by COVID-19. There is nothing in the Explanatory Statement to suggest that it was Parliament's intention to restrict the economic relief provided by JobKeeper in this way. In fact, the statement in the Explanatory Statement, that "Employers that have difficulty meeting the timing requirements may seek such a deferral from the Commissioner," suggests a far more liberal application of the lodgement deferral discretion. Moreover, the rationale provided in PN 2020/002 (e.g. that the scheme is of short duration) does not provide a meaningful justification for the restricted approach as it does not explain why the *grounds* for exceptional circumstances have been narrowed to a small number of ATO-specified circumstances.

Notwithstanding the above, the IGTO has observed in its investigations that after April 2021 the ATO's decision-making on JobKeeper enrolment deferral requests, in response to IGTO complaints investigations, has become substantially more consistent with the Commissioner's instructions in PS LA 2011/15. In several of the IGTO complaint investigations mentioned in this report, the ATO arrived at a fair and transparent outcome and demonstrated a willingness to overturn their initial decisions. However, there is a concern that taxpayers who did not have the benefit of lodging a complaint with the IGTO would have been disadvantaged by the ATO's pre-April 2021 approach.

Finally, given the assistance that JobKeeper provided to, or had the potential to provide, vulnerable members of the community, the IGTO considers the ATO should have considered:

- notifying potential applicants personally of their possible eligibility to encourage enrolment within the specified time frame, particularly eligible business participants, as the IGTO experience shows many intuitively believed that "JobKeeper" was only available to employees;
- publishing guidance on when retrospective enrolment would be permitted, to:
 - ensure that potential applicants were aware of the requirements; and
 - improve the confidence of applicants that decisions were made fairly and consistently, and not arbitrarily.

The lack of transparency was a cause of concern for a number of IGTO complainants, including where their colleagues and associates were able to obtain different outcomes for reasons that were unclear¹² - see **Appendix L: JobKeeper Discussion on a Bookkeeper's Facebook Group dated 12 August 2020.**

¹² Information provided to the IGTO, screenshots of JobKeeper Discussion on a Bookkeeper's Facebook Group, 12 August 2020 (a redacted copy is reproduced in **Appendix L**.

Conclusions

It is unclear why the criteria for not granting JobKeeper enrolment deferrals was not more clearly communicated to the public. The IGTO report is published to:

1. provide assurance to the community that taxation investigations can assist in resolving their disputes with the ATO;
2. ensure the community is informed (especially advisers assisting business taxpayers in the community) that the ATO has clarified its administration of lodgment deferral for JobKeeper enrolments in response to IGTO investigations;
3. provide clear communication to the public that JobKeeper enrolment deferral decisions are to be made in accordance with the Commissioner's instructions to ATO staff in PS LA 2011/15 – that is after considering the merits of each case and granting deferral where this is fair and reasonable in the circumstances – and not to be limited to the limited ATO-specified circumstances;
4. request feedback from the community to confirm if there are more widespread issues in relation to the administration of:
 - a. requests to defer the lodgment date for JobKeeper enrolment notices; and/or
 - b. requests to defer the lodgment of other forms or notices, more generally, in accordance with PS LA 2011/15.

Appendix A — Glossary and Defined terms

Appendix A — Glossary and Defined terms

Abbreviation	Defined term
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
Complaint	<p>A complaint is defined AS/NZS 10002:2014 Guidelines for complaint management in organizations</p> <p><i>Expression of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.</i></p> <p><i>Disputes - Unresolved complaints escalated internally or externally, or both.</i></p> <p><i>Feedback - Opinions, comments and expressions of interest or concern, made directly or indirectly, explicitly or implicitly to or about the organization, its products, services, staff or its handling of a complaint. Organizations may choose to manage such feedback as a complaint.</i></p>
EM	Explanatory Memorandum to the <i>A New Tax System (Tax Administration Act (No. 2) 2000</i>
IGT Act 2003	<i>Inspector-General of Taxation Act 2003</i>
IGTO	Inspector-General of Taxation and Taxation Ombudsman.
PS LA 2011/15	Practice Statement Law Administration PS LA 2011/15 <i>Lodgment obligations, due dates and deferrals</i>
Rules	<i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

Appendix B — Section 255-10 of the TAA Act 1953

255-10 To defer the payment time

Deferrals for particular taxpayers

- (1) The Commissioner may, having regard to the circumstances of your particular case, defer the time at which an amount of a *tax-related liability is, or would become, due and payable by you (whether or not the liability has already arisen). If the Commissioner does so, that time is varied accordingly.

Note: General interest charge or any other relevant penalty, if applicable for any unpaid amount of the liability, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the Income Tax Assessment Act 1997.

- (2) The Commissioner must do so by written notice given to you.

Deferrals for classes of taxpayers

- (2A) The Commissioner, having regard to the circumstances of the case, may, by notice published on the Australian Taxation Office website, defer the time at which amounts of *tax-related liabilities are, or would become, due and payable by a class of taxpayers (whether or not the liabilities have already arisen).

- (2B) If the Commissioner does so, that time is varied accordingly.

Note: General interest charge and any other relevant penalties, if applicable for any unpaid amounts of the liabilities, will begin to accrue from the time as varied. See, for example, paragraph 5-15(a) of the Income Tax Assessment Act 1997.

- (2C) A notice published under subsection (2A) is not a legislative instrument.

Deferral does not affect time for giving form

- (3) A deferral under this section does not defer the time for giving an *approved form to the Commissioner.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

PS LA 2011/15 - Lodgment obligations, due dates and deferrals

 This cover sheet is provided for information only. It does not form part of *PS LA 2011/15 - Lodgment obligations, due dates and deferrals*

 This document has changed over time. This version was published on *20 May 2011*

Other obligations

131. With one exception, where a person⁹⁰ gives a TFN declaration to a payer, this must be lodged with the Commissioner within 14 days of the declaration being made.⁹¹ The exception is where the payer is a labour hire firm and the payee has not commenced work.
132. For each financial year, investment bodies must give the Commissioner a written report in relation to all investments in the investment body (Annual Investment Income Report). The report must be lodged within four months after the end of the financial year; that is, 31 October following a financial year ending 30 June.⁹²
133. An obligation to lodge a Petroleum Resource Rent Tax annual return arises where a person derives assessable receipts in relation to a petroleum project.⁹³ The due date for lodgment of an annual return is 60 days after the end of the year of tax in which a person derives the assessable receipts for financial years commencing on or after 1 July 2006⁹⁴ and 42 days after the end of the year of tax for previous years.

Elections

134. Eligible entities may elect to pay PAYG instalments annually. Entities must make an election to report annually by the date on which the first quarterly instalment would otherwise be due⁹⁵ – generally 28 October.
135. Eligible entities will be able to elect to pay GST by instalments. This election generally must be made on or before 28 October of the financial year to which it relates.⁹⁶ The election is usually made on the first quarterly activity statement in the income year (or the first quarterly activity statement issued after eligibility criteria are met).
136. Those entities that are eligible to report and pay, or claim a refund of, GST annually (that is, elect annual tax periods) must make an election by the due date. Annual GST tax period elections are generally due:⁹⁷
 - for quarterly reporters, on or before 28 October in the financial year to which it relates, or
 - for monthly reporters, on or before 21 August in the financial year.
137. New GST registrants will be allowed up to six months from the date of effect of their GST registration to elect the annual GST option if this is later than the dates above.
138. The Commissioner may accept elections after the due date in certain circumstances.

Deferring lodgment obligations

139. At times, entities may experience circumstances that prevent them from lodging by the due date. The law generally allows the Commissioner to defer the time for lodgment of an approved form and a prescribed form.

⁹⁰ Section 202A of the ITAA 1936.

⁹¹ Section 202CD of the ITAA 1936.

⁹² Sub-regulation 56(3) of the *Income Tax Regulations 1936*.

⁹³ Section 59 of the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA).

⁹⁴ Section 82 of the PRRTAA.

⁹⁵ Subsection 45-140(2).

⁹⁶ Section 162-25 of the GST Act.

⁹⁷ Section 151-20 of the GST Act.

