

# JOBKEEPER 2.0 DIRECTIONS



## JOBKEEPER ENABLING DIRECTIONS AND TEMPLATE DOCUMENTS

14 SEPTEMBER 2020

The information contained in this document is provided as general information.

QHA members are encouraged to contact the QHA's Employment Relations team to discuss their own specific workplace situation.

Phone 07 3221 6999 | Email [er@qha.org.au](mailto:er@qha.org.au)

### **ABOUT THIS JOBKEEPER ENABLING DIRECTION DOCUMENT**

The QHA has prepared a number of template documents to assist employers with implementing various JobKeeper Enabling Directions ('Directions') and Requests ('Requests') associated with the operation of the JobKeeper 2.0, as allowable per the *Fair Work Act 2009* ('FW Act'). This scheme commences on 28 September when the original JobKeeper scheme ('Original JK Scheme') that commenced 30 March 2020 concludes.

This document is relevant to employers who are Qualifying Employers, as well as Legacy Employers.

In many cases employers will need to issue new Directions to employees. The 'why' and 'how' of this is explained within this document.

The *Coronavirus Economic Response Package (JobKeeper Payments) Amendment Bill 2020* extends the operation of Part 6-4C\* of the FW Act beyond 28 September 2020. Part 6-4C is a temporary provision in the FW Act, will remain in operation until its repeal date of 29 March 2021.

The above Bill received assent on 3 September 2020.

The templates contained in this document are templates for QUALIFYING EMPLOYERS and for LEGACY EMPLOYERS.

It is important for employers to know which type of employer they are, given the requirements differ for the issuing of a JobKeeper Enabling Direction.

For the purposes of this document, reference to a Request made under s. 789GG or 789GJD also means an agreement arising between an employer and employee as a result of the Request.

*The document should be read in conjunction with the QHA's Q&A Information Guide on JobKeeper 2.0, dated 2 September 2020*

# QUALIFYING EMPLOYERS

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Qualifying employers, being those employers who meet the required turnover test to be eligible to receive JobKeeper payments for eligible employees from 28 September 2020, can continue utilising a JobKeeper Enabling Direction or Request\* in the same manner as was in place for the Original JK Scheme.

\* The only change from the Original JK Scheme to JobKeeper 2.0 concerns the ability for an employer to request that an employee take annual leave. This type of Request is not a feature of Part 6-4C post 28 September 2020. This means that an employer cannot request that an employee take a period of annual leave as part of a JobKeeper Enabling Request.

A Direction or Request can only be issued to an eligible employee. That is, the employee must be eligible with the employer receiving JobKeeper payments for them, in accordance with the JobKeeper 2.0 scheme.

A lawfully implemented Direction will be authorised by the FW Act and provide further protection for employers against a challenge that the original stand down was not lawfully implemented. Accordingly, for employers who have previously stood down employees pursuant to section 524 of the FW Act, it is recommended that you issue those employees with a JobKeeper Enabling Stand Down Direction in accordance with the relevant templates provided in this document.

In addition to that, for employers who have entered into other arrangements with employees to work less hours, different duties or different days and times, compared to when those employers would ordinarily work, and those arrangements were other than by mutual agreement with the employee, it is recommended that you re-issue those employees with the relevant JobKeeper Enabling Stand Down Direction or JobKeeper Different Days And Times Request using the relevant template/s.

## DO I NEED TO ISSUE A NEW DIRECTION?

That depends.

For a qualifying employer, an existing Direction, in place at 27 September 2020, can automatically carry over from 28 September, however, before relying on this, check whether the Direction has an expiry date. If it does not, there is no action to be taken if the Direction is still relevant and reasonable in the circumstances.

Where the Direction has an expiry – and this is likely for most employers – it will be necessary to issue a new Direction. This is due to the expiry date meaning that the Direction legally has no effect after that expiry date.

## STEPS TO FOLLOW WHEN SEEKING TO ISSUE A DIRECTION

In order to issue a Direction described in this document, a qualifying employer:

### **Step 1:**

Must give an employee written notice of the Direction by issuing the employee with:

- Notice of Direction - refer Attachment B; and
- (Proposed) Direction - refer Attachment C.

A notice can be issued electronically.

**Step 2:**

Must consult with the employee and their representative, if they have one, about the (proposed) Direction. Consultation is required by section 789GM of the FW Act.

**Step 3:**

Must keep a written record of the consultation eg a File Note. Refer to Attachment D for a template consultation note.

**Step 4:**

After considering any matters raised by the employee during the consultation step, update the (proposed) Direction, and issue it to the employee. This Direction must be issued at least three (3) clear days after the Notice was issued at Step 1.

All at times, an employer must ensure that the Direction is reasonable in the circumstances. In addition, the Direction must meet the relevant criteria for being a Direction – as explained further in QHA’s Fact Sheet titled *JobKeeper Enabling Directions*.

