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Question	***Answer***
Employer eligibility - turnover	
Could you please recap on an example where a business can't demonstrate a the necessary turnover decrease until end April 2020. Can we apply for, and pay, the JobKeeper payment from the start of April 2020, or do we need to wait?	The ATO has provided guidance on the assessment of employer eligibility and enrolment in the JobKeeper scheme – we recommend that businesses review this guidance, in conjunction with specific advice their accountant / bookkeeper / financial advisor. The business may also be eligible to apply one of the alternative turnover tests under the Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020. However based on current guidance, it appears that GST turnover data from calendar months March or April 2020 can be utilised to establish eligibility from the commence of the JobKeeper period (commencing 30 March 2020) – provided that: • Where a business seeks to claim for April 2020, it must ensure adequate fortnightly payments are made to all eligible employees (who have agreed to be nominated) before 8 May 2020.
If we pay BAS quarterly, can we still rely upon monthly data to establish the necessary reduction in turnover prior to end of the quarter?	Yes, the turnover test period can be a calendar month that ends after *30 March 2020** and before 1 October 2020. ** Guidance from the ATO suggests that data from March 2020 (and comparative data for March 2019) may also be submitted for employer eligibility assessment – however we recommend that businesses confirm this guidance with advice their accountant / bookkeeper / financial advisor.*
Employee Eligibility	
I have an employee who also works for another employer that will not be registering for JobKeeper – are they eligible to be nominated by us? If an employee is a permanent part time employee at another business that is still operating, can they still apply for the JobKeeper scheme as an employee with us? If a long-term casual employee for us was working elsewhere before COVID and that business has closed down, are they an eligible employee for us?	Just because your employee has another employer this will not automatically exclude them from being nominated as an eligible employee by your business - however: • the employee can only be nominated by one employer; and • if the employee is a long-term casual with your business, but is employed on a full-time or part-time basis by the other employer (regardless of whether that employer is eligible to participate in the JobKeeper scheme) they will not be able to be nominated with you. We recommend that businesses have a process for clarifying with their eligible employees whether or not they are: • employed on a full-time or part-time basis elsewhere; and/or • claiming the JobKeeper Payments through another employer or not; and direct their employees to advise them if their position changes at any stage during the period.

Question	***Answer***
If an employee is not eligible at the start of the JobKeeper scheme, but their status changes can you add them to the scheme at a later point?	The employee's eligibility must be assessed as at 1 March 2020 - this is a fixed date and if they do not meet the eligibility criteria as at that date, they cannot later 'become' eligible. For example, if at 1 March 2020: - the employee is a casual with 3 months service, but becomes a permanent employee after 1 March 2020, they will not 'become' eligible. - if the employee is 15, and turns 16 on 2 March 2020 (or later), they will not 'become' eligible. Exception to this rule would be where an employee met all other eligibility criteria for participation in the scheme, but could not provide the business with the appropriate nomination approval at the time of enrolment due to secondary employment circumstances. If the circumstances of their secondary employment change during the JobKeeper period, rendering the employee now eligible to participate in the JobKeeper scheme through your business - then your business may include the employee in the scheme, upon receipt of the employee's nomination form from the lawful nomination date.
If casual employees were terminated after 1 March 2020 and after announcement of the Job Keeper, do they still qualify if not on our system? Separately, would this trigger any unfair dismissal claims?	In addition to meeting the eligibility criteria as at 1 March 2020, the employee must also be employed during the 'relevant JobKeeper fortnight' to qualify (and receive the payment) through the scheme. The Job Keeper fortnights are defined as: • the first fortnight beginning on 30 March 2020; • each subsequent fortnight, ending with the fortnight ending 27 September 2020. As such, employees whose employment ceased prior to 30 March 2020 will not be eligible for payment. Employees whose employment ceased between, 30 March 2020 and the date upon which the business enrols in the JobKeeper, *may* be eligible - in these cases please contact the SIAG advice line for specific advice. Once the employment ends, individuals will cease to be an eligible employee and the any JobKeeper payments, applicable to that point onwards, must cease. Any overpayments transferred to the employer for that (future) illegible period will be recoverable by the ATO. Separately, any dismissal could trigger an unfair dismissal claim – and termination arising from the effects of the COVID19 pandemic are no exception. Please contact the SIAG advice line for specific advice regarding the circumstances of any proposed termination.