140. Subsection 388-55(1) provides the Commissioner with the discretionary power to defer the time within which an approved form is to be given to the Commissioner or another entity.
141. The existence of this discretion does not mean that the entity has an entitlement to it being exercised, but it does enable the time for lodgment to be deferred where warranted.
142. The Commissioner will generally grant a deferral where it is fair and reasonable to do so having taken into account all of the material facts. This approach seeks to achieve a balance between the Commissioner's obligation to administer tax law consistently and to do so fairly having regard to the relevant circumstances.
143. The purpose of deferring the due date for lodgment is to facilitate the lodgment of forms by entities (or their representatives) that are unable to be lodged by the due date but have the ability or potential to lodge at a particular time in the future. Deferring the due date for lodgment provides a further period of time in which to lodge without incurring an FTL penalty or other administrative penalties and provides the Commissioner with an alternative to undertaking further compliance action.
144. A deferral of time to lodge does not defer the time for payment.⁹⁸ However, the Commissioner does have power under a separate provision to defer the time for payment of a tax-related debt.⁹⁹ Refer to PS LA 2011/14 General debt collection powers and principles.
145. Where possible, a lodgment deferral request should be made before the lodgment due date. A request may be made by telephone, but in some cases it may be necessary to apply in writing to assist the Commissioner to make a more informed decision. Requests by registered agents will generally need to be in writing. The preferred method for receiving deferral requests made by registered agents is through the Tax Agent Portal or the BAS Agent Portal.
146. In any request for a deferral of the due date to lodge a form, an entity or the entity's representative will need to:
 - provide details of the particular circumstances that make them unable to lodge on time
 - propose a deferred date for lodgment, and
 - give an assurance that future obligations will be met on time once the stated circumstances are resolved.
147. In determining whether it is fair and reasonable to grant a deferral the Commissioner will consider:
 - the reason why the entity or their representative is unable to lodge on time
 - the value of the information contained in the form
 - the size and structure of the entity (large corporate entities are more likely to have the ability to overcome circumstances that might otherwise adversely affect their ability to lodge by the due date)
 - the risk to revenue

⁹⁸ Subsection 388-55(2).

⁹⁹ Section 255-10.

- the entity's compliance history as a whole (that is lodgment of taxation returns, activity statements and other forms, payment of amounts on time and previous dealings with the Commissioner, to gain a view of the entity's level of compliance)
 - the length of time needed to lodge the form (a deferral will usually be granted where an entity has good compliance history and requests a short period of additional time to lodge a form), and
 - any other relevant information.
148. Each request will be considered on its merits and the deferred due date will be determined having regard to the particular circumstances of the entity.
149. If a lodgment deferral is granted it is done so on a short term basis to allow time to overcome problems preventing the lodgement of the relevant form. Lodgment deferrals will not be extended on a permanent basis.

Exceptional or unforeseen circumstances

150. The Commissioner will generally consider it fair and reasonable to grant a deferral where the inability to lodge by the due date is reasonably attributed to exceptional or unforeseen circumstances, such as:
- natural disasters (flood, fire, drought, cyclones, earthquake and similar events) or other disasters or events that may have, or have had, a significant impact on an entity, region or particular industry or grouping of entities
 - the serious illness or death of the individual or their representative
 - impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
 - the advanced age or the youth of an individual, the serious illness or death of a family member or a problem due to language difficulties.
151. A deferral can be granted even where the circumstances leading to their inability to lodge on time continue to be beyond the entity's control so that they may not be able to meet future obligations on time. For example, where arm's length partners or beneficiaries of a partnership or trust cannot influence the preparation timeframe of the main return.
152. The fact that an entity may have a poor lodgment compliance history should not prevent granting a request for a deferral of time to lodge, where the inability to lodge was caused by circumstances beyond their control or if it would be otherwise fair and reasonable to grant the deferral.

Other circumstances

153. In circumstances such as an individual being overseas or away from home the individual should, where possible, make arrangements to deal with their taxation affairs either before or during their absence. Where an individual is absent at the time of normal bulk activity statement generation, it may be possible to generate an activity statement in advance so that the individual can meet lodgment and payment obligations on time.
154. If an entity presents a lodgment deferral proposal that is either unacceptable or has some aspects that are unacceptable to the Commissioner, a more suitable arrangement may be negotiated.

155. Where fraudulent alterations made by an entity's representative without the authority of the entity are detected in a form already lodged, the Commissioner will generally advise the entity of the requirement to lodge a fresh form. The due date for lodgment of this form will be deferred for 30 days from the date of the advice from the Commissioner. A longer deferral period may be granted, if requested, depending on the entity's circumstances.

Collective deferrals

156. Deferrals may be granted to a class of entities affected by a common event such as bushfire or delayed legislation. Where the Commissioner can reasonably assume that a common event has sufficiently impacted on all of a defined population, a deferral may be granted without individual applications being made by the entities involved. For example, where industrial instruments prevent employees of schools and associated bodies from working over the Christmas holiday shutdown period, deferrals may be granted to all entities affected in this way.

New legislative measures

157. On occasions, the Australian Government may announce new legislative measures that will have retrospective application once enabling legislation is enacted. The general approach of the Commissioner to administering retrospective changes is to apply the existing law until the proposed changes are enacted. The Commissioner cannot insist on the application of a proposed law that has the effect of increasing entities' liabilities or of paying money to entities where there is no legal basis. However, the tax law allows the Commissioner to accept returns as lodged. PS LA 2004/6 Tax Office role in providing information or advice on the potential application of announced changes to the tax law, or where legislative change is contemplated but not announced, discusses the limited situations in which the Commissioner may advise entities that they can satisfy their obligations by anticipating the effects of a proposed legislative change. These decisions are not taken lightly and must be defensible having regard to the *Financial Management and Accountability Act 1997*.
158. In limited circumstances, it may be appropriate to grant a general deferral of the due date for lodgment. Generally, however, the fact that a new legislative measure will have retrospective application but has not been enacted will not be sufficient for a deferral of the due date for lodgment.

Labour hire firms

159. Labour hire firms and recruitment agencies acting in the capacity of a labour hire firm, are given a deferral for lodgment of TFN declarations. These firms are required to forward TFN declarations to the Commissioner within 14 days from the commencement of the relationship, that is, from when the payee actually commences working for the payer (the labour hire firm), and not from the date the payee has made the declaration. This is because the labour hire firm will usually have the payee complete a TFN declaration at the time of registering with the labour hire firm (for convenience only), but the payee may not commence a working relationship until a substantial time later, if at all.



Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

made under subsection 20(1) of the

Coronavirus Economic Response Package (Payments and Benefits) Act 2020

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Division 2—Entitlement based on paid employees

6 Employer's entitlement to jobkeeper payment for an employee

- (1) An entity (the *employer*) is entitled to a jobkeeper payment for an individual for a fortnight if:
 - (a) the fortnight is a jobkeeper fortnight (see subsection (5)); and
 - (b) the employer qualifies for the jobkeeper scheme for the fortnight (see section 7); and
 - (c) the individual is an eligible employee of the employer for the fortnight (see section 9); and
 - (d) the employer has satisfied the wage condition in section 10 in respect of the individual for the fortnight; and
 - (e) the employer has notified the Commissioner in the approved form at or before the time referred to in subsection (2) that the employer elects to participate in the jobkeeper scheme; and
 - (f) the employer has given information about the entitlement for the fortnight, including details of the individual, to the Commissioner in the approved form; and
 - (fa) for a jobkeeper fortnight beginning on or after 28 September 2020—the employer has notified the Commissioner in the approved form as to whether the higher rate or the lower rate applies to the individual (see section 9A); and
 - (g) the employer has not notified the Commissioner in the approved form that the employer no longer wishes to participate in the jobkeeper scheme.

Note 1: Some provisions of the Act also affect whether an entity is entitled to a jobkeeper payment: see section 14 of the Act (about record keeping) and section 19 of the Act (about contrived schemes).

Note 2: The approved form may require further information: see paragraph 388-50(1)(c) in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) For the purposes of paragraph (1)(e), the time at or before which the employer must notify the Commissioner that the employer elects to participate in the jobkeeper scheme is:
 - (a) for an entitlement arising in the first or second jobkeeper fortnight—the end of the second jobkeeper fortnight; or
 - (b) for an entitlement arising in any other fortnight—the end of the fortnight.

Note 1: The Commissioner may defer the time for giving an approved form: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: See section 10A of this instrument for requirements that apply if an employer notifies the Commissioner that the employer elects to participate in the jobkeeper scheme.

Part 2 Jobkeeper payment

Division 2 Entitlement based on paid employees

Section 7

No other entity to be entitled for the same individual for a fortnight

- (3) An entity cannot be entitled under this section to a jobkeeper payment for an individual for a fortnight if another entity is entitled under this section or section 11 or 12A to a jobkeeper payment for the individual for the fortnight.

Employer must notify individual

- (4) An employer must notify an individual in writing within 7 days of giving the Commissioner details of the individual under paragraph (1)(f).
- (4A) An employer must notify an individual in writing within 7 days of giving the Commissioner a notice under paragraph 6(1)(fa) in respect of the individual. The notice must state whether the rate notified to the Commissioner under that paragraph was the higher rate or the lower rate.

Meaning of jobkeeper fortnight

- (5) Each of the following is a *jobkeeper fortnight*:
- the fortnight beginning on 30 March 2020;
 - each subsequent fortnight, ending with the fortnight ending on 28 March 2021.

