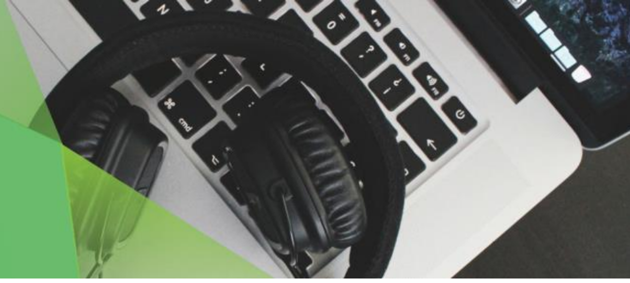

Why are some businesses returning JobKeeper to the ATO?

Companies that received JobKeeper and subsequently paid dividends to shareholders and executive bonuses have come under particular scrutiny, not just by the regulators but by public opinion.

The first phase of JobKeeper did not require business to prove that they had actually suffered a downturn in revenue, just have evidence turnover was likely to drop in a particular month or quarter. For many businesses, early trends indicated that the pandemic would have a devastating impact on revenue. Many also took action and prevented the trend entrenching by actioning plans to protect their workforce and revenue. The fact that business improved, does not impact on initial JobKeeper eligibility. In the first phase of JobKeeper, employers were not obliged to stop JobKeeper payments if trends improved.

Speaking at the Senate Select Committee on COVID-19, ATO Deputy Commissioner Jeremey Hirschhorn stated that the ATO rejected some $180 million in JobKeeper claims pre-issuance. Approximately, $340 million in overpayments have been identified. Of these, $50 million were honest mistakes and will not be clawed back where the payment had been passed on to the employee.

Where the ATO determines that JobKeeper overpayments need to be repaid, they will contact you and let you know the amount and how the repayment should be made. Administrative penalties generally will not apply unless there is evidence of a deliberate attempt to manipulate the circumstances to gain the payment.

Taxpayers can object to the ATO's JobKeeper overpayment assessment. If you are contacted by the ATO, please contact us immediately on 02 9008 3000 for assistance and we will work with the ATO on your behalf.

COVID-19 Vaccinations and the Workplace

The first COVID-19 vaccination in Australia rolled out on 21 February 2021 preceded by a wave of protests. With the rollout, comes a thorny question for employers about individual rights, workplace health and safety, and vaccination enforcement.

The rollout, managed in phases, is expected to complete by the end of 2021 (you can check your eligibility here). While the Australian Government's COVID-19 vaccination policy states that vaccination *"is not mandatory and individuals may choose not to vaccinate",* this does not mean that there will not be punitive initiatives for those failing to vaccinate including proof of vaccination to move across borders. Australia for example, already has a precedent with "No Jab, No Play" policies in place to access child care payments (the ability to object to vaccination on non-medical grounds was removed from 1 January 2016).

There are currently no laws or public health orders in Australia that specifically enable employers to require their employees to be vaccinated against coronavirus. However, it is likely that in some circumstances an employer may require an employee to be vaccinated.

Can an employer require an employee to be vaccinated?

For most employers, probably not. The Fair Work Ombudsman, however, states that there are *"limited circumstances where an employer may require their employees to be vaccinated."* These are:

- **The State or Territory Government enacts a public health order** requiring the vaccination of workers (for example, in identified high-risk workplaces or industries).
- **An agreement or contract requires it** - some employment agreements already require employees to be vaccinated and where these clauses exist, they will need to be reviewed to determine if they also apply to the COVID-19 vaccine.
- **A lawful and reasonable direction** – employers are able to issue a direction for employees to be vaccinated but whether that direction is lawful and reasonable will be assessed on a case by case basis. It's more likely a direction will be "reasonable" where, for example, there is an elevated risk such as border control and quarantine facilities, or where employees have contact with vulnerable people such as those working in health care or aged care.

If an employee refuses to be vaccinated on non-medical grounds in a workplace that requires it, standard protocols apply. That is, the employer will need to follow through with disciplinary action - there are no special provisions that enable suspensions or stand downs for employees who refuse to be vaccinated against COVID-19.

Can an employer require evidence of vaccination?

In general, an employer can only require evidence of vaccination if they have a lawful and reasonable reason to do so. Requesting access to medical records and storing data of an individual's medical information will also have privacy implications (see the Office of the Information Commissioner for more details).

Your immunisation history is already accessible through your myGov account when it is linked to Medicare. The Express Plus Medicare app enables you to access this information on your phone.

More details are expected shortly on Australia's "vaccine passport" that will enable the quick identification of an individual's vaccination status. Israel's "Green Pass" for example uses a simple QR code but there are already concerns that it is easily forged.