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Question	***Answer***
An employee on unpaid parental leave has requested an extension to their period of parental leave, for another 12 months - Do they qualify?	Parental leave taken under the *Fair Work Act 2009* (Cth) does not render and employee ineligible to participate in the scheme. If they meet the eligibility criteria as at 1 March 2020 (regardless of whether at that point they were on parental leave) then they may participate in the scheme (subject to any nomination exclusions). However, it is important to note that any employee cannot receive the JobKeeper payments at the same time as receiving any Parental Pay under the Federal Government's parental pay scheme (whether the primary carer or the dad/partner pay).
Are full time students (Secondary or Tertiary) eligible?	The Government has recently updated its guidance (and amendments to the JobKeeper Rules are proposed) to clarify that full-time students under the age of 18 who they are not financial independent, will not be eligible to participate in the scheme after 26 April 2020.
A staff member was employed for a period of 16 months, but resigned on 16 February 2020; They were then re-employed on 9 March 2020 - Is this staff member an eligible employee?	Unfortunately, if as at 1 March 2020 there was no employment relationship in place, this would render the employee ineligible to participate in the JobKeeper scheme with your business.
If a role is to be made redundant but - on return to the business opening, casual positions would be available, and the affected employee would be capable of fulfilling that role - Can they stay on the employee list and receive JobKeeper in the meanwhile?	Eligibility to participate in the scheme relies on a qualifying employment relationship being in place as at 1 March 2020 AND the continuation of the employment relationship during the JobKeeper period. If the position has not yet been made redundant and there has been no termination of employment, then assuming all other eligibility and nomination criteria is satisfied, the affected employee will be eligible to participate in the scheme and receive payment. At the point in time that a position is made redundant, and the employee is unable to be redeployed and – thus – their employment ceases, then their participation in the scheme must also end.
If you have a casual staff member who has been employed for 12 months that is not regularly or often rostered, but occasionally 'picks up' shifts as a backfill - Would the staff member be eligible for this scheme?	The question is whether the person is a regular and system casual. Guidance as to when a casual relationship is 'regular and systemic' can be taken from the Fair Work interpretation – including as set out in the Fair Work Commission's unfair dismissal benchbook: *It is the employment that must be on a regular and systematic basis, not the hours worked. However, a clear pattern or roster of hours is strong evidence of regular and systematic employment.* *The term 'regular' implies a repetitive pattern and does not mean frequent, often, uniform or constant.* *The term 'systematic' requires that the engagement be 'something that could fairly be called a system, method or plan'.*

Question	*Answer*
	Where there is no clear pattern or roster, evidence of regular and systematic employment can be established where: • *the employer offered suitable work when it was available at times that the employee had generally made themselves available, and* • *work was offered and accepted regularly enough that it could no longer be regarded as occasional or irregular.* *https://www.fwc.gov.au/unfair-dismissals-benchbook/what-dismissal/periods-service-casual-employee#field-content-4-heading* Based on the limited information provided we hold reservations about whether the casual employment described could be characterised as regular and systematic – rather it appears to be an irregular casual employment relationship.
I have a staff member that signed a full-time contract after 1 March 2020 but worked for us casually prior 1 March 2020 (not for 12 months), but prior to working with us was in the same industry of which he has worked for years. Are they eligible for JobKeeper?	The employee's eligibility must be assessed as at 1 March 2020 - this is a fixed date. Service in the industry, but with another employer, will not generally count unless there has been a "transfer of employment" and – pursuant to this - the employee's prior service counts as if it were service with your business. Please contact the SIAG advice line for further information about 'transfer of employment'. Here, where the person was a casual employee on 1 March 2020 but unable to demonstrate regular and systematic employment with your business during the 12 months ending 1 March 2020, they will not be eligible.