7 When an entity qualifies for the jobkeeper scheme

- (1) For the purposes of paragraphs 6(1)(b), 11(1)(c) and 12A(1)(c), an entity qualifies for the jobkeeper scheme for a jobkeeper fortnight if:
- on 1 March 2020, the entity:
 - carried on a business in Australia; or
 - was a non-profit body that pursued its objectives principally in Australia; or
 - was a deductible gift recipient that was, or operated, a public fund covered by item 9.1.1 or 9.1.2 of the table in subsection 30-80(1) of the *Income Tax Assessment Act 1997* (international affairs deductible gift recipients); and
 - the entity has satisfied the decline in turnover test at or before the end of the fortnight (see sections 8 and 8A); and
 - for a fortnight beginning on or after 28 September 2020—the entity also satisfies the actual decline in turnover test (see section 8B) for the fortnight.

Note: Qualifying entities must report monthly turnover information to the Commissioner for the duration of the scheme: see section 16.

Exceptions

- (2) However, an entity does *not* qualify for the jobkeeper scheme for a jobkeeper fortnight if:
- an amount of levy under the *Major Bank Levy Act 2017* was imposed for any quarter ending before 1 March 2020 on:

Division 3—Entitlement based on business participation

11 Entity's entitlement to jobkeeper payment for a business participant

- (1) An entity is entitled to a jobkeeper payment for an individual for a fortnight if:
 - (a) the fortnight is a jobkeeper fortnight (see subsection 6(5)); and
 - (b) the entity is not a non-profit body; and
 - (ba) the entity is not the approved provider of an approved child care service; and
 - (c) the entity qualifies for the jobkeeper scheme for the fortnight (see section 7); and
 - (d) the individual is the eligible business participant for the entity for the fortnight (see section 12); and
 - (e) the entity has notified the Commissioner in the approved form at or before the time referred to in subsection (2) that the entity elects to participate in the jobkeeper scheme; and
 - (f) the entity has given information about the entitlement for the fortnight, including details of the individual, to the Commissioner in the approved form; and
 - (fa) for a jobkeeper fortnight beginning on or after 28 September 2020—the entity has notified the Commissioner in the approved form as to whether the higher rate or the lower rate applies to the individual (see section 12AA); and
 - (g) the entity has not notified the Commissioner in the approved form that the entity no longer wishes to participate in the jobkeeper scheme.

Note 1: Some provisions of the Act also affect whether an entity is entitled to a jobkeeper payment: see section 14 of the Act (about record keeping) and section 19 of the Act (about contrived schemes).

Note 2: The approved form may require further information: see paragraph 388-50(1)(c) in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) For the purposes of paragraph (1)(e), the time at or before which the entity must notify the Commissioner that the entity elects to participate in the jobkeeper scheme is:
 - (a) for an entitlement arising in the first or second jobkeeper fortnight—the end of the second jobkeeper fortnight; or
 - (b) for an entitlement arising in another fortnight—the end of the fortnight.

Note: The Commissioner may defer the time for giving an approved form: see section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*.

Only one eligible business participant per entity

- (3) An entity cannot be entitled under this section to a jobkeeper payment for more than one individual (whether for the same fortnight or a different fortnight).

Part 2 Jobkeeper payment

Division 3 Entitlement based on business participation

Section 12

No other entity to be entitled for the same individual for a fortnight

- (4) An entity cannot be entitled under this section to a jobkeeper payment for an individual for a fortnight if another entity is entitled under this section or section 6 or 12A to a jobkeeper payment for the individual for the fortnight.

Entity must notify individual

- (5) Unless the entity is a sole trader, the entity must notify an individual in writing within 7 days of giving the Commissioner details of the individual under paragraph (1)(f).

Note: In the case of a sole trader, the entity and the individual are the same: see item 1 of the table in subsection 12(2).

- (5A) Unless the entity is a sole trader, the entity must notify an individual in writing within 7 days of giving the Commissioner a notice under paragraph 11(1)(fa) in respect of the individual. The notice must state whether the rate notified to the Commissioner under that paragraph was the higher rate or the lower rate.

Integrity rule

- (6) An entity is *not* entitled to a jobkeeper payment under this section unless the entity had an ABN on 12 March 2020 (or a later time allowed by the Commissioner), and the requirement in subsection (7) or (8) is satisfied.

- (7) For the purposes of subsection (6), the requirement in this subsection is satisfied if:

- (a) an amount was included in the entity's assessable income for the 2018-19 income year in relation to it carrying on a business; and
(b) the Commissioner had notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the amount should be so included.

- (8) For the purposes of subsection (6), the requirement in this subsection is satisfied if:

- (a) the entity made a taxable supply in a tax period that applied to it that:
(i) started on or after 1 July 2018; and
(ii) ended before 12 March 2020; and
(b) the Commissioner had notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the entity had made the taxable supply.

- (9) For the purposes of subsection (8), in determining whether the entity made a supply (within the meaning of the GST Act) that is a taxable supply:
- (a) assume that the entity is registered (within the meaning of that Act); and
(b) assume that the supply is neither GST-free (within the meaning of that Act) nor input taxed (within the meaning of that Act); and
(c) for an entity carrying on business solely in the external Territories—assume that the external Territories are part of the indirect tax zone (within the meaning of that Act).

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Appendix E - Explanatory Statement to the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (extract)

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Coronavirus Economic Response Package (Payments and Benefits) Act 2020

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

Subsection 20(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act) provides that the Treasurer may make rules prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 7(1) of the Act provides that the rules may make provision for and in relation to one or more kinds of payments by the Commonwealth to an entity in respect of a time that occurs during the prescribed period (the period between 1 March 2020 and 31 December 2020), and the establishment of a scheme providing for matters relating to one or more of those payments, and matters relating to such a scheme. Any payments must relate to the prescribed period – the period from 1 March 2020 to 31 December 2020. However, payments under the JobKeeper scheme can only be made after the commencement of both the Act and the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) that provide for payments – earlier events within the period may affect entitlement to a payment but all payments must be made prospectively.

The object of the Act is to provide financial support to entities to assist with the impact of the Coronavirus known as COVID-19. In particular, the Act establishes a framework for the Treasurer to make rules about one or more kinds of payments to an entity in respect of a prescribed period.

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 Rules 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 Rules specify 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. The payment provides the equivalent of approximately 70 per cent of the national median wage. 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.

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.

Under section 388-55 in Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner may also defer the timing for giving information in an approved form. Employers that have difficulty meeting the timing requirements may seek such a deferral from the Commissioner.

The employer has not withdrawn their election to participate

An employer is not entitled to the JobKeeper payment if they notify the Commissioner that they no longer wish to participate in the JobKeeper scheme. This notification must be made in the form approved by the Commissioner. An employer does not need to consult with or obtain the consent of its eligible employees if it no longer wishes to participate in the JobKeeper scheme.

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. However, where there is a change of circumstances – for example, a person who was an eligible employee for the previous JobKeeper fortnight is no longer an eligible employee for the relevant JobKeeper fortnight – the employer must notify the Commissioner of this in the approved form before the end of the relevant JobKeeper fortnight to satisfy the notification requirements for entitlement to a payment for that fortnight.

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.

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Appendix F - Email from ATO to IGTO dated 5 February 2021 (redacted)



Australian Government
Australian Taxation Office

IGT reference number: [REDACTED]
ATO reference number: [REDACTED]

05 February 2021

Dear Robyn,

With reference to your referral of IGTO complaint reference number: [REDACTED] please consider the following information.

1. Provide written reasons for the decision that was made, including the criteria for the exercise of the discretion and what considerations were taken into account

Based on the circumstances the BAS agent provided to explain why the client did not register for JobKeeper in an earlier month, the client did not meet the exceptional circumstances for the deferral request to be granted. The exceptional circumstances for deferral requests are:

- natural disasters – how was the client prevented from enrolling on time or contacting the ATO earlier
- impeded access to records – how was access impeded and/or what about the impeded access prevented the client from enrolling on time or contacting the ATO earlier
- serious illness or death – when did the illness happen and/or what prevented the client or their representative from contacting the ATO for assistance
- system issues – specifying the nature and duration of the problem, what had been done to resolve the issue and/or when they first contacted the ATO to seek assistance

Initial contact from the BAS agent [REDACTED] was made on 7 August 2020, refer to activity ID: [REDACTED]. The Call Centre representative applied the exceptional circumstances to the reasons the BAS agent provided why the client did not register for JobKeeper at an earlier date. This resulted in the deferral request not being granted.

The BAS agent subsequently lodged a complaint.

