BRIEFINGS

WATERHOUSE
CHARTERED ACCOUNTANTS

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Unwinding Covid-19 Relief

Covid-19 support will roll back as states and territories reach vaccination targets.

The National Plan, i.e. the roadmap out of Covid-19, does more than provide greater freedoms at 70% and 80% full vaccination rates. It also withdraws the steady stream of Commonwealth financial support to individuals and business impacted by Covid-19 lockdowns and border closures. We look at the impact and the support that remains in place.

Support for Business

Each state and territory manages lockdown and financial support to businesses impacted by Covid-19 lockdowns and border closures differently. The way in which support is withdrawn will depend on how support has been provided and the extent of Commonwealth support.

Australian Capital Territory

The ACT government has distributed grants to business jointly funded with the Commonwealth. The ACT Covid-19 Business Support Grant was recently extended with top-up grants of $10,000 for employing businesses and $3,750 for non-employing businesses distributed to previous grant recipients in industries impacted by continued lockdowns. Large businesses (turnover of $2m to $5m) received an additional top-up amount of between $10,000 and $30,000. The Tourism, Accommodation Provider, Arts, Events, Hospitality & Fitness Grants have also been topped up with grants between $5,000 and $25,000 to existing recipients and the grant has been expanded to the fitness/sports sector (more information will be available in mid-October).

Lockdowns eased on 1 October and are scheduled to be lifted from 15 October, with a return to normal in early to mid-December 2021 (refer to the pathway forward). While not specified, it is expected that grants will cease at this point and instead be directed into targeted industry specific initiatives (see the recovery plan).

New South Wales

The NSW JobSaver program, which provides payments of up to 40% of weekly payroll, is jointly funded by the state and Commonwealth governments. From 13 September, businesses receiving JobSaver have been required to reconfirm their eligibility for the payment each fortnight including a 30% decline in turnover test and headcount test.

JobSaver*	Weekly Payroll	Mini-mum	Maxi-mum	Non-Employing Business
Current	40%	$1,500.00	$100,000.00	$1,000.00
10 October	30%	$1,125.00	$75,000.00	$750.00
80% full vaccination	15%	$562.50	$37,500.00	$375.00
30 November	0%			$0.00

**excludes extension program*

At 70% full adult vaccination (10 October 2021), JobSaver will reduce from 40% of weekly payroll to 30%. Then at 80% full vaccination, the Commonwealth will withdraw funding. The NSW Government announced that it will continue to fund their portion of JobSaver up until 30 November 2021 (15% of payroll).

It is unclear at this stage of what the impact of the withdrawal of Commonwealth funding at 80% vaccination rates will mean to large tourism, hospitality, and recreation businesses.

The $1,500 fortnightly Micro-Business Grant will reduce to $750 per fortnight from 80% full vaccination and cease on 30 November 2021.

If you are uncertain how the easing of restrictions will impact on you and your workplace, see the roadmap.

Queensland

While not significantly impacted by local lockdowns, Queensland tourism is impacted by national and international border closures. A second round of Tourism and Hospitality Sector Hardship grants have been announced although no further details are currently available.

For businesses on the border with New South Wales, a hardship grant will become available if the closure remains in place until 14 October or longer with grants of $5,000 for employing entities and $1,000 for non-employing entities (see Business Queensland for details). To receive the grant, you must operate in a "border business zone" and have received the Covid-19 Business Support Grant.

Pointedly, Federal Treasurer Josh Frydenberg has stated, "Governments must also hold up their end of the bargain and stick to the plan agreed at National Cabinet that will see restrictions ease and our borders open up as we reach our vaccination targets of 70 to 80 per cent." The Queensland Government will be under significant pressure to open borders once vaccination rates reach 80% in December and prior to the school holiday period.

Victoria

The Victorian Government has distributed grants to business jointly funded with the Commonwealth. For many of these grants, funding has been topped up in line with lockdown extensions.

The small business hardship fund providing one-off grants of $20,000 for businesses that have suffered a 70% or more decline in turnover and were not eligible for other grants or funding will reopen (see the BusinessVictoria website for details).

The Business Costs Assistance Program will provide automatic top-ups to existing recipients across October and into the first half of November (two fortnightly payments between 1-29 October on a rising scale). Businesses that remain closed or severely restricted between 70% and 80% double dose will receive an automatic payment for the period from 29 October to 13 November.