If a staff member was on sick leave prior to the COVID19 pandemic and still absent from work during to illness/injury, are they eligible for JobKeeper?	Eligibility of an employee to participate in the scheme relies on a qualifying employment relationship being in place as at 1 March 2020 AND the continuation of the employment relationship during the JobKeeper period. An illness or injury will only impact an employee's eligibility to receive JobKeeper payments if: • their employment ends due to their incapacity – however termination due to incapacity may give rise to discrimination or adverse action claims if not conducted appropriately. Please contact the SIAG advice line for further information and specific assistance in this regard. OR • during the relevant JobKeeper fortnight they are totally incapacitated and receive workers compensation payment for their total incapacitation during the period – in which case they will not be entitled to also receive the JobKeeper payment.

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Question	***Answer***
Can a casual make themselves unavailable for the next six months and still receive the JobKeeper payments?	If a casual was unavailable to perform work for an extended period, an employer could reasonably terminate that employment relationship. However, a termination process should be carefully managed to protect against post-employment claims that the employee could bring, for example an unfair dismissal or adverse action claim. Please contact the SIAG advice line for further information and specific assistance in this regard.
Earlier this month, we paid some casuals an ex-gratia payment in good faith to help them out. Can we include them in the JobKeeper scheme and seek reimbursement for those payments?	Eligibility to receive reimbursement of monies paid to staff during April 2020 through the JobKeeper scheme relies upon: • *both the employer and affected employees being eligible to participate in the scheme* in the relevant fortnight; and • you, as an eligible and participating employer, having ensured payment to the employee of a minimum of $1,500 (gross) for the fortnight. If the above conditions are met, then reimbursement of the funds paid can be sought through the JobKeeper scheme. If funds are yet to be paid but both parties are eligible (and the employee nominates)– then you will need to ensure that they are transferred to the employee by end April 2020, to be entitled to receive the ATO reimbursement – for that month - by 14 May 2020.
Is a long-term subcontractor entitled to JobKeeper?	No. Genuine independent contractors will not be 'eligible employees.' However, certain contractors may qualify to receive JobKeeper Payments by nominating themselves, through their own business, as an eligible business participant – however we do not provide advice on this matter.
We don't wish to reengage certain casual employees when we reopen - Can we elect not pay them JobKeeper?	If employees met the employee eligibility criteria as at 1 March 2020 then you must offer them the ability to nominate and participate in the scheme through you. Provided that they are not otherwise excluded (eg. via permanent employment elsewhere or receiving the payment through their other casual employment) then they can nominate, and you must include them in your enrolment. It is a separate matter for the business to determine the timing, and rationale, for terminating any employment relationship and ensure that a proper process is carried out prior to effecting the termination. ANY termination process should be carefully managed to protect against post-employment claims that the employee could bring, for example an unfair dismissal or adverse action claim. Please contact the SIAG advice line for further information and specific assistance in this regard.

Question	***Answer***
Can you please explain the "one in, all in rule"	This means that if an employer opts to participate in the JobKeeper scheme, they must invite all of their eligible employees to nominate for inclusion in the scheme. Put another way, you cannot elect who to invite to nominate, or exclude a portion of your eligible employees, if you – as a business - elect to participate and the employee otherwise meets the eligibility criteria. However a business, even if it meets the business eligibility criteria, is not required to enrol and participate in the scheme. But once you do enrol and are deemed eligible by the ATO, you must (subject to later legislation) continue to participate.
Interaction with employee leave	
Instead of unpaid stand down, my permanent staff elected to access and be paid their accrued annual leave - Are they eligible for JobKeeper payments (assuming they and the business otherwise qualify and agree to enrol/nominate)?	Yes. The taking of leave or the earning of wages is not relevant in determining a permanent employee's eligibility. Leave taken, and paid, during April 2020 will count towards the employer's obligation to ensure a minimum $1,500 gross fortnightly payment to staff during the relevant JobKeeper fortnight. If the leave payments (and any wages for time worked) equate to less than this amount, then the business will need to make retrospective 'top up' payments to ensure a minimum gross fortnightly payment of $1,500 to the employee – regardless of whether this exceeds what the employee would have ordinarily earned, in a 'normal' roster scenario. The $1,500 gross payment from the ATO can be used to reimburse the employer for the leave (and/or wages) costs of the employee paid during that relevant fortnight.