**HOW LONG WILL A DIRECTION / REQUEST LAST?**

A Direction issued or Request made will operate until one of the following applies:

- The Direction / Request is withdrawn by the employer;
- The Direction is replaced;
- An order of the Fair Work Commission applies to the Direction / Request; or
- The employer ceases to be eligible for JobKeeper payments in respect of the employee to whom the Direction / Request applies.

**DIRECTION TO REDUCE HOURS OF WORK**

JobKeeper 2.0 provides that where a Direction is issued to reduce an employee’s hours of work, in addition to an employer needing to ensure the Direction is reasonable, a Direction of this nature will be viewed as unreasonable if:

- The Direction has an unfair effect on some employees in the same category,
- When compared to other employees in that category who,
- Are also subject to the Direction.

An unreasonable Direction does not apply to an employee.

**TEMPLATE DOCUMENTS: QUALIFYING EMPLOYERS**

Each template has been drafted to assist qualifying employers in meeting their obligations when issuing a Direction or Request. The attachments are:

**A. JobKeeper ATO Notification**

Under section 6 of the JobKeeper Rules, employers are required to advise each JobKeeper Employee that they have notified the ATO Commissioner of the employee’s participation.

This template can be used for this purpose.

B. Notice of JobKeeper Enabling Direction

This template is to give written notice to employees that their employer *intends* to issue them with a JobKeeper Enabling Direction.

A copy of the proposed Direction (refer to Attachment C) should be attached to this Notice. Please note that the Direction is proposed at this stage, and subject to consultation before it can be issued as a Direction.

C. JobKeeper Enabling Direction (and example)

This template can be used to set out the reduced days or hours, different duties or work location that is being directed. Employers will need to amend and remove the sections which are not relevant to each particular Direction to be issued.

A draft version of this Direction should be attached to the Notice at B above. The draft document may need to be amended following the consultation.

D. JobKeeper Consultation Record (and example)

This template can be used to record the consultation with an employee before confirming the JobKeeper Enabling Direction.

E. JobKeeper Different Days and Times Request

This template can be used to request an employee to work *different* days and times compared to their *ordinary* days and times.

The terms of the Request cannot be imposed; however, the employee cannot unreasonably refuse the Request.

A reasonable refusal could include family responsibilities occurring on the proposed different days or times.

**OTHER IMPORTANT CONSIDERATIONS:**

- A Direction must be reasonable. In the event that it is unreasonable, it will not apply;
- Any change of location or duties has no effect unless it is necessary to continue the employment of one or more employees;
- The Direction notification period is 3 clear days – that means there must be 3 days between notification (e.g. Monday) and commencement of the direction (e.g. Friday);
- A Direction, including the notice and consultation, *must* be in writing;
- A dispute can be referred to the Fair Work Commission for resolution, including arbitration.

# LEGACY EMPLOYERS

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A legacy employer is an employer:

- Who qualified for the Original JK Scheme but who does not qualify for JobKeeper 2.0; and
- Who can show at least a 10% decline in turnover as per the relevant periods; and
- Who has an authorised certificate (or a self-certification\*\*) confirming that decline.

Legacy employers will still be able to access some of the flexibilities in Part 6-4C after 28 September 2020 and provide **modified** JobKeeper Enabling Directions. The flexibilities will be limited in application, as detailed below.

The proviso to a legacy employer utilising Part 6-4C is that a legacy employer **must have** a certificate/self-certification stating they have experienced a 10% decline in turnover.

## WHAT IS THE 10% TURNOVER TEST?

The 10% decline in turnover test requires that:

- For the period between 28 September and 27 October, an employer must have a 10% decline in turnover in the June 2020 quarter compared to June quarter 2019;
- For the period between 28 October and 27 February 2021, an employer must have a 10% decline in turnover in the September 2020 quarter compared to September quarter 2019;
- For the period between 28 February and 28 March 2021, an employer must have a 10% decline in turnover in the December 2020 quarter compared to December quarter 2019.

To be a legacy employer for the purposes of issuing a Direction / making a Request, the employer must be able to prove there has been a 10% decline in turnover. Those employers are required to:

- Obtain a 10% decline in turnover certificate from a financial service provider; **OR**
- \*\* If a small business with less than 15 employees (by head count and not including non-regular and systematic casual employees), that business can choose to self-certify there has been a decline. A small business employer can still elect to obtain a written certificate from an eligible financial services provider if they prefer.

## MODIFIED JOBKEEPER DIRECTIONS

Legacy employers can continue to implement a JobKeeper Enabling Direction or Request to existing eligible employees (being those an employer received payment for as part of the Original JK Scheme) in a similar manner to that which was in place for the Original JK Scheme – subject to several modifications.

