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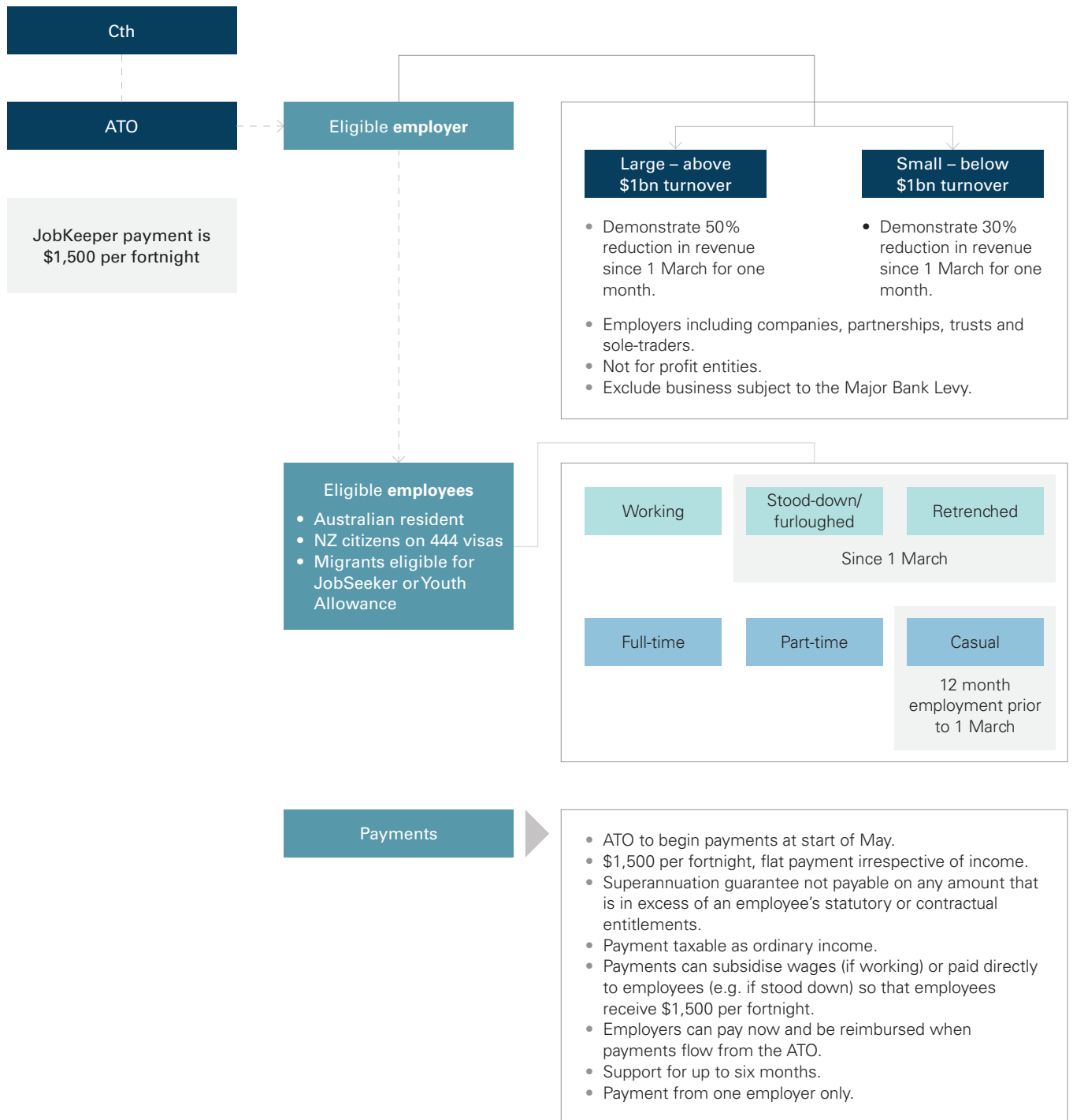
# COVID-19: Employer Update

Examining the JobKeeper Payment and Other Worker Benefits

31 March 2020



# JobKeeper Commonwealth support





## Introduction

The Federal Government has announced a series of extraordinary fiscal measures designed to protect the jobs and incomes of Australian workers, as part of its response to the economic consequences of the COVID-19 pandemic.

