



# **Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020**

**No. 81, 2020**

**An Act to amend the law relating to the  
Coronavirus economic response, and for related  
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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2020

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*Fair Work Act 2009*

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*ii*      *Coronavirus Economic Response Package (Jobkeeper Payments)*      *No. 81, 2020*  
*Amendment Act 2020*



# **Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020**

**No. 81, 2020**

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**An Act to amend the law relating to the  
Coronavirus economic response, and for related  
purposes**

*[Assented to 3 September 2020]*

The Parliament of Australia enacts:

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*No. 81, 2020*

*Coronavirus Economic Response Package (Jobkeeper Payments)  
Amendment Act 2020*

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## 1 Short title

This Act is the *Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	3 September 2020
2. Schedule 1	The day this Act receives the Royal Assent.	3 September 2020
3. Schedule 2, Part 1	27 September 2020.	27 September 2020
4. Schedule 2, Part 2	The day after this Act receives the Royal Assent.	4 September 2020
5. Schedule 2, Part 3	28 September 2020.	28 September 2020
6. Schedule 2, Part 4	Immediately after the commencement of Part 2 of Schedule 1 to the <i>Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020</i> .	29 March 2021
7. Schedule 2, Part 5	At the same time as Part 2 of Schedule 1 to the <i>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020</i> commences. However, the provisions do not commence at all if that Part does not commence.	16 September 2020

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

**Schedule 1—Extending the operation of the  
Coronavirus Economic Response  
Package (Payments and Benefits) Act  
2020**

**Part 1—Main amendments**

*Coronavirus Economic Response Package (Payments and  
Benefits) Act 2020*

**1 Section 6 (definition of *prescribed period*)**

Omit “31 December 2020”, substitute “28 March 2021”.



## **Part 2—Consequential amendments**

### ***Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020***

#### **2 Subitems 28(4) and (5) of Schedule 2**

Omit “31 December 2020”, substitute “28 March 2021”.

#### **3 Application of item 2**

The amendments made by item 2 of this Schedule apply in relation to an instrument made before, on or after the commencement of that item.

### ***Taxation Administration Act 1953***

#### **4 Subsection 355-65(8) in Schedule 1 (after table item 10)**

Insert:

- |     |                                  |  |
|-----|----------------------------------|--|
| 10A | an *Australian government agency | (a) is of information that relates to the jobkeeper scheme (within the meaning of the <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> ); and |
|     |                                  | (b) is for the purpose of administering an *Australian law; and  |
|     |                                  | (c) is for a purpose relating to the coronavirus known as COVID-19.  |

#### **5 Application of item 4**

The amendment made by item 4 of this Schedule applies in relation to records and disclosures of information made on or after the commencement of that item, whether the information was obtained before, on or after the commencement of that item.

**Schedule 2** Jobkeeper-related provisions of the Fair Work Act 2009

**Part 1** Extension of the jobkeeper-related provisions of the Fair Work Act 2009

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## **Schedule 2—Jobkeeper-related provisions of the Fair Work Act 2009**

### **Part 1—Extension of the jobkeeper-related provisions of the Fair Work Act 2009**

#### ***Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020***

##### **1 Subsection 2(1) (table item 3)**

Repeal the item, substitute:

3. Schedule 1,      29 March 2021.  
Part 2

29 March 2021

## **Part 2—General amendments**

### ***Fair Work Act 2009***

#### **2 Subsection 539(2) (cell at table item 40, column 1)**

After “789GDB(3)”, insert:

789GJE(3)

789GJE(5)

789GJF(4)

789GJF(6)

#### **3 Subsection 539(2) (at the end of the cell at table item 40, column 1)**

Add:

789GXB(1)

789GXB(2)

789GXB(3)

789GXC(1)

#### **4 Section 789GA**

After “employers who qualify” (first occurring), insert “(or previously qualified)”.

#### **5 Section 789GA**

After “employer who qualifies” (first and second occurring), insert “(or previously qualified)”.

#### **6 Section 789GA**

Omit:

This Part authorises an employer who qualifies for the jobkeeper scheme and an employee to make an agreement in relation to:

- (a) the days or times when the employee is to perform work; or
- (b) the employee taking annual leave, including at half pay.

substitute:

This Part authorises an employer who qualifies (or previously qualified) for the jobkeeper scheme and an employee to make an agreement in relation to the days or times when the employee is to perform work.

