

Senate Select Committee on COVID-19
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office
Public Hearing 30 July 2020

Department/Agency: ATO

Question: 1

Topic: JobKeeper eligibility audits

Reference: Spoken – Hansard page 32

Senator: Siewert

Question:

Senator SIEWERT: Can I go to the eligibility of participants in the JobKeeper scheme. Was eligibility checked prior to payments being made?

Mr Hirschhorn: You're talking about people who have made their application, so businesses have made their application through the system. Some elements of eligibility were checked at the time the person applied, and, once somebody's application was successful, we paid pretty much immediately.

Senator SIEWERT: Was that prior to any of the elements being checked or prior to some of them being checked?

Mr Hirschhorn: I might go back. It was designed as a self-assessment system, so people had to self-assess their own eligibility. In our form process we had embedded some checks on some aspects of eligibility and some sensibleness checks for if strange things were happening. Other elements of eligibility were harder, in a sense—again, in the compressed time frame, things were harder to build into the online application process, so we relied on self-assessment and checked afterwards. That's a long way of saying some elements of eligibility were checked at the time of making the application, and other elements of eligibility were only checked afterwards.

Senator SIEWERT: Are you able to provide further detail, on notice, on what the preliminary checks were and what the subsequent checks were? Or have you got that?

Mr Hirschhorn: We can certainly answer on notice. To give a sense, you had to have an ABN, so that's a factor. There were some factors which were in the form and others which were not. It's probably better if I come back on notice.

Senator SIEWERT: That would be appreciated, thank you.

Answer:

Refer to response to question 8

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Question: 2

Topic: Ineligible businesses that received payment

Reference: Spoken – Hansard page 32-33

Senator: Siewert

Question:

Senator SIEWERT: How many recipients do you believe have received payments but were in fact ineligible?

Mr Hirschhorn: As I say, on some of this stuff I put a caveat that it may not be exhaustive, but there was a round where we wrote to about 8,000 businesses saying that according to our records they do not meet one or other of the features of eligibility, and asking them to contact us if they believe that they do meet those conditions of eligibility.

Senator SIEWERT: Have any of those recipients gotten back to you? How many have gotten back to you and how many are confirmed as ineligible?

Mr Hirschhorn: I think about 50 per cent have gotten back to us. Just give me a moment, Senator, and I might see if I've got some more specific data. Not all did get back to us. Sorry, Senator, maybe if I can temporarily take that on notice and, while we're going, see if I can come back to it if I can find that information.

Senator SIEWERT: If you could. What quantum of money would those 8,000 businesses have been paid?

Mr Hirschhorn: If I can do some very round numbers, as I understand it, it's about 0.1 per cent of applicants and about 0.1 per cent of the value, and it was generally for the first month or two. We're paying out about \$10 billion a month, so it will be less than \$100 million..

Senator SIEWERT: Are you asking businesses to pay this money back?

Mr Hirschhorn: Our general stance is that if it's an honest mistake—there are certain mistakes you can make, and we would categorise some of these eligibility mistakes as honest mistakes because the law is complex, particularly for newly formed businesses. That's where a lot of the angst is—around newly formed businesses who met a couple of all tests but not all the tests. Where it's an honest mistake, we are just turning off JobKeeper for future months. We are not seeking to claw back the JobKeeper that they have received.

Senator SIEWERT: So reports we were hearing about businesses being contacted and having to pay money back—and I'm particularly concerned about smaller and newly formed businesses—are they not correct?

Mr Hirschhorn: We have asked for money back from some. I think that concern in the community was more the fear that we would claw it back whereas the actuality of most of these eligibility cases is that we view those as honest mistakes that we have not sought to claw back.

Senator SIEWERT: You may need to take this on notice but how much have you clawed back?

Mr Hirschhorn: I can take that on notice. I would say, interestingly enough, there are different reasons. There is the eligibility and honest mistake element. There are bits where, for example, we identified multiple claims for the one employee and things like that, so that's where money will come back, potentially. We can try to get you some information on the trigger or reason for asking for a claw back.

