

Administration of the JobKeeper Scheme

Australian Taxation Office
Department of the Treasury

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Canberra ACT

4 April 2022

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Australian Taxation Office and the Department of the Treasury. The report is titled *Administration of the JobKeeper Scheme*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Audit snapshot

Auditor-General Report No.22 2021–22

Administration of the JobKeeper Scheme



Why did we do this audit?

- ▶ This audit was conducted under phase two of the ANAO's multi-year strategy that focuses on the effective, efficient, economical and ethical delivery of the Australian Government's response to the COVID-19 pandemic.
- ▶ The JobKeeper scheme was a key measure in the Australian Government's economic response to the COVID-19 pandemic and has affected a significant number of employees and businesses.



Key facts

- ▶ Over one million entities had JobKeeper applications processed by the ATO.
- ▶ Around \$89 billion in JobKeeper payments were made.
- ▶ An average of 3.6 million individuals received payments in each month of the original scheme.
- ▶ 1160 ATO staff were involved in administering the scheme (as their primary role) in August 2020.



What did we find?

- ▶ The Australian Taxation Office's (ATO's) administration of the JobKeeper scheme was effective, except for shortcomings in implementation across parts of the ATO's compliance program.
- ▶ The ATO has been effective in administering the legislative rules for the JobKeeper scheme.
- ▶ The ATO largely implemented fit for purpose arrangements to protect the integrity of JobKeeper payments.
- ▶ The ATO's monitoring and reporting on the operational performance of the JobKeeper scheme was effective.



What did we recommend?

- ▶ No recommendations were made to the ATO or the Department of the Treasury.
- ▶ Key messages on the administration of economic response measures like the JobKeeper scheme have been identified for the benefit of Australian Government entities.

5 weeks

after the JobKeeper Payment was announced, entities could claim the first monthly reimbursement.

4 days

was the ATO's average timeframe for processing a JobKeeper claim for reimbursement.

\$180 million

in JobKeeper overpayments were waived by the ATO using the legislative discretion provided to the Commissioner of Taxation.

Summary and recommendations

Background

1. The JobKeeper Payment was announced by the Prime Minister and Treasurer on 30 March 2020 as part of the Australian Government's response to the COVID-19 pandemic. The announcement stated that the JobKeeper Payment was a wage subsidy to businesses that would keep more Australians in jobs through the outbreak.
2. The legislative framework for the JobKeeper Payment mainly comprises:
 - the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (CERP Act), which received Royal Assent on 9 April 2020; and
 - the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 ('the Rules'), which is a legislative instrument made under the CERP Act by the Treasurer.
3. The Rules establish the 'JobKeeper scheme' and set out the eligibility requirements for the JobKeeper Payment, payment arrangements and administration matters. The JobKeeper scheme is administered by the Commissioner of Taxation, who also has the general administration of the CERP Act.
4. The JobKeeper scheme was originally legislated to operate for six months from 30 March until 27 September 2020. Following an announcement by the Australian Government on 21 July 2020, the JobKeeper scheme was extended for six months to 28 March 2021.
5. The Australian Taxation Office (ATO) assisted the Commissioner of Taxation in the day-to-day administration of the JobKeeper scheme, while the Department of the Treasury (Treasury) has responsibility for JobKeeper policy and evaluation.
6. As with other COVID-19 economic response measures administered by the ATO in 2020, the JobKeeper scheme was characterised by rapid implementation.
7. As of 15 August 2021, the ATO's data stated that net payments totalled \$88.82 billion (\$69.97 billion in the original period and \$18.85 billion in the extension period). A total of 1,068,856 entities had applications processed under the scheme. An average of 3.6 million individuals were estimated to have received payments each month in the original period and 1.8 million unique individuals received payments in the extension period.
8. The ATO advised the ANAO that the cost of administering the JobKeeper scheme from March 2020 to 30 June 2021 was \$286 million.

Rationale for undertaking the audit

9. An audit of the JobKeeper scheme is part of phase two of the ANAO's multi-year strategy that focuses on the effective, efficient, economical and ethical delivery of the Australian Government's response to the COVID-19 pandemic.
10. The JobKeeper scheme was a key measure in the Australian Government's economic response to the COVID-19 pandemic. Following the phase one audit that examined the ATO's management of risks related to the rapid implementation of six COVID-19 economic response

measures (including the JobKeeper scheme)¹, this audit focused on the ATO's administration of the JobKeeper scheme. This audit also examined the ATO's and Treasury's strategies for evaluating the JobKeeper scheme and disseminating lessons learned.

Audit objective and criteria

11. The objective of the audit was to assess the effectiveness of the ATO's administration of the JobKeeper scheme.

12. To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Has the ATO effectively administered the legislative rules for the JobKeeper scheme?
- Has the ATO implemented fit for purpose arrangements to protect the integrity of JobKeeper payments?
- Has the ATO effectively monitored and reported on the operational performance of the scheme?

13. Under the third criterion, the scope of the audit included an examination of Treasury's arrangements for evaluating the JobKeeper program and policy.

Conclusion

14. The ATO's administration of the JobKeeper scheme was effective, except for shortcomings in implementation across parts of the ATO's compliance program.

15. The ATO has been effective in administering the legislative rules for the JobKeeper scheme. The legislative rules relating to JobKeeper entitlement, payment rates and payment timeframes were reflected in the ATO's administrative systems, processes and practices. The ATO's approach was to make the application and payment process as simple and fast as possible for eligible entities.

16. In line with its priority of making timely payments to eligible entities, the ATO largely implemented fit for purpose arrangements to protect the integrity of JobKeeper payments. The ATO identified payment risks, developed compliance strategies and, with some exceptions, demonstrated that key compliance measures were implemented largely as intended. A more structured approach for documenting the reasons for exercising discretion on JobKeeper overpayments would have provided more transparency and accountability for the use of public funds.

17. The ATO's monitoring and reporting on the operational performance of the JobKeeper scheme was effective. The ATO maintained fit for purpose governance arrangements to monitor scheme performance, regularly monitored performance and provided regular reporting to Treasury and other government entities. Treasury developed an evaluation framework for the JobKeeper program.

1 See Auditor-General Report No.24 2020–21 *The Australian Taxation Office's Management of Risks Related to the Rapid Implementation of COVID-19 Economic Response Measures*.

Supporting findings

Administering the legislative rules for the JobKeeper scheme

18. The ATO established processes to administer the legislative rules on entitlement that were aligned to its general self-assessment approach to administering the taxation and superannuation systems. Key rules on entitlement, including rule changes, were incorporated into the ATO's processes. For the original period of the scheme, the ATO did not capture all relevant details in the JobKeeper application form about the decline in turnover test, impacting on its subsequent compliance activities. More granular information was added to the application form for the JobKeeper extension period. (See paragraphs 2.2 to 2.24)

19. The ATO's systems and processes were appropriately updated when JobKeeper payment rates changed. Payment amounts were calculated correctly by the ATO, taking into account the number of employees declared by the applicant and the relevant JobKeeper payment rate at different periods of the scheme. (See paragraphs 2.25 to 2.28)

20. Ninety-nine per cent of JobKeeper payments were made to entities within the initial 14-day timeframe set out in the Rules. The average timeframe was four days. (See paragraphs 2.29 to 2.34)

Protecting the integrity of JobKeeper payments

21. Compliance strategies were developed for both periods of the scheme. Detailed treatment plans set out the ATO's intended compliance measures for specific payment risks. (See paragraphs 3.3 to 3.17)

22. The ATO did not implement all key compliance and integrity measures as intended. Of the 22 compliance measures tested, two were partly implemented as intended, seven largely as intended and eight fully as intended. The ANAO was unable to conclude on five compliance measures due to data integrity issues. The ATO's governance and internal reporting arrangements did not provide clear assurance on the implementation of the compliance measures. (See paragraphs 3.18 to 3.28)

23. While the ATO conducted decline in turnover reviews in accordance with its internal procedures, the nature of the ATO's procedures and variability in the documentation maintained did not provide strong assurance on the assessed eligibility of entities that were reviewed. (See paragraphs 3.29 to 3.43)

24. The ATO exercised discretion on overpayments largely in accordance with its internal policies and procedures. The ATO's approach was that the exercise of discretion needed to be reasonable based upon the circumstances of the case. The ATO's guidance material set out two significant factors to be taken into account when exercising discretion — honest mistake and retention of financial benefit. Based on a sample of 63 overpayments, the ATO did not consistently document how its exercise of discretion related to the two significant factors. The ATO's understanding of the law was that the Commissioner's discretion on JobKeeper overpayments could not be limited by internal policies and procedures. (See paragraphs 3.44 to 3.60)

Monitoring and reporting on the performance of the JobKeeper scheme

25. The ATO implemented sound arrangements for monitoring the performance of the JobKeeper scheme. Governance arrangements were established early and were subject to review and adjustments. The main governance and oversight bodies operated in accordance with their charters in respect of meeting frequency and matters considered. The ATO monitored and reported on performance. Internal performance measures were reported in July 2021. (See paragraphs 4.3 to 4.23)

26. The ATO has reported externally on the JobKeeper scheme in a timely and informative manner, in line with arrangements established for the scheme and with public sector mechanisms. (See paragraphs 4.24 to 4.40)

27. Treasury has established arrangements to evaluate the JobKeeper Payment. An evaluation report is scheduled to be completed by the end of 2022. In December 2021, Treasury's Executive Board determined that the JobKeeper evaluation would be conducted internally. The ATO has internally reviewed its administration of the scheme. (See paragraphs 4.41 to 4.57)

Summary of entity responses

28. The entities' summary responses to the audit are set out below, while their full responses are provided at Appendix 1.

Australian Taxation Office

The ATO welcomes this review and the report finding that the ATO has been effective in administering the legislative rules for the JobKeeper scheme and effective in our administration, noting some areas for improvement. We are also pleased the ATO's arrangements for administering the program were found to be fit for purpose considering the context and timeframe that it was asked to be delivered within.

The ATO identified payment risks, developed compliance strategies and, with some exceptions, demonstrated that key compliance measures were implemented largely as intended. We recognise the findings identified the potential for better record-keeping practices, particularly in relation to the favourable exercise of discretions and decisions not to continue compliance action, although we do note the actual environment required rapid implementation while balancing the need to support the community in a time of great uncertainty. We note also that the ATO, under a self-assessment system and having regard to the efficient use of resources, has traditionally put more effort into documenting reasons for decisions unfavourable to taxpayers (to ensure rigour in the decision and to provide procedural fairness to a taxpayer who may wish to challenge that decision) than to favourable decisions (which are unlikely to be challenged).

We reaffirm the challenge of delivering a program of the scale and complexity of JobKeeper under exceptional circumstances and in very tight timeframes and reflect the confidence and pride that the ATO has, that the substantive outcomes of this program have been delivered with high integrity. Whilst there are some differences of opinion, the ATO has taken on board the findings from the ANAO and will continue to refine and improve processes in the delivery of our key programs of work.

Department of the Treasury

Treasury welcomes the report and its finding that the Australian Taxation Office's administration of the JobKeeper scheme has been largely effective. Given the potential for a severe economic

outcome to materialise, JobKeeper had to be implemented rapidly to ensure support was delivered to households and businesses to address the acute circumstances of the time.

While the report does not contain any recommendations for Treasury, the findings and key messages within the report are valuable in the context of Treasury's role in providing economic policy advice, including designing economic stimulus measures in the future.

Key messages from this audit for all Australian Government entities

29. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Governance and risk management

- Where a measure is implemented rapidly to support an economic stimulus objective, entities should document their approach for balancing the timeliness of payments with the integrity of payments, and how that approach makes effective use of public money.
- Entity-level governance and reporting arrangements should clearly identify roles and responsibilities for overseeing the implementation of agreed compliance strategies and measures, to provide assurance that identified risks have been managed in line with risk tolerances.
- To provide transparency and accountability for the use of public funds, entities should ensure that where available discretion is exercised, the reasons for decisions are clearly documented including in relation to any guidance material prepared by the entity.

Performance and impact measurement

- The policy and administrative design of economic stimulus measures should give explicit consideration to identifying and establishing a consistent set of performance measures and indicators to assist in monitoring whether intended policy and administrative outcomes are being achieved.

Audit findings

1. Background

Overview of the JobKeeper Payment and scheme

1.1 The JobKeeper Payment was announced by the Prime Minister and Treasurer on 30 March 2020 as part of the Australian Government's response to the coronavirus disease 2019 (COVID-19) pandemic.

1.2 The announcement stated that the JobKeeper Payment was a wage subsidy to businesses that would keep more Australians in jobs through the outbreak. The announcement outlined that:

- the payment would be made to employers for up to six months for each eligible employee who was on the employer's books on 1 March 2020 and was retained or continued to be engaged by that employer;
- employers would receive a payment of \$1500 per fortnight per eligible employee² and every eligible employee must receive at least \$1500 per fortnight from this business, before tax;
- eligible employers included businesses structured through companies, partnerships, trusts and sole traders, and not-for-profit entities, including charities; and
- the program would commence on 30 March 2020, with the first payments to be received by eligible businesses in the first week of May as monthly arrears from the Australian Taxation Office (ATO).

1.3 Other countries also introduced wage subsidy or 'job retention' schemes in response to the COVID-19 pandemic, including the United Kingdom, New Zealand and Canada.³

Legislative framework

1.4 The legislative framework for the JobKeeper Payment mainly comprises:

- the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (CERP Act), which received Royal Assent on 9 April 2020; and
- the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 ('the Rules'), which is a legislative instrument made under the CERP Act by the Treasurer.⁴

1.5 The Rules were first made by the Treasurer on 9 April 2020 and were updated a number of times during the course of the JobKeeper scheme.

1.6 The Rules establish the 'JobKeeper scheme' and set out the eligibility requirements for the JobKeeper Payment, payment arrangements and administration matters. The JobKeeper scheme is administered by the Commissioner of Taxation, who also has the general administration of the CERP Act.

2 As discussed in Chapter 2, changes were made to the JobKeeper payment for the extension period of the scheme.

3 See Organisation for Economic Cooperation and Development, *Job Retention Schemes During the COVID-19 Lockdown and Beyond*, Organisation for Economic Cooperation and Development, Paris, 2020.

4 Consequential changes were also made to the *Fair Work Act 2009* (Cth).

1.7 The JobKeeper scheme was originally legislated to operate from 30 March to 27 September 2020. Following an announcement by the Australian Government on 21 July 2020, the JobKeeper scheme was extended to 28 March 2021. Under the Rules, the Commissioner of Taxation must not make any JobKeeper payments after 31 March 2022, except in specified circumstances.⁵

Rapid implementation

1.8 As with other COVID-19 economic response measures administered by the ATO in 2020, the JobKeeper scheme was characterised by rapid implementation. The first monthly claim period under the scheme opened on 4 May 2020, five weeks after the JobKeeper Payment was announced.

1.9 In his opening statement to the Parliament of Australia's Senate Select Committee on COVID-19 on 7 May 2020, the Commissioner of Taxation articulated the ATO's approach to administering the economic response measures, including JobKeeper, as follows:

In response to COVID-19, the ATO has pivoted our focus to ensure the efficient rollout of the five key measures, in particular the JobKeeper payments, early release of superannuation, cash flow boost, increasing the instant asset write-off, and accelerated depreciation. Our priority has been to deliver on the government's commitment to get millions of Australians access to financial support quickly and as easily as possible during this difficult time.⁶

JobKeeper Payment

1.10 As of 15 August 2021, ATO data indicated that net payments⁷ totalled \$88.82 billion (\$69.97 billion in the original period and \$18.85 billion in the extension period). A total of 1,068,856 entities had applications processed under the scheme.⁸ An average of 3.6 million individuals were estimated to have received payments each month in the original period⁹ and 1.8 million unique individuals received payments in the extension period.¹⁰ A monthly breakdown of net payments, the number of entities receiving payments and the number of individuals covered by payments over the course of the scheme is provided in Figure 1.1.

5 For instance, where a payment is required to give effect to an objection decision.

6 Commonwealth, *Public Hearing*, Senate Select Committee on COVID-19, 7 May 2020, C Jordan, Commissioner of Taxation, p.1.

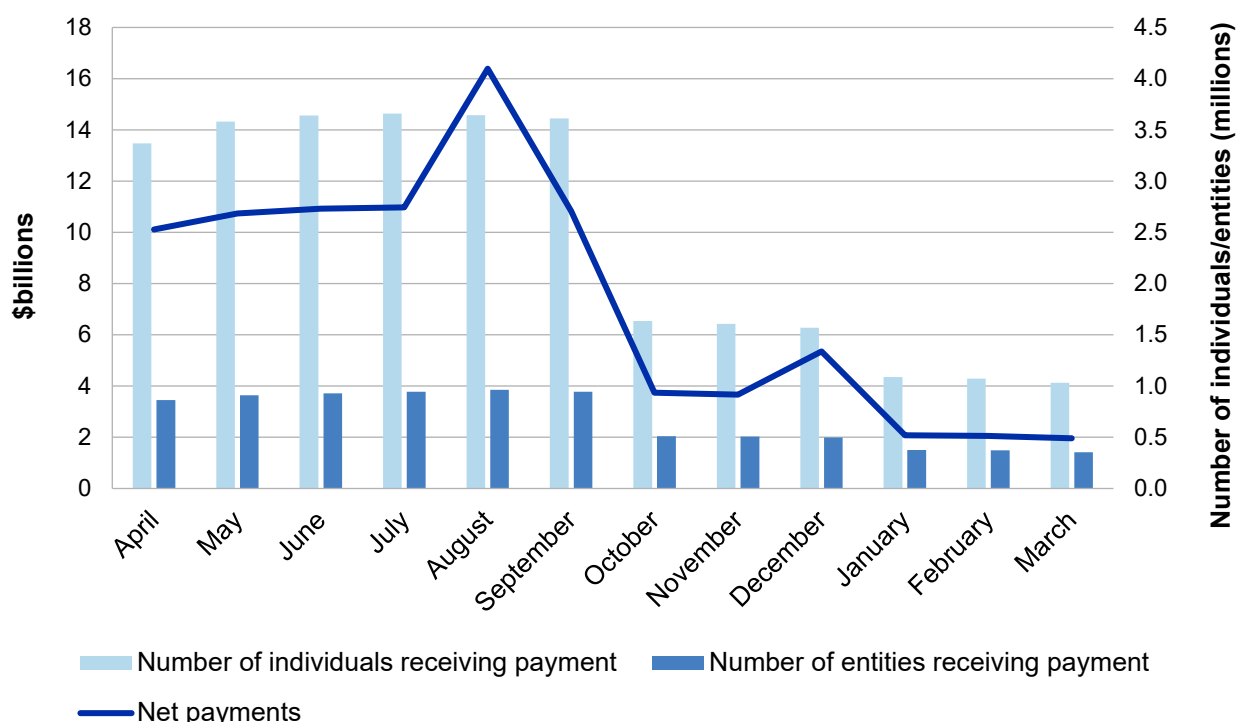
7 The ATO defines 'net payments' as JobKeeper payment disbursements after repayments from entities.

8 For 'entities', the ATO counted unique Australian Business Numbers. Entities included employers and eligible business participants with a processed JobKeeper application.

9 Treasury's October 2021 report, *Insights from the first six months of JobKeeper*, noted that around four million unique individuals were supported by JobKeeper in one or more JobKeeper fortnights in the original period of the scheme.

10 'Individuals' included employees and eligible business participants. For the original period, the ATO estimated the number of individuals based on net payments. For the extension period, the ATO calculated the number of individuals on the basis of those for whom an entity had a processed application and for whom a payment had been made.

Figure 1.1: Net payments, entities with processed applications, individuals with processed applications — 30 March 2020 to 28 March 2021



Notes: The first 'JobKeeper fortnight' was 30 March to 12 April 2020.

The August and December 2020 net payments are higher due to three JobKeeper fortnights being included in these periods.

Source: ANAO, reproduced from the ATO's JobKeeper data (as at 15 August 2021).

1.11 Other summary data produced by the ATO on the JobKeeper scheme, including analysis by entity type, market segment and jurisdiction, is provided at Appendix 3.

Administration arrangements for the JobKeeper scheme

1.12 The ATO assisted the Commissioner of Taxation in the day-to-day administration of the JobKeeper scheme, while Treasury has responsibility for JobKeeper policy and evaluation.

1.13 The ATO's administration arrangements for the JobKeeper scheme changed over time.

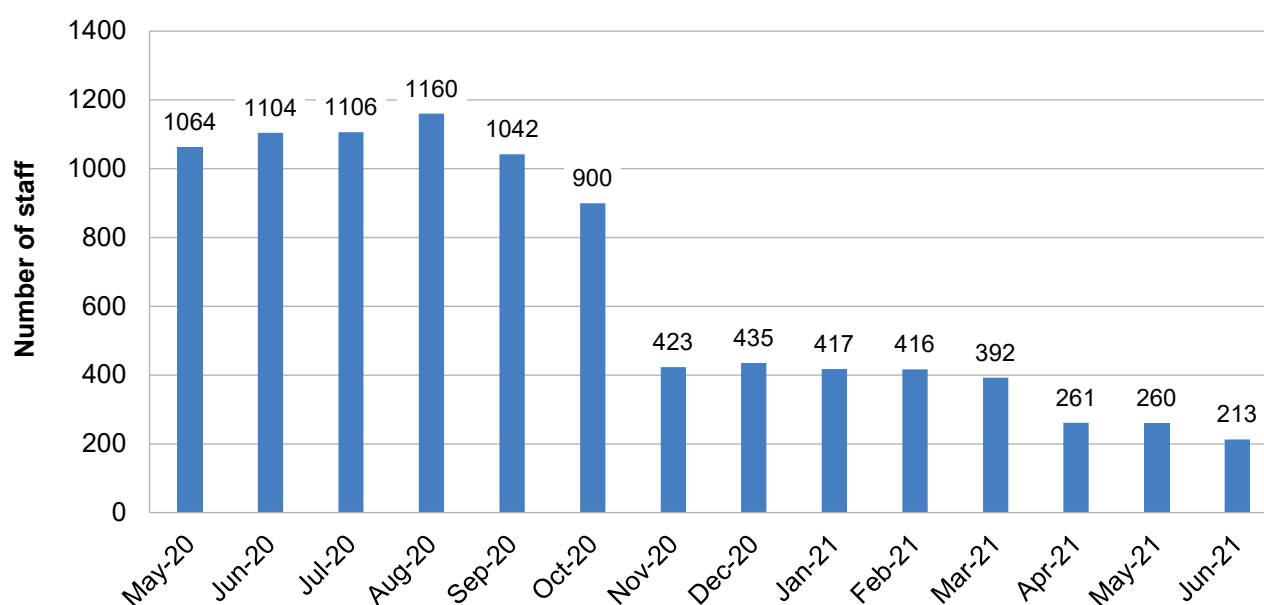
- For the first six months, compliance activities were undertaken by four business lines within the ATO's Client Engagement Group. ATO documentation noted that this reflected the rapid implementation and the ATO's ability to leverage its existing structures and processes.
- In October 2020, the ATO established the Economic Stimulus Branch within the Client Engagement Group to centralise administration of the JobKeeper scheme (as well as the JobMaker Hiring Credit scheme and the Single Touch Payroll program). The Economic Stimulus Branch comprised three work streams: Engagement and Assurance (initially 556 staff), Advice and Guidance (212), and Program Governance and Management (74, of which 12 worked on JobKeeper and 62 on the Single Touch Payroll program).

