

# COVID-19 Employer Guide

Managing the workplace in the face of the outbreak

April 2020



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# Introduction

# COVID-19 Employer Guide



The impact of COVID-19 on Australia and the resulting impacts on Australian businesses and their operations is unprecedented. The Australian Government on the advice of health officials has implemented significant changes to ordinary life in order to try to stay ahead of the curve and as a result for many employers, decisions made now are about survival and will shape the future.

**With the concept of ‘business as usual’ completely redefined, what should employers be considering and doing to manage through the COVID-19 outbreak? There is no set playbook for how to deal with this crisis however the focus of this information booklet is on covering and answering some of the most common workplace relations and work health and safety (WHS) issues that are arising for employers as well as common questions that are being asked.**

To assist we have set out this information booklet in a way to address the key safety and employment issues, outlining the base position and then additional questions that may arise. Employers should, however, at all times be conscious of their particular legal obligations that will apply under the Fair Work Act 2009, respective State and Territory WHS legislation and workers compensation legislation, enterprise agreements, awards, contracts and policies and should seek further advice where necessary.

*The material in this guide is of a general nature and should not be regarded as legal advice or relied on for assistance in any particular circumstance or situation. In any important matter, you should seek appropriate independent professional advice in relation to your own circumstances. The Australian Chamber of Commerce and Industry accepts no responsibility or liability for any damage, loss or expense incurred as a result of the reliance on information contained in this guide.*



### 1.1.2 Providing information on COVID-19 to workers

As the COVID-19 crisis continues to evolve employers should ensure they are in constant communication with their workforce about what is happening to their working arrangements and employment.

Employers have a duty under WHS legislation to provide information and consult with workers about health and safety in the workplace. You should provide regular updates to workers about the status of COVID-19 that are consistent with information provided by the [Department of Health](#) and other authoritative sources.

The Department of Health has published an [information sheet for employers](#). As the situation and corresponding medical advice is constantly changing, it is critical that employers keep up to speed with the latest information.

We recommend that you provide regular updates on COVID-19 to employees so that they feel informed and well supported and in return, stay motivated to assist and adapt through this time.

We recommend any updates address:

- the current status of the virus in Australia
- impacts on the workplace and policies; and
- advice on good hygiene practices for work.

Employers should provide information and brief all employees and any contract staff in the workplace (such as cleaning staff), on relevant information and procedures to prevent the spread of COVID-19 (see section 1.3).

#### Coronavirus Health Information Line

24 hour a day, seven days a week

1800 020 080

### 1.1.3 What should employer do to keep the workplace clean?

If you are still operating at the workplace you should arrange regular workplace (environmental) cleaning, ensuring any areas of frequent use by workers or others are cleaned daily.

Frequently touched surfaces should be cleaned several times a day. This may include for example: light switches, handrails, taps, door knobs, Eftpos equipment, elevator buttons, tables and counter tops.

The Department of Health has produced a cleaning guide: [Environmental cleaning and disinfection principles for COVID-19](#).

If a worker has been exposed to a positive case of COVID-19 at the workplace, you will need to deep clean areas where the worker with the confirmed case has been. For advice on cleaning, see WHS authorities' contact information from your state and territory.

### 1.1.4 Violence and aggression in the workplace

Working in the community, communicating face-to-face with customers, providing care to people who are distressed, afraid or ill or providing services for people with unreasonable expectations or in such a way that leads to frustration can all be hazards for occupational violence and aggression.

These hazards are likely to be more notable during the COVID-19 outbreak due to the increased fear and anxiety amongst the general public increasing the risk to workers.

Employers should consider, in consultation with their workers, if their workers could be exposed to verbal, aggressive or violent behaviour, when this could occur, the frequency, the harm it could cause and how effective any controls currently in place still are. In particular, you may want to consider if you are providing any products or services that are in high demand or short supply.

Some possible control measures may include:

- Improving processes to reduce wait times and double handling
- Sending workers out in pairs
- Considering physical barriers to enforce social distancing and safe entry / exit in the event of aggressive behaviour
- Implementing increased security measures, e.g. by providing additional security on site for high risk work environments, video surveillance, duress alarms, and providing contacts for assistance in an emergency
- Providing instruction and training on de-escalating conflict
- Having clear policies and procedures outlining how the business will manage aggressive behaviour, including how to report an incident.



### 1.1.5 Can an employer conduct temperature checks on workers or others?

Some employers are considering temperature checks for workers as a preventative measure. There may be times where this is lawful and reasonable, for example, where workers live together in accommodation such as FIFO, agricultural workers or in high-risk and close proximity settings such as aged care and essential services. It is important to note however that a higher than average temperature does not automatically mean that a worker has COVID-19. Likewise, someone may have COVID-19 and be asymptomatic or the fever symptom not present due to medication reducing their temperature.

## 1.2 Supporting mental health and wellbeing during COVID-19

### 1.2.1 Coping with anxiety and stress

COVID-19 has the potential to create significant psychological risks in the workplace. These may arise for example because of employees working in isolated environments or because of fears around redundancy and stand down.

While these risks are significant and real there are control measures employers can put in place to assist employees, such as providing information and regular updates to employees as well as doing regular individual check-ins by direct managers.

Employers should also be conscious of the individual circumstances of employees and those who may be more susceptible than others to the risks created by COVID-19.

### 1.2.2 Workloads and fatigue

While much of the focus has been on industries experiencing a decrease in workload, in some industries COVID-19 has resulted in unusually high workloads for some employees, who are being required to work additional hours.

Employers must ensure these additional hours are reasonable and in accordance with the employees' contract and any applicable industrial instrument.

Employers also need to identify any risk to the health and safety of their workers and take steps to eliminate or minimise such risks. Where there is a risk, appropriate control measures should be put in place to assist employees, such as checking in with employees to monitor actual hours worked, ensuring workers are taking breaks and have an adequate gap between working days or shifts.

## 1.3 Workers compensation

Workers' Compensation schemes are governed by the Commonwealth, States and Territories.

Arrangements differ across schemes however there are common threshold requirements that would apply in the case of COVID-19:

- that the worker is covered by the scheme, either as an employee or a deemed worker
- that they have an injury, illness or disease of a kind covered by the scheme, and
- that their injury, illness or disease arose out of, or in the course of, their employment.