During the complaint, the exceptional circumstances applied to the client's situation were provided to the BAS agent on 12 August 2020. Refer to complaint activity ID [REDACTED] created on 10 August 2020, see Note ID: [REDACTED]

2. Provide an explanation of what (if any) review rights are available to the complainant's client.

If the client does not agree with the decision to not grant the deferral request, the client can apply to the Federal Court or the Federal Circuit Court of Australia for a review under the Administrative Decisions (Judicial Review) Act 1977. The application must be lodged within 28 days. Clients can be directed to our website www.ato.gov.au and advised to search for "Federal Court". Or you can input into the search field webpage reference "QC 33829".

3. Did a change to deferral request policy occur?

At the start of August, the deferral request policy for JobKeeper had changed. We ceasing providing extended dates for clients to lodge their deferral requests. The exceptional circumstances that were considered were tightened. The exceptional circumstances stated above are the ones that have been applied since August.

If you have any questions or would like to discuss this matter further, please do not hesitate to contact [REDACTED].

Regards

[REDACTED]
ATO Complaints and External Review
[REDACTED]

**JobKeeper Practice Note 2020/002**

ATO practice statements should be the primary reference and basis for decisions. However, in some cases practice notes may be the only source of information. For example, where a practice note outlines policy which has not yet been included in a practice statement, or where the guidance is of a non-tax technical nature.

The practice note system has been adopted across the ATO to deliver business line-specific policies and practices. They have become an important component of the ATO governance framework, as outlined in the [ATO Policy Framework and Requirements](#).

ATO personnel, including non-ongoing personnel and relevant contractors, must comply with this practice note unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.¹

This practice note is intended as a guide for ATO staff only and may not be relied upon by taxpayers if released publicly.

Extension of time request to lodge approved forms

1. Background

The Government's JobKeeper payment scheme supports businesses and their employees who have been significantly affected by the coronavirus to help keep more Australians in jobs.

Under the JobKeeper payment scheme, businesses impacted by the coronavirus outbreak are able to access a subsidy from the government to assist with the cost of wages paid to their employees. Affected employers, businesses and registered religious institutions, are able to claim a fortnightly JobKeeper payment per eligible employee, per eligible religious practitioner, or for one eligible business participant. These payments can be claimed for fortnights from 30 March 2020 to the end of the JobKeeper scheme.

To be eligible for the JobKeeper payment, an employer must provide the Commissioner with certain required information in the approved form by a due date. Sections 6(1)(e) and 11(1)(e) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) require employers or business participants to provide to the Commissioner an election to participate. Sections 6(2) and 11(2) provide the deadline for that election to be given. Generally, this is at or before the end of the first fortnight for which the employer is electing to claim, however the Commissioner has extended the due dates for enrolment for the JobKeeper fortnights. See Attachment A for a list of the approved deferred due dates for enrolment in order to claim for the JobKeeper fortnights and any further deferral will be from these due dates.

This practice note is limited in scope to deferral of the approved form for JobKeeper enrolment and does not cover the deferment of other JobKeeper dates (such as the date by which the wage condition in section 6(1)(d) of the Rules must be satisfied).

2. Issue

¹ Service Delivery Practice Note 2003-001.

This practice note provides guidance to staff on how to respond to enquiries from businesses requesting that the Commissioner allow an extension of time to lodge an approved form for the purposes of JobKeeper participation.

3. Policy

The coronavirus outbreak is a special circumstance which impacts businesses. In certain limited circumstances, it may be reasonable for the Commissioner to exercise discretions to allow approved forms to be lodged after the due date to facilitate claiming of the JobKeeper payments.

4. Practice

Section 388-55 of Schedule 1 to the *Taxation Administration Act 1953* provides the Commissioner with the power to defer the time for the giving of an approved form. The Commissioner can defer lodgment where it is fair and reasonable to do so, taking into account all the relevant circumstances².

Deferment will only be available in exceptional circumstances for the following reasons:

- the Commissioner has already put in place broad deferrals, giving taxpayers more time to submit JobKeeper approved forms;
- the purposes of the JobKeeper approved forms are elections to participate and the satisfying of monthly reporting obligations;
- the scheme is only of a short duration.

Consistent with *PSLA 2011/15: Lodgment obligations, due dates and deferrals*, exceptional circumstances will arise where:

- natural disasters or other disasters or events that may have, or have had, a significant impact on individuals, regions or particular industries;
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter);
- the serious illness or death of a family member, tax professional or critical staff member;
- system issues, either with ATO online services or the entity's business system³.

Such circumstances do not commonly occur and there would be few others that would give rise to a business qualifying for a deferral.

If an entity has missed lodging the approved form for enrolment for specific JobKeeper fortnights for reasons not outlined in this practice note, the Commissioner will not generally exercise his discretion to defer enrolment. If there are additional facts and circumstances that resulted in the entity missing the relevant enrolment due date and warrant further consideration, the request for deferral will need to be escalated and considered in a decision of whether it is appropriate for the Commissioner to grant a deferral of the due date to lodge the approved form outside the reasons outlined above. If an employer has met the payment conditions for the relevant JobKeeper fortnights for which they are seeking a payment under the JobKeeper scheme, the request for deferral can be considered.

² Paragraph 45 of PSLA 2011/15: Lodgment obligations, due dates and deferrals

³ Paragraph 48

Any deferral of the enrolment date for an employer is so that they are able to claim for JobKeeper fortnights that have occurred in the previous month. Employers who request a deferral will need to confirm that they have met the minimum payment conditions⁴ for all their eligible employees for the relevant JobKeeper fortnights before a deferral is granted, otherwise it may facilitate claims for JobKeeper payments which they will not be entitled to claim⁵.

5. Time for making the application

Applications for deferment should ordinarily be made before the due date. However, we accept that the coronavirus outbreak is a special circumstance and many applications will not be made by that deadline. Therefore, it is permissible for applications to be made after the due date. Regardless of when the deferral application is made, the agreed deferral period begins from the first business day after the due date.

6. Staff authorised to grant the lodgment deferral

There are limits which apply to the authorisation of ATO officers making deferral decisions. Additionally, the JobKeeper Payment Program is a short-term wage subsidy scheme that requires participants to provide information on a monthly basis to the Commissioner. Any deferral should only be for a short amount of time unless there are exceptional circumstances. The limits for deferral of JobKeeper approved forms are:

Level	APS 1	APS 2	APS 3	APS 4	APS 5	APS 6	EL 1	EL 2	SES
Maximum Adjustment Period:	14 business days	No Lt							

Related documents

[PSLA 2011/15: Lodgment obligations, due dates and deferrals](#)

Need help?

If you are unsure about the application of this practice note, you should seek advice from your team leader or technical adviser in the first instance. If they are unable to provide resolution themselves, they can seek technical support from Economic Stimulus Branch – Advice & Guidance

([REDACTED] [@ato.gov.au\).](mailto:@ato.gov.au)

Contact officer:	[REDACTED]
Phone:	(02) [REDACTED]
Date first issued:	11 June 2020

⁴ Employers must pay all their eligible employees at least the JobKeeper amount (gross salary inclusive of PAYG withholding) per JobKeeper fortnight.

⁵ Employers can only claim for eligible employees where they have met the minimum payment requirements under the wage conditions.

Date of effect:	11 June 2020
Date of next review:	N/A
Issued under the authority of:	[REDACTED] Assistant Commissioner

Version control

Version	Date	Description of Change		
1.0	11 June 2020	New Practice Note		
1.1	3 September 2020	Minor amendments and extension to maximum adjustment period for staff making deferral decisions.		
1.2	1 October 2020	Update to enrolment due date for FN 20.		
1.3	16 October 2020	Update internal mailbox.		

Modified Date: 16 October 2020

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Key Dates for Job Keeper Enrolments & declarations

JobKeeper Fortnight	Period relating to each JobKeeper Fortnight	Claim Month	Enrolment (Step 1)
1	30 March – 12 April	April	11 June
2	13 April – 26 April		
3	27 April – 10 May	May	11 June
4	11 May – 24 May		
5	25 May – 7 June	June	
6	8 June – 21 June		30 June
7	22 June – 5 July	July	
8	6 July – 19 July		31 July
9	20 July – 2 August	August	
10	3 August – 16 August		31 August
11	17 August – 30 August		
12	31 August – 13 September	September	
13	14 September – 27 September		30 September
14	28 September – 11 October	October	31 October
15	12 October – 25 October		
16	26 October – 8 November	November	30 November
17	9 November – 22 November		
18	23 November – 6 December	December	31 December (3 January for FN 20)
19	7 December – 20 December		
20	21 December – 3 January		
21	4 January – 17 January	January	31 January
22	18 January – 31 January		
23	1 February – 14 February	February	28 February
24	15 February – 28 February		
25	1 March – 14 March	March	31 March
26	15 March – 28 March		

This document is to be used in conjunction with the PSLA 2011/15 and the associated practice note 2020/002

Consistent with *PSLA 2011/15: Lodgment obligations, due dates and deferrals*, exceptional circumstances will arise where:

- natural disasters or other disasters or events that may have, or have had, a significant impact on individuals, regions or particular industries;
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter);
- the serious illness or death of a family member, tax professional or critical staff member;
- system issues, either with ATO online services or the entity's business system.