- The Economic Stimulus Branch was disbanded in June 2021 and responsibility for JobKeeper functions, including compliance work, was assigned to the Superannuation and Employer Obligations business line.

1.14 The cost of administering the first six months of the JobKeeper scheme was funded from the ATO's existing budget in 2019–20. The ATO received additional funding of \$305.9 million over four years in the 2020–21 Budget to deliver the extension period and the JobMaker Hiring Credit scheme. The bulk of this funding (\$256.2 million) was allocated for 2020–21.

1.15 The ATO advised the ANAO that the cost of administering the JobKeeper scheme from March 2020 to 30 June 2021 was \$286 million. Figure 1.2 shows the number of ATO staff involved in administering the JobKeeper scheme (as their primary role) from May 2020¹¹ to June 2021.

Figure 1.2: Number of ATO staff administering the JobKeeper scheme, May 2020 to June 2021



Note: Staff worked in Client Engagement Group, Enterprise Solutions and Technology, and Law Design and Practice.
Source: ANAO, based on the ATO's data.

1.16 Treasury's responsibilities for JobKeeper policy were managed by the JobKeeper Division, which was later renamed the Labour Market Policy Division, located within Fiscal Group. An average of 22 staff worked in the division between April 2020 and June 2021. Staff also had responsibilities for the JobMaker Hiring Credit scheme and other labour market policy matters. The Tax Analysis Division within Treasury's Revenue Group also had dealings with the ATO on fiscal and economic updates and reporting.

11 The ATO did not provide staffing numbers for the first month of the JobKeeper scheme, April 2020.

Rationale for undertaking the audit

1.17 An audit of the JobKeeper scheme is part of phase two of the ANAO's multi-year strategy that focuses on the effective, efficient, economical and ethical delivery of the Australian Government's response to the COVID-19 pandemic.¹²

1.18 The JobKeeper scheme was a key measure in the Australian Government's economic response to the COVID-19 pandemic. Following the phase one audit that examined the ATO's management of risks related to the rapid implementation of six COVID-19 economic response measures (including the JobKeeper scheme)¹³, this audit focused on the ATO's administration of the JobKeeper scheme. This audit also examined the ATO's and Treasury's strategies for evaluating the JobKeeper scheme and disseminating lessons learned.¹⁴

Audit approach

Audit objective, criteria and scope

1.19 The objective of the audit was to assess the effectiveness of the ATO's administration of the JobKeeper scheme.

1.20 To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Has the ATO effectively administered the legislative rules for the JobKeeper scheme?
- Has the ATO implemented fit for purpose arrangements to protect the integrity of JobKeeper payments?
- Has the ATO effectively monitored and reported on the operational performance of the scheme?

1.21 Under the third criterion, the scope of the audit included an examination of Treasury's arrangements for evaluating the JobKeeper program and policy.

Audit methodology

1.22 The audit methodology included:

- examination of ATO documentation;
- analysis of JobKeeper data to assess timeliness of JobKeeper payments and correct payment rates;
- examination of Treasury documentation relating to the evaluation of the JobKeeper program and policy; and
- meetings with ATO and Treasury staff.

12 See Australian National Audit Office, *COVID-19* [Internet], ANAO, Canberra, available from <https://www.anao.gov.au/work-program/covid-19> [accessed 9 June 2021].

13 See Auditor-General Report No.24 2020–21 *The Australian Taxation Office's Management of Risks Related to the Rapid Implementation of COVID-19 Economic Response Measures*.

14 Phase two audits focus on the main stages of program delivery (policy design, implementation, and performance assessment, evaluation and dissemination of lessons learned) as well as an ongoing focus on risk management (commenced under phase one audits).

1.23 The audit considered feedback from members of the National Tax Liaison Group¹⁵ on aspects of the ATO's administration of the JobKeeper scheme, and six submissions received through the citizen contribution function on the ANAO website.

1.24 The audit was conducted in accordance with ANAO auditing standards at a cost to the ANAO of \$963,033.

1.25 The team members for this audit were David Willis, Samuel Painting, Evan Lee, Connor McGlynn, Chay Kulatunge, Matt Rigter, Omer Shaikh, Peta Martyn and Christine Chalmers.

15 The National Tax Liaison Group is one of the stewardship groups operated by the ATO. The membership includes national tax, law and accounting bodies.

2. Administering the legislative rules for the JobKeeper scheme

Areas examined

This chapter examines whether the Australian Taxation Office (ATO) has effectively administered the legislative rules for the JobKeeper scheme.

Conclusion

The ATO has been effective in administering the legislative rules for the JobKeeper scheme. The legislative rules relating to JobKeeper entitlement, payment rates and payment timeframes were reflected in the ATO's administrative systems, processes and practices. The ATO's approach was to make the application and payment process as simple and fast as possible for eligible entities.

2.1 To assess the effectiveness of the ATO's administration of the legislative rules governing the JobKeeper scheme, this chapter examines whether the ATO:

- established effective processes to administer the legislative rules on entitlement, including changes to those rules during the course of the scheme;
- appropriately updated systems and processes when JobKeeper payment rates changed; and
- made JobKeeper payments in accordance with the timeframes set out in the legislative rules.

Did the ATO establish effective processes to administer the legislative rules on entitlement?

The ATO established processes to administer the legislative rules on entitlement that were aligned to its general self-assessment approach to administering the taxation and superannuation systems. Key rules on entitlement, including rule changes, were incorporated into the ATO's processes. For the original period of the scheme, the ATO did not capture all relevant details in the JobKeeper application form about the decline in turnover test, impacting on its subsequent compliance activities. More granular information was added to the application form for the JobKeeper extension period.

2.2 The ANAO examined whether the ATO established effective administrative design and decision-making processes to give effect to the rules on entitlement determined by the Treasurer. The legislative rules on entitlement for a JobKeeper payment are set out in part 2 of the Rules and are specified under three headings:

- *Entitlement based on paid employees* — an employer's entitlement for an employee;
- *Entitlement based on business participation* — a business' entitlement for an individual who is not an employee but is actively engaged in operating the business¹⁶; and

16 Listed in section 12 of the Rules as a sole trader, a partner in a partnership, an adult beneficiary of a trust, or a shareholder in, or a director of, a company.

- *Entitlement based on paid religious practitioners* — a registered religious institution's¹⁷ entitlement for a minister of religion or a full-time member of a religious order.

2.3 Part 2 of the Rules also lists the types of entities that do not qualify for the JobKeeper scheme.¹⁸ These include Australian government agencies and local governing bodies.¹⁹

Self-assessment approach and administrative design

2.4 The ATO administered the JobKeeper scheme, including the legislative rules on entitlement, on a self-assessment basis — in line with its approach to administering other parts of the taxation and superannuation systems.

2.5 The main features of the ATO's self-assessment approach for the JobKeeper scheme were:

- applicants (or their intermediaries²⁰) were responsible for assessing their eligibility to receive JobKeeper payments by answering questions on forms developed by the ATO (with questions tailored based on information already held by the ATO);
- the ATO provided information and guidance in its forms, on its website and in direct stakeholder communication to support applicants to provide the correct information;
- applicants were not required to provide evidence upfront to support their self-assessment — they were required to declare that the information provided was true and correct; and
- the ATO undertook pre-payment and post-payment checks and compliance activities to support the integrity of the application and payment processes for the scheme — these included processes to 'block' entities that were ineligible under the Rules.

2.6 The decision-making process that led to the ATO administering the JobKeeper scheme on a self-assessment basis was not evident from the ATO's records. Treasury advised the ANAO that the decision to adopt self-assessment was implicit in the original policy decision made by government that the ATO would be the key delivery entity leveraging its existing mechanisms.

2.7 The ATO's early planning arrangements included establishing a 'core design team' to develop the legislation, processes and data management. The core design team was chaired by an Assistant Commissioner and was comprised of representatives from different program 'streams' such as compliance, marketing and communications, advice and guidance, internal readiness, IT and data, and rapid dispute resolution. The core design team was focused on the ATO's readiness for JobKeeper applications to be made and the development of 'experience pathways' for applicants.²¹

17 'Registered religious institution' is defined in subsection 4(1) of the Rules as an institution that is a registered charity and is registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as the subtype of entity mentioned in column 2 of item 4 of the table in subsection 25-5(5) of that Act.

18 As listed in subsection 7(2) of the Rules.

19 'Australian government agency' is defined in section 995-1 of the *Income Tax Assessment Act 1997* as the Commonwealth, a State or a Territory, or an authority of the Commonwealth, of a State or of a Territory.

20 As shown in Figure 2.1, the ATO's experience pathways for JobKeeper applications included tax and Business Activity Statement agents (who could apply on behalf of the applicant).

21 The ATO designed the online forms to present differently for applicants, with the questions posed and information to be provided depending on the size and type of the entity.

2.8 An internal briefing pack, which the ATO advised incorporated the JobKeeper measure on 9 April 2020, indicated that the following key design decisions had been made by this date.

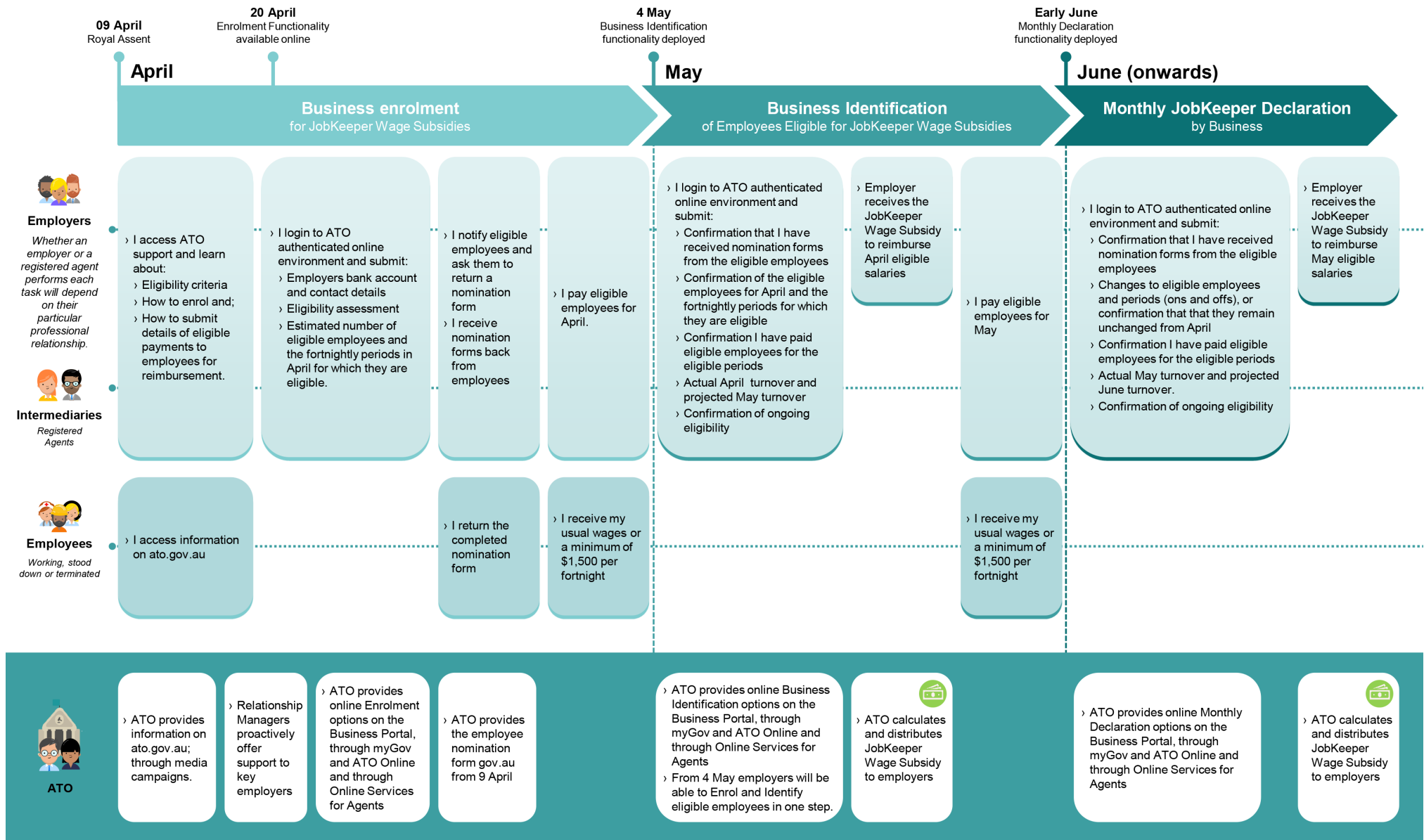
- Eligible employers to apply online, self-assess eligibility through a reduction in turnover and identify eligible employees.
- Employees to complete an approved nomination notice that is kept by the employer.
- Single Touch Payroll (STP) employers to have some prefilled employee data.²²
- Non-STP employers and the self-employed to have a more manual claim process.

2.9 The JobKeeper Program Board — the ATO's key governance body for the scheme — held its first meeting on 14 April 2020²³, with the focus on the ATO's 'Day 1 Readiness Program'. A paper on 'experience pathways' for different JobKeeper parties (employers, intermediaries, employees) across the initial phases of the scheme was considered (Figure 2.1).

22 Single Touch Payroll employers report employees' payroll information to the ATO each time they pay their employees using STP-enabled software.

23 The Program Board was chaired by the Senior Responsible Officer for the JobKeeper scheme. Membership of the Board included Second Commissioners, Deputy Commissioners and Assistant Commissioners from across different parts of the ATO as well as invited guests or observers for particular meetings.

Figure 2.1: JobKeeper experience pathway, as of 14 April 2020



Note: Generic for all employees excluding non-digital.

Source: Reproduced from the ATO's records.

2.10 The ATO's intended approach was to focus on online forms and to use its existing online service channels as the main mechanism for accessing the scheme. Applicants would apply through one of three channels: ATO Online²⁴; Business Portal²⁵; or Online Services for Agents.²⁶ ATO documentation shows that 87.6 per cent of applications were made through the three online channels.²⁷

2.11 The paper considered by the JobKeeper Program Board on 14 April 2020 set out a number of principles for administering the JobKeeper scheme. This included the intention for payments to be made 'as timely and seamlessly as possible.' A 28 April 2020 paper set out the guiding principles for compliance, including that the ATO sought to make it easy for JobKeeper payments to be made to eligible applicants, and stated that strategies to detect suspected ineligible applicants would be developed.

2.12 The ATO continued to consider design issues over the course of the scheme. A JobKeeper Design Board was established in July 2020 following the announced extension of the scheme.²⁸ The Design Board was renamed the Economic Stimulus Design Board in September 2020. At its 5 August 2020 meeting, the Design Board decided to maintain the existing administrative arrangements for the JobKeeper extension period.

Administering the decline in turnover tests

2.13 The decline in turnover test was a key eligibility requirement for the JobKeeper scheme (Appendix 4). The Rules provided for four types of decline in turnover tests:

- a basic test — met by having projected, or experienced, a threshold reduction in turnover, which varied by entity type;
- an alternative test — met by satisfying one of eight alternative tests determined by legislative instrument²⁹;
- a modified test for certain group structures — met by having projected, or experienced, a specified reduction in turnover, when the turnover of each member of a consolidated, consolidatable or GST group is combined; and
- an actual decline in turnover test — introduced in the JobKeeper extension period and met by having experienced the threshold reduction in turnover, which varied by entity type.

24 ATO Online is for individuals and sole traders to manage their tax and superannuation through the myGov portal.

25 The Business Portal allows businesses with an Australian Business Number to lodge Business Activity Statements (BAS) amongst other services. It was retired in July 2021 and was replaced by Online Services for Business.

26 Online Services for Agents is for registered tax and BAS agents and their authorised staff to access services on behalf of their clients.

27 Offline methods included applications entered by ATO officers or made by telephone.

28 The role of the Design Board was to develop, maintain, and control a 'Blueprint' for the scheme and recommend design changes to the Senior Responsible Officer. The Design Board was comprised of Deputy Commissioners, Assistant Commissioners and Executive Level 2 staff.

29 Seven alternative decline in turnover tests were provided for the original period and one additional test for the extension period.

2.14 JobKeeper applicants were required to satisfy the relevant test, along with other requirements³⁰, in order to be eligible for a JobKeeper payment.

Online application form

2.15 The online application form developed by the ATO for the original period of the scheme required applicants to determine the relevant turnover threshold and declare whether they had experienced, or were likely to experience, that reduction for a nominated month (Appendix 5). Questions were tailored for the applicant based on the information previously provided to the ATO.

2.16 The form did not require the applicant to specify:

- which relevant decline in turnover test they used in self-assessing their eligibility;
- whether the ‘turnover test period’ was for a month or quarter as provided for in the Rules and the Explanatory Statement to the Rules, instead asking applicants to nominate a month only;
- whether the claimed reduction in revenue was informed by a projection or on the basis of actual revenue data — as was considered to be an important distinguishing factor in the ATO’s subsequent compliance activities on the scheme³¹; or
- whether a cash or accrual accounting method was used in calculating their decline in turnover — the two options provided for in the ATO’s ‘administratively binding’ Law Companion Ruling on its approach to administering the decline in turnover test.

2.17 The ATO advised the ANAO that the forms for the original period of the scheme did not ask applicants which test they used to satisfy the decline in turnover test because of the speed in which the ATO had to implement the application process for the JobKeeper scheme.

2.18 An internal ‘Strategy finalisation report’ dated 23 October 2020 noted that in relation to the risk population of ‘self-preparers’ and ‘agents and intermediaries’:

not capturing the basic or alternative test information on the application form made it difficult to correctly determine the risk. In many instances the Agent had used actual turnover figures to determine eligibility ... Many clients had also appropriately used the alternative test.

2.19 This same document also noted that not asking applicants to specify whether the cash or accrual method was used limited the use of Business Activity Statement data as a reliable indicator of whether the decline had eventuated.

2.20 The JobKeeper Design Board considered the question of whether the ATO should capture additional information in the JobKeeper extension period to assist in assurance over eligibility. A paper considered at the 14 August 2020 meeting recommended that the JobKeeper extension form capture details on the alternative decline in turnover tests. The ATO revised its online application form for the extension period to capture these details (Appendix 5).

Reflecting other rule changes in administrative processes

2.21 In addition to the actual decline in turnover test introduced for the JobKeeper extension period, other changes to the rules on entitlement were made over the course of the JobKeeper

30 Other key requirements in the Rules include that entities qualify for the JobKeeper scheme (section 7 of the Rules) and satisfy the wage condition (section 10 of the Rules).

31 The ATO’s approach to conducting decline in turnover reviews is discussed from paragraph 3.29.

scheme. The ATO reflected these other rule changes in its online application forms, associated guidance and employee nomination notices (Table 2.1).

Table 2.1: Other rule changes reflected in the ATO's administrative processes for JobKeeper

Date of change	Rule change	Rationale	Reflected in ATO processes?
1 May 2020	Established an additional entitlement category for JobKeeper — registered religious institutions based on paid religious practitioners.	The change was made 'to assist entities to maintain relationships with their religious practitioners throughout the period of the downturn.' ^a	Yes — the ATO reflected the rule change in the nomination notice for religious practitioners and in guidance provided through the online forms for JobKeeper.
15 August 2020	Allowed employers to use 1 July 2020 (previously 1 March 2020) as the date an employee could qualify for JobKeeper.	The change was made so 'that eligible entities can qualify for JobKeeper payments in respect of more recently engaged employees or existing employees that now meet eligibility requirements.' ^b	Yes — the ATO reflected the rule change in an updated employee nomination notice that required new employees to declare to their employer that they satisfied the new entitlement requirements to participate in the JobKeeper scheme.
16 September 2020	Modified the amount of the JobKeeper payment based on the number of hours worked by each individual, to be stepped down in the December 2020 and March 2021 quarters.	The introduction of the two-tiered payment rate and the gradual step down of assistance was to 'ensure that the rate of the payment is appropriately targeted and sustainable.' ^c	Yes — the ATO reflected the rule change by adding drop down lists to the online form for the JobKeeper extension period that required the applicant to identify whether the higher or lower payment rate applied for each individual.

Note a: Explanatory Statement, Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020 (Cth), p.22.

Note b: Explanatory Statement, Amendment Rules (No. 7) 2020 (Cth), p.3.

Note c: Explanatory Statement, Amendment Rules (No. 8) 2020 (Cth), p.4.

Source: ANAO, based on the ATO's records and public records.

Processes to block ineligible entities

2.22 The ATO's general approach to block ineligible entities involved the compilation of an Australian Business Number (ABN) 'exclusion list' and the use of system-based exclusion rules to prevent ineligible entities from accessing the ATO's online enrolment form and claiming a JobKeeper payment. The exclusion list drawn from ATO-held information was developed in April 2020 and included entities that do not qualify for the JobKeeper scheme listed in part 2 of the Rules, including entities who registered for an ABN after 12 March 2020.³²

2.23 The ATO identified that it was not able to effectively develop a population of all the exceptions provided for in subsection 7(2) of the Rules. Wholly-owned government bodies (as per paragraph 7(2)(d) of the Rules) had not been excluded because of difficulties in precisely identifying these entities from the source data available. Also, the ATO identified that its population of

³² This aspect was aimed at administering the integrity rule in subsection 11(6) of the Rules for eligible business participants.

exclusions would be restricted to those entities that meet a tight definition of liquidation and bankruptcy.