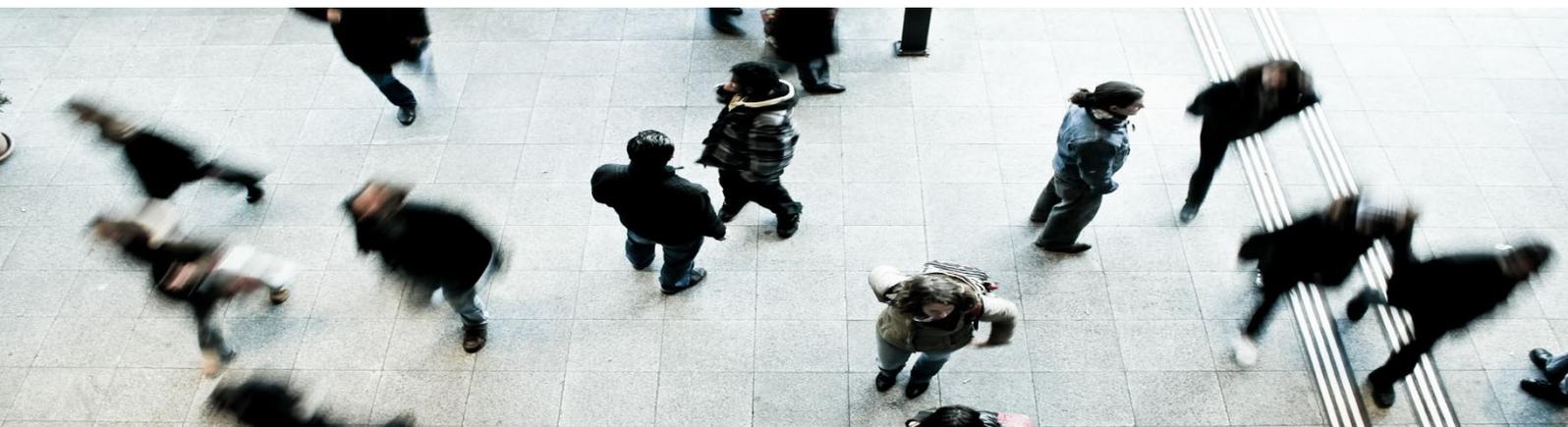
Safe Work Australia notes "Compared to work-related injuries, it is more difficult to prove that a disease was contracted in, or caused by, particular employment. In the case of a virus such as COVID-19, establishing the time and place of contraction may become increasingly hard. Whilst the spread of COVID-19 is contained, it may be easier to establish whether contraction is work-related, for example, if in the course of their employment a worker travels to a high-risk area with a known viral outbreak or interacts with people who have contracted the virus. However, once the virus becomes more wide-spread in the local community, establishing the degree of contribution of a worker's employment to their contraction of the virus will inevitably be more difficult.

Whether a claim for workers' compensation for contracting COVID-19 is accepted will be a matter for the relevant workers' compensation authority, applying their jurisdictions' workers' compensation laws. Workers' compensation authorities will consider each claim on its merits, with regard to the individual circumstances and evidence."

If you would like to review the different scheme wording and thresholds relating to "disease", this can be found [here](#).

Employers should be very careful to guard against the risks of employees contracting COVID-19 at the workplace and should ensure that any mitigating steps they take in response to COVID-19 are measured.

Where employers are concerned about this issue we strongly recommend they seek specific legal advice based on their circumstances.



## 2. Employer obligations

### 2.1 Managing employees and leave entitlements

#### 2.1.1 What do I do if an employee is feeling unwell and suffering flu/COVID-19 like symptoms?

The most common symptoms of COVID-19 are fever, tiredness, and dry cough. Some patients may have aches and pains, nasal congestion, runny nose, sore throat or diarrhea. These symptoms are usually mild and begin gradually.

If an employee presents with these symptoms they should be isolated from others and provided a disposable surgical mask, if available for the person to wear. Employers should then ring the national COVID-19 hotline (1800 020 080) and follow the advice of health officials. Employers should then ensure the employee has transport to their home or to a medical facility.

#### **WHS Incident Notification**

If an employee is suspected or found to have contracted COVID-19 at the workplace you may be required to notify your state or territory WHS regulator. The requirement to notify varies across each state/territory. You can check your states incident notification requirements on this [Safe Work Australia information sheet](#) or you can contact the WHS regulator in your jurisdiction.

The health and safety of staff and those they come into contact with must be an employer's top priority. Employers should ensure that the area where the person was working and all the places, they have been are cleaned by a person wearing appropriate PPE. This may mean evacuating those areas.

It is important to also identify all employees and persons at the workplace who had close contact with the infected person in the 24 hours before that infected person started showing symptoms. These

employees should be sent home to isolate. The work area of these employees should also be thoroughly cleaned by a person wearing appropriate PPE. Again this may mean evacuating those areas.

During this entire process employees should be kept up to date with what is happening in the workplace and any specific risks to them.

Of course, an employee who is unwell and showing signs of COVID-19 can avail themselves of their accrued sick leave if they take time off work due to being ill with the COVID-19 virus.

Under the Fair Work Act, national system employees (other than those engaged on a casual basis), are entitled to 10 days each year paid sick leave (personal) for each year of service. This entitlement accrues on a progressive basis during each year of service and many employees will have an accrual in excess of 10 days.

There is no limit on the number of days of accrued leave that can be taken as personal leave.

#### 2.1.2 What do I do if an employee is required to self-isolate under Federal or State law for 14 days because they have returned from overseas or interstate?

The Australian Government has imposed a universal precautionary self-isolation requirement on all international arrivals in Australia (effective as at 11:59pm Sunday 15 March 2020).

This means that all employees - whether they be citizens, residents or visitors - will be required to self-isolate for 14 days upon arrival in Australia because of their possible or actual exposure to the COVID-19 virus.

Similarly, Queensland, Western Australia, South Australia, Northern Territory and Tasmania all require new entrants to self-isolate for 14 days (with some exceptions for "essential workers" such as healthcare and defence).

**Self-isolation** means staying in your home, hotel room or provided accommodation and not leaving for the period of time that you are required to isolate for (currently 14 days). Only people who usually live in the household should be in the home. No visitors should be allowed. The Department of Health has issued isolation guidance which can be accessed [here](#).

Technically an employee is not entitled to take sick/carer's (personal) leave under the Fair Work Act unless they are absent from work due to either a personal injury or illness, a need to care for a member of their immediate family or household who is sick or injured or due to a family emergency.

This means that an employee returning from travel who is required by government to self-isolate, but is not yet sick themselves cannot avail themselves of sick (personal) leave. This is because, to qualify for personal leave, an employee must be "not fit for work" because of an illness or injury affecting them. It is unlikely that this pre-requisite will be met by persons who are not yet diagnosed as ill but merely require isolation.

However, employees covered by an applicable modern award (see Appendix 1) are likely to be able to access an entitlement to up to two weeks' unpaid pandemic leave (see section 7.1).

On a practical level, however, it may make sense for employers to look to utilise practical solutions during the employee's absence due to government imposed quarantine so that employees do not suffer from a loss of pay during the isolation period where possible, such as:

- allowing the employee to work from home (where feasible), during the quarantine period;
- allowing employees to avail themselves of other leave available to an employee (such as annual leave, long service leave or any other leave available under an award, enterprise agreement or contract of employment);
- any other paid or unpaid leave by agreement between the employee and the employer (e.g. personal leave, or discretionary paid leave); or

Note: Employers should be aware they may attract the risk of breaching the National Employment Standards in the Fair Work Act if they allow an employee to use personal leave where the employee is not in fact ill, even where the employee agrees to this approach.

Always be sure to also check any applicable modern awards, enterprise agreements, employment contract terms and company policies – as they may contain additional rules or entitlements which may apply to your workplace and employees.

### 2.1.3 What do I do if an employee has been in contact with someone who has or may have COVID-19?

If an employee has been "in contact with" someone who has or may have COVID-19 they may also be required to self-quarantine because of their possible or actual exposure to the virus.