Impeded access to records due to COVID lockdown in VIC

July and August - impeded access to records – COVID lockdown VIC

Prior months – case by case if they met one of the Four exceptional circumstances outlined in SMART at an earlier date

- **Service Delivery will consider COVID as an acceptable reason to grant a lodgment deferral for July and August, for clients living in Victoria under lockdown where the client advises that for only these months they were unable to see their agent or to gather required information to make the declaration.**
- **This is only exceptional if they needed to see their agent in order to provide physical records relating to JK eligibility/enrolment. Where calling or emailing the agent would be reasonable alternative discretion would not be granted.**
- If reason given is COVID alone, deferral for prior months will not be considered. There must be a circumstance that impacted the client being able to enrol on time. For example, because of the lockdown I am unable to access my financial data stored on my business computer, my business premises is outside the 5km radius I am allowed to travel and I don't have remote access from my home.

Where an ATO staff member has taken incorrect action on an account or provided incorrect information, in the below scenarios we would accept a lodgment deferral.

- If an ATO staff member incorrectly keyed a monthly form and the client has received any JobKeeper funds this is considered an ATO error. Where a prior month has been incorrectly keyed, the client remains enrolled for all later months - no lodgment deferral is required however, the client is still required to satisfy all the eligibility criteria each month to be entitled to receive JobKeeper payment.
- Where an ATO staff member has incorrectly advised a client they were not eligible for Job Keeper and the client has subsequently been found eligible and wants to backdate their JobKeeper application this an appropriate reason to allow late enrolment back to the date of the incorrect advice. Evidence of the previous advice would need to be confirmed. For example, client calls ATO in April and is told they are not eligible (case note recorded) and do not enrol. Later the client visits a TAG who helps them determine they are eligible; the client enrolls and wishes to backdate. The case note provides evidence of the previous advice and ECP tool should be used to confirm eligibility (unless confirmed by subsequent ATO advice).

Advice provided where a deferral should not be granted.

- Client/Agent advises they were waiting for turnover to dip before applying
- Client/Agent was waiting until they worked out actual turnover to apply.
- **The JobKeeper rules allow clients to make a projection of turnover for the purpose of the decline in turnover test and as such clients are not obliged to wait for actual turnover figures to enrol – our public facing online reference material, and the portals, reflect this.**
- From September 28th, actual turnover is required.

Tax Agent related reasons for not lodging on time that should not be considered for a deferral:

- Changing from one agent to another – unless the client has evidence of being unable to obtain records for the new agent evidenced by change in TAN associated to client record (in which case would be impeded access to records)
- Agent provided incorrect advice that client was not eligible
- New agent or bookkeeper has determined client was eligible however no previous contact with the ATO
- Client did not know they were eligible until they saw their agent – current month only
- Agent has just finished tidying up client books and found client was eligible – current month only
- Clients agent passed away **but** client did not attempt to contact ATO/significant time passed until client found another agent. For example, TAG passed away in March and client contacted ATO in September wanting late enrolment back to April.
- Agent advised client was stuck overseas and backdate until April –if overseas and an EBP they would not be actively engaged in business and not eligible.
- Agents with new clients due to issues with previous agent – current month only

Reasonable basis to exercise discretion outside of the 4 limited exception circumstances

Assessed case by case as there is scope in the PSLA to approve outside of the 4 reasons listed in SMART/the practice note *where the Commissioner considers it reasonable to do so*. There are very few circumstances that would warrant exercise of the discretion outside of the 4 in the practice note.

These include -

- Domestic violence – case by case.
- Evidence of ATO error/incorrect advice
- Client was waiting for ATO to make a section 11 discretion decision (for certain EBPs who require section 11 discretion to be eligible, they are not able to enrol until we make a decision. When we do exercise s11 discretion, they should be allowed to enrol back to the fortnight they first requested the s11 discretion).

Additional Guidance

Serious Illness

How far is the scope? Does it need to be a direct family member?

Deferral to be assessed on all of the circumstances.

Under the exceptional circumstance Serious Illness:

Where a client advises death of a family member OR a person at a tax agent office, we will accept these on face value for all of the months being requested. This is so we are ensuring our clients are being looked after and also supporting our commitment to the staff experience .

Mental Illness and affected by Cancer – these requests also fall into the above criteria.

Natural Disaster

Siebel indicator is enough to evidence impacted by natural disaster but there needs to be information around how the natural disaster caused them not to enrol in earlier months – ie why did they not apply earlier. COVID alone is not sufficient.

System Issues

Not sufficient if the client/agent had ongoing issues (eg patchy nbn) from April with no contact to the ATO until months later (asking in September for enrolment back to April). The system issue needs to be proximate to the enrolment due date and should also be proximate to the client contacting the ATO.

Where the client/agent advises system issues and there is evidence of prior contact to the ATO then it can be considered.

Impeded access to records

Going through a divorce and ex-partner denied access to records – not acceptable unless the client can provide evidence.

Overseas and could not access records – to be assessed on a case by case basis however an ABP needs to be actively engaged in the business each fortnight. If they are overseas, they would not be.

JobKeeper form deferral requests

Background

This page provides:

- instructions when assisting clients who have not enrolled for JobKeeper by the legislated or extended due date
- the conditions a deferral may be granted, and
- the process to follow based on Authorisations to grant the deferral.

! If you receive an escalation as part of the **Plus one** team, establish PORSO if not already completed and proceed to **Eligibility for deferral**.

! Deferral consideration is only required if the client has **not** lodged the enrolment form by the due date for the fortnights being claimed.

There is no requirement to consider a deferral for lodgment of the monthly declaration. However, clients should be encouraged to lodge their monthly declaration by the due date so there are no delays to payment of JobKeeper amounts.

Recent updates

04/05/2021	Added link in Scenarios to Apted FFC decision page content. Removed 'impeded access to records' from eligibility for deferral.	Case Id: [REDACTED]
01/05/2021	<p>Updates:</p> <ul style="list-style-type: none"> • Removed 'system issues' as a circumstance at step 1 under 'Eligibility for deferral' heading • Changed 'Assigned To:' to ENTERPRISE_Q, under 'Actioning deferral requests (Plus One team only)' heading, step 8 and step 10. 	Case Id: [REDACTED]
21/04/2021	<p>Added:</p> <ul style="list-style-type: none"> • Warning Alert under 'Eligibility for deferral' heading, to advise Plus One team only • (Plus One team only) as a part of 'Actioning deferral requests' heading. 	Case Id: [REDACTED]

Checks

PORO

Establish [PORO](#).

Confirm client ineligible to enrol

Step	Action
1	Open ECP .
2	Type the client's <ul style="list-style-type: none"> • TFN • ABN, or • Name.
3	Set up the JobKeeper enrolment exclusion tool .
4	Determine if the client meets any of the exclusion checks. If there are no exclusions, ECP will display 'There are no details for this entity'.

To claim JobKeeper payments, an entity must satisfy certain eligibility requirements. As a sole trader, you are an eligible entity if:

- on 1 March 2020, you carried on a business in Australia
- you satisfy the relevant decline in turnover tests
- you satisfied certain conditions at 12 March 2020, being
 - you had an ABN on 12 March 2020, and
 - you had lodged, on or before 12 March 2020, at least one of
 - a 2018–19 income tax return showing an amount included in your assessable income for carrying on a business, or
 - an activity statement or GST return for any tax period that started after 1 July 2018 and ended before 12 March 2020 showing you made a taxable, GST-free or input-taxed sale.

For additional eligibility information, refer to the **Employers** section of the [JobKeeper Payment](#) page for information about eligibility.

Enrolment status

Determine if the client has lodged an enrolment form (JobKeeper FID form), by the due date, for the month they are attempting to claim. Refer to [JobKeeper dates and Authorisations](#).

If **yes**, no deferral is required. Assist the client by encouraging them to self serve or complete the relevant forms for them, if they are unable to. Refer to [JobKeeper payment](#) page.

Wage condition has been met

Ensure the client is eligible for JobKeeper before considering a deferral. Determine if the client is claiming as an employer or an eligible business participant. If the client is an:

- employer, confirm the client has paid their eligible employees a minimum of:

- \$1500 per fortnight, for fortnights **prior** to 28 September 2020
- the relevant [payment tier](#) amount for JobKeeper extension periods
- If:
 - **yes**, proceed to **Active compliance case**
 - **no**, the business is not eligible for the deferral. Discuss eligibility requirements for submitting for future months. Refer to [COVID-19 – JobKeeper Payment](#) for the relevant information to assist the client
- eligible business participant (including a sole trader), proceed to **Active compliance case**

Active compliance case

Before making any changes to JobKeeper forms, go to [Further validation on JobKeeper forms](#) to check if an active Compliance Activity exists. No deferral should be granted if there is an open compliance activity on the account or where the client has been deemed ineligible for JobKeeper.