2.24 The ATO reported in a compliance update to the Treasurer on 7 July 2021 that 69,500 ineligible JobKeeper enrolment attempts had been prevented. The ATO advised the ANAO that it did not maintain a report on the types of excluded entities that made up the total 69,500 enrolment attempts or which entities triggered the ‘blocks’ set up through its system access rules.

Have the ATO’s systems and processes been appropriately updated when payment rates have changed?

The ATO’s systems and processes were appropriately updated when JobKeeper payment rates changed. Payment amounts were calculated correctly by the ATO, taking into account the number of employees declared by the applicant and the relevant JobKeeper payment rate at different periods of the scheme.

2.25 Section 13 of the Rules sets out the amount of the JobKeeper fortnightly payment.

- For the original period of the scheme, the payment rate was \$1500 per fortnight for each eligible individual. The Explanatory Statement to the Rules noted that the \$1500 payment provided the equivalent of approximately 70 per cent of the national median wage. Treasury’s three-month review of the JobKeeper Payment noted that the \$1500 JobKeeper rate provided an ‘income transfer payment’ to some individuals.³³ That is, the \$1500 rate was higher than some individuals’ ordinary wages.³⁴
- For the extension period, the JobKeeper payment rate was ‘stepped down’ in two stages and two payment ‘tiers’ were introduced — a higher rate and a lower rate (Table 2.2).

Table 2.2: JobKeeper payment rates, 28 September 2020 to 28 March 2021

Period	Tier 1 rate	Tier 2 rate
28 September 2020 to 3 January 2021	\$1200	\$750
4 January 2021 to 28 March 2021	\$1000	\$650

Source: ANAO, based on section 13 of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth).

2.26 Entitlement to the Tier 1 rate generally depended on whether an individual satisfied the relevant 80-hour threshold over the specified ‘reference period’³⁵; otherwise, the Tier 2 rate applied. The Australian Government’s announcement of the JobKeeper extension noted that the two-tiered payment system was designed to better align the payment with the incomes of employees before the onset of the COVID-19 pandemic.

33 Treasury, *The JobKeeper Payment: Three-Month Review*, Treasury, Canberra, 2020, p.7.

34 Treasury estimated that around three-quarters of JobKeeper payments had gone to subsidising wages and the balance to providing income transfers.

35 The reference periods are set out in section 4A of the Rules. For example, the reference period for an eligible business participant and an eligible religious practitioner was the month of February 2020. Section 4A also provides for the Commissioner of Taxation to determine an alternative reference period for a specified class of individuals. One such determination was made.

2.27 The ANAO tested a population of more than 8.8 million JobKeeper transactions³⁶ to determine whether the ATO's payment systems and processes used the correct payment rates for different periods of the JobKeeper scheme.³⁷ The transactions covered the period from 3 May 2020 to 28 February 2021, and involved net JobKeeper payments and receipts of over \$84.4 billion. Of this total, \$72.1 billion in transactions were system-automated without any manual intervention by ATO staff. The balance of the transactions, \$12.3 billion (15 per cent), involved manual intervention. Manual interventions could include entering the complete transaction as the result of a telephone call, reversing or amending a transaction as a result of compliance procedures or amending a transaction at the request of the entity.

2.28 The ANAO tested the transaction amount through a combination of automated evaluation and sample testing.³⁸ The testing took account of the relevant claim period and rate, the number of employees, and employees' respective payment rates as reported by entities in monthly JobKeeper claims. Thirteen per cent of the 8.8 million transactions were updating non-financial data and had no financial effect. The remaining 7.7 million transactions were found to be materially correct.³⁹

Were JobKeeper payments made in accordance with required timeframes?

Ninety-nine per cent of JobKeeper payments were made to entities within the initial 14-day timeframe set out in the Rules. The average timeframe was four days.

2.29 Section 15 of the Rules sets out the timeframe in which the Commissioner of Taxation ('the Commissioner') must pay JobKeeper payments.

The Commissioner must pay the jobkeeper payment no later than the later of:

- (a) 14 days after the end of the calendar month in which the fortnight ends; and
- (b) 14 days after the requirements in section 14 for the Commissioner to make the payment are met.⁴⁰

2.30 In relation to section 14 of the Rules, the Explanatory Statement notes that if the Commissioner is satisfied that an employer or business is entitled to a JobKeeper payment for a fortnight, the Commissioner must pay the employer or business the JobKeeper payment. The ATO advised the ANAO that the practical application of section 14 is that when an entity lodged its monthly JobKeeper declaration, the Commissioner could choose to accept the statements and be satisfied on the basis of those statements to make the payment to the entity. Alternatively, the Commissioner may not be satisfied and could undertake checks before making a payment. The ATO further advised that the Rules did not prescribe when the Commissioner must become satisfied. That is, the Rules did not set a time limit on how long the ATO could take to determine whether an entity was entitled to a JobKeeper payment.

36 A transaction is a modification to a JobKeeper form and includes the initial submission and amendments.

37 The testing does not provide assurance that payments were provided to eligible entities.

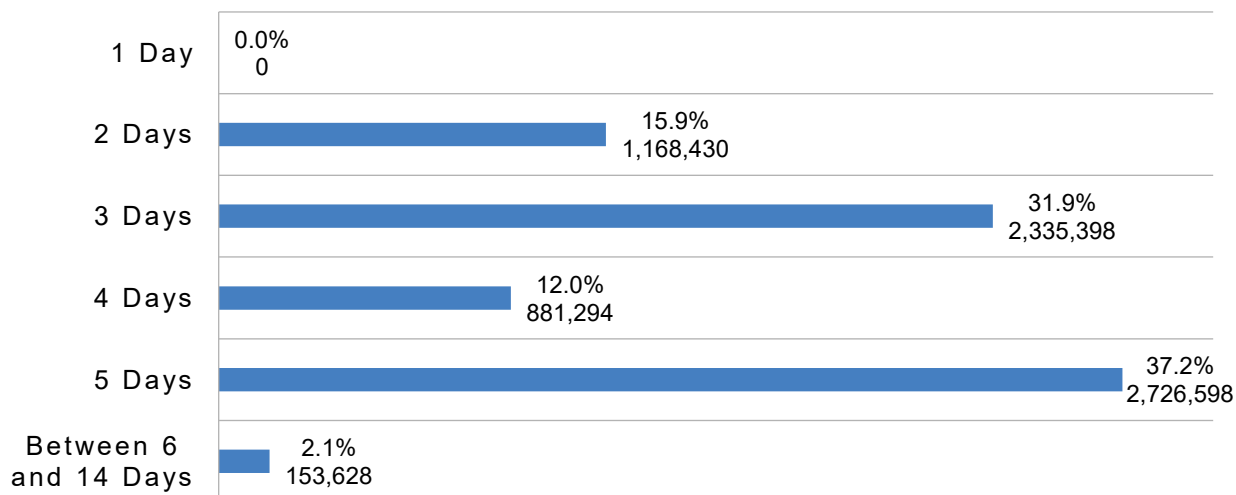
38 Automated evaluation is a test over a complete population to determine if all individual transactions meet a predefined formula.

39 The ANAO identified two errors totalling \$30,000, which represented 0.00003 per cent of the tested transactions.

40 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), section 15.

2.31 Automated testing of 7,329,699 JobKeeper payment transactions for 3 May 2020 to 28 February 2021 was performed by the ANAO to identify the number of payment transactions that were disbursed by the ATO within 14 days of a JobKeeper application form being received by the ATO.⁴¹ A total of 7,265,348 payment transactions (99 per cent) were paid within 14 days (Figure 2.2). The balance of the tested population (64,351 payment transactions) were paid after 14 days. The average timeframe for making a JobKeeper payment was four days.

Figure 2.2: Distribution of JobKeeper payments made within 14 days



Source: ANAO, based on the ATO's data.

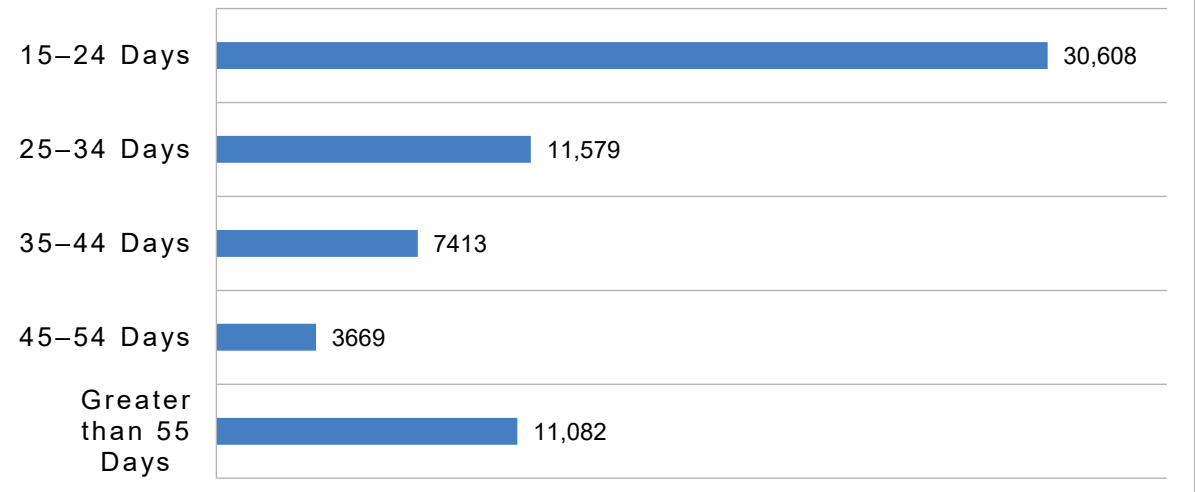
2.32 The ATO's goal was to make timely payments whilst also checking the integrity of payments. A 27 April 2020 paper considered by the ATO recommended a four-day rather than three-day payment cycle, allowing the ATO an additional day to run 'risk rules' and undertake fraud checks.

2.33 In relation to the number of payments processed within two days, the ATO advised the ANAO that risk cases were still able to be identified and removed prior to any payment file being generated.

2.34 The ANAO analysed the time distribution of the 64,351 payments made after 14 days, nearly half of which were paid within 24 days (Figure 2.3). The longest timeframe for disbursement of a JobKeeper payment was 306 days.

41 The ANAO used the earlier of either the date the application form was processed in the ATO's systems or the timestamp from when the form was submitted.

Figure 2.3: Distribution of JobKeeper payments made after 14 days



Source: ANAO, based on the ATO's data.

3. Protecting the integrity of JobKeeper payments

Areas examined

This chapter examines whether the Australian Taxation Office (ATO) implemented fit for purpose arrangements to protect the integrity of JobKeeper payments.

Conclusion

In line with its priority of making timely payments to eligible entities, the ATO largely implemented fit for purpose arrangements to protect the integrity of JobKeeper payments. The ATO identified payment risks, developed compliance strategies and, with some exceptions, demonstrated that key compliance measures were implemented largely as intended. A more structured approach for documenting the reasons for exercising discretion on JobKeeper overpayments would have provided more transparency and accountability for the use of public funds.

3.1 In administering the legislative rules for the scheme, the Commissioner of Taxation (the Commissioner) and the ATO had responsibility, and broad discretion, for determining and implementing measures to protect the integrity of JobKeeper payments.⁴²

3.2 To assess whether the ATO implemented fit for purpose arrangements for protecting the integrity of JobKeeper payments, this chapter examines whether the ATO:

- developed a compliance framework and strategy for the JobKeeper scheme;
- implemented key compliance and integrity measures as intended;
- conducted 'decline in turnover' reviews in accordance with its internal procedures; and
- exercised discretion on overpayments in accordance with its internal policies and procedures.

Did the ATO develop a compliance framework and strategy for the JobKeeper scheme?

Compliance strategies were developed for both periods of the scheme. Detailed treatment plans set out the ATO's intended compliance measures for specific payment risks.

3.3 The expectation that the ATO develop a compliance framework and strategy for the JobKeeper scheme is based on the materiality of the scheme and on the principle of a 'risk-based' approach to inform and promote the proper use and management of public resources under the *Public Governance, Performance and Accountability Act 2013*.⁴³

Compliance strategy for the original period of the scheme

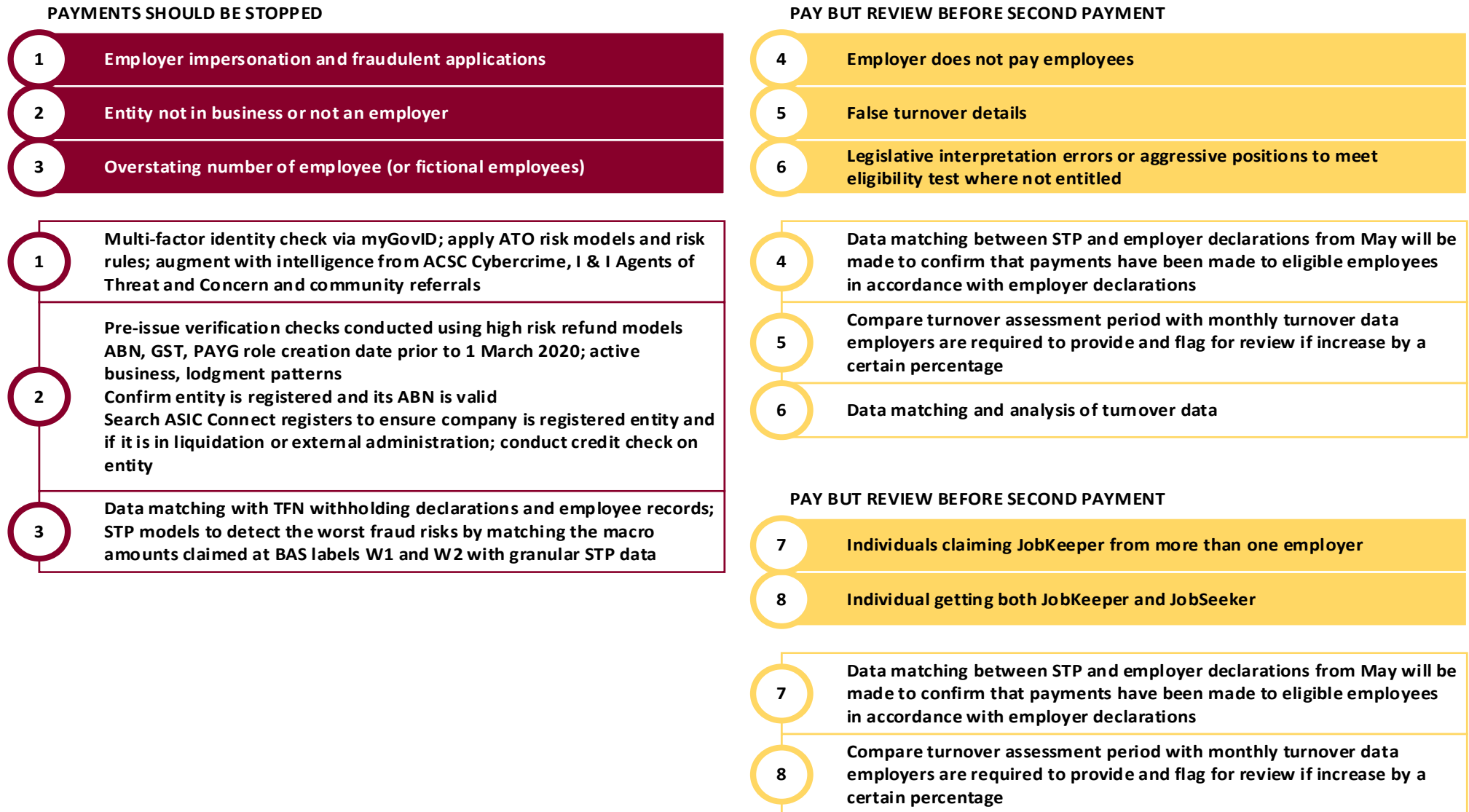
3.4 At the first meeting of the JobKeeper Program Board on 14 April 2020, it was stated that 'the highest level of assurance and integrity is maintained to monitor and act to identify and prevent

⁴² The legislative rules do not prescribe how the ATO should protect the integrity of JobKeeper payments.

⁴³ *Public Governance, Performance and Accountability Act 2013* (Cth), paragraph 15(1)(a).

apparent misuse and fraud'. A 'JobKeeper Payment: Compliance Risk Framework' was included in the Program Board papers. The draft framework set out the ATO's top eight risks for JobKeeper payments and the intended payment action for each risk: 'Payments should be stopped' or 'Pay but review before second payment' (Figure 3.1). The draft framework also outlined the ATO's intended mitigation measures for the top eight risks.

Figure 3.1: The ATO's top eight risks from its draft JobKeeper Payment: Compliance Risk Framework (14 April 2020)



Source: ANAO, based on the ATO's records.

3.5 Separate to the draft compliance risk framework, the ATO progressively developed a compliance strategy. Six iterations of the strategy were presented to the Program Board between 21 April and 3 July 2020. The Program Board suggested ways to improve the strategy, including ensuring the identified risks are examined from a ‘whole of ATO compliance lens’. The Program Board noted that the risks identified for the JobKeeper scheme could be applicable to the other stimulus measures being administered by the ATO.

3.6 The compliance strategy was presented to the ATO Executive Committee⁴⁴ on 30 June 2020. A companion paper⁴⁵ noted that the intent was to:

- support an economic stimulus package with the principal policy aims of keeping people in business and employment;
- pay JobKeeper payments to businesses as quickly as possible with minimal friction points and high levels of certainty for those that are entitled; and
- identify and treat those who are not entitled, have made mistakes or who intentionally defraud the system.

3.7 The Commissioner noted that the compliance program was both comprehensive and collaborative. The Commissioner emphasised the importance of obtaining and retaining the learnings and ensuring that the capability was systemised and held within the ATO for future initiatives.

3.8 The final version of the compliance strategy, presented to the Program Board on 3 July 2020, included the objective ‘To provide confidence that we will make timely payments while maintaining integrity and fairness and dealing with fraud to the system’. The strategy outlined assurance approaches and specific risk tolerances for 10 identified risks covering entity eligibility, employee eligibility, JobKeeper obligations and decline in turnover declarations (Appendix 6).

3.9 As with the draft compliance risk framework, a feature of the compliance strategy was a combination of pre-payment and post-payment verification. Pre-payment verification included the option of ‘suppressing’ (stopping) payments that triggered pre-set risk rules. At the enrolment stage from 20 April 2020 onwards, the ATO’s intended strategy was to block entities identified in the Rules as being ineligible for JobKeeper payments from progressing to the application stage of the scheme.

3.10 For the original period of the scheme, the ATO developed ‘treatment plans’ for eight payment risks (Table 3.1), which set out the ATO’s detailed intentions about how to manage the specific payment risks.

44 The Executive Committee is the ATO’s most senior governance body, consisting of the Commissioner, Second Commissioners and the Senior Executive Service Band 3 officers from the ATO’s operations, service delivery and finance groups.

45 The paper also addressed the compliance strategy for two other measures: Boosting Cash Flow for Employers, and Early Release of Superannuation.

Table 3.1: Risk-specific treatment plans prepared by the ATO for the original period

Name of risk treatment plan	Relating to	Date on risk treatment plan
JobKeeper Turnover Test	Decline in turnover test in the Rules (for entities managed by the ATO's Public Groups and International ^a , and Private Wealth business lines)	22 May 2020
JobKeeper Turnover Test	Decline in turnover test in the Rules (for entities managed by the ATO's Small Business business line)	13 July 2020
Eligible Business Participant	Requirement in the Rules that only one eligible business participant can be claimed for an entity	Undated
Employee Verification Risk Mitigation Strategies	Incorrect claiming of employees, including over-claiming by employers	Undated
Wage Condition	Requirement in the Rules for employees to be paid before the employer is reimbursed by the ATO	26 May 2020
Signs of Life	Requirement in the Rules that on 1 March 2020 an entity carried on a business in Australia or was a non-profit body that pursued its objectives principally in Australia	26 May 2020
Identity Fraud	Integrity of individuals' details (employees) for whom JobKeeper payments are claimed	26 May 2020
JobKeeper/JobSeeker	Rules preventing simultaneous receipt of JobKeeper and JobSeeker payments	26 May 2020

Note a: Previously called Public and Multinational Businesses.

Source: ANAO, based on the ATO's records.

3.11 There was broad alignment between the payment risks identified in the compliance risk framework, compliance strategy and risk treatment plans.

3.12 The ATO's governance arrangements for the JobKeeper scheme did not specifically identify which person or body was responsible for approving the risk treatment plans. The June 2020 JobKeeper Program Board Charter did not include a specific role to review and approve the risk treatment plans for the original period of the scheme. The JobKeeper and JobMaker Hiring Credit Program Board Charter, which was formalised during the extension period, also did not include a specific role to review or approve the risk treatment plans.

3.13 The ATO advised the ANAO that three business lines were responsible for the development and execution of the treatment plans for their relevant areas of focus⁴⁶, in concert with the 'stream lead' for compliance.⁴⁷ The three business lines and stream lead for compliance were responsible for reporting to the Senior Responsible Officer and the Program Board. The ATO was unable to demonstrate that all eight risk treatment plans had been formally approved within the relevant business lines or by the stream lead for compliance.

