
CIRCULAR NO.	GEN/04/CCV/2021
DATE:	15 February 2021
SUBJECT:	Victorian Restrictions – clarification on current stand down laws
ATTENTION:	Club Managers

Further to our update on 12 February 2021, we confirm that Victoria is currently in Stage 4 restrictions and that the Government has indicated that these restrictions will end on **11.59pm on Wednesday 17 February 2021**.

Stage 4 restrictions will obviously have had a significant impact on your Club's ability to operate and therefore its workforce requirements during the Stage 4 period.

The purpose of this Circular is to provide clarity around the current stand down laws.

1) Clubs that are participating in the JobKeeper scheme or are 'Legacy employers' in relation to the particular employee

For Clubs that are currently participating in the JobKeeper scheme or are 'legacy employers' (further info see here - <https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/pay-and-leave-during-coronavirus/jobkeeper-wage-subsidy-scheme/legacy-employers>), you are able to issue a '**JobKeeper enabling stand down direction**'. Such direction will be lawful where the employee cannot be usefully employed because of changes to the business attributable to the COVID-19 pandemic or government initiatives to slow the transmission of COVID-19.

As per our Circulars pertaining to the JobKeeper provisions during 2020, there are other types of 'JobKeeper enabling directions' that may be of assistance to Clubs – such as direction to:

- perform different duties;
- work at a different location; and
- work different days / hours etc.

Importantly, a JobKeeper enabling stand down direction will only apply where the Club becomes entitled to JobKeeper payments for the employee during the period of the stand down. Therefore, the JobKeeper enabling stand down direction is employee-specific, and will not cover an employee for whom the employer is not able to receive JobKeeper payments for. For these employees, please see the next section.

Importantly, under the FW Act, a JobKeeper enabling direction does not apply to an employee unless the Club provided written notice of the Club's intention to give the direction and provided at least **3 days' notice** before the direction was given. The notice period may be a shorter period where the employee 'genuinely agrees' to a lesser period of notice.

It is apparent that no Club could reasonably have complied with the obligation to consult with 3 days' notice in the situation where Clubs were provided with less than 24 hours' notice of the Stage 4 restrictions.

Attached to this Circular is a template letter regarding the decision to initiate a stand down from 17 February 2021. You should adapt / modify as appropriate to your circumstances.

2) Clubs that are not participating in the JobKeeper scheme in relation to the particular employee

For employees who are not entitled to JobKeeper payments, the JobKeeper employer 'flexibilities' do not apply.

There are however, stand down provisions in the FW Act that apply independently of JobKeeper. These are per section 524 of the FW Act and provide that an employer can lawfully stand down an employee who cannot usefully be employed because of 'a *stoppage of work for any cause for which the employer cannot reasonably be held responsible*'.

The current directives from the Government authorise 'essential providers' to open their business during the Stage 4 restrictions. 'Essential providers' include a restaurant, café, pub, bar or hotel, whether licensed or unlicensed, but '*only to the extent that it provides takeaway meals or drinks or a meal delivery service*'.

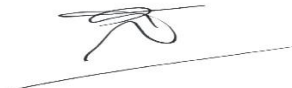
If your Club is not currently operating at all during the Stage 4 restrictions (due to it not providing a takeaway service), then it will follow that your workforce (or a significant portion of it) will fall under the scope of the section 524 stand down provision. That is, there is a stoppage of work *caused by* the Government health directives.

Finally, we note that employees who are stood down pursuant to either a JobKeeper stand down direction or under the section 524 stand down powers will continue to accrue paid leave entitlements during the period of the stand down.

The Information provided in this e-mail is generic advice. For advice in respect of your specific situation, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 742 447.



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