Licensed hospitality venue fund recipients will also receive weekly top-ups in October of between $5,000 and $20,000, stepped according to venue capacity. Between 70% and 80% double dose, payments for licensed premises in metropolitan Melbourne will be reduced by 25%, and in regional Victoria by 50%.

Victoria is not expected to reach the 70% vaccination target until the end of October, and 80% in early to mid-November. You can find Victoria's broad road map here.

National

The National Plan stipulates that state and territory borders are to reopen at 80% double vaccination in that state or territory, but this will depend on health advice at the time.
Generally, international borders will reopen in states and territories at 80% double vaccination with Australian and permanent residents able to quarantine at home for seven days. Unvaccinated travellers will need to stay in hotel quarantine for 14 days. Commercial flights will also resume for vaccinated Australians with Australia expected to implement a "red light, green light" system similar to the UK to designate safe countries.

For other regions such as South Australia and the Northern Territory, borders are expected to reopen at 80% double vaccination, but with some nuances flagged. The Western Australian government has stated that it will announce an easing of border restrictions once an 80% double vaccination has been achieved for those over 12 years of age.

For Individuals

The Covid-19 Disaster Payment offered a lifeline to those who lost work because of lockdowns, particularly in the ACT, New South Wales and Victoria where the Delta strain of the virus and long-term lockdowns had the greatest impact.

In late September 2021, the Treasurer announced that the Disaster Payment will roll back as states and territories reach vaccination hurdles on the National Plan. Over $9 billion has been paid out to date on Disaster Payments, and at 70% and 80% full adult vaccination the disaster, apparently, is over.

At 70% Full Vaccination in your State or Territory

In the first week that a state or territory reaches 70% full adult vaccination, the automatic renewal that has been in place will end and individuals will need to reapply each week that a Commonwealth hotspot remains in place to confirm their eligibility. The Covid-19 Disaster Payment will not necessarily end, but anyone currently receiving the payment will need to reconfirm that they meet the eligibility criteria, including living or working in a Commonwealth declared hotspot. Refer to the section below in relation to reconfirmation.

Given that the time gap between 70% and 80% full vaccination might be as little as two weeks in some regions, the impact of the 70% restrictions might be a moot point.

At 80% Full Vaccination in your State or Territory

In the first week a state or territory reaches 80% full adult vaccination, the Covid-19 Disaster Payment will phase out over a two week period before ending completely.

Trigger	Disaster Payment per Week
<70% vaccination*	$750 – lost 20 hours or more for that week $450 – lost at least 8 hours of work $200 – on income support and have lost at least 8 hours of work
70% vaccination*	Automatic renewal ends
80% vaccination	Payment reduced from first week
Week 1	$450 – lost at least 8 hours of work $100 – for those on income support who have lost at least 8 hours of work
Week 2	$320 – lost at least 8 hours of work

**First week population +16 year of age reaches vaccination target*

Those needing financial support will no longer be eligible for the Disaster Payment regardless of whether a Commonwealth hotspot is in place, and instead will need to apply for another form of income support such as JobSeeker. Unlike the Disaster Payments, JobSeeker and most other income support payments are subject to income and assets tests.

The Pandemic Leave Disaster Payment, for those who cannot work because they need to self-isolate, care or quarantine or care for someone with Covid-19, will remain in place until 30 June 2022.

SME Lending Options

While there is likely to be an economic rebound when restrictions ease across the country, for many a funding gap will remain between the assistance provided by government grants and viable trading conditions.

The expanded SME recovery loan scheme took effect on 1 October 2021. Under the scheme, the government will guarantee 80% of loan amounts to businesses that have been adversely impacted by Covid-19.

The lending terms, repayment and interest rates are set by the lenders, but cannot be backed by residential property; that is, if the government is underwriting the loan lenders cannot ask business owners to use their home as security. However, director guarantees are likely to be required.

Under the scheme, lenders can provide:

- A repayment holiday of up to 24 months;
- Loans of up to $5m;
- Loan terms of up to 10 years; and
- Secured and unsecured loans

The recovery loans can be used to refinance existing loans, purchase commercial property, purchase another business, or for working capital. But they cannot be used to purchase residential property, financial products, to lend to associated entities, or for lease, rent, hire or hire purchase of existing assets that are more than halfway into their effective life.