46 That is, Public Groups and International, Private Wealth, and Small Business.

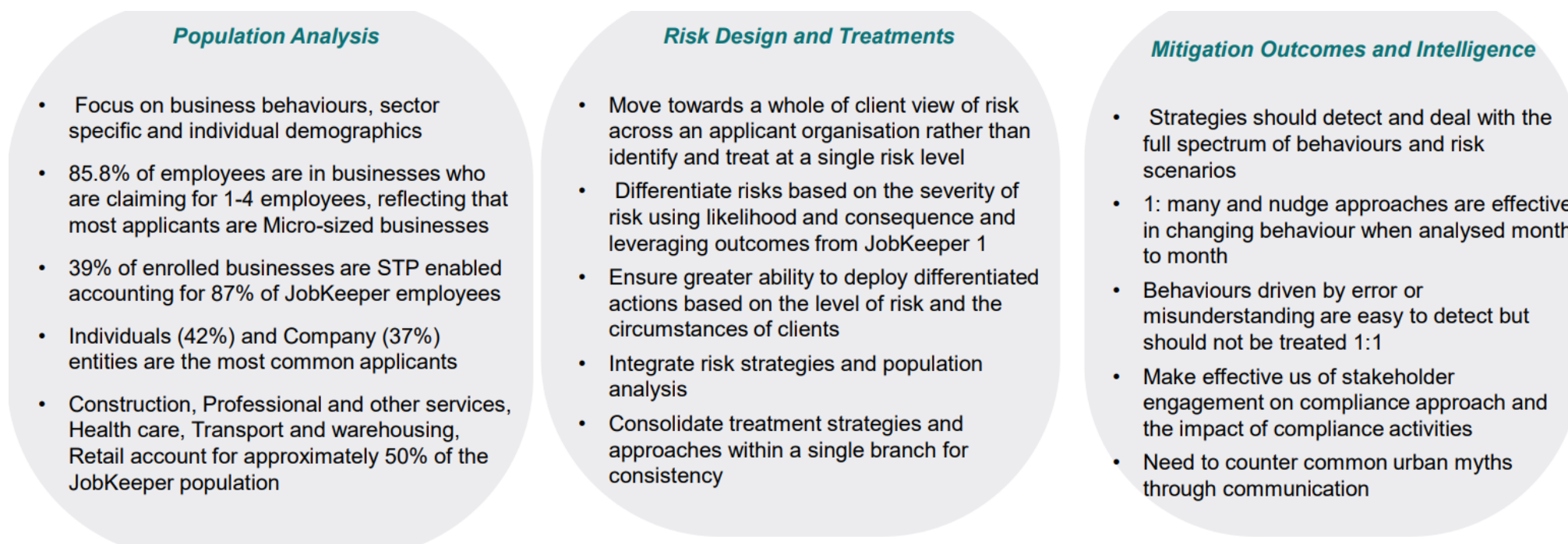
47 The stream lead was the officer with principal responsibility for managing compliance activities. The arrangement reflected the ATO's more devolved administration of the JobKeeper scheme in the original period, where three business lines were undertaking compliance activities for their industry sectors.

Compliance strategy for the extension period

3.14 The ATO prepared a new compliance strategy for the extension period. A 'JobKeeper Extension–Compliance Approach' was provided for information to the Program Board at its 18 November 2020 meeting. The strategy reflected learnings from the original period (Figure 3.2).

3.15 The ATO designed a seven-step compliance model for the extension period based on a 'whole of client' view of risk across an entity (Figure 3.3).

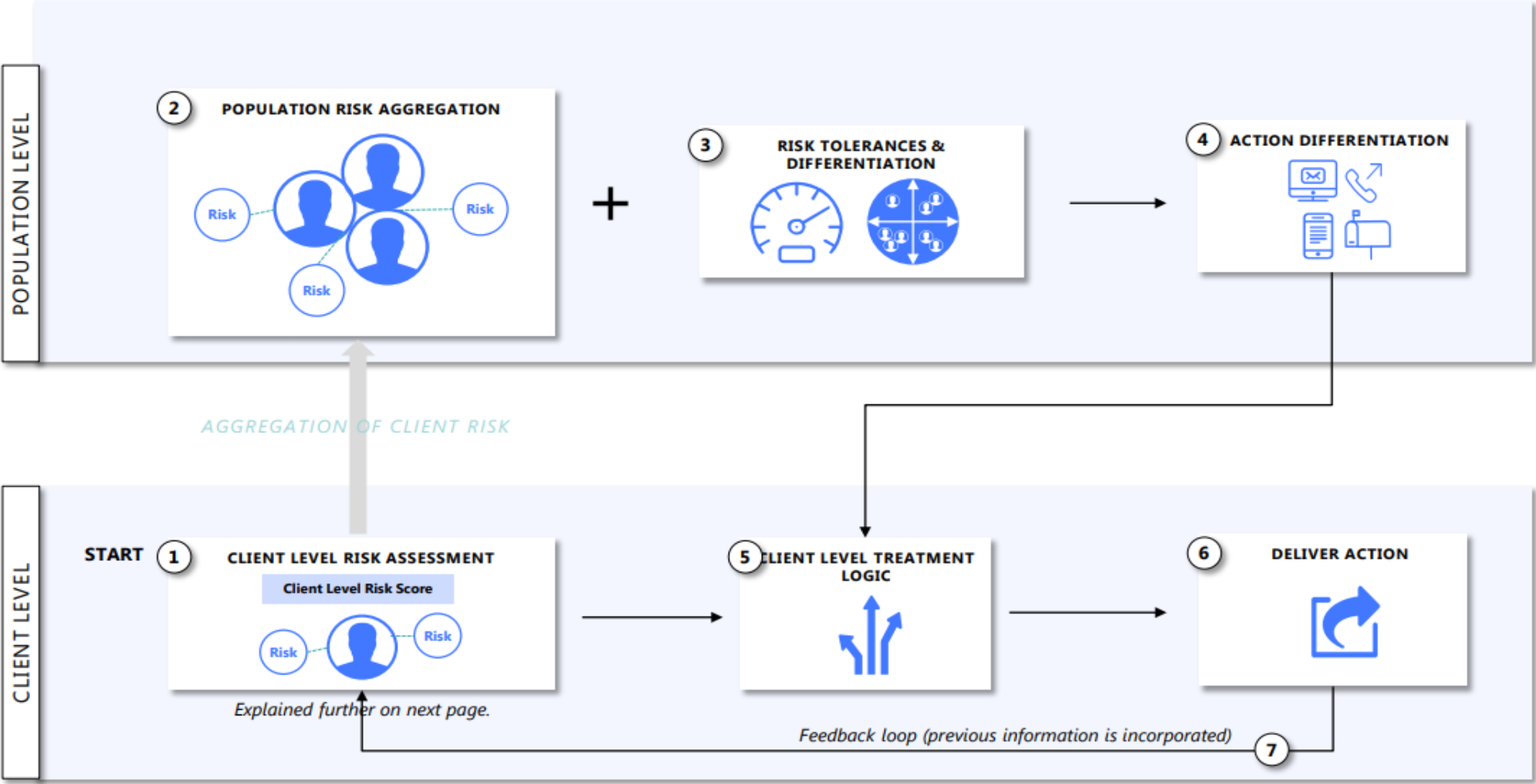
Figure 3.2: ATO learnings from JobKeeper into JobKeeper extension



Note: '1:many' refers to ATO bulk communications and '1:1' refers to ATO engagement with individual taxpayers.

Source: Reproduced from the ATO's records.

Figure 3.3: Overview of the ATO’s compliance model for the extension period



Source: Reproduced from the ATO’s records.

3.16 The extension period compliance model was designed to calculate an overall 'Client Level Risk Score' for each JobKeeper recipient, based on the likelihood of ineligibility and financial consequences of ineligibility (such as the number of employees being claimed for). The likelihood was to be derived from the client's demographic characteristics (for example, type of industry) and six risks models, comprising: 'Eligible business participant eligibility', 'Employee eligibility and (payment) tiers', 'Identity take over', 'Signs of life', 'Turnover', and 'Agents of threat'.

3.17 The ATO prepared treatment plans for seven payment risks in the extension period (Table 3.2). None of the seven risk treatment plans were dated and there was no evidence of the plans being approved in writing.

Table 3.2: Risk-specific treatment plans prepared by the ATO for the extension period

Name of risk treatment plan	Relating to
Employee Verification	A range of risks associated with an employer/employee relationship such as employers claiming for ineligible employees
Decline in Turnover	The actual decline turnover test for the JobKeeper extension period
Wage Condition	Requirement that employers must pay their employees first, before being reimbursed by the ATO
Intermediaries assurance COVID-19 response	Reducing any adverse influence of tax agents or other intermediaries on the integrity of JobKeeper payments and other stimulus measures
Eligible Business Participants	Requirement that businesses can only claim a JobKeeper payment for one eligible business participant
Eligible Business Participants Tier Payments	Two new payment tiers for the JobKeeper extension period
Residency	Residency requirements for JobKeeper payments

Source: ANAO, based on the ATO's records.

Have key compliance and integrity measures been implemented as intended?

The ATO did not implement all key compliance and integrity measures as intended. Of the 22 compliance measures tested, two were partly implemented as intended, seven largely as intended and eight fully as intended. The ANAO was unable to conclude on five compliance measures due to data integrity issues. The ATO's governance and internal reporting arrangements did not provide clear assurance on the implementation of the compliance measures.

3.18 To assess whether key compliance measures had been implemented as intended, the ANAO selected one or more compliance measures from each of the ATO's 15 risk treatment plans. A total of 22 compliance measures were selected.⁴⁸ The selection was principally based on compliance measures that the ATO had directed at higher-risk populations or behaviours, which were typically intended to involve direct engagement with JobKeeper recipients. Evidence was

⁴⁸ The ANAO also examined the ATO's arrangements for sharing data with Services Australia, as outlined in the JobKeeper/JobSeeker risk treatment plan.

sought from the ATO on whether it had implemented the selected measures as intended or implemented any approved changes to the measures (Appendix 7).

3.19 The ATO provided ‘case lists’ of individual compliance activities extracted from its case management system, Siebel. The case lists represented the ATO’s initial claims about the implementation of intended compliance measures. The ATO provided lists of compliance cases for each of the 22 compliance measures selected by the ANAO. From a total of 41,031 compliance cases in the case lists across both the original and extension periods, 735 cases were selected for testing. For each compliance case, the ANAO sought evidence that the intended action had been undertaken.

Implementation of compliance measures

3.20 Of the 22 compliance measures tested, two were partly implemented as intended, seven largely as intended and eight fully as intended. For five measures comprising 202 compliance cases, the ANAO was unable to conclude on whether the intended compliance measures were implemented (Table 3.3).

- A total of 30 compliance cases with substantive exceptions – that is, where the ATO did not evidence that its intended compliance action had been fully undertaken or that an eligibility outcome had been recorded – were identified across nine of the 17 compliance measures that could be tested.
- There were 41 compliance cases across 16 of the compliance measure populations where issues were identified with the reliability of the ATO’s case lists. These included compliance cases that were created in error and closed without compliance action, and apparent duplicates in the case lists.

Table 3.3: ATO implementation of sampled compliance measures

Compliance measure		Total compliance cases	Sampled compliance cases	Compliance cases with exceptions	ANAO testing results
Original period of the JobKeeper scheme					
1.1a	Turnover Test – Public Groups & International and Private Wealth ^a	100	18	0	<ul style="list-style-type: none"> In all cases, client contact occurred, and an eligibility outcome was recorded
1.1b	Turnover Test – Public Groups & International and Private Wealth ^a	86	86	1	<ul style="list-style-type: none"> In one case, there was no evidence of profiling to verify that the client had met the decline in turnover test
1.2a	Turnover Test – Small Business ^b	20	20	0	<ul style="list-style-type: none"> In all cases profiling and client contact occurred, and an eligibility outcome was recorded

Compliance measure		Total compliance cases	Sampled compliance cases	Compliance cases with exceptions	ANAO testing results
1.2b	Turnover Test – Small Business ^b	30	30	1	<ul style="list-style-type: none"> In one case, there was no evidence of profiling to verify that the client had met the decline in turnover test In all cases, client contact occurred, and an eligibility outcome was recorded
1.2c	Turnover Test – Small Business ^b	30	30	1	<ul style="list-style-type: none"> In one case, there was no evidence of profiling to verify that the client had met the decline in turnover test In all cases, client contact occurred, and an eligibility outcome was recorded
1.3	Eligible Business Participants	4345	22	0	<ul style="list-style-type: none"> In all cases, client contact occurred, and an eligibility outcome was recorded
1.4a	Employee Verification Risk ^c	1062	41	2	<ul style="list-style-type: none"> In one case, there was no evidence of a review being conducted, or that the risk that the client was claiming JobKeeper payments on behalf of an inflated number of employees had been addressed In one case, a review was conducted with no evidence that the risk had been addressed
1.4b	Employee Verification Risk ^c	4518	22	0	<ul style="list-style-type: none"> In all cases, a review was conducted, and the verification risk was addressed
1.4c	Employee Verification Risk ^c	7	7	0	<ul style="list-style-type: none"> In all cases, the employee was referred to the ATO's Integrated Compliance business line
1.4d	Employee Verification Risk ^c	69	69	0	<ul style="list-style-type: none"> In all cases, a review was conducted

Compliance measure		Total compliance cases	Sampled compliance cases	Compliance cases with exceptions	ANAO testing results
1.5	Wage Condition (Payment of Employees)	49	49	15	<ul style="list-style-type: none"> In 15 cases, a compliance case was closed without evidence that the risk that the client receiving JobKeeper payments was not paying their employees had been addressed
1.6	Signs of Life	16,657	42	0	<ul style="list-style-type: none"> In all cases, payments were suppressed
1.7	Identity Fraud	5814	22	1	<ul style="list-style-type: none"> In one case, there was no evidence of client contact to verify that an application for JobKeeper payments was genuine, or of an eligibility outcome being documented
Extension period of the JobKeeper scheme					
2.1a	Employee Verification ^d	2599	41	The ANAO was unable to conclude on whether this compliance measure was implemented as intended	
2.1b	Employee Verification ^d	260	20	6	<ul style="list-style-type: none"> In five cases, there was no evidence of client contact to verify that employees were not receiving JobKeeper payments from multiple employers In one case, there was no evidence of an eligibility outcome being documented
2.1c	Employee Verification ^d	973	40	The ANAO was unable to conclude on whether this compliance measure was implemented as intended	
2.2	Decline in Turnover	638	40	The ANAO was unable to conclude on whether this compliance measure was implemented as intended	
2.3	Wage Condition (Payment of Employees)	130	19	1	<ul style="list-style-type: none"> In one case, there was no evidence of client contact to verify that the client receiving JobKeeper payments was paying their employees

Compliance measure		Total compliance cases	Sampled compliance cases	Compliance cases with exceptions	ANAO testing results
2.4	Agents and Intermediaries	18	18	0	<ul style="list-style-type: none"> In all cases, the intermediary was referred to the Tax Practitioners Board
2.5	Business Participants	703	40	The ANAO was unable to conclude on whether this compliance measure was implemented as intended	
2.6	Eligible Business Participants Tier Payments	102	18	2	<ul style="list-style-type: none"> In two cases, there was no evidence of client contact to verify that the client understood the two-tier payment structure for the JobKeeper extension period
2.7	Residency	2821	41	The ANAO was unable to conclude on whether this compliance measure was implemented as intended	

Note a: The ANAO tested two compliance measures selected from the 'Turnover Test – Public Groups & International and Private Wealth' treatment plan. Compliance measure 1.1a was directed at medium to high-risk entities selected through a risk filter, and 1.1b at selected Significant Global Entities.

Note b: The ANAO tested three compliance measures selected from the 'Turnover Test – Small Business' treatment plan. Compliance measure 1.2a was directed at entities that had self-prepared their Business Activity Statement, 1.2b at entities that reported increased sales, and 1.2c at entities that reported sales increasing from nil.

Note c: The ANAO tested four compliance measures selected from the 'Employee Verification Risk' treatment plan for the original period of the JobKeeper scheme. Compliance measure 1.4a was directed at entities that were at risk of claiming JobKeeper payments for an inflated number of employees, 1.4b at entities that were claiming the payment for employees without a (or with a backdated) pay as you go withholding role, 1.4c at potential multiple claims for the same individual, and 1.4d at entities at risk of claiming for fictitious employees.

Note d: The ANAO tested three compliance measures selected from the 'Employee Verification' treatment plan for the extension period of the JobKeeper scheme. Compliance measure 2.1a was directed at entities at risk of claiming JobKeeper payments for ineligible employees, 2.1b at employees at risk of receiving payments from multiple employers, and 2.1c at entities at risk of claiming payments for non-resident employees.

Source: ANAO, based on the ATO's records.

3.21 The highest number of exceptions (15 among the 49 cases tested) was for the Wage Condition treatment plan for the original period, which was intended to ensure that employers receiving JobKeeper payments were paying their employees. The 15 exceptions comprised:

- five compliance cases that were closed together with no further attention given to the individual cases in February 2021 — six months after a review was opened — with no indication that the wage condition risk had been addressed;
- five compliance cases for which there was not sufficient evidence that the risk had been addressed (for example, no notes recorded);
- three compliance cases that were closed due to being 'likely low risk' although there was no confirmation that the risk had been addressed; and

- two compliance cases in which a case officer recorded that the risk had been addressed through the completion of an eligibility checklist; however, verifying the wage condition was not included on the checklist.

3.22 In relation to the ATO's JobKeeper/JobSeeker risk treatment plan, JobKeeper data was regularly shared with Services Australia from May 2020 to March 2021. The principal aim of the data sharing was to identify persons who were in receipt of both JobKeeper and JobSeeker payments — which was not permitted under the JobSeeker payment rules.

3.23 The five compliance measure populations where testing was not able to determine whether they had been implemented as intended involved the application of the ATO's 'Action Differentiation Framework' (ADF) — a key element of the extension period compliance model. The intent of the ADF was to align the treatment approach to the identified level of risk. Each entity was assigned to one of four ADF categories:

- Detect and monitor — monitoring groups of entities for risk through data analysis;
- Detect, educate and encourage — promoting compliance across a group of entities through outbound telephone calls, emails and letters to entities;
- Detect and review — reviewing high-risk payments without applying a suppression; or
- Detect, stop and review — suppressing the highest-risk payments prior to review.

3.24 During the ANAO's initial testing of the five populations, inconsistencies were identified in all five populations between the action recorded in the ATO's case lists and the compliance action that was evident from the ATO's case documentation. There were 106 inconsistencies among the 202 sampled compliance cases in these five populations. These included 47 compliance cases where 'detect, stop and review' was recorded in the case list, but there was no evidence of payments being suppressed before the review commenced, or at all. A further eight cases were identified where either 'detect, stop and review' or 'detect and review' was recorded in the case list, but there was no evidence of a review being completed. Following testing, the ATO advised the ANAO that the ADF category recorded in the case lists was not a reliable indicator of the ATO's intended action:

The ADF categories were not always final actions undertaken by the ATO. Each risk was monitored on an ongoing basis ... Where the action taken does not match the ADF, a decision would be made based on a number of factors... The ADF rating in these cases would not be solely relevant in selection. The data showing the ADF category does not get updated if we [the ATO] decide to undertake a review on the client. The ADF is based on automated risk models and is not manually changed if for example a risk manager decides to review a 'monitor' ADF case.

3.25 On this basis, no finding could be made on whether the ATO's compliance measures over the five affected populations were implemented as intended.

Oversight of compliance measures

3.26 The ATO's governance arrangements for the JobKeeper scheme did not specifically identify which person or body was responsible for overseeing the implementation of the risk treatment plans for the original period of the scheme. The ATO advised the ANAO that its existing business lines were responsible for the development and execution of the treatment plans for their relevant areas of focus. No document was provided to support this advice or to set out the respective responsibilities of business lines and the Program Board.

3.27 The Program Board received a range of reporting on the ATO's compliance strategies, activities and outcomes. In addition, there was evidence of progress and outcomes reporting being provided within the business lines for some of the risk treatment plans.

- A 'Strategy Finalisation Report' (dated 23 October 2020) on the Small Business Decline in Turnover Risk treatment plan provided to an Assistant Commissioner in the Small Business line.
- An 'Evaluation Report' provided on 1 December 2020 to the Strategic Management Committee within the ATO's Public Groups and International business line on the decline in turnover compliance measures undertaken within this business line.
- A 'Risk Insights Report' provided to the ATO's stream lead for compliance (Assistant Commissioner level) on 5 October 2020 outlining compliance activities undertaken within the Private Wealth business line for the decline in turnover risk.

3.28 The reporting to the Program Board did not typically provide a clear 'line of sight' back to the intended compliance measures from the ATO's risk treatment plans.

Did the ATO conduct 'decline in turnover' reviews in accordance with its internal procedures?

While the ATO conducted decline in turnover reviews in accordance with its internal procedures, the nature of the ATO's procedures and variability in the documentation maintained did not provide strong assurance on the assessed eligibility of entities that were reviewed.

3.29 The decline in turnover test was a key eligibility requirement for the JobKeeper scheme and an area of focus for the ATO's compliance activities. The ATO's published guidance emphasised the need for an entity's projected decline in turnover to be 'reasonable' and for the entity to maintain records to demonstrate that a reasonable approach was taken.⁴⁹

3.30 The extension period compliance strategy stated that over 1000 'decline in turnover reviews' had been undertaken by business lines on applications received during the original period of the scheme and that over 97 per cent of the cases reviewed were found to be eligible. A similar result was reported publicly. On 10 September 2021, the Commissioner advised the Senate Economics Legislation Committee that:

We have undertaken a comprehensive review of cases that forecast a decline in turnover and found the vast majority of taxpayers undertook the projected decline in turnover test in good faith. From our review of more than 1,600 entities across all markets, including 480 large businesses, we found more than 95% were eligible.⁵⁰

49 The published guidance included a Law Companion Ruling on the original decline in turnover test, first published on 5 May 2020 and applicable from 9 April 2020. The Ruling sets out the Commissioner's views on the law and was 'administratively binding' on the Commissioner to the extent that entities follow that view in good faith.

50 C Jordan (Commissioner of Taxation), *Statement to Senate Economics Legislation Committee Friday 10 September 2021* [Internet], Australian Taxation Office, Canberra, 2021, available from <https://www.ato.gov.au/Media-centre/Speeches/Commissioner/Statement-to-Senate-Economics-Legislation-Committee-Friday-10-September-2021/> [accessed 18 November 2021].

Decline in turnover reviews

3.31 The ANAO asked the ATO to provide a list of the decline in turnover reviews that were referenced in the compliance strategy. From a list of 1619 decline in turnover reviews provided by the ATO in March 2021⁵¹, a sample of 40 reviews was selected by the ANAO for testing. The sample comprised 30 cases listed as ‘eligible’ and 10 cases listed as ‘ineligible’. Reviews were undertaken by three business lines — Public Groups and International, Private Wealth, and Small Business.

3.32 The ATO developed a range of internal procedures and guidance material to support the decline in turnover reviews. This included a ‘risk guide’, first issued on 10 July 2020, designed to assist staff when actioning activities relating to entities identified as potentially not meeting the decline in turnover test. The risk guide set out four main tasks for ATO staff to complete and included different guidance for the three business lines conducting the decline in turnover reviews.

- Profile the client to understand the risk.⁵²
- Understand the product that is being recommended.
- Contact the client.
- Determine the outcome.