#### "In contact with" is defined as requiring:

- Greater than 15 minutes face-to-face contact in any setting with a person who has tested positive for COVID-19 in the period extending from 24 hours before onset of symptoms in the confirmed case; or
- Sharing a closed space for 2 hours or more with a person who has tested positive for COVID-19, in the period extending from 24 hours before onset of symptoms in the confirmed case.

Similar to the position at 2.1.2, employees in these circumstances who need to quarantine but are not yet sick themselves cannot avail themselves of sick (personal) leave. This is because, to qualify for personal leave, an employee must be "not fit for work" because of an illness or injury affecting them. It is unlikely that this pre-requisite will be met by persons who are not yet diagnosed as ill but merely require isolation.

However, employees covered by an applicable modern award (see Appendix 1) are likely to be able to access an entitlement to up to two weeks' unpaid pandemic leave (see section 7.1).

Again, however we suggest discussing the matter with your employees and trying to utilize the practical solutions set out at 2.1.2 so that employees do not suffer from a loss of pay during the isolation period where possible.



#### **2.1.4 What happens if an employee's immediate family member contracts the COVID-19 virus?**

An employee may use paid personal leave to take time off to care for an immediate family member or household member who is sick or injured or to help during a family emergency.

The amount of accrued paid carer's leave that can be taken is not capped, subject to the employee's accrued balance of personal leave at the time.

If an employee exhausts their accrued paid personal leave they may also access up to two days' unpaid carer's leave (or a longer period with the agreement of their employer) in order to care for a family member with a personal illness or injury or to help during a family emergency.

#### **2.1.5 What if an employee cannot attend work because their child's school or childcare centre has been closed due to COVID-19?**

An employee may use paid personal leave to take time off to help during a family emergency. Previous case law around the meaning of a "family emergency" suggests that it is likely to include providing care to a child whose school has been forced to close with little or no notice as a result of COVID-19. Therefore, an employee in this circumstance will likely also be able to access their paid personal leave for this purpose.

The amount of accrued paid carer's leave that can be taken is not capped. However, the circumstance of a school closing with little or no notice is unlikely to continue to exist for longer than a few days, after which time an employee will need to move to using their annual leave entitlement (or some other form of leave available to them) in order to be paid for any absence from work to care for a child.

Note: Casual employees are entitled to 2 days of unpaid carer's leave per occasion. Full and part time employee who have exhausted their accrued paid personal leave may access up to two days' unpaid carer's leave (or a longer period with the agreement of their employer) in order to provide care where their child's school has been forced to close with little or no notice.

#### **2.1.6 What if an employee may have contracted COVID-19 but they still wish to attend work?**

If an employee maintains that they are able to work (but are not sick and not able to work from home) then employers face a difficult scenario: the employee says they are fit to work, but the employer has concerns that the employee is not fit to work (perhaps because they may have been exposed to COVID-19 through travel or close contact with someone who has tested positive) without posing unacceptable safety risks to the workforce. Remembering that employers have a duty to provide and maintain, so far as is reasonably practicable, a working environment that is safe and without risks to the health of employees. As well as workers having a duty to take reasonable care for their own and others' health and safety.

The best means of resolving this impasse is to first discuss the issue with the employee and then if necessary direct the relevant employee to undergo testing if testing is available.

Employees can be directed to obtain medical clearance, which may include being tested for coronavirus, provided this is reasonable and based on factual information about health and safety risks.

Once the test is undertaken, if the employee is cleared, they are able to return to work (best practice would dictate the employer pays the employee for the relevant period). If the employee tests positive, then they can be permitted to take personal leave for the duration of their absence.

#### **2.1.7 What about casual employees?**

Casual employees are entitled to not attend work when they are unwell or injured. However, they are not entitled to any additional payment of sick leave for any shifts they do not work as they have already been paid an additional loading in lieu of other entitlements including sick leave. This means that a casual employee who is diagnosed with COVID-19 may be required to refrain from presenting to work without a legal entitlement to additional payments.

Furthermore, where shifts to casual employees are reduced either on account of business downturn or because the employee has been required to isolate (due to contact or recent travel), the employees will not be entitled to payment during this period.

Casual employees are entitled to 2 days unpaid carer's leave to take time off to care for an immediate family member or household member who is sick or injured or to help during a family emergency.



## 2.2 Employee directions

### 2.2.1 Can you send an employee home if you observe COVID-19 virus symptoms?

Employers have a legal responsibility to ensure the health and safety of those in the workplace, including visitors. Where an employer holds a reasonable belief that an employee is posing a health risk – such as showing symptoms of the COVID-19 virus – it would not be unreasonable to send the employee home on sick (personal) leave on the basis that they are unfit to work safely and without risk to the health of others in the workplace.

Employers should ask the employee to seek medical advice / testing and a clearance before returning to work. If the employee maintains they are able to work, consider whether it is practical for the employee to work from home for part or all of the period prior to obtaining the test results.

Once the test is undertaken, an employee may return to work if they are cleared. If the employee tests positive, see section 2.1.1 regarding any pay and leave obligations and entitlements that may apply.

During the COVID-19 outbreak, it may also be prudent to remind employees of their obligation to take reasonable care not to adversely affect the health and safety of other persons, and ask that they notify their employer immediately if they are suffering flu-like symptoms.

### 2.2.2 What if you wish to direct an employee to not attend work but the employee is not showing signs of COVID-19 and is not required to isolate themselves under a federal or state government direction (and not subject to a stand down)?

If an employer directs an employee not to attend work, despite them being fit and able to do so (and not subject to any government isolation requirements) then we suggest best practice is for that employee to continue to get paid.

In this situation, it is also important to check and consider whether you can simply issue this direction (e.g. pursuant to the employee's contract or as a reasonable and lawful direction based on factual information about health and safety risks) – or whether you need employee agreement. Again, also check any applicable industrial instruments (such as enterprise agreements, awards), contract terms and company policies – and seek specific advice.

### 2.2.3 Work related travel

Employers should make sure that travel policies clearly address where an employee can travel to, the reasons for travel and permission required.

Employees should be informed that travel policies are constantly under review and may be subject to regular change, particularly as state border arrangement change.

Employers should also carefully check any insurance cover for work-related travel.



#### 2.2.4 Can you give directions about non-work related employee travel?

Employers must be mindful not to give directions to employees that might extend to or impact the personal or private activities of the employee and which would not otherwise affect their work. Only in exceptional circumstances would it be regarded as reasonable for an employer to direct an employee how to conduct themselves outside the workplace and have the right to extend its supervision over the private lives of employees. In considering this issue, a court will look at whether there is a significant connection between the outside activity and the employee's employment.

It is possible that the current COVID-19 circumstances may give rise to such a sufficient connection, given subsequent quarantine at federal and state government's direction that an employee will now likely be subject to, meaning an employer may be in a position to potentially direct staff with respect to non-work related travel.

At a minimum employers should inform employees that when making travel plans (including interstate travel) they should understand the isolation requirements which they may be subject to on arrival and return.

### 2.3 Visitors to workplaces

Taking extra precautions in allowing visitors to enter the workplace is important for employers in limiting exposure to COVID-19 in the workplace.

Employers have the right to ask visitors to provide information in advance as to whether they have flu-like symptoms, have been in contact with anyone infected with COVID-19, or travelled to a high-risk area.

