



Fair Work Commission
Australia's national workplace relations tribunal

COVIDSafe app, JobKeeper dispute decision, COVID-19 applications and decisions

On 8 May 2020, the Fair Work Commission published a [statement from the President](#) setting out how it is responding to the COVID-19 pandemic, including the Commission's role in relation to the JobKeeper scheme.

COVIDSafe app

On 14 May 2020, the government passed legislation to support the COVIDSafe app, the [Privacy Amendment \(Public Health Contact Information\) Bill 2020](#).

Amongst other new offences, the legislation makes it an offence for an employer to require an employee or prospective employee to download and use the app as a condition of employment, or to take adverse action against an employee or prospective employee for not doing so.

An employer will also contravene the general protections provisions of the *Fair Work Act 2009* if it takes adverse action against an employee or prospective employee for not downloading or using the app.

These provisions are contained in cl.94H(2) of the legislation.

Once the legislation receives Royal Assent, the Coronavirus (COVID-19) updates & advice and general protections pages on our website will be updated to reflect the expansion of the workplace rights protected under the Commission's general protections disputes jurisdiction.

JobKeeper dispute applications and decisions

Mathew Mazzitelli v Qantas Airways Limited [2020]

On 5 May 2020, an application was lodged with the Commission to deal with a JobKeeper dispute under Part 6-4C of the Fair Work Act. The case concerns the application of the JobKeeper payment rules to an employee who was stood down under general stand down provisions in the Fair Work Act. The employee, who is paid monthly, is disputing the amounts paid to him in JobKeeper fortnights in April.

The responding employer, Qantas Airways Limited, opposed the application and raised three issues concerning whether the Commission has power to deal with the case. The jurisdictional issues concern whether the dispute is a JobKeeper dispute under Part 6-4C of the Fair Work Act,

whether the remedy would require the Commission to exercise judicial power and whether the remedy sought is in the nature of an underpayment claim.

In a [decision on 8 May 2020](#), Deputy President Anderson rejected all three issues advanced by Qantas and concluded that the Commission has power to deal with the dispute under Part 6-4C of the Fair Work Act.

On 11 May 2020, Qantas appealed the decision. A full bench will hear the appeal on 18 May 2020.

Leonie McCreedy v Village Roadshow Theme Parks Pty Ltd [2020]

On 6 May 2020, Ms Leonie McCreedy applied to the Commission to deal with a JobKeeper dispute under Part 6-4C of the Fair Work Act.

Her employer, Village Roadshow Theme Parks, has issued a JobKeeper enabling direction that Ms McCreedy not attend work. Village Roadshow Theme Parks also asked Ms McCreedy to take one day of annual leave each week until either 27 September 2020, when the coronavirus provisions cease to take effect, or the time when her leave balance has reduced to four days (whichever happens first).

In a [decision on 13 May 2020](#), Commissioner Hunt found that Ms McCreedy's refusal to take one day's annual leave per week is unreasonable. The Commissioner [issued an order](#) that will remain in effect until 11:59:59pm on 27 September 2020.

Recent significant decisions

Vehicle Manufacturing, Repair, Services and Retail Award 2010

On 11 May 2020, a Full Bench [granted a joint application to vary the Vehicle Manufacturing, Repair, Services and Retail Award](#) to insert a new Schedule J. The new Schedule J includes clauses related to: operational flexibility; temporary reduction in ordinary hours of work for full time and part time employees; and requests and directions to take paid annual leave in certain circumstances and subject to safeguards.

The resulting variation operates from 11 May 2020 until 30 June, unless extended.

For completeness we note that the [Vehicle Repair, Services and Retail Award 2020](#) will come into effect on Friday, 29 May 2020. The 2020 award will incorporate the new schedule.

Seven Network (Operations) Limited (News, Public Affairs and Operations) Agreement 2019

On 6 May 2020, the Fair Work Commission [granted an application to vary the Seven Network \(Operations\) Limited \(News, Public Affairs and Operations\) Agreement 2019](#) to remove the entitlement to a 2% wage increase that is payable from the first full pay period after 4 April 2020.