3.33 For Public Groups and International, the options for conducting a decline in turnover review included sending a ‘nudge’ email to the taxpayer where they were of a ‘lower consequence’ (fewer than 25 employees) or a Significant Global Entity that was applying the 30 per cent decline in turnover rate and had not experienced an actual decline of 50 per cent or more (Appendix 4).⁵³ The risk guide stated that the nudge approach was designed to prompt entities to reconsider their eligibility for JobKeeper payments by checking for any errors in their decline in turnover test. The ATO advised the ANAO that 113 nudge emails were sent by the Public Groups and International business line.⁵⁴

3.34 The risk thresholds that underpinned the nudge email for Public Groups and International were not required to be applied by the two other business lines — Private Wealth and Small Business. The ATO advised the ANAO that the different thresholds and treatments across the three business lines was attributed to three factors:

- ATO policy to segment the taxpayer population by different client experiences;
- the differences in the severity of behaviours that caused risks to manifest; and
- the risks that were being treated.

51 In June 2021, the ATO provided a revised list of 1734 reviews. The ATO advised that the revised list included an additional 155 reviews that had not been categorised correctly in its case management system (Siebel) as well as 40 reviews where the identification details had been duplicated. In December 2021, the ATO provided a further revised list of 1738 reviews. Neither revised list was used for testing.

52 The risk guide states that ‘The Risk and Intelligence function establishes activity/case pools for decline in turnover risk. This requires internal profiling to be performed to validate risk filter results and capture any other information that cannot be discerned by internal data sources.’

53 For an explanation of the term ‘Significant Global Entity’, see Australian Taxation Office, *Significant Global Entities* [Internet], ATO, Canberra, 2020, available from <https://www.ato.gov.au/business/public-business-and-international/significant-global-entities/> [accessed 21 November 2021].

54 The ANAO’s sample of 40 cases included one nudge email sent by the Public Groups and International business line. For this case, the ATO’s records indicated that the entity’s ongoing eligibility was monitored.

3.35 Public Groups and International also had the option of issuing a formal request for information, seeking detailed source documents from the taxpayer. The risk guide stated that this approach was to be used by exception and only after a telephone questionnaire had been used. The ATO advised the ANAO that no formal requests for information were issued.

Implementation of decline in turnover reviews

3.36 The main issues identified by the ANAO through testing concerned the nature of the evidence sought and received by the ATO to gain assurance that the entity had satisfied the decline in turnover test.

3.37 A requirement in the ATO's risk guide, which applied to all three business lines, was the need to obtain documents to substantiate the entity's decline in turnover claims. Where documentation was directly sought from entities in line with this requirement, there was variability in the nature and quality of the records provided. Some entities provided a spreadsheet including only a decline in turnover calculation, which provided no indication of when the calculation was completed. The ATO acknowledged the general variability of the documentation and advised the ANAO that 'there was no definition of what records were required to be kept or how to present the calculation, so we received large variations between clients.'

3.38 In three cases where direct contact was made (which were all assessed to be eligible), no documentation was included in the ATO's records. The ATO advised the ANAO that these three cases were part of a private group comprising 29 employer entities. In such cases, the ATO's risk guide allowed the Private Wealth business line to determine which employer entities to request working papers from, having regard to factors such as the number of employees and the expected impact on the relevant industry. The ATO's records indicate that working papers were requested from six of the 29 entities.

3.39 The ANAO's testing sought to identify whether the ATO obtained evidence from entities on when the decline in turnover projection was made and who prepared the projection. This first aspect reflected a principle in the ATO's published guidance that the decline in turnover projection needed to be a reasonable assessment of what was likely at the 'point in time' an entity calculated the test.⁵⁵ The ATO was generally accepting of entity assertions with regard to the manner in which the decline in turnover test was completed and did not seek to verify the responses provided, by, for instance, requesting primary documentation to evidence the date on which the projections were produced (such as emails or board papers). This reduced the intended assurance that entities had completed their decline in turnover projection before they submitted their application.

3.40 In conducting the reviews, the ATO typically sought to identify which decline in turnover test the entity used to establish their eligibility — the basic test, the alternative test or the modified alternative test for group employers. As discussed in Chapter 2 (paragraph 2.16), the ATO's online form for the original JobKeeper scheme did not require entities to specify which test was used.

3.41 The sampled reviews included one case, categorised as eligible, where a nudge email was sent to the entity. The ATO's profiling document noted that the entity's reported revenue increased by 152 per cent, whereas a decline of 50 per cent had been nominated on the entity's application form. The entity was categorised as 'low consequence' (fewer than 25 employees), in line with the

55 Australian Taxation Office, Law Companion Ruling LCR 2020/1 *JobKeeper Payment — Decline in Turnover Test*, ATO Legal Database, para [53].

ATO's risk guide for the Public Groups and International business line. The nudge email encouraged the entity to review its eligibility for JobKeeper payments and contact the ATO to discuss any issues. The ATO's records state that no response was received. Based on the information gathered by the ATO, the potential overpayment was up to \$360,000.

3.42 The ATO's risk guide provided the three business lines with different options for profiling the client and recording the outcome. The ATO created profiling templates and an 'analysis and decision template', but these were not required to be used across the three business lines. The ANAO observed variability in the ATO's documentation in relation to the entity profiling step and recording the outcome of the review.

3.43 For the 10 sampled reviews that were assessed by the ATO as 'ineligible', the ATO provided sufficient evidence that the proposed decisions were referred for approval in line with the requirements for each business line set out in the risk guide.

Has the ATO exercised discretion on overpayments in accordance with its internal policies and procedures?

The ATO exercised discretion on overpayments largely in accordance with its internal policies and procedures. The ATO's approach was that the exercise of discretion needed to be reasonable based upon the circumstances of the case. The ATO's guidance material set out two significant factors to be taken into account when exercising discretion — honest mistake and retention of financial benefit. Based on a sample of 63 overpayments, the ATO did not consistently document how its exercise of discretion related to the two significant factors. The ATO's understanding of the law was that the Commissioner's discretion on JobKeeper overpayments could not be limited by internal policies and procedures.

Legislation, policy and guidance on the exercise of discretion on overpayments

3.44 The JobKeeper legislation provides the Commissioner with the discretion to make a written determination that an entity is not liable to repay an amount of a JobKeeper payment where the entity was either not entitled to the payment or the amount paid was more than the amount to which the entity was entitled.⁵⁶ The Explanatory Memorandum to the Coronavirus Economic Response Package (Payments and Benefits) Bill 2020 stated that:

This ensures that the Commissioner has flexibility to address issues that might otherwise arise where entities may have made an honest mistake and not retained any personal benefit from a payment they have received.⁵⁷

3.45 On 10 September 2021, the ATO publicly reported that it had identified a total of \$470 million worth of JobKeeper overpayments, of which \$180 million had been waived following the exercise of discretion.⁵⁸

56 *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cth), section 9.

57 Explanatory Memorandum, *Coronavirus Economic Response Package (Payments and Benefits) Bill 2020* *Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020*, p.39.

58 Commonwealth, *Public Hearing*, Senate Economics Legislation Committee, 10 September 2021, C Jordan, Commissioner of Taxation, p.7.

3.46 The ATO developed a range of internal guidance material to support the exercise of the Commissioner's discretion on JobKeeper overpayments. This included the ATO's policy position on the practical application of the discretion, approved by the Senior Responsible Officer for the JobKeeper scheme on 16 June 2020, as well as four 'Practice Notes' to support decision-making by ATO officers.⁵⁹

3.47 In considering the practical circumstances under which the Commissioner should exercise the discretion to waive repayment, the ATO determined, based upon the Explanatory Memorandum, that the discretion is to be exercised broadly, when:

- there has been an honest mistake, including where there is reasonable reliance on a statement made by the other entity in their nomination notice; and
- there has been no direct financial benefit retained by the entity that received the JobKeeper payment.

3.48 In addition, the ATO's policy position included 'concessional treatment' for overpayments identified by the ATO in the first four JobKeeper fortnights.

- For the first two fortnights, discretion could be exercised solely on the basis that an honest mistake was made by the applicant, regardless of whether or not a financial benefit had been retained. The ATO's stated basis for taking this approach included the rapid implementation and complexity of the scheme and the fact that ATO guidance materials were still being developed after JobKeeper applications had opened.
- For the second two fortnights, other factors were to be used in determining whether discretion should be exercised, including whether the ATO had previously contacted the entity in relation to eligibility issues.
- For all four fortnights, the ATO determined that where a JobKeeper recipient had independently contacted the ATO to repay an overpaid amount, the ATO would process the repayment and not offer to waive it.

3.49 For the extension period, concessional treatment was expanded to apply to the entire original period (the first 13 JobKeeper fortnights). The ATO's rationale for this change was that it would be unreasonable to recover these amounts after the conclusion of the original period. The ATO also considered that exercising discretion would provide closure for ineligible recipients by indicating that the ATO would not later seek to recover past overpaid amounts. Under this policy, JobKeeper recipients found ineligible could keep all overpaid amounts from the original JobKeeper period, provided that ATO was satisfied that they had made an honest mistake.

3.50 The Practice Notes broadened the ATO's earlier decision that the application of the Commissioner's discretion was to be exercised broadly by adding 'including' when there has been an honest mistake and no financial benefit retained. The Practice Notes state that:

Ultimately, it will be a question of whether it is reasonable to not require the repayment of the overpayment of JK in all the circumstances. This requires consideration of the interests of both the entity and the broader community. The circumstances surrounding the rapid implementation of the JK scheme will also be relevant, including the need for quick decisions about eligibility, the fact that the provisions were concerned with getting stimulus into the economy as fast as possible and

59 Three of the Practice Notes were developed for the original JobKeeper period, and one for the JobKeeper extension period.

retaining jobs as an emergency measure, the fact that JK was intended to have a response effect in those receiving it, and that the recovery of good faith claims may leave employers in a worse position than if they didn't claim at all.

3.51 The Practice Notes also stated that, in considering whether it is reasonable to not require repayment, a significant factor would be the 'honesty of the entity's mistake', and another significant factor would be 'the extent to which receipt of JK payments has provided a financial benefit.' The Practice Notes explained the ATO's concept of an 'honest mistake' and 'financial benefit' (Appendix 8) and provided illustrative examples of each.

3.52 The Practice Notes did not include specific guidance on how ATO staff were required to support their decisions if the significant factors of honest mistake and retention of financial benefit were determined not to apply, or if other factors were considered more material to the exercise of discretion.

3.53 The ATO established overpayment review and advisory panels to provide a consistent view over overpayment decisions, particularly for higher value and more complex cases. The exercise of discretion based on considerations other than the two 'significant factors' listed in the Practice Notes was one of the reasons that would require mandatory referral to the panels.

Implementation of the Commissioner's discretion in relation to overpayments

3.54 The ATO's understanding of the law was that the Commissioner's discretion could not be strictly limited by its policies and procedures.⁶⁰ The ATO advised that 'While the concepts of honest mistake and retention of [financial] benefit were primary considerations, they were not conclusively determinative in the final decision as to whether the overpayment discretion was exercised', and further advised that:

The final decision on each matter, regardless of the content of the Practice Notes, was wholly determined by the consideration of the relevant decision-maker as to whether the exercise of the discretion (in whole, in part, or not at all) was reasonable based upon the circumstances of the case.

3.55 In relation to the question of whether decisions to exercise discretion on JobKeeper overpayments were made in accordance with its internal guidance, the ATO advised that: 'Unless the discretion decision made was established to be unreasonable in the eyes of the relevantly delegated and experienced decision-maker, then it was made in accordance with the Practice Notes'.

3.56 Despite this discretion, there is a requirement under the *Public Governance, Performance and Accountability Act 2013* for the accountable authority of a Commonwealth entity to promote the proper use and management of public resources. The general expectation is that entities provide transparency over and accountability for the use of public funds.

3.57 In this context, ANAO testing focused on whether the ATO had clearly documented the basis for its overpayment decisions — in particular, how the decisions took account of the two 'significant'

60 The ATO advised that any suggestion that the Practice Notes had to be strictly followed by decision-makers would be contrary to well-established administrative law principles. It noted that where there is a grant of a broad discretionary power, the courts have confirmed that if a decision-maker considers that the power is to be exercised, or exercised in a certain manner, only in special or exceptional circumstances, or only sparingly, any decision made in exercise of the power may be set aside.

factors listed in its Practice Notes (honest mistake and retention of financial benefit) and whether any other factors relevant to the decision were explicitly identified. The expectation that decisions are clearly documented does not limit the exercise of discretion.

3.58 The population of overpayments as of 8 June 2021 comprised 32,514 unique clients who had received overpayments totalling \$433 million. Sixty-three JobKeeper overpayments, totalling \$57.8 million, were sampled for testing using a stratified sampling approach based on three decision outcomes — full write-off, partial write-off and full repayment. The testing targeted the highest value cases in the full write-off and full repayment categories.

3.59 Of the 63 overpayments examined, 40 decisions were explicitly based on the significant factors of 'honest mistake' and 'financial benefit' as set out in the Practice Notes. Nine cases were assessed as 'not applicable' for a range of reasons.⁶¹ In the remaining 14 cases, the ATO's documentation did not clearly set out how the overpayment decisions took account of the two significant factors (Table 3.4).

Table 3.4: Implementation of the Commissioner's discretion in relation to overpayments where the two significant factors were not documented

Nature of documentation	Number of cases	Details
Did not document how the two significant factors were taken into account Explicitly based on factors other than the significant factors	5	<ul style="list-style-type: none"> One case where the entity had experienced a decline in turnover, despite it being less than the required percentage (full write-off, \$701,250). One case where, if the business owner had been able to sell part of their business two days earlier, then they would have met the actual decline in turnover test (full write-off, \$269,700). One case where the entity claimed they were in a position of financial difficulty, and where the ATO noted that the entity had an existing debt with the ATO and was an employer of 40-plus individuals (full write-off, \$247,800). One case where the entity claimed that repayment of the overpayment amounts would have a detrimental effect on its business (full write-off, \$217,650). One case where there was limited ATO guidance available at the time the entity submitted its JobKeeper application (partial write-off, \$234,000).
Did not document how the two significant factors were taken into account Not explicitly based on factors other than the significant factors	9	<ul style="list-style-type: none"> One case where the ATO recommended that discretion be exercised on the basis that an honest mistake had been made and the entity did not retain any financial benefit, despite not considering whether the entity had stood down its employees (Box 1). Three cases where the ATO required some amount to be repaid where the ATO's records indicated that the employer would have relied upon an employee nomination notice, which the Practice Notes state will generally be reasonable grounds to exercise full discretion. Five cases where the ATO did not require an entity to repay part of an overpayment without clearly stating any reasons for the decision.

Source: ANAO, based on the ATO's records.

61 These reasons included voluntary repayments by entities, ATO errors, or objection decisions made by the ATO after the date that overpayment data had been originally provided to the ANAO.

3.60 Three of the five overpayment decisions that were based on factors other than the two significant factors did not include evidence of referral to an overpayment review and advisory panel — as was required under the ATO’s internal guidance.

Box 1: Entity found ineligible, resolved with full write-off upon objection

A business had received JobKeeper for the first 10 JobKeeper fortnights, worth a total of \$11.86 million (the largest overpayment present in the ATO’s dataset). Through its compliance activity, the ATO investigated whether the business had satisfied the decline in turnover test. The entity was found to have applied an incorrect decline in turnover percentage of 30 per cent, rather than the 50 per cent required for an entity of its size.

The ATO found the entity to be ineligible to receive JobKeeper and determined that it had made an honest mistake. The ATO exercised discretion to not require repayment of amounts received for the first four JobKeeper fortnights, in accordance with the ATO’s concessional treatment approach. Repayment of amounts for JobKeeper fortnights five to 10 was required.

The entity lodged an objection with the ATO. The ATO overturned the original overpayment decision, exercising discretion to not require repayment of amounts received in JobKeeper fortnights five to ten. The entity remained ineligible but was not required to repay any of the JobKeeper payments received.

The ATO’s decision documentation stated that this was done on the basis that an honest mistake was made and that no financial benefit was retained. The documentation did not comment on whether the entity’s employees were stood down. The Practice Notes indicate that this is one of the conditions of the entity not retaining any financial benefit.

The ATO’s decision documentation referred to a range of other matters, which the ATO advised the ANAO in December 2021 sufficiently described the circumstances where it was open for the discretion to be granted. This included the fact that the entity had asked 731 staff to undertake a reduction in income of 20% for three months, and that the entity had passed on the JobKeeper payments to its employees.

The ATO’s internal correspondence on this case included the comment that ‘reasonable minds could differ on the exercise of discretion in these circumstances.’

Source: ANAO, based on the ATO’s records.

4. Monitoring and reporting on the performance of the JobKeeper scheme

Areas examined

This chapter examines whether the Australian Taxation Office (ATO) effectively monitored and reported on the operational performance of the JobKeeper scheme. This chapter also examines the Department of the Treasury's (Treasury's) arrangements for evaluating the JobKeeper program and policy.

Conclusion

The ATO's monitoring and reporting on the operational performance of the JobKeeper scheme was effective. The ATO maintained fit for purpose governance arrangements to monitor scheme performance, regularly monitored performance and provided regular reporting to Treasury and other government entities. Treasury developed an evaluation framework for the JobKeeper program.

4.1 The ATO and Treasury had responsibilities for monitoring and reporting on the performance of the JobKeeper scheme — reflecting their respective roles for administration and policy. This chapter examines whether the ATO:

- implemented sound arrangements for monitoring scheme performance; and
- reported on the scheme in a timely and informative manner.

4.2 In addition, this chapter examines Treasury's arrangements for evaluating the JobKeeper program and policy.

Has the ATO implemented sound arrangements for monitoring scheme performance?

The ATO implemented sound arrangements for monitoring the performance of the JobKeeper scheme. Governance arrangements were established early and were subject to review and adjustments. The main governance and oversight bodies operated in accordance with their charters in respect of meeting frequency and matters considered. The ATO monitored and reported on performance. Internal performance measures were reported in July 2021.

4.3 As the entity responsible for administering the JobKeeper scheme, the ATO was able to determine what arrangements would be appropriate for monitoring scheme performance.⁶² It outlined its intended approach to administering the scheme in a paper provided to the first meeting of the JobKeeper Program Board on 14 April 2020. The paper noted the ATO's intentions that:

- a strong and robust governance framework is maintained;
- the coordination of the various streams of work are in place, which need to come together to enable the program to succeed; and

62 There were no particular legislative requirements or external frameworks directing this aspect of scheme administration.

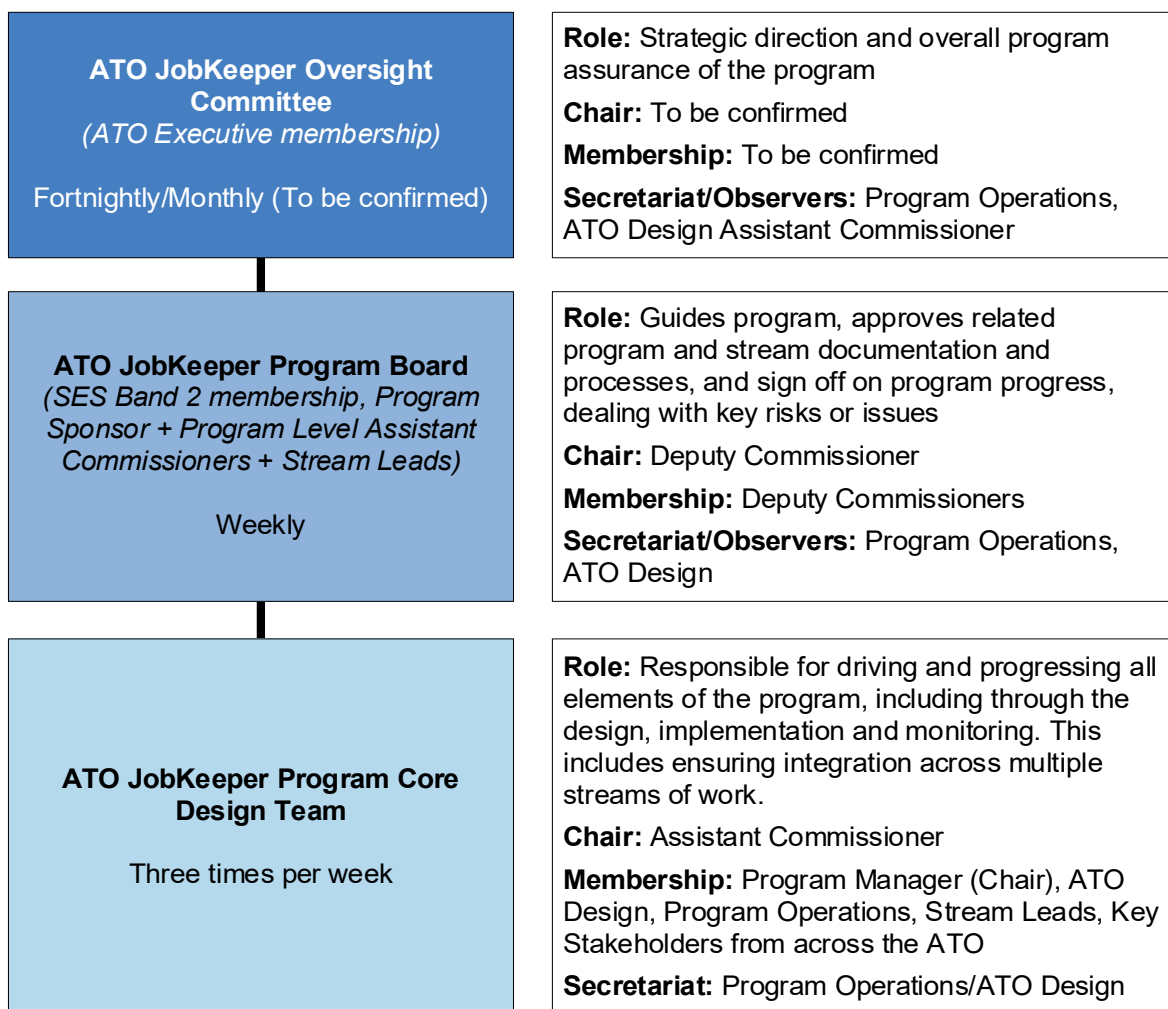
- the monitoring and reporting of key performance indicators and milestones are in place to support the policy objective.

4.4 The ATO advised the ANAO that the governance arrangements determined for the JobKeeper scheme were the principal means by which the ATO monitored scheme performance.

Governance framework

4.5 A proposed governance structure for the JobKeeper scheme⁶³, and related arrangements, were set out at the 14 April 2020 meeting of the JobKeeper Program Board (Figure 4.1).