This Part authorises an employer who qualifies for the jobkeeper scheme and an employee to make an agreement in relation to the employee taking annual leave, including at half pay.

### 7 Section 789GA

After “employer who qualifies” (fourth, fifth and sixth occurring), insert “(or previously qualified)”.

### 8 Section 789GA

After “employers who qualify” (last occurring), insert “(or previously qualified)”.

### 9 Section 789GA (note)

Repeal the note, substitute:

Note 1: Division 5 (taking paid annual leave) will be repealed on 28 September 2020.

Note 2: The remaining core provisions of this Part (namely, Divisions 2, 3, 4, 5A, 6, 9 and 11) will be repealed on 29 March 2021.

### 10 Section 789GC

Insert:

**10% decline in turnover certificate** has the meaning given by section 789GCD.

**10% decline in turnover test** means the test set out in section 789GCB.

**current GST turnover** has the same meaning as in the jobkeeper payment rules.

*decline in turnover test* has the same meaning as in the jobkeeper payment rules.

*designated quarter* applicable to a time has the meaning given by section 789GCC.

*eligible financial service provider* means:

- (b) a registered tax agent or BAS agent; or
- (c) a qualified accountant.

### **11 Section 789GC (definition of *jobkeeper enabling direction*)**

Omit “or 789GF”, substitute “, 789GF, 789GJA, 789GJB or 789GJC”.

### **12 Section 789GC**

Insert:

*qualified accountant* has the same meaning as in the *Corporations Act 2001*.

*quarter* means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

*registered tax agent or BAS agent* has the same meaning as in the *Tax Agent Services Act 2009*.

### **13 At the end of Division 1 of Part 6-4C**

Add:

#### **789GCB 10% decline in turnover test**

- (1) For the purposes of this Part, an employer satisfies the **10% decline in turnover test** for a quarter if the employer would satisfy the decline in turnover test at a time in the quarter if:
    - (a) the turnover test period were the quarter, instead of the period determined under paragraph 8(7)(a) or (aa) of the jobkeeper payment rules; and
    - (b) instead of projected GST turnover, current GST turnover were used (including in subsection 8A(3) of the jobkeeper payment rules, and in applying an alternative decline in turnover test determined under subsection 8(6) of the jobkeeper payment rules); and
-

- 
- (c) the specified percentage for the employer was 10%, instead of the percentage worked out under subsection 8(2) of the jobkeeper payment rules; and
  - (d) the decline in turnover test was subject to such modifications (if any) as are prescribed by the regulations.
- (2) The regulations must not prescribe modifications for the purposes of paragraph (1)(d) unless:
- (a) the jobkeeper payment rules are amended after the commencement of this section; and
  - (b) the modifications relate to those amendments.

### 789GCC Designated quarter

For the purposes of this Part, the *designated quarter* applicable to a time is set out in the table.

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<b>Designated quarter applicable to a time</b>		
<b>Item</b>	<b>If the time occurs:</b>	<b>the designated quarter applicable to the time is the quarter ending on:</b>
1	before 28 October 2020	30 June 2020
2	during the period: <ul style="list-style-type: none"><li>(a) beginning at the start of 28 October 2020; and</li><li>(b) ending at the end of 27 February 2021</li></ul>	30 September 2020
3	on or after 28 February 2021	31 December 2020

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### 789GCD 10% decline in turnover certificate

- (1) An eligible financial service provider may issue a written certificate that:
- (a) relates to a specified employer; and
  - (b) confirms that the employer satisfied the 10% decline in turnover test for the designated quarter applicable to a specified time.

- (2) However, an eligible financial service provider is not entitled to issue a certificate under subsection (1) in relation to an employer if the eligible financial service provider is:
- (a) a director or employee of the employer; or
  - (b) an associated entity of the employer; or
  - (c) a director or employee of an associated entity of the employer.
- (3) A certificate under subsection (1) is to be known as a **10% decline in turnover certificate** that covers the employer specified in the certificate for the designated quarter applicable to the time specified in the certificate.
- (4) If:
- (a) an employer is a small business employer; and
  - (b) an individual who:
    - (i) is, or is authorised by, the employer; and
    - (ii) has knowledge of the financial affairs of the employer; makes a statutory declaration to the effect that the employer satisfied the 10% decline in turnover test for the designated quarter applicable to a specified time;
- the statutory declaration is taken to be a **10% decline in turnover certificate** that covers the employer for the designated quarter applicable to the time specified in the statutory declaration.

