

# ***PS LA 2020/1 (Withdrawn) - Commissioner's discretion to allow further time for an entity to hold an ABN or provide notice to the Commissioner of assessable income or supplies***

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! This was withdrawn on 31 May 2024 as it covers guidance no longer needed on discretions to grant further time under JobKeeper and Cash Flow Boost legislation.

! This document has changed over time. This version was published on *31 May 2024*



# Commissioner's discretion to allow further time for an entity to hold an ABN or provide notice to the Commissioner of assessable income or supplies

This was withdrawn on 31 May 2024 as it covers guidance no longer needed on discretions to grant further time under JobKeeper and Cash Flow Boost legislation.

This Law Administration Practice Statement provides guidance to staff in relation to the exercising of the Commissioner's discretion to allow an entity further time to:

- hold an Australian business number (ABN), or
- provide notice to the Commissioner that an amount of business income should be included in the entity's assessable income for the relevant period or that the entity made a taxable supply during the relevant tax period,

for the purposes of satisfying the eligibility criteria for the cash flow boost or the JobKeeper payment in respect of an eligible business participant.

*This Practice Statement is an internal ATO document and is an instruction to ATO staff.*

## 1. What is this Practice Statement about?

An entity's entitlement to receive benefits under the Boosting cash flow for employers measure<sup>1</sup> and the JobKeeper payment scheme<sup>2</sup> turns on the entity meeting a number of eligibility requirements.

For an entity to be eligible for the cash flow boost or to receive the JobKeeper payment for an eligible business participant<sup>3</sup>, the entity must have:

- had an ABN on 12 March 2020 (or a later time allowed by the Commissioner)<sup>4</sup>, and
- either<sup>5</sup>
  - had an amount included in its assessable income in the 2018–19 income year in relation to it carrying on a business, or
  - made a taxable supply in a tax period that applied to it starting on or after

1 July 2018 and ending before 12 March 2020<sup>6</sup>, and

- given the Commissioner notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the amount of income should be so included, or that the entity had made the taxable supply.<sup>7</sup>

This Practice Statement provides guidance on relevant circumstances that should be taken into account when the Commissioner is considering whether to grant further time for an entity:

- to hold an ABN, or
- to provide notice to the Commissioner of income or taxable supplies during the relevant period.

This Practice Statement also outlines the authorisations required to grant further time.

This Practice Statement only applies for the purposes of determining an entity's eligibility for either the cash flow

<sup>1</sup> *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* (the **Boosting Cash Flow Act**).

<sup>2</sup> *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the **Payments and Benefits Act**) and *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the **Payments and Benefits Rules**).

<sup>3</sup> Depending on the entity, an 'eligible business participant' is a sole trader, partner in a partnership, adult beneficiary of a trust, or shareholder or director of a company. See section 12 of the Payments and Benefits Rules.

<sup>4</sup> Subparagraphs 5(1)(f)(ii) and 6(1)(d)(ii) of the Boosting Cash Flow Act and subsection 11(6) of the Payments and Benefits Rules.

<sup>5</sup> Paragraphs 5(5)(a) and 6(5)(a) of the Boosting Cash Flow Act and paragraphs 11(7)(a) and 11(8)(a) of the Payments and Benefits Rules.

<sup>6</sup> In determining whether an entity made a taxable supply (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* for this notification requirement, assume that the entity is registered for GST, the supply is neither GST-free nor input taxed. For an entity carrying on business solely in the external Territories assume they are part of the indirect tax zone: see subsections 5(7) and 6(7) of the Boosting Cash Flow Act and subsection 11(9) of the Payments and Benefits Rules.

<sup>7</sup> Paragraphs 5(5)(b) and 6(5)(b) of the Boosting Cash Flow Act and paragraphs 11(7)(b) and 11(8)(b) of the Payments and Benefits Rules.

boost or the JobKeeper eligible business participant payment. It does not apply to any other discretion the Commissioner may exercise that is relevant to determining ABN eligibility at a point in time, or deferral of lodgment due dates for tax returns or business activity statements.

