About the F13A application form

# Application for the Commission to deal with a JobKeeper dispute (Coronavirus economic response)

## About the Coronavirus economic response – JobKeeper scheme

Subject to various safeguards to protect employees, the Coronavirus economic response provisions in Part 6-4C of the *Fair Work Act 2009* allowed some employers who qualified for JobKeeper payments for an employee to temporarily vary the working conditions of the employee by:

* giving JobKeeper enabling directions about hours of work, duties and work location, or
* asking an employee to agree to change the days and times that they work.

On 29 March 2021, most of the JobKeeper provisions of the *Fair Work Act 2009* were repealed. On or after 29 March 2021, an employer cannot:

* give an employee a JobKeeper enabling direction, or
* ask an employee to agree to change the days and times that they work.

All JobKeeper enabling directions and agreements stopped applying on 29 March 2021. Any orders made by the Fair Work Commission to give effect to or vary a JobKeeper enabling direction also stopped applying on 29 March 2021.

The provisions of Part 6-4C that continue to operate on and after 29 March 2021 include:

* s.789GR, which provides that if an employee is subject to a JobKeeper enabling direction for a period, that period counts as service; and
* s.789GS, which deals with how an employee accrues leave entitlements, and how redundancy pay and payment instead of notice of termination of employment is calculated, where a JobKeeper enabling direction or agreement applies to the employee.

The Commission can still deal with disputes about these provisions.

For more information about the Coronavirus economic response provisions in the *Fair Work Act 2009*, please see the [JobKeeper disputes](https://www.fwc.gov.au/issues-we-help/jobkeeper-disputes) page on the Fair Work Commission’s website.

## Who can use this form

Use this form if you want the Commission to deal with a JobKeeper dispute under s.789GV of the *Fair Work Act 2009* and you are:

* an employee
* an employer
* an employee organisation
* an employer organisation

If you want the Commission to deal with a stand down dispute that does not concern the JobKeeper scheme, in accordance with Part 3-5 of the *Fair Work Act 2009*, use a [Form F13 – Application for the Commission to deal with a stand down dispute](https://www.fwc.gov.au/issues-we-help/industrial-action/apply-resolve-stand-down-dispute-form-f13).

## Lodging your completed form

1. After completing the form, use this checklist to make sure you have all the relevant documents:
* this Form F13A, which you have signed and dated
* a copy of the JobKeeper Employee Nomination Notice (if you have one)
* the written direction that the employer provided to the employee (the JobKeeper enabling direction) (if you have one)
* the written agreement about taking annual leave or changing the employee’s days or times of work (if you have one)
* a 10% decline in turnover certificate (legacy employers)
1. Lodge **your application** and any supporting documents with the Commission by emailing it to melbourne@fwc.gov.au.

**Note:** The Commission will provide a copy of your application and any other documents you lodge with the application to the person or organisation you are in dispute with.

You will find further useful information in the [Information sheet](#_Information_sheet) at the end of this form.

# Form F13A – Application for the Commission to deal with a JobKeeper dispute (Coronavirus economic response)

Fair Work Act 2009, s. 789GV

This is an application for the Fair Work Commission to deal with a JobKeeper dispute under s.789GV of the [Fair Work Act 2009](https://www.legislation.gov.au/Series/C2009A00028).

## The Applicant (you)

|  |  |
| --- | --- |
|  | This is information about you. Please provide a telephone number – it is important that we can contact you so that we can deal with your application.  |
| Legal name of Applicant |  |
| Applicant’s ACN/ABN (if applicable) |  |
| Applicant’s trading name or registered business name (if applicable) |  |
| Name of person we can contact |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| Phone number |  |
| Email address |  |

### What is your role in making this application – are you?

[ ] an employee

 If yes, are you still employed?

[ ] yes

[ ] no

[ ] I don’t know

[ ] an employee organisation

[ ] an employer

[ ] an employer organisation

### Do you need an interpreter?

If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](https://www.fwc.gov.au/about-us/contact-us/accessibility) on our website.

|  |
| --- |
|  |

[ ] Yes – Specify language

[ ] No

### Do you need any special assistance at a hearing or conference (eg do you have hearing difficulties)?

|  |  |
| --- | --- |
|  | If you answer yes, we will contact you before a hearing or conference to see if there is anything we can reasonably do to assist you. |

|  |
| --- |
|  |

[ ] Yes – tell us what you need

[ ] No

### Do you have a representative?

|  |  |
| --- | --- |
|  | A representative is a person or organisation that is representing you. This might be a lawyer or paid agent, a union, or a family member or friend. You do not need to have a representative. |

[ ] Yes – tell us information about your representative below

[ ] No – go to questions on page 3 about the Respondent.