Note: For *small business employer*, see section 23.

#### **14 Subsection 789GDB(2)**

After “789GDC”, insert “or 789GJA”.

#### **15 Subsection 789GDB(3)**

After “789GE”, insert “or 789GJB”.

#### **16 Division 3 of Part 6-4C (at the end of the heading)**

Add “—**employer currently entitled to jobkeeper payment for employee**”.

**17 Section 789GDC (at the end of the heading)**

Add “—employer currently entitled to jobkeeper payment for employee”.

**18 Division 4 of Part 6-4C (at the end of the heading)**

Add “—employer currently entitled to jobkeeper payment for employee”.

**19 Section 789GE (at the end of the heading)**

Add “—employer currently entitled to jobkeeper payment for employee”.

**20 Section 789GF (at the end of the heading)**

Add “—employer currently entitled to jobkeeper payment for employee”.

**21 Section 789GG (at the end of the heading)**

Add “—employer currently entitled to jobkeeper payment for employee”.

**22 Before Division 6 of Part 6-4C**

Insert:

**Division 5A—Flexibility provisions relating to employers previously entitled to jobkeeper payment**

**789GJA Jobkeeper enabling stand down—employer previously entitled to jobkeeper payment for employee**

(1) If:

- (a) after the commencement of this section, an employer of an employee gave the employee a direction (the *jobkeeper enabling stand down direction*) to:
  - (i) not work on a day or days on which the employee would usually work; or
  - (ii) work for a lesser period than the period which the employee would ordinarily work on a particular day or days; or



- (iii) work a reduced number of hours (compared with the employee's ordinary hours of work);  
during a period (the *jobkeeper enabling stand down period*);  
and
  - (b) the jobkeeper enabling stand down direction does not require the employee to work a reduced number of hours (compared with the employee's ordinary hours of work) that is less than:
    - (i) if the employee does not belong to a class of employees specified in regulations made for the purposes of subparagraph (ii)—60% of the employee's ordinary hours of work as at the start of 1 March 2020; or
    - (ii) if the employee belongs to a class of employees specified in the regulations—60% of the number of ordinary hours of work ascertained in accordance with the regulations for that class; and
  - (c) the jobkeeper enabling stand down direction does not require the employee to work less than 2 hours in a day; and
  - (d) the employee cannot be usefully employed for the employee's normal days or hours during the jobkeeper enabling stand down period because of changes to business attributable to:
    - (i) the COVID-19 pandemic; or
    - (ii) government initiatives to slow the transmission of COVID-19; and
  - (e) the implementation of the jobkeeper enabling stand down direction is safe, having regard to (without limitation) the nature and spread of COVID-19; and
  - (f) the employer is not entitled to one or more jobkeeper payments for the employee:
    - (i) for a period that consists of or includes the jobkeeper enabling stand down period; or
    - (ii) for periods that, when considered together, consist of or include the jobkeeper enabling stand down period; and
  - (g) the jobkeeper enabling stand down period begins on or after 28 September 2020; and
  - (h) the employer was entitled to a jobkeeper payment for the employee for a fortnight that ended before 28 September 2020; and
-

- (i) at the time when the direction was given, the employer held a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to that time;  
the jobkeeper enabling stand down direction is authorised by this section.
- (2) If the jobkeeper enabling stand down direction applies to the employee, then, during the jobkeeper enabling stand down period, the employer is still required to comply with:
- (a) section 323 (method and frequency of payment of wages); and
  - (b) the hourly rate of pay guarantee (see section 789GDB);
- but is not otherwise required to make payments to the employee in respect of the jobkeeper enabling stand down period.
- (3) The jobkeeper enabling stand down direction does not apply to the employee during a period when the employee:
- (a) is taking paid or unpaid leave that is authorised by the employer; or
  - (b) is otherwise authorised to be absent from the employee's employment.
- Note: An employee may take paid or unpaid leave (for example, annual leave) during all or part of a period during which the jobkeeper enabling stand down direction would otherwise apply to the employee.
- (4) This section has effect despite a designated employment provision.