Scenarios

Apted - Full Federal Court decision

Refer to [Apted decision - Jobkeeper payment](#) for any client enquiries regarding this matter and their eligibility for JobKeeper.

Procedure Steps

Before you begin

If the client...	Then...
wants to enrol for JobKeeper	<p>advise the client</p> <ul style="list-style-type: none"> they can lodge the enrolment form online any enrolment lodged today will allow them to claim the JobKeeper subsidy for future periods if they have confirmed their actual decline in turnover and are eligible for the JobKeeper extension no deferral is required.
has already attempted to <ul style="list-style-type: none"> enrol for JobKeeper, and claim for prior months 	<ul style="list-style-type: none"> check any Siebel activities with the classification: <ul style="list-style-type: none"> Capability: Operations Category: Processing Type: JobKeeper deferral review the notes on the activity to determine if more information has been requested, or if the client has already been advised they are not eligible.
wants to enrol for JobKeeper to claim for a prior month where the enrolment due date has passed	<ul style="list-style-type: none"> warm transfer the client to the Plus one team on x92211 who will continue with the client's eligibility for deferral if unable to transfer within 2 minutes, refer to Plus one team on JobKeeper Payment to escalate via NPE.
wants to enrol for a prior month, where there is an existing deferral request	<ul style="list-style-type: none"> ! Do not cold transfer the client to the Plus one team.
! A deferral does not need to be considered if the client is amending a form that has already been processed.	

Eligibility for deferral

! Eligibility should **only** be confirmed by the Plus One team.

Step	Action
1	<p>Determine if any of the following exceptional circumstances apply to the client:</p> <ul style="list-style-type: none"> natural disasters: how was the client prevented from enrolling on time or contacting the ATO earlier <p>! COVID-19 is not a natural disaster on its own. It is a circumstance that led to the implementation of JobKeeper.</p>

	<ul style="list-style-type: none"> • serious illness or death: when did the illness happen and/or what prevented the client or their representative from contacting the ATO for assistance. <p>!Determine if the information provided by the client clearly meets the exceptional circumstance to consider a deferral request.</p> <p>Clients must advise of how the circumstance impeded them from enrolling on time.</p> <p>If one of the reasons above is not provided, with sufficient information to support the request, the deferral may not meet the exceptional circumstances and cannot be considered for approval.</p> <p>If:</p> <ul style="list-style-type: none"> • yes, <ul style="list-style-type: none"> ○ add a note to the inbound phone activity including eligibility has been met for JobKeeper or JobKeeper extension (or both) ○ update the activity with the following classifications <ul style="list-style-type: none"> ▪ Capability: Operations ▪ Category: Processing ▪ Type: Jobkeeper deferral ○ complete template JobKeeper deferral, stating the period/s that require a deferral, and detailing how the client has met the deferral criteria <p>!The note must state one of the reasons for deferral listed above. Specifically, your note must primarily state the circumstance and the reason supported by how the client was prevented from enrolling.</p> <ul style="list-style-type: none"> ○ proceed to step 2 • no, go to step 3 in this table.
2	<p>Refer to JobKeeper dates and Authorisations on this page, to determine your authorisation to approve the deferral based on your APS level. When considering your authorisation, the deferral period starts from the next business day after the due date, not from the call date.</p> <p>Are you authorised to approve the deferral? If:</p> <ul style="list-style-type: none"> • yes, a deferral can be provided; <ul style="list-style-type: none"> ○ assist the client to enrol and complete the relevant forms ○ create a JobKeeper application form in ICP (for periods prior to 28 September 2020) ○ create an Employer eligibility form in ICP ○ create an Employee eligibility form in ICP to identify their employees ○ create a JobKeeper declaration form in ICP <p>There is no separate deferral form.</p> <ul style="list-style-type: none"> • no, go to step 4 in this table.
3	Advise the client no deferral is available.

	<p>Assist the client to enrol but do not create a JobKeeper application form in ICP.</p> <p>Discuss eligibility requirements for submitting for future months. Refer to COVID-19 – JobKeeper Payment for the relevant information to assist the client.</p> <p>This is the end of the procedure.</p> <p>! If the client advises they received incorrect advice from the ATO, which led to the late enrolment, check the client account for evidence of the previous interactions. Where client notes indicate incorrect advice was provided, seek advice from your support officer. If the client disagrees with the decision to reject the deferral, initiate the following discussion with the client.</p> <p>"Today we have determined that you don't have exceptional circumstances that would allow us to accept your late enrolment form.</p> <p>This is not a decision about your eligibility for JobKeeper payment and/or if you have assessed that you are eligible for JobKeeper payment in a fortnight going forward.</p> <p>If you don't agree with our decision today not to accept your late enrolment form for prior fortnights, you can apply to the Federal Court or the Federal Circuit Court of Australia for a review under the Administrative Decisions (Judicial Review) Act 1977."</p> <p>This application must be lodged within 28 days. You can find out more about this by searching Federal Court on ato.gov.au.</p>
4	<p>Advise the client:</p> <ul style="list-style-type: none"> • you can assist them with submitting the required forms • approval will be required before the form can be finalised • if the deferral is <ul style="list-style-type: none"> ◦ not approved, they will be notified ◦ approved, the client will not hear from us, and no further action is required. <p>Assist the client to enrol:</p> <ul style="list-style-type: none"> • create a JobKeeper application form in ICP (for periods prior to 28 September 2020) • create an Employer eligibility form in ICP • create an Employee eligibility form in ICP to identify their employees • create a JobKeeper declaration form in ICP <p>For periods prior to 28 September 2020, do not submit the Application form, but save and suspend it.</p> <p>For JobKeeper extension periods, submit the Employer eligibility form and the Employee form, but save and suspend the Declaration.</p> <p>Do not close the Inbound activity.</p> <p>Make sure to follow the steps on that page, as different actions are required for forms that need deferral approval.</p>

JobKeeper dates and Authorisations

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Refer to the table below for the relevant lodgment dates, and the Authorisations that apply, when considering deferral for clients lodging after the due date.

If any of the below dates fall on a public holiday, the next business day will be the due date.

Definitions

Step 1: JobKeeper enrolment form (JobKeeper FID form)

Claim month	Enrolment due date	Enrolment deferral authorisations
April 2020 Fortnight 1 period: 30 March - 12 April Fortnight 2 period: 13 April - 26 April	31 May (extended to 11 June)	APS 1-6 (including Outsource): Up to 25 June
May 2020 Fortnight 3 period: 27 April - 10 May Fortnight 4 period: 11 May - 24 May	31 May (extended to 11 June)	APS 1-6 (including Outsource): Up to 25 June
June 2020 Fortnight 5 period: 25 May - 7 June Fortnight 6 period: 8 June - 21 June	30 June	APS 1-6 (including Outsource): Up to 7 July
July 2020 Fortnight 7 period: 22 June - 5 July Fortnight 8 period: 6 July - 19 July	31 July	APS 1-6 (including Outsource): Up to 7 August
August 2020 Fortnight 9 period: 20 July - 2 August Fortnight 10 period: 3 August - 16 August Fortnight 11 period: 17 August - 30 August	31 August	APS 1-6 (including Outsource): Up to 18 September
September 2020 Fortnight 12 period: 31 August - 13 September Fortnight 13 period: 14 September - 27 September	30 September	APS 1-6 (including Outsource): Up to 20 October
October 2020 Fortnight 14 period: 28 September – 11 October Fortnight 15 period: 12 October – 25 October	31 October	APS 1-6 (including Outsource): Up to 19 November
November 2020 Fortnight 16 period: 26 October – 8 November Fortnight 17 period: 9 November – 22 November	30 November	APS 1-6 (including Outsource): Up to 18 December

December 2020		
Fortnight 18 period: 23 November – 6 December Fortnight 19 period: 7 December – 20 December Fortnight 20 period: 21 December – 3 January	Fortnights 18 and 19 , have a due date of 31 December. Fortnight 20 , has a due date of the 3 January.	APS 1-6 (including Outsource): Up to 21 January
January 2021		APS 1-6 (including Outsource): Up to 18 February
Fortnight 21 period: 4 January – 17 January Fortnight 22 period: 18 January – 31 January	31 January	
February 2021		APS 1-6 (including Outsource): Up to 18 March
Fortnight 23 period: 1 February – 14 February Fortnight 24 period: 15 February – 28 February	28 February	
March 2021		APS 1-6 (including Outsource): Up to 20 April
Fortnight 25 period: 1 March – 14 March Fortnight 26 period: 15 March – 28 March	31 March	

Actioning deferral requests (Plus One team only)

Step	Action
1	Review the Siebel activity Status , If: <ul style="list-style-type: none"> • Approved – proceed to step 2 to action the request • Request for Approval Denied – go to step 8.
2	From the client's Siebel CCV, perform a null query (query, go) and open the activity with the below classifications: <ul style="list-style-type: none"> • Capability: ICP Suspense item • Category: Exception generalist • Type: Approval Required
3	Select the link in the Attachments tab to access the suspended form.
4	Select: <ul style="list-style-type: none"> • Correct suspended form, and • Input reason: FDF validation - 1.
5	Navigate to the Form Confirmation tab and select Submit .
6	Add a note to the suspense activity, and link it to the Inbound phone deferral request via service request if this has not been done previously.

