

ACT WORKERS COMPENSATION SCHEME: COMMONWEALTH JOBKEEPER PAYMENTS

Introduction

Understanding how the Commonwealth's JobKeeper payments in response to the impacts of COVID-19 affects obligations under the *Workers Compensation Act 1951* (the Act) in relation to:

- wages declaration for workers' compensation premiums; and
- earnings for the purposes of weekly compensation payments.

Please note: Eligibility for the JobKeeper payments has been determined by the Commonwealth and employers and workers should refer to the criteria published by the Australian Taxation Office at <https://www.ato.gov.au/General/JobKeeper-Payment/> to see if they are eligible.

Will JobKeeper payments affect workers' compensation premiums?

In the ACT, workers' compensation is privately underwritten and premiums are set by approved insurers under the scheme. There are a number of factors that are taken into consideration by insurers in determining the risk of an employer when setting premiums.

The framework established under the Act requires employers to provide information to approved insurers on application for a policy, renewal and end of a policy that is used to determine an employer's risk. This includes not only the total wages of workers but also time worked by each worker (refer section 155 of the Act for more detail). It is important that the risk applied by insurers reflects the actual work being performed. Insurers will need to pay closer attention to the time worked by employers, rather than a focus on wages paid, to ensure premiums reflect the actual risk of a business.

Based on the definition of wages which calls on the Wages and Earnings Guide (<https://www.accesscanberra.act.gov.au/ci/fattach/get/136110/1490063648/redirect/1/fileName/ACT+wages+and+earnings+guide+-+December+2016.pdf>), **the JobKeeper payments made to employers are not considered to be wages of the employer that must be declared under section 155 (7)(b).**

The table below sets out how this will apply:

Employee stood down without pay	Employer pays the employee the \$1,500 JobKeeper subsidy.	No wages declarable. This is akin to how the Commonwealth paid parental leave is treated under the Wages and Earnings Guide.
Employee earned wages of more than \$1,500 per fortnight before JobKeeper	Employer continues to pay the employee their pre-JobKeeper wage (eg. \$2,500). Employer may receive \$1,500 back from the Government under the JobKeeper scheme.	The full \$2,500 is considered wages. This is akin to workers who are on paid long service leave.

Employee earned wages of exactly \$1,500 per fortnight before JobKeeper	Employer continues to pay the employee their pre-JobKeeper wage (eg. \$1,500). Employer may receive \$1,500 back from the Government under the JobKeeper scheme.	The full \$1,500 is considered wages. This is akin to workers who are on paid long service leave.
Employee earned wages of less than \$1,500 per fortnight before JobKeeper	Employer continues to pay the employee's wages (eg \$500). Employer pays an additional amount under the JobKeeper subsidy (eg \$1,000).	The \$500 paid in wages is declarable. The additional \$1,000 is not as this is incidental to their employment.

Will the JobKeeper payments affect how much weekly compensation is paid?

The JobKeeper payments do not have an impact on injured workers receiving weekly compensation for total incapacity. Similarly, injured workers who are only receiving medical treatment compensation will not be impacted.

In relation to injured workers who are receiving weekly compensation for partial incapacity, the JobKeeper payment is to be included in what is being paid for working.

The table below sets out how this will apply:

Partial weekly compensation	Employee may be eligible for JobKeeper as they are employed and not receiving total incapacity weekly compensation.	Weekly compensation paid is the difference between what the employer pays to the injured worker for working (including the JobKeeper payment) and their pre-injury earnings.
Total incapacity weekly compensation (including partial deemed total incapacity)	Injured worker not eligible for JobKeeper payments.	No impact on weekly compensation.
Pre-injury earnings	Employer may have been receiving JobKeeper for an employee whose usual earnings would have been less than \$1,500 per fortnight.	Earnings paid in the last year, to be a fair reflection of the workers' earnings, should not include payments made as a result of JobKeeper. For example: A worker currently earns \$500 per fortnight and is paid an extra \$1,000 by their employer as a result of the JobKeeper subsidy. The \$500 is earnings of the worker but the additional \$1,000 is not part of the pre-injury earnings.