Those modifications are:

- An employer cannot request that an employee take annual leave in the manner provided for in the Original JK Scheme (this is the same as for qualifying employers);
- A Direction to reduce hours of work must not result with the employee working less than 60% of their ordinary hours (as assessed on 1 March 2020)
- A Direction to reduce hours must not result in an employee working less than two hours in a day that they work.

In addition, a Request to work at different times or days of the week must not result in an employee working less than two hours in a day that they work.

## **EXISTING AND FUTURE DIRECTIONS**

Existing Directions made under the Original JK Scheme will cease to have effect at midnight 28 September 2020.

This is regardless of a later expiry date in the Direction, or no expiry date being provided.

A new JobKeeper 2.0 Direction made by a legacy employer:

- Can only have effect on and from 28 September 2020; and
- Can only be made where the employer:
  - Meets the legacy employer requirements of a legacy employer; and
  - Complies with the notification and consultation requirements of a legacy employer; and
  - Has a current certificate or self-certification; and
- Can only be issued to an employee who was an eligible employee in the Original JK Scheme.

A legacy employer with a turnover certificate or self-certification can initiate consultation with an employee for the purposes of a JobKeeper Enabling Direction. This can mean that consultation commences while the Original JK Scheme is still in effect so that the new Direction can take effect on 28 September 2020.

### **Period after 28 September with no Direction:**

Legacy employers need to be aware that should there be a gap between the expiry of an Original JK Scheme Direction (at midnight 28 September) and a new legacy Direction, an employee will be entitled to all of their usual terms and conditions for that gap period.

This is because no Direction applies to the employee, and usual terms and conditions do.

## **HOW LONG WILL A DIRECTION / REQUEST LAST?**

A Direction issued or an agreement arising from a Request made will operate until one of the following applies:

- The Direction / Request is withdrawn by the employer;
- The Direction is replaced;
- An order of the Fair Work Commission applies to the Direction / Request; or
- The employer ceases to meet the qualifications of a legacy employer; or
- The employer does not have a current certificate or self-certification at the time the Direction or Request is in effect.

### **Decline in turnover test dates:**

If, at 28 October 2020 or at 28 February 2021 (the decline in turnover test dates – refer to page 5), the employer does not hold a certificate or self-certification, the Direction or Request will cease to have effect.

## **Continuation or termination of Direction / Request at each turnover test date:**

*Notifications required per ss.789GJE (3) and (5); 789GJF (4) and (6)*

- Legacy employers must advise eligible employees, to whom a Direction applies or an agreement arising from a Request applies, in writing, of the Direction/Request agreement being terminated because the employer does not hold a turnover certificate/self-certification at the test date. The written notice must also state when the Direction /Request ceases to have effect.
- Legacy employers must advise eligible employees, to whom a Direction applies or an agreement arising from a Request applies, in writing, prior to the turnover test time, of the Direction/Request continuing to have effect, because the employer holds a turnover certificate/self-certification.

This means that once an employer knows whether they will continue to be a legacy employer at 28 October 2020, and/or at 28 February 2021, they must, prior to each of these dates, inform any employees to whom a Direction/Request applies that the Direction/Request is:

- Going to cease to have effect and when it will cease to have effect; **OR**
- That the Direction/Request will not cease and will continue to have effect.

This notice must be in writing.

## **STEPS TO FOLLOW WHEN SEEKING TO ISSUE A DIRECTION**

In order to issue a Direction described in this document, a legacy employer:

### **Step 1:**

Must give an employee written notice of the intention to issue a Direction. The notice can be provided by electronic means.

### **Step 2:**

Must provide the employee or their appointed representative (if any) with information about the proposed Direction, including information about:

- The nature of the proposed Direction;
- When the proposed Direction will take effect;
- The expected effects of the proposed Direction on the employee.

This can be done at the same time as the notice referred to in Step 1 above.

### **Step 3:**

Must consult with the employee and their representative, if they have one, about the proposed Direction. This includes inviting the employee or their appointed representative (if any), to give their views about the impact of the proposed Direction.

A legacy employer must give prompt and genuine consideration to any views expressed by the employee or their appointed representative (if any).

### **Step 4:**

After considering any matters raised by the employee or their appointed representative (if any), during Step 3, update the proposed Direction, and issue it to the employee.

This Direction must be issued at least seven (7) clear days after the written notice was issued at Step 1.



An employer should keep a written record of their consultation and discussions e.g. a File Note.

All at times, an employer must ensure that the Direction is reasonable in the circumstances. In addition, the Direction must meet the relevant criteria for being a Direction – as explained further in QHA’s Fact Sheet titled *JobKeeper Enabling Directions*.