## 2. Background – policy intent

Both the JobKeeper payment and the cash flow boost measures are designed to provide financial support to active businesses that have been adversely affected by the economic impacts of COVID-19, and to support the retention of employment of their staff.

The JobKeeper scheme temporarily subsidises salary and wage costs where there has been a significant decline in turnover in the business. The cash flow boosts are credits delivered to eligible entities in the activity statement system, generally equivalent to the amount withheld from wages paid to employees for each monthly or quarterly period from March to June 2020.<sup>7A</sup>

The JobKeeper payment measure also recognises that many closely-held businesses – such as sole traders and partnerships and family trusts – operate through legal structures that may not make payments of salary or wages to employees. Therefore, the JobKeeper payment also applies to certain eligible participants in qualifying businesses based on their participation in the business of the closely-held entity.

To ensure that only businesses that were existing, and active as at 12 March 2020 receive the benefit of these measures, the law for both the cash flow boost and the JobKeeper payment (as it applies to qualifying businesses based on an eligible business participant) require an entity to have held an ABN on 12 March 2020.

Additionally, the Commissioner is required to have had notice on or before 12 March 2020 of any assessable income derived by the entity in the 2018–19 income year in relation to it carrying on a business, or notice (usually in the entity's business activity statement) that the entity made a taxable supply<sup>8</sup> in a tax period that applied to the entity starting on or after 1 July 2018 and ending before 12 March 2020. This requirement ensures that only active businesses with a lodgment period that ends prior to the date the Government commenced announcing measures that would comprise the Coronavirus Economic Response Package would be

eligible for the cash flow boost or the JobKeeper payment (as it applies to qualifying businesses based on an eligible business participant).

These eligibility requirements, falling under the heading of an 'integrity rule', were included to prevent new entities from being established, or inactive entities being revived, solely to obtain the benefits provided under either measure.<sup>9</sup>

The purpose of both measures was to assist active businesses with employees at the time the COVID-19 pandemic began to affect Australian businesses. Accordingly, the Payments and Benefits Rules require the entity to:

- have held an ABN from the date the Government commenced announcing measures that would comprise the Coronavirus Economic Response Package, and
- be active (by lodging a return to the Commissioner) by that time.

Each of these eligibility requirements requires the business to have actively reported certain information to the Commissioner by 12 March 2020. Through that system of reporting, the Commissioner has on record that the business is active. These requirements, of their nature, exclude entities from eligibility where those entities are operating in a manner that is not visible to the Commissioner.

## 3. The discretion to grant further time

### *Further time to hold an ABN after 12 March 2020*

In determining whether to grant further time to hold an ABN, the Commissioner will have regard to the objects of the Boosting Cash Flow Act, the Payments and Benefits Act and the Payments and Benefits Rules.

While all relevant facts and circumstances of an entity's situation should be taken into account, a key consideration will be the existence of evidence to demonstrate that the entity was conducting an active business on 12 March 2020 and, as such, was entitled to hold an ABN. That consideration, on its own, is not determinative of whether the discretion should be exercised by the Commissioner.

Where the entity did not hold an ABN on 12 March 2020, in considering whether the discretion

<sup>7A</sup> Eligible businesses are entitled to a minimum of \$10,000 across March to June 2020, even if their total withholding is less than \$10,000, and total cash flow boosts for March to June 2020 cannot exceed \$50,000. Eligible businesses who received initial cash flow boosts will also receive additional cash flow boosts from June to September 2020 equivalent to the total initial cash flow boosts received, which will be delivered in either two or four instalments, depending on their reporting cycle.

<sup>8</sup> Taxable supply for this purpose includes GST-free or input taxed supplies. See footnote 6 of this Practice Statement for more details.

