

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into Coronavirus Economic Response Package Amendment (Ending Jobkeeper Profiteering) Bill 2021

Topic: JobKeeper - various
Senator: Anthony Chisholm

Question:

1. For firms that qualified for JobKeeper's first phase:
 - a. What was the ratio of entities that qualified on the basis of demonstrating a March downturn relative to those that qualified on the basis of an anticipated fall?
 - i. What was that ratio among entities who qualified but whose revenue ended up rising in that first phase?
 - ii. What was the ratio among entities who qualified but whose decline in didn't end up meeting the necessary threshold for their category?
 - b. How many entities in each of the groupings compared in a, a.i and a.ii lodged monthly BASs (as required for turnover of more than \$20m)?
2. Monthly BAS reports would have pointed to entities who were receiving JobKeeper and had rising revenue relative to the same period in 2019.
 - a. Is that how you first saw signs of that 15% of recipients who were flagged in Treasury's June 2020 report as having received JobKeeper alongside rising revenue?
 - b. If so.
 - i. When did you first raise that with the Treasurer or his office?
 - ii. What form did that take?
 - iii. What was the response?
 - iv. When did you first raise it with Treasury?
 - v. What form did that take?
 - vi. What was the response?
 - c. If not, which ATO systems first showed that firms with rising revenue were receiving JobKeeper payments.
3. When was it first apparent that 15% of JobKeeper payments were going to businesses whose revenue was rising relative to the same period in the previous year?
4. Regarding ATO compliance activity, please break that down for numbers of entities and the payments involved by types of ATO compliance activity – ie rejecting eligibility, reviewing eligibility, etc – please also breakdown those figures by size of entities involved (as per revenue brackets in Q 7).
5. How much of those compliance activities will recoup money that was paid out to recipients who turned out to have received JobKeeper payments outside the rules of the scheme?
6. How much of those compliance activities will recoup money that was paid out to recipients who turned out to have rising revenue rather than a decline?
7. How much of those compliance activities were triggered by evidence of a rise in revenue where evidence or anticipation of a decline had initially qualified the business for payment?

8. What was the trigger or threshold to investigate the forecast or assessment by which a company qualified for the scheme?
9. Of the companies that ended up receiving JobKeeper while their earnings rose, and whose eligibility was subsequently reviewed in some way by the ATO, please provide the number of ATO reviews by entity size:
- a. Revenue <\$10 million
 - b. Revenue \$10-20 million
 - c. Revenue \$20-50 million
 - d. Revenue \$50-100 million
 - e. Revenue \$100-250 million
 - f. Revenue \$250 million - \$1 billion
 - g. Revenue >\$1 billion
10. With regard to firms with revenue over \$20 million:
- a. How did the ATO confirm that entities which qualified for JobKeeper on the basis of anticipated loss were entitled to make the forecast they did?
 - b. What documentation or justification did applicants have to provide if they were basing their eligibility for JobKeeper on anticipated decline?
 - c. Does the ATO have any way to review the basis of forecasts that qualified these entities for the JobKeeper payments?
11. If the ATO discovered firms who got JobKeeper payments while also experiencing an increase in revenue had entered the scheme in bad faith – ie through unwarranted forecasts or accounting tricks – what could you do, what actions do the rules allow?
12. Does the way the scheme was administered allow the ATO to conduct that kind of discovery?

Answer:

Question 1: During the first phase of the JobKeeper program (April to September 2020), the ATO systems and application process did not distinguish between those entities that claimed JobKeeper on the basis of actual decline in turnover based on the previous year's period, those who did so on the basis of projected turnover or those who were using one of the eight alternative tests.

As at 15 August 2021, the number of entities that received JobKeeper on the basis their business in a relevant period has had, or is likely to have a decline in turnover (as was required in period 1) was approximately 1.046 million for the first phase of JobKeeper with the amount paid around \$70 billion.

*Entities includes employers and eligible business participants inclusive of sole traders.

Question 2: This is a matter for Treasury to respond.

Question 3: This is a matter for Treasury to respond.