This includes a A\$130 billion 'wage subsidy' scheme: the JobKeeper payment.

Following the announcement of this scheme on 30 March, there is likely to be significant and immediate pressure on employers to start making payments to workers who have been stood down and to rehire workers who have been made redundant. This is not without risk for some employers.

In this update we summarise:

- what is known about the JobKeeper payment announced on 30 March 2020;
- the questions employers should be asking about the scheme; and
- the other entitlements available to workers who are affected by COVID-19 but who may not be able to access the JobKeeper payment.

This publication relies on information published by the Treasury and Australian Tax Office (**ATO**) as at 31 March 2020. We recommend businesses refer to the Treasury and ATO for point-in-time information.

## What is currently known about the JobKeeper payment?

As at the time of publication the Government has committed A\$130 billion to pay 'Eligible Employers' \$1,500 per fortnight for each 'Eligible Employee' for a period of up to six months (from 30 March 2020).

Parliament is expected to be recalled to legislate the expenditure in the coming weeks.

### Purpose of the JobKeeper payment

The scheme serves several public policy aims, including to:

- provide immediate cash-flow relief to organisations strained by COVID-19 in order to keep employees 'on the books' and rehire those who may have recently been made redundant;
- efficiently deliver stimulus to a large proportion of the working population (up to six million workers) impacted by COVID-19 even if their employer goes 'into hibernation and closes down for six months'; and
- limit the short and long-term strain on the Commonwealth welfare system by maintaining employers as the primary source of income.

Unlike the scheme that has been announced in the United Kingdom, an employer does not have to stand down ('furlough') employees in order to access the payment.

### How will the JobKeeper payment scheme work?

The scheme subsidises Eligible Employers for continuing to pay the wages of Eligible Employees during the six month period from 30 March 2020.

After paying wages, Eligible Employers will be reimbursed by the ATO at a flat rate of \$1,500, before tax, per Eligible Employee per fortnight.

Eligible Employers will be required to notify employees that they are an Eligible Employer and that their wages will be subsidised by the scheme.

Employees who work for multiple Eligible Employers will have to nominate one employer to make the payment.

### Who is an Eligible Employer?

An employer may be eligible for the subsidy if:

- their business has a **turnover of less than \$1 billion** (presumably, per annum) and their turnover will be reduced by more than 30 per cent relative to a comparable period a year ago (of at least a month); or
- their business has a **turnover of \$1 billion or more** and their turnover will be reduced by more than 50 per cent relative to a comparable period a year ago (of at least a month); and
- the business is not subject to the Major Bank Levy.

Employers (including not-for-profits and certain independent contractors) that satisfy the 'turnover test' may apply to the ATO to access the JobKeeper payment in respect of Eligible Employees.

It can confidently be anticipated that there will be heavy demand for access to the JobKeeper payment scheme.

For example, on the morning of 31 March, the ABC reported that within five hours of the Prime Minister's announcement, 66,000 businesses had applied to the ATO to register as Eligible Employers. This clearly suggests that there will be enormous pressure on employers to access the scheme, and also that there may be significant delays in processing applications.

### Who is an Eligible Employee?

Eligible Employees are employees who:

