

Important Update

COVID-19 Award flexibilities extended and JobKeeper 2.0 guidance released

Further to our previous [bulletin](#), VACC provides an important update to members regarding firstly, the extension of temporary COVID-19 flexibilities contained in Schedule I and Schedule X of the VRSR Award; and secondly, the issuance of a number of new legislative instruments to support the implementation of JobKeeper 2.0.

Fair Work Commission extends Schedule I and Schedule X of the VRSR Award

Subsequent to VACC's recent [survey request](#) to members, we can confirm that the Fair Work Commission (FWC) has issued Determinations extending the operation of Schedule I and Schedule X of the Vehicle Repair, Services and Retail Award 2020 (VRSR Award).

The **Schedule I Determination**, achieved through consent of the industry parties, extends the current flexibilities from 30 September 2020 until **30 November 2020**. It is currently the only award-specific COVID-19 flexibility schedule in a modern Award that remains in effect post-September, with an application to extend the Clerks - Private Sector Award 2020 currently being arbitrated before the FWC. VACC will continue to review the situation to determine whether further extensions and/or changes to Schedule I are needed and achievable – and as part of this process, will continue to seek member feedback through surveys and other means as appropriate.

Schedule I only applies to:

- businesses who are not eligible for JobKeeper; and
- non-eligible employees (e.g. employees employed after 1 July 2020) employed by a business qualified to receive the JobKeeper payment; and
- businesses covered by the VRSR Award.

Schedule I flexibilities

Schedule I provides for the following changes to the VRSR Award:

- a temporary reduction of hours of work for full-time and part-time employees, for employers who first implemented a reduction before 30 June 2020;
- an ability for an employer to request an employee to take paid annual leave, provided the employer provides a minimum 72 hours' notice and the employee retains a balance of at least 2 weeks annual leave; and
- an ability to agree with an employee to take up to twice as much annual leave at a proportionately reduced rate of pay for all or part of any agreed or directed period away from work, including any close-down (**Note:** a similar flexibility is provided in Schedule X);

The **Schedule X Determination**, which extends an entitlement to unpaid 'pandemic leave' and the flexibility to take twice as much annual leave at half pay until **29 March 2021**, applies to the VRSR Award and 73 other modern Awards. Notably however, this does not currently include the Clerks – Private Sector Award 2020, which will be subject to arbitration before the FWC.

If you have any questions or would like to have a more detailed discussion, please get in touch with the Workplace Relations team at ir@vacc.com.au or 03 9829 1123.

New JobKeeper 2.0 related legislative instruments issued

A number of new legislative instruments have recently been issued to support the implementation of JobKeeper 2.0, which commenced on 28 September 2020. A summary of these Rules, Regulations and Determinations is provided below for member reference, together with links to the instruments themselves.

JobKeeper 2.0 Rules – Decline in Turnover Test and Payment Rates

The [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 8\) 2020](#) address matters relevant to the implementation of the JobKeeper extension (i.e. JobKeeper 2.0) – providing specific details on matters such as the basic decline in turnover test and the payment rates. Rules 9A and 4A set out how to calculate which JobKeeper payment rate applies to the eligible employee (i.e. \$1,200 or \$750 from 28 September 2020 until 3 January 2021) – clarifying that the higher rate applies to those eligible employees who worked **80 hours or more in the 28 day period** ending at the end of the most recent pay cycle for the employee that ended before either 1 March or 1 July 2020.

An employer must notify the ATO which payment tier amount they are claiming for each eligible employee in their relevant monthly business declaration – and must notify each employee of the rate applicable to them within **7 days of giving the ATO that notice**. The ATO will allow employers **until 31 October 2020** to meet the wage condition for the fortnights from 28 September 2020 and 12 October 2020.

The ATO has also clarified that employers do **not** need to re-enrol to claim payments in the first extension period if they are already enrolled in JobKeeper. They just need to check their continuing eligibility and **submit that information to the ATO** from 1 October 2020.

JobKeeper Payment Rates – Non-Standard Scenarios

The ATO has issued two determinations, also providing useful guidance to employers with respect to determining whether the higher or lower JobKeeper payment rate (i.e. \$1,200 or \$750 from 28 September 2020 until 3 January 2021) applies in non-standard scenarios.

The [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Reference Period Determination 2020](#) provides an alternative reference period for determining which JobKeeper payment rate applies in circumstances where the standard reference period may not be appropriate. For example, this includes where the total number of hours worked by the eligible employee were not representative of a typical 28-day period (e.g. due to unpaid leave, particular rostering schedules, etc), or where the eligible employee had not been employed during all of the standard reference period.

The [Coronavirus Economic Response Package \(Payments and Benefits\) Higher Rate Determination 2020](#) sets out the specified circumstances where the higher JobKeeper payment rate will apply, in circumstances where the hours in a reference period are not able to be easily ascertained.

Alternative Decline in Turnover Tests

The [Coronavirus Economic Response Package \(Payments and Benefits\) Alternative Decline in Turnover Test Rules \(No. 2\) 2020](#) sets out alternative tests where there is not an appropriate comparison period in 2019 for the purposes of satisfying the decline in turnover test in JobKeeper 2.0. The Rules include the same alternative decline in turnover tests that applied previously, with minor modifications to account for the slight differences between JobKeeper 2.0 and the original JobKeeper 1.0 - e.g. 'actual' versus 'projected' turnover, and comparison with a particular quarter.

JobKeeper Fair Work Act Flexibilities – Stand Down Directions for Legacy Employers

The [Fair Work Amendment \(Jobkeeper Payments\) Regulations 2020](#) (JobKeeper Regulations) support the implementation of [s.789GJA](#) of the *Fair Work Act 2009* which allows a legacy employer, when certain conditions have been met, to give an employee a JobKeeper enabling stand down direction to no less than 60% of the employee's ordinary hours as at 1 March 2020 (i.e. their ordinary hours before the impact of COVID-19).

The regulations provide a method of determining an employee's ordinary hours for the purposes of JobKeeper Enabling Stand Down Directions for employees where it is not possible or appropriate to assess their ordinary hours as at 1 March 2020 – e.g. they didn't have ordinary hours as at 1 March 2020 as they were not yet employed (see regulation 6.07C).

The JobKeeper Regulations also contain a provision which ensures that any modifications to the calculation of the decline in turnover test in the JobKeeper Payment Rules are also picked up for the purposes of the 10% decline in turnover test in the *Fair Work Act 2009* (regulation 6.07B).

GST Turnover – Timing of Supplies

The [Coronavirus Economic Response Package \(Payments and Benefits\) \(Timing of Supplies Made and Decline in Turnover Test\) Rules 2020 \(No. 1\)](#) sets out the time or times a supply is treated as being made for the purposes of calculating an entity's current GST turnover in a test period. Under this instrument, a supply must be treated as being made or partly made in a relevant test period to the extent that any GST payable on the supply would be attributed to that test period.

Members needing further advice and support on JobKeeper Payments are encouraged to contact the Chamber's IR Department on 03 9829 1123 or ir@vacc.com.au.

For specific payroll related advice relating to JobKeeper, members are encouraged to contact Andrea Chwalko: E: achwalko@vacc.com.au.

Daniel Hodges
Executive Manager
Workplace Relations
Industrial Relations and OHSE