**789GJB Duties of work—employer previously entitled to jobkeeper payment for employee**

- (1) If:
- (a) after the commencement of this section, an employer of an employee directed the employee to perform any duties during a period (the *relevant period*) that are within the employee's skill and competency; and
  - (b) those duties are safe, having regard to (without limitation) the nature and spread of COVID-19; and
  - (c) in a case where the employee was required to have a licence or qualification in order to perform those duties—the employee had the licence or qualification; and
-

- (d) those duties are reasonably within the scope of the employer's business operations; and
  - (e) the employer is not entitled to one or more jobkeeper payments for the employee:
    - (i) for a period that consists of or includes the relevant period; or
    - (ii) for periods that, when considered together, consist of or include the relevant period; and
  - (f) the relevant period begins on or after 28 September 2020; and
  - (g) the employer was entitled to a jobkeeper payment for the employee for a fortnight that ended before 28 September 2020; and
  - (h) at the time when the direction was given, the employer held a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to that time;
- the direction is authorised by this section.

- (2) This section has effect despite a designated employment provision.

**789GJC Location of work—employer previously entitled to jobkeeper payment for employee**

- (1) If:
- (a) after the commencement of this section, an employer of an employee directed the employee to perform duties during a period (the *relevant period*) at a place that is different from the employee's normal place of work, including the employee's home; and
  - (b) the place is suitable for the employee's duties; and
  - (c) if the place is not the employee's home—the place does not require the employee to travel a distance that is unreasonable in all the circumstances, including the circumstances surrounding the COVID-19 pandemic; and
  - (d) the performance of the employee's duties at the place is:
    - (i) safe, having regard to (without limitation) the nature and spread of COVID-19; and
    - (ii) reasonably within the scope of the employer's business operations; and

- (e) the employer is not entitled to one or more jobkeeper payments for the employee:
    - (i) for a period that consists of or includes the relevant period; or
    - (ii) for periods that, when considered together, consist of or include the relevant period; and
  - (f) the relevant period begins on or after 28 September 2020; and
  - (g) the employer was entitled to a jobkeeper payment for the employee for a fortnight that ended before 28 September 2020; and
  - (h) at the time when the direction was given, the employer held a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to that time;
- the direction is authorised by this section.

- (2) This section has effect despite a designated employment provision.

**789GJD Days of work etc.—employer previously entitled to jobkeeper payment for employee**

- (1) If:
    - (a) an employer of an employee was entitled to a jobkeeper payment for the employee for a fortnight that ended before 28 September 2020; and
    - (b) the employer gives the employee a request to make an agreement with the employer under subsection (2); and
    - (c) if the request is made on or after 28 September 2020—the employer is not entitled to one or more jobkeeper payments for the employee; and
    - (d) if the request is made before 28 September 2020—the employer will not be entitled to a jobkeeper payment for the employee for the fortnight beginning on 28 September 2020; and
    - (e) at the time when the request was given, the employer held a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to that time;
- the employee:
- (f) must consider the request; and

- (g) must not unreasonably refuse the request.
- (2) If:
- (a) after the commencement of this section, an employer and an employee of the employer agree in writing to the employee performing duties during a period (the *relevant period*):
    - (i) on different days; or
    - (ii) at different times;compared with the employee's ordinary days or times of work; and
  - (b) the performance of the employee's duties on those days or at those times is:
    - (i) safe, having regard to (without limitation) the nature and spread of COVID-19; and
    - (ii) reasonably within the scope of the employer's business operations; and
  - (c) the agreement does not have the effect of reducing the employee's number of hours of work (compared with the employee's ordinary hours of work); and
  - (d) the agreement does not have the effect of requiring the employee to work less than 2 hours in a day; and
  - (e) the employer is not entitled to one or more jobkeeper payments for the employee:
    - (i) for a period that consists of or includes the relevant period; or
    - (ii) for periods that, when considered together, consist of or include the relevant period; and
  - (f) the relevant period begins on or after 28 September 2020; and
  - (g) the employer was entitled to a jobkeeper payment for the employee for a fortnight that ended before 28 September 2020; and
  - (h) at the time when the agreement was made, the employer held a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to that time;
- the agreement is authorised by this section.
- (3) This section has effect despite a designated employment provision.
-

**789GJE Termination of direction if employer ceases to satisfy the 10% decline in turnover test**

*Test time*

- (1) For the purposes of this section, **test time** means:
- (a) the start of 28 October 2020; or
  - (b) the start of 28 February 2021.