## TEMPLATE DOCUMENTS: LEGACY EMPLOYERS

Each template has been drafted to assist qualifying employers in meeting their obligations when issuing a Direction or Request. The attachments are:

F. Notice of JobKeeper Enabling Direction

This template is to give written notice to employees that their legacy employer intends to issue them with a JobKeeper Enabling Direction.

A copy of the proposed Direction (refer to Attachment G) should be attached to this Notice. Please note that the Direction is proposed at this stage, and subject to consultation before it can be issued as a Direction.

G. JobKeeper Enabling Direction (and example)

This template can be used to set out the reduced days or hours, different duties or work location that is being directed. Employers will need to amend and remove the sections which are not relevant to each particular Direction to be issued.

A draft version of this Direction should be attached to the Notice at F above. The draft document may need to be amended following the consultation.

H. JobKeeper Consultation Record (and example)

This template can be used to record the consultation with an employee before confirming the JobKeeper Enabling Direction. This record is the same as the record for qualifying employers.

I. JobKeeper Different Days and Times Request

This template can be used to request an employee to work different days and times compared to their ordinary days and times.

The terms of the Request cannot be imposed; however, the employee cannot unreasonably refuse the Request.

A reasonable refusal could include family responsibilities occurring on the proposed different days or times.

J. Notice of a Direction/Request Ceasing to Have Effect

This template can be used where a legacy employer is required to notify an employee to whom a Direction/agreement relating to a Request applies that the Direction/Request will **cease** to have effect.

This requirement applies due to the operation of s. 789GJE and 789GJF.

K. Notice of a Direction/Request Continuing to Have Effect

This template can be used where a legacy employer is required to notify an employee to whom a Direction/agreement relating to a Request applies that the Direction/Request will **continue** to have effect.

This requirement applies due to the operation of s. 789GJE and 789GJF.



## **OTHER IMPORTANT CONSIDERATIONS:**

- A Direction must be reasonable. In the event that it is unreasonable, it will not apply;
- Any change of location or duties has no effect unless it is necessary to continue the employment of one or more employees;
- The Direction notification period is 7 clear days – that means there must be 7 days between notification (e.g. Monday) and commencement of the direction (e.g. the following Tuesday);
- A Direction, including the notice and consultation, must be in writing.
- A dispute can be referred to the Fair Work Commission for resolution, including arbitration.

## **ATTACHMENTS:**

Attachments F to K are located on pages 20-28.

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14 September 2020

**QUALIFYING EMPLOYERS  
ATTACHMENTS A-E**

## **ATTACHMENT A: QUALIFYING EMPLOYERS ONLY**

### **TEMPLATE JOBKEEPER ATO NOTIFICATION**

<INSERT ON COMPANY LETTERHEAD>

<insert date>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

**RE: PARTICIPATION IN JOBKEEPER PAYMENT SCHEME**

We hereby confirm that we have notified the Commissioner of Taxation of your participation in the JobKeeper Payment Scheme.

If you have any questions please contact me on <insert telephone number or email address>.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>

## **ATTACHMENT B: QUALIFYING EMPLOYERS ONLY**

### **TEMPLATE NOTICE OF JOBKEEPER ENABLING DIRECTION**

<INSERT ON COMPANY LETTERHEAD>

<insert date: referred to for the purposes of this template as 'Date A'>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

#### **RE: NOTICE OF JOBKEEPER ENABLING DIRECTION**

As you are aware, we are currently entitled to receive payments from the federal government in respect to your employment under the JobKeeper Payment Scheme.

The purpose of this letter is to give you written notice of our intention to give you a JobKeeper Enabling Direction ('JobKeeper Direction') pursuant to ss.789GDC, 789GE, 789GF of the *Fair Work Act 2009* (the 'Act') **and/or** to Request pursuant to s.789GG of the Act that you work on different days and/or at different times, as set out in the attached document.

It is our intention that the JobKeeper Direction will take effect from <insert date that is Date A plus 4 days>.

If the JobKeeper Direction relates to a change in duties which attract a higher rate of pay under a modern award or enterprise agreement, you will receive the higher rate of pay in accordance with relevant provisions of the modern award or enterprise agreement.

If the Request relates to you working on different days and/or at different times, you must consider the request and not unreasonably refuse the request.

We confirm that we will consult with you before we issue you with the attached JobKeeper Direction.

We look forward to talking with you.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>

**Attach.**

## **ATTACHMENT C: QUALIFYING EMPLOYERS ONLY**

### **TEMPLATE JOBKEEPER ENABLING DIRECTION**

<INSERT ON COMPANY LETTERHEAD>

<insert date>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

#### **RE: JOBKEEPER ENABLING DIRECTION**

Further to the consultation we undertook with you on <insert date of consultation>, we are unable to provide with your usual employment arrangements due to the COVID-19 Pandemic and the Government's response to prevent the spread of COVID-19.