<sup>9</sup> Note that for the cash flow boost credit, charities registered with the Australian Charities and Not-for-profits Commission do not need to meet the ABN requirement.

should be exercised, the Commissioner will consider factors including whether:

- the entity has put forward a reasonable explanation as to why it did not hold an ABN on 12 March 2020
- the Commissioner considers that the entity would have met the requirements for holding an ABN on 12 March 2020 under the *A New Tax System (Australian Business Number) Act 1999*. Namely, that the entity was genuinely and actively carrying on an enterprise
- it is reasonable in all the circumstances to allow the entity further time to hold an ABN – such circumstances would include where
  - the entity’s ABN had been incorrectly cancelled by the Registrar of the Australian Business Register as at 12 March 2020 and was subsequently reinstated
  - the entity did not obtain an ABN because its turnover was below the threshold for GST registration and its payments were not subject to no-ABN withholding
  - the entity had a good compliance history but neglected to apply for an ABN – as a result of which the tax consequences were relatively insignificant
  - the entity had (by 12 March 2020) provided notice to the Commissioner of assessable income it derived in relation to its business and/or that the entity made a taxable supply after 1 July 2018 but before 12 March 2020, or
  - the entity, through oversight, neglected to apply to reactivate a previously cancelled ABN upon resuming a business activity on or before 12 March 2020 (as was the case in *Apted*).<sup>10</sup>

The Commissioner would be less likely to exercise the discretion to allow further time to hold an ABN if:

- there is insufficient evidence provided that the entity was carrying on an active business, or the evidence as a whole lacks credibility or is equivocal as to whether a business was actually being carried on
- the entity has not put forward a reasonable explanation as to why it did not hold an ABN on 12 March 2020
- it is a reasonable inference in the circumstances that not holding an ABN was part of a pattern of

operating invisibly to the Commissioner or to authorities generally (for example, to operate within the shadow economy), or

- there is undue delay in the entity obtaining an ABN after 12 March 2020 and in making application to the Commissioner for the discretion to be exercised.

***Further time to give notice that an amount should be included in assessable income, or that the entity had made the taxable supply***

In determining whether to grant further time to give notice, the Commissioner will have regard to the statutory purpose and context of the integrity rule, and all relevant facts and circumstances applying to an entity’s situation.

The law allows the Commissioner to give further time to provide the notice but this does not mean that the entity is entitled to extra time. Rather the law allows the Commissioner to consider allowing further time.

In considering whether the discretion should be exercised, the Commissioner considers the following factors are relevant:

- whether the entity had any obligations to report the amount in a 2018–19 income tax return or relevant GST returns<sup>11</sup> before 12 March 2020
- if the entity had a requirement to lodge an income tax return or GST return before 12 March 2020
  - the reasons why the entity did not comply with those lodgment obligations
  - how late the lodgments were
  - the extent to which the entity had the opportunity to provide notice to the Commissioner through lodgment obligations (the more lodgment obligations have not been complied with, the less likely the Commissioner will exercise the discretion).

Relevantly, the Commissioner will likely grant further time where an entity has not lodged by the relevant due date because either:

- the entity has a pre-existing lodgment deferral in place, such as through the tax agent lodgment program or the deferrals for taxpayers affected by government-declared natural disasters, or
- the entity is a new business established from 1 July 2019 that is not registered, nor required to be registered, for GST, but has made supplies in

<sup>10</sup> *Commissioner of Taxation v Apted* [2021] FCAFC 45.

<sup>11</sup> For tax periods starting on or after 1 July 2018 and ending before 12 March 2020.

a tax period ending between 1 July 2019 and 12 March 2020, or

- there were other circumstances making it reasonable to grant further time, such as the loss of a significant amount of records due to government-declared natural disasters.<sup>12</sup>

The Commissioner would be less likely to exercise the discretion to grant further time to give notice if:

- there is insufficient evidence provided that the entity was carrying on an active business or the evidence as a whole lacks credibility or is equivocal as to whether a business was actually being carried on
- the entity has a history of failing to meet their lodgment obligations without good reason
- the information suggests that the entity has been deliberately operating invisibly to the Commissioner or to the authorities generally, or
- there is undue delay in the entity notifying the Commissioner after 12 March 2020 of income or supplies, and in making application to the Commissioner for the discretion to be exercised.