[...]

Senator SIEWERT: Of those 8,000, the 50 per cent that haven't got back to you, I take it that means they have been chopped off?

Mr Hirschhorn: They have been chopped off. Of the 8,000, another 2,000 have also been found to be ineligible. Of the 8,000, about 6,000 have been chopped off.

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Senator SIEWERT: How many employees does that 8,000 cover?

Mr Hirschhorn: I'd have to take that on notice. Sorry, my briefing focus is on the number of employers. They are generally newer businesses, so I expect they are generally smaller claims than average but I'd have to take that question on notice.

Senator SIEWERT: As the new phase is rolled out, will there be checks before any new entities come on board?

Mr Hirschhorn: Part of our design process is to design any this into the form, into the application process so we don't get a situation where somebody applies, gets money, and then we say, 'Are you eligible? You don't look eligible to us'. We're going to try to design as much as possible of that into the application process.

Answer:

On 30 June 2020, the ATO issued letters to approximately 8,000 entities.

Approximately 1,900 of these entities were advised they were ineligible as they were new businesses and could not satisfy the integrity requirements in Division 3 of the JobKeeper Rules.

The 1,900 entities who were advised of their ineligibility were informed of their right to have the decision reviewed.

The remainder of the 8,000 were advised that information held by the ATO gave us concerns about whether they were carrying on a business and they were requested to contact us within 14 days if they had evidence to support their claim. Approximately 3,500 responded to our letter.

Of those where we have reviewed the information provided and finalised our verification checks, approximately 1,100 were found to be eligible, and approximately 450 were found to be ineligible.

Those that did not respond were issued a follow up letter giving them an extra 14 days to respond.

As at 27 July 2020, the ATO had determined that approximately 9,200 entities were ineligible for JobKeeper (including those outlined above). This number changes daily.

Of the JobKeeper amounts already paid to eligible entities, as at 27 July 2020 approximately \$2.6m has been repaid.

The ATO have only required the return of amounts previously paid where it is determined that the incorrect application was not as a result of an honest mistake. For example, the approximately 1,900 entities who were advised they were ineligible because they are a new business that does not meet the integrity tests, have been advised they will not be required to repay amounts already received.

Of the approximately 9,200 entities determined to be ineligible as at 27 July 2020, the total number of employees and eligible business participants included on the JobKeeper application forms was approximately 13,500.

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Department/Agency: ATO

Question: 3

Topic: Deflation impact on HELP scheme

Reference: Spoken – Hansard page 34

Senator: Siewert

Question:

Senator SIEWERT: Going to the cash flow for SMEs, how many businesses and what's the value of the cash flow support that's been provided in the form of wages withheld for tax?

Mr Hirschhorn: Cash flow boost has two rounds. There is round 1 for the first quarter and then there's round 2 for the second quarter. Round 2 is designed to be a mirror image of the first round, so whatever you got in round 1, you'll get in round 2; you don't have to requalify. Round 1 is about 750,000 businesses and the payments to date are a little bit under \$16 billion. You would expect that would be replicated, so those 750,000 businesses will get another \$16 billion over the next few months, so \$32 billion all up. To date, we've already paid out \$2 billion of that second round.

Ms Jenkins: Maybe if I could just add to that to build on what Mr Hirschhorn has said. The actual amount that they get credited is a credit, so it isn't necessarily an amount that is paid out. It is a credit against their activity statement for that period. Obviously, if they were in a refund position, that credit would give them a larger refund. If they were in a payable position, that credit could either reduce that payable or reduce it until it becomes a refund. I just wanted to make that clear. It's slightly different from the JobKeeper payment, which is obviously a wage subsidy.

Senator SIEWERT: Thanks, that's useful. But the overall value when it finishes at the end of September will be \$32 billion. Is that correct?

Mr Hirschhorn: Yes. Again, in order of magnitude, it's going to be based on what we got so far in round 1. It will be \$31 billion or \$32 billion.

Senator SIEWERT: What happens to students' debts if the deflation figures continue? Are they reduced?