Accordingly, we hereby advise you that we are implementing the arrangements as follows:

***INSTRUCTIONS:*** Choose the relevant option or options from the three types of Directions in the boxes below, tailor them to your situation and delete the options not relevant for this Direction:

**Option 1** <delete if not applicable for this Direction>

#### **STANDDOWN (REDUCTION IN HOURS) DIRECTION**

In accordance with s.789GDC of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Stand Down Direction that takes effect from <insert date> and continues until it is terminated or replaced.

That Direction is that you:

- not work on a day or days on which you usually work <with details of the day or days that the employee is required to work as per this Direction >; or
- work for a lesser period than the period you would ordinarily work on a particular day or days <with details provided of the hours for the days the employee is required to work as per this Direction>; or
- work a reduced number of hours compared with your ordinary hours of work <with details of the hours the employee is required to work, if any, as per this Direction>.

Section 789GQ of the *Fair Work Act 2009* requires that you comply with the direction.

**And/or Option 2** <delete if not applicable for this Direction>

**CHANGE OF DUTIES DIRECTION**

In accordance with s.789GE of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Direction that takes effect from <insert date> and continues until it is terminated or replaced.

The Direction is that you are to perform the following duties that are within your skill, competency and qualifications, and are reasonably within the scope of our business operations:

<insert details of the changed duties in detail – dot point form>

Section 789GQ of the *Fair Work Act 2009* requires that you comply with the direction.

**And/or Option 3** <delete if not applicable for this Direction>

**CHANGE OF LOCATION DIRECTION**

In accordance with s.789GF of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Direction that takes effect from <insert date> and continues until it is terminated or replaced.

That Direction is that you are to perform your duties at the following location which is at a place that is different from your normal place of work:

<insert the new temporary work location  
eg employee's home, other venue owned by the employer>

Section 789GQ of the *Fair Work Act 2009* requires that you comply with the direction.

<Delete the below text if employee is not currently stood down under s 524 of the FW Act>

By issuing you with this Direction, we confirm that the stand down of your employment, issued under section 524 of the *Fair Work Act 2009* is rescinded and replaced with this Direction.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>

**EXAMPLE:**

<INSERT ON COMPANY LETTERHEAD>

14 September 2020

Billy Bloggs  
C/ Billy Bloggs Address

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear Billy,

**RE: JOBKEEPER ENABLING DIRECTION**

Further to the consultation we undertook with you on 9 September 2020, we are unable to provide with your usual employment arrangements due to the COVID-19 Pandemic and the Government's response to prevent the spread of COVID-19.

Accordingly, we hereby advise you that we are implementing the arrangements as follows:

**1. STANDDOWN (REDUCTION IN DAYS OR HOURS) DIRECTION**

In accordance with s.789GDC of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Stand Down Direction that takes effect from 4 May 2020 and continues until it is terminated or replaced.

That Direction is that instead of full-time employment of 38 hours per week, you will work 3 x 6 hour shifts each week during the above period.

Section 789GQ of the *Fair Work Act 2009* requires that comply with the direction.

**2. CHANGE OF DUTIES DIRECTION**

In accordance with s.789GE of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Direction that takes effect from <insert date> and continues until it is terminated or replaced, to perform the following duties that are within your skill, competency and qualifications, and are reasonably within the scope of our business operations as follows:

The Direction is that instead of your duties as a qualified chef, you will provide general assistance in the bottle shop including receiving goods, stocktake, stacking shelves and other general duties.

Section 789GQ of the *Fair Work Act 2009* requires that comply with the direction.

Yours faithfully,

John  
The Manager



**ATTACHMENT D: QUALIFYING EMPLOYERS ONLY**

**TEMPLATE JOBKEEPER CONSULTATION RECORD (and example)**

**SECTION 789GM OF THE FAIR WORK ACT 2009  
Record of JobKeeper Enabling Stand down Direction Consultation**

s.789GM(4) An employer must keep a written record of a consultation under paragraph (1)(c):  
(a) with an employee of the employer; or  
(b) with a representative of an employee of the employer.

**Name of Employee:** \_\_\_\_\_

**Date/time/Method/Consultation:** \_\_\_\_\_

**Details:**

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**EXAMPLE:**

**SECTION 789GM OF THE FAIR WORK ACT 2009**

**Record of JobKeeper Enabling Stand down Direction Consultation**

s.789GM (4) An employer must keep a written record of a consultation under paragraph (1)(c):  
(a) with an employee of the employer; or  
(b) with a representative of an employee of the employer.

**Name of Employee:** Billy Bloggs

**Date/time/Method/Consultation:** 2:00pm on 9 September 2020 by Zoom Videoconference

**Attendees:** Billy Bloggs and John, The Manager

**Details:**

I explained to Billy, a qualified chef, that as the kitchen was closed and we had increased our product lines in the bottle shop, we need assistance in the bottle shop with stocktake, stacking shelves, receiving deliveries and general duties.