When having regard to all the relevant facts and circumstances of an entity's situation, we may need to contact the entity and obtain more information before we can determine whether the discretion should be exercised. Additional supporting documentation will depend on the entity's circumstances. The kinds of supporting documents we ask for will depend on the entity's individual facts and circumstances and may include:

- tax invoices
- records of merchant payment facilities
- evidence of corporate structure, including Australian Securities and Investment Commission registration for companies, partnership agreement, executed trust deed
- bank statements in the business name
- council permits (for example, for building use, selling food or storage of dangerous goods)
- occupancy agreements (such as leases) for business premises
- documents showing business financing arrangements
- business contracts
- advertising of business services.

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<sup>12</sup> Paragraph 3.31 of the Explanatory Memorandum to the Boosting Cash Flow Act.

#### **4. Example 1 – Norfolk Island, no ABN required**

*Amy is a sole trader who runs a local small business on Norfolk Island selling goods to local residents. She does not sell her goods to the Australian mainland, nor have any employees or fringe benefits tax reporting obligations.*

*As Amy's business operates solely on Norfolk Island, she is not required to have an ABN as the no-ABN rules and GST provisions do not apply within Norfolk Island. Amy does not choose to voluntarily obtain an ABN or register for GST.*

*Amy's business has suffered as a result of the economic impacts of COVID-19, and she would like to apply for the JobKeeper payments.*

*However, in order to be eligible for the payments, Amy will need to obtain an ABN, apply for the Commissioner's discretion to allow a time later than 12 March 2020 to hold an ABN, and have that discretion exercised.*

#### **5. Example 2 – operating an enterprise without an ABN**

*Helen operates a business in Australia as a sole trader. She sells handmade kids clothing online to retailers to on-sell to end users, and also takes orders for tailor-made speciality clothing for end-user customers. She has operated the business for a number of years and has a clear intention to make a profit from the activity as demonstrated by her business plan. Her turnover is \$40,000 and she is not registered for GST. She also operates her business without an ABN. However, she has a good record of lodging her tax returns on time and disclosing relevant business income. Upon hearing about the sole trader entitlement for the JobKeeper payment she registers for an ABN on 14 April 2020.*

*Helen understands that she did not satisfy the ABN requirement, as she did not have an active ABN on 12 March 2020. During a review, Helen requests the Commissioner consider granting her more time to hold an ABN later than 12 March 2020.*

*The Commissioner exercises the discretion to grant further time to hold an ABN. The Commissioner is satisfied that Helen was running an active business prior to 12 March 2020, even though Helen did not hold an ABN at that time and the no-ABN withholding provisions applied to her sales to other businesses, the Commissioner is satisfied that Helen was carrying on an enterprise and entitled to an ABN. Importantly, the Commissioner is satisfied that all other criteria were*

met and sufficient information was provided by Helen to establish entitlement.

Although Helen has not provided a particular reason why she did not obtain an ABN earlier, on balance having regard to her clear demonstration of being in business and her good lodgment record, the Commissioner is satisfied it is appropriate to exercise the discretion.

#### **6. Example 3 – adverse consequences of not holding an ABN do not apply**

Thanh operates a business selling juice made from fruit grown in a small orchard on his property and does not have an ABN. Thanh is also not registered or required to be registered for GST because his turnover is below the GST registration threshold. Thanh has included business income in his tax returns, including his return for the 2018–19 income year which was lodged before 12 March 2020.

Thanh only sells directly to customers at markets and fairs, and he does not sell to other businesses. As a result, the adverse consequences of not holding an ABN, particularly no-ABN withholding, do not apply to Thanh's business.

Realising he may be eligible for JobKeeper payments for eligible business participants, Thanh registers to get an ABN on 14 April 2020 and requests that the Commissioner exercise the discretion to allow him to hold an ABN later than 12 March 2020.

The Commissioner exercises the discretion to grant further time to hold an ABN as Thanh has provided a reasonable explanation for not having an ABN on 12 March 2020. As Thanh is also able to satisfy the other eligibility requirements, he is eligible to receive JobKeeper payments for an eligible business participant.

#### **7. Example 4 – eligibility of a business with no supplies in a tax period that ends before 12 March 2020**

Jack commenced a new business selling toys at the start of December 2019. He did not open a new bank account.