Question 4: As at 1 September 2021, the ATO has completed almost 114,000 (approx. 10%) JobKeeper payment reviews with a total overall value of around \$12.5b (approx. 14%). These reviews were across all eligibility criteria for JobKeeper including employee and entity eligibility.

Approximately \$744m of ineligible claims were identified as a result of these reviews. Approximately \$274m of this was stopped prior to payment. There were \$470m in overpayments (including \$92m in client initiated amendments) of which the ATO recovered \$194m and are pursuing \$89m with \$6m in dispute. It is projected that a further \$767m was also prevented in future payments going forward to these ineligible businesses.

We have determined not to pursue \$180m where there have been honest mistakes by the clients, usually because the employers (typically in small businesses) claimed it in good faith and passed it on to their employees. This is consistent with ATO policy published on the ATO website: [www.ato.gov.au/General/JobKeeper-Payment/Keeping -JobKeeper-payment-fair/JobKeeper-overpayments/](http://www.ato.gov.au/General/JobKeeper-Payment/Keeping-JobKeeper-payment-fair/JobKeeper-overpayments/)

Note – these compliance activities are for JobKeeper 1, 2.1 and 2.2

JobKeeper entities - Decline in Turnover Risk Cases

Business Income Range	Client Count	Review Count	Eligible Client Count	Eligible Review Count	Not eligible Client Count	Not Eligible Review Count	Total value of claims reviewed (\$ '000)
a. <\$2M	3,035	3,307	2,439	2,527	596	780	60,199
b. \$2M-\$10M	860	929	769	816	91	113	110,757
c. \$10M-\$100M	623	773	588	734	35	39	462,956
d. \$100M-\$250M	234	306	224	295	10	11	345,976
e. >\$250M	381	513	373	501	8	12	1,544,383
f. Other	359	402	265	279	94	123	249,011
Total	5,492	6,230	4,658	5,152	834	1,078	2,773,282

- For JobKeeper 1 over 1,600 reviews in relation to decline in turnover were undertaken across all markets. **Of those reviews around 480 large public and multinational businesses were reviewed and found over 95% were fully eligible.**

JobKeeper entities – Eligible Business Participant Risk Cases

Business Income Range	Client Count	Review Count	Eligible Client Count	Eligible Review Count	Not eligible Client Count	Not Eligible Review Count	Total value of claims reviewed (\$ '000)
a. <\$2M	7,194	8,212	3,558	4,037	3,636	4,175	127,848
b. \$2M-\$10M	282	356	266	336	16	20	37,306
c. \$10M-\$100M	63	79	57	71	6	8	29,935
d. \$100M-\$250M	1	1	0	0	1	1	8
e. >\$250M	3	5	3	5	0	0	5,277
f. Other	20	27	14	21	6	6	7,277
Total	7,563	8,680	3,898	4,470	3,665	4,210	207,651

JobKeeper entities – Employee Eligibility Risk Cases

Business Income Range	Client Count	Review Count	Eligible Client Count	Eligible Review Count	Not eligible Client Count	Not Eligible Review Count	Total value of claims reviewed (\$ '000)
a. <\$2M	16,877	21,253	13,620	16,605	3,257	4,648	409,019
b. \$2M-\$10M	2,152	2,618	2,065	2,503	87	115	379,995
c. \$10M-\$100M	1,080	1,375	1,052	1,337	28	38	930,462
d. \$100M-\$250M	136	198	133	194	3	4	516,978
e. >\$250M	231	337	225	330	6	7	2,722,699
f. Other	1,957	2,264	1,911	2,197	46	67	829,449
Total	22,433	28,045	19,006	23,166	3,427	4,879	5,788,602

JobKeeper entities – Signs of Life Risk Cases

Business Income Range	Client Count	Review Count	Eligible Client Count	Eligible Review Count	Not eligible Client Count	Not Eligible Review Count	Total value of claims reviewed (\$ '000)
a. <\$2M	28,900	36,241	15,668	19,333	13,232	16,908	232,240
b. \$2M-\$10M	90	111	9	21	81	90	9,049
c. \$10M-\$100M	22	35	7	13	15	22	9,359
d. \$100M-\$250M	0	0	0	0	0	0	0
e. >\$250M	0	0	0	0	0	0	0
f. Other	31	32	18	19	13	13	760
Total	29,043	36,419	15,702	19,386	13,341	17,033	251,408

JobKeeper entities – Other Risk Cases

“Other” risk cases includes reviews with multiple risk hits, internal ATO risks and pre enrolment risks.