Mr Hirschhorn: I must confess that you have thought about an issue that we in this room have not turned our minds to—how deflation would work on the HELP scheme—but we could take that on notice.

Senator SIEWERT: That would be very much appreciated. There would be a lot of people who are very interested in this topic.

Answer:

Student income contingent loan balances are made up of tuition fees incurred, plus annual indexation, less any voluntary or compulsory repayments as outlined in Division 140 of the *Higher Education Support Act 2003* (HESA).

The indexation factor applied each year to an accumulated debt is calculated using the Consumer Price Index (CPI) as prescribed by section 140-10 of the HESA.

If deflation results in a negative CPI prescribed period, it is possible to have a negative indexation factor that could decrease a student loan balance.

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Question: 4

Topic: Alternative turnover test in JobKeeper 2.0

Reference: Spoken – Hansard page 36

Senator: Patrick

Question:

Senator PATRICK: Can I go to a specific one, and maybe Ms Jenkins can help. I gave an example with Treasury before of a South Australian business that has a proper tax ruling that permits them to operate only with input taxed sales; they deal in long-term residential retail. Because they don't have a GST turnover per se, but they are a legitimate business and they have been employing people, they have been excluded from any support. Do any of those legislative instruments go to legitimate businesses that have been affected in circumstances where their only input taxed sales are with the companies?

Ms Jenkins: There's the basic test, which I think is what you're referring to, which is the GST turnover test, and you're absolutely right—input taxed supply such as residential property is excluded from that. So, what you're saying is, under the basic test, the person you are talking about doesn't apply. The range of alternative tests that have come out do not include anything that would bring those people back into the system. The alternative test covered things like start-up businesses, businesses that were impacted by drought, businesses that, for example, have been bought or sold in the period—things like that. So, the alternative test that we set out did not bring the businesses of the nature you described back into the system.

Mr Hirschhorn: Senator, if I might add that I think our discretion there is about what the comparable period is for working out the decline in turnover. Our discretion is not as to what turnover is. So, under the law, our discretion is curtailed to the relevant comparable period, not to actually what the turnover is.

Senator PATRICK: I don't see that restriction in the terms of the act. Is that because 'turnover' has some other secondary reference in the legislation?

Ms Jenkins: The term 'turnover' in the legislation—actually, I think in the rules—has been defined to be as it is if you were a GST registered business, and the usual turnover tests were that you would exclude input taxed supply; that was in the particular legislation. That was meant to be applying for everyone. The common question I often get is: what about if I'm not registered for GST? The rules actually say you treat them as if you were registered for GST. So, as Mr Hirschhorn said, the alternative tests were designed to be put into the legislation where there wasn't a comparable period, and that's the idea of those examples that I've provided.

Senator PATRICK: Okay—satisfied there's not an appropriate relevant comparison period. So, this could be a hole in the legislation that might require some potential amendments. How many of these businesses would be affected businesses that only deal with input taxed sales? They're legitimate businesses—I don't think anyone questions that—and it didn't seem to me like Treasury were trying to exclude anyone; they architected the program to be able to respond quickly, with integrity. There's always scope for amendments, but is that anything that has been recommended by the tax department to Treasury, moving forward on JobKeeper 2.0?

Ms Jenkins: What I can say is that this issue you raised was recognised in the development of JobKeeper in its early days—what you called JobKeeper 1.0. We did raise this with Treasury, and at that time they were aware that a business that had nothing other than input-taxed supplies, as you described, would miss out. I think Ms Wilkinson described today that a lot of these businesses have a combination of input-taxed and taxable supplies, so they would fall within it. I'm not sure that this has been discussed for the development of 2.0, but I can check that and come back to you.

Senator PATRICK: I'd greatly appreciate that.

Senator PATRICK: Sure, but perhaps you could table some of the considerations around that particular problem, where a company only has input-taxed sales. Anything you've got on that would be helpful, and for

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the purpose of allowing the parliament to perhaps consider that in the context of legislation that will be brought before it, where there are opportunities to amend to deal with these sorts of holes.