Can we require customers to be vaccinated?

Some high risk industries are likely to require customers to be vaccinated or where they cannot be vaccinated, subject to heightened measures such as quarantine and/or testing. Qantas CEO Alan Joyce recently told *A Current Affair*, *"We are looking at changing our terms and conditions to say, for international travellers, that we will ask people to have a vaccination before they can get on the aircraft."* Qantas is expected to release its position middle-to-end 2021 on domestic and international travel.

For employers in high risk industries, it's important to maintain a conversation with employees and consult an industrial relations specialist if your workplace intends to require vaccinations for employees and/or customers.

FBT 2021: Tax & Employee Benefits

Fringe benefits tax (FBT) is one of Australia's most disliked taxes because it's cumbersome and generates a lot of paperwork. The COVID-19 lockdowns have added another layer of complexity as many work patterns and behaviours changed.

A fringe benefit is a 'payment' to an employee or an associate (an associate is someone related to you such as a spouse, child or even a friend), but in a different form to salary or wages. A benefit might be as simple as hosting a work Christmas party, providing car parking, using a work vehicle, or providing the goods or services of the business at a reduced rate to what the public pay.

If your business is not already registered for FBT, it's important to understand if fringe benefits have been provided. Generally, the ATO will look closely at unregistered employers and where there are mismatches in data.

With the FBT year ending on 31 March, we look at the key issues and the Australian Taxation Office's (ATO) hotspots.

What is exempt from FBT?

Certain benefits are excluded from the FBT rules if they are provided primarily for use in the employee's employment. These include:

- Portable electronic devices (e.g., laptop, ipad, printers, GPS, etc.,). Larger businesses are limited to the purchase or reimbursement of one portable electronic device for each employee per FBT year;
- A handbag, briefcase or satchel to carry items you are required to use and carry for work, such as laptops, tablets, work papers or diaries. Be warned that if you are using these bags for a mix of personal and work use, then the use needs to be apportioned and will not be fully exempt from FBT. The ATO is not going to pay for your Gucci bag even if you do throw your ipad into it on occasion.
- Tools of trade.

Also, if the item or service provided to the employee is less than $300 and is a one-off, it's generally classed as a minor benefit and exempt from fringe benefits tax.

COVID-19 & FBT

The ATO has changed how it will approach FBT compliance this year because of the impact of COVID-19 on work patterns and conditions.

Emergency assistance such as flights and accommodation – emergency assistance to provide immediate relief to employees because the employee is at risk of being adversely affected by COVID-19 will generally not be subject to FBT. This might include:

- Expenses incurred relocating an employee, including paying for flights home to Australia.
- Expenses incurred for food and temporary accommodation if an employee cannot travel due to restrictions (domestic, interstate or intrastate).
- Benefits provided that allow an employee to self-isolate or quarantine.
- Transporting or paying for an employee's transport expenses including car hire and transport to temporary accommodation.

For fly-in fly-out workers, this includes temporary accommodation and meals where they were unable to return home because of border or travel restrictions.

Health care - Providing flu vaccinations to employees is generally exempt from FBT because it is work-related preventative health care. However, health care treatment is only exempt from FBT if it is provided to your employees at your workplace or adjacent to your worksite. The cost of ongoing medical costs are generally not exempt.

Company cars - a company car garaged at an employee's home will generally attract FBT. However, this FBT year, many company carparks and places of business were closed. As a result, the ATO has stated that for employers using the operating cost method, if the "car has not been driven at all during the period it has been garaged at home, or has only been driven briefly for the purpose of maintaining the car, we will accept that you don't hold the car for the purpose of providing fringe benefits to your employee." But, you will need to maintain odometer readings that show the car has not been used.

If the car was used, fringe benefits generally applies. However, if the car was used for business purposes then this use reduces the taxable value. If the car was only used for business, the taxable value may be reduced to zero.

Logbooks – COVID-19 is likely to have impacted on driving patterns and the ATO have made some concessions where the 12 week log book period was interrupted.

If you are already using the logbook method and have an existing logbook in place, you can still rely on this logbook. However, you must keep odometer records for the year to show how much the car has been driven during the year including during any lockdown period.

If this is the first year you have used a logbook, you still need to keep an accurate 12 week logbook. However, if COVID-19 impacted driving patterns during that 12 weeks, then the ATO will allow you to adjust the use indicated in the logbook to account for the change in driving patterns.