Figure 4.1: The ATO's proposed governance structure for the JobKeeper scheme (14 April 2020)



Source: ANAO, based on the ATO's records.

4.6 The Program Board and the Core Design Team operated from April 2020. The JobKeeper Oversight Committee was not established and its intended role was instead absorbed into the Program Board.

⁶³ The ATO established a 'JobKeeper Payment Program' to administer the JobKeeper scheme.

4.7 Following a review of the JobKeeper accountability and governance structure by PricewaterhouseCoopers, the ATO established the Economic Response Oversight Committee in August 2020 to ‘provide strategic direction and overall program assurance of the ATO’s management of the COVID-19 Economic response measures’, which included the JobKeeper scheme.⁶⁴ The Economic Response Oversight Committee comprised three ATO Second Commissioners and was supported by a range of advisers at Deputy Commissioner and Assistant Commissioner level (Senior Executive Service Band 2 and 1). The Economic Response Oversight Committee held its first meeting on 25 August 2020. Material considered included a table of ‘program level tolerance thresholds’ for different aspects of program management (such as cost, resources and risk) above which an ‘exception report’ was to be raised with the Committee. This requirement was reflected in the charter for the JobKeeper and JobMaker Hiring Credit Program Board, which superseded the JobKeeper Program Board in October 2020.

4.8 Other material provided to the Program Board on 14 April 2020 included:

- a program structure — comprising an ‘oversight level’ by a Senior Responsible Officer, a ‘program level’ by a program lead, program management directors and a ‘stream level’ involving seven different functions⁶⁵;
- key program accountabilities — involving a reporting structure; and
- the planned schedule and content of governance meetings and reporting — including reporting to Treasury and ministers’ offices.

4.9 Different governance structures were considered and implemented by the Program Board over the course of the JobKeeper scheme. Common features of the governance arrangements included a key role for the Program Board and for the Senior Responsible Officer.

4.10 Following the establishment of the JobKeeper and JobMaker Hiring Credit Program Board in October 2020, the Senior Responsible Officer became the sole decision maker for the JobKeeper program. Previously, the JobKeeper Program Board’s role was to make ‘significant decisions’. The Program Board’s initial charter did not delineate the Senior Responsible Officer’s and the Program Board’s respective decision-making authorities.

4.11 The JobKeeper Program Board and Senior Responsible Officer were supported by other bodies. This included the JobKeeper Design Board, which was responsible for making design decisions. There were three iterations of an ‘administrative’ group responsible for working through ‘critical priority issues’ to advise the Program Board.

4.12 The ATO’s documented governance arrangements for the Program Board and the Economic Response Oversight Committee included intentions about how often these bodies should meet and the type of reporting they should receive. From October 2020, both bodies were expected to meet on a fortnightly basis⁶⁶ and to receive a JobKeeper ‘program status report’ that included a program summary, key decisions, a risk/issue summary, payment statistics and stream updates. Review and

64 Originally called the Stimulus Measures Oversight Committee.

65 Namely: compliance, marketing and communications, advice and guidance, ATO readiness, systems delivery, review and objections, and Smarter Data.

66 The JobKeeper Program Board met on a more regular basis during the first six months of the JobKeeper scheme (initially twice a week, and then weekly).

analysis of the agenda papers for both bodies showed that the intended meeting frequencies and reporting arrangements were met.

4.13 The provision of program status reports to the Program Board was a key mechanism through which the ATO monitored the various streams of work in place for the JobKeeper scheme. The reporting typically provided a summary and statistics on current activities and an overview of upcoming activities.

4.14 In October 2020, the Economic Stimulus Branch was established, with the JobKeeper Senior Responsible Officer appointed as its head. All monthly meetings of the Economic Stimulus Branch executive included stream performance reports with updates from the three branch streams.

4.15 The Program Board's governance role to escalate risks that exceeded tolerance thresholds to the Economic Response Oversight Committee did not eventuate in the manner intended. No 'exception reports' were escalated. The Committee was informed of emerging risks and issues in other ways such as through project status updates, meeting papers on JobKeeper identity security and fraud, and court and tribunal decisions related to JobKeeper. From February 2021, the JobKeeper status report included a 'Risk Profile Summary' setting out risk levels (High, Medium, Low) against different risk areas (Client experience, Compliance, Advice, and Data).

4.16 At its final meeting on 10 June 2021, the JobKeeper and JobMaker Hiring Credit Program Board discussed ongoing governance and management arrangements for the JobKeeper scheme. A paper asked the ATO's Executive Committee to note that:

- specific advice or compliance action for both the JobKeeper and JobMaker programs would thereafter be managed within the ATO's Superannuation and Employer Obligations business line;
- the Economic Stimulus Branch, which was established in October 2020 to centralise administration of the JobKeeper scheme for the extension period, would be disbanded (effective from 19 June 2021); and
- ongoing Senior Executive Service level accountability, governance and reporting arrangements for the JobKeeper scheme were being finalised.

4.17 From July 2021, the Charter for the newly established JobMaker Hiring Credit Steering Committee included oversight of residual work being undertaken for the JobKeeper scheme.

Performance indicators and milestones

4.18 The 14 April 2020 JobKeeper Program Board paper stated that the ATO would monitor and report on key performance indicators and milestones to track whether the policy objective of the scheme was being met. The paper did not define the policy objective and described the outputs as: 'a "wage subsidy" paid in arrears to "eligible employers" for their "eligible employees" in accordance with the law governing this program from May – September 2020.'

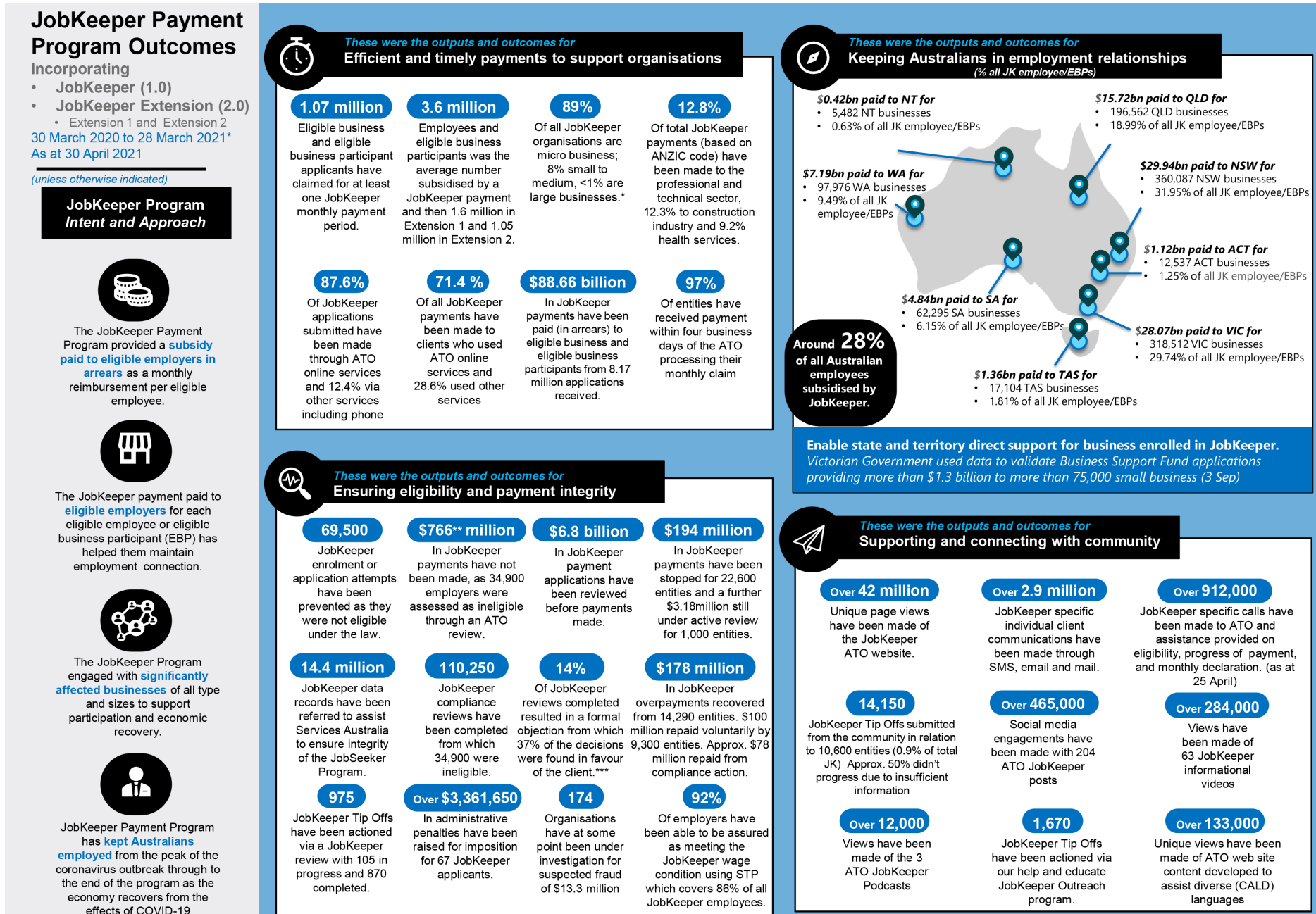
4.19 The ATO monitored and reported internally on performance in different reports, including:

- Program Board status reports — initially weekly reports that included an update from each of the 'stream' leads and performance information, such as key decisions, risks and issues, dashboard reporting on applications and payments, and data on community interactions including 'tip-offs' and complaints;

- Economic Response Oversight Committee status reports — initially fortnightly reports that included a list of performance indicators and controls covering items such as total budget, eligible applicants, complaints received, objections and fraud detected, as well as an assessment of key risks;
- Corporate project status reports — monthly reports that included a summary of JobKeeper applications and payments, a ‘traffic light’ assessment of delivery status, budget information, risks and issues, and a status update on deliverables.

4.20 The ATO produced iterations of an internal document titled ‘JobKeeper Payment Program Outcomes’ (Figure 4.2). The outcomes were provided to the JobKeeper and JobMaker Hiring Credit Program Board on 13 November 2020 for the original period and on 10 June 2021 for the extension period. The outcomes were also provided to the Economic Response Oversight Committee on 1 February 2021 for the original period and on 11 June 2021 for the extension period.

Figure 4.2: The ATO's summary of JobKeeper Payment Program Outcomes (as at 30 April 2021)



Source: Reproduced from the ATO's records.

4.21 On 18 February 2021, a paper to the JobKeeper and JobMaker Hiring Credit Program Board outlined, for both the JobKeeper and the Cash Flow Boost programs, what effective ATO administration would look like and proposed five performance criteria (Box 2).

Box 2: The ATO's performance criteria for the JobKeeper scheme (18 February 2021)

What would effective ATO administration look like?

The ATO has:

- delivered timely payments, credits or refunds for eligible entities
- paid or credited the right amounts to the right entities with a high degree of accuracy
- identified and addressed ineligible claims and fraudulent behaviour
- provided the right help and assistance
- used data ethically and with efficiency and effectiveness

Proposed performance criteria

1. Timeliness — We deliver timely payments, credits and refunds
2. Correct payments — We deliver the correct payments, credits and refunds
3. Ease of access — Clients can easily access our services and submit eligible claims
4. Stakeholder perceptions — Key stakeholders perceive we have administered the program effectively
5. Effective and efficient use of data — We use data in ways that enhance public trust and confidence

Source: ANAO, based on the ATO's records.

4.22 The Program Board was advised that the five proposed measures had been approved by the Senior Responsible Officer for JobKeeper on 7 February 2021 and that measurement methodologies for all five measures would be completed for the JobKeeper project closure report.⁶⁷

4.23 The five performance measures were first reported on, in draft, to the JobMaker Hiring Credit Steering Committee on 27 July 2021, four months after the JobKeeper scheme had closed.⁶⁸ The draft paper provided a provisional assessment of performance against the five measures, which was positive (Box 3). The five performance measures were not included in the project closure report provided to the JobKeeper and JobMaker Hiring Credit Program Board on 10 June 2021.

⁶⁷ The project closure report for JobKeeper is discussed at paragraphs 4.54 to 4.57.

⁶⁸ The Committee was chaired by the Senior Responsible Officer for both JobKeeper and the JobMaker Hiring Credit program.

Box 3: The ATO's provisional assessment of its performance in administering the JobKeeper scheme (as at 30 June 2021)

Timeliness — The ATO's goal was to support the community by providing timely stimulus payments to those eligible, while protecting the integrity of the system. The finding that 97% of entities received payment within four business days of the ATO processing their monthly claim reflects the ATO's achievement of that goal and expected performance.

Correct payments — \$88.79 billion in JobKeeper payments were paid from 18 million applications received in total for all the monthly claim periods. The estimated net gap for the original period was 2.6 per cent. That is, there were a total of 1.2 million incorrect payments, (\$1.8 billion) out of 47 million final payments (\$70 billion). Based on this estimation, 97.3 per cent of payments were correctly made to eligible employers.

Ease of access — The ATO has designed information, guidance, tools and processes in a way that all potential clients could easily determine their eligibility; and if eligible, they could easily receive a correct payment, credit or refund.

Stakeholder perceptions — The ATO has ensured that program stakeholders had an opportunity to comment on our performance, and we reflected and applied their feedback to our processes where relevant.

Effective and efficient use of data — The ATO applied best practice data management and data sharing principles and used data efficiently and effectively. We used data in ways that enhanced public trust and confidence.

Source: ANAO, based on the ATO's records.

Has the ATO reported on the scheme in a timely and informative manner?

The ATO has reported externally on the JobKeeper scheme in a timely and informative manner, in line with arrangements established for the scheme and with public sector mechanisms.

4.24 The legislative framework for the JobKeeper scheme does not impose external reporting obligations on the ATO or other entities. The nature and extent of reporting were shaped by arrangements reached between the ATO and Treasury and by existing scrutiny and reporting mechanisms for Australian Government entities, such as parliamentary committees and annual reporting requirements.

Reporting to government entities

4.25 For the JobKeeper scheme, the ATO's principal reporting relationship was with Treasury, which was responsible for JobKeeper policy. In turn, Treasury's policy role included reporting JobKeeper data to other government entities. This included providing JobKeeper data to the Department of the Prime Minister and Cabinet (PM&C) for forwarding to state and territory agencies.⁶⁹

⁶⁹ Treasury advised the ANAO that the provision of JobKeeper data to state and territory agencies by the Commonwealth was agreed in the context of National Cabinet.

4.26 The ATO's and Treasury's records provide evidence of regular engagement between the entities on reporting. On 30 April 2020 the ATO provided Treasury with a 'mock up' of its proposed reporting. Treasury's response on 5 May 2020 provided a list of data items to be provided by the ATO on a daily, weekly or monthly basis. Treasury advised the ATO that the data items encompassed requests from the Treasurer's office, PM&C and the states and territories.

4.27 In August 2021, Treasury advised the ANAO that there was an agreement made between Treasury, the ATO and the Treasurer's office that reporting on JobKeeper would be daily from the commencement of the scheme in the form of a 'daily dashboard'. Treasury advised the ANAO that it also made additional data requests to the ATO outside of the daily dashboard.

4.28 In December 2020 the ATO and Treasury formalised a 'reporting schedule' for the scheme during the extension period. The schedule set out the type of JobKeeper reports to be produced by the ATO, the frequency of those reports, and a distribution list of Treasury staff who would receive the reports.

- *Daily JK2* — a daily dashboard of high-level statistics for the extension period.
- *Extended JK2* — a weekly report of key data (such as applications, payments, and individuals by entity type, jurisdiction, market segment and industry).
- *Combined JK1 and JK2* — a weekly report that provided a comparative breakdown of key data for both the original and extension periods of the JobKeeper scheme. This report provided cumulative totals across both periods.
- *JK1* — a weekly report that provided a breakdown of key data for the original period.

4.29 The ANAO selected 12 reports from the two periods and asked the ATO to evidence the reporting to Treasury.⁷⁰ The ATO either provided evidence of the reports being provided to Treasury within the agreed timeframe or satisfactory explanations for any changes to the agreed timeframe.

4.30 Reporting arrangements for the JobKeeper scheme were also considered through the JobKeeper Data and Reporting Working Group — one of four Working Groups established under an interdepartmental committee for JobKeeper.⁷¹ The meeting minutes and records kept for the Data and Reporting Working Group show that a range of data and reporting issues were discussed, and that the members of the Group received access to a range of JobKeeper data. This included copies of the data releases prepared for state and territory agencies.

Data sharing arrangements

4.31 The ATO received various requests for JobKeeper data from Commonwealth entities and other external parties such as state government entities. Such requests could be made directly to the ATO or through Treasury or the Data and Reporting Working Group.

4.32 Division 355 of Schedule 1 of the *Taxation Administration Act 1953* provides that the disclosure of information about the tax affairs of a particular entity is prohibited, except in certain

70 The sample included reports that pre-dated the reporting schedule when arrangements were not formally documented.

71 Treasury and the Department of the Prime Minister and Cabinet were co-chairs of the Working Group, which included seven other entities — Attorney-General's Department, ATO, Department of Education, Skills and Employment, Services Australia, Fair Work Commission, Fair Work Ombudsman, and the Australian Bureau of Statistics.

specified circumstances. On 3 September 2020, the *Taxation Administration Act 1953* was amended to add an exception (under the category of ‘disclosure for other government purposes’) for information that relates to the JobKeeper scheme.⁷²

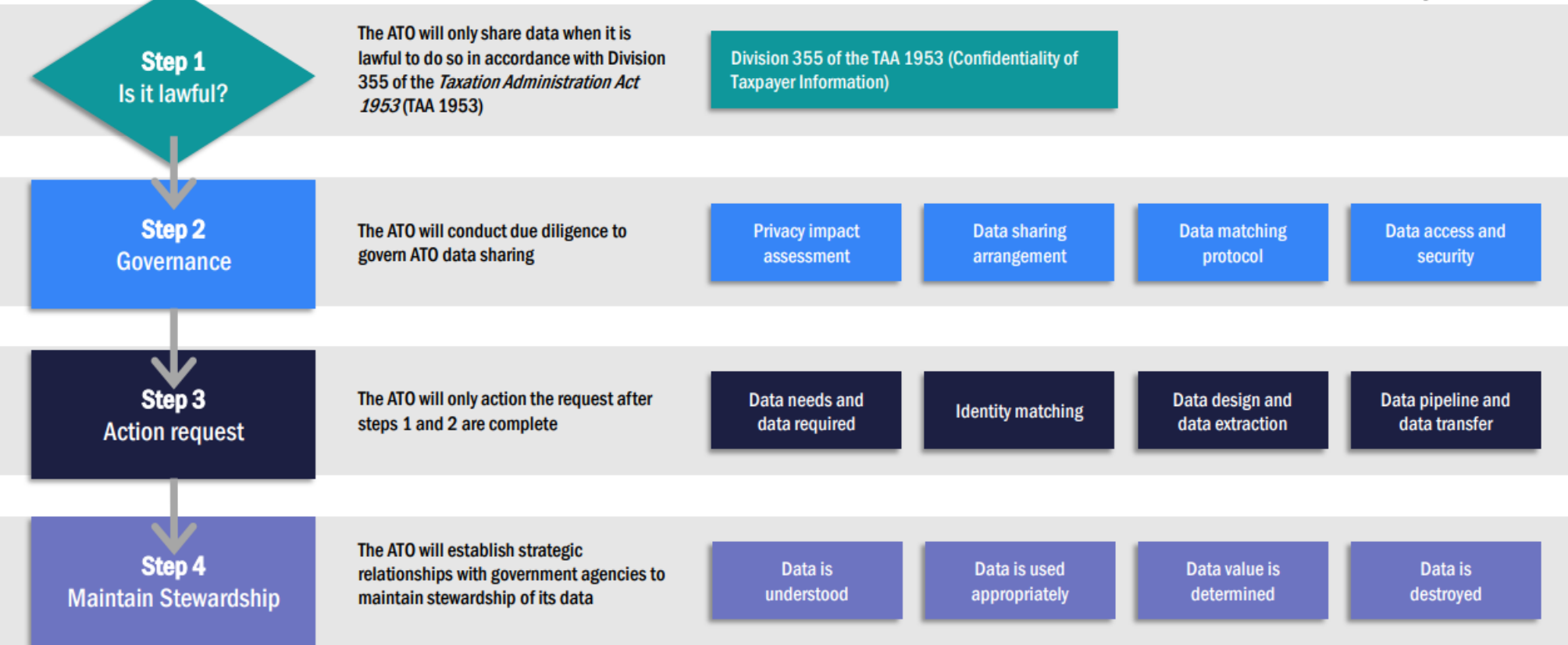
4.33 The ATO maintained a register of external data requests relating to the JobKeeper scheme (or other COVID-19 measures being managed by the ATO). Among the details recorded was whether the request was for ‘unit level’ or ‘aggregate’ (de-identified) data. As of 28 February 2021, the register listed 72 data requests.

4.34 The ATO developed procedural documentation to administer its data sharing arrangements with government agencies. The ATO’s process involved four main steps — the first step of which was to determine whether the data sharing was lawful (Figure 4.3).

72 See *Taxation Administration Act 1953* (Cth) schedule 1 subsection 355-65(8) item 10A.

Figure 4.3: The ATO’s four-step data sharing process with government entities

When a government agency makes a request for ATO data, the ATO will review the request and engage with the agency to progress through **four steps**:



Source: Reproduced from the ATO’s records.

4.35 To test whether the ATO addressed Step 1, the ANAO selected six (of 28) data sharing arrangements that were categorised by the ATO as ‘outbound requests’ that had been finalised. The sample comprised three requests for aggregate level data and three requests for unit level data, and were made by Commonwealth, state, and local government bodies, and one non-government organisation. The ANAO found that the data was shared in a manner that was consistent with what was recorded in the data sharing register. The legal basis for sharing the data was assessed by ATO staff beforehand.⁷³

4.36 The ATO provided JobKeeper data to the Australian Bureau of Statistics (ABS), for the ABS’s ‘DataLab’.⁷⁴ The ABS facilitates access to the DataLab for approved researchers and other parties. Provision of this data supports the undertaking in Treasury’s July 2020 report to make de-identified program administration data available for research purposes (paragraph 4.41).