### Your representative

|  |  |
| --- | --- |
|  | These are the details of the person or organisation that is representing you (if any). |
| Name of person |  |
| Firm, organisation, company |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| Phone number |  |
| Email address |  |

### Is your representative a lawyer or paid agent?

|  |  |
| --- | --- |
|  | A lawyer is a person who is admitted to the legal profession by a Supreme Court of a State or Territory. A paid agent is an agent who charges or receives a fee to represent you in this case. |

[ ] Yes

[ ] No

## The Respondent

|  |  |
| --- | --- |
|  | These are the details of the person or company/organisation that you are having a dispute with about JobKeeper. The Fair Work Commission will give a copy of this form to the Respondent. The Respondent will be able to tell their side of the dispute to the Fair Work Commission.If the Respondent is your employer, the legal name of the respondent is the name of your employer (not the name of a person such as your boss). For example, if you work for Energy Fitness Pty Ltd and your boss’ name is Alex Smith, then the Legal name of the respondent is ‘Energy Fitness Pty Ltd’ and the name of a person we can contact is ‘Alex Smith’. Your employer will usually be a person or a company (with a name ending in Pty Ltd or Ltd), or sometimes it is a partnership, an incorporated association, or a public sector employer.The legal name is different to the trading name or business name. You should be able to find your employer’s legal name on your pay slips, PAYG payment summary, appointment letter or employment contract.If the Respondent is your employee, tell us their name and contact details. |
| Legal name of Respondent  |  |
| Respondent’s ACN/ABN (if known) |  |
| Name of a person we can contact |  |
| Postal address |  |
| Suburb |  |
| State or territory |  | Postcode |  |
| Phone number |  |
| Email address |  |

## 1. Preliminary

### 1.1 What industry is the employer in?

|  |  |
| --- | --- |
|  | This is what the employer makes or does.  |
| [ ] Agriculture, forestry and fishing[ ] Mining[ ] Manufacturing[ ] Electricity, gas, water and waste services[ ] Construction[ ] Wholesale trade[ ] Retail trade[ ] Accommodation and food services[ ] Transport, postal and warehousing[ ] Information media and telecommunications[ ] Financial and insurance services | [ ] Rental, hiring and real estate services[ ] Professional, scientific and technical services[ ] Administrative and support services[ ] Public administration and safety (private)[ ] Education and training (private)[ ] Health care and social assistances (private)[ ] Arts and recreation services[ ] Other (please specify)

|  |
| --- |
|  |

 |

### 1.2 How many employees are employed by the employer?

[ ] 1–14

[ ] 15–99

[ ] 100 or more

[ ] I don’t know

## 2. About the dispute

### 2.1 The employer involved in this dispute:

[ ] was entitled to JobKeeper payments for the employee(s) in this dispute.

[ ] has never claimed JobKeeper payments for the employee(s) in this dispute.

[ ] I don’t know.

### 2.2 What kind of dispute is it?

|  |  |
| --- | --- |
|  | Tick all that apply. |

[ ] A dispute about the period when a JobKeeper enabling direction applied to the employee counting as service (s.789GR).

[ ] A dispute about the accrual of leave entitlements, calculation of redundancy pay or calculation of payment instead of notice of termination, where a JobKeeper enabling direction or agreement applied to an employee (s.789GS).

[ ] Other

### 2.3 What is the dispute about?

Using numbered paragraphs, tell us about the dispute. You can attach extra pages if there is not enough room. When you email this application to the Fair Work Commission, you can also send documents that are relevant to your dispute.

|  |
| --- |
|  |

### 2.4 Was the employer enrolled for JobKeeper wage subsidy?

|  |  |
| --- | --- |
|  | Employers must have enrolled in the JobKeeper Payment program before they could get JobKeeper payments. If it accepted the employer’s enrolment, the Australian Taxation Office (ATO) will have given the employer an ATO receipt ID.  |

|  |
| --- |
|  |

[ ] Yes – If you have it, give us the ATO receipt ID

[ ] No.

[ ] I’m not sure.

### 2.5 Did the employee fill in a JobKeeper employee nomination notice?

|  |  |
| --- | --- |
|  | Before enrolling for the JobKeeper payment, an employer should have provided the employee with a form called a ‘JobKeeper employee nomination notice’. Both the employer and employee needed to complete the form.  |

[ ] Yes – please lodge the Notice with this application

[ ] No.

[ ] I’m not sure.

### 2.6 Did the employer have a 10% decline in turnover certificate? (legacy employers only)

|  |  |
| --- | --- |
|  | Before giving a JobKeeper enabling direction or making an agreement with an employee to change the days or times that the employee works, a legacy employer must have had a 10% decline in turnover certificate from an eligible financial service provider. A small business with fewer than 15 employees could have made a statutory declaration in the place of a 10% decline in turnover certificate. |

[ ] Yes – please lodge the certificate or statutory declaration (if you have it)

[ ] No.

[ ] I’m not sure.

### 2.7 Did the employer give the employee a written JobKeeper enabling direction?

|  |  |
| --- | --- |
|  | An employer that was entitled to the JobKeeper payment for an employee could give the employee a ‘JobKeeper enabling direction’. Some legacy employers could also give ‘JobKeeper enabling directions’. ‘JobKeeper enabling directions’ must have been in writing and could have been about reducing the employee’s ordinary hours of work or changing the employee’s duties or place of work. You can find more information in the JobKeeper Benchbook. |

[ ] Yes – please lodge the written direction with this application.