If a visitor answers affirmatively to any of these questions, employers should strongly consider their work health and safety obligations and should request the visitor not come to the workplace until they have been asymptomatic for 14 days or can provide a clearance letter from a physician.

Employers may also ask any visitor to provide their contact information in the event that COVID-19 develops in the workplace and the visitor may have been exposed to the COVID-19 virus.



# 3. Working from home

Reducing face-to-face contact is an excellent measure to mitigate the impact of COVID-19. The Federal Government is encouraging business to adjust work places to enable staff to work from home where possible. With this however, comes a number of practical implications to consider.

Firstly not every position and every activity can be conducted from an employee's home, but in an increasingly service based economy / IT based jobs perhaps can more than ever before.

It is also important to remember that regardless of where your employees work, you are still responsible for their physical health and safety while at work, as well as their mental wellbeing.

## 3.1 When can employees be directed to work from home?

Employers are entitled to issue reasonable and lawful direction to their employees which is likely to including a direction to work from home (in line with the Governments request) in instances where the nature of work involved is suitable to be conducted from an employee's home. Employers should however also review their obligations under any applicable enterprise agreements, awards, contracts and policy (such as consultation clauses) prior to issuing such a direction.

Where employees are required to record their hours of work (for example, in relation to annualized wage arrangements under some awards), this currently needs to continue when employees are working from home.

## 3.2 Ensuring the health and safety of your staff working from home

In Australia, WHS laws still apply to businesses if workers are required to work from locations other than their usual workplace, for example from their home. Employers must still ensure, so far as is reasonably practicable, the health and safety of their workers. The worker also has a responsibility to take reasonable care for his or her own health and safety, including complying with reasonable instruction given by the employer or any policy and procedures provided.

Prior to going moving staff to work-from-home, employers should have a discussion with their staff to make sure their work area at home meets WHS

standards, which would involve a safety assessment of the work area prior to the employee working from home.

Some key things to consider during an assessment include the following:

- Workstation set up
- Work hours and breaks
- Physical environment (i.e. noise, heat, cold, lighting, security, electrical safety, home hygiene and home renovations, first aid etc.)
- Any manual tasks the worker has to carry out
- Psychosocial risks (i.e. isolation, reeducated support, fatigue, online harassment).

After doing such an assessment, you should come to an agreement with the employee about any controls and preventative measures that need to be put in place.

It is also important to consider whether workers have the correct equipment to work from home. It may be for instance that at present only some staff have the technological capacity to work remotely. Considering what is needed to expand this capacity will involve consideration of available technology, cyber-security, cost factors and work, health and safety implications.

## 3.3 Expectation around working remotely

Employers should make sure that employees are aware of any on-going obligations around issues and policies such as confidentiality and safe work practices whilst working at home.

## 3.4 Insurance

It is important to remember that while employees are not working at their standard workplace, it is still an employer's responsibility to provide a safe work environment. Therefore, if an employee sustains an injury in the course of their work while at home, it is an employer's responsibility to ensure they are covered by workers compensation insurance. Bear in mind that psychological injury is also claimable under workers compensation.



# 4. Changing or scaling down operations

The following section addresses the worst-case scenarios and suggests some contingency strategies that business may be considering to limit the impact of COVID-19.

Note that if an employer qualifies for the JobKeeper scheme, and is entitled to JobKeeper payments for a particular employee, additional options will be available to that employer in relation to that employee/s (see section 6).

## 4.1 Varying hours or rosters

As a result of the spread of COVID-19 some employers may be considering varying operations, for example to reduce the risk of exposure for employees by altering start and finishing times or to address changes in demand patterns of consumers.

An employer's ability to vary hours and/or rosters will largely depend upon the applicable industrial instrument (e.g. enterprise agreement or award) or contract that applies to their employees.

For example some employers whose workforces are covered by an award or enterprise agreement may be restricted from altering work arrangements without first consulting with employees (and potentially also union/s). Changes to an employee's start and finish times (for example, in order to avoid crowds during peak hours) might be possible under the span of hours provisions in an award or enterprise agreement. Some awards and enterprise agreements also allow the span of hours to be varied by agreement. Reducing a permanent employee's ordinary hours usually requires the employee's agreement.

We therefore strongly recommend if you are considering making certain variations to your operations that you get advice on your specific options and obligations prior to making any changes.

## 4.2 Reducing operations

As a result of the potential further spread of COVID-19 some employers may be forced to consider scaling down operations. For example by:

- placing a freeze on new hires;
- reducing any supplementary labour such as contractors or labour hire workers;
- reducing employee hours; or
- providing annual or long service leave in advance or at half pay.

An employer's ability to make such changes will largely depend upon the applicable industrial instrument (e.g. enterprise agreement or award) or contract that applies to their employees.

We therefore strongly recommend if you are considering scaling down your operations that you seek advice on your specific options and obligations prior to making any changes.

## 4.3 Redundancies

Some employers may decide that things have gotten so financially stringent that they are compelled to reduce the size of their workforce and as a result need to make some staff redundant.

Before making any employees redundant it is important to first consider:

- whether there are any options for redeployment within the business or associated entities; and
- your consultation obligations under any enterprise agreements or modern awards.

Most employees (who have at least one year of service with the employer) will be entitled to receive a minimum redundancy payment in accordance with the Fair Work Act (a general exception applies to employers with fewer than 15 employees in most (but not all) industries). This payment is in addition to a period of notice and payment for untaken annual leave.

The amount of redundancy pay employees are entitled to will be based upon their continuous service, as well as any terms in any applicable enterprise agreement or award.

It is possible for employers to ask the Fair Work Commission to reduce an amount that would otherwise be payable on redundancy if:

- the employer finds other acceptable employment for the employee; or
- the employer cannot afford the full redundancy amount.

If as an employer you are considering redundancy of 15 or more staff, you must also give written notice to the Department of Human Services of the proposed dismissals.

Before taking steps to make an employee redundant we strongly suggest getting advice on your specific circumstances.

## 5. Business shut down

From 22 March 2020, the Federal Government and state and territories agreed to dramatically ramp up restrictions to control the spread of coronavirus. This ramp up has included closing business where large amounts of people tend to congregate, raising the risk of COVID-19 transmission. As a result, many businesses across the country have already been forced to close due to these enforceable government directives.

As the COVID-19 pandemic continues to take a worsening course many businesses still operating may be also be in a situation where they are forced to close due to a lack of stock or customers. This may include situations in which businesses are unable to trade due to a lack of vital supplies or stock becoming unavailable (for example medical and allied businesses that may require masks to safely work).

The following section addresses both of these scenarios with respect to an employer's ability to stand down their employees without pay.

Note that if an employer qualifies for the JobKeeper scheme, and is entitled to JobKeeper payments for a particular employee, additional options will be available to that employer in relation to that employee/s – including in relation to stand down (see section 6).

### 5.1 Stand down where a business IS subject to an enforceable government directive to close

Under the Fair Work Act employers have the right to temporarily stand down employees without pay during a period in which the employees cannot be “usefully employed” because of a stoppage of work for any cause for which the employer cannot reasonably be held responsible. (The other circumstances are industrial action and breakdown of machinery or equipment).