Public reporting

4.37 The ATO’s public reporting on the JobKeeper scheme has been provided through its website and submissions to parliamentary committees, including the Senate Select Committee on COVID-19 (COVID-19 Committee), which was established to inquire and report on the Australian Government’s response to the COVID-19 pandemic. The ATO appeared before the COVID-19 Committee on six occasions between 7 May 2020 and 11 February 2021. The ATO also provided details on the JobKeeper scheme to the Senate Economics Legislation Committee.

4.38 The ATO prepared a ‘live’ communications document, called a ‘Strategic Communications Overview’, for the original and extension periods. Both documents outlined ‘key messages’ for the affected audiences (such as employers, employees, tax professionals, sole traders and digital service providers) and listed communication activities in different channels (webinars, podcasts, social media, newsletters for industry sectors and web content in different languages).

4.39 The ATO’s 2019–20 Annual Report, which covered the first three months of the JobKeeper scheme, included high level information on the scheme’s operation such as the number of enrolments on the first day, the amount of payments made and the number individuals covered by these payments. In the Annual Performance Statement section of the Annual Report, JobKeeper (along with the Cash Flow Boost payment) is listed under the Administered Program ‘1.19 Economic Response to the Coronavirus’. The 2020–21 Annual Report, which covered the remaining period of the JobKeeper scheme, provided various details including: total payments (\$88.8 billion); total overpayments (\$470 million); and the total of JobKeeper payments stopped, recovered or prevented through compliance activities (\$1.1 billion).

4.40 The ATO is providing input to Treasury’s evaluation of the JobKeeper policy and program, which Treasury intends to be a public report.

73 In two of the six cases, the ATO determined that the requested JobKeeper data was already publicly available, and therefore no legal basis was required for directing the applicant to the data.

74 As explained on the ABS’s website, DataLab is the analysis solution for high-end users who want to undertake real time complex analysis of detailed microdata.

Has an evaluation strategy for the scheme been developed?

Treasury has established arrangements to evaluate the JobKeeper Payment. An evaluation report is scheduled to be completed by the end of 2022. In December 2021, Treasury's Executive Board determined that the JobKeeper evaluation would be conducted internally. The ATO has internally reviewed its administration of the scheme.

4.41 Treasury undertook a three-month review of the JobKeeper Payment in May and June 2020 and reported its findings on 21 July 2020.⁷⁵ The review found that JobKeeper had met its three objectives — supporting business and job survival, preserving the employment relationship, and providing needed income support.⁷⁶ The report stated that:

Beyond this review, it is imperative that a program of this magnitude and novelty should be studied and evaluated very closely. The Treasury, the Australian Taxation Office and the Australian Bureau of Statistics will work with the academic community and others to make de-identified program administration data available for research purposes. An independent evaluation should be conducted at the completion of the program.⁷⁷

4.42 Treasury published a further review of JobKeeper on 11 October 2021: *Insights from the first six months of JobKeeper*.⁷⁸ The review noted that an evaluation would be completed in 2022 to provide a detailed assessment of JobKeeper against its policy objectives and lessons learned for future policy makers.

Evaluation planning

4.43 Treasury prepared a draft work plan for the evaluation in March 2021. The draft work plan and a related briefing note indicated that the evaluation would be conducted by Treasury's Labour Market Policy Division, which was responsible for JobKeeper policy. Treasury's planning was based on a nine-month delivery timeframe for the final evaluation report.

4.44 Treasury's planning included engaging an external provider with experience in conducting program performance evaluations. Treasury advised the ANAO that a desktop review and research process was undertaken to identify suitable providers within the 'Strategy and Policy' category of the Australian Government's Digital Marketplace in late March 2021. Six providers were requested to provide a proposal and quote, four of whom responded.

4.45 Following evaluation of the four proposals, Treasury selected Value Management Consulting Pty Ltd. A 'work order' was executed between the two parties on 11 May 2021.⁷⁹ The requirements in the work order included the preparation of:

- an agreed policy and program evaluation framework for Treasury to use for JobKeeper, and also for potential re-use for other existing and future programs; and
- a strategy for delivery of the JobKeeper policy and program performance evaluation.

⁷⁵ Treasury, *The JobKeeper Payment: Three-Month Review*, Treasury, Canberra, 2020, p.7.

⁷⁶ *ibid.*

⁷⁷ *ibid.*, p.8.

⁷⁸ Treasury, *Insights from the first six months of JobKeeper*, Treasury, Canberra, 2020.

⁷⁹ The work order covered an initial term of around seven months, from 17 May to 24 December 2021, for a total estimated contract price of \$576,400 (GST inclusive).

Evaluation framework and governance

4.46 A draft Evaluation Framework was discussed at a meeting of Treasury's Executive Board on 25 August 2021. The draft document detailed the evaluation purpose, scope, timing, governance, evaluation questions, methodology and stakeholders.

4.47 The minutes of the Executive Board meeting included the statement that:

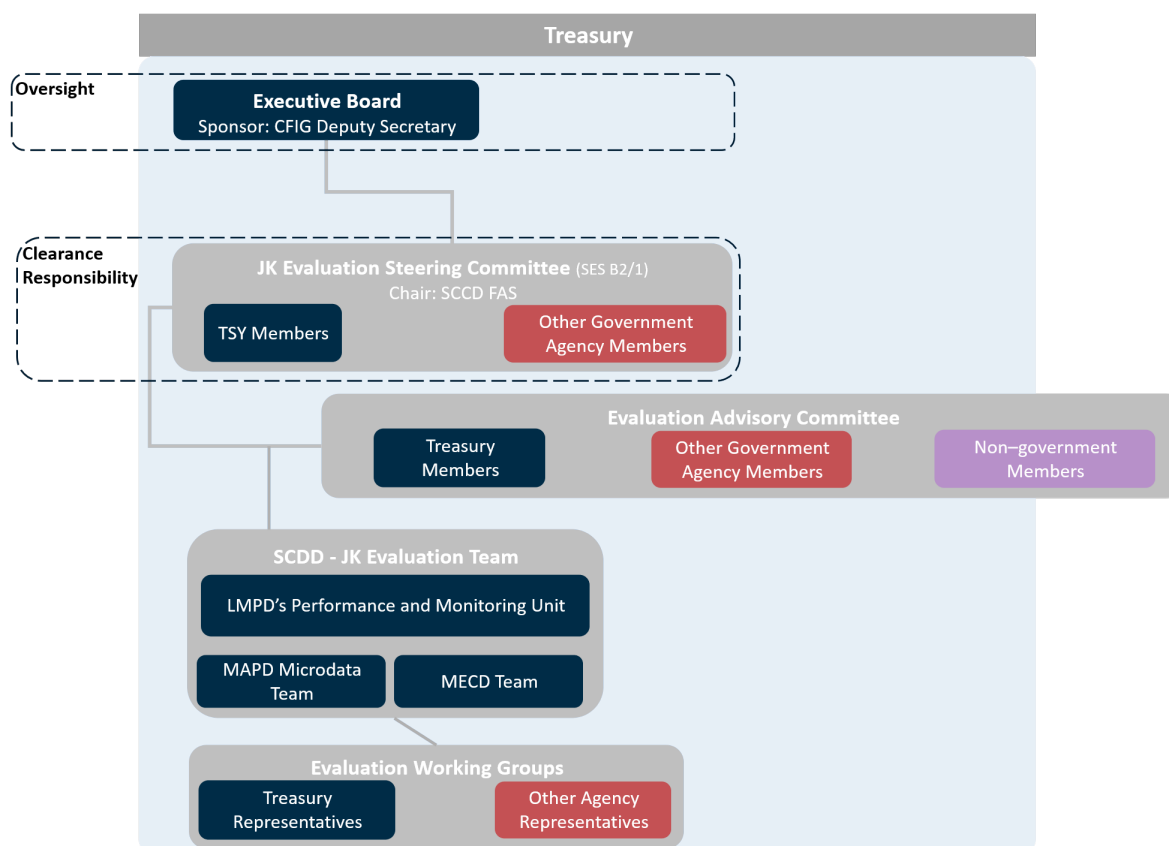
The Board discussed the merits of the evaluation being governed within Labour Market Policy Division, another Division within the Department or an independent person. The Board agreed to further consider the approach to governance and have a further conversation about the approach and return for a further discussion.

4.48 The Executive Board asked the head of the Labour Market Policy Division, in consultation with the head of Treasury's Strategic Coordination and Communications Division, to review the proposed JobKeeper evaluation governance approach and return to the Executive Board.

4.49 Treasury provided a ministerial submission to the Treasurer on 16 November 2021, recommending that the Treasurer agree to developing terms of reference for the Productivity Commission to conduct an inquiry into the design and economic outcomes of JobKeeper. The submission noted that the inquiry was intended to commence in February 2022 and be completed by the end of 2022. The submission also noted that should the Treasurer not support an inquiry by the Productivity Commission, Treasury would establish departmental governance arrangements to complete an evaluation by the end of 2022. On 20 December 2021, Treasury advised the Treasurer's office that, following a discussion by Treasury's Executive Board, consideration of the ministerial submission was no longer required.

4.50 A briefing paper was provided to the Executive Board ahead of its meeting on 14 December 2021, which outlined proposed departmental governance arrangements in the event that the Treasurer did not support an inquiry by the Productivity Commission (Figure 4.4).

Figure 4.4: Treasury's proposed governance arrangements for the JobKeeper evaluation (10 December 2021)



Source: Reproduced from Treasury's records.

4.51 The briefing paper recommended that, in order to provide a whole-of-department perspective to the JobKeeper evaluation and enhance separation of responsibilities for program delivery and evaluation, the Deputy Secretary of Treasury's Corporate and Foreign Investment Group assume the role of project sponsor with accountability for evaluation oversight. The briefing paper also recommended that the First Assistant Secretary of Treasury's Strategic Coordination and Communications Division (SCCD) lead the evaluation process. The briefing paper noted that there would not be spare capacity at Senior Executive Service level within SCCD until mid-2022.

4.52 On 14 December 2021, Treasury's Executive Board determined that the JobKeeper evaluation would commence in early June 2022 and be undertaken within Treasury in line with the arrangements recommended in the briefing paper. The Executive Board also approved the JobKeeper Evaluation Framework (which had been revised since the Board's previous meeting). The agreed purpose and objectives of the evaluation are set out in Box 4.

Box 4: Purpose and objectives of the JobKeeper Evaluation (as of 14 December 2021)

The purpose of the JobKeeper evaluation is to:

- consider the effectiveness of JobKeeper in achieving its objectives by measuring its outcomes using relevant quantitative and qualitative data; and
- consider and record lessons learned from the design and implementation of JobKeeper, including to inform future policy responses.

The primary objectives of the JobKeeper evaluation are to:

- measure the extent to which JobKeeper achieved its stated policy objectives, that is to support business and job survival, preserve the employment relationship (between employees and employers), provide needed income support, and decrease uncertainty;
- evaluate and record lessons learned from the design and implementation of JobKeeper, including to inform any future policy responses and anticipatory investments in data, systems and staff capability; and
- evaluate broader outcomes and unintended consequences (both positive and negative) of JobKeeper, including the impact of JobKeeper directly in supporting recipients and indirectly on the economy and society more broadly.

In addition, the evaluation will:

- record and archive end of program JobKeeper data, including ensuring accurate program data continues to be available for further research as appropriate;
- collect and collate qualitative data to understand the experience of Australians impacted by JobKeeper;
- establish a strategy for further evaluation and/or ongoing research on the medium to long term impacts of JobKeeper to be undertaken by Treasury, academics, and other researchers, as appropriate; and
- enhance Treasury's policy evaluation capabilities, including in data collection and analysis required for policy evaluation, including the development of an evaluation framework that can be used to support other evaluations conducted by Treasury.

Source: ANAO, based on Treasury's records.

4.53 The Evaluation Framework indicates that the final evaluation report containing analysis of outcomes for public release, updates to early insights analysis and broader analysis, will be finalised by late 2022. Treasury's documentation indicates that JobKeeper data is expected to be included in the ATO's 2022 release of Taxation Statistics. The ATO is also expected to provide updated JobKeeper microdata to the ABS (for uploading to the DataLab) in early 2022.

The ATO's 'closure report' and other internal reports on the JobKeeper scheme

4.54 The preparation of a closure report is a requirement under the ATO's project management framework. A project closure report records the formal termination of a project and includes information on a range of matters including budget and funding, project risks and issues, records management, law conformance, and lessons learned. The ATO completed a project closure report on its administration of the JobKeeper scheme as well as preparing other documents detailing its experience and insights in administering the scheme.

4.55 The closure report for the JobKeeper scheme was provided to the final meeting of the JobKeeper and JobMaker Hiring Credit Program Board on 10 June 2021. The closure report stated that the project was delivered within allocated budget for the extension period while the original period was absorbed within the existing ATO budget; mandated milestones were delivered on time as were changes announced by the Australian Government; scope was modified and extended by the Australian Government during the project and changes were delivered on time; and risk and issues were managed within tolerance. The closure report documented lessons learned across

different aspects of the project, including what the ATO would do differently next time. The report also set out the challenges and practical solutions and noted that the JobKeeper scheme was unlike any other measure delivered by the ATO.

4.56 The Program Board was advised that residual risks were being handed to business-as-usual arrangements, which included ongoing management of JobKeeper risks within the ATO's Superannuation and Employer Obligations business line.

4.57 For the last Program Board meeting on 10 June 2021, the ATO also prepared a 'JobKeeper Experience' report. This report documented the ATO's experience and insights from administering the JobKeeper scheme, with the aim of informing future programs across different aspects of scheme administration such as design, governance, leadership and integrity. The ATO's key observations from this report are set out in Box 5.

Box 5: Key observations from the ATO's 'JobKeeper Experience' report (31 May 2021)

- In a fast-paced policy environment, recognise that design, build and implementation are likely to not be sequential and there will be strong overlaps at times between policy settings and implementation phases and settings.
- Drawing on our experience and understanding of implementation requirements, find ways for the ATO to provide insights to others so that there is appreciation for the design challenges and trade-offs that may be required.
- Recognise the importance to develop and maintain a deep and ongoing understanding of the policy intent and the way success will be defined or described by other stakeholders.
- Ensure the early development of ATO specific design principles and an accountable 'Design Board' that allows the ATO to have a framework from which it can make sound and balanced design decisions.
- Ensure that as the policy is refined or matures, that mechanisms are in place to be able to monitor and assess the impact on the client and staff experience arising from the administrative, workflow and risk settings.
- Ensure design and administrative arrangements recognise and understand the nature of shared risks and responsibilities arising across other policy portfolios or regulatory settings.

Source: ANAO, based on the ATO's records.



Grant Hehir
Auditor-General

Canberra ACT
4 April 2022

Appendices

Appendix 1 Entity responses



Australian Government
Australian Taxation Office

Second Commissioner of Taxation

Grant Hehir
Auditor-General for Australia
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir,

**Re: ANAO s19 draft report on the Administration of the JobKeeper Scheme –
18 February 2022**

Thank you for your letter dated 18 February 2022 and for the opportunity to provide comments on the s19 draft report for the Administration of the JobKeeper Scheme.

I would like to acknowledge and thank the ANAO audit team for their co-operative and professional approach, and productive working relationship over the last 12 months to review this significant program underpinning Australia's economic response to the COVID-19 pandemic.

Our formal response (provided at Attachment A) reaffirms the challenge of delivering a program of the scale and complexity of JobKeeper under exceptional circumstances and in very tight timeframes. It also reflects the confidence and pride that the ATO has that the substantive outcomes of this program have been delivered, and that the program was delivered with high integrity.

I would also like to take this opportunity to reiterate the pride that I have in, and gratitude for, the efforts of all ATO officers during the pandemic: those directly involved in JobKeeper and other stimulus schemes; those involved in other direct responses to the pandemic; but importantly also those who worked hard to serve the community in ensuring that the tax system was administered in an empathetic fashion during this most challenging of times.

I acknowledge that no recommendations have been made and note the key messages identified in this audit may also be relevant for the operations of other Australian Government entities.

We will take on board the findings from the ANAO and will continue to refine and improve processes in the delivery of our key programs of work.

If you require further information on this matter, please contact Assistant Commissioner Jason Lucchese.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Hirschhorn'.

Jeremy Hirschhorn
Second Commissioner of Taxation
18 March 2022

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Australian Government
The Treasury

Secretary
Dr Steven Kennedy PSM

Mr Grant Hehir
Auditor-General for Australia
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Dear Mr Hehir

**Response to the Australian National Audit Office (ANAO) proposed report on the
*Administration of the JobKeeper Scheme***

Thank you for providing the Department of the Treasury (Treasury) with the opportunity to comment on the ANAO's proposed report on the *Administration of the JobKeeper Scheme*.

Treasury welcomes the report and its finding that the Australian Taxation Office's (ATO) administration of the JobKeeper scheme has been largely effective. While the report does not contain any recommendations for Treasury, we will consider the key messages within the report in the context of Treasury's role in providing economic policy advice, including designing economic stimulus measures in the future.

As you are aware, JobKeeper was designed and delivered in response to the economic uncertainty that Australia was facing as a result of the COVID-19 pandemic and associated health restrictions. Given the potential for a severe economic outcome to materialise, JobKeeper had to be implemented rapidly, to ensure support was delivered to households and businesses in the shortest possible time. In the context of these compressed timeframes, I acknowledge the achievements of the ATO in establishing a new payment program that delivered payments in just over five weeks of the announcement and the staged approach to improve the robustness of the program over time. I consider the ATO's approach appropriately balanced the unavoidable risks and trade-offs we were confronting. I also acknowledge the collaborative way in which the ATO worked with Treasury to design and deliver JobKeeper.

I would also like to thank the ANAO for the cooperative and professional manner in which they conducted this performance audit.

Yours sincerely

Steven Kennedy

15 March 2022

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Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2021–22 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
 - strengthening governance arrangements;
 - introducing or revising policies, strategies, guidelines or administrative processes; and
 - initiating reviews or investigations.
4. The ANAO did not observe any changes in the ATO's administration of the JobKeeper scheme. The scheme closed in March 2021, which was early in the fieldwork stage of the audit.

Appendix 3 ATO analysis of JobKeeper data

1. The ANAO has reproduced the following graphs (and notes) from data presented in the ATO's 'Combined JobKeeper 1.0 and 2.0 Payment Report'. The data presented is cumulative across both periods of the JobKeeper scheme as of 15 August 2021.

