

Coronavirus COVID-19: Employer Guide

AMMA has been working with many of its members to manage issues relating to the COVID-19 coronavirus.

While this is an evolving situation, AMMA has prepared the information in this document as a 'current state' overview of key employment consideration as at 14 April 2020.

This includes steps AMMA members are taking to prevent the spread of the COVID-19 disease; the latest information on interstate and intra-state travel restrictions; and a summary of the JobKeeper wages subsidy scheme.

For more information on government policy and/or to influence AMMA's advocacy priorities, contact policy@amma.org.au.

For any practical support relating to your COVID-19 employment considerations, get in touch with one of AMMA's specialist workplace relations consultants via membership@amma.org.au or by contacting your nearest [AMMA office](#).

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JobKeeper Scheme: All you need to know

The Australian Parliament passed its Coronavirus Economic Response Legislative Package on 8 April 2020, including the \$130 billion “JobKeeper” wages subsidy scheme.

The purpose of the JobKeeper scheme is to support businesses to keep people in employment throughout the COVID-19 health / economic crisis. It seeks to achieve this through a temporary amendment to the Fair Work Act providing eligible businesses with:

- A number of flexibilities related to employment practices including stand-downs, location of work, days and hours of work, annual leave and duties; and
- A wages subsidy which guarantees employees covered by the scheme a minimum fortnightly payment of \$1500 irrespective of changes to their working hours or duties.

The full amending legislation is available here: [Coronavirus Economic Response Package Omnibus \(Measures No.2\) Act 2020](#).

A summary of key points is provided below.

Note: A comprehensive “employer guide” on the JobKeeper Scheme is available to AMMA members. Email policy@amma.org.au if you require this information.

Administration / Schedule

JobKeeper is being administrated by the Australian Tax Office. Employers must elect to participate in the scheme and should register their interest online now at the [ATO website](#).

Employers approved for eligibility by the ATO will subsequently need to apply for the JobKeeper payment through an online application (not available yet). The first JobKeeper Payment will be reimbursed by the ATO from the first week in May but will be backdated to 30 March 2020. Payments will be made to the employer monthly in arrears by the ATO.

The payments will continue for up to six months, with the scheme estimated to be complete on 27 September 2020.

Eligibility

To be eligible for the scheme businesses with pre-COVID annual revenues of up to \$1 billion must have reported a 30% loss in turnover. Businesses with annual revenues of more than \$1 billion must have reported a 50% loss in turnover.

Where businesses may not quite meet the eligibility, the Tax Commissioner will be provided discretion to make judgements on a case-by-case basis. AMMA has also been advised by the Treasurer’s office that subsidiary businesses will be considered independently of parent company / group revenues for purposes of eligibility.

All employees permanently employed as of 1 March 2020 will be covered by the scheme. Casuals will only be eligible for payments if they have been with their employer for more than 12 months. Casual employees not eligible for JobKeeper can access the separate “Job Seeker” scheme administered by Centrelink.

Directions on working hours / stand downs

The amendments enable eligible employers to make a variety of “JobKeeper-enabling” directions to employees, including to reduce hours, work on fewer or different days, and a complete stand down.

A number of rules and conditions apply to these directions including that they must be reasonable, made for the purpose of continuing that person’s employment during COVID-19, consulted upon and provided in writing at least three days prior to taking effect (unless the employee agrees to a lesser notice period).

Pay

The amendments include two key provisions on pay: a Minimum Payment Guarantee and an Hourly Rate of Pay Guarantee. The combined effect is that an employee must be paid at their regular hourly rate and either their standard pay for the hours worked over a fortnightly period or \$1500, whichever is greater.

Where no work is being done, such as during a stand down, an employer must pass on the \$1500 JobKeeper payment in full. These provisions are designed to protect against misuse of the scheme, such as preventing an employer from maintaining working hours but reducing hourly rates of pay to match the JobKeeper payment.

Duties / location of work

Employers can direct temporary changes to the duties of employees which can temporarily override award or agreement provisions and the basis upon which someone was originally hired. This is subject to conditions but may be of high value to resources sites being operated on skeleton crews.

Employers can direct temporary changes to where work is undertaken. If the location is not the employee’s home it must not require unreasonable travel.

Annual leave

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

Other matters

The amendments allow for the Fair Work Commission to deal with disputes that arise under this temporary new part of the Fair Work Act. A wide range of orders can be made including restricting scope for employers to exercise the directions.

Adverse action / general protections will still apply to employers making directions under the JobKeeper scheme. The amendments order an independent review of the temporary measures, commencing on 28 July 2020 and reporting by 8 September 2020, unless changed by regulation.

Do you have any questions about eligibility, the application process, obligations and flexibilities for employers and administering payments? [Contact](#) your nearest AMMA office or email membership@amma.org.au.

State / Territory border controls and travel restrictions

A number of State and Territory Governments have signed directions under emergency laws giving effect to various border control measures. AMMA members requiring to move employees between states must closely familiarise yourselves with the specific requirements of each state/territory.