**“Usefully employed”** means that the employment will result in a net benefit to the employer's business by reason of the performance of the particular work done by the employee.

The Federal and State governments have announced a number of government enforced directives for businesses to close, generally in places of social gatherings such as pubs, gyms, places of worship, beauty salons and libraries.

As a result of these enforceable government directives where a business has been directed by the government to close, under the Fair Work Act, employees can be stood down because of a stoppage of work for which the employer cannot reasonably be held responsible and for which employees cannot be usefully employed.

Employers are not required to pay employees during the period of a stand down. Employees do however accrue leave as normal during a stand down.

Note: Enterprise agreements and employment contracts can sometime have different or extra rules about when an employer can stand down an employee without pay, for example, a requirement to notify or consult. Employers should consider whether their obligations are impacted by any applicable enterprise agreement, award, employees' employment contracts or workplace policies prior to issuing a stand down even where it is as a result of an enforceable government direction to close.



## 5.2 Stand down where a business is NOT currently subject to an enforceable government directive to close

Employers not subject to a government directive must ensure that each of the three limbs of a stand down under the Fair Work Act are met before standing down employees.

Under the Fair Work Act an employer may stand down an employee:

- During a period in which the employee cannot be usefully employed;
- Because of a stoppage of work for any cause
- For which the employer cannot be reasonably held responsible.

While the regulator, the Fair Work Ombudsman, states on its website that employers cannot stand down an employee “just because the business is quiet or there isn’t enough work”, (in our view) the COVID-19 outbreak could and is resulting in situations that meets the requirements for stand down under the Act, for example where a business imports and sells overseas goods which they are unable to currently receive or where a large proportion of the workforce has been forced to self-quarantine with the result that the remaining employees/workforce cannot be usefully employed.

There will however be no right to stand down if there is useful work available for the employee to do which is within the terms of the employee’s contract of employment. It need not be work the employee normally carries out.

It is an essential part of stand down that the decision is a unilateral one of an employer to withhold work and payment even when employees are prepared to perform all duties.

Employees can be stood down for the period of time while the business is dealing with the issue AND employees cannot be usefully employed.

Situations where stand down does NOT apply:

- Where an employer refuses to pay an employee in response to the employee’s refusal to work (e.g. for safety reasons) in accordance with the contract of employment.
- If an enterprise agreement or contract of employment (rare) makes provision for stand down. In these circumstances the provisions in the agreement or contract will apply as opposed to the Fair Work Act. They may have different or extra rules about when an employer can stand down an employee without pay.
- An employee is taking authorised leave (paid or unpaid) or is otherwise authorised to be absent from their employment.
- If there is work available for some employees you cannot stand down all employees. Only those employees who cannot be usefully employed may be stood down.

In the event of a valid stand down under the Fair Work Act, an employer does not need to pay wages to stood down employees, but an employee accrues leave in the usual way (as though they have worked). Continuity is also not broken.

Even though stand down periods are unpaid, an employer may wish to consider some of the following options prior to ceasing employee pay outright:

- Options for redeployment to other parts of the business where available.
- Allowing employees to take paid leave (such as annual leave or long service leave) if requested.
- Allowing employees alternative leave arrangements such as extended annual leave at half pay or early long service leave (if permitted under any applicable award, enterprise agreement or contract).
- Special provisions for employees with insufficient accrued leave to cover the period of shut down (for example, allowing staff to purchase leave which is then dedicated on a pro rata basis from their annual wage).

Stand downs are likely to be closely scrutinised and can be challenged by an employee or union in the Fair Work Commission if not implemented strictly in accordance with legal obligations, including the ordering of back pay to those employees who were unlawfully stood down, so we strongly recommend seeking advice prior to implementing a stand down.



# 6. JobKeeper wage subsidy payment

New temporary amendments to the Fair Work Act were made on 8 April 2020 to support the practical operation of the JobKeeper scheme.

If an employer qualifies for the JobKeeper scheme, and is entitled to JobKeeper payments for a particular employee, additional options will be available to that employer in relation to that employee/s. This applies for the period from 30 March to 27 September 2020. Employers should wait until they have confirmation from the ATO that they are eligible before they seek to avail themselves of any of these options.

Note that the measures below apply despite any limitations in a 'designated employment provision' such as the stand down provisions of the Fair Work Act, a contract of employment, or a fair work instrument such as an enterprise agreement or award.

See ACCI's JobKeeper Payment – Quick Employer Guide for full details about the JobKeeper scheme, including eligibility of employers and employees, options to support job retention and business recovery, and additional guidance in relation to implementing these options.

## 6.1 Direction to work fewer days or hours

An eligible employer may give a 'JobKeeper enabling stand down direction' to work fewer days or hours to an eligible employee who cannot be usefully employed for the employee's normal days or hours because of business changes attributable to the COVID-19 pandemic or government initiatives to slow COVID-19 transmission.

The amount of hours can be reduced to nil, that is, a complete stand down – effectively a lower bar to satisfy than the 'stand down' test in the Fair Work Act.

## 6.2 Direction to perform different duties

An eligible employer may direct an eligible employee to perform any duties within their skill and competency, so long as:

- the duties are safe
- the employee is licensed and qualified to perform the duties; and
- the duties are reasonably within the scope of the employer's business operations.

Employers should ensure the direction is not unreasonable in all of the circumstances, as employees may then be able to refuse.

## 6.3 Direction relating to location of work

An eligible employer may direct an eligible employee to perform duties at a place (including the employee's home) that is different from the employee's normal workplace, if:

- the place is suitable for the employee's duties;
- the place does not require the employee to travel an unreasonable distance; and
- performance of the employee's duties at the place is safe, having regard to the nature and spread of COVID-19; and
- reasonably within the scope of the employer's business operations.

For the direction to apply, employers should ensure the direction is reasonable in the circumstances, including taking into consideration any impact on caring responsibilities of an employee.

## 6.4 Request to work different days or times

Eligible employers can request employees perform work on different days or at different times during a period, compared with the employee's ordinary days or times of work. The request will be permitted where:

- performance of the duties on different days or at different times is safe, having regard to the nature and spread of COVID-19 and reasonably within the scope of the employer's business operations, and
- the agreement does not reduce the employee's number of hours of work compared with the employee's ordinary hours of work.

An employee cannot unreasonably refuse the employer's request for agreement to the changed arrangements.

## 6.4 Request to take annual leave

Employers can request that employees take annual leave, down to a balance of two weeks / 10 days. Employees must not unreasonably refuse such a request. There is also scope to agree to the taking of double annual leave at half pay.

# 7. Other alternative options

In many situations an employer may not be able to avail themselves of the ability to stand down employees or seek assistance from the JobKeeper Payments Scheme (for example because they don't meet the stand down test or because their staff don't meet the eligibility test). There are other options available to employers in such instances to protect employment and contribute to the maintenance of the business.

## 7.1 Renegotiating employee wages and conditions

Employers may seek to renegotiate salaries and working hours with their employees, noting that there remains the requirement to pay employees in accordance with the minimums contained in an industrial instrument or the National Minimum Wage.

This must be done with the consent of the employee. While employees may not ordinarily be willing to renegotiate and vary their contractual entitlements, employees may be open to engage with the idea to protect their employment and help the business ensure that it can survive through and after COVID-19.