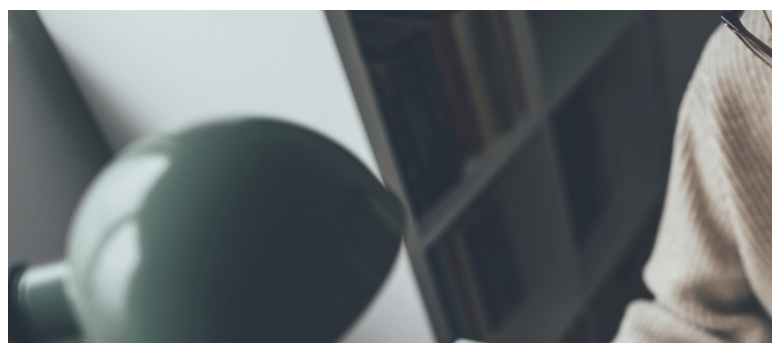
- are currently employed by an Eligible Employer (including those stood down or re-hired);
- were employed by that employer as at 1 March 2020;
- are full-time, part-time, or long-term casuals (a casual employed on a regular basis for longer than 12 months as at 1 March 2020);
- are at least 16 years of age;
- are an Australian citizen, the holder of a permanent visa, a Protected Special Category Visa Holder, a non-protected Special Category Visa Holder who has been residing continually in Australia for 10 years or more, or a Special Category (Subclass 444) Visa Holder; and
- are not in receipt of a JobKeeper payment from another employer.

There is no income cap on eligibility for employees. Therefore an Eligible Employer may receive the subsidy in respect of its highest paid employees.

The following categories of workers are not Eligible Employees:

- employees who have been stood down by a business that is not an Eligible Employer; and
- employees who have been made redundant but are not rehired.

Subject to further announcements, these workers may be entitled to receive other benefits (such as the JobSeeker Allowance – see Annexure A).





## Is 'stand down' still an option for employers if employees cannot be 'usefully employed' (and it satisfies the other criteria)?

Yes. The JobKeeper scheme does not affect the conditions for standing down all or part of the workforce under an industrial instrument, contract of employment or section 524 of the *Fair Work Act 2009* (Cth).

The scheme provides a higher level of income protection to employees stood down by Eligible Employers and 'maintains connection' with the employer by ensuring continuity of payment. There is no requirement that employees receiving the payment be provided with work to do.

If an employer meets the eligibility criteria it is conceivable that, if there is no work for employees to do, it could as an alternative to a 'stand down', permit affected employees to take a novel form of leave paid at the rate of the JobKeeper payment.

## Outstanding questions

### How will different entities within a corporate group be treated?

There is currently no guidance as to how the turnover test will apply to large corporate groups.

It is likely that the concept of turnover in the announcement will be based on the annual group turnover which will mean the definition of employer should encompass the broader corporate group (which is common with many tax measures). This is consistent with:

- the practice of group companies to report PAYG for all employees of the group to the ATO through a single entity; and
- the fact there are very few single employing entities with a turnover in excess of A\$1 billion.

Subject to further announcements, the Government may adjust the JobKeeper payment mechanism to capture employees who have been stood down within large corporate groups to avoid these cohorts moving to the welfare system while on 'stand down'.

## What information needs to be provided to the ATO?

It is likely employers will need to provide the following information to the ATO for assessment as an Eligible Employer:

- the number of Eligible Employees employed by the business;
- the relevant period in 2020 where the downturn has occurred or is likely to occur (from 1 March and of at least one month);
- turnover for the corresponding period in 2019; and
- evidence of the change in revenue between the 2019 and 2020 period.

It is not clear whether evidence of a direct link between the drop in revenue and COVID-19 must be supplied.

On the information available, it appears that the ATO will make a determination as to whether the eligibility criteria are satisfied.

## I have already stood down part of my workforce – do I need to pay them for the period from 30 March 2020?

There is no requirement that Eligible Employers backpay employees who have already been stood down (or who agreed to take a period of leave without pay) at the JobKeeper rate.

Given the JobKeeper payment is higher than other welfare payments available to stood down employees, affected employees and unions (and possibly the Government) are likely to apply considerable pressure on Eligible Employers to make the JobKeeper Payment and sign up to the scheme to obtain reimbursement from the ATO.

Employers who are not confident that they are in fact Eligible Employers will need carefully to consider how they respond to these demands.

## Do I have to rehire workers who have been made redundant?

In announcing the scheme, Prime Minister Scott Morrison said, 'if you're an employer who's been forced as a result of the downturn following the coronavirus to retrench workers, you'll put them back on your books and you'll receive this \$1500 payment'.