These border control measures are rapidly changing. AMMA updates its [online advice](#) about State and Territory travel policies as soon as they are made available. To discuss your workforce travel needs, [contact](#) AMMA's expert Workplace Relations team.

Note: National Cabinet flags broad exemptions for maritime crew

AMMA is presently consulting with various state and territory governments to gain clarity on possible broad exemptions for maritime crew required to travel interstate to board vessels. Given the unique nature of the industry, the treatment of resource sector maritime crew has been a particularly sensitive issue for AMMA and its members.

This follows a statement being issued by the COVID-19 National Cabinet (comprising the Prime Minister and Premiers from each state and territory) regarding “updated quarantine arrangements for non-cruise maritime and air crew”. The full [statement](#) is printed below:

Australia’s skilled maritime workforce plays a unique and strategically important role in Australia’s supply chains.

National Cabinet agreed that the Australian Government and all states and territories will implement a consistent and immediate exemption for non-cruise maritime crew to provide for the transiting to and from their places of work, within and across jurisdictions with agreed documentation.

National Cabinet noted that states and territories may adopt additional protocols in consultation with industry that creates protection for crews on board vessels, and will put in place appropriate penalties for companies and individuals that are found to be in breach of the requirements of the exemption which will be reviewed on 1 June 2020.

The Australian Border Force, in consultation with the Commonwealth Department of Health, will continue to manage the safe movement of maritime crew.

While the above statement is a positive indication, members should note that as of 14 April 2020 no state or territory has issued or amended their official travel directions to reflect this position. Until they do, maritime crew will continue to be subject to the existing travel directions summarised below.

“Designated Areas” (remote Indigenous communities)

On 26 March 2020 the Australian Government issued the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020*.

The [legislation](#) intends to protect remote Indigenous communities by requiring that people self-isolate for 14 days prior to entering a “designated area”. A number of designated areas are listed in the legislation, located in Western Australia, Queensland, South Australia and the Northern Territory.

Part 1 of the legislation, under “Definitions”, includes as persons exempt from these requirements those engaged in “essential services” which includes mining, oil and gas, ancillary operations and involved in transporting crew for these services.

Western Australia

On 5 April 2020, the Western Australian Government signed the [Quarantine \(Closing the Border\) Directions](#) under the *Emergency Management Act 2005* (WA) closing the Western Australian border to all travellers unless an exemption has been granted. The border closure took effect from 11.59pm Sunday 5 April 2020.

The following persons are considered ‘exempt travellers’ and may continue to arrive in WA:

- any person responsible for provision of transport, freight or logistics services into or out of WA, but this does not include maritime crew;
- specialists required for industry or business continuity and maintenance of competitive operation where the service is time critical;
- a FIFO worker (being persons who travel interstate for work according to an established work schedule), provided the person undertakes 14 days of self-isolation on arrival in WA (at the employer’s expense) at a location agreed with the State Emergency Coordinator;
- persons approved by the State Emergency Coordinator in writing (this provision expressly contemplates the approval of categories of maritime crews as a category of exempt person).

Travellers believing they fall into an exempt category can submit an approval form at [this link](#).

Maritime Crew entering Western Australia

On 8 April 2020 the Western Australian Government issued a [specific direction](#) for maritime crew seeking approval to be exempted from the state’s travel ban under Paragraph 27 (r) of the “Closing the Border” direction.

This document provides written approval to maritime crew to be considered exempt from the original travel direction provided a number of conditions are met.

Most notably, persons entering Western Australia from another state or territory to become crew members are required to be quarantined in a “crew hotel” for 14 days prior to boarding a vessel.

Queensland

On 2 April 2020, the Queensland Government issued an updated [direction](#) in accordance with emergency powers arising from the declared public health emergency, closing the borders to all people entering the State, unless they are an exempt person.

From 11.59pm Saturday 4 April “an employee of a resources sector company or service provider is only an exempt person if they are **a critical resources sector employee**” (see paragraphs 21-24). This includes statutory positions specified in legislation responsible for worker health and safety.

Further, the Queensland Government is now requiring that resources sector employees travelling into the state provide the following information upon their arrival:

- the name of their employer
- evidence that they are a fly in fly out worker
- evidence that they are entering Queensland to go directly to work
- evidence of the location of the worksite or work camp
- for resources sector employees, evidence that they are a critical resources sector employee

Employers must provide a [health plan](#) that complies with requirements set by the Chief Health Officer to address hygiene and safety requirements to limit the transmission of COVID-19.

South Australia

On 28 March 2020, the South Australian Government signed the updated [Cross Border Travel No. 2 Direction](#) under the *Emergency Management Act 2004* (SA).