Any variation to a contract of employment should be in writing.

## 7.2 Varying or terminating an enterprise agreement

Employers may consider the possibility of varying an enterprise agreement to provide for further flexibilities, for example broader stand down provisions, reduced wages or other costs to the business, increasing the ability to enter into agreed leave without pay arrangements.

The variation must be approved by a majority of affected employees who cast a valid vote. The employer and employees may then make a joint application to the FWC within 14 days.

The requirements for varying an agreement are similar to those for approving a new agreement, including that the agreement as varied must pass the Better Off Overall Test (BOOT). There may be some scope to argue that the FWC can approve an agreement variation in cases where the agreement does not pass the BOOT if, because of exceptional circumstances, approval of the agreement would not be contrary to the public interest. See [FWC Fact Sheet: Varying an agreement](#) for more information.

## 7.3 Agreed leave of absence

Employers may seek to make an agreement with all or some of their employees to take a period of leave without pay (LWOP).

In doing so, employers should communicate clearly with their employees so that they understand what the business is trying to achieve (e.g. to maintain employment, keep its doors open), and what the options are.

Relevant considerations are as follows:

- Employees might first be provided with the opportunity to take paid leave, e.g. annual leave and long service leave.
- Continuity of service will not be broken by the LWOP period. However, a period of leave, such as LWOP does not ordinarily count towards service, so service-based leave entitlements (e.g. annual leave) would not accrue. Employers may consider allowing employees to accrue service-based leave entitlements (thus being consistent with the position if the employee was stood down).
- An agreement with an employee to take LWOP should be in writing and signed by the employee, reflecting any agreed principles. Employers may consider allowing their employee to accept alternative employment during the period of LWOP (subject to any obligations such as in relation to use of confidential information).
- Employers should maintain communication lines during a period of LWOP, including to monitor employees' health and wellbeing, and answer any questions.

Employers also need to be mindful of additional considerations that may apply if an industrial instrument (e.g. award or enterprise agreement) applies.

For example, a proposal that a large number of employees take LWOP might be considered a major change for the purposes of a consultation clause. Employers should also consider whether there are any provisions regarding change to rostering arrangements, and whether there are any terms that would prevent LWOP arrangements.

# 8. Modern award changes

## 8.1 General modern award changes

The Fair Work Commission on its own initiative has in response to COVID-19 temporarily varied 99 awards (full list contained in Annexure 1) until 30 June 2020 by introducing:

- Two weeks' unpaid pandemic leave; and
- The capacity for an employee to take twice as much annual leave at half pay.

These temporary changes aim to assist employers and employees through this unprecedented crisis.

### 8.1.1 Two weeks' unpaid pandemic leave

All employees (full-time, part-time & casual) are entitled to two weeks' unpaid pandemic leave in full immediately if they are:

- Required to self-isolate; or
- Otherwise prevented from attending work by measures taken by government or medical authorities.

This leave is considered a workplace right under the Fair Work Act for the purposes of an adverse action claim if an employee is unlawfully prevented from taking this leave.

### 8.1.2 Double annual leave at half pay

Employers and employees may agree to the taking of up to twice as much annual leave at half the rate of pay.

## 8.2 Changes to specific modern awards

### 8.2.1 Restaurant Industry Award

In response to COVID-19 the Restaurant & Catering Industry Association applied to the Fair Work Commission to temporarily vary the Restaurant Industry Award until 30 June 2020.

Employers with employees covered by the Restaurant Industry Award should take note of the following temporary amendments:

- **Taking annual leave:** Employers and individual employees can agree to take up to twice as much annual leave at a proportionately reduced rate for all or part of any agreed or directed period away from work, including a close-down.

- **Directing annual leave:** Employers may direct employees to take annual leave with 24 hours' notice, subject to consideration of an employee's personal circumstances. Employees who take annual or personal leave will be paid leave based on their ordinary hours of work prior to the commencement of the relevant Schedule.
- **Close down:** An employer may with one weeks' notice close down, for a period between 28 March 2020 and 30 June 2020. During a close-down, an employee can take annual leave and then will be given leave without pay for the remainder of the shutdown. Employees with insufficient accrued annual leave are required to take unpaid leave.
- **Relaxation of classifications:** An employer may direct employees to perform all duties within their skill and competency, regardless of their ordinary classification so long as:
  - the duties are safe
  - the employee has any necessary licenses or qualifications to perform them; and
  - the requisite payment is made where the duties are considered 'higher duties' under the award.
- **Reduction in hours:** An employer may direct:
  - A full-time employee to work an average of between 22.8 and 38 ordinary hours per week, with payment made on a pro rata basis.
  - A part-time employee to work an average of between 60% and 100% of their guaranteed hours per week, or per roster cycle.

Where an employee's hours are reduced, employees must be consulted prior to the reduction in hours and be provided as much notice as practicable. The employee will continue to accrue leave entitlements based on the ordinary hours prior to the reduction.



## 8.2.2 Clerks – Private Sector Award

In response to COVID-19 the Australian Chamber of Commerce and Industry in conjunction with the Australian Industry Group applied to the Fair Work Commission to temporarily vary the Clerks Award until 30 June 2020.

Employers with employees covered by the Clerks Award should take note of the following temporary amendments:

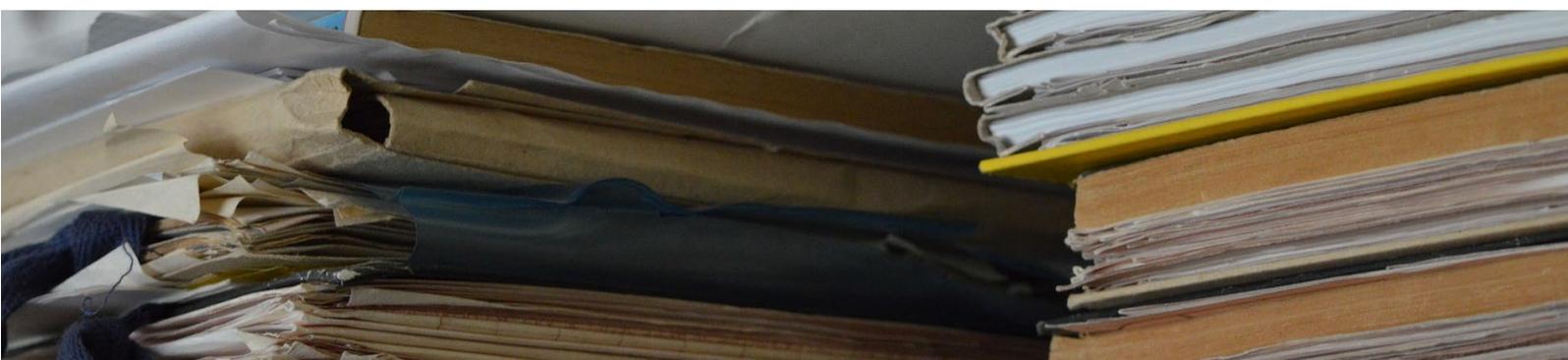
- **Relaxation of classifications:** An employer may direct employees to perform all duties within their skill and competency, regardless of their ordinary classification with no reduction in the employee's pay so long as the duties are safe and the employee has any necessary licenses or qualifications to perform them.
- **Minimum engagement:** The minimum period of engagement of part-time and casual employees who are working from home with the agreement of their employer may be reduced from 3 hours to 2 hours.
- **Spread of hours:** The spread of ordinary hours for dayworkers (being employees other than shift workers) working from home has been extended to between 6am and 11pm Monday to Friday, and 7am to 12:30pm on Saturday.
- **Taking annual leave:** Employers and individual employees can agree to take up to twice as much annual leave at a proportionately reduced rate for all or part of any agreed or directed period away from work, including a close-down.
- **Directing annual leave:** An employer may direct employees, subject to considering the employee's personal circumstances, to take any annual leave that has accrued by giving at least 1 weeks' notice or any shorter notice period agreed. An employee must not be left with less than 2 weeks accrued annual leave after taking the leave.