7 Update the status of both activities to **Done**.

This is the end of the procedure.

Check the activity notes to determine action required. If the activity note has:

- **Request for deferral declined** - then the circumstances provided by the client do not meet the exceptional circumstances outlined under 'Eligibility for deferral' on this page. Contact the client and advise their deferred enrolment has not been granted, however they may claim for current and future months if eligible. Ensure you cancel any suspended JobKeeper forms in ICP, and resolve associated Siebel activities after contact. To contact the client, proceed to Step 9
- **Additional information required** – then this deferral request cannot be approved based on limited information provided in the initial escalation. Contact the client and determine if they meet exceptional circumstances outlined under 'Eligibility for deferral' on this page. If the client does not meet these exceptional circumstances, advise their deferral has been declined. Ensure you cancel any suspended JobKeeper forms in ICP which were lodged prior to the enrolment date, and resolve associated Siebel activities.

If the client **does** meet the acceptable circumstances, assign the activity using the following values:

8

- **Capability:** Operations
- **Category:** PROCESSING
- **Type:** JobKeeper Deferral
- **Template:** Attach and complete template **JobKeeper deferral**
- **Assigned To:** ENTERPRISE_Q
- **Description:** Deferral Discretion
- **Status:** For Approval
- Tick the **Escalation Flag**

To contact the client, proceed to Step 9.

! If the additional information required has already been provided, an outbound call is required. Advise the client, their request for deferral has been denied after careful consideration, as they do not meet the exceptional circumstances to grant a deferral.

9 Three contact attempts are required. If client contact is:

- **Unsuccessful** - Update **Call Back Attempts** field and place a review date of 1 business day before assigning the activity as 'Information Pending' in the Enterprise-Q. If after three unsuccessful attempts
 - cancel any suspended ICP forms and close their associated Siebel Activities
 - place a detailed note in the original activity detailing the information you were seeking
 - set the **Status** of any Service Request linked activities to **Done**.
- **Successful** – proceed to step 10.

10

Ensure appropriate call recording warnings and privacy statements are provided, refer to [Outbound protocols](#).

Advise the client their deferral request has been reviewed, and based on the information provided their request to have a deferral granted for late enrolment has been denied. If the client then offers additional information, and **does** meet the exceptional circumstances, assign the activity using the following values:

- **Capability:** Operations
- **Category:** PROCESSING
- **Type:** JobKeeper Deferral
- **Template:** Attach and complete template **JobKeeper deferral**
- **Assigned To:** ENTERPRISE_Q
- **Description:** Deferral Discretion
- **Status:** For Approval
- Tick the **Escalation Flag**.

Discuss their eligibility requirements for submitting for future months, and that they are not already enrolled. The client will need to:

- enrol for the JobKeeper payment
- identify their eligible employees/eligible business participant, and
- make a business monthly declaration.

Refer to [JobKeeper Payment](#) on [ato.gov.au](#) for further information.

If client enrolled prior to 28 September 2020, inform the client that they:

- will need to apply an additional actual decline in turnover test, and
- the change in rate of payments.

Refer to [JobKeeper Extension](#) and [JobKeeper Payment](#) on [ato.gov.au](#) for further information.

! If the client disagrees with the decision to reject the deferral, initiate the following discussion with the client.

"Today we have determined that you don't have exceptional circumstances that would allow us to accept your late enrolment form.

This is not a decision about your eligibility for JobKeeper payment and if you have assessed that you are eligible for JobKeeper payment in a fortnight going forward.

If you don't agree with our decision today, not to accept your late enrolment form for prior fortnights, you can apply to the Federal Court or Federal Circuit Court of Australia for a review under the Administrative Decisions (Judicial Review) Act 1977.

The application must be lodged within 28 days. For more information go to [Federal Court](#) on [ato.gov.au](#)."

To correct any form error codes or suspense errors, refer to [Correct a suspended JobKeeper application form in ICP](#).

Finalise your activity:

- Add a detailed note of action taken
- Set the Siebel activity to **Done**

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- Close all associated activities.

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Appendix J - Change log for instructions and scripting for front line staff (change long for SMART instructions)

Content	Change Log
 V.1.0 - 12 Jun 2020.docx	Introduce scripting including guidelines for eligibility for JobKeeper deferral
 V.5.0 - 22 Jun 2020.docx	Further clarify JobKeeper deferral eligibility criteria. Includes support for clients of tax practitioners due to tax practitioner workloads and support for clients with limited understanding of JK enrolment process and dates
 V.9.0 - 1 Jul 2020.docx	Clarified JobKeeper deferral documentation and escalation process. Eligibility criteria not changed
 V.10.0 - 23 Jul 2020.docx	Clarified that sole traders are included as Eligible Business Participants. JK Deferral eligibility criteria updated - additional support removed for tax practitioners due to work load and clients with limited understanding of JK enrolment process and dates
 V.11.0 - 1 Oct 2020.docx	Additional information requested from clients regarding how client circumstances prevented them from enrolling on time or contacting the ATO earlier, including: <i>"If one of the reasons above is not provided with sufficient information to support the request, the deferral may not meet the exceptional circumstances and cannot be considered for approval"</i>
 V.12.0 - 16 Oct 2020.docx	Clarified JobKeeper deferral documentation and escalation process. Eligibility criteria not changed
 V.13.0 - 4 Dec 2020.docx	Scripting structure changed. JK Deferral eligibility scripting published separately from other JobKeeper content. Eligibility criteria not changed
 V.15.0 - 1 May 2021.docx	System issues removed as eligibility for JK Deferral
 V.16.0 - 4 May 2021.docx	Impeded access to records removed as eligibility for JK Deferral

Deferrals

Businesses eligible to claim JobKeeper must enrol by the due date for the month they wish to lodge and claim.

Businesses not enrolled by the due date cannot lodge and claim for an earlier period unless they meet the strict deferral criteria and all other eligibility criteria.

Businesses must be able to show they have:

- **paid** their eligible employees the minimum wage requirement;
- no current **compliance** activity;
- **not** been deemed ineligible for JobKeeper; and
- extenuating circumstances preventing them from **enrolling** by the monthly due date.

Hi, I checked my eligibility for JobKeeper and I think I was eligible to receive it back in April



In order to qualify for JobKeeper you must meet the eligibility criteria and enrol by the due date for the first month you want to claim.



Deferrals

Businesses eligible to claim JobKeeper must enrol by the due date for the month they wish to lodge and claim.

Businesses not enrolled by the due date cannot lodge and claim for an earlier period unless they meet the strict deferral criteria and all other eligibility criteria.

Businesses must be able to show they have:

- **paid** their eligible employees the minimum wage requirement;
- no current **compliance** activity;
- **not** been deemed ineligible for JobKeeper; and
- extenuating circumstances preventing them from **enrolling** by the monthly due date.

Oh. So if I'm too late I can't claim it?



If you are eligible you can still claim but only for the months where you have met the enrolment due date.



Deferrals

Businesses eligible to claim JobKeeper must enrol by the due date for the month they wish to lodge and claim.

Businesses not enrolled by the due date cannot lodge and claim for an earlier period unless they meet the strict deferral criteria and all other eligibility criteria.

Businesses must be able to show they have:

- **paid** their eligible employees the minimum wage requirement;
- no current **compliance** activity;
- **not** been deemed ineligible for JobKeeper; and
- extenuating circumstances preventing them from **enrolling** by the monthly due date.

Is there anyway I can enrol and claim from the start. I'm really struggling and need the money. My agent didn't tell me about it.



Firstly, to be eligible for deferred enrolment you must have actually paid your staff the minimum to meet the wage requirement.



Deferrals

Businesses eligible to claim JobKeeper must enrol by the due date for the month they wish to lodge and claim.

Businesses not enrolled by the due date cannot lodge and claim for an earlier period unless they meet the strict deferral criteria and all other eligibility criteria.