Based on the materials released to date, there appears to be no express requirement to rehire employees made redundant since 1 March 2020.

However, for the reasons described above, there may be considerable pressure on employers to rehire employees who have recently been made redundant. Further clarification will be required as to how entitlements that have been paid out on termination will be treated in that circumstance.



## Will some employees receive more than they currently earn as wages under the scheme?

Yes, the scheme is not a 'pure' subsidy. The \$1,500 must be paid to all Eligible Employees including those who might usually be paid less than \$1,500 a fortnight by an Eligible Employer (e.g. casual workers and part-time employees who have been stood down).

On the current guidance, employers are not required to pay superannuation or other entitlements (such as annual leave accruals) on any amount that is in excess of an employee's statutory or contractual entitlements.

## Is an employer obliged to pay above the JobKeeper payment rate?

An employee's terms of employment are not changed as a result of this scheme. If, under an industrial instrument or contract of employment, an employee is paid more than \$1,500 a fortnight an employer is still liable to pay that amount.

As discussed in [our recent publication](#), if an employer is unable to sustain wage or salary payments at their current rate, it may attempt to renegotiate salaries and working hours with their employees as an alternative to standing down those employees.

## Can employment be terminated if an employee is in receipt of the JobKeeper payment?

There is no indication that this scheme will affect an employer's right to terminate a contract of employment with notice or for cause.

In the event an Eligible Employer undertakes a restructure during the period, it may consider placing an employee whose job would otherwise be made redundant on a form of special leave (payable at the JobKeeper payment rate).

## Further considerations

By making an application to the ATO and notifying employees of the application, businesses will be acknowledging a substantial drop in their revenue. Whilst this may not be remarkable in the circumstances, it may have other implications beyond the immediate employment relationship.

### Insolvency

While this scheme will provide cash flow relief to eligible businesses, it may not resolve all solvency issues. A record that a company continued to incur debts after acknowledging a 30% or 50% drop in turnover may be damaging in subsequent litigation.

### Market Disclosure

For listed companies, applying to the scheme (and acknowledging the relevant drop in turnover) is likely to be market-sensitive information that must be disclosed. Companies should ensure that any application, announcement to employees and announcement to the market is correctly sequenced.



## Overview of other entitlements available to workers impacted by COVID-19

Workers who are not entitled to receive the JobKeeper payments through their employer may be eligible to access other COVID-19 specific welfare schemes. These are set out in further detail in Annexure A but include the following:

### JobSeeker Allowance

- Existing welfare scheme provided by Centrelink, expanded to allow access to workers who have lost income as a result of the pandemic.
- Payments are available to eligible employees (including those who have been stood down or given leave without pay) as well as casual and contract workers who have lost work.
- The amount payable depends on personal circumstances, with relaxed income testing measures to apply for the next six months.

### Coronavirus Supplement

- A new \$550 payment per fortnight provided by Centrelink to those on the JobSeeker scheme (for six months).

### Early access to superannuation

- Temporary scheme to enable eligible individuals to access up to \$20,000 of their superannuation across the next two financial years.
- To be eligible, a person must demonstrate at the time they apply for early release that they are:
  - unemployed; or
  - eligible to receive any of the following under the *Social Security Act 1991*:
    - JobSeeker payment;
    - parenting payment;
    - special benefit; or
  - eligible to receive youth allowance under the *Social Security Act 1991* (other than on the basis that the person is undertaking full time study or is a new apprentice); or
- eligible to receive farm household allowance under the *Farm Household Support Act 2014*; or

- on or after 1 January 2020 they were made redundant, or their working hours were reduced by 20% or more (including to zero); or
- for a person who is a sole trader, on or after 1 January 2020, their business was suspended or suffered a reduction in turnover of 20% or more.

### Hardship payments from building and construction industry redundancy funds

Hardship payments may be available to construction workers who are members of various redundancy funds, subject to the terms of the applicable Trust Deeds. For example, eligible Incolink members (Victorian and Tasmanian construction workers) who have an available balance in their account and have been stood down, or required to self-isolate as a result of COVID-19, will have access to \$2,000 per month from their Incolink account.