Jack completed all the necessary registration requirements for his new business, including obtaining an ABN and registering for quarterly GST reporting; however, Jack did not undertake any further activities.

In January 2020, Jack incurred numerous costs in establishing his business.

However, due to delays in setting up the business, Jack did not manage to make any sales during the month of December. Rather the business' first sales eventuated in late January 2020.

Because Jack's business did not make any taxable supplies<sup>13</sup> in the December quarter reporting period, the business will not be eligible for either the cash flow boost or the JobKeeper payment because it did not make a taxable supply in a tax period that ended prior to 12 March 2020.

As the business did not commence until after 30 June 2019, it is not able to include an amount in its assessable income in the 2018–19 income year.

On behalf of his business, Jack asks the Commissioner to exercise the discretion to allow further time for Jack to notify the Commissioner that he made a taxable supply during the relevant period for the purposes of being eligible for both the cash flow boost and JobKeeper payment.

It is not reasonable for the Commissioner to exercise the discretion under either measure because Jack's business is ineligible for either payment as the business did not make a taxable supply in a tax period ending prior to 12 March 2020.<sup>14</sup> The Commissioner does not have the discretion to extend the date by which an entity can make a taxable supply. The Commissioner can only extend the date by which notice of the made supply is provided.

#### **8. Example 5 – new business not registered for GST**

Pam started her consulting business in August 2019, employing an office administrator to assist her.

As a new business, Pam does not expect her annual turnover to be above \$75,000. She does not register for GST and does not include GST in her invoices.

Pam's business may be eligible for the cash flow boost; however, because the business started after 1 July 2019, Pam cannot lodge a 2018–19 return for the business. Pam asks the Commissioner to exercise the discretion to allow her more time to notify a taxable supply being made before 1 January 2020. Pam satisfies all other eligibility requirements.

Pam provides invoices made out to clients in August and September 2019 to the Commissioner and bank statements showing receipt of payments on those invoices. The Commissioner exercises the discretion to

<sup>13</sup> Taxable supply for this purpose includes any supply including those that may be GST-free or input taxed. See footnote 6 of this practice statement for more details.

<sup>14</sup> New businesses that do not have a tax period that ends before 12 March 2020 are similarly not eligible for any cash

flow boosts, this includes both the first and second cash flow boosts. See *Slatter Building Group Pty Ltd and Commissioner of Taxation* [2021] AATA 456.

grant further time to notify a taxable supply. Pam will be eligible to receive the cash flow boost.

#### 9. Example 6 – non-ATO initiated deferral

Misha lodges her own tax returns each year. After starting her sole trader business making cupcakes in 2018, Misha finds it is more difficult keeping on track with her tax lodgment obligations.

In October 2019, before her 2019 tax return is due, Misha calls the ATO and requests an extension to lodge until 30 March 2020, which is approved.

On 12 March 2020, Misha had a pre-existing lodgment deferral and had not provided notice to the Commissioner of business income in the 2018–19 income year. The Commissioner exercises the discretion to grant further time to provide notice of business income for reason that Misha had a non-ATO initiated deferral in place for her 2018–19 tax return.

#### 10. Example 7 – impact of tax agent conduct

Jane has operated her business as an independent valuer for a number of years. She obtained an ABN on commencement of her business and the ABN was active on 12 March 2020. Jane has always used a tax agent to complete her tax returns each year and to provide tax advice.

Jane provides all her 2019 documentation to her tax agent in January 2020, when they meet and discuss her 2019 return. Following that meeting the tax agent advises Jane by email that the return will be submitted that week and tells Jane that, once the return is submitted, Jane will be informed how much tax will be required to be paid to the ATO.

Over the next few weeks, Jane didn't receive confirmation from her tax agent that her return was lodged. Jane makes a couple of follow-up calls to her tax agent in May; however, her calls are not returned.

In early July, Jane sends a follow up email to her tax agent, enquiring about the progress of the return and the amount of additional tax required to be paid; however, Jane still receives no response from her tax agent. Due to the lack of response, Jane contacts another tax agent at the same firm who advises that Jane's 2019 return has not yet been lodged. Jane's 2019 return was lodged on 28 July 2020.