Not-for-profit salary packaging – Not-for-profit employers often provide salary-packaged meal entertainment to employees to take advantage of the exempt or rebatable cap. For the FBT year ending 31 March 2021, the ATO has stated that they will not look into these arrangements where meals are provided by a supplier that was authorised as a meal entertainment provider as at 1 March 2020.

Cancellation fees – non-refundable costs for cancelled events are exempt from FBT unless the employee paid for the event themselves and was reimbursed by you. That is, if the employer paid for the event then the cancellation fee is the employer's obligation as no benefit was provided. If the employee paid for the event, the cancellation fee is the employee's obligation that has been reimbursed. It really depends on who the arrangement was between.

ATO 'red flags'

One of the easiest ways for the ATO to pick up on problem areas is where there are mismatches in the information provided to the ATO. Common problem areas include:

Entertainment deductions with no corresponding fringe benefit - A simple way for the ATO to pick up on a problem is when an employer claims a deduction for expensive entertainment expenses – meals out, tickets to cricket matches, etc., – but there is not a corresponding recognition of the fringe benefit. Entertainment expenses are generally not deductible and no GST credits can be claimed unless the expenses are subject to FBT.

If your business uses the 'actual' method for FBT purposes and the value of the benefits provided is less than $300 then there might not be any FBT implications. This is because benefits provided to a client are not subject to FBT and minor benefits provided to employees (i.e., value of less than $300) on an infrequent and irregular basis are generally exempt from FBT. However, no deductions should be claimed for the entertainment and no GST credits would normally be available either.

If the business uses the 50/50 method, then 50% of the meal entertainment expenses would be subject to FBT (the minor benefits exemption would not apply). As a result, 50% of the expenses would be deductible and the company would be able to claim 50% of the GST credits.

Employee contributions reduce fringe benefits tax but not recognised in income tax return – Where employee contributions reduce the amount of fringe benefits tax payable (for example where an employee makes a contribution relating to a car fringe benefit), a corresponding amount needs to be recognised in the income tax return of the employer.

The Pandemic Productivity Gap

A recent article published in the Harvard Business Review by Bain & Co suggests that the pandemic has widened the productivity gap between top performing companies and others stating, *"Some have remained remarkably productive during the Covid-era, capitalizing on the latest technology to collaborate effectively and efficiently. Most, however, are less productive now than they were 12 months ago. The key difference between the best and the rest is how successful they were at managing the scarce time, talent, and energy of their workforces before Covid-19."*

Atlassian data scientists also crunched the numbers on the intensity and length of work days of software users during the pandemic. The results found that workdays were longer with a general inability to separate work and home life, and workers were working longer hours (predominantly because during lockdowns, there is no set start and end of the workday routine). Interestingly, the average length of a day for Australian workers is shorter than our international peers by up to an hour pre pandemic. Australia's average working day is around 6.8 active hours whereas the US is close to 7.2.

However, working longer does not mean working more productively. Atlassian's research shows that while the length of the working day increased and the intensity of work increased earlier and later in the day, intensity during "normal" hours generally decreased.

So, how do we measure productivity? Bain & Co suggests:

- The best companies have minimised wasted time and kept employees focused; the rest have not. Those that were able to collaborate effectively with team members and customers pre pandemic fared the best. Poor collaboration and inefficient work practices reduce productivity.
- The best have capitalised on changing work patterns to access difference-making talent (they acquire, develop, team, and lead scarce, difference-making talent).
- The best have found ways to engage and inspire their employees. Research shows an engaged employee is 45% more productive than one that is merely a satisfied worker.

The productivity gap was always there. The pandemic merely brought the gap into stark contrast.

Annualised Salary Changes Reminder

Last year, the Fair Work Commission introduced changes to the way annualised salaries are applied for over a dozen modern awards. This annualised salary changes reminder is here to help! From 1st March 2020, businesses that employ people under any one of these awards must:

- Keep a record of all hours worked (including start, break and finishing times)
- Compare the hours worked and wages paid with the minimum entitlements under the award on an annual basis, or when an employee exits the company.
- If an underpayment is uncovered, employers must make up the difference within 14 days of discovering the underpayment.

Note - Maintaining a record of all hours worked by affected employees is mandatory. Failing to do so can incur fines of up to **$60,000**.

Why now?

It's been almost 12 months since the annualised salary changes took effect, which means it's time to reconcile the hours work and the wages paid with the minimum entitlements under the relevant award. You should have already done this for any employees who left your employment since 1 March 2020.

Which of my employees apply?

