



Has your employer reduced your hours/pay under a JobKeeper Direction that seems unreasonable?

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With the [extension of the Federal Government's JobKeeper Scheme until 28 March 2021](#), employees should continue to be aware of their workplace rights in circumstances in which they think their employer has reduced their hours/pay unreasonably. A recent case of the Fair Work Commission ("**FWC**") demonstrates what employees can do in such circumstances.

You can learn more about the JobKeeper scheme's employee entitlements and employer responsibilities in our "[JobKeeper Q&A](#)" article.

Background

In [Allan Jones v Live Events Australia Pty Ltd \[2020\]](#) FWC 3469 ("**Jones**"), the FWC arbitrated an application by Mr Allan Jones to deal with a JobKeeper dispute between him and his employer, Live Events Australia Pty Ltd ("**Live Events**").

Live Events' enterprise involved broadcasting horse racing in Victoria and Western Australia and Mr Jones was employed in Western Australia as a broadcast engineer. His work overwhelmingly concerned broadcasting racing events in Western Australia. Prior to COVID-19, Mr Jones:

- was contracted to work a minimum of 80 hours per fortnight ("**Contract Hours**"); and
- regularly worked 5 - 20 hours per fortnight in overtime ("**Overtime Hours**").

Employer issues a JobKeeper Direction to reduce the workers' hours/pay

Live Events' business was impacted negatively by COVID-19. However, racing operations continued in Western Australia during the COVID-19 period and the impact on work required to be performed by Mr Jones was minimal. He continued to work his Contract Hours.

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pay or hours have been
unreasonably reduced under
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That said, due to some minor impacts of the pandemic in Western Australia, his Overtime Hours were scaled back. His normal hours during the COVID-19 period were 80 hours per fortnight.

Although Live Events required Mr Jones to work his Contract Hours, the company proceeded to issue a JobKeeper enabling stand-down direction that Mr Jones new minimum hours of work will be 48 hours per fortnight ("**JobKeeper Direction**").

A JobKeeper enabling stand-down direction is a direction to an employee to:

- refrain from working on a day or days on which the employee would usually work; or
- work for a lesser period than the period which the employee would ordinarily work on a particular day or days; or
- work a reduced number of hours compared to the employee's ordinary hours of work.

Live Events' JobKeeper Direction constituted a 40% reduction in Mr Jones' Contract Hours.

At the heart of the dispute in *Jones* was whether Live Events' JobKeeper Direction was consistent with Part 6-4C of the *Fair Work Act* which requires, among other things, that a JobKeeper enabled direction be "authorised" and "reasonable".

Was Live Events' JobKeeper Direction authorised?

A JobKeeper enabled direction is "authorised" if the employee cannot be usefully employed for the employee's normal days or hours during the JobKeeper enabling stand-down period.

The FWC determined that Mr Jones' normal hours included his Overtime Hours. On the basis that Live Events did not require Mr Jones to work his Overtime Hours during the COVID-19 period, the FWC found that Live Events' JobKeeper Direction was authorised.

Was Live Events' JobKeeper Direction reasonable?

Although the FWC acknowledged the difficulties that COVID-19 had imposed on Live Events, it ultimately found that Live Events' JobKeeper Direction was unreasonable on the basis that:

- the level of reduction was not proportionate to the actual rosters that applied to Mr Jones or other crew members during the COVID-19 period, and those reasonably forecasted in the future;
- Live Events' technical crews were required for 80 hours per fortnight, rather than the 48 hours per fortnight proposed in Live Events' JobKeeper Direction to Mr Jones;
- Live Events' JobKeeper Direction was issued at a time that Live Events expected to continue to roster Mr Jones in excess of 48 hours per fortnight; and
- Live Events' other employees had been guaranteed 80% of their salary at least, since June 2020 (meaning it would be unreasonable to reduce Mr Jones' hours and salary by 40%).

The FWC ordered that the Direction be amended to Mr Jones' new minimum hours of work being no less than 64 hours per fortnight (i.e., no more than a 20% reduction).

However, given that Mr Jones currently had around 80 hours of work available per fortnight, the FWC emphasized that its order was not a 'green light' to reduce Mr Jones' hours without Live Events having an "objective or fair basis for doing so."

A warning to employers and confirmation of entitlements for workers

Even if an employer is authorised to issue a JobKeeper enabled direction, the *Fair Work Act* prohibits terms of that direction from being unreasonable (or unauthorised).

The FWC's decision in *Jones* demonstrates that workers may be entitled to apply to the FWC to amend a JobKeeper enabled direction on the basis that it is unreasonable, particularly if the direction:

- disproportionately reduces their hours/salary when compared to other employees;
- is not consistent with the labour their employer requires of them; and/or
- other employees have been guaranteed a higher minimum entitlement.

Get help from an employment lawyer

If you find yourself in these circumstances, we can advise you of your prospects in obtaining a FWC order to amend your employer's direction to ensure that your minimum entitlements are not reduced unreasonably.

Likewise, if you are having any issues in relation to your employment, whether related to COVID-19 or not, our [award-winning employment law team can assist you in securing your employment rights and entitlements.](#)

We continue to provide our client services during the coronavirus outbreak.

Most of our teams have now returned to their respective offices with others remaining fully equipped to work remotely, where necessary.

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

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