Jane's business suffered as a result of the economic impacts of COVID-19 and she wanted to enrol for JobKeeper as an eligible business participant but requires the Commissioner to exercise the discretion to grant further time to provide notice of business income.

Having regard to Jane's individual circumstances, the Commissioner exercises the discretion to grant further time on the basis of the emails provided by Jane from

the tax agent showing that her return should have been lodged in January. It was the tax agent who caused the return not to be lodged before 12 March 2020.

#### 11. Example 8 – reasonable circumstances

Annika is a hairdresser and works part time from her home. Annika is always busy, which means she does not focus on tax affairs. She does lodge tax returns but they are usually late and she will often lodge more than one tax return at a time. She lodged her 2017–18 return in February 2020. Annika is not registered (nor required to be registered) for GST.

In late May 2020, Annika's business has completely ceased due to COVID-19 and Annika is not earning any income. Annika attempts to enrol in JobKeeper but cannot because she does not hold an ABN. Annika phones the ATO who tell her that she needs an ABN, needs to lodge her 2018–19 tax return, and will need to seek the Commissioner's discretion.

Annika organises for her 2018–19 tax return to be lodged by mid-June 2020, which includes close to \$35,000 business income. Annika also applies online for an ABN and backdates the start date to 1 July 2017. Annika then requests discretion from the Commissioner to grant further time to hold an ABN and provide notice.

Annika has consistently reported business income as a hairdresser in past returns up to 2018. The no-ABN withholding rules would not apply to Annika. Further information is requested and Annika provides photographs of pages of her booking diary from multiple months through 2019 that show clients regularly between 10am–2pm on weekdays. She also provides bank statements that show small regular payments from individuals, which align with some booking requests. Annika provides a statement that some of her payments are in cash but she records all payments in her diary and returns all income in her returns. Annika also provides screen shots of numerous messages that confirm appointments with clients and prices charged.

Although Annika has a history of lodging her tax returns late, the Commissioner is satisfied that Annika is running an active business, supported by further information and contemporaneous evidence that shows appointments and receipt of income for services during the relevant period. The Commissioner also takes into account that the 2018–19 tax return was lodged within a short period of time of being reminded of her lodgment obligations and relatively soon after 12 March 2020 and, on balance, considers it reasonable to exercise the discretion. The Commissioner also provides further time to hold an ABN as the no-ABN withholding rules do not apply to Annika's payments. Annika meets all the other

*JobKeeper criteria, and as a result of exercising both discretions, Annika is entitled to JobKeeper.*

## **12. Example 9 – operating outside the tax system**

*In 2015, Jasmine commenced trading in comic books in an organised way that amounted to carrying on a business.*

*Jasmine did not obtain an ABN, did not register for GST and never included income from her trading activities in her tax returns. From 2015 through to 2020 Jasmine took no steps to engage with the Commissioner in respect of her business.*

*In June 2020, Jasmine lodged her 2018–19 tax return, which disclosed a small amount of business income. In June 2020, Jasmine also applied for and received an ABN.*

*Jasmine asks the Commissioner for more time to meet the requirement to hold an ABN and to report income for the purposes of the JobKeeper eligible business participant rules. Jasmine does not provide the Commissioner with an explanation as to why she did not comply with her lodgment obligations previously.*

*The Commissioner takes into account the consistent non-reporting of any business income for an extended period, and the lack of any transparency prior to 12 March 2020 that a business was being carried on. Although the Commissioner is satisfied that Jasmine's activities amount to carrying on a business, the Commissioner does not exercise the discretions to allow an ABN to be held and income to be reported at a later time.*

## **13. Example 10 – unreasonable circumstances**

*Steve started his sole trader business in August 2018, providing consulting services to various clients. Steve obtained an ABN at the same time but did not register for GST as he projected his income staying under the GST threshold, which it did with Steve deriving gross income of \$65,000 in the 2018–19 income year. Steve's business continued in the 2019–20 income year and was impacted by COVID-19 closures.*

*At 12 March 2020, Steve had not lodged either of his 2017–18 or 2018–19 tax returns. With no lodgments or*