Employees working under the following awards must be paid in accordance with the annualised salary changes:

Clerks Award - Surprisingly comprehensive! e.g., marketing and payroll head counts, Banking, Finance, and Insurance Award, Broadcasting Award, Contract Call Centres Award, Hydrocarbons Industry (Upstream) Award, Legal Award, Local Government Award, Manufacturing Award, Mining Award, Oil Refining and Manufacturing Award, Pharmacy Award, Rail Award, Salt Award, Telecommunications Award, Water Award and Wool Award

We're still waiting to hear from the Fair Work Commission about when these changes will apply to the following awards:

Health Services Award Hospitality Award Marine Towage Award Restaurant Award

Can't I apply the better off overall test (BOOT)?

The BOOT only applies to enterprise agreements. If you don't have an enterprise agreement, and you employ someone under the above award, you must reconcile their total hours worked and wages earned with the minimum entitlements under the relevant award.

I haven't been keeping a record of my affected employees' start, end and break times; what should I do?

Start! Use a timesheet application that is employee friendly and make sure to explain to employees why they need to be filling in timesheets. Salaried staff aren't used to submitting timesheets, so getting them on board may be the biggest hurdle.

If you're using software with modern award interpretation then your employees should have been paid the entitlements under the award. If you're not using payroll software with modern award interpretation, use the hours and wage data you do have to compare it with the minimum entitlements under the award. If you notice an underpayment, pay it within 14 days.

In the meantime, contact the Fair Work Commission. 2020 was a big year, but as with any payroll mistakes, it's always better to self-report than hope it goes unnoticed.

Information on the New Laws around Payment Times & Insolvency

Payment Times Reporting Scheme

Payment terms have become a critical issue to small business and have caused such a significant amount of harm to small business cash flow that the government will now intervene. According to the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) 53% of invoices are paid late with an average of 23 days overdue. This equates to $115 billion paid late each year, an impact of $52,000 for every small business in Australia. Source: ASFBEO

As of 1st January 2021, the **Payment Times Reporting Scheme (PTRS)** came into effect. These new laws will require big businesses to report their payment times and terms to small business suppliers. Big businesses with an annual turnover of $100 million-plus will be enforced to comply with the legislation as soon as possible.

The scheme is intended to:

- Increase the transparency around reporting entities payment performance.
- Promote good payment behaviours by discouraging large businesses to pay late due to public disclosure.
- Help small businesses make better-informed decisions about who to do business with.
- Enable small business suppliers to get paid quicker.

How does this impact small businesses?

Small businesses do not have to do anything for the PTRS to operate. Small businesses that do not wish to be included in the scheme can opt out by accessing the PTRS using their MyGovID.

The government has also introduced the Small Business Identification (SBI) Tool to enable reporting entities to easily identify their small business suppliers for reporting under the scheme. Reporting entities will upload a file of their supplier ABNs and the SBI tool will identify which are classified as a small business.

Reporting entities will be required to provide a report for each six months of the income year within three months of the reporting period. The government will publish the reports twice a year on an online public register known as the **Payment Times Report Register**. The published report will not contain any specific details of the small businesses. The report will include such information as:

- Name and ABN Business description Reporting period Statement of standard payment terms
- The proportion of small business invoices paid during the period
- The proportion of all purchasing/earnings from small businesses.

The introduction of PTRS will further encourage an increased level of accountability for payment terms disclosure will change the way a business considers payment terms. Eventually, it is expected to improve payment outcomes for Australia's small businesses community by creating transparency around the payment terms and practices of large businesses.

Delay to Phase 2 of Single Touch Payroll

The Tax Office has agreed to delay the start date for the second phase of Single Touch Payroll after intense pressure from all corners of the payroll industry.

Mandatory STP phase 2 reporting will commence from 1st January 2022 — a six-month extension from the previously proposed 1st July 2021 start date.

STP phase 2 will require additional payroll information to be reported to the ATO, and subsequently shared with Services Australia and other government agencies. The ATO notes that there is nothing practitioners and employers need to do at the moment, with work being done with accounting and payroll software providers to develop and test their services.

Navwealth will monitor the development and implementation of STP2 solutions and provide ongoing updates and implementation assistance to clients as needed.

For small employers with closely held payees that were previously exempt from reporting these payees through STP for the 2019–20 and 2020–21 financial years. From 1 July 2021 must report payments made to closely held payees through STP.

The ATO has confirmed that small employers can report payments to closely held payees through STP in three ways:

1. Reporting actual payments in real time.
2. Reporting actual payments quarterly.
3. Reporting a reasonable estimate quarterly.