*Termination of direction*

- (2) If:
- (a) an employer of an employee gave the employee a jobkeeper enabling direction under section 789GJA, 789GJB or 789GJC; and
  - (b) the direction applies to the employee at a test time; and
  - (c) at the test time, the employer did not hold a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to that time;
- the direction ceases to have effect immediately after the test time.

Note 1: Under section 789GCC, the designated quarter applicable to the start of 28 October 2020 is the quarter ending on 30 September 2020.

Note 2: Under section 789GCC, the designated quarter applicable to the start of 28 February 2021 is the quarter ending on 31 December 2020.

*Notification of termination of direction*

- (3) If:
- (a) an employer of an employee gave the employee a jobkeeper enabling direction under section 789GJA, 789GJB or 789GJC; and
  - (b) the direction will cease to have effect immediately after a test time;
- then, before the test time, the employer must give the employee a written notice that explains:
- (c) that the direction will cease to have effect; and
  - (d) when the direction will cease to have effect.

Note: This subsection is a civil remedy provision (see Part 4-1) unless subsection (4) applies.

- (4) Section 539 (civil remedy) does not apply to a contravention by an employer of subsection (3) of this section unless the employer has previously contravened that subsection on one or more occasions.

*Notification of continuation of direction*

- (5) If:
- (a) an employer of an employee gave the employee a jobkeeper enabling direction under section 789GJA, 789GJB or 789GJC; and
  - (b) the direction will not cease to have effect immediately after a test time;

then, before the test time, the employer must give the employee a written notice that explains that the direction will not cease to have effect immediately after the test time.

Note 1: This subsection is a civil remedy provision (see Part 4-1) unless subsection (6) applies.

Note 2: Section 789GP deals with the circumstances in which a jobkeeper enabling direction ceases to have effect (for example, if the direction is withdrawn, revoked or replaced by the employer or if the direction is terminated under this section).

- (6) Section 539 (civil remedy) does not apply to a contravention by an employer of subsection (5) of this section unless the employer has previously contravened that subsection on one or more occasions.

**789GJF Termination of agreement if employer ceases to satisfy the 10% decline in turnover test**

*Test time*

- (1) For the purposes of this section, **test time** means:
- (a) the start of 28 October 2020; or
  - (b) the start of 28 February 2021.

*Termination of agreement*

- (2) If:
- (a) an employer of an employee and the employee have made an agreement under subsection 789GJD(2); and
  - (b) the agreement is in force at a test time; and

- (c) at the test time, the employer did not hold a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to that time;

the agreement ceases to have effect immediately after the test time.

Note 1: Under section 789GCC, the designated quarter applicable to the start of 28 October 2020 is the quarter ending on 30 September 2020.

Note 2: Under section 789GCC, the designated quarter applicable to the start of 28 February 2021 is the quarter ending on 31 December 2020.

- (3) Subsection (2) does not, by implication, prevent an agreement from being terminated otherwise than under that subsection.

*Notification of termination of agreement*

- (4) If:

- (a) an employer of an employee and the employee have made an agreement under subsection 789GJD(2); and

- (b) the agreement will cease to have effect immediately after a test time;

then, before the test time, the employer must give the employee a written notice that explains:

- (c) that the agreement will cease to have effect; and

- (d) when the agreement will cease to have effect.

Note: This subsection is a civil remedy provision (see Part 4-1) unless subsection (5) applies.

- (5) Section 539 (civil remedy) does not apply to a contravention by an employer of subsection (4) of this section unless the employer has previously contravened that subsection on one or more occasions.

*Notification of continuation of agreement*

- (6) If:

- (a) an employer of an employee and the employee have made an agreement under subsection 789GJD(2); and

- (b) the agreement will not cease to have effect immediately after a test time;

then, before the test time, the employer must give the employee a written notice that explains that the agreement will not cease to have effect immediately after the test time.

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Note: This subsection is a civil remedy provision (see Part 4-1) unless subsection (7) applies.

(7) Section 539 (civil remedy) does not apply to a contravention by an employer of subsection (6) of this section unless the employer has previously contravened that subsection on one or more occasions.

### **23 Section 789GK (note)**

Omit “Note”, substitute “Note 1”.