Mr Hirschhorn: Yes, we'll see what information we can provide.

Answer:

Information on how many entities only deal with input taxed sales is not available from ATO data. Input-taxed sales are reported in the Total Sales label with taxable sales and GST-free sales.

Under the current JobKeeper Rules, the decline in turnover test is made in reference to the decline in projected GST turnover in the test period as compared to the entity's current GST turnover in the comparison period. Projected GST turnover and current GST turnover are terms used in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

This treatment of input taxed supplies is explained in the ATO Law Companion Ruling [LCR 2020/1 JobKeeper Payment - decline in turnover test](#) (at paragraphs 27 to 29).

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Question: 5

Topic: ERS approval letter

Reference: Spoken – Hansard page 38

Senator: Keneally

Question:

Senator KENEALLY: My concern, and the reason I am asking these questions—and I appreciate that this is people's money and they may feel that they are under stress and they need it—is that the broad advertising of this program, the lack of clarity about what the eligibility is and the self-assessment process may have led some Australians to inadvertently or mistakenly think that they were eligible when they weren't and that they may themselves become responsible for a tax or for a fine when they never intended to. They may be honest; they may just in fact be ill informed by the speed at which this was rolled out and hyped, and also ill informed by the fact that this is a self-assessment. There is an article on Business Insider Australia that profiles one such person; she thought the ATO would do due diligence on her application. The article says that the ATO sends out notifications to successful applicants which read: 'After careful consideration, we've determined that you are eligible.' Is that actually in the notification that the ATO sends out?

Mr Hirschhorn: I would have to take that on notice. Can I say I would be surprised, but I will take that on notice.

Answer:

Throughout the process and prior to finalising their application to access their super, the applicant confirms that the information they have provided, including the basis of their eligibility, is true and correct. The self-assessment approach is consistent with other elements of the tax system.

Once the application for early release of superannuation has been processed, we send a determination to the applicant which includes the following “After careful consideration, we’ve determined that you are eligible”.

The ATO’s careful consideration of COVID-19 early release of super applications includes:

- Checking that no more than one application has been approved in the same financial year
- Undertaking proof of identity checks for each applicant – either via myGov or over the phone
- Identifying and checking applications from individuals who applied in 2019-20 as a temporary resident, who subsequently apply in 2020-21 as a permanent resident or citizen
- Identifying and blocking applications for particular indicators of potential fraud
- Ensuring all individuals complete the self-assessment and declarations regarding their eligibility in the application form
- System and other checks to prevent the annual \$10,000 cap being exceeded

In addition to these considerations, we also run all approved applications through a detailed risk model and advise super funds of approvals that we suggest they undertake comprehensive due diligence on, prior to making payment to their member.

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Question: 6

Topic: Instant Asset Write-off usage

Reference: Spoken – Hansard page 40

Senator: Siewert

Question:

Mr Hirschhorn: I think you were just asking about the instant asset write-off when you lost us.

Senator SIEWERT: Yes, I was making the comment that I thought that more businesses would have submitted early, given that there is an indication that there has been a much earlier lodging of tax returns. So, is there no preliminary review to get even a feeling for how that mechanism is being used?

Mr Hirschhorn: We can certainly take that on notice and have a look. Our lodgements this year have been up by about seven per cent on last year, year to date, so only two per cent for current year returns. There's not been a huge pull forward of returns this year and most of that is individuals. We can have a look to see if there's any information, but I think it's going to be too early.

Senator SIEWERT: I presume that's the same for SMEs and what value of capital investment has been deducted under the expanded instant write-off.

Ms Jenkins: That's correct.

Answer:

Instant asset write-off is claimed through the lodgment of tax returns. As such, we will be unable to provide an indication regarding the take-up of this incentive/concession for the 2019/20 financial year until tax returns are lodged with the ATO.

While we received over 4 million returns in the first month of processing 2019-20 income tax returns, over 85% of these returns were from individuals, mostly salary and wage earners who are not able to claim the instant asset write-off.

