

Important Update – JobKeeper legislation passed and Award flexibility changes proposed

This bulletin provides an important update to members regarding firstly, the successful passage of the JobKeeper legislation; and secondly, the extension of the temporary Award flexibilities contained in Schedule I of the VRSR Award and the release of a Draft Award Flexibility Schedule by the Fair Work Commission.

Federal Parliament Passes Coronavirus Economic Response Package (JobKeeper Payments) Amendment Bill 2020

The Morrison Government's [Bill](#) to give effect to the JobKeeper wage subsidy extension has been formally passed into legislation – extending the operation of the scheme from 27 September 2020 to 27 March 2021. The legislation serves to confirm the changes outlined in previous bulletins (see summary below) - as well as containing important changes to the JobKeeper labour flexibility arrangements under the Fair Work Act 2009.

Summary of key dates

- **From 3 August 2020:** Reference date for assessing employee eligibility changes from 1 March to 1 July 2020.
- **Until 27 September 2020:** Payment continues at \$1,500 per fortnight
- **28 September 2020 – 3 January 2021:** Payment reduced to \$1,200 / \$750 per fortnight
- **4 January 2021 – 27 March 2021:** Payment reduced to \$1,000 / \$650 per fortnight
- **28 March 2021:** Payments end.

Please refer to our previous [bulletin of 7 August 2020](#) for further detail on this summary of key dates.

Changes to JobKeeper labour flexibility arrangements under the Fair Work Act 2009

Whilst the legislation extends most of the JobKeeper provisions in [Part 6-4C](#) of the Fair Work Act 2009 until 28 March 2021, for employers who remain eligible for JobKeeper from 28 September 2020 – the ability to make JobKeeper Enabling Annual Leave Requests will **cease on 27 September 2020**.

However, whilst such employers will no longer be able to issue a JobKeeper Enabling Request to take annual leave – this does **not** prevent employers and employees from otherwise mutually agreeing to take annual leave.

Employers who continue to qualify for JobKeeper can continue to issue JobKeeper Enabling Directions to their JobKeeper eligible employees to work reduced hours or days, undertake alternative duties, or work at an alternative location; and can continue to make JobKeeper Enabling Requests for an employee to work different days/times to their ordinary hours.

VACC through ACCI have made available a comprehensive new [JobKeeper 2.0 Employer Guide](#), which members are encouraged to access for more detailed information on the changes effective from 28 September 2020. This guide covers all aspects of the JobKeeper wage subsidy including eligibility, changes in payment rates, interaction with JobSeeker and the Fair Work Act 2009 flexibilities for both qualifying and legacy (see below) employers.

JobKeeper Legacy Employers

The new legislation also enables employers who cease being eligible for JobKeeper on 27 September 2020, but who can demonstrate their **turnover has declined 10%**, to continue to access a number of the JobKeeper labour flexibility arrangements under the Fair Work Act 2009. To qualify, such employers will need to obtain a certificate issued by a financial services provider (or self-certify where the employer is a small business with less than 15 employees) confirming the reduction in turnover of at least 10% in the relevant quarters this year compared to last year.

Known as 'Legacy Employers', these employers will be able to use JobKeeper Enabling stand down directions, provided that such directions do **not** result in a reduction of an employee's hours of work below **60%** of their ordinary hours of work as at 1 March 2020 (e.g. for a full-time employee working a 38 hour week, this would equate to 22.8 hours per week), or to require an employee to work less than **two hours** on a day that they work.

Legacy Employers will also be able give employees who previously received JobKeeper payments JobKeeper Enabling Directions in relation to duties and location of work - and can request employees work different days and times of work, provided the requires does **not** require the employee to work less than 2 consecutive hours in a day.

Legacy Employers will also need to meet more stringent consultation requirements, including **seven days'** written notice (rather than the current notice period of 3 days).

VACC through ACCI have made available a new [Legacy Employer Guide](#), which members are encouraged to access for more detailed information on the changes effective from 28 September 2020. This guide aims to assist Legacy Employers with utilising the new flexibilities – providing notification and consultation checklists and draft letters for each of the JobKeeper Enabling Directions available.

Members needing further advice and support on these legislative changes are encouraged to contact VACC's Workplace Relations team 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.

Schedule I of the VRSR Award extended to 30 September 2020

Further to previous bulletins (and surveys) to members regarding extensions to the interim flexibility award provisions in **Schedule I – Award Flexibility during the COVID – 19 Pandemic**, inserted in the Vehicle Repair, Services and Retail Award 2020 (VRSR Award) – the Fair Work Commission has issued a [Determination](#) extending the Schedule from 31 August 2020 until **30 September 2020**.

Having secured the extension of Schedule I until the end of September 2020 – we are now in the process of examining whether sufficient evidence can be obtained to convince the Fair Work Commission of a need to amend and extend the Schedule beyond September.

Draft Award Flexibility Schedule

This process in relation to Schedule I has been significantly impacted by the release of a **Draft Award Flexibility Schedule** on 31 August 2020 – provided (at Attachment B) as part of a COVID-19 update [Statement](#) by Justice Ross, President of the Fair Work Commission. It is important to note that whilst the draft Award Flexibility Schedule does not represent a concluded view of the FWC on any issue, it would appear likely that any negotiated/arbitrated outcome would effectively replace Schedule I of the VRSR Award, and is also likely to have application to other Award covered employers.

Members to be surveyed in coming weeks

We intend to survey members in the coming weeks to seek member feedback on matters arising from Draft Award Flexibility Schedule and to ascertain how many members are potentially affected by changes to Schedule I, as our lobbying efforts to the Australian Government have resulted in the number of businesses needing to utilize Schedule I post-September 2020 being less than initially feared.

We would therefore ask members to complete the survey as soon as it becomes available.

VACC also thanks those members currently utilizing Schedule I who have already provided detailed feedback to us on the impact its removal would have on their businesses – and encourages other affected members to also get in touch.

Schedule I currently 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.

Award flexibilities

Schedule I allows for the following changes to the [VRSR Award](#):

- for employers who first implemented before 30 June 2020, a temporary reduction of hours of work for full-time and part-time employees;
- 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.

Members are encouraged to contact VACC's Workplace Relations team for further details and assistance on 03 9829 1123 or ir@vacc.com.au.

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