

# AU Sharing Knowledge Series JobKeeper Arrangements for employers & employees

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*Thursday 23 April*

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# Protecting *your* brand

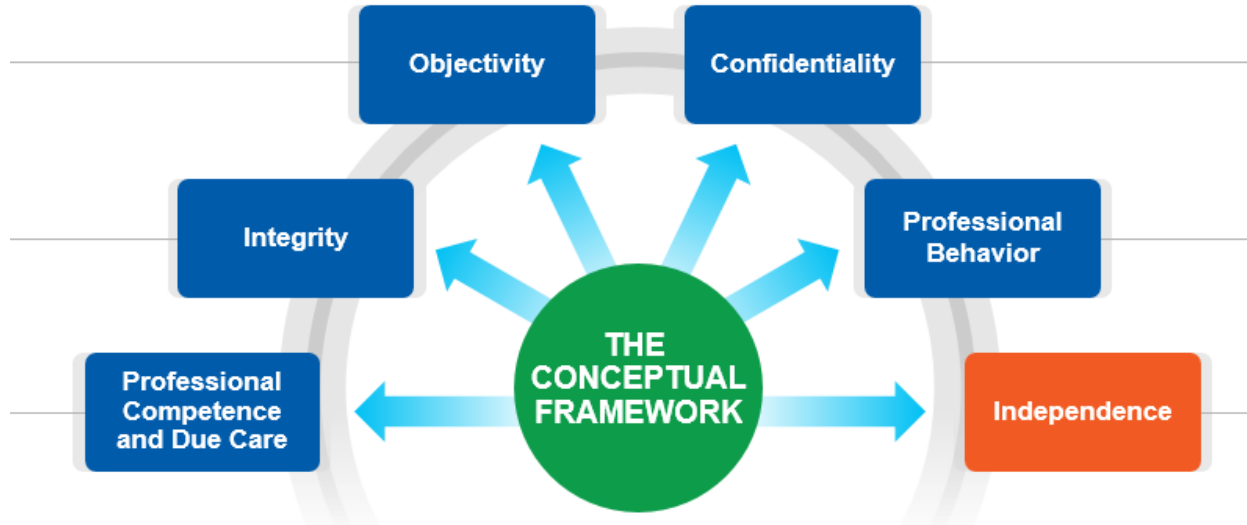
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*Ethics & Professional Standards*  
*Autumn 2020*



*Kristen Wydell FCA*  
*General Manager Professional Standards*  
*CA ANZ*

# Fundamental-Guiding Principles



# Help and Information

- [CA ANZ professional standards line](#)
- [Chartered Accountants Advisory Group](#)
- A trusted colleague or friend
- [CA ANZ Website](#)
- [The St James Ethics Centre,](#)
- Legal adviser
- [CA ANZ EAP](#)

# Professional Standards

- Business as usual – but a bit different!
- Conduct and Complaints
  - Moving to fully online in May
  - Standard you are assessed against is unchanged
- Quality Review
  - Piloting a fully remote model
- Continuing Professional Development
- Scheme Monitoring

# Professional Standards

- **Professional Indemnity Insurance**
  - Read your policy
  - Are all services included?
  - Staff supervision
  - Data security
  - Is it an engagement?
- **Stick to your knitting**
- **Know your client**
- **Watch for scams**

# About us

Kingston Reid is Australia's largest specialist workplace firm with a national focus, international reach and a global outlook.

Our extensive national team of lawyers, across all levels, led by nine deeply experienced senior partners, expertly guide and support employers through the full lifecycle of workplace relations, employment, and workplace health and safety matters.

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## Summary

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1. Who is eligible – in brief
  2. JobKeeper directions under the Fair Work Act
  3. Your questions

**Disclaimer:** Kingston Reid is unable to provide taxation advice. Please seek independent advice regarding any matters arising under the JobKeeper legislation and rules that relates to the calculation of your business' GST turnover and any other taxation matter.



Who is eligible for  
JobKeeper?