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Question: 7

Topic: Negative Gearing Guidance

Reference: Spoken – Hansard page 42

Senator: Siewert

Question:

Senator SIEWERT: Okay. Obviously, I need to follow that up with Services Australia. Thank you. Can I go to an issue around negative gearing. Are you able to make any preliminary observations around changes in deductions on rental properties this financial year?

Mr Hirschhorn: I'm afraid not.

Senator SIEWERT: I presume that falls into the same basket as 'not enough returns have come in to have a look at that'.

Mr Hirschhorn: That's correct. And we would typically do that sort of analysis later in the year.

Ms Jenkins: Around October we'd start doing that.

Mr Hirschhorn: Given the nature of the economy at the moment with the bushfires and other natural disasters, and now with COVID, there are a range of new issues relating to negatively geared properties whereby you can't rent them out or, indeed, they might have been destroyed. We've put out a fair bit of new guidance as to what deductions people can still claim. Also, in the context of the deferral of interest by the banks, we've said you can still claim your interest expense even if you don't have to pay it to the bank. So, there is a range of guidance we've been giving around negative gearing.

Ms Jenkins: We're happy to share that information with the committee if you would like links to that guidance.

Senator SIEWERT: That would be appreciated. Thank you.

Answer:

Relevant information can be found here: [Residential-rental-properties Covid 19](#)

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Question: 8

Topic: Compliance and Integrity Risk ratings

Reference: Spoken – Hansard page 42

Senator: Gallagher

Question:

CHAIR: I have a couple of questions, and I hope I'm not repeating some of the areas Senator Siewert went to. There is a section in the back of the JobKeeper review which goes to the work the ATO has done around compliance and integrity. Is there a document available around the risk ratings, or a risk register you've done around implementing the JobKeeper payment, that can be provided to the committee?

Mr Hirschhorn: I'm not sure we've got a neat document, but certainly we can pull together, under notice, information as to the issues we are looking at and what we're doing.

CHAIR: That would be useful

Answer:

The JobKeeper Integrity and Assurance model follows a staged integrity approach based on the JobKeeper lifecycle and allows the ATO to:

- a. design differentiated treatment approaches for behaviours using a phased approach
- b. make deliberate decisions as to how it will dedicate resources across all phases
- c. ensure every JobKeeper application is subject to a differentiated level of treatment over the JobKeeper lifecycle
- d. determine the residual risk associated with the outcome of its compliance program.

Our model seeks to balance the need to make timely payments to businesses while maintaining the integrity of the system.

Our compliance approach is summarised below but note we do not publish our compliance and detection approaches in detail as that would be advertising our enforcement methods to those that do the wrong thing.

Enrolment Stage

The first phase of our integrity model is based on the enrolment stage where entities enrol in the JobKeeper program. Our compliance approaches allow us to prevent entities from enrolling in the JobKeeper program where they do not meet the eligibility requirements under the law. Entities will be prevented from enrolling or applying if their ABN:

- Is dated after 12 March 2020
- Relates to a government entity or sovereign entity
- Relates to an entity in liquidation or is bankrupt
- Relates to an entity that is subject to the Major Bank Levy

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Application Stage

The second phase of our integrity model allows us to identify and treat applications of high concerns, behaviours of concern including potentially fraudulent behaviour and applications which are likely to be ineligible. We use a series of data driven analytical behavioural and risk models which are designed to identify high risk enrolments and/or applications before the ATO disburses payments. They assist to identify concerns that are significant enough to stop a payment or to flag follow up action. The risk models also allow the ATO to identify applications which may not be the highest risk, but which the ATO may review at a later stage. The risk rules focus on verification required for both the business entity and/or the employee status/history:

- **Active Business Income** – Where the applicant is an eligible business participant who is not an employer (i.e. a Division 3 applicant), the ABN of the applicant is verified and must be attached to an active business i.e. an eligible organisation must have business income in 2018/2019 or a supply in the relevant tax period. Where we do not have evidence and information in relation to income or supplies, we will look to verify the business activity of these applicants.
- **Identity Risks** – The ABN must not be associated with a compromised ABN based on ATO records and the bank account must not be associated with a compromised bank account. These cases will be treated on a one to one basis given the seriousness of potential identity crime.
- **Eligibility of employees and business participants** – We use STP, non-STP and ATO held data sources to ensure employees are eligible employees, meaning they must satisfy residency and age requirements, not be in more than one application, have a valid employment relationship with the employer and have been employed as at 1 March. Business Participants must also satisfy the eligibility criteria and must not be in multiple applications.