Can staff use their sick leave, if they have any, and still receive the JobKeeper payment?	If an employee is working, the normal rules around accessing personal leave apply. However, if an employee has been stood down, the employee is not entitled to access personal (sick or carer's) leave to compensate them for their absence during the overlapping stand down period (*Please note that there is a current case before the Federal Court on this issue, the outcome of which may alter this advice*). An employer may, however, agree to the employee accessing their personal leave – though we recommend any such agreement be confirmed in writing. Whether the employee is 'sick' during the JobKeeper period will not affect their eligibility payments – unless the illness/injury deems them totally incapacitated and also entitles them to receipt of WorkCover payments for the same period, as outlined above.

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Question	***Answer***
Can the parties agree to use all leave accrued? An employee – if they would be required to work their normal hours – would ordinarily receive payment in excess of $1,500 gross per fortnight. If the employee requests and the Club agrees, can they top up their pay by accessing their accrued leave? If an employee has requested to access their accrued leave, do I pay the $750 gross p/week first without touching their leave, or is it meant to subsidise the leave? If so, do they need to agree to this?	It is advisable to ensure that there is a clear understanding between you and each employee as how payments for access to accrued leave will be made and ensure that any such agreement is confirmed in writing and signed by both parties. Any leave agreed to be taken in advance of being accrued should be carefully considered. By mutual agreement businesses can allow an employee to top up their fortnightly pay (to equate to their ordinary earnings) by taking leave – this should not result in annual leave being "cashed out" as a lump sum unless the ordinary cashing out principles apply. If the leave taken is to be paid *in addition* to the JobKeeper payments, this should be specified in the agreement – otherwise the business may be entitled to utilise the $1,500 gross fortnightly JobKeeper as reimbursement (or part reimbursement) for the leave payment made. Subscribers may look to utilise the leave agreement template available on the SIAG portal to assist with any such arrangements, to which specific adjustment can be made by SIAG lawyers, to suit your circumstances, on a fee for service basis.
Can we direct staff to take leave (and utilise the JobKeeper payment as reimbursement of this payment)?	Capacity to direct staff to take long service leave under the *Victorian Long Service Leave Act 2018* is limited, and subject to (amongst other things) 12 weeks prior written notice of the directive. There is no capacity to direct staff to take personal (sick/carers) leave during a period where they are stood down, or where they are not otherwise ill/injured, or required to care for an immediate family or household member who requires the employee's care due to that member's illness or injury or an unexpected emergency affecting the member. Businesses can only direct staff to take annual leave in accordance with the provisions of an applicable modern award, enterprise agreement or under the *Fair Work Act 2009* (Cth). Generally, this will relate to situations where the employee has excessive leave (likely 8 or 10 weeks depending on the employee) or in circumstances of annual shut down (excluding COVID19 shut down). The recent JobKeeper amendments to the FW Act enable an employer to request, but not direct, an employee to take annual leave - provided that the direction does not result in the employee's annual leave balance reducing to less then 2 weeks. An employee may reasonably refuse the direction – in which case either party may raise the matter as a dispute with the Fair Work Commission for resolution. You businesses wish to request staff take annual leave in accordance with the new FW Act JobKeeper 'request' provisions, please contact the SIAG advice line for specific assistance in this regard.

Question	***Answer***
My permanent employees have taken annual leave since closing. How does the JobKeeper payment affect their leave that has already been paid? Do we have to recredit their leave balance?	There is no obligation on employers to reverse or recredit leave that has been taken by agreement.
Do staff have an entitlement to carers leave, if they are unable to work due to obligations associated with supervision of their children who are remote learning?	If an employee has been stood down, the employee is not entitled to access personal (sick or carer's) leave to compensate them for their absence during the overlapping stand down period (*Please note that there is a current case before the Federal Court on this issue that may alter this advice*). If the employee has not been stood down, then carer's leave may apply to the extent where circumstances constitute the employee "providing care or support to an immediate family member / household in circumstances of an unexpected emergency affecting the member." It is our view that sustained periods of remote learning, do not constitute an 'unexpected emergency' for which carer's leave would apply.