- **Reducing ordinary hours:** An employer and its full-time and part-time employees in a workplace or section of a workplace may agree, by ballot with 75% approval by employees, to temporarily reduce the ordinary hours of work for a specified period between 28 March 2020 and 30 June 2020, but must not be reduced to fewer than 75% of the full time ordinary hours for a full time employee, or 75% of the part-time employee's agreed hours immediately prior to the implementation of reduced hours. The employee's hourly rate must be maintained but the weekly wage will reduce by the same proportion.

Employers cannot unreasonably refuse a request from an employee whose hours have been reduced to engage in reasonable secondary work, and must consider reasonable requests for training, professional development and/or study leave.

Notwithstanding this change, employers may still reach an agreement in writing with an employee to reduce the employee's hours or to move the employee temporarily from full-time to part-time hours of work, with a commensurate reduction in the employee's weekly wage.

- **Close down:** An employer may with one weeks' notice close down, for a period between 28 March 2020 and 30 June 2020. During a close-down, an employee can take annual leave and then will be given leave without pay for the remainder of the shutdown. Employees with insufficient accrued annual leave are required to take unpaid leave.





### 8.2.3 Hospitality Award

In response to COVID-19 the Australian Hotels Association applied to the Fair Work Commission to temporarily vary the Hospitality Award until 30 June 2020.

Employers with employees covered by the Hospitality Award should take note of the following temporary amendments:

- **Relaxation of classifications:** An employer may direct employees to perform all duties within their skill and competency, regardless of their ordinary classification so long as:
  - the duties are safe
  - the employee has any necessary licenses or qualifications to perform them; and
  - the requisite payment is made where the duties are considered 'higher duties' under the award.
- **Taking annual leave:** Employers and individual employees can agree to take up to twice as much annual leave at a proportionately reduced rate for all or part of any agreed or directed period away from work, including a close-down.
- **Directing annual leave:** Employers may direct employees to take annual leave with 24 hours' notice, subject to consideration of an employee's personal circumstances. Employees who take annual or personal leave will be paid leave based on their ordinary hours of work prior to the commencement of the relevant Schedule.

- **Reduction in hours:** An employer may direct:
  - A full-time employee to work an average of between 22.8 and 38 ordinary hours per week, with payment made on a pro rata basis.
  - A part-time employee to work an average of between 60% and 100% of their guaranteed hours per week, or per roster cycle.

Where an employee's hours are reduced, employees must be consulted prior to the reduction in hours, provided as much notice as practicable and the employee will continue to accrue leave entitlements based on the ordinary hours prior to the reduction.

### 8.3 Next tranche of Awards

The Fair Work Commission has expressed its view that these matters are best addressed by discussions between the industrial parties and by way of consent variations.

These discussions are likely to be prioritised in industries most likely to experience decreases in employment as an immediate consequence of COVID-19, due to a decrease in labour demand either due to government restrictions, or due to households reducing their spending.

# 9. Discrimination and privacy

## 9.1 Discrimination, bullying

Employers should be careful to balance their health and safety obligations to ensure the health and safety of all employees against a risk of practices which unlawfully discriminate against employees or harass them (for example on the grounds of race or disability).

It is likely in our view that contracting COVID-19 would be characterized as a 'disability' for the purposes of anti-discrimination laws.

Whilst arrangements based on risk assessments which are critical to discharging an employer's work health and safety obligation to ensure a safe workplace are likely to be defensible, employers should be alert and aware that conduct may be unlawful even if it arises from a genuinely held concern about COVID-19 (e.g. changes to the provision of services for certain types of customers).

Employers will be vicariously liable for the conduct of their employees who discriminate against or harass other employees, unless the employer can show it has taken reasonable steps to avoid the conduct.

Reasonable steps include:

- having a policy which deals with discrimination and unlawful harassment;
- having a procedure to handle complaints of unlawful discrimination and harassment;
- conducting training on those policies and procedures;
- directing employees not to engage in any kind of discrimination or harassment; and
- acting promptly in relation to any complaints of unlawful discrimination in accordance with the appropriate policies and procedures and then taking actions to avoid such conduct occurring again.

Employers can minimise the risk of unlawful discrimination claims by ensuring that any decisions made as to a workers' attendance or requesting medical clearance are consistent with publications of the Department of Health and communicating this with employees.

## 9.2 Privacy considerations

Most employers will need to collect personal information from staff members and workplace visitors to control the risks posed by the COVID-19 pandemic, but they must still comply with privacy laws and the Australian Privacy Principles (APPs) in Schedule 1 of the Commonwealth Privacy Act 1988.

In relation to the COVID-19, employers can collect, use and disclose personal information for the purpose of ensuring all necessary precautionary steps are taken for the individual the information is taken from or any other individuals who might be at risk. However, you must collect "as little information as is reasonably necessary", in line with Department of Health advice on identifying COVID-19 risk factors and controlling the spread of the communicable disease.

You may inform staff that a colleague or visitor has or may have contracted COVID-19 but you should only use or disclose personal information that is reasonably necessary in order to prevent or manage COVID-19 in the workplace.

Depending on the circumstances, it may not be necessary to reveal the name of an individual in order to prevent or manage COVID-19, or the disclosure of the name of the individual may be restricted to a limited number of people on a 'need-to-know basis'.

An employer doesn't need to obtain an individual's express or implied consent to collect personal health information where, for example, the collection relates to preventing serious health and safety threats.

An employee's sick leave records aren't protected by the Privacy Act where those records are used or disclosed for a purpose directly related to the relevant employment relationship.

Where employees are working remotely or from home we strongly recommend employers implement stringent security measures to protect personal information during remote work. This include ensuring all laptops and other devices have updated operating systems and anti-virus software, and strong passwords; workers use work email accounts instead of personal ones; and multi-factor authentication for remote access systems and resources are in place.