Ongoing Compliance and Assurance Stage

This final stage is aimed at identifying and treating ongoing risks and providing assurance in relation to JobKeeper integrity. In this stage we aim to identify and treat additional risks and concerns as follows:

- **Turnover risk** – Entities are required to have projected a decline in turnover. We identify and treat arrangements at high risk of not satisfying the decline in turnover test including structures and arrangements where turnover may have been incorrectly projected or manipulated.
- **Wage Condition** – Employers must pay eligible employees a minimum of \$1500 per fortnight. We use STP and other data sources including tip-offs to identify and treat arrangements where employers have not passed on the full \$1500 wage subsidy to employees as required by the law.

JobKeeper Tip-Offs – provide the community with confidence that we will action JobKeeper Tip-Offs which community members make to us.

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Department/Agency: ATO

Question: 9

Topic: JobKeeper Suppressions data

Reference: Spoken – Hansard page 42-44

Senator: Gallagher

Question:

CHAIR: It says 26,000 enrolments or applications from organisations were assessed as being ineligible for the JobKeeper payment through that systems check. Is that right?

Mr Hirschhorn: I'd like to just check exactly what number that one is referring to, because there are so many different ways of cutting the numbers—

CHAIR: It just says they were ineligible.

Mr Hirschhorn: The numbers I have here are that about 42,000 were blocked. We had the enrolment process. We knocked out 42,000 in the enrolment process, which was all about employer eligibility. Then we had the application process, which was about employees. Another chunk were put aside for review at that stage, and there we're talking about around 60,000. But, again, it depends. The challenge here is that the numbers move every day.

Again, about two per cent of applications, once they got through the form, got pushed aside for human intervention.

CHAIR: Say we take that 60,000 figure. How many of those were then—is the word 'blocked'?

Mr Hirschhorn: Yes.

CHAIR: How many were blocked from the scheme?

Mr Hirschhorn: This is when we start getting into the manual interventions. That's where we go to the 8,000 that we were talking about—

CHAIR: With Senator Siewert.

Mr Hirschhorn: with Senator Siewert. As of this week we've completed about 34,000 cases. About 20,000 of those were actually found to be eligible. About 10,000 were ineligible, for whatever reason. And 2,000 were partially eligible, which might be that we've knocked out some employees, but not all. So, we've done the review case; 12,000 have been spat into a more detailed process. We say they're completed but really, they've escalated to the next stage of review.

CHAIR: Is there a backlog of applicants waiting for this assessment to be completed in order to get their cash?

Mr Hirschhorn: Yes. At any given time, there is a number of people who have not received all their money. We generally give them an SMS within a couple of days of receiving their form and say, 'Your application is being reviewed.'

CHAIR: Do you have a figure from a point in time that you can give me?

Mr Hirschhorn: I might come back to you, but it's probably going to be in the order of about 25,000 applications—we call them suppressions.

[...]

CHAIR: How many suppressions have there been?

Mr Hirschhorn: There are about 24,000 currently in place, which represent about \$100 million of JobKeeper.

CHAIR: That's \$100 million that people have applied for but you're not paying?

Mr Hirschhorn: Yes.

CHAIR: Did you say that changes all the time, or is that a cumulative total since the beginning of the scheme?

Mr Hirschhorn: That does change. New people will come on and some people will come off. The ones we've found to be ineligible will just stay, but some will come on and some will come off.

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CHAIR: What's your peak suppression? Have you peaked above 24,000?