Employee Nomination	
Can the business nominate and enrol all eligible employees, or does each eligible employee have to nominate to participate in the scheme?	As discussed, once the employer has assessed its, and its employees', eligibility it should issue a nomination form to all eligible employees. Once the employer has received an approved nomination form from the employee, they can be included in the scheme participation. The nomination form – can be downloaded from the ATO's website – must be kept securely on file, but do not need to be sent to the ATO via enrolment.
Can an employee who otherwise meets the eligibility criteria, elect not to approve their nomination?	Yes - if an eligible employee does not complete and return the approved nomination form, then you will have no authority from the employee to register them with the scheme and the business will not be eligible to claim JobKeeper payment reimbursement in respect of them.
Interaction with other Government payments	
What if an employee is on a pension, or in receipt of other Government payments, are they eligible?	Strictly speaking yes, however – • eligible employees will need to assess how receipt of the JobKeeper payment will affect their capacity to continue to receive other government payments – especially where such payments are income tested (as JobKeeper payments will count as income) or will otherwise affect their tax liability at the end of the financial year; • as noted above employees cannot receive both the JobKeeper payment and government parental (primary carer or dad/partner) pay or WorkCover total incapacity benefits, at the same time.

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Question	***Answer***
Interaction with Public Holidays	
There is some conflicting advice around the around staff being entitled to public holiday payments when they are stood down. Could you please confirm	As set out in our circular of 8 April 2020, stand down in accordance with the provisions of the *Fair Work Act 2009* (Cth) will not affect an employee's entitlement to payment for absence on a public holiday under section 116 of the FW Act – which forms part of the National Employment Standards. The NES include an entitlement for full-time or part-time employees to be absent on a public holiday but receive payment at his / her base rate of pay for their ordinary rostered hours on that day. If the employee does not have ordinary hours of work on the day (that is a nominated public holiday), the employee will not be entitled any payment for their absence on that day. By way of example, in respect of Good Friday, where a full-time or part-time employee would ordinary work on a Friday, but – due to the public holiday – he/she would be entitled to be absent for that day, the employee will be entitled to payment at their base rate for their ordinary rostered hours on a Friday. The same principles will apply in respect to other public holidays during the period of stand down (including ANZAC day). Our advice: • is based on a stand down under the FW Act, and assumes that no enterprise agreement or contract of employment apply to provide more beneficial entitlements for employees on stand down – should these apply, the business will be bound by those arrangements. • reflects the current position of the Fair Work Ombudsman, and we consider that there are reasonable prospects that a Court or Fair Work Commission who is asked to consider this scenario will adopt this view.
If any employee would normally work Good Friday and Easter Saturday, but was stood down without pay for those days, what would we pay?	The employee should be paid for their base rate for their ordinary rostered hours on those days. Penalty payments applicable under the *Registered and Licensed Clubs Award 2010* only apply if hours are worked on the public holiday. If eligible, the business will be entitled to use the JobKeeper payment to offset against those payments – provided that for the relevant fortnight (30 March to 12 April 2020) the business has paid the employee no less than $1,500 gross.

Question	***Answer***
Would the 'additional arrangements for full-time employees' under clause 34.4 of *the Registered and Licensed Clubs Award 2010* still apply if the employee has been stood down during the period that the public holiday falls?	No – during stand down the employee may be said to have no 'rostered hours' or 'rostered days on / off' therefore, the provision would not apply.
Impact of Stand down	
Am I obligated to pay the employee the difference between the JobKeeper and their normal wage?	Only if the employee is performing work, which entitles them to be paid wages in excess of $1,500 gross per fortnight.
If an eligible employee earning $1,200 gross p/week, is lawfully stood down, has no annual leave left and cannot be returned to work to perform useful work (whether on reduced hours or alternative duties) until the Club reopens, should they receive their normal pay ($2,400 gross) or $1,500 per fortnight?	If there is no useful work for the employee to perform, and they cannot otherwise access leave during the period, then the Club must facilitate the JobKeeper payment ($1,500 gross) for the fortnight.