[ ] No.

[ ] I’m not sure – if you have a document that you think might be a written direction about JobKeeper, please lodge the document with this application.

### 2.8 Did the employer make a JobKeeper agreement with the employee?

|  |  |
| --- | --- |
|  | An employer that was entitled to the JobKeeper payment for an employee could ask the employee to agree to work on different days or times compared with their ordinary days or times of work. In some situations, legacy employers could also ask their employees to make such agreements. Prior to 28 September 2020, an employer that was entitled to the JobKeeper payment for an employee could also ask the employee to agree to take annual leave, including at half pay. You can find more information in the JobKeeper Benchbook. |

[ ] Yes – please lodge the written agreement with this application.

[ ] No.

[ ] I’m not sure – if you have a document that you think might be a written agreement about JobKeeper, please lodge the document with this application.

## Remedy

### 3.1 How do you want the dispute to be solved?

|  |
| --- |
|  |

## Signature

|  |  |
| --- | --- |
|  | If you can use an electronic signature, please insert it below beside ‘Signature’. If do not have an electronic signature, you can type your name beside ‘Signature’. You will also need to fill in your name again beside ‘Name’ and fill in the date.You can leave the ‘Capacity/Position’ blank if you are the applicant. If you are signing on behalf of the Applicant, include your role in the **Capacity/Position** section.  |
| Signature |  |
| Name |  |
| Date |  |
| Capacity/Position |  |

|  |
| --- |
| PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS |

#

# Information sheet

## Where to get help

### Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

* processes in the Commission
* how to make an application to the Commission
* how to fill out forms
* where to find useful documents such as legislation and decisions
* other organisations that may be able to assist you.

The Commission's website [www.fwc.gov.au](http://www.fwc.gov.au/) also contains a range of information that may assist.

### Throughout this form

|  |  |
| --- | --- |
|  | This icon appears throughout the form. It indicates information to help you answer the question following. |

### Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or an employee of a union or employer organisation) speaks or acts on a person’s behalf, or assists a person in certain other ways in relation to a matter before the Commission. There is no requirement to be represented at the Commission.

There are some restrictions on representation by a lawyer or paid agent.

Generally, a person must give notice to the Commission (by lodging a Form F53 – Notice that a person: (a) has a lawyer or paid agent; or (b) will seek permission for a lawyer or paid agent to participate in a conference or hearing)) and seek permission from the Commission Member dealing with the matter if they wish to have a lawyer or paid agent represent them by participating in a conference or a hearing.

Apart from participating in a conference or hearing, a person’s lawyer or paid agent can represent them without permission, unless the Commission decides otherwise. For example, the lawyer or paid agent can prepare and lodge written applications, responses and submissions with the Commission, and communicate in writing with the Commission and other parties to the matter on the person’s behalf.

The requirement to give notice and seek permission for a lawyer or paid agent to participate in a conference or hearing, does not apply if the lawyer or paid agent is:

* an employee or officer of the person **or**
* a bargaining representative that is representing the person **or**
* an employee or officer of an employee or employer organisation, or an association of employers or a peak council, that is representing the person.

Rule 12(2) of the [Fair Work Commission Rules 2013](https://www.legislation.gov.au/Series/F2013L02054) sets out further exceptions to the requirement to give notice and seek permission. For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](https://www.legislation.gov.au/Series/C2009A00028), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](https://www.legislation.gov.au/Series/F2013L02054) and the Commission’s [practice note on representation by lawyers and paid agents](https://www.fwc.gov.au/resources/practice-notes/lawyers-and-paid-agents).

## Glossary of common terms

**Applicant** This is the person or organisation that is making an application.

**Lawyer** – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

**Legacy employer** - An employer who:

* received one or more JobKeeper payments for an eligible employee before 28 September 2020, and
* did not qualify for JobKeeper payments for the employee on or after 28 September 2020.

**Paid agent** – in relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

**Party** A party is a person or organisation involved in a matter or case that is brought to the Commission.

**Respondent** The person or business responding to an application made by an Applicant.

**10% decline in turnover certificate** – A written certificate from an eligible financial service provider that states that the employer met the 10% decline in turnover test for the quarter that applies at the time (the ‘designated quarter’). A small business employer with fewer than 15 employees can made a statutory declaration instead of getting a 10% decline in turnover certificate.

## Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and will disclose this information to the other parties to this matter. The Commission may also disclose this information to other persons. For more details of the Commission’s collection, use and disclosure of this information, please see the [Privacy notice](https://www.fwc.gov.au/documents/documents/forms/form_f13a-privacy.pdf) for this form, or ask for a hard copy to be provided to you.

|  |  |
| --- | --- |
|  | **Remove this information sheet** and keep it for future reference – it contains useful information |