Business Income Range	Client Count	Review Count	Eligible Client Count	Eligible Review Count	Not eligible Client Count	Not Eligible Review Count	Total value of claims reviewed (\$ '000)
a. <\$2M	20,475	30,880	14,773	23,113	5,702	7,767	445,547
b. \$2M-\$10M	1,408	2,180	1,269	2,005	139	175	374,960
c. \$10M-\$100M	570	910	538	868	32	42	485,923
d. \$100M-\$250M	106	256	101	250	5	6	419,217
e. >\$250M	161	238	154	228	7	10	1,098,113
f. Other	597	903	556	851	41	52	683,145
Total	23,317	35,367	17,391	27,315	5,926	8,052	3,506,905

Notes

- Figures from accounts are point-in-time as at 20 September 2021. Reviews counted were closed by 1 September 2021.
- "Recipients who turned out to have received JobKeeper payments outside the rules of the scheme" – the closest data we have available identifies clients as ineligible following review.
- The Business Income ranges are based on ATO system-based categorisation of entity types, noting range splits at \$20M and \$50M are not available
- Other includes entities where the business income may be unknown
- Slight rounding differences may be found when comparing total figures for All Risk Groups with the sum of individual Risk Group tables
- Claim Value is the value of the claim at the time of the review

Question 5: The table below is an overall collectable for all compliance cases. Allocating pursuable debt against a particular risk is difficult to extract, noting an entity may have a debt against 1 or more risk hits.

JobKeeper Entities Pursuable Debt - All Risk Cases

Business Income Range	Client Count	Review Count	Eligible Client Count	Eligible Review Count	Ineligible Client Count	Ineligible Review Count	Identified Overpayments (\$ '000)	Pursuable Debt (\$ '000)
a. <\$2M	76,481	99,893	50,058	65,615	26,423	34,278	200,370	49,627
b. \$2M-\$10M	4,792	6,194	4,378	5,681	414	513	45,486	9,403
c. \$10M-\$100M	2,358	3,172	2,242	3,023	116	149	40,333	3,955
d. \$100M-\$250M	477	761	458	739	19	22	19,476	1,877
e. >\$250M	776	1,093	755	1,064	21	29	33,073	389
f. Other	2,964	3,628	2,764	3,367	200	261	40,465	200
Total	87,848	114,741	60,655	79,489	27,193	35,252	379,203	88,133

In addition to the overpayments from direct ATO compliance action, there were approximately \$92 million in overpayments which resulted from client initiated amendments. This is where clients became aware that they did not meet all the eligibility criteria for some or all of the JobKeeper payments received, and self corrected with the ATO. These amounts are in addition to the \$379 million in the table above.

Notes:

- Figures from accounts are point-in-time as at 20 September 2021. Reviews counted were closed by 1 September 2021.
- The closest figure we have to “amount to be recouped” is "pursuable debt".
- “pursuable debt” is a point in time figure which has been reduced by amounts paid and non pursuable debt.
- "Recipients who turned out to have received JobKeeper payments outside the rules of the scheme" – the closest data we have available identifies clients as ineligible following review.
- Entities can be found eligible and still be overpaid and incur debt if one or more of the employees they had claimed is found to be ineligible.
- The amounts pursuable may contain amounts raised from other actions.
- The Business Income ranges are based on ATO system-based categorisation of entity types, noting range splits at \$20M and \$50M are not available.
- Slight rounding differences may be found when comparing total figures with other tables.
- Client counts, claim values and pursuable debt are attributed to Eligibility and Risk Groups based on each client's latest review finalised to avoid double counting.