How do we calculate the leave accruals for employees that have been stood down?	Time on stand down does not 'break' continuous service and will count as service for the purpose of leave accrual. As such, leave continues to accrue as it would normally, during any period of stand down. For example, a part-time employee employed for 30 hours – but stood down and performing no hours – will accrue service (and related leave entitlements) as if they had worked 30 hours.
How can I direct staff to come back to work, where they have been stood down?	If it is safe, reasonable and lawful to do so businesses may direct staff to return to work, and perform useful work, pay staff for such time. In respect of circumstances where COVID19 business restrictions and physical distancing requirements remain in place, please refer to SIAG's circular of 9 April 2020 and webinar slides 12 to 19 which provide an outline of when eligible employers may direct eligible employees to return to work, albeit on lesser hours, under the temporary Job Keeper Fair Work Act amendments. Full detail of the JobKeeper FW Act directives is contained in Schedule 1 of the *Coronavirus Economic Response Package Omnibus Measures No. 2) Act 2020.*

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Question	***Answer***
What if staff refuse to come back to work but are entitled to JobKeeper payments?	In circumstances where a valid directive to return to work is given, but an employee refuses to comply: • the employer may escalate the matter to dispute – and arbitration – before the Fair Work Commission; • this may constitute a breach of s.789GC of the FW Act (which requires an employee to comply with the valid direction) and warrant a disciplinary process, the outcome of which may support termination of employment. However, before ANY application to the FWC or disciplinary process is commenced, we strongly recommend the business contact the SIAG advice line for specific information and assistance.
Can eligible part time staff be forced to work additional hours to equate to wages equivalent to $750 gross p/week?	No - you can only vary their number hours or days of work accordance with the *Fair Work Act* amendments. These amendments do not allow you to require a part-time employee to work MORE than their guaranteed hours, or work on days outside of the employee's nominated availability.
We have eligible casual employees who normally earn (on average) $100 a week. When we re-open, and we are in a position to offer them shifts, what happens if they refuse the shifts or continuously call in sick, presumably so they can receive the JobKeeper payment – but not work?	Refusals to perform work due to genuine sickness circumstances, should be treated as normal – that is, that the employee's temporary absence/unavailability must be carefully managed to avoid exposure to a potential disability discrimination claim. Ongoing employee refusals to accept shifts that are rostered within the employee's availability span (as notified), for reasons other than illness/injury, may prompt the business to consider bringing the employment to an end. However, before ANY termination process is commenced, we strongly recommend the business contact the SIAG advice line for specific information and assistance.
If the business is closed, and not operating, can staff who have been previously stood down be directed to return to work to clean and do other, general, maintenance tasks – which might otherwise fall outside of their ordinary duties?	Section 789GE of the *Fair Work Act 2009* (Cth) provides (for the temporary period) that – in circumstances where all requirements are met – an eligible employer may direct an eligible employee to perform duties (including alternate duties) that are within the employee's skill and competency whilst in receipt of the JobKeeper payments. The duties must be safe to perform, including having regard to the nature and spread of COVID-19, not require the employee to perform work beyond necessary licensing or qualifications held by the employee and associated with the work, and be reasonably within the scope of the employer's business operations. Whilst simple cleaning and maintenance tasks may fall within the scope of the above, cleaning/ maintenance work that must be, or would be more appropriate to be, performed by a qualified tradesperson would be beyond the scope of the directive – and would not be lawful.