## Resources

ATO portal: <https://bp.ato.gov.au/>

Treasury Guide for Employers (as at 31 March):

[https://treasury.gov.au/sites/default/files/2020-03/Fact\\_sheet\\_supporting\\_businesses\\_4.pdf](https://treasury.gov.au/sites/default/files/2020-03/Fact_sheet_supporting_businesses_4.pdf)

Prime Minister's Statement (30 March):

<https://www.pm.gov.au/media/130-billion-jobkeeper-payment-keep-australians-job>

## Annexure A: Benefits available to workers affected by COVID-19

### JobKeeper Payment

#### Payment

- The Government will provide eligible employers \$1,500 (before tax) per fortnight per eligible employee for up to 6 months.
- The employer must provide the employee with the entire \$1,500 payment (before tax) regardless of whether the employee would usually earn less or more than this amount. Employers are able to top-up the payment.
- It is at the employer's discretion if they want to pay superannuation on any additional wage paid because of JobKeeper payments.

#### Eligible people

##### Employees

Eligible employees must:

- have been employed by the employer on 1 March 2020;
- be over 16 years of age; and
- not currently receiving the JobKeeper subsidy from another employer.

The scheme will apply to those currently engaged by the employer, including:

- fulltime or part-time employees;
- employees who were stood down or made redundant, provided that they were employed on 1 March 2020 and have since been re-engaged by the employer; and
- casuals who were employed on a regular basis for at least 12 months prior to 1 March 2020.

##### Employers

Employers must elect to participate in the scheme by applying through the Australian Taxation Office (ATO).

Employers (including not-for-profits) will be eligible for the subsidy if:

- their business has a turnover of less than \$1 billion and their turnover will be reduced by more than 30 per cent relative to a comparable period a year ago (of at least a month); or
- their business has a turnover of A\$1 billion or more and their turnover will be reduced by more than 50 per cent relative to a comparable period a year ago (of at least a month); and
- the business is not subject to the Major Bank Levy.

Self-employed individuals are also eligible if they have suffered or expect to suffer a 30 per cent decline in turnover relative to a comparable prior period (of at least a month).

#### Residence rules

Employees that are not Australian citizens must notify their employer of their visa status, to allow their employer to determine if they are an eligible employee.

The payment is available to a:

- Australian citizen;
- permanent visa holder;
- Protected Special Category Visa Holder;
- non-protected Special Category Visa Holder who has been residing continually in Australia for 10 years or more; or
- a Special Category (Subclass 444) Visa Holder.

#### Timing

- Currently, employers can register their interest in the JobKeeper scheme on the ATO website.
- The subsidy starts from 30 March 2020. However, employers will not receive their first subsidy payment from the ATO until the first week of May. This period will be backpaid to employers.
- Subsequent payments will be paid to the employer in arrears monthly by the ATO.

#### Other conditions

##### Employers

- Employers must notify eligible employees that the employer is receiving the subsidy on their behalf.
- Employers must report the number of eligible employees employed by the employer to the ATO on a monthly basis.

##### Employees

- Employees with multiple employers must notify the employer that is their primary employer to receive the subsidy on their behalf. Claiming the tax-free threshold is sufficient notification.
- Employees that are currently in receipt of an income support payment must notify Services Australia of their new income.

#### Evidence

- An eligible employer will need to provide the ATO with supporting information demonstrating a downturn in their business.





## JobSeeker Allowance

### Payment

Payment will depend on a person's unique situation, taking into account partners and dependents, as well as income earned in the past fortnight.