The loan scheme is generally available to solvent businesses with a turnover of up to $250m, have an ABN, and are a tax resident of Australia. Loans remain subject to lending conditions, and generally the lenders will look to lend to viable businesses where it is clear that they can trade their way out of the impact of Covid-19 or the assets of the business make the break-up value attractive.

If you default on your loan, you cannot simply walk away from it. The government is guaranteeing 80% of the lender's risk, not your debt. Director guarantees are still likely to be required, and for many loans it will be secured against a business asset. On the plus side, interest rates are very attractive right now and many of the lenders are providing a repayment holiday of up to 24 months and, in some cases, existing debt can be bundled into the loan arrangements.

Reconfirmation Process for JobSaver and the Micro-Business Grant

If your business currently receives payments under the NSW JobSaver or Micro-Business Grant schemes, you will need to reconfirm your eligibility each fortnight to continue receiving payments.

Broadly, entities will need to confirm each fortnight that they have maintained their headcount as at 13 July 2021 and that they have continued to experience a decline in turnover of at least 30%. If you require our assistance to confirm your continued eligibility, please send us your income figures each fortnight.

What needs to be Confirmed?

Each fortnight, your business will need to reconfirm that it:

- Continues to experience a decline in turnover of 30% or more; and
- Has maintained the employee headcount stated in the application. Note that if your headcount changes, you are obliged to notify ServiceNSW.

Measuring Decline in Turnover

There are two main approaches to validate your decline in turnover depending on whether the business has traded during the relevant fortnight:

If your Business was <u>not</u> Trading During the Relevant Fortnight

There is no requirement to perform a decline in turnover calculation. You can simply select “yes” on the confirmation screen to indicate that your business has continued to experience a decline in turnover of at least 30%.

If your Business was Trading During the Relevant Fortnight

You will need to determine if your business continues to meet the 30% or more decline in turnover eligibility criteria. There are three potential methods you can use, but whichever method you use you will need to use the same method for each subsequent fortnight.

Method 1 – 2019 or 2020 Comparison Period using Testing Period Fortnight

If your initial comparison period was in 2019 or 2020, then you can use the same year but adjust the comparison period to match the current fortnight being tested.

For example, if you initially compared the period of 26 July 2021 to 8 August 2021 to 26 July 2019 to 8 August 2019 and you are now reconfirming your eligibility for the period of 13 September 2021 to 26 September 2021, then your comparison period is 13 September 2019 to 26 September 2019:

	Test Period	Comparison Period
Application	26 July 2021 to 8 August 2021	26 July 2019 to 8 August 2019
Re-testing	13 September 2021 to 26 September 2021	13 September 2019 to 26 September 2019

You cannot use 13 September 2020 to 26 September 2020 as your comparison period in this example.

Method 2 – 2019 or 2020 Comparison Period using Original Testing Period

If the initial comparison period was in 2019 or 2020, then you can use the same year and comparison period that you used in your original application.

For example, if you initially compared the period of 26 July 2021 to 8 August 2021 to 26 July 2019 to 8 August 2019, and you are now reconfirming your eligibility for the period of 13 September 2021 to 26 September 2021, then your comparison period remains 26 July 2019 to 8 August 2019. This comparison period will remain fixed for all future periods:

	Test Period	Comparison Period
Application	26 July 2021 to 8 August 2021	26 July 2019 to 8 August 2019
Re-testing	13 September 2021 to 26 September 2021	13 September 2019 to 26 September 2019

Method 3 - 12 June to 25 June 2021 Comparison Period

If 12 June 2021 to 25 June 2021 was used as your initial comparison period, then you must use the same period as your initial application when reconfirming eligibility.

For example, if you initially compared the period of 26 July 2021 to 8 August 2021 to 12 June 2021 to 25 June 2021, and you are now reconfirming your eligibility for the period of 13 September 2021 to 26 September 2021, then your comparison period remains 12 June 2021 to 25 June 2021. This comparison period will remain fixed for all future periods:

	Test Period	Comparison Period
Application	26 July 2021 to 8 August 2021	12 June 2021 to 25 June 2021
Re-testing	13 September 2021 to 26 September 2021	12 June 2021 to 25 June 2021

No Further Documentation Required

ServiceNSW states that you will not need to provide any additional evidence or attach any documentation when reconfirming your eligibility. However, it is essential that you maintain adequate records to show evidence of your eligibility in the event of an audit.

