

From: Fair Work Commission <FWCsubscriptions=fwc.gov.au@cmail20.com> on behalf of Fair Work Commission <FWCsubscriptions@fwc.gov.au>
Sent: Tuesday, 28 July 2020 3:30 PM
To:
Subject: FWC Update – JobKeeper dispute decision and COVID-19 Award variation matters

[Web Version](#) | [Update preferences](#) | [Unsubscribe](#)

[f Like](#) [Tweet](#) [Forward](#)



Fair Work Commission
Australia's national workplace relations tribunal

JobKeeper dispute decision and COVID-19 Award variation decisions

JobKeeper dispute decision

Transport Workers' Union of Australia Queensland Branch v Prosecur Australia Pty Limited

On 30 June 2020, the Transport Workers' Union of Australia Queensland Branch (TWU) lodged an appeal against a decision of Deputy President Sams ([\[2020\] FWC 3139](#)) published on 17 June 2020 (the decision).

The decision concerned a "JobKeeper enabling direction" (the direction) issued by Prosecur Australia Pty Limited (Prosecur) to all employees for whom Prosecur was eligible to receive a JobKeeper subsidy, including full time, part time and long term casual employees. The substance of the direction was that normal working hours will reduce to 50 hour per fortnight. Prosecur had issued the direction under [section 789GDC](#) of the *Fair Work Act 2009*.

In the decision, Deputy President Sams determined that the direction was not unreasonable. In its appeal, the TWU contended that the decision was in error because it involved a misconstruction of the statute and an error of fact.

The TWU sought an expedited hearing of the appeal on the basis that the direction was in place only until 28 September 2020, it was causing significant financial prejudice to the TWU's members, and the appeal concerned matters of general importance and significance. The Full Bench agreed to expedite the appeal and the appeal hearing appeal took place on 9 July 2020.

On 13 July 2020, a Full Bench quashed the decision ([\[2020\] FWCFB 3655](#)). It held that the decision adopted an incorrect approach to the construction of the 'reasonableness' of the direction under [section 789GK](#) of the Fair Work Act because it failed to properly take into account the relevant circumstances of employees.

The parties were directed to confer and file any further written submissions by 17 July 2020.

The Full Bench decision set out propositions that should guide the determination of the matter. These include that the assessment of the reasonableness of the direction must take into account in a significant way the statutory, award, agreement and contractual entitlements of the employees affected by the direction. This includes whether the reduction of pre-existing entitlements to hours of work disproportionately and unfairly affects one category of employees over another. It is also relevant that full time and part time employees may, depending on the extent of accruals, have access to leave entitlements to supplement their income, and full time employees may have access to accrued rostered days off.

Submissions were received from the parties and the Full Bench accepted Prosegur's modified JobKeeper-enabling directions, which reduce the minimum fortnightly hours of full-time armoured vehicle operators to 60, while it has provided separate assurances for part-timers and casuals.

On 23 July, pursuant to [section 789GV\(4\)\(c\)](#) of the Fair Work Act, the Full Bench ordered:

1. the JobKeeper enabling direction issued by Prosegur to employees at its Moorooka depot on 9 June 2020, which took effect from 10 June 2020, is set aside effective from 27 July 2020; and
2. in substitution thereof, the replacement JobKeeper enabling direction proposed by Prosegur filed on 18 July 2020 shall take effect on 27 June 2020 and remain in effect until 28 September 2020.

Award variation decisions

Health sector awards (AM2020/13)

On 27 July 2020, the Health Sector Awards Full Bench issued a decision ([\[2020\] FWCFB 3940](#)) granting an entitlement to paid pandemic leave for employees working in the aged care industry who are covered by the following awards:

- Aged Care Award 2010
- Health Professionals and Support Services Award 2020
- Nurses Award 2010

The paid leave entitlement is for workers who are required by their employer or a government medical authority or on the advice of a medical practitioner to self-isolate because they display COVID-19 symptoms or have come into contact with a person suspected of having contracted COVID-19. The leave entitlement is limited to up to 2 weeks' paid leave on each occasion of self-isolation.

Draft variation determinations setting out the entitlement in full were also published. Interested parties had until **2pm on Tuesday, 28 July 2020** to comment on the draft determinations.

The variations take effect from Wednesday, 29 July 2020 and will operate for an initial period of 3 months (until 29 October 2020).

The Full Bench said that this decision does not conclude the proceedings and noted that the paid pandemic leave entitlement awarded in the current urgent circumstances may require adjustment, in light of continuing developments. They also noted that it is possible that future events may require the consideration of the extension of the entitlement to other awards.

Retail awards – Schedule X extension (AM2020/87)

On 27 July 2020, the Full Bench issued a decision ([\[2020\] FWCFB 3933](#)) granting an application by the SDA to extend the operation of Schedule X – Additional measures during the COVID-19 pandemic until 30 September 2020 in 4 awards.

The relevant awards are the:

- Fast Food Industry Award 2010
- General Retail Industry Award 2010
- Hair and Beauty Industry Award 2010
- Storage Services and Wholesale Award 2020.

Manufacturing Award and Graphic Arts Award – Schedule X extension (AM2020/86)

On 27 July 2020, the Full Bench issued a decision ([\[2020\] FWCFB 3925](#)) granting an application by the AMWU in relation to the **Manufacturing and Associated Industries and Occupations Award 2020** and the **Graphic Arts and Printing and Publishing Award 2010**.

The AMWU had sought to extend the operation of Schedule X – Additional measures during the COVID-19 pandemic from 8 April 2020 until 30 September 2020. However, the Schedules in both awards ceased operation on 30 June 2020 and the Full Bench concluded that they were unable to backdate a new variation determination as sought by the AMWU.

The Full Bench concluded that Schedule X in both awards would be reinstated with an operative date of 27 July 2020.

Find out more

Visit the [Coronavirus \(COVID-19\) updates & advice](#) page on our website for information about specific application types and any changes to our operations in response to COVID-19.

To find out more about measures taken to restrict gatherings and non-essential business, and support for businesses, please read the latest [Information note – Government responses to COVID-19 pandemic \(PDF\)](#).

We remain focused on improving the services we provide the public during this time. Feedback and suggestions for improvement are welcome and can be sent to stakeholderrelations@fwc.gov.au.

28 July 2020

You are receiving this email because you subscribed to receive updates from the Fair Work Commission. You can update or cancel your subscription at any time by clicking on an option below.

Log-in to the Fair Work Commission site to [edit your preferences](#).
[Unsubscribe](#)

Fair Work Commission
www.fwc.gov.au
enquiries@fwc.gov.au