

**CIRCULAR:** GEN/093/NAT/093/20  
**DATE:** 23 March 2020  
**SUBJECT:** COVID-19 – Update # 3  
**ATTENTION:** Chief Executive Officer

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The purpose of this circular is to provide you with further advice, following on from our circulars of 13 and 17 March 2020, in respect of the proactive action(s) that have been taken by both the Federal & State governments to assist to mitigate the spread of COVID-19 within Australia.

An [official COVID-19 website](#) is being updated by the Federal Government to link Australians with essential health advice and directives, as well as stimulus support announcements.

### **Travel restrictions**

From 9pm AEDT 20 March 2020, only Australian citizens, residents and immediate family members can travel to Australia. **All travellers arriving into Australia on and from 16 March 2020 are required to [self-isolate](#) for 14 days.**

Current travel restrictions can be viewed online at the [Department of Home Affairs website](#).

Arrivals may board a domestic flight to their intended destination within Australia to self-isolate there (subject to state border closures, which current apply in Tasmania, NT, WA and SA). If travellers do not comply with 14 day self-isolation requirements, they may face a range of penalties that exist in each State or Territory.

### **Government declarations**

[Last night the Prime Minister announced](#), registered and licensed clubs, pubs, hotels (excluding accommodation), cinemas, casinos, entertainment venues, nightclubs, gyms, indoor sporting venues, and places of worship will close from **12 noon today** in an attempt to slow the spread of coronavirus. Cafes and restaurants will only be allowed to offer home delivery or take-away.

[Victoria, New South Wales](#) and the ACT had foreshadowed more comprehensive shutdowns of non-essential services to take effect from Tuesday 24 March 2020 in an attempt to slow the spread of coronavirus – however these measures have currently been paired back to reflect the Federal Government announcement late last night.

Schools in all three states will remain open on Monday 23 March 2020, but in Victoria school holidays will be brought forward to start on Tuesday. Parents in NSW are encouraged to keep their children at home to help contain the spread of the coronavirus, though for those who are not able to do this, schools remain open. Online learning is to be implemented for the foreseeable future.

### **Effect of business shut down**

If a business is required to *temporarily* cease all or part of its operations **due to government directive**, the employer **generally** has a right to stand down affected employees that cannot usefully be employed as a result without pay:

- where the stoppage of work is outside the control of the employer, refer s.524(1)(c) of the *Fair Work Act 2009* (Cth); BUT

- subject to any contrary shut down provisions contained in an applicable enterprise agreement or contract of employment.

An obligation to (re)deploy staff to other useful duties - including remote working - in lieu of stand down (if duties are available and it is safe to do so) remains. Workplace OHS obligations continue to apply to remote work and employees who injure themselves in the 'home workplace' whilst working may be eligible to workers' compensation payments.

In the current circumstances business are unlikely to be able to undertake safety inspections at employees' homes. Rather employers should rely upon "self-assessment" checklists, and ask employees to agree to these if they are to work from home. Useful resources are available at the [various state Worksafe websites](#).

An employee who is stood down is still employed and will continue to accrue leave entitlements during the period (even where they are not paid for work). Where an employee has applied for leave (or is on leave) prior to the stand down taking effect they are still entitled to that leave. After a stand down takes effect employers don't have to approve leave requests but it is good practice to allow employees to take their paid leave accruals by agreement.

### **Redundancy**

Unfortunately redundancies are an inevitable reality of the current environment, either as a result of a temporary slow-down of business driven by a down-turn in demand (ie. in the absence of lock down or mandatory social distancing measures) or permanent closure.

To avoid claims associated with termination of employment arising from redundancy, employers must:

- (i) demonstrate that the impacted job is no longer required;
- (ii) consult with affected staff in accordance with applicable modern award or enterprise agreement consultation provisions;
- (iii) consider alternative (suitable) redeployment options;
- (iv) effect decisions regarding termination fairly, and based on lawful reasons; and
- (v) make applicable severance payments to staff in accordance with the National Employment Standards, modern award or enterprise agreement (and/or contracts and workplace policies to the extent these provide a greater benefit to employees).

The *Fair Work Act* provides limit mechanism for businesses to seek any exemption from the obligation to pay severance pay in circumstances of redundancy – as such we recommend specific advice be sought.

### **Access to leave in lieu of stand down / redundancies**

Employers must be prepared for and engage with staff who, as a result of their caring responsibilities look to make flexible working arrangement requests and/or access leave under the National Employment Standards to facilitate caring for children in circumstance of school and childcare closures.

It is important to note that employees will be eligible to access Carers Leave, even if the dependent child is not sick or requiring isolation, where the child ***requires care due to an unexpected emergency***.

Case law does not provide clear guidance on the parameters of an 'unexpected emergency' and when a situation may no longer be considered 'unexpected' and/or 'an emergency' – as such we recommend that employers proactively engage with their staff about child care arrangements in regard to any expectation that staff make permanent arrangements for child care alternatives within designated

periods, after which carers' leave will not long be applicable. This is highly sensitive area and we strongly recommend that clients seek specific advice in this regard before imposing any blanket bans, or barriers to Carers Leave access.

Whilst flexible work requests do not 'entitle' any employee to work from home or remotely to enable them to provide care for their child and continue to work concurrently, such requests should be managed carefully in accordance with the requirements set out at section 65 of the *Fair Work Act*.

Full and part-time employees who can't come to work because they are sick, or caring for an immediate family or household member who is sick; or who are in self-isolation can access their accrued personal (sick/carer's) leave. Casual employees or full-time and part-time staff who have exhausted their accrued personal leave balance, are entitled to 2 days' unpaid carer's leave per occasion.

In the current climate employers and employees may also agree for full and part-time employees to access accrued annual leave (and in certain circumstances long service leave) to cover their absence.

**The Information provided in this e-mail is generic advice. For advice in respect of your specific situation, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 742 447.**



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