I advised Billy that increasing the product lines in the bottle shop and getting that trading as much as possible was necessary for the business and would keep people in jobs.

Billy advised me that he understood and would be happy to help as much as possible.

I advised Billy that I would have 3 x 6 hour shifts for 18 hours per week to be rostered in the usual way. Billy agreed to that.

I advised him that the first shift would be on **<insert date>**.

## **ATTACHMENT E: QUALIFYING EMPLOYERS ONLY**

### **TEMPLATE JOBKEEPER REQUEST – DIFFERENT DAYS AND TIMES**

<INSERT ON COMPANY LETTERHEAD>

<insert date>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

#### **RE: JOBKEEPER EMPLOYER REQUEST – WORK ON DIFFERENT DAYS AND TIMES**

The purpose of this letter is to give you written notice of our request pursuant to s.789GG of the *Fair Work Act 2009* for you to perform your duties on different days or at different times compared with your ordinary days or times of work as follows:

<Insert details of different days and/or times>

The different days and times set out above will apply for the period commencing on <insert start date> and ending on <insert end date>.

In accordance with s.789GG of the *Fair Work Act 2009*, you must consider this request and must not unreasonably refuse it.

We require you to confirm your response to our request by no later than <insert date – date should be in advance and provide sufficient time for the employee to consider the request>.

In the event that you refuse our request, we require you to set out in writing your reasons for the refusal.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>

**LEGACY EMPLOYERS  
ATTACHMENTS F-K**

## **ATTACHMENT F: LEGACY EMPLOYERS ONLY**

### **TEMPLATE NOTICE OF JOBKEEPER ENABLING DIRECTION**

<INSERT ON COMPANY LETTERHEAD>

<insert date: referred to for the purposes of this template as 'Date A'>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

#### **RE: NOTICE OF JOBKEEPER ENABLING DIRECTION**

<Insert name of employer> is a legacy employer within the meaning of the *Coronavirus Economic Response Package (JobKeeper Payments) Amendment Act 2020*.

The purpose of this letter is to give you written notice of our intention to give you a JobKeeper Enabling Direction ('JobKeeper Direction') pursuant to ss.789GJA, 789GJB, 789GJC of the *Fair Work Act 2009* (the 'Act') **and/or** to Request pursuant to s.789GJD of the Act that you work on different days and/or at different times, as set out in the attached document.

It is our intention that the JobKeeper Direction will take effect from <insert date that is Date A plus 8 days>.

If the JobKeeper Direction relates to a change in duties which attract a higher rate of pay under a modern award or enterprise agreement, you will receive the higher rate of pay in accordance with relevant provisions of the modern award or enterprise agreement.

If the Request relates to you working on different days and/or at different times, you must consider the request and not unreasonably refuse the request.

We confirm that we will consult with you before we issue you with the attached JobKeeper Direction.

We look forward to talking with you.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>

**Attach.**

## **ATTACHMENT G: LEGACY EMPLOYERS ONLY**

### **TEMPLATE JOBKEEPER ENABLING DIRECTION**

<INSERT ON COMPANY LETTERHEAD>

<insert date>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

#### **RE: JOBKEEPER ENABLING DIRECTION**

Further to the consultation we undertook with you on <insert date of consultation>, we are unable to provide with your usual employment arrangements due to the COVID-19 Pandemic and the Government's response to prevent the spread of COVID-19.

Accordingly, we hereby advise you that we are implementing the arrangements as follows:

***INSTRUCTIONS:*** Choose the relevant option or options from the three types of Directions in the boxes below, tailor them to your situation and delete the options not relevant for this Direction:

**Option 1** <delete if not applicable for this Direction>

#### **STANDDOWN (REDUCTION IN HOURS TO NO LESS THAN 60% OF ORDINARY HOURS) DIRECTION**

In accordance with s.789GJA of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Stand Down Direction that takes effect from <insert date> and continues until it is terminated or replaced.

That Direction is that you:

- not work on a day or days on which you usually work <with details of the day or days that the employee is required to work as per this Direction >; or
- work for a lesser period than the period you would ordinarily work on a particular day or days <with details provided of the hours for the days the employee is required to work as per this Direction>; or
- work a reduced number of hours compared with your ordinary hours of work <with details of the hours the employee is required to work as per this Direction; the proviso being that the period is no less than 60% or the employee's ordinary hours as at 1 March 2020>.

At all times the effect of this Direction will not result with you working less than a minimum of 2 hours on a day that you work.

Section 789GQ of the *Fair Work Act 2009* requires that you comply with the Direction.