# Eligible employees



## **Employed at 1 March 2020**



## **Currently employed**

Can include re-hire of employees made redundant post-1 March and employees on stand down



## **At least 16 years old on 1 March 2020**



## **Eligible residency status**

Australian citizen  
Australian Permanent Resident  
Special category (subclass 444) visa holder (Kiwi)



## **From one employer only**

Eligible employees with multiple eligible employers can only receive JobKeeper from one



## **Employment type**

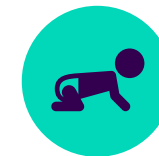
Full time & part time

Casual employee with more than 12 months' service at 1 March 2020

Casual employees cannot be employed on full time or part time basis with another employer



## **Not receiving workers' compensation weekly benefits**



## **Not receiving Government paid parental leave**

Employees on unpaid parental leave or employer paid parental leave are eligible

# Decline in turnover test



## Turnover test period

A calendar month from  
March 2020 to October 2020  
or

A quarter starting on 1 April  
2020 or 1 July 2020

Note: to be eligible, employers  
only need to be able to  
demonstrate that they have  
met the turnover test for one  
month



## Relevant comparison period

The period in 2019 that  
corresponds to the turnover  
test period

Where no relevant comparison  
period in 2019 (ie for new  
business), ATO Commissioner  
can determine alternative test



## Specified percentage

For businesses with  
aggregated turnover in  
previous year exceeding \$1  
billion—50%

For businesses with  
aggregated turnover in  
previous year not exceeding \$1  
billion—30%

For ACNC registered charities—  
15%

# How can JobKeeper Payments be Used?

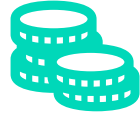


## Retention incentive

For employees who are **stood down** without pay, the payment is essentially a **reciprocal retention incentive**

Businesses receive the payment based on the number of employees who are employed on 1 March 2020 and continue to be employed – so employers are incentivised to keep people employed.

Individuals can only receive the payment through their employer – so employees are incentivised to remain with their employer.



## Subsidy for wages owed

For employees whose wages are equal to or **more than \$1500 per fortnight**, the payment **subsidises wages owed**

For these employees, the Government is essentially paying for the **first \$1500** of that employee's fortnightly pay.

The payment will assist the employer subsidising all or part of an employee's income.



## Replacement for wages

For employees whose wages are **less than \$1500 per fortnight**, the payment is essentially a **replacement for wages**

These employees will effectively get a pay rise since employers will need to ensure all eligible employees receive **at least \$1500** per fortnight.

However, the cost of the pay rise and the employee's wages will be met by the Government.

Employers can choose to pay superannuation on any additional amounts paid to employees above their normal fortnightly pay.



JobKeeper enabling  
directions

# Temporary amendments to the Fair Work Act

- Designed to assist employees to keep their jobs and maintain their connection with their employer
- Employer must at all times satisfy minimum payment guarantee
- Directions may only be exercised while employer qualifies for JobKeeper scheme
- Automatically repeal on **28 September 2020**



**JobKeeper  
enabling stand  
down**



**Alteration to  
duties and  
location of work**



**Direction to change  
days of work or take  
annual leave**

# What's going down?

Let's get some things straight at the outset



## Shut down

A shut down is a period during which all or part of a business closes and employees are required to take an amount of annual leave

Regulated under modern awards, enterprise agreements and the National Employment Standards

Also referred to as a **close down**



## Stand down

A stand down is a period during which an employee is stood down without pay during a period that an employee cannot be usefully employed because of a stoppage of work for which the employer cannot reasonably be held responsible

Regulated under s524 of the Fair Work Act 2009, and some enterprise agreements and contracts



## Lock down

Not an industrial term (and a term that our Prime Minister doesn't like much!)

A term used colloquially in relation to mandated business closures as part of the staged responses to contain the spread of COVID-19

# JobKeeper enabling stand down

Allow employers to alter an employees' hours of work by directing an employee to:

- Not work on a day that the employee would usually work
- Work for a lesser period than they would ordinarily work on a particular day
- Work a reduced number of hours (including no hours)

1

Direction must be safe

2

Must be because of changes attributable to COVID-19 pandemic or government initiatives to slow the spread of COVID-19

3

Direction must be in writing with at least 3 days' notice (or lesser period by agreement)

4

Must consult with employee (and their representative) and keep a record of the consultation

5

Direction ceases to have effect no later than 28 September 2020

# JobKeeper enabling stand down



Employee must be paid the greater of the JobKeeper payment and any wages earned during period of stand down / reduced hours