Situation	Max. fortnightly payment
Single, no children	\$565.70
Single with a dependent child or children	\$612
Single, 60 or over, following nine months' pay	\$612
Partnered	\$510.80 each
Single principal carer	\$790.10

### Eligible people

This payment is available to people between 22 and the Age Pension age who are looking for work. This includes but is not limited to:

- permanent workers who are stood down or lose their employment;
- sole traders, self-employed, casual or contract workers with reduced income;
- people caring for someone who's affected by coronavirus;
- people on leave without pay who are unable to resume their employment before the end of the leave period; and
- sick or injured workers, unable to do usual work for a short time.

### Residence rules

Applicants must be Australian residents and in Australia. Non-protected Special Category visa holders may be eligible if they have lived in Australia for ten years.

### Income test

Situation	Payment reduces to nil once income reaches this amount
Single, no children	\$1,086.50
Single with a dependent child or children	\$1,164.84
Single, 60 or over, following 9 months' pay	\$1,175.17
Single principal carer	\$1,673.25
Partnered	\$993.50 each

Full payments are reduced where people earn income over certain thresholds that depend on the person's unique situation. On 30 March 2020, Prime Minister Morrison announced that the partner income threshold would be lifted temporarily to \$79,762.

The assets limit has been waived for new claims from 25 March to 24 September 2020.

### Other conditions

People cannot access employer entitlements such as annual leave, sick leave or Income Protection Insurance at the same time as receiving JobSeeker Payments.

### Evidence

Services Australia has temporarily removed evidence requirements like employment separation certifications, bank statements, proof of reduced work hours and proof of rental arrangements.

## Coronavirus Supplement

**This entitlement provides eligible people up to an additional \$550 per fortnight.**

### Payment

This temporary supplement will be an extra \$550 per fortnight payment on top of an income support payment, like the JobSeeker Payment. All eligible people will receive the full rate of the supplement.

### Eligibility

This supplement is automatic for people receiving the JobSeeker Payment.

### Timing

Fortnightly payments will generate automatically from 27 April 2020, and will recur for up to six months.

## Economic Support Payments

**Each of the two payments provide eligible people with a one-off sum of \$750.**

### Payment

Each of the one-off Economic Support Payments is for \$750. These payments will be exempt from taxation and will not count as income. The amount is the same for single people and each eligible member of a couple.

### Eligibility

Payment 1 applies to people getting an eligible payment, like the JobSeeker Payment, on any day from 12 March to 13 April 2020. Payment 2 applies to people who receive an eligible payment or hold an eligible concession card on 10 July 2020. People getting the Coronavirus Supplement will not get the second payment.

### Timing

The first payment will be paid from 31 March 2020, and the second from 13 July 2020.

## Early Access to Superannuation

### Benefit

An eligible person can access up to \$20,000 of their superannuation; up to \$10,000 in the 2019-20 financial year and up to another \$10,000 in the 2020-21 financial year.

### Eligibility

An eligible person must satisfy any one of the following requirements:

- is unemployed; or
- is eligible to receive any of the following under the *Social Security Act 1991*:
  - JobSeeker payment;
  - parenting payment;
  - special benefit; or
- is eligible to receive youth allowance under the *Social Security Act 1991* (other than on the basis that the person is undertaking full time study or is a new apprentice); or
- is eligible to receive farm household allowance under the *Farm Household Support Act 2014*; or
- on or after 1 January 2020 they were made redundant, or their working hours were reduced by 20% or more (including to zero); or
- for a person who is a sole trader, on or after 1 January 2020, their business was suspended or suffered a reduction in turnover of 20% or more.

### Timing

Applications can be made to the ATO from 20 April 2020. Eligible individuals will be able to apply online through myGov to access up to \$10,000 of their superannuation before 1 July 2020. They will also be able to access up to a further \$10,000 between 1 July and 24 September 2020.

### How to apply

Eligible people can apply directly to the ATO through the myGov website. After the ATO process an application, it will issue a determination. The ATO will provide a copy of this to the applicant's super fund, which will advise them to release the payment. The fund will then make payment directly to the applicant.

### Other conditions

People accessing their superannuation will not need to pay tax on amounts released and the money will not affect Centrelink payments. Also, if a person requests less than \$10,000 for either financial year, they cannot then make another request for release in that financial year.





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