Comparison Period FAQs

I had a three week comparison period. How do I do the comparison?

If the comparison period used in your initial application was more than two weeks (e.g. a three week period), the turnover amount for the comparison period must be converted to a fortnightly amount for comparison purposes to the current turnover by dividing by the number of days in the period and multiplying by 14.

What happens if the business is ineligible one fortnight but eligible the next?

The reconfirmation only tests the relevant fortnight. Becoming ineligible for one fortnight does not disqualify your business from becoming eligible again in a future. Some businesses may be eligible one fortnight and not eligible the next if their decline in turnover decreases again.

Can I delay confirming eligibility?

Yes, but your business will not receive payment until confirmation of eligibility has been received. Some businesses might prefer to wait until month-end accounting records are finalised to confirm eligibility. ServiceNSW states that payments will be made within five days of your business reconfirming its eligibility.

Reconfirming Headcount

Your employee headcount was noted on your original application. This was the number of people you employed in NSW, including full-time, part-time and long-term casuals that had been employed by the business for more than 12 months at the time of the application.

JobSaver requires your business to maintain this same headcount to qualify to receive payments unless the employee is no longer employed due to circumstances outside of your control, such as resignation, death or where you have fairly terminated the employee because of misconduct.

If your full-time, part-time or long-term casual employees have been stood down they are still included in the headcount. During a stand down the employment relationship remains (their role has not been terminated), the employee is not paid (unless they are taking paid leave), and they continue to accrue annual leave. See the FairWork website to clarify how and when an employer can stand down employees and the documentation requirements.

Payment Amounts

JobSaver

40% of the weekly payroll for work performed in NSW:

	Per Week
Non-employing entity	$1,000.00
Minimum	$1,500.00
Maximum	$100,000.00

For large tourism, hospitality and recreation businesses:

Aggregated Annual Turnover	Per Week*
More than $250m to $500m	$300,000.00
More than $500m to $1bn	$500,000.00

**maximum per week*

Micro-Business Grant

Payments of $1,500 per fortnight are made to those eligible for the Micro-Business Grant.

How to Reconfirm your Eligibility

You can reconfirm the eligibility of your business for JobSaver or the Micro-Business Grant by logging into your ServiceNSW business profile.

You should also receive reminders from ServiceNSW to confirm the eligibility of your business. For security, it is best to go straight to your business profiles rather than clicking on any email links.

What do I do if I no Longer Need Assistance?

Log into your ServiceNSW business profile and request a withdrawal.

What Happens to your Superannuation when you Die?

Superannuation is not like other assets as it is held in trust by the trustee of the superannuation fund. When you die, it does not automatically form part of your estate, but instead is paid to your eligible beneficiaries by the fund trustee according to the rules of the fund, superannuation law and the death nomination you made.

Death Nominations

Most people have a death nomination in place to direct their superannuation to their nominated beneficiaries on their death. There are four types of death benefit nominations:

Binding death benefit nomination - putting in place a binding death benefit nomination will direct your superannuation to whoever you nominate. As long as that person is an eligible beneficiary, the trustee is bound by law to pay your superannuation to that person as soon as practicable after your death. Generally, death benefit nominations lapse after three years unless they are a non-lapsing binding death nomination.

Non-lapsing binding death benefit nomination **-** non-lapsing binding death benefit nominations, if permitted by your trust deed, remain in place unless the member cancels or replaces them. When you die, your superannuation is directed to the person you nominate.

Non-binding death nomination - a non-binding death nomination is a guide for trustees as to who should receive your superannuation when you die, but the trustee retains control over who the benefits are paid to. This might be the person you nominate, but the trustees can use their discretion to pay the superannuation to someone else or to your estate.

Reversionary beneficiary – if you are taking an income stream from your superannuation at the time of your death (pension), the payments can revert to your nominated beneficiary at the time of your death and the pension will be automatically paid to that person. Only certain dependants can receive reversionary pensions, generally a spouse or a child under 18 years.