Figure A.1: Applications processed and net payments by entity type

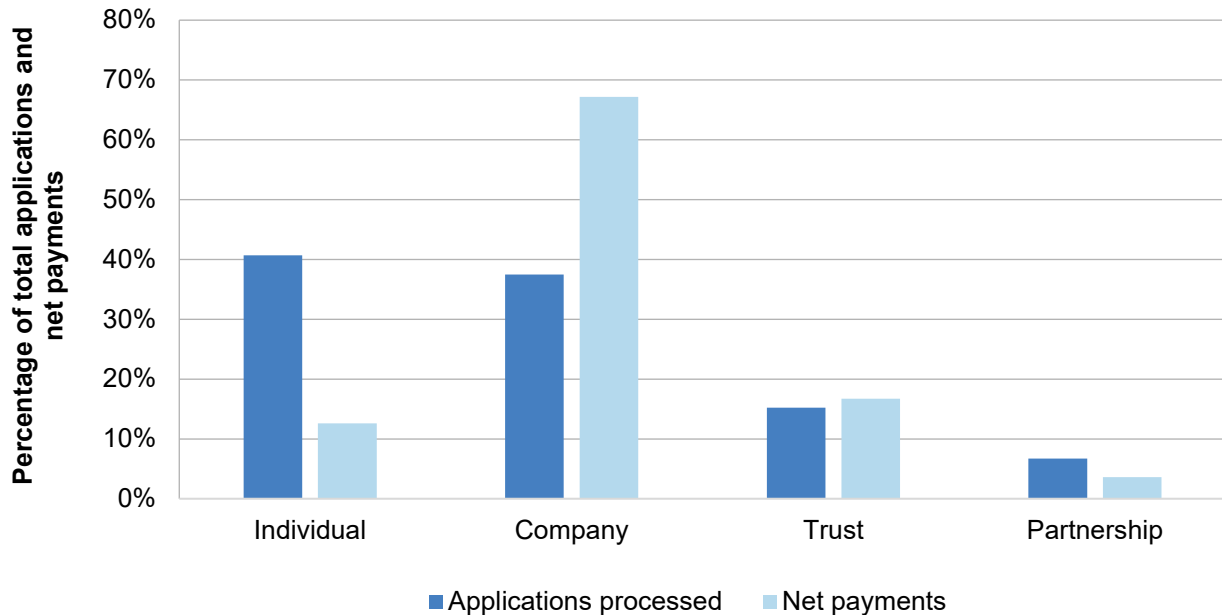


Figure A.2: Applications processed and net payments by market segment

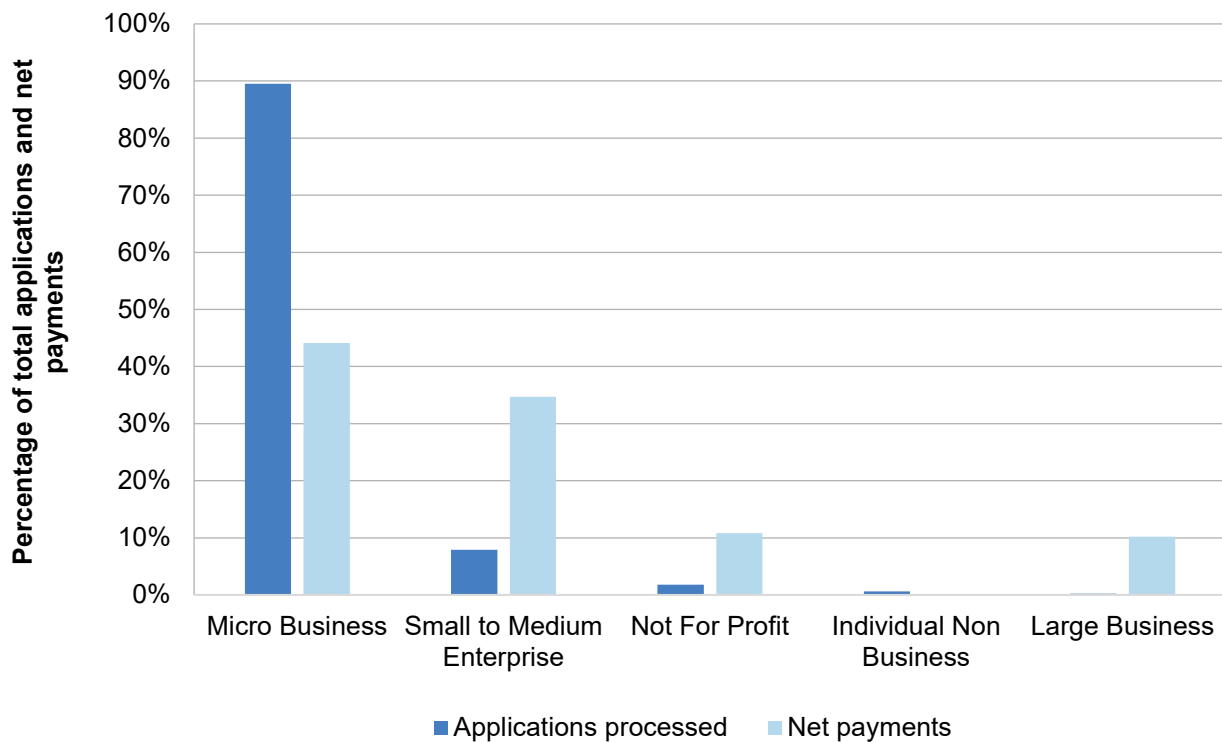


Figure A.3: Applications processed and net payments by state/territory

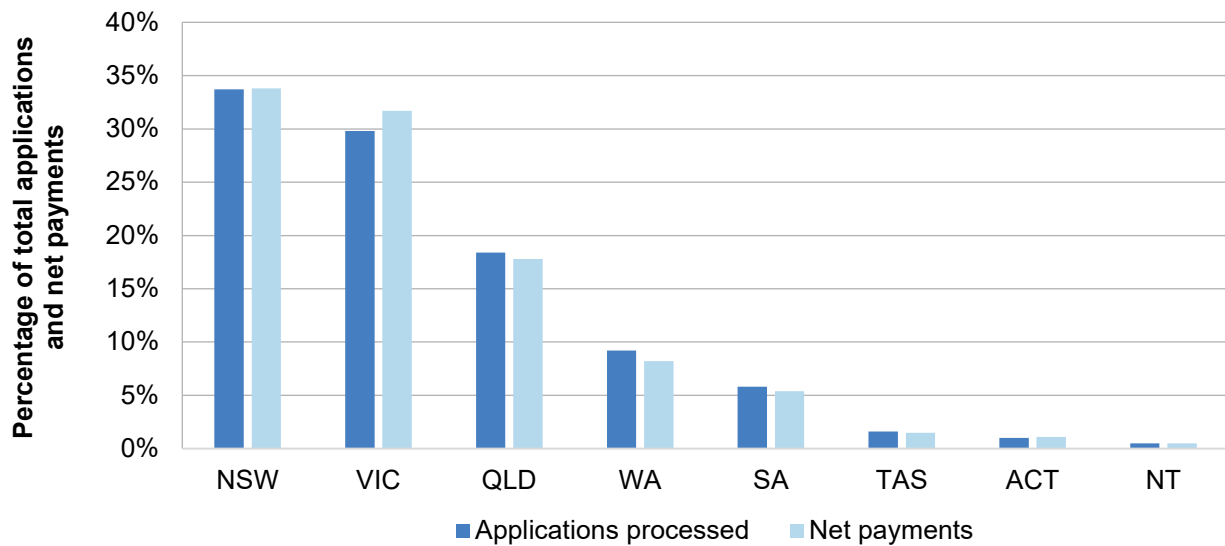
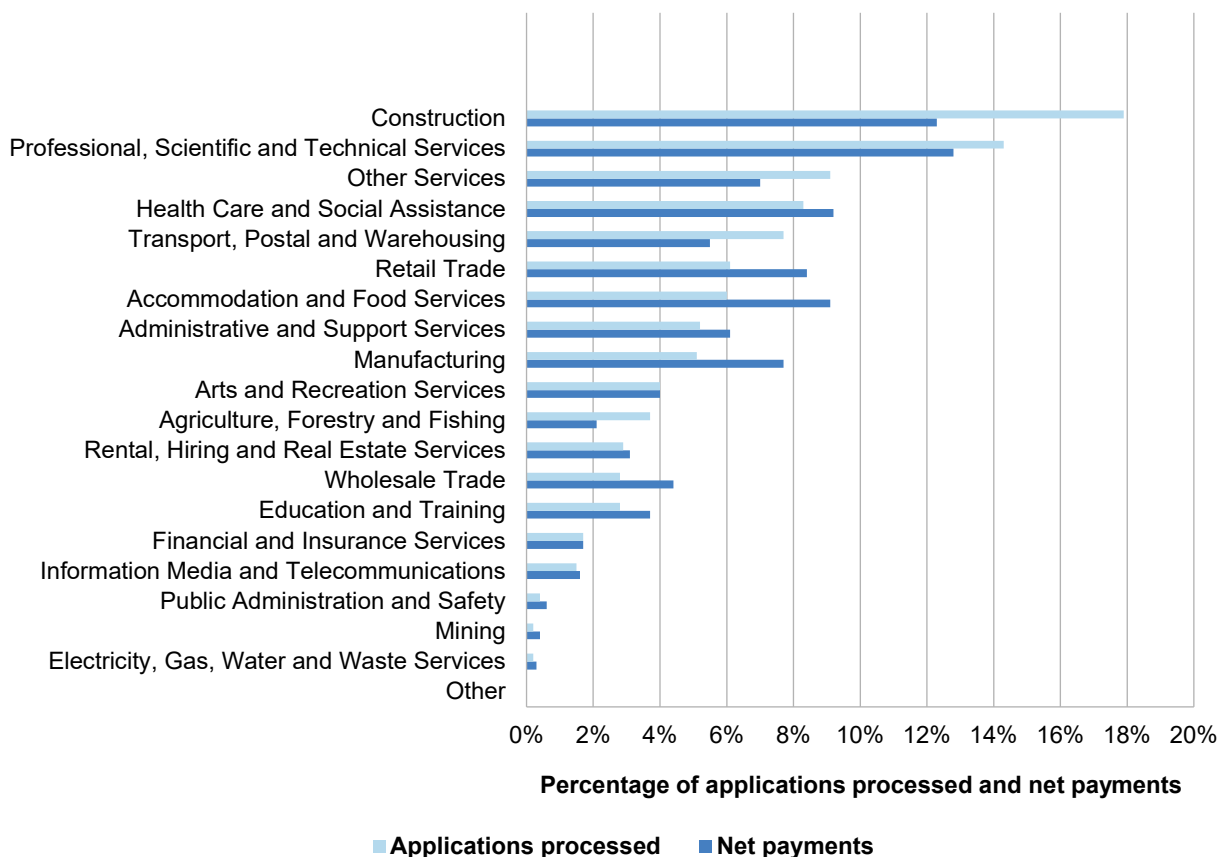


Figure A.4: Applications processed and net payments by industry



Notes: Data are for unique entities (unique Australian Business Numbers, ABNs) with a processed application for JobKeeper. Entities include employers and eligible business participants.

Net payments is the payment disbursements after repayments from entities. Total for all periods may not balance due to rounding.

State/territory is taken from the location of the entity's address for the registered ABN. Not all employees are based in the state/territory where the ABN is registered.

Industry is based on ANZSIC codes registered with the Australian Business Register.

Appendix 4 Overview of the decline in turnover tests for the JobKeeper scheme

Type of test	Overview of the test
Basic test (Subsections 8(1) – 8(4) of the Rules)	<p>The original Rules (9 April 2020) provide for the basic test. To satisfy the basic decline in turnover test at the end of a fortnight, the entity must meet a threshold calculated by comparing their projected GST turnover for a month or quarter between 30 March 2020 and 1 October 2020 with the corresponding month or quarter in 2019. The thresholds are:</p> <ul style="list-style-type: none"> • 15% for an Australian Charities and Not-for-profits Commission registered charity; • 50% for a business with an aggregated turnover over \$1 billion within the current or previous income year; or • 30% for all other businesses. <p>The Explanatory Statement for the Rules states that ‘to properly target the JobKeeper payment to affected employers, section 8 of the Rules establishes a decline in turnover test that must be satisfied at the end of a fortnight for an employer to qualify. Once an entity satisfies this test it does not need to retest its turnover in later months.’^a</p>
Alternative test (Subsections 8(5) – 8(7) of the Rules)	<p>The original Rules (9 April 2020) also provide for alternative decline in turnover tests to be made at the discretion of the Commissioner. The ATO determined, by legislative instrument, the following seven alternative decline in turnover tests that applied over the period 24 April to 27 September 2020:</p> <ul style="list-style-type: none"> • Business commenced (after the relevant comparison period); • Business acquisition or disposal (made between the relevant comparison period and the applicable turnover test period) that changed the entity’s turnover; • Business restructure (between the relevant comparison period and the applicable turnover test period) that changed the entity’s turnover; • Business had substantial increase in turnover (within the last 12 months); • Business affected by drought or natural disaster (during the relevant comparison period); • Business has an irregular turnover (in the 12 months immediately before the applicable turnover test period); and • Sole trader or small partnership with sickness, injury or leave (for all or part of the relevant comparison period). <p>A subsequent legislative instrument was made on 22 September 2020 to provide for the alternative decline in turnover tests in the JobKeeper extension period.^b</p> <p>The Explanatory Statement for the Rules states that the intent of the alternative decline in turnover tests was to ‘maximise flexibility and responsiveness to ensure that all entities that are intended to be assisted by the JobKeeper payment... obtain the benefit of the payment’.^c</p>
Modified test for certain group structures (Section 8A of the Rules)	<p>The 1 May 2020 rule change provides for a modified decline in turnover test for employers that are members of consolidated, consolidatable or GST groups and supply employee labour services to other members of the group. To satisfy the modified test, the entity must use the combined GST turnover of each test member for both the relevant test period^d and the corresponding month or quarter in 2019 when calculating their decline in turnover. The test is otherwise unchanged from the basic test.</p> <p>The JobKeeper extension required entities applying the modified test to use actual GST turnover rather than project GST turnover.</p> <p>The Explanatory Statement for the rule change states that the change was intended to address that the original decline in turnover test rules did ‘not expressly provide for circumstances where the entity is an employer entity that operates in a group structure.’^e</p>

Type of test	Overview of the test
Actual decline in turnover test (Section 8B of the Rules)	<p>The 16 September 2020 rule change provides for an actual decline in turnover test based on a calculation of actual GST turnover and replaces the original test based on projected GST turnover for the JobKeeper extension. To satisfy the actual decline in turnover test an entity must meet the relevant threshold based on actual GST turnover for the quarter ending 30 September 2020 (for the first three months of the JobKeeper extension period) and the quarter ending 31 December 2020 (for the final three months).</p> <p>The Explanatory Statement for the rule change states that the introduction of the actual decline in turnover test 'ensures that entities that qualify for JobKeeper payments under the extension period of the scheme have had a recent actual decline in turnover to ensure that it is appropriately targeted.'^f</p>

Note a: Explanatory Statement, Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), p.6.

Note b: An eighth alternative decline in turnover test was introduced, by legislative instrument, on 10 October 2020 covering businesses that had temporarily ceased trading during the relevant comparison period. In addition, some changes were made to the existing seven alternative decline in turnover tests from 27 September 2020 onwards.

Note c: Explanatory Statement, Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth), p.9.

Note d: For the original period of the JobKeeper scheme the test period was a month or quarter between 30 March 2020 and 1 October 2020. For the JobKeeper extension period the test period was the quarters ending 30 September 2020 and 31 December 2020.

Note e: Explanatory Statement, Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020 (Cth), p.4.


Note f: Explanatory Statement, Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 (Cth), p.1.

Source: ANAO, based on public records and the ATO's records.

Appendix 5 Examples of the online forms used for the original and extension periods of the JobKeeper scheme


Figure A.5: Example eligibility information required in the online form for the original JobKeeper period^a

Eligibility information


Ensure all information provided below complies with [legislation for receiving the JobKeeper](#)  wage subsidy, and that you are an employer or business that qualifies for the JobKeeper wage subsidy.

Are you an entity that is registered with the Australian Charities and Not-for-profits Commission (but not a university or school)?*


☐ Yes ☒ No

Does your aggregated turnover **exceed \$1 billion dollars** per annum?* 

☒ Yes ☐ No

 You will work out your decline in turnover using GST concepts. You will need to work out current GST turnover and projected GST turnover. This may include using amounts reported on business activity statements. It includes all taxable supplies and GST-free supplies.

For which month have you experienced or are likely to experience a reduction in turnover of **50% or more**?*

March 

Has your turnover for the entity for the selected month (or the quarter including the selected month) fallen, or is it likely to fall by **50% or more**?*

☒ Yes ☐ No

Note a: Figure A.5 reproduces how the eligibility information in the enrolment form was presented for an employer. Responses to the first two questions would modify the turnover threshold (to either 15%, 30% or 50% as required) for the final two questions.

Source: Reproduced from the ATO's original JobKeeper scheme online enrolment form.

Figure A.6: Example turnover test information required in the online form for the JobKeeper extension period

Turnover test

Provide amounts for the turnover test period in 2020 and the relevant comparison period in 2019.

Turnover test period in 2020

Provide the amount to use as your September quarter 2020 turnover

September quarter 2020 turnover amount*

\$

.00

Relevant comparison period in 2019

Provide the amount to use as your September quarter 2019 turnover

September quarter 2019 turnover amount*

\$

.00

Was an alternative test used to provide the turnover amount?*

☒ Yes
 ☐ No

Select the alternative turnover test used*

☐ Commenced before 1 March 2020 but after 2019 relevant comparison period

☒ Acquisition or disposal changed the entity's turnover

☐ Restructure changed the entity's turnover

☐ Substantial increase in turnover

☐ Affected by drought or natural disaster

☐ Irregular business turnover

☐ Sole trader or partnership with sickness, injury or leave

Which month did you use?*

– Select –
▼

Source: Reproduced from the JobKeeper extension 'check decline in turnover' stage of the online application process, as released by the ATO on 1 October 2020.

Appendix 6 Summary of the ATO's assurance approach for risks listed in the JobKeeper Compliance Strategy (3 July 2020)

Risk description	Total population	Potential incorrect payments	Total payments subject to treatment	Identified scenario(s)	Risk tolerance
Entity eligibility — No active business income	20,500 Eligible Business Participants	\$272 million	\$272 million	Applicant has an Australian Business Number but has not lodged a tax return for one or two years	Low risk tolerance
Entity eligibility — Eligible Business Participants	8400 Eligible Business Participants	\$156 million	\$70 million	Individual is a sole trader and applies for JobKeeper as an Eligible Business Participant, but is also a part-time employee of another employer	Low risk tolerance
Employee eligibility	44,000 employees	\$858 million	\$220 million	Employee completes a nomination notice and JobKeeper is claimed by their employer. They are not an Australian resident Employer claims for an employee who has been 'off the books' and does not have an established employment link	Higher risk tolerance Further sampling needed
Pay-as-you-go-withholding (PAYGW) role	10,000 employees	\$195 million	\$195 million	Employer without a PAYGW role claims JobKeeper payments for employees who are all under the tax-free threshold	Low risk tolerance
Employees in multiple applications	6100 employees	\$59 million	\$59 million	An individual employee has both a part-time and a casual job. The employer is not aware of the requirements and completes two nomination notices	Low risk tolerance
Inflated employees	23,000	\$450 million	\$120 million	An employer has a baseline Single Touch Payroll (STP) of 45 employees at 1 March 2020. The employer has been lax in their STP reporting and adds an additional 20 employees over the baseline	Higher risk tolerance
Wage condition	Assessed as 'To be analysed'	Assessed as 'To be analysed'	Assessed as 'To be analysed'	An employer pays their eligible employees their regular wage of \$750 and does not pass on the remaining \$750 to eligible employees	Low risk tolerance

Risk description	Total population	Potential incorrect payments	Total payments subject to treatment	Identified scenario(s)	Risk tolerance
Significant Global Entities (SGEs)	280 SGEs	\$230 million	\$230 million	An SGE estimates a decline in turnover of 30% and claims JobKeeper. The SGE is not aware until we contact them that it must use the 50% test	Low risk tolerance
Decline in turnover	940 large businesses / number of small business to be confirmed	\$400 million – \$700 million for large businesses	\$400 million – \$700 million	A large entity makes a reasonable assessment that its revenue will decline by 35%. Its actual revenue only declines by 20%	Medium risk tolerance
Contrived arrangements	125 employers / number of small businesses to be confirmed	\$93 million for large businesses	\$93 million for large businesses	An entity amends its prior period Business Activity Statement labels to include turnover so it can be eligible for JobKeeper. It then estimates it will have a decline in turnover and claims JobKeeper	Low risk tolerance

Source: ANAO, based on the ATO's records.

Appendix 7 ANAO sampling methodology for testing ATO compliance measures

1. The ANAO's methodology for testing the ATO's implementation of compliance measures for the JobKeeper scheme involved a two-stage sampling process.

Stage 1: Selecting compliance measures for testing

2. The ATO prepared 15 risk treatment plans for the JobKeeper scheme. The risk treatment plans contained many compliance measures, which represented the ATO's intentions about how it would mitigate the payment risks identified in the risk treatment plans.

3. The ANAO used a targeted sampling methodology to select which compliance measures to test. Twenty-two compliance measures were selected. In addition, the ANAO examined the ATO's arrangements for sharing data with Services Australia, as outlined in the JobKeeper/JobSeeker risk treatment plan.

4. The selection was principally targeted at compliance measures that the ATO had directed at JobKeeper populations deemed by the ATO to be higher risk, and which typically involved direct engagement with JobKeeper recipients.

5. Each compliance measure comprised individual compliance cases. For each of the 22 compliance measures selected for testing, the ATO provided lists of individual compliance cases which the ATO claimed to have undertaken.

Stage 2: Selecting individual compliance cases for testing

6. There was a total of 41,031 compliance cases across the 22 selected compliance measures.

7. The eight compliance measures set out in Table A.1 each comprised fewer than 100 cases. Census testing was performed.

Table A.1: Compliance measures subject to census testing

Compliance measure		Population size of compliance cases
1.1b	Turnover Test – Public Groups & International and Private Wealth	86
1.2a	Turnover Test – Small Business	20
1.2b	Turnover Test – Small Business	30
1.2c	Turnover Test – Small Business	30
1.4d	Employee Verification Risk	69
1.5	Wage Condition (Payment of Employees)	49
2.4	Agents and Intermediaries	18

8. For the 14 compliance measures which each comprised 100 or more individual compliance cases, random sampling was used to select from the populations of compliance cases.

9. Where random sampling was used, the ANAO sought to achieve a margin of error of plus or minus five per cent at a 90 per cent confidence level.

10. The sample sizes selected depended on the expected exception rate set out in Table A.2. Given that the compliance measures selected for testing were directed by the ATO at higher risk populations, the ANAO expected that those measures would be implemented by the ATO with few exceptions. An 'exception' was where the ATO's documentation did not evidence that the intended compliance action was undertaken. Whether an estimated exception rate of two per cent or four per cent was selected depended on the ANAO's professional judgment as to the complexity of the compliance measure.

Table A.2: Compliance measures subject to random sampling

Compliance measure		Population size of compliance cases	Expected exception rate	Sample size of compliance cases
Original period of the JobKeeper scheme				
1.1a	Turnover Test – Public Groups & International and Private Wealth	100	2%	18
1.3	Eligible Business Participants	4345	2%	22
1.4a	Employee Verification Risk	1062	4%	41
1.4b	Employee Verification Risk	4518	2%	22
1.6	Signs of Life	16,657	4%	42
1.7	Identity Fraud	5814	2%	22
Extension period of the JobKeeper scheme				
2.1a	Employee Verification	2599	4%	41
2.1b	Employee Verification	260	2%	20
2.1c	Employee Verification	973	4%	40
2.2	Decline in Turnover	638	4%	40
2.3	Wage Condition (Payment of Employees)	130	2%	19
2.5	Business Participants	703	4%	40
2.6	Eligible Business Participants Tier Payments	102	2%	18
2.7	Residency	2821	4%	41

11. The observed exception rate exceeded the expected exception rate for some of the compliance measures subject to random sampling. An increase in sample size for the affected compliance measures would have been necessary to achieve a margin of error of plus or minus five per cent at a 90 per cent confidence level.

12. The ANAO did not sample additional cases for compliance measures where observed exception rates exceeded expected exception rates. The additional testing would not have materially affected the audit conclusion that the ATO did not evidence the full implementation of the selected compliance measures.

Appendix 8 The ATO's Practice Note explanations of 'honest mistake' and 'financial benefit'

The ATO's explanation of 'honest mistake' and 'financial benefit'

Whether the entity has made an honest mistake

A mistake is an incorrect view or interpretation of:

- the law, most likely in this case to be the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (the Rules); and/or
- the facts that are relevant to the operation of the law.

A mistake will generally be considered honest where it was reasonable to have made the mistake in the circumstances.

From a practical perspective, an honest mistake may arise where an entity can demonstrate that they reasonably relied on a material statement made by an individual in their nomination notice. For further information about reasonably relying on a statement from another entity, see further below. In instances where an entity itself, rather than an employee or business participant is ineligible for JobKeeper, it is unlikely that its ineligibility will have been caused by a statement from an individual in an approved form.

A mistake or omission can be the result of ignorance or reliance on the incorrect advice of others (for example, a tax agent). However, it would need to be established that the entity's ignorance led to the honest mistake.

Deliberate behaviour to remain ignorant of the operation or requirements of the Rules where the taxpayer is aware or was made aware of the relevant provisions before that time, does not satisfy the meaning of honest mistake.

The size, sophistication and resourcing of an entity will be a relevant factor in considering whether an honest mistake was made.

Whether or not an honest mistake has been made is a question of fact. Examples of when an honest mistake will not be considered to have occurred include where it is established that:

- fraud was perpetrated by either the JobKeeper recipient or another entity (for example, the employee, business participant or tax agent);
- there has been recklessness toward or intentional disregard of the law; or
- the employer entity has deliberately not met the wage condition.

Whether the entity retained a financial benefit

An employer will retain a financial benefit in all circumstances where a JobKeeper payment is received in relation to an employee unless the employee has been stood down for the relevant JobKeeper fortnight and the wage condition has been met for that employee by the employer.

A sole trader will always retain the benefit of a JobKeeper payment.

Generally, an entity claiming in respect of a business participant other than a sole trader (the partner of a partnership, shareholder or director in a company or adult beneficiary of a trust) will be considered to have retained the benefit of a JobKeeper payment.

Source: ANAO, based on the ATO's records.