Changes to delivery of PAYG and GST quarterly instalment notices

Previously, clients with a digital preference for quarterly PAYG and GST instalment notices (forms R, S & T) would receive a paper form, regardless of their preference (excluding myGov clients). As part of the ATO's digital improvement program, they no longer issue paper instalment notices for PAYG and GST quarterly instalments where a client has a digital preference on ATO systems.
The September 2020 quarterly instalment notice was the last time the ATO issued these as paper to these clients. The notices are now delivered electronically and accessible in Online Services for Agents (OSFA) and other ATO online services.

For clients of Navwealth Accounting and Navwealth Bookkeeping Resources, we will monitor and advise clients of the need to lodge and pay and also payment due dates. Should you or a business you are associated with have any queries or concerns around the electronic delivery rather than paper. Please contact Navwealth

Prepare for the unexpected – Build a Business Continuity Plan

Know your risks – What COVID has taught us

After a disaster, the process of recovery can seem overwhelming, particularly when you don't have a plan. Preparing for a disaster is simply good business practice. It could be the difference between your business or your client's business being out of action for a few days or never re-opening at all.

A business should know its strengths and weaknesses and put strategies in place to adapt to any likely scenario.

Whether it is structural fire, bushfire, floods, storms, an unexpected illness or absence of you or key staff members the consequences can be devastating.

Make it a priority to review this and develop a risk assessment plan.

Plan now for what you will do to alleviate risk

What is the mitigation strategy for the business? A businesses ability to alleviate risk allows them to proactively acknowledge and accommodate risks. Navwealth can assist in establishing policies and procedures that support the business to plan for high-risk situations.

Get your business ready!

Prepare and plan for business continuity so that when disaster strikes a business can easily access all the financial and business records, pay bills, invoice customers, and have sufficient resources and cash flow to continue operating.

The NSW Small Business Commission has prepared a set of easy-to-follow templates and checklists to develop a plan. By preparing a plan to the aim is to ensure your businesses remain resilient despite a disaster or disruption. The resource is available at NSW – Small Business Continuity Plan. Prepare for the unexpected is part of the Get Ready suite of resources for small businesses and includes:

- Get Ready Business
- Get Back to Business
- A Guide to Recovering from Disaster, and
- Insurance Claims for Small Business. These resources can be accessed at NSW –Disaster Recovery

A Business Continuity Plan includes: Plans, measures, and arrangements to ensure the continuous delivery of essential services and products, which permits the organisation to recover its facility, data, and assets. Identification of necessary resources to support business continuity, including personnel, information, equipment, financial allocations, legal counsel, infrastructure protection and accommodations.

A business continuity plan is a live document. Having a plan will help a business evaluate how reliable it will be if it has to respond to an incident or crisis. It needs to be constantly tested and evaluated, then updated.

The prevention, preparedness, response and recovery (PPRR) model is a comprehensive approach to risk management and can assist in identifying risks and responding to change. It includes:

- Prevention — take actions to reduce or eliminate the likelihood or effects of an incident
- Preparedness — take steps before an incident to ensure effective response and recovery.
- Response — contain, control, or minimise the impacts of an incident
- Recovery — take steps to minimise disruption and recovery times.

Remember - Businesses who prepare for disruption and have a clear, tailored plan for recovery can get on their feet again sooner.

We encourage you to download the "Prepare for the Unexpected" template kit from NSW Govt
Being aware of the signals of an impending disaster is crucial in knowing when to act and trigger your emergency action plan, ultimately helping you to save a business.

Support available for businesses affected by NSW floods

A range of support measures are available for small businesses and individuals affected by floods in both New South Wales and Queensland. For example:

- The Australian Banking Association is offering waiving of fees and deferral of loan repayments.
- The NSW Rural Assistance Authority is offering a natural disaster loan for small businesses and primary producers.
- The Federal Government has support payments for individuals

*Given the timing of this news update and the fact that disaster recovery plans and stimulus are still being formulated and rolled out. We will cover this in more detail in our next edition of **Navtalk**.*

For the time being, the government have developed a toll call the "Disaster Assistance Finder which after answering various questions will point you to any currently applicable grants or assistance relief. https://disasterassistance.service.nsw.gov.au/covid

So where are the Hardship Grants For Northern Beaches Small Businesses?

Last month we reported to you that new $3,000 and $5,000 hardship grants will be available to small businesses in Sydney's Northern Beaches that were affected by COVID-19 restrictions over Christmas last year.

We are still awaiting a clear process and methodology to access the grants and grants scheme

If you are unsure as to the eligibility requirements and the application process please visit the Navwealth https://navwealth.com.au/client-centre/#tab-4d27fdab8763a9f6c37 and read our newsletter from last month or contact your Navwealth advisor.

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.