

## MANAGING & SUPPORTING YOUR STAFF DURING COVID-19

COVID-19 has certainly brought the tourism and hospitality sectors to a standstill. The South Australian Tourism Commission (SATC) is focussed on supporting businesses and partners to not only get through the crisis but rebound strongly once the recovery process commences.

A series of fact sheets, written by Deloitte for the SATC have been developed to build capability and resilience in South Australia's tourism and hospitality industries.

Each fact sheet is organised under three key themes - *respond*, *recover* and *thrive* - with the aim of ensuring that businesses are ready to welcome visitors as soon as travel restrictions are lifted.

For those businesses which employ staff, there are several things to keep in mind.

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With significant travel restrictions and social distancing rules due to COVID-19, tourism businesses are heavily impacted. Businesses have made decisions on how to reduce, redeploy or “hibernate” their workforce so they can emerge on the other side. New options are evolving as governments continue to roll out legislative change and financial support packages.

The Fair Work Ombudsman has publicly acknowledged the impact of COVID-19 on businesses and will continue to monitor and enforce compliance in a way that acknowledges this impact. Employers must ensure they continue to be compliant with their industrial relations obligations despite the challenges brought about by COVID-19.

It is important that employers are also aware of the staggered introduction of the minimum wage increase. The national minimum wage increase for industries seen to be least affected by the pandemic wage commences from the first full paid period on or after 1 July 2020, with other industries to have the minimum wage increase operational on 1 November 2020. Industries most adversely affected by the pandemic, including accommodation and food services and tourism, will have the minimum wage increase operational on 1 February 2021.

### WHAT ARE MY OPTIONS?

Tourism businesses have a variety of options available, which are outlined below. The Australian Government’s *JobKeeper* subsidy may be used as an alternative or in combination with other options for eligible businesses until it ends on 28 September 2020. The Fair Work Commission is modifying modern awards to accommodate the extraordinary circumstances our businesses and communities currently face. As a first port of call, employers should always refer to their relevant award or enterprise agreement and seek advice on their specific circumstances.

### JOBKEEPER INITIATIVE

The JobKeeper initiative covers employees who continue to be engaged by eligible businesses – whether full-time, part-time, long-term casuals (with the employer on a regular basis for at least 12 months as at 1 March 2020) and employees either stood down or terminated after 1 March 2020 and rehired. Persons who ceased to be employees prior to 1 March 2020, or who first commenced employment after that date, appear to be outside of the scheme.

Under the JobKeeper scheme, the Government pays eligible employers a wage subsidy, being a flat payment of \$1,500 per fortnight. Employers must pay employees the higher of the JobKeeper amount or their usual pay for work performed, whichever is higher and meets or is more favourable than the employees’ minimum rates. The JobKeeper payment must be paid in full, regardless of if the employee earns less than the JobKeeper payment during a fortnight for the work they perform. The subsidy commenced with effect from 30 March 2020.

Employers accessing JobKeeper can temporarily stand down employees, change an employee’s usual duties, hours of work or location of work (JobKeeper enabling direction). To make these directions, employers are required to follow a range of notice and consultation requirements which should be checked to ensure your direction has met the necessary legal requirements.

JobKeeper provisions in the Fair Work Act 2009 will currently end on 28 September 2020. Employers (including not-for-profits) will be eligible for the subsidy as follows:

- **Where the turnover of the business is less than \$1 billion:** the business self-assesses that its turnover will be reduced by more than 30% relative to comparable period (of at least a month) a year ago;
- **Where the turnover of the business is \$1 billion or more:** the business demonstrates that its turnover will be reduced by more than 50% relative to a comparable period (of at least a month) a year ago; and
- **The business is not subject to the Major Bank Levy, or one of the limited class of ineligible employers.**

Additionally, the Federal Government has clarified the following with respect to the qualification criteria:

- Businesses are expected to establish their actual GST turnover for March, or their projected GST turnover for a subsequent month or quarter, has fallen relative to their actual GST turnover for the corresponding period a year earlier.
- If a business was not operational a year earlier or its earlier turnover is not representative of its usual turnover – i.e. due to an acquisition, it was newly established, or it has variable turnover – the ATO will by way of legislative instrument introduce an alternate test. This alternate test is yet to be published.

- The legislative instruments issued by the ATO are also expected to set out alternative tests to establish eligibility in specific circumstances.
- There will also be tolerance where employers, in good faith, estimate a greater than 30% fall in turnover but in reality, experience a slightly smaller fall.

It will be necessary for employers to elect to participate in the scheme and register their interest with the ATO.

Self-employed individuals are also be eligible to receive the payment where they have suffered or expect to suffer a 30% decline in turnover relative to a comparable period (of at least a month) a year ago. Businesses without employees will need to provide an ABN for their business, nominate an individual to receive the payment and provide that individual's Tax File Number and provide a declaration as to recent business activity.

