



▶ Background note: Labour relations and COVID-19

September 2020¹

Extension of COVID-19 provisions through variations to Modern Awards in Australia

▶ Industrial relations in Australia

Australia ratified the [ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#) and the [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#) in 1973. Australia's system for regulating pay, working conditions and benefits is unique in the world, reflecting a long-standing experiment with judicial arbitration structures. Beginning in 1905, Australia developed an economy-wide system of industrial arbitration courts, known as the "awards system." Today, the [Fair Work Act 2009](#) governs labour relations. Awards (or "modern awards") are legal documents that set the

minimum pay rates and conditions of employment in each industry. There are currently 122 modern awards of general application.

Unions and employers' organizations do not have a formal status as co-determinants of the industry awards; they can make submissions stating their views, but have no direct role in their determination. However, unions can negotiate enterprise-level agreements which must (overall) provide superior terms to the minimum terms and conditions set by awards.

▶ COVID-19 crisis award

In Australia, in March 2020 the [Australian Services Union \(ASU\)](#), [Australian Council of Trade Unions \(ACTU\)](#), [Australian Chamber of Commerce and Industry \(ACCI\)](#) as well as the [Australian Industry Group](#) agreed on a temporary set of measures to provide support to business and employees during the pandemic, such as working time flexibility for those working from home (in terms of minimum shift and working hours), allowing staff to work more flexibly across classifications (without reductions in pay), and leave flexibility including double leave on half-pay. Furthermore, employers have the capacity to close down operations while employees are on leave, or direct employees to reduce their working hours or take leave, having regard to their personal circumstances.

Initially these measures applied only to a limited number of awards including the [Clerks - Private Sector Award](#), the [Hospitality Industry Award](#) and the [Fast-Food Industry Award](#). Having heard submissions from the social partners, on 8 April 2020, the Fair Work Commission made [determinations varying 99 awards](#), which cover most people who work in Australia. The determinations inserted a temporary new schedule into these awards. The schedule provides employees with two weeks of unpaid pandemic leave and the ability to take twice as much annual leave at half their normal pay if their employer agrees. The schedule in each award applies from an employee's first full pay period on or after 8 April 2020 until 30 June 2020. This end date was extended by the FWC, with varying end dates (later this year and into 2021) now applicable for different awards.

¹ This note was compiled in May 2020. Additional details are accessible through the links below.

▶ Introduction of a JobKeeper wage subsidy scheme

Following a campaign by the ACTU and demands by ACCI for wage subsidies during the pandemic, the Fair Work Act was amended on 9 April 2020 to [support the implementation and operation of the “JobKeeper scheme”](#) in Australian workplaces. The JobKeeper wage subsidy scheme gives qualifying businesses and non-profit organizations access to a government paid wage subsidy. The scheme helps employers significantly affected by coronavirus to keep paying their employees. It also gives them the ability under the Fair Work Act to give directions and make agreements with their employees to help manage their business in certain circumstances. Qualifying

employers can claim a reimbursement of AUD1500 (before tax) per employee and per fortnight from the Government.

The JobKeeper scheme included temporary changes to the Fair Work Act, providing employers with even greater flexibility (than was available under awards, see above) to stand employees down, reduce their working hours, request them to take annual leave, etc. – if the employee is in receipt of JobKeeper payments via the employer. Furthermore, JobKeeper left out many casual and migrant workers.²

▶ Key effects of the agreement

The COVID-19 crisis provisions in the Modern awards provided support to business and employees during the pandemic, such as working time flexibility. It illustrates how a set of negotiated measures provide support to businesses by increasing flexibility while helping workers to retain a

balance with other responsibilities, such as care responsibilities, effectively balancing workers’ needs with firms’ business requirements. With the Fair Work Commission varying 99 awards this effectively became the temporary norm for nearly the entire Australian workforce.

▶ Paid COVID-19 sick leave extended to casual staff in the public sector

In the public sector, following a [submission by the Community and Public Sector Union \(CPSU\)](#) the [Australian Public Service Commission extended paid leave to casual](#)

[staff](#) affected by COVID-19. According to the CPSU, this covers about 9,000 casual workers.

▶ Access to further information

- ▶ The Australian Chamber of Commerce and Industry (ACCI) has launched a [dedicated website to provide information and assistance to businesses during the COVID-19 crisis](#).
- ▶ [Website of the Fair Work Commission providing more information on modern awards](#).
- ▶ [Unpaid pandemic leave & annual leave changes to awards](#).
- ▶ [History of variations to the Clerks – Private Sector Award 2010](#).
- ▶ [Information on the The JobKeeper Payment scheme](#).
- ▶ [Information by the CPSU on paid COVID-19 leave for casual workers](#).
- ▶ [Information by the Australian Public Service Commission on COVID-19 leave arrangements](#).

2 A. Forsyth (2020): COVID-19 and Labour Law: Australia. In: Italian Labour Law e-Journal. Special Issue 1. Vol. 13 (2020). COVID-19 and Labour Law. A Global Review. July 2020.

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