Question 6, 7 and 8: During JobKeeper 1 the ATO undertook extensive compliance work to ensure that entities had made reasonable assessments of projected turnover for the nominated periods. We developed and implemented tailored risk treatment approaches for large public and multinational businesses, large private groups, and the small business market. The risk populations split across different market segments:

- Large public and multinational businesses who had experienced an increase in turnover
- Significant Global Entities from large privately held groups who were using the incorrect rate (including a nudge approach)
- clients from Large public and multinational Top 100, PG Large public and multinational Top 1000 and large privately held groups Top 500 programs
- Large privately held groups clients using the 15% decline in turnover rate
- Large privately held groups clients who had not shown a decline in turnover during the test period
- sample of small businesses, and
- reviews of entities from community tip-offs/referrals

Question 9: The ATO reviewed over 1,600 entities for JobKeeper 1 decline in turnover reviews.

- Of these 1,600 entities, around 480 large public and multinational businesses were reviewed and found over 95% were fully eligible.

In almost all instances, the compliance checks found that these entities were eligible for the JobKeeper payments.

Question 10: The ATO is unable to provide a specific response in respect of revenue over \$20 million, however the following is in response more broadly.

Through sophisticated and targeted compliance reviews, the ATO was able to assess the reasonableness of turnover projections made by businesses.

In these reviews, ATO officers were required to consider the circumstances of a business at the time the business prepared their decline in turnover projections. ATO officers were required to do this to assess whether a reasonable person under the same conditions would have taken other factors into account and made other assumptions leading to a different outcome.

Guidance in the form of Practical Compliance Guidelines, Law Companion Ruling and Internal Risk Guides were available to staff to assist them in assessing the eligibility of entities including understanding the reasonableness of forecasts. Broadly ATO officers assessed:

- the governance an entity had in place to ensure reasonable projections were prepared including appropriately skilled staff undertook the work and oversight from senior personal within the business
- obtaining sufficient evidence such as working papers to support the basis of the forecasted GST turnover. i.e. correct rate applied, appropriate test used etc.
- tested the reasonableness of the assumptions against the trends that were being observed in their specific industry

- where there was a variance from forecasted position against actual obtained explanations from the entity as to why, such as, unexpected consumer behaviour or lockdowns ending sooner than expected

Where an entity relied on forecasts to qualify for JobKeeper and did not have the required decline in turnover, risk filters prioritised them for compliance action to capture further information about their circumstances and how they forecasted their decline in turnover. The expected documentation to be furnished needed to allow the ATO officer to be able to assess:

- the rate of the decline in GST turnover forecasted and / or experienced by the business
- that the basic test, modified basic test or alternative test had been used appropriately
- the assumptions that were underpinning the decline in turnover were reasonable. This needed to be demonstrated at the entity level.

Question 11: The ATO has administered the JobKeeper Payment in accordance with the legislation and has applied appropriate compliance action based on evidence-based risk assessments.

Our focus in relation to turnover for the initial phase of JobKeeper, was ensuring that entities had reasonable decline in turnover projections.

The ATO took detailed reviews of projected turnover estimates, particularly for publicly listed and multinational entities, and found that there was a high degree of compliance. This included engagement with entities to assess eligibility for JobKeeper against legislation, policy intent and principles set out in published advice and guidance.

Under the JobKeeper rules, the Commissioner could accept either in whole or in part a statement lodged by the entity. Where the statement by the entity led to an overpayment then the entity would generally be required to repay the overpaid amount and a general interest charge. Administrative penalties could apply if there is evidence of deliberate actions to get JobKeeper payments that an entity would not have otherwise been entitled to under the rules.

Question 12: The ATO undertook compliance work to ensure entities had made reasonable assessments of projected turnover for the nominated periods, this included seeking evidence of reasonable steps taken to project their turnover, with differences between projected and actual turnover influenced by changes in economic circumstances including; uncertainty on the easing of restrictions, trading conditions, and supply chain issues.