### **24 At the end of section 789GK**

Add:

Note 2: If directions relating to reduction of hours are given by an employer to the employees in a particular category, the directions may be unreasonable if the directions have an unfair effect on some employees in that category when compared with other employees in that category who are also subject to those directions.

### **25 Subsection 789GL(1)**

After “789GE”, insert “or 789GJB”.

### **26 Subsection 789GL(1)**

After “789GF”, insert “or 789GJC”.

### **26A Section 789GM (at the end of the heading)**

Add “—employer currently entitled to jobkeeper payment for employee”.

### **27 Subsection 789GM(1)**

After “of the employer”, insert “under section 789GDC, 789GE or 789GF”.

### **28 At the end of subsection 789GM(1)**

Add:

Note: An employee organisation may be a representative of the employee.

### **29 After section 789GM**

Insert:

**789GMA Consultation—employer previously entitled to jobkeeper payment for employee**

- (1) A jobkeeper enabling direction given by an employer to an employee of the employer under section 789GJA, 789GJB or 789GJC does not apply to the employee unless:
  - (a) the employer gave the employee written notice of the employer's intention to give the direction; and
  - (b) the employer did so:
    - (i) at least 7 days before the direction was given; or
    - (ii) if the employee genuinely agreed to a lesser notice period—during that lesser notice period; and
  - (c) during the 7-day period ending when the direction is given, the employer complied with subsections (4) to (8) in relation to the direction.
- (2) The regulations may require that a notice under paragraph (1)(a) must be in a prescribed form.

*Consultation*

- (3) During the 7-day period ending when a jobkeeper enabling direction is given by an employer to an employee of the employer under section 789GJA, 789GJB or 789GJC, the employee may appoint a representative for the purposes of consultation in relation to the direction.

Note: An employee organisation may be a representative of the employee.

- (4) If, during the 7-day period ending when a jobkeeper enabling direction is given by an employer to an employee of the employer under section 789GJA, 789GJB or 789GJC:
  - (a) the employee appoints a representative for the purposes of consultation in relation to the direction; and
  - (b) the employee advises the employer of the identity of the representative;the employer must recognise the representative.
- (5) During the 7-day period ending when a jobkeeper enabling direction is given by an employer to an employee of the employer under section 789GJA, 789GJB or 789GJC, the employer must

consult with the employee or the employee's representative (if any).

- (6) For the purposes of the consultation, the employer must:
- (a) provide to the employee or the employee's representative (if any) information about the proposed direction, which may, for example, include any of the following:
    - (i) information about the nature of the direction;
    - (ii) information about when the direction is to take effect;
    - (iii) information about the expected effects of the direction on the employee; and
  - (b) invite the employee or the employee's representative (if any) to give their views about the impact of the proposed direction on the employee (for example, any impact in relation to the employee's family or caring responsibilities).
- (7) However, the employer is not required to disclose confidential or commercially sensitive information to the employee.
- (8) The employer must:
- (a) give prompt and genuine consideration to any views given under paragraph (6)(b); and
  - (b) do so within the 7-day period ending when the direction is given.
- (9) If:
- (a) a jobkeeper enabling direction is given by an employer to an employee of the employer under section 789GJA, 789GJB or 789GJC; and
  - (b) the employer takes action under subsection (4), (5), (6) or (8) in relation to the direction before the start of the 7-day period ending when the direction is given;
- then:
- (c) the action is as valid and effective as if it had been done during the 7-day period; and
  - (d) if the employee takes action under subsection (3) in relation to the direction before the start of the 7-day period—the action is as valid and effective as if it had been done during the 7-day period.

- (10) Subsections (1) to (8) do not apply to a jobkeeper enabling direction (the *relevant direction*) given by an employer to an employee of the employer under a particular section of this Part if:
- (a) the employer previously complied with paragraphs (1)(a), (b) and (c) and subsections (4) to (8) in relation to a proposal to give the employee another direction under that section; and
  - (b) in the course of consulting the employee (or a representative of the employee) about the proposal, the employee (or the representative of the employee) expressed views to the employer; and
  - (c) the employer considered those views in deciding to give the relevant direction.
- (11) An employer must keep a written record of a consultation:
- (a) with an employee of the employer; or
  - (b) with a representative of an employee of the employer;
- that is covered by paragraph (1)(c).