# 10. Resources and contacts

## 10.1 Key resources

The following are links to government and public health organization websites that have reliable up-to-date information about the status of the COVID-19 in Australia and globally:

**Commonwealth Department of Health** – [Coronavirus \(COVID-19\) health alert](#)

**Service Australia (formerly Centrelink)** – [Affected by coronavirus \(COVID-19\)](#)

**World Health Organisation** – [Coronavirus disease \(COVID-19\) outbreak](#)

**Fair Work Ombudsman** - [Coronavirus and Australian workplace laws](#)

**Safe Work Australia** – [Coronavirus \(COVID-19\) Advice for PCBU's](#)

**Smartraveller** – [Coronavirus \(COVID-19\)](#)

**Worksafe Victoria** – [Exposure to coronavirus in workplaces](#)

**SafeWork NSW** – [Coronavirus](#)

**WorkCover QLD** – [Coronavirus \(COVID-19\) workplace risk management](#)

**NT Worksafe** – [Getting your workplace ready for COVID-19](#)

**WorkSafe Tasmania** – [Novel coronavirus \(COVID-19\)](#)

**SafeWork SA** – [Coronavirus \(COVID-19\) workplace information](#)

**Coronavirus Australia App** - The Federal Government has released a COVID-19 app in the [Apple App Store](#) or in [Google Play](#) with up-to-date information on a range of topics.

**WhatsApp Channel** – The Federal Government has set up a WhatsApp Channel that you can ask questions to, with real-time information provided on [iOS](#) or [Android](#).

## 10.2 Key contacts

If you need further assistance in dealing with the implications of COVID-19 Business SA is here to assist.

### Business SA members

Our Business Advice Hotline is here to assist. Call 08 8300 0000 and select option 1.

#### Elisa Pecorelli

General Manager, Business Advisory

Direct Line: 08 8300 0059

Email: [elisap@business-sa.com](mailto:elisap@business-sa.com)

#### Lauren Krollig

Senior Consultant, Workplace Relations

Direct line: 08 8300 0053

Email: [laurenk@business-sa.com](mailto:laurenk@business-sa.com)

#### Kathryn Rees

Senior Consultant, Injury Management

Direct Line: 08 8300 0012

Email: [kathrynr@business-sa.com](mailto:kathrynr@business-sa.com)

#### Estha van der Linden

Senior Policy Adviser

Direct Line: 08 8300 0073

Email: [esthav@business-sa.com](mailto:esthav@business-sa.com)

# Annexure 1

## Modern Awards covered by the Fair Work Commission's variations

- Aboriginal Community Controlled Health Services Award 2010
- Aged Care Award 2010
- Air Pilots Award 2010
- Aircraft Cabin Crew Award 2010
- Airline Operations-Ground Staff Award 2010
- Airport Employees Award 2010
- Alpine Resorts Award 2010
- Aluminium Industry Award 2020
- Ambulance and Patient Transport Industry Award 2020
- Amusement, Events and Recreation Award 2010
- Animal Care and Veterinary Services Award 2020
- Aquaculture Industry Award 2020
- Architects Award 2010
- Asphalt Industry Award 2010
- Banking, Finance and Insurance Award 2020
- Book Industry Award 2020
- Broadcasting, Recorded Entertainment and Cinemas Award 2010
- Business Equipment Award 2010
- Car Parking Award 2020
- Cement, Lime and Quarrying Award 2010
- Cemetery Industry Award 2020
- Children's Services Award 2010
- Cleaning Services Award 2010
- Clerks - Private Sector Award 2010
- Commercial Sales Award 2010
- Concrete Products Award 2010
- Contract Call Centres Award 2010
- Corrections and Detention (Private Sector) Award 2020
- Cotton Ginning Award 2020
- Dry Cleaning and Laundry Industry Award 2010
- Educational Services (Post-Secondary Education) Award 2010
- Educational Services (Schools) General Staff Award 2010
- Educational Services (Teachers) Award 2010
- Fast Food Industry Award 2010
- Fitness Industry Award 2010
- Food, Beverage and Tobacco Manufacturing Award 2010
- Funeral Industry Award 2010
- Gardening and Landscaping Services Award 2020
- General Retail Industry Award 2010
- Graphic Arts, Printing and Publishing Award 2010
- Hair and Beauty Industry Award 2010
- Health Professionals and Support Services Award 2010
- Higher Education Industry-Academic Staff-Award 2010
- Higher Education Industry-General Staff-Award 2010
- Horse and Greyhound Training Award 2010
- Horticulture Award 2010
- Hospitality Industry (General) Award 2010
- Journalists Published Media Award 2010
- Labour Market Assistance Industry Award 2010
- Legal Services Award 2020
- Live Performance Award 2010
- Local Government Industry Award 2010
- Mannequins and Models Award 2010
- Manufacturing and Associated Industries and Occupations Award 2010
- Marine Tourism and Charter Vessels Award 2010
- Market and Social Research Award 2020
- Meat Industry Award 2010
- Medical Practitioners Award 2020
- Miscellaneous Award 2010
- Nursery Award 2020
- Nurses Award 2010
- Passenger Vehicle Transportation Award 2010
- Pastoral Award 2010
- Pest Control Industry Award 2010
- Pharmaceutical Industry Award 2010
- Pharmacy Industry Award 2010
- Poultry Processing Award 2010
- Premixed Concrete Award 2020
- Professional Diving Industry (Recreational) Award 2010
- Professional Employees Award 2010
- Racing Clubs Events Award 2010
- Racing Industry Ground Maintenance Award 2020
- Rail Industry Award 2010

- Real Estate Industry Award 2020
- Registered and Licensed Clubs Award 2010
- Restaurant Industry Award 2010
- Road Transport (Long Distance Operations) Award 2010
- Road Transport and Distribution Award 2010
- Salt Industry Award 2010
- Seafood Processing Award 2020
- Security Services Industry Award 2010
- Silviculture Award 2020
- Social, Community, Home Care and Disability Services Industry Award 2010
- Sporting Organisations Award 2020
- State Government Agencies Award 2020
- Storage Services and Wholesale Award 2010
- Sugar Industry Award 2010
- Supported Employment Services Award 2010
- Surveying Award 2020
- Telecommunications Services Award 2010
- Textile, Clothing, Footwear and Associated Industries Award 2010
- Timber Industry Award 2010
- Transport (Cash in Transit) Award 2010
- Travelling Shows Award 2020
- Vehicle Manufacturing, Repair, Services and Retail Award 2010
- Waste Management Award 2010
- Water Industry Award 2020
- Wine Industry Award 2010
- Wool Storage, Sampling and Testing Award 2010

## Modern Awards NOT covered by the Fair Work Commission's variations

- Building and Construction General On-site Award 2010
- Electrical, Electronic and Communications Contracting Award 2010
- Electrical Power Industry Award 2020
- Fire Fighting Industry Award 2020
- Plumbing and Fire Sprinklers Award 2010
- Joinery and Building Trades Award 2010
- Mobile Crane Hiring Award 2010
- Coal Export Terminals Award 2020
- Dredging Industry Award 2010
- Marine Towage Award 2010
- Port Authorities Award 2020
- Ports, Harbours and Enclosed Water Vessels Award 2010
- Seagoing Industry Award 2010
- Stevedoring Industry Award 2010
- Black Coal Mining Industry Award 2010
- Gas Industry Award 2010
- Hydrocarbons Field Geologists Award 2010
- Hydrocarbons Industry (Upstream) Award 2020
- Maritime Offshore Oil and Gas Award 2010
- Mining Industry Award 2010
- Oil Refining and Manufacturing Award 2020
- Professional Diving Industry (Industrial) Award 2010

