

# BULLETIN

## Industrial Relations



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With the imminent commencement of **Stage 4** restrictions on businesses operating in metropolitan Melbourne for the next six weeks as of 11.59pm Wednesday 5 August, and **Stage 3** restrictions for the rest of Victoria, VACC strongly recommends that members take the opportunity to review their workforce needs in view of current work requirements.

For affected members, careful consideration should be given to the appropriateness of current employment arrangements and whether changes need to be made in relation to matters such as reduction of hours and stand down, the taking of paid or unpaid leave, and potential decisions around redundancy. This should also entail consideration of the number of employees, the role/classification composition required currently and going forward, as well as leave balances, accruals and length of service – together with strategies around consultation.

It is important to remember that the options that are available will be directly influenced by which of the three following categories the employer and employees fall into:

1. JobKeeper Eligible
2. Utilising flexibilities under Schedule I of the Vehicle Repair, Services and Retail Award 2020 (VRSR Award)
3. Not eligible for JobKeeper or to utilise flexibilities under Schedule I of VRSR Award

### 1. JobKeeper Eligible

The current fortnightly payment rate of \$1,500 for eligible employees will continue until 27 September 2020, before stepping down to lower rates and new eligibility requirements until March 2021. Further information on the JobKeeper payment extension is available [here](#).

Employers may need to review the JobKeeper Enabling Directions they currently in place. For example, an employer may need to issue a new JobKeeper enabling stand down direction, requiring an employee to work further reduced hours or days. Members are reminded that an employer must give an employee at least 3 days written notice before they give a JobKeeper direction (or a lesser period if agreed by the employee) and consult with the employee about the JobKeeper direction (and keep a written record of the consultation). Members should note that employees continue to accrue entitlements based on their pre-JobKeeper stand down hours of work. Please find template JobKeeper enabling stand down direction letter [here](#).

Employers may also request (which cannot be unreasonably refused) an employee take accrued paid annual leave (provided that they retain a balance of at least two weeks leave) – and may agree with the employee for double annual leave to be taken at half pay.

### 2. Utilising flexibilities under Schedule I of VRSR Award

For members not eligible for JobKeeper but currently utilizing [Schedule I](#), the current arrangements in have recently been [extended](#) to 31 August 2020. These arrangements provide an ability to provide a temporary reduction of hours of work for full time and part time employees – albeit with stricter limitations on the than available to JobKeeper employers. Members should note that employees continue to accrue entitlements based on their hours of work prior to the temporary reduction direction. Members seeking to utilize this arrangement should contact the Industrial Relations team on 03 9829 1123 for further details and assistance.

Schedule I also enables an employer to request (which cannot be unreasonably refused) an employee take accrued paid annual leave, provided that they retain a balance of at least two weeks leave – and may agree with the employee for double annual leave to be taken at half pay.

### **3. Not eligible for JobKeeper or to utilize flexibilities under Schedule I of VRSR Award**

For employers not eligible for either JobKeeper or utilization of Schedule I, there is no ability to unilaterally direct employees to reduce their hours of work. Nor, is an employee required to accept a request to take annual leave in the same manner as those under JobKeeper or utilizing Schedule I of the VRSR Award.

However, there is nothing preventing an employer and employee mutually agreeing to a temporary (or permanent) reduction of hours in writing. Members seeking to implement such an arrangement should contact the Industrial Relations team on 03 9829 1123 for further details and assistance. Similarly, an employer and employee may also mutually agree to the employee requesting a period of paid or unpaid leave.

Where such agreement is not able to be reached and a business is required to cease operations as a result of Stage 4 restrictions, the employer is entitled to stand down its employees in accordance with s 524(3) of the Fair Work Act 2009. This option is available where employees cannot usefully be employed because of a stoppage of work for which the employer could not reasonably be held responsible. Please find template stand down under s 524(3) letter here. Members should note that employees continue to accrue entitlements based on their pre-stand down hours of work.

#### **There are also a number of additional options available regardless of which of these categories apply.**

An employer may wish to offer an employee the opportunity to take accrued paid (e.g. annual leave or long service leave) or unpaid leave. This option may be particularly appropriate where the employer is otherwise considering the need to either stand down employees without pay, or, making roles redundant.

In addition, [Schedule X](#) of the VRSR Award currently provides that an employee is entitled to take up to 2 weeks' unpaid pandemic leave if the employee is required by government or medical authorities or on the advice of a medical practitioner to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic. Unlike other types of unpaid leave, unpaid pandemic leave is similar to stand down in that it counts as service for accrual purposes.

Ultimately, an employer may come to the decision to make roles redundant, resulting in termination of employment. Members considering this option should contact the Industrial Relations team on 03 9829 1123 to discuss appropriate procedural steps, as well as related issues including notice of termination.

**Daniel Hodges**  
Executive Manager  
Workplace Relations