**29A At the end of subsection 789GP(1)**

Add:

Note: A jobkeeper enabling direction given by an employer to an employee of the employer under section 789GDC, 789GE or 789GF is contingent on the employer being entitled to jobkeeper payment for the employee. This means that if that entitlement ceases, the jobkeeper enabling direction will cease to have effect.

**30 After paragraph 789GP(2)(a)**

Insert:

(aa) subsection 789GJE(2); and

**30A At the end of subsection 789GP(2)**

Add:

; and (c) an order made by the Federal Court under section 789GXD.

**31 Subsection 789GP(3)**

Omit “28 September 2020”, substitute “29 March 2021”.

**32 At the end of section 789GQ**

Add:

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Note: Under section 562, jurisdiction is conferred on the Federal Court in relation to any matter arising under this Act (including compliance with this section).

**33 Subsections 789GS(1) and (2)**

After “789GDC”, insert “or 789GJA”.

**34 Paragraph 789GU(a)**

After “789GDC”, insert “or 789GJA”.

**35 Subsections 789GV(5) and (6)**

Omit “28 September 2020”, substitute “29 March 2021”.

**36 After paragraph 789GX(d)**

Insert:

- (da) section 789GJA;
- (db) section 789GJB;
- (dc) section 789GJC;
- (dd) section 789GJD;

**37 After section 789GXA**

Insert:

**789GXB 10% decline in turnover test—prohibited conduct**

- (1) An employer must not purport to give a jobkeeper enabling direction under section 789GJA, 789GJB or 789GJC if, at the time when the direction was given:
  - (a) the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time; and
  - (b) the employer knew that, or was reckless as to whether, the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (2) An employer must not purport to give a request under subsection 789GJD(1) if, at the time when the request was given:
  - (a) the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time; and

- (b) the employer knew that, or was reckless as to whether, the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (3) An employer must not give information to an eligible financial service provider if:
  - (a) the information is given in connection with the issue of a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to a particular time; and
  - (b) the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading; and
  - (c) the employer knows that the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading.

Note: This subsection is a civil remedy provision (see Part 4-1).

### **789GXC False statutory declaration**

- (1) A person must not make a false statement in a statutory declaration covered by subsection 789GCD(3) if the person knows that the statement is false.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (2) The following laws:
  - (a) a law of the Commonwealth, other than:
    - (i) subsection (1) of this section; or
    - (ii) the remaining provisions of this Act so far as they relate to subsection (1) of this section;
  - (b) a law of a State or Territory;do not apply to making a false statement in a statutory declaration covered by subsection 789GCD(3).

**789GXD Federal Court may terminate a jobkeeper enabling direction if employer does not satisfy the 10% decline in turnover test**

If:

- (a) a jobkeeper enabling direction given by an employer to an employee of the employer under section 789GJA, 789GJB or 789GJC is in force at a particular time; and
- (b) the Federal Court is satisfied that the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time;

the Federal Court may, on application made by:

- (c) the employee; or
- (d) an employee organisation; or
- (e) an inspector;

make either or both of the following orders:

- (f) an order terminating the direction;
- (g) any other order that the court considers appropriate.

**789GXE Federal Court may terminate a subsection 789GJD(2) agreement if employer does not satisfy the 10% decline in turnover test**

If:

- (a) an agreement made by an employer and an employee of the employer under subsection 789GJD(2) is in force at a particular time; and
- (b) the Federal Court is satisfied that the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time;

the Federal Court may, on application made by:

- (c) the employee; or
- (d) an employee organisation; or
- (e) an inspector;

make either or both of the following orders:

- (f) an order terminating the agreement;
- (g) any other order that the court considers appropriate.

**38 Paragraph 789GY(b)**

After “subsection 789GG(2)”, insert “or 789GJD(2)”.



## **Part 3—Amendments relating to paid annual leave**

### ***Fair Work Act 2009***

#### **39 Section 789GA**

Omit:

This Part authorises an employer who qualifies for the jobkeeper scheme and an employee to make an agreement in relation to the employee taking annual leave, including at half pay.

#### **40 Division 5 of Part 6-4C**

Repeal the Division.

#### **41 Subsections 789GS(3) and (4)**

Before “subsection 789GJ(2)”, insert “repealed”.