Notable points for AMMA members:

- There is an exemption for FIFO workers entering the State for work purposes
- Employees must carry photo ID to show border control staff
- Employers should provide employees with an exemption letter detailing their name, working dates, transit path and work location to show to border control staff as required.
- Exploration activities do not satisfy criteria for exempt workers
- Companies should provide SA Health with a health management plan on prevention controls

Northern Territory

The Northern Territory Chief Health Officer signed the [COVID-19 Directions \(No. 16\) 2020](#) under the *Public and Environmental Health Act 2011* on 1 April 2020.

Notable points for AMMA members:

- FIFO workers are exempt from 14 day isolation and need to complete an Arrivals Card
- Workers do not need to apply for an exemption if they fall within the exemption categories

- Employers should provide employees with an exemption letter justifying their status as an essential traveller
- Companies must also provide a health management plan to the Chief Health Officer

More information available [here](#).

Tasmania

On 20 March 2020, the Tasmanian Government declared a state of emergency and issued a directive under the *Public Health Act 1997* to effectively close its borders from the mainland. Any travellers entering the state must quarantine themselves for 14 days.

Notable points for AMMA members:

- All travellers arriving in to Tasmania must complete a [Tasmanian Arrivals Form](#)
- Resource sector employees are exempted from the 14 days quarantine but must travel directly to site.
- People living in Tasmania but working on the mainland must quarantine themselves when they are home for 14 days or until they are due to return to work

Template: Exemption letter for all states and territories

AMMA has prepared, for the general use of its members, a [template letter](#) to provide FIFO employees to assist with their interstate travel to and from work during the COVID-19 travel restrictions enacted by various state and territory governments.

AMMA members may use this letter as you see fit, to assist with documentation to be held on the person of any resource sector FIFO employees travelling between states/territories.

Note this template letter will not in isolation satisfy the stricter border control measures put in place by Western Australia and Queensland. Further processes, provision of evidence and applications for permits / exemptions may apply.

Precautionary and preventative measures

Outlined below are a number of precautionary and preventative measures AMMA members are taking to safeguard against the spread of COVID-19 in the workplace.

Not all of these measures will be applicable or appropriate for your organisation, but they provide an overview of how seriously others are treating the current situation. AMMA recommends you approach precautionary and preventative measures practically and with regard to your own assessment of what impact COVID-19 could have on your organisation.

All worksites

- Provide employees with updated information about COVID-19, including steps your organisation is taking and steps employees should take to prevent the spread of the disease.
- Advise employees you expect them to observe the Australian Government's directions on self-isolation.
- Reinforce to employees you expect them to disclose if they have any COVID-19 symptoms, or have been in contact with known or suspected cases of COVID-19.
- Cancel any non-essential domestic or international business travel for all personnel.
- Prohibit attendance of conferences or large group meetings.
- Require employees to report if they have returned from overseas during the past two weeks.
- Implement comprehensive cleaning requirements and hygiene standards for all worksites.

Remote worksites

(e.g. offshore installations, mine sites, work camps)

- Reduce the number of non-essential personnel on site and cancel any non-essential travel to the site.
- Require employees to complete a self-assessment questionnaire before travelling to site, highlighting the current state of the employee's health and any contact with a confirmed or suspected COVID-19 case.
- Require employees to undertake temperature screening before mobilising to site, ideally at an airport or heliport.

Offices

- Limit the number of face-to-face meetings between employees and with external personnel
- Facilitate employees working from home where feasible

Additional steps your organisation can take to maintain a state of preparedness include:

- Appoint a person in your organisation to monitor official sources of information about COVID-19 and who will update relevant personnel of any changes to official information. Recommended sources of official information are set out on Page 10.

- Review any commitments you have made to regulators (e.g. NOPSEMA, DMIRS or other government departments) by way of safety cases or hazard response plans for managing the outbreak of illnesses or other similar circumstances. Some AMMA members have proactively engaged with NOPSEMA to advice of updates to safety cases in relation to COVID-19.
- Ensure relevant personnel are aware of any commitments made and that your organisation is ready to enact those measures if needed. Also consider whether your safety cases and hazard management plans need to be updated to address a potential outbreak of COVID-19.
- Consider your response plan for dealing with a confirmed case of COVID-19 in the workplace, particularly if you have employees based at remote work sites.

Managing your employees – Q&A

Following below is a list of the most common questions asked by AMMA members in relation to managing employees through the COVID-19 situation.

Please keep in mind that employers have broad discretion to enact measures such as ‘special paid leave’, and that decisions about whether to do so should be approached from the standpoint of the welfare of the employee in question and the welfare of your broader workforce.

Your organisation will have obligations under legislation to mitigate risks to employees’ health and safety in the workplace. How you manage employees who are impacted by COVID-19 is likely to be relevant to your health and safety obligations overall. Employers should also be aware of the obligations that may arise under public health legislation on them and their employees.

EMPLOYEE WORK ARRANGEMENTS / ENTITLEMENTS

Q. Can I stand down employees without pay?

A. AMMA initially advised it was unlikely that employees could be stood down without pay. However, the dramatic escalation of the COVID-19 pandemic now makes