*other tax system information that gave the Commissioner any visibility of Steve's business in the tax system, the Commissioner does not know if Steve was running an active business.*

*Steve approaches his tax agent in late March 2021 to lodge his outstanding tax returns, which includes his now very late 2018–19 tax return. His tax agent tells Steve that he could have accessed JobKeeper payments as an eligible business participant. On 31 March 2021, Steve seeks the Commissioner's discretion for further time to provide notice, and provides supporting evidence of his active business, including invoices, bank statements showing receipt of payments, contracts for services and receipts for ad hoc office hire.*

*The Commissioner does not dispute that Steve was carrying on an active business in relevant periods for JobKeeper payment. However, given the very late lodgment of his 2018–19 tax return (thereby meaning the Commissioner had no visibility of Steve's business prior to March 2021) and taking into consideration that the JobKeeper scheme ended on 28 March 2021, it is not reasonable for the Commissioner to exercise the discretion. Steve is not entitled to JobKeeper payment.*

*Steve would have also required the exercise of a separate discretion to enrol late in JobKeeper, having missed all enrolment cut-off dates under the JobKeeper scheme. That discretion is separate and distinct from the time discretion to hold an ABN or provide notice; however it is unlikely Steve would have been granted discretion to enrol late either.*

## **14. Who is authorised to exercise the discretion on behalf of the Commissioner?**

Staff should refer to Schedule 9 of the [Taxation Authorisation Guidelines](#) (link available internally only) to find who is approved to exercise the discretions discussed in this practice statement.

**Date issued** 1 May 2020

**Date of effect** 1 May 2020



## Amendment history

Date of amendment	Part	Comment
29 April 2021	Heading and section 1	Language updated to reflect holding an ABN
	Section 2	Discussion about Explanatory Memorandum and Explanatory Statement removed Active reporting of a business added to clarify significance for purpose of Commissioner's discretion
	Section 3	Reference to policy intent updated to reflect object of the measures Factors relevant in considering whether it is appropriate to exercise discretion added Factors relevant in considering when it is not appropriate to exercise discretion added Footnote 10 added Footnote 11 replaced
	Section 4 – Example 1	Heading updated to include reference to no ABN required
	Section 5 – Example 2	Heading updated to include reference without an ABN Example updated to reflect relevant factors taken into consideration and concluding active business
	Section 6 – Example 3	Language describing why Commissioner's discretion was exercised reworded for clarity
	Section 7 – Example 4	Clarified to state that it is not reasonable for the Commissioner to exercise discretion Footnote 14 updated to include the <i>Slatter</i> case reference
	Section 8 – Example 5	Removed
	Section 8 – Example 5	Language describing why Commissioner's discretion was not exercised reworded and added for clarity
	Section 9 – Example 7	Removed
	Section 11 – Example 8	Added
	Section 12 – Example 9	Added
	Section 13 – Example 10	Added
16 September 2020	Section 2	Language providing a description of the cash flow boost clarified and footnote 7A added Footnote 8 corrected to cross-reference to footnote 6. Language describing the requirement to notify the Commissioner of assessable income in the 2018-19 income year or provide notice that they have made a taxable supply in a tax period that applied to it starting on or after 1 July 2018 and ending before 12 March 2020 expanded.

	Section 3	Preliminary paragraphs expanded to clarify that an entity is not entitled to extra time. Lodgment history of an entity added as a relevant consideration.
	All examples	Numbered to allow easier referencing.
	Section 5 – Example 2	Description of Helen's business clarified, and statement that no-ABN withholding provisions would apply added. .
	Section 6 – Example 3	Added.
	Section 7 – Example 4	Description of Jack's business activities clarified, and other minor language changes. Footnotes 12 and 13 added.
	Sections 8 to 12 – Examples 5 to 9	Added.
13 August 2020	Section 7	Removed - authorisations are now included in the <a href="#">Taxation Authorisation Guidelines</a> (link available internally only)
11 May 2020	Section 3	Clarified the second dot point to indicate that further time will likely be granted for new businesses established from 1 July 2019 that are not registered <b>nor</b> required to be registered for GST.