If no death benefit nomination is in place - if you have not made a death benefit nomination, the trustees of the fund will decide who to pay your superannuation to according to state or territory laws. This will often be a financial dependant to the legal representative of your estate to then be distributed according to your will.

Is your Death Benefit Nomination Valid?

There have been a number of court cases over the years that have successfully contested the validity of death nominations, particularly within self-managed superannuation funds (SMSFs). For a death nomination to be valid it must be in writing, signed and dated by you, and witnessed. The wording of your nomination also needs to be clear and legally binding. If you nominate a person, ensure you use their legal name, and if the superannuation is to be directed to your estate, ensure the wording uses the correct legal terminology.

Who can Receive your Superannuation?

Your superannuation can be paid to an SIS dependant, your legal representative (e.g. the executor of your will) or someone who has an interdependency relationship with you.

A dependant is defined in superannuation law as "the spouse of the person, any child of the person and any person with whom the person has an interdependency relationship". An interdependency relationship is where someone depends on you for financial support or care.

Do Beneficiaries Pay Tax on your Superannuation?

Whether or not the beneficiaries of your superannuation pay tax depends on who the superannuation was paid to and how. If your superannuation is paid as a lump sum to a tax dependant, the superannuation is tax-free. The tax laws have a different definition of who is a dependant to the superannuation laws. A tax dependant for tax purposes is your spouse or former spouse, your child under the age of 18, or someone you have an interdependency relationship with. Special rules exist if you are a police officer, member of the defence force or protective service officer who died in the line of duty.

If your superannuation is paid to your estate, the tax laws use a "look through" approach when superannuation death benefits are distributed to the deceased's legal representative. This involves determining whether the final recipient of the superannuation is a dependant or a non-dependant of the deceased.

If the person is not a dependant for tax purposes, e.g. an adult child, then there might be tax to pay.

Recruiting New Employees? The 1 November Superannuation Rule Changes

When your business hires a new employee, the Choice of Fund form is used to identify where they want their superannuation to be directed. If the employee does not identify a fund, generally the employer directs their superannuation into a default fund.

From 1 November 2021, where an employee does not identify a fund the employer is required to contact the ATO and request details of the employee's existing superannuation fund or "stapled" fund (the fund stapled to them). The request is made through the ATO's online services through the "Employee Commencement Form".

If the ATO confirms no other fund exists for the employee, contributions can be directed to the employer's default fund or a fund specified under a workplace determination or an enterprise agreement (if the determination was made before 1 January 2021).

SMSFs and Non-Arm's Length Income and Expenses

The Australian Taxation Office (ATO) has recently released a ruling on the treatment of non-arm's length income and expense arrangements in SMSFs.

If the ATO deems transactions not to have been made on an arm's length basis, there is significant additional tax payable by the fund on the income and any capital gain on the sale of the underlying assets where the non-arm's length income has been derived from.

The current tax rate that applies to non-arm's length transactions is 45%. In addition, if members are in pension mode no tax exemption can be claimed on the gain.

To manage taxation risks associated with non-arm's length income and expenses, fund trustees should undertake a detailed review of all of their transactions and their related party transactions (both income and expenses) to ensure all transactions have been made on an arm's length basis. They should have on file appropriate support in the event of an ATO review.

Please contact us if you would like us to assist you to review your arrangements.

Director ID

All directors need to apply for their own director identification number (director ID) and will keep it forever. You can apply from November 2021and when you must apply depends on when you become a director.

The director ID is a unique identifier that a director will apply for once and will keep forever. If you are a director or a corporate trustee of an SMSF you will need to apply for a director ID.

You will be able to apply for a director ID from November 2021 on the new Australian Business Registry Services (ABRS) online and will log in using the myGovID app. You will need to apply for your director ID yourself to verify your identity. No one can apply for it on your behalf.

When you must apply for a director ID, depends on the date you became a director:

Date you Become a Director	Date you Must Apply by
On or before 31 October 2021	By 30 November 2022
Between 1 November 2021 and 4 April 2022	Within 28 days of appointment
From 5 April 2022	Before appointment

The introduction of director ID will create a fairer business environment by helping prevent the use of false and fraudulent director identities. This will go a long way to better identifying and eliminating director involvement in unlawful activity.