# Attachment 4 – Jobkeeper disputes jurisdictional checklist

The purpose of Part 6-4C of the *Fair Work Act 2009* is to assist employers that qualify for the jobkeeper scheme to deal with the economic impact of COVID-19. Part 6-4C allows employers that qualify for the jobkeeper scheme and are entitled to jobkeeper payments for an eligible employee to give the employee a ‘jobkeeper enabling direction’, request the employee agree to change their days or times of work, and request the employee agree to take annual leave (including at half pay), subject to a number of safeguards for employees.

The Fair Work Commission has power to deal with disputes about the operation of Part 6-4C. The Commission cannot deal with other disputes about the jobkeeper scheme.

Use this checklist to check that the Commission can deal with your jobkeeper dispute. If your dispute does not fit the criteria in the checklist, see the [Need help](https://www.fwc.gov.au/about-us/coronavirus-covid-19-updates-advice/jobkeeper-disputes)? section on the Commission’s website for information about government agencies that may be able to assist. If you still aren’t sure, [contact us](https://www.fwc.gov.au/about-us/contact-us).

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| 1. You are one of the following:

See: ‘Who can make an application’ on pages 21 – 22 of this benchbook for more information. |
| * a national system employee
* a national system employer
* an employee organisation
* an employer organisation
 | ☐ |
| 1. Your dispute relates to at least one of the following:
 |
| * a jobkeeper enabling stand down direction

For example, the dispute could be about: * + whether the direction is reasonable in all the circumstances
	+ whether the employer consulted with the employee
	+ whether the jobkeeper enabling stand down direction is safe
	+ whether the employee cannot be usefully employed for their normal days or hours
	+ whether the jobkeeper enabling stand down direction is because of changes to business attributable to COVID-19 or the government’s response to it
	+ whether the employer has complied with the hourly rate of pay guarantee
	+ whether the employer has calculated the employee’s leave entitlements while the jobkeeper enabling stand down direction is in place as though the direction had not been made

\* The examples provided are not exhaustive. | [ ]  |
| * a direction about the duties an employee is to perform

For example, the dispute could be about:* + whether the direction is reasonable in all the circumstances
	+ whether the direction is necessary to continue the employment of one or more of the employer’s employees
	+ whether the employer consulted with the employee
	+ whether the direction is safe
	+ whether the duties are within the employee’s skill and competency, or the employee has the appropriate licence or qualification to perform the duties
	+ whether the employer has paid the employee the jobkeeper payment, or the amount payable for the duties the employee is performing, whichever is greater

\* The examples provided are not exhaustive. | [ ]  |
| * a direction about the location where the employee is to perform work

For example, the dispute could be about:* + whether the direction is reasonable in all the circumstances
	+ whether the direction is necessary to continue the employment of one or more of the employer’s employees
	+ whether the employer consulted with the employee
	+ whether it is safe to perform work in the location
	+ whether the direction requires the employee to travel an unreasonable distance

\* The examples provided are not exhaustive. | [ ]  |
| * a request that an employee agree to a change in the days or times when the employee is to work

For example, the dispute could be about:* + whether performing the duties on the days or at the times requested is safe, or is reasonably within the scope of the employer’s business operations
	+ whether the employee has considered the request, or has unreasonably refused the request

\* The examples provided are not exhaustive. | [ ]  |
| * a request prior to 28 September 2020 that an employee agree to take annual leave

For example, the dispute could be about: * + whether the request will mean the employee has a balance of paid annual leave of less than 2 weeks
	+ whether the employee has considered the request, or has unreasonably refused the request

\* The examples provided are not exhaustive. | [ ]  |
| * an agreement prior to 28 September 2020 that the employee take annual leave at half pay

For example, the dispute could be about:* + whether the employer agreed in writing to the employee taking leave at half pay
	+ whether the employer has calculated the employee’s leave entitlements as though the agreement had not been made

\* The examples provided are not exhaustive. | [ ]  |
| * an employee’s request for secondary employment, training or professional development, where the employer has given a jobkeeper enabling stand down direction

For example, the dispute could be about:* + whether the employer has considered, or has unreasonably refused, the request

\* The example provided is not exhaustive. | [ ]  |