Mr Hirschhorn: I'd have to come back to you on that. Early on we probably had an initial peak, so the shape is probably that it went up quite high early on when we were trying to really understand the system and everybody's applications were new, and over time that then dipped down as we got through that load, and then I suspect it gradually increases over time.

CHAIR: Okay. Could you perhaps take on notice the highest peak of the suppression and perhaps add in whatever information you need to explain that?

Ms Jenkins: If it helps, I think what I would say is that over time we've been able to change our risk tolerances. This really goes to the point that Mr Hirschhorn was making about early release of super. Over time we've worked out that actually we don't need to stop this amount, because we've worked out that creates a false positive in the system or there's another data source that we can match it up with to get a better quality of result. That's why over time that will go down: we have a better understanding of the population over time. But we'll provide more detail.

Answer:

Where a JobKeeper application is lodged and concerns are identified in respect of the eligibility of the employer or their employees, the ATO applies a "suppression" to their JobKeeper to prevent payment being made until the ATO has been able to verify and resolve any concerns.

A "suppression" is basically a process that stops a payment being made to an entity.

In some cases, verification work identifies that an applicant is not eligible for JobKeeper, in which case the suppression will remain on the account to prevent further applications and payments from being accepted. By contrast, if it is determined the applicant is eligible, the suppression is removed, and the payment is made.

The ATO may also undertake verification activities to confirm a client's eligibility for JobKeeper after a payment has been made. This occurs where information comes to our attention after the payment has been made, or post-payment verification work is undertaken.

Where this verification activity identifies that the client is not eligible, a suppression would be applied to prevent any future payments being made. There is a separate decision as to whether to "claw back" any previous payments.

As at 27 July 2020 over 12,000 active reviews were in progress to determine the eligibility of the applicants or their employees, where one or more payments have been suppressed pending these reviews. This represents about 1% of total applications lodged at that time. The value of payments that were being held as a result of these reviews was about \$100 million.

There were also 5,700 on-going suppressions where an entity has been determined to be ineligible to ensure no further payments are made. We use suppressions to stop payments while we permanently rectify ineligible entities to ensure they can't re-apply and incorrectly received payments.

As at 27 July 2020, over 53,000 applicants have had (or currently have) a payment stopped by some form of review. This is a cumulative figure since 4 May. These applicants were identified through our JobKeeper risk models. They represent about 5% of all applications lodged and amount to about 3% of payments.

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The peak was on 14 June 2020, when there were about 28,000 cases on hand for ATO staff to verify information.

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Department/Agency: ATO

Question: 11

Topic: ERS fraud liability

Reference: Written – 31 July 2020

Senator: Gallagher

Question:

I refer to the ATO (Mr Hirschhorn) evidence on 30 July 2020 that superannuation funds and their members are liable for cases of fraud and that super funds are not required to pay out funds after having received a declaration from the ATO:

Can the ATO please clarify how this is consistent with ARPA guidance to super funds, specifically FAQ 11 and 12 on Superannuation Trustees' response to COVID-19, located here <https://www.apra.gov.au/frequently-asked-questions-superannuation-trustees-response-to-covid-19?>

Answer:

Applicants for the Australian Government's COVID-19 Early Release of Superannuation (ERS) scheme, self-assess their eligibility consistent with self-assessment for Australia's tax system. Throughout the process and prior to finalising the application, the applicant confirms the information they have provided, including the basis of their eligibility, is true and correct.

Based on the information provided by the applicant, the ATO issues a determination to the applicant (and the details of that determination to the fund) that a condition of release has been met. The determination also confirms for the applicant that the payment made by the fund is a tax free superannuation benefit.

Prior to releasing any funds to a member, a trustee of a superannuation fund must ensure that the governing rules of the fund allow for the release of the payment. By issuing a determination the ATO does not and cannot direct the fund trustee to make payment to the fund member. Nor does the determination absolve the superannuation fund trustee of responsibility for fraud prevention or for losses suffered due to fraud.

The Australian Prudential Regulation Authority guidance material outlines that superannuation funds will undertake their own automated checking to identify red flags.