**And/or Option 2** <delete if not applicable for this Direction>

### **CHANGE OF DUTIES DIRECTION**

In accordance with s.789GJB of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Direction that takes effect from <insert date> and continues until it is terminated or replaced.

The Direction is that you are to perform the following duties that are within your skill, competency and qualifications, and are reasonably within the scope of our business operations:

<insert details of the changed duties in detail – dot point form>

At all times the effect of this Direction will not result with you working less than a minimum of 2 hours on a day that you work.

Section 789GQ of the *Fair Work Act 2009* requires that you comply with the Direction.

**And/or Option 3** <delete if not applicable for this Direction>

### **CHANGE OF LOCATION DIRECTION**

In accordance with s.789GJC of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Direction that takes effect from <insert date> and continues until it is terminated or replaced.

That Direction is that you are to perform your duties at the following location which is at a place that is different from your normal place of work:

<insert the new temporary work location  
eg employee's home, other venue owned by the employer>

At all times the effect of this Direction will not result with you working less than a minimum of 2 hours on a day that you work.

Section 789GQ of the *Fair Work Act 2009* requires that you comply with the Direction.

**<Delete the below text if employee is not currently stood down under s 524 of the FW Act>**

By issuing you with this Direction, we confirm that the stand down of your employment, issued under section 524 of the *Fair Work Act 2009* is rescinded and replaced with this Direction.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>



**EXAMPLE:**

<INSERT ON COMPANY LETTERHEAD>

17 September 2020

Billy Bloggs  
C/ Billy Bloggs Address

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear Billy,

**RE: JOBKEEPER ENABLING DIRECTION**

Further to the consultation we undertook with you on 9 September 2020, we are unable to provide with your usual employment arrangements due to the COVID-19 Pandemic and the Government's response to prevent the spread of COVID-19.

Accordingly, we hereby advise you that we are implementing the arrangements as follows:

**3. STANDDOWN (REDUCTION IN DAYS OR HOURS) DIRECTION**

In accordance with s.789GJA of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Stand Down Direction that takes effect from <insert date – ensuring it is a date at least 8 days after the date of the Notice> and continues until it is terminated or replaced.

That Direction is that instead of full-time employment of 38 hours per week, you will work 3 x 8 hour shifts each week during the above period.

At all times the effect of this Direction will not result with you working less than 60% of your ordinary hours of work, or you working less than a minimum of 2 hours on a day that you work.

Section 789GQ of the *Fair Work Act 2009* requires that comply with the direction.

**4. CHANGE OF DUTIES DIRECTION**

In accordance with s.789GJB of the *Fair Work Act 2009* we issue you with a JobKeeper Enabling Direction that takes effect from <insert date> and continues until it is terminated or replace, to perform the following duties that are within your skill, competency and qualifications, and are reasonably within the scope of our business operations as follows:

The Direction is that instead of your duties as a qualified chef, you will provide general assistance in the bottle shop including receiving goods, stocktake, stacking shelves and other general duties.

Section 789GQ of the *Fair Work Act 2009* requires that comply with the direction.

Yours faithfully,

John  
The Manager

**ATTACHMENT H: LEGACY EMPLOYERS ONLY**

**TEMPLATE JOBKEEPER CONSULTATION RECORD (and example)**

**SECTION 789GM OF THE *FAIR WORK ACT 2009*  
Record of JobKeeper Enabling Stand down Direction Consultation**

s.789GM(4) An employer must keep a written record of a consultation under paragraph (1)(c):  
(a) with an employee of the employer; or  
(b) with a representative of an employee of the employer.

**Name of Employee:** \_\_\_\_\_

**Date/time/Method/Consultation:** \_\_\_\_\_

**Details:**

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**EXAMPLE:**

**SECTION 789GM OF THE FAIR WORK ACT 2009**

**Record of JobKeeper Enabling Stand down Direction Consultation**

s.789GM (4) An employer must keep a written record of a consultation under paragraph (1)(c):  
(a) with an employee of the employer; or  
(b) with a representative of an employee of the employer.

**Name of Employee:** Billy Bloggs

**Date/time/Method/Consultation:** 2:00pm on 9 September 2020 by Zoom Videoconference

**Attendees:** Billy Bloggs and John The Manager

**Details:**

I explained to Billy, a qualified chef, that as the kitchen was closed and we had increased our product lines in the bottle shop, we need assistance in the bottle shop with stocktake, stacking shelves, receiving deliveries and general duties.

I advised Billy that increasing the product lines in the bottle shop and getting that trading as much as possible was necessary for the business and would keep people in jobs.

Billy advised me that he understood and would be happy to help as much as possible.

I advised Billy that I would have 3 x 8 hour shifts (24 hours per week) to be rostered in the usual way. Billy agreed to that.

I advised him that the first shift would be on <insert date>.