#### **42 Paragraph 789GX(dd)**

Omit “;”, substitute “.”.

#### **43 Paragraph 789GX(e)**

Repeal the paragraph.

#### **44 Paragraph 789GY(c)**

Before “subsection 789GJ(1)”, insert “repealed”.

#### **45 Paragraph 789GY(d)**

Before “subsection 789GJ(2)”, insert “repealed”.

#### **46 Transitional—paid annual leave**

- (1) To avoid doubt, if an employee was given a request under repealed subsection 789GJ(1) of the *Fair Work Act 2009*, the employee is not required to comply with the request to the extent that the request relates to taking paid annual leave after the time of the repeal of Division 5 of Part 6-4C of that Act by this Part.

**Schedule 2** Jobkeeper-related provisions of the Fair Work Act 2009

**Part 3** Amendments relating to paid annual leave

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- (2) To avoid doubt, the repeal of Division 5 of Part 6-4C of the *Fair Work Act 2009* by this Part has the effect that an agreement under subsection 789GJ(2) of that Act ceases to have effect from the time of the repeal.
- (3) To avoid doubt, if an employee was a party to an agreement under repealed subsection 789GJ(2) of the *Fair Work Act 2009*, the making of the agreement does not, after the time of the repeal mentioned in subitem (2), affect any of the following matters:
- (a) the period for which the employee is to work on a particular day or days;
  - (b) the employee's hours of work;
  - (c) the employee's duties;
  - (d) the times when the employee is to work.

## **Part 4—Miscellaneous amendments**

### ***Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020***

#### **47 Item 9 of Schedule 1**

Omit “5,”, substitute “5A,”.

#### **48 Item 10 of Schedule 1**

Before “To avoid doubt”, insert “(1)”.

#### **49 Item 10 of Schedule 1**

Omit “5,”, substitute “5A,”.

#### **50 Item 10 of Schedule 1**

Omit “789GJ(2)”, substitute “789GJD(2)”.

#### **51 At the end of item 10 of Schedule 1**

Add:

- (2) To avoid doubt, if an employee:
- (a) was subject to a jobkeeper enabling direction under Part 6-4C of the *Fair Work Act 2009*; or
  - (b) was a party to an agreement under repealed subsection 789GG(2) or 789GJD(2) of the *Fair Work Act 2009*;
- the giving of the direction, or the making of the agreement (as the case requires) does not, after the time of the repeal mentioned in subitem (1), affect any of the following matters:
- (c) the day or days on which the employee is to work;
  - (d) the period for which the employee is to work on a particular day or days;
  - (e) the employee’s hours of work;
  - (f) the employee’s duties;
  - (g) the place at which the employee is to work;
  - (h) the times when the employee is to work.

***Fair Work Act 2009***

**52 Subsections 789GS(1) and (2)**

Before “section 789GDC”, insert “repealed”.

**53 Paragraph 789GY(a)**

Before “section 789GD”, insert “repealed”.

**54 Paragraph 789GY(b)**

Before “subsection 789GG(2)”, insert “repealed”.

**55 Paragraph 789GY(e)**

Before “section 789GU”, insert “repealed”.

**Part 5—Amendments consequential on the  
commencement of the Coronavirus  
Economic Response Package (Payments  
and Benefits) Amendment Rules (No. 8) 2020**

*Fair Work Act 2009*

**56 Section 789GC (definition of *qualifies for the jobkeeper scheme*)**

Repeal the definition, substitute:

*qualifies for the jobkeeper scheme* has the meaning given by  
section 789GCA.

**57 At the end of Division 1 of Part 6-4C**

Add:

**789GCA When employer qualifies for the jobkeeper scheme**

For the purposes of this Part, an employer qualifies for the  
jobkeeper scheme at a time if, under the jobkeeper payment rules,  
the employer qualifies for the jobkeeper scheme for the fortnight in  
which the time occurs.

**58 Application**

The amendments made by this Part apply in relation to a fortnight  
(within the meaning of Part 6-4C of the *Fair Work Act 2009*) beginning  
at or after the commencement of this item.

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*[Minister's second reading speech made in—  
House of Representatives on 26 August 2020  
Senate on 27 August 2020]*

(106/20)

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34      *Coronavirus Economic Response Package (Jobkeeper Payments)  
Amendment Act 2020*      *No. 81, 2020*