Where there is a concern that fraud may have occurred, we encourage superannuation funds [and affected members] to engage with the ATO so that appropriate investigation may be undertaken, this may ultimately result in such actions as referral to the Australian Federal Police and measures to recover stolen moneys.

Senate Select Committee on COVID-19
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office
Public Hearing 30 July 2020

Department/Agency: ATO

Question: 12

Topic: Ineligible payment recovery

Reference: Written – 31 July 2020

Senator: Siewert

Question:

In response to a question at the hearing on 30/07/20, you said that the ATO had written to 8,000 businesses that you believe to have been ineligible.

- a. For the 8,000 businesses, how many employees does these 8,000 covers?
- b. How many have you explicitly asked to repay either all or some of their JobKeeper payment?
- c. Are there any you haven't asked but intend to, if so, how many?

Answer:

Please refer to our response to question 2.

Senate Select Committee on COVID-19
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office
Public Hearing 30 July 2020

Department/Agency: ATO

Question: 13

Topic: JobKeeper Eligibility criteria

Reference: Written – 31 July 2020

Senator: Siewert

Question:

In response to questions at the hearing on 30/07/20, you said that of the 8,000 entities that you believed to be ineligible, “1,800 didn’t satisfy because they were too new”, what specific eligibility criteria didn’t they meet?

Answer:

The relevant provisions can be found in section 11 of the JobKeeper Rules which relates to Eligible Business Participants, particularly subsections (6) and (8).

Senate Select Committee on COVID-19
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office
Public Hearing 30 July 2020

Department/Agency: ATO

Question: 14

Topic: JobKeeper further ineligible entities

Reference: Written – 31 July 2020

Senator: Siewert

Question:

Has the ATO identified more than the 8,000 that you have already written to as ineligible for JobKeeper?

- a. If so, how many entities and how many employees do they cover?
- b. Does the ATO anticipate it will identify more ineligible entities?
- c. If so, approximately how many entities and how many employees do you expect this to consist of?
- d. Can the ATO provide an estimate of how many of them would be asked to repay incorrect payments? If so, what is the predicted total amount??

Answer:

As at 27 July 2020, over 9,200 organisations have been found to be ineligible for the JobKeeper scheme (Including the original 8,000). Whenever an entity is determined to be ineligible, they are provided with a written explanation as to why they are not eligible, together with an explanation of their review rights.

- a. Of the approximately 9,200 entities determined to be ineligible, the total number of employees and eligible business participants included on the application forms is approximately 13,500.
- b. As at 27 July, over 12,000 active reviews were in progress to determine the eligibility of applications. As more reviews are completed and should more organisations enter the scheme, the ATO anticipates there will continue to be a small number of applications that do not meet the eligibility rules.
- c. The ATO are unable to predict how many more entities will be found ineligible and how many employees those entities will have. While compliance efforts have identified a small level of non-compliance, the vast majority of JobKeeper applicants that have been reviewed to date have been found to be eligible.
- d. The ATO are unable to estimate how many entities will be asked to repay incorrect amounts. The ATO has published guidance on the ATO website outlining the circumstances under which incorrect payment/overpayments would need to be repaid, and that it will not in general pursue overpayments where an honest mistake has occurred. Any decision will be made on the facts and circumstances of each case.

Senate Select Committee on COVID-19
ANSWERS TO QUESTIONS ON NOTICE
Australian Taxation Office
Public Hearing 30 July 2020

Department/Agency: ATO

Question: 15

Topic: ERS withdrawals

Reference: Written – 31 July 2020

Senator: Siewert

Question:

- a) Are you sharing data with other agencies, for example Treasury, ASIC or APRA, to understand what people who are making early withdrawals on their super are doing with the money?
- b) In particular, is there any way of understanding how much of early super withdrawals are going towards paying off mortgages?

Answer:

- a) The ATO shares some application data at an aggregate level with Treasury, ASIC and APRA, to assist them with fulfilling their responsibilities within the superannuation system.
- b) The ATO does not hold or receive information regarding how individuals are spending their money withdrawn under the Early Release of Superannuation scheme.