### SUPPORTING APPRENTICES AND TRAINEES

To help small businesses support and retain their apprentices and trainees, the Government has introduced a wage subsidy payment:

- Small businesses (i.e. those employing fewer than 20 full-time employees) with apprentices or trainees can apply for a wage subsidy of 50% of the relevant wages for up to 9 months from 1 January 2020 to 30 September 2020.
- Employers will be reimbursed up to a maximum of \$21,000 per eligible apprentice or trainee (\$7,000 per quarter).
- Employers can register from early April 2020 and final claims for payment must be lodged by 31 December 2020.

### SCALE DOWN

*(JobKeeper initiative should be considered and may apply in this circumstance)*

Employers may have had no choice but to dramatically scale down or reduce their workforce and operations. In addition to accessing the JobKeeper subsidy (for eligible businesses), options include freezing recruitment, reducing contractor, casual or labour-hire workers and encouraging employees to take leave. These options have specific rules around how and when they can be used so it is important to check the relevant award, enterprise agreement and also individual employee contracts.

### LEAVE OPTIONS

*(JobKeeper initiative should be considered and may apply in this circumstance)*

Employers may encourage, and in some cases, direct employees to take leave. This depends on the award or enterprise agreement which applies, which may also contain rules about giving notice. The Fair Work Commission has made temporary, COVID-19 specific changes to the rules for some industries temporarily on this issue (hospitality until 27 September 2020 for example). Where the employer looks to direct the employee to take leave, their leave balances may need to be considered. Leave at half pay may also be an option.

***If the employee does take the leave, they may be able to utilise:***

- Annual leave
- Annual leave in advance (if allowed by the business and approved)
- Long service leave
- Unpaid leave.

***As a result of COVID-19, an employee may also look to take leave such as:***

- Personal leave (for personal illness or incapacity)
- Carers leave (to care for immediate family or a household member who is sick or injured)
- Compassionate leave (where an immediate family member has a life-threatening illness or dies)
- Community service leave (for voluntary emergency management activities)
- The Fair Work Commission has also provided for unpaid 'pandemic leave' in many modern awards for employees who must self-isolate or have COVID-19. The date that pandemic leave provisions concludes is different for each award and needs to be considered before being accessed.

### **VARYING HOURS, DUTIES, ROSTERS OR LOCATIONS**

*(JobKeeper initiative should be considered and may apply in this circumstance)*

Employers may change the hours, duties and rosters that people work. This might include changing start/end times, reducing weekly or daily hours, sharing available roster hours across employees, or temporarily giving employees duties that are different to their usual work in order to meet changing demands. Employers may be able to change where employees perform work, such as from their own home.

Again, to implement any of these changes, employers must consider their relevant modern award or enterprise agreement as well as individual employee contracts to ensure they are meeting their legal obligations such as providing enough notice to make such a change, or seeking agreement, rather than giving a direction. Temporary COVID-19 variations, with different periods of application, have been made to many awards in relation to hours, rosters and work locations. The consultation obligations under the relevant award and expiration of COVID-19 variations, need to be considered before being accessed.

### **EXAMPLE – HOSPITALITY INDUSTRY (GENERAL) AWARD 2010**

Where employees are covered by the Hospitality Industry (General) Award 2010, additional flexibilities have been included that may allow employers to lawfully direct employees who are not in the JobKeeper scheme to:

- Work outside their usual duties where they have the skill and competency to do so
- Reduce hours of part time and full time staff
- In some circumstances, and for certain employees, request that they take annual leave.

### **STAND DOWN**

*(JobKeeper initiative should be considered and may apply in this circumstance)*

Employers may stand their employees down without pay when their business has had to stop or dramatically scale back due to reasons outside of

their control. Government Directions closing or limiting business operations, a significant number of workers needing to self-isolate or quarantine, or a lack of supply, could all be reasons that justify this decision. The Fair Work Ombudsman has made clear that this option must be exercised with caution; contracts and enterprise agreements may contain rules relevant to when workers may be stood down and whether this may be unpaid. Stand downs during COVID-19 have been challenged in the Fair Work Commission and courts so it is important that employers correctly use this option.

For businesses that qualify as employers for the JobKeeper scheme, a stand down may be implemented under the temporary Job Keeper provisions. To qualify under these provisions an employer must qualify for the JobKeeper scheme and be entitled to JobKeeper payments for the employee to whom the direction or agreement applies. A JobKeeper stand down direction must be attributable to the coronavirus pandemic or the government initiatives to slow coronavirus transmission.

An employee must be notified in writing with 3 days notice of a JobKeeper standdown direction. An employer must consult with employees or their representative about the direction. Employers must also keep a written record of the consultation and give the direction to employees in writing.

### **REDUNDANCY**

Some positions may become redundant due to the impact of COVID-19 measures, which means employees may be terminated. Employees who are in positions which are made redundant are entitled to redundancy pay and paid notice of termination. Awards and enterprise agreements will also have consultation provisions which must be followed. If they are not followed, unfair dismissal remedies may be available to the employees.

In order to calculate redundancy payments and notice requirements, relevant awards, enterprise agreements and individual employee contracts should be checked for specific conditions.