Businesses must be able to show they have:

- **paid** their eligible employees the minimum wage requirement;
- no current **compliance** activity;
- **not** been deemed ineligible for JobKeeper; and
- extenuating circumstances preventing them from **enrolling** by the monthly due date.

Yeah I paid them. I checked and it
meets the minimum wage
requirement



Ok. So why didn't you enrol for
JobKeeper earlier?



Deferrals

Extenuating circumstances include:

- Natural disasters or other disasters or events that may have, or have had, a significant impact on individuals, regions or particular industries
- Impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
- The serious illness or death of a family member, tax professional or critical staff member
- System issues, either with ATO online services or the entity's business system.

When discussing the client's circumstances you need to consider and ask:

- Are the circumstances beyond the clients' control that prevented them from lodging their enrolment form on time?
- What actions did the client take to mitigate those circumstances?
- Did the client previously contact the ATO to seek help? If so there should be recorded evidence of this.
- Did the client engage a Tax Agent early on in the JobKeeper scheme when they realised they could not manage the process themselves?
- Was the client given incorrect advice by the ATO in a prior interaction? This should be evidenced from client records.

Ahh. I have just been really overwhelmed with you know, everything. Its been really hard. You guys would not understand.



Unfortunately, to be eligible for deferred enrolment you need to have specific extenuating circumstances that prevented you from enrolling. The circumstances you have described don't meet the criteria.

I can still help you enrol now and claim for the remaining fortnights in JobKeeper, but not for the earlier periods.



Deferrals

JobKeeper deferred enrolment review rights

Sometimes clients will insist they are eligible even when the circumstances they describe don't meet the strict criteria for a deferral. You should do everything to help them claim for the periods where they have met the deadline.

If they do not accept your decision you should explain that they can apply to the Federal Court or the Federal Circuit Court of Australia for a review under the Administrative Decisions (Judicial Review) Act 1977. This application must be lodged within 28 days from the day they called.

Escalating deferral requests for clients who don't meet the criteria will not produce a different result and will instead delay their ability to go through the correct appeal process. This is not a good client experience.

That's not fair. I really need the money. Can I get this reviewed?



You can apply to the Federal Court or the Federal Circuit Court of Australia for a review of the ATO decision under the Administrative Decisions (Judicial Review) Act 1977. This application must be lodged within 28 days.

This does not stop you from enrolling for JobKeeper now and claiming for the months where you have met the due date.



Deferrals

If a client meets all the eligibility criteria for a deferral you must ensure you check your authorisation and take action accordingly. Requests that are within your authorisation do **not need to be escalated**.

Requests that are outside your authorisation but meet **all other eligibility criteria** require the following actions.

- [Assist the client to enrol](#)
- [Create a JobKeeper application form in ICP](#) but do not submit the form. This will be saved and suspended.
- Ensure there are sufficient notes in your escalation for the person making the decision to assess the clients' relevant circumstances fully.
- Escalate your activity.

Make sure to always refer to [SMARTonline](#) for updated reference material to assist you in supporting clients.



[REDACTED] August 12 at 8:16 PM ·

Hi All,

Jobkeeper Australia.

Question, if we call ATO tomorrow, will they still give chance for late enrolment for July Jobkeeper? The business meets all criteria including wage payment requirement.

Much appreciated your advice if you have experience this.

Thank you.



5

32 Comments

Like

Comment

[REDACTED] Looks is like the earliest you can enrol is the August fortnights

...

Like · Reply · 1w

[REDACTED] Do the initial set up on the ATO portal first then call and ask

...

Like · Reply · 1w



3

[REDACTED] C [REDACTED]



2

[REDACTED] Only if you have unusual circumstances.

...

Like · Reply · 1w

[REDACTED] te

...

Like · Reply · 1w

[REDACTED] They have changed the criteria to allow for this, so I expect not.

...

Like · Reply · 1w

f !

Like · Reply · 1w



5

yes! That's been my experience too.

Like · Reply · 1w

Write a reply...



I

C

Like · Reply · 1w

It's always worth a try

Like · Reply · 1w

Like · Reply · 1w

a Author

Thank you so much everyone! yes we'll give a try 😊

Like · Reply · 1w

One of my clients enrolled in for July but only a couple of days ago, and can only claim August payments not July. You're meant to enrol before the eom!

Like · Reply · 1w

m

c

Like · Reply · 1w

don't you hate that! The person I got wasn't obliging 😞

You have to have extreme circumstances and I've not been able to claim for clients due to the strict criteria

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...

Like · Reply · 1w

Yeah I've done it a few times but today had someone who refused to discuss it. We had to call back to talk to someone else to get them to put it through. Its seriously rediculous...that one person will put it through then someone else won't. Makes no ... See More



5

Like · Reply · 1w

can't hurt to try.

...

Like · Reply · 1w

it for one of mine, money was in the bank this morning.

...

Like · Reply · 1w

[REDACTED] goes to show it really depends on who you get on the phone because I got refused

...

[REDACTED]

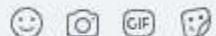
Like · Reply · 1w



...

Like · Reply · 1w

Write a reply...



I think it depends on the person you get. Had one the other day where they were nice and helpful but then in a different department refused to do anything. May

...

Like · Reply · 1w

[REDACTED] I tried this today. They read the notes of the previous person I dealt with and refused to grant it.

...

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I do [REDACTED] is [REDACTED]. They said in order to apply for a deferral after that, you have to have exceptional circumstances (or death, serious illness, impeded access to files or data etc).

Like · Reply · 1w

[REDACTED] I did one on May 1 [REDACTED] - the healthy estimate we had assessed for July evaporated & Aug/Sep are not looking good. There was no argument from the ATO

Like · Reply · 1w

[REDACTED] Yes they may. Give them a call, they're very helpful. 😊

Like · Reply · 1w · Edited

[REDACTED] Y [REDACTED]

[REDACTED] C [REDACTED]
They were great!!!!

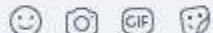
Like · Reply · 1w

[REDACTED] how did you put in your request? Phone call?

Thanks 😊

Like · Reply · 1w

[REDACTED] Write a reply...



Like · Reply · 1w



Karen Payne
Inspector-General of Taxation and Taxation
Ombudsman
Office of the Inspector-General of Taxation and
Taxation Ombudsman
Level 6, 321 Kent Street
SYDNEY NSW 2000

8 September 2021

Dear Karen,

Thank you for the opportunity to consider your report *Investigation into the ATO's administration of JobKeeper enrolment deferral decisions.*

We are proud of the ATO's delivery of the Government's COVID-19 stimulus measures, including the delivery of \$89 billion in payments to eligible businesses and supporting 3.8 million individuals through the JobKeeper program. The program is the largest economic support program in Australia's history, keeping individuals employed and businesses operating.

The ATO understands the importance of granting applicants more time to apply for JobKeeper, and more broadly the significant impact the Government stimulus measures brought to financially support businesses and participants. The ATO's approach to administering the various aspect of JobKeeper was guided by timeliness, transparency, simplicity, and critically – efficiency.

Independent scrutiny of the ATO is an important part of sustaining confidence in the administration of Australia's tax and superannuation systems and we welcome observations that assist in this endeavour.

As you are aware, granting additional time is a discretion to be considered in light of individual facts and circumstances, and exercised where it is fair and reasonable to do so in those circumstances. This principle has underpinned the ATO's approach throughout the duration of the JobKeeper program.

Recognising the environmental settings and context facing the community in 2020, the ATO put in place various procedures to rationalise and expedite decisions for applicants impacted by exceptional and unforeseen circumstances. This involved setting out those cases where the circumstances were clearly ascertainable by the ATO as being fair and reasonable to grant additional time for enrolment, enabling decisions to be made quickly and consistently by ATO officers at first instance.

However, the ATO did not restrict or narrow the granting of additional time to those in limited exceptional or unforeseen circumstances. Where requests for additional time did not correspond to a clear circumstance allowing the ATO to streamline decision making, escalation and review pathways were available for applicants to have their situations reconsidered. In addition, blanket discretions were granted at the start of the JobKeeper program, in recognition that applicants and advisers needed time to familiarise themselves with new rules, and eligibility criteria – in times of uncertainty.

As with all ATO decisions, the ATO takes the review and complaints process very seriously – including complaints referred to us by the Office of the Inspector-General of Taxation and Taxation Ombudsman – always with a view of improving everything we do. As extension of time decisions are made on a case by case basis, decisions might be upheld, or overturned based on a review of the facts and evidence, or with the benefit of new information. We do not consider that granting

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requests for applicants on review as being reflective of an overall change in the ATO's administration of these decisions, and the ATO is not aware of this approach causing widespread inconsistent outcomes for applicants.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Rosenzweig".

Emma Rosenzweig
Deputy Commissioner, Superannuation and Employer Obligations
Australian Taxation Office