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Question	***Answer***
Upon reopening, revenues will obviously be down and may take time to pick up to pre-COVID19 standards - To enable planning for this, how can we reduce/ vary permanent staff hours to prepare for the business not running like it was before?	In respect of circumstances where COVID19 business restrictions and physical distancing requirements remain in place, please refer to SIAG circular of 9 April 2020 and webinar slides 12 to 19 which provide an outline of when eligible employers may direct eligible employees perform work, albeit on lesser hours, under the temporary Job Keeper Fair Work Act amendments. Full detail of the JobKeeper FW Act directives is contained in Schedule 1 of the *Coronavirus Economic Response Package Omnibus Measures No. 2) Act 2020* – noting that these provisions will automatically cease (subject to later legislation) on 28 September 2020. Variations to hours, beyond application of the temporary JobKeeper FW Act directives will require variation to the employee's terms and conditions of employment – that can only be achieved via agreed variation – signed by both parties. Subscribers may look to utilise the variation template available on the SIAG portal to assist with any such arrangements, to which specific adjustment can be made by SIAG lawyers, to suit your circumstances, on a fee for service basis. Absence of an such lawful variation / reduction to hours due to business slow down, are likely to give rise to circumstances of redundancy – in respect of which we recommend that you contact the SIAG advice line for specific information and assistance
Can staff, who are stood down or performing alternative duties, and receiving payments be made redundant during the JobKeeper period? If so, do normal redundancy provisions apply – including notice or payment in lieu of notice obligations?	If a redundancy scenario arises then the business will be able to implement this, but MUST consider the lawful justification for doing so during a period of stand down, and make sure that consultation is carried out as required. Any redundancy entitlement will be as 'normal' (including in accordance with the *Registered and Licensed Club Award* and/or the NES), although in circumstances where the employer is not in a financial position to transfer any severance payment it may apply to the Fair Work Commission for reduction of the severance payment due. Two recent, differing, decisions have been made by the FWC in response to COVID19 hardship applications – as such we strongly recommend that businesses contact the SIAG advice line for specific advice prior to and regarding the circumstances of any proposed termination and/or FWC application on these grounds. At the point in time that a position is made redundant, and the employee is unable to be redeployed and – thus – their employment ceases, then their participation in the JobKeeper scheme must also end. The business must advise the ATO of the cessation of employment and no further JobKeeper payments/reimbursements must be made/accepted in respect of the post-employment period.

Question	***Answer***
If we need eligible employees to take annual leave entitlements during the JobKeeper period, how much notice do we need to provide to them? What annual leave balance must be maintained by the employee?	Businesses can only direct staff to take annual leave in accordance with the provisions of an applicable modern award, enterprise agreement or under the *Fair Work Act 2009* (Cth). Generally, this will relate to situations where the employee has excessive leave (likely 8 or 10 weeks depending on the employee) or in circumstances of annual shut down (not COVID shut down). The recent JobKeeper amendments to the FW Act enable an employer to request, but not direct, an employee to take annual leave provided that the direction does not result in the employee's annual leave balance reducing to less than 2 weeks. An employee may reasonably refuse the direction – in which case either party may raise the matter as a dispute with the Fair Work Commission for resolution. There is no mandated minimum notice period applicable to a 'request' to take annual leave under the FW Act JobKeeper amendments, however good rule of thumb would be the relevant pay/roster cycle. Should the business wish to request staff take annual leave in accordance with the new FW Act JobKeeper 'request' provisions, please review the template available through the SIAG portal and contact the SIAG advice line for additional specific assistance in this regard.
Superannuation	
If an employee is currently working and earning $1,600 gross p/fortnight do you only have to pay super on the $100 difference between their earned salary and the JobKeeper payment?	No - you must pay super on any 'ordinary time earnings' which include payment for hours worked, and payment for leave taken during the period. The ATO's checklist on OTE may businesses for further reference. In this specific scenario, the employer must make superannuation contributions on the whole amount.
We understand that super is only payable on ordinary time earnings, and in line with minimum super contribution thresholds, but the wishes to make super contributions on all payments to staff work are working – but not those who are not. Is this OK?	We would caution against applying that 'additional' benefit to some, and not all, employees. Whilst there is nothing (perhaps) overly discriminatory about the distinction and associated decision, this may – inadvertently- give rise to indirect discrimination against a disgruntled staff member who is not asked to work and who may look to raise down the track.
Visas	
If my employee meets all the other eligibility criteria, but is in Australia under conditions of temporary visa – Do they qualify?	Typically no, however if you are unsure as to the circumstances of your employee's VISA please submit full details of their VISA, including a copy of the employee's visa and if application nomination approval, and current VEVO check to info@siag.com.au for review.