## RECOVER - LEARN & EMERGE STRONGER

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Recovery thus far is happening at a different pace in various jurisdictions around Australia. Those businesses which continue to be heavily affected by COVID-19 – whether that be due to a lack of international demand, or due to continuing restrictions – may take a different set of actions to those which are able to rebound more quickly. Nevertheless, this ‘hibernation’ or slower period gives you time to think – time that you ordinarily wouldn’t have while engaged with the day-to-day running of the business.

For those who continue to employ their staff throughout this period by utilising the JobKeeper payment or other methods, your employees’ regular duties are may not be realistic or take as long as they once did. Considering this time as a positive, rather than a negative, means setting some goals or tasks which your staff can achieve.

### GOALS OR TASKS COULD INCLUDE:



#### DEVELOPING AND EXECUTING A NEW CUSTOMER ENGAGEMENT STRATEGY

Which is appropriate and tailored to COVID-19 (see [Customer Engagement During COVID-19 fact sheet](#)).



#### INVESTIGATING NEW DISTRIBUTION CHANNELS OR METHODS TO MARKET

Particularly considering the likely shift towards domestic travel in the medium term (see [SATC Industry Resources and Tools fact sheets](#)).



#### EXAMINING THE DATA COLLECTED

Through your operations (such as bookings data), considering whether there are any lessons to be learned.



#### LOOKING INTO NEW BOOKING AND PAYMENT OPTIONS

Such as pay now or book later vouchers.



#### CONSIDERING HOW TO RE-ORIENT YOUR BUSINESS

Towards a future where travel restrictions are eased but some social distancing restrictions still apply.



#### UNDERTAKING CUSTOMER FEEDBACK AND RESEARCH

To tailor your product



#### A RANGE OF ONLINE TRAINING AND DEVELOPMENT COURSES TO UPSKILL



#### CLEANING AND REORGANISING YOUR CUSTOMER DATABASE

There are many other options not listed here – the main advice is to spend time doing the things you ordinarily wouldn’t have time to prioritise. Before you deploy your staff on different duties, consider whether this might impact on their classification and pay rate in their industrial instrument. The other advice is to ensure that, while there are many things you and your staff can do during this time, prioritising wellbeing is paramount. The SATC has compiled a list of resources and links available on [Mental Health and Wellbeing](#).

### PREPARING TO RE-OPEN IN A NEW ENVIRONMENT

Even once travel restrictions are lifted, COVID-19 will continue to exist in the community for some time until treatments and vaccines are developed and distributed across the world. The COVID-19 pandemic will change the way we work and behave over a much longer timeframe. With this in mind, all business owners need to be aware that the requirements for a safe and healthy workplace may not return to the 'old' normal.

For example, as mentioned above, social distancing requirements are expected to continue even once travel restrictions are eased, meaning tourism businesses should consider how they can deliver quality visitor experiences while ensuring the safety of their staff. Spending some time now to consider whether all, or some parts of your operations, could continue under these conditions with modifications may mean you can come back online more quickly with a new business model.

Similarly, ensuring facilities are available for hand-hygiene, and regular cleaning of your environment, will continue to be important. Aside from protecting you, your staff and your customers, taking these measures can also reassure potential customers.

### RETURNING TO WORK

These times are unprecedented, but your employees will crave a return to normality as soon as possible – part of which is returning to their old jobs. Think about how you can pave this transition for them, while ensuring their safety, the safety of your visitors, and the overall longevity of your business.

A number of resources are available, including the following:

[Online Self Assessment Tool](#)

[COVID-19 Awareness Training For All Employees & Business Owners](#)



## WHERE DO I GO FOR MORE INFORMATION?

The Australian Government Business website has information on the JobKeeper payment [Click here.](#)

For more information on supporting apprentices and trainees [Click here.](#)

The Fair Work Ombudsman website has some useful resources to help employers understand their rights and responsibilities during the COVID-19 outbreak [Click here.](#)

### TO FULLY UNDERSTAND YOUR OPTIONS, YOU WILL NEED TO REFER TO:

- An enterprise agreement if your business is covered by one: and/or
- A modern award, if it applies to your business; and
- The Fair Work Act 2009; and
- Individual employee contracts.

### SOME OF THE MODERN AWARDS THAT MAY BE APPLICABLE TO THE TOURISM INDUSTRY, INCLUDE:

- General Retail Industry Award 2010
- Hospitality Industry (General) Award 2010
- Clerks – Private Sector Award 2010
- Passenger Vehicle Transportation Award 2010
- Marine Tourism and Charter Vessels Award 2010
- Contract Call Centres Award 2010
- Restaurant Industry Award 2010
- Fast Food Industry Award 2010.

This list is not exhaustive and other awards may be relevant to your business.

Please note rules relevant to these options are changing daily, so it is important to check the Fair Work Ombudsman website and the relevant award or enterprise agreement when considering applying any of the above listed options.

More tailored support is available from the Fair Work Ombudsman, community legal centres and specialist legal or industrial relations advisors.

South Australian Tourism Commission (SATC) has engaged Deloitte to provide business support to the South Australian tourism industry following the COVID-19 pandemic.

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