The variation is approved and the [consolidated version of the Agreement](#), as varied, is attached to the decision.

In accordance with section 216 of the Fair Work Act, the resulting variation operates from 6 April 2020.

Urgent applications

Fast Food Industry Award 2010

An application to vary the **Fast Food Industry Award 2010** was filed by Ai Group on 1 May 2020. The application is supported by the Australian Council of Trade Unions and the Shop, Distributive and Allied Employees' Association. A [statement was issued on 3 May 2020](#) setting out the Commission's provisional views regarding the variation.

The application seeks to insert a new Schedule H: Award flexibility during the COVID-19 pandemic. The proposed schedule provides a temporary and alternative scheme for part time employment; and includes clauses that enables an employer to request and give directions to take paid annual leave in certain circumstances and subject to safeguards. Schedule H is expressed to operate for a period of 3 months.

A submission was received from the Retail and Fast Food Workers Union opposing the application.

A hearing was held on 5 May 2020, [transcript of the proceedings](#) is available on the Commission's website. On 8 May 2020 the Commission issued a statement and directions for the filing of further submissions and evidence. The matter is listed for hearing at **2pm on Friday, 15 May 2020**.

Social, Community, Home Care and Disability Services Industry Award 2010

On 28 April 2020 the Australian Services Union, Health Services Union, United Workers Union and the National Disability Service made a joint application to vary the **Social, Community, Home Care and Disability Services Industry Award 2010** to include a new allowance to be paid to an employee when they are required to work with a client who:

- is required by government or medical authorities to self-isolate in response to the COVID-19 pandemic
- is required on the advice of a medical practitioner to self-isolate in response to the COVID-19 pandemic
- has COVID-19 or is reasonably suspected to have COVID-19.

The application is opposed by the Australian Industry Group, Australian Business Industrial and the Australian Federation of Employers and Industries.

A hearing was held on 4 May 2020, [transcript of the proceedings](#) is available on the Commission's website.

On 5 May 2020 the Commission issued a statement setting out some provisional views and a range of questions to the parties. Further directions were issued on 6 May 2020 providing for the filing of submissions and evidence in response to the **provisional** views by **2pm Tuesday, 19 May 2020**.

The matter will be listed for mention after the submissions have been filed.

Health sector awards

On 28 April 2020 the ACTU filed a [proposed timetable](#) for the hearing of this ongoing matter. The Commission convened a conference of interested parties on 30 April 2020 to discuss the proposed timetable; a [transcript of this conference](#) has been published.

A [statement and directions issued on 1 May 2020](#) directed interested parties to file an outline of submissions in support of the applications, witness statements and any other material by Monday 11 May 2020. A telephone mention was held on 13 May 2020.

Directions were issued on 13 May 2020 providing for the filing of submissions and evidence by employer parties by **5pm on Wednesday, 17 June 2020**.

The matter is listed for directions on **Friday, 19 June 2020 at 10am**. A hearing has been listed for **25 and 26 June 2020**.

All material relevant to this matter will be published on the [Health sector awards](#) page of the Commission's website.

Find out more

Visit the [Coronavirus \(COVID-19\) updates & advice](#) page on our website for information about specific application types and any changes to our operations in response to COVID-19.

On 8 May 2020, the Commonwealth Government announced a 3-step pathway for easing restrictions, called the [Roadmap to a COVIDSafe Australia](#). The exact roll-out and time is to be announced and implemented by state and territory premiers and chief ministers.

To find out more about measures taken to restrict gatherings and non-essential business, and support for businesses, please read the latest [Information note – Government responses to COVID-19 pandemic \(PDF\)](#).

We remain focused on improving the services we provide the public during this time. Feedback and suggestions for improvement are welcome and can be sent to stakeholderrelations@fwc.gov.au.

15 May 2020



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