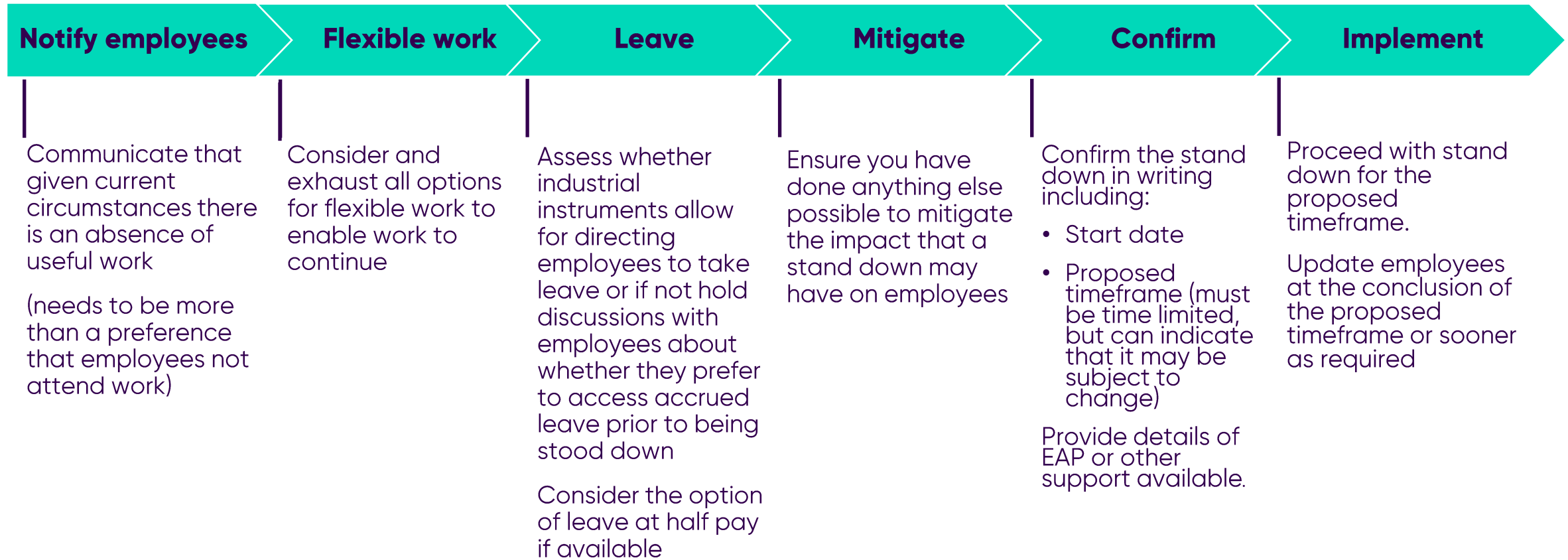


Stand down direction not operative during any period employee is taking paid or unpaid leave



Keep a record of the consultation undertaken with employees and (if relevant, their representatives)

# Stand down for non-JobKeeper employers



# Alteration to Duties

Employee may be directed to perform alternative duties if alternative duties are



Safe



Within the employee's skill and competency



Reasonable in all the circumstances



Reasonably within the scope of the business



Employee is paid greater of current hourly rate, or the minimum payable for that work

# Alteration to Location

Employee may be directed to perform duties at a different location if



The location is safe



The place does not require unreasonable travel



The place is suitable for their duties

**Tip:** alternation to location considerations are relevant to any direction to work from home

# Alteration of duties and location for non-JobKeeper employer



Clerks, Hospitality and Restaurant Awards have temporary schedules providing for capacity to perform duties at a different level



Check common law contract for location and duties clauses



Consult with employees and codify any agreement reached about temporary change in duties or location in writing



Change in location in enterprise agreements and modern awards invariably subject to reasonableness

# Agreement to change days or work times

JobKeeper employer and employee may agree to the employee performing work on different days or at different times during a period



Performance of duties at different times and days must be safe



Agreement must not reduce number of ordinary hours of work



Employee must consider and not unreasonably refuse agreement

**Important!** Agreement to change work days or work times does not displace obligation to pay relevant penalty rates arising under an applicable instrument

# Agreement to Take Annual Leave

## Employer qualified for JobKeeper

An employee must consider and must not unreasonably refuse employer's request to take annual leave, provided arrangement will not result in leave balance of less than 2 weeks

Employee and employer can agree for employee to take twice the period of paid annual leave at half pay

Employer and employee may otherwise agree for employee to take annual leave at any time

## Not qualified for JobKeeper

Employer may direct employee to take annual leave in accordance with provision of modern award or enterprise agreement, where direction is reasonable. Generally limited to shut down or excessive leave

NES does not permit twice the period of annual leave at half pay. Modern award or enterprise agreement may provide entitlement

Employer and employee may otherwise agree for employee to take annual leave at any time

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