## **ATTACHMENT I: LEGACY EMPLOYERS ONLY**

### **TEMPLATE JOBKEEPER REQUEST – DIFFERENT DAYS AND TIMES**

<INSERT ON COMPANY LETTERHEAD>

<insert date>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

#### **RE: JOBKEEPER EMPLOYER REQUEST – WORK ON DIFFERENT DAYS AND TIMES**

The purpose of this letter is to give you written notice of our request pursuant to s.789GJD of the *Fair Work Act 2009* for you to perform your duties on different days or at different times compared with your ordinary days or times of work as follows:

<Insert details of different days and/or times>

The different days and times set out above will apply for the period commencing on <insert start date> and ending on <insert end date>.

In accordance with s.789GJD of the *Fair Work Act 2009*, you must consider this request and must not unreasonably refuse it.

We require you to confirm your response to our request by no later than <insert date – date should be in advance and provide sufficient time for the employee to consider the request>.

In the event that you refuse our request, we require you to set out in writing your reasons for the refusal.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>

## **ATTACHMENT J: LEGACY EMPLOYERS ONLY**

### **TEMPLATE TERMINATION NOTICE OF JOBKEEPER DIRECTION / AGREEMENT ARISING FROM A REQUEST**

**(Employer does not hold a turnover certificate or self-certification at 28 October or 28 February)**

<INSERT ON COMPANY LETTERHEAD>

<insert date>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

**RE: NOTICE OF TERMINATION JOBKEEPER ENABLING DIRECTION or NOTICE OF TERMINATION AGREEMENT RELATING TO A REQUEST**

***INSTRUCTIONS:** Choose the relevant date option that applies to the employer for a JobKeeper Enabling Direction or a Request - the dates reflect the turnover test time that applies to an employer. In the event an employer does not have the required turnover certificate / self-declaration confirming the at least 10% decline in turnover, the Direction or agreement that relates to a Request will cease to have effect immediately after the test time.*

<Insert name of employer> is a legacy employer within the meaning of the *Coronavirus Economic Response Package (JobKeeper Payments) Amendment Act 2020*.

**If a JobKeeper Enabled Direction:**

The purpose of this letter is to notify you that the JobKeeper Enabling Direction issued to you pursuant to ss.789GJA, 789GJB and/or 789GJC of the *Fair Work Act 2009* (the 'Act') will cease to have effect immediately after the start of <option 1: 28 October 2020 / option 2: 28 February 2021>.

**If an agreement made as a result of a Request:**

The purpose of this letter is to notify you that the agreement made in relation to the Request made pursuant to s.789GJD of the *Fair Work Act 2009* (the 'Act') will cease to have effect immediately after the start of <option 1: 28 October 2020 / option 2: 28 February 2021>.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>

## **ATTACHMENT K: LEGACY EMPLOYERS ONLY**

### **TEMPLATE NOTICE OF JOBKEEPER DIRECTION / AGREEMENT ARISING FROM A REQUEST CONTINUING AFTER THE TEST TIME (Employer holds a turnover certificate or self-certification at 28 October or 28 February)**

<INSERT ON COMPANY LETTERHEAD>

<insert date that is prior to the test time'>

<Insert employee name>  
<Insert employee address>

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear <insert employee name>

#### **RE: NOTICE OF JOBKEEPER ENABLING DIRECTION or NOTICE OF TERMINATION AGREEMENT RELATING TO A REQUEST CONTINUING**

***INSTRUCTIONS:** Choose the relevant date option that applies to the employer - the dates reflect the turnover test time that applies to an employer. In the event an employer does not have the required turnover certificate / self-declaration confirming the at least 10% decline in turnover, the Direction or agreement that relates to a Request will cease to have effect immediately after the test time.*

<Insert name of employer> is a legacy employer within the meaning of the *Coronavirus Economic Response Package (JobKeeper Payments) Amendment Act 2020*.

#### **If a JobKeeper Enabled Direction:**

The purpose of this letter is to notify you that the JobKeeper Enabling Direction issued to you pursuant to ss.789GJA, 789GJB and/or 789GJC of the *Fair Work Act 2009* (the 'Act') will continue to have effect immediately after the start of <option 1: 28 October 2020 / option 2: 28 February 2021>. This is because <insert name of employer> continues to hold a turnover certificate / self-certification.

#### **If an agreement made as a result of a Request:**

The purpose of this letter is to notify you that the agreement made in relation on the Request made pursuant to s.789GJD of the *Fair Work Act 2009* (the 'Act') will continue to have effect immediately after the start of <option 1: 28 October 2020 / option 2: 28 February 2021>. This is because <insert name of employer> continues to hold a turnover certificate / self-certification.

Yours faithfully,

<Insert name of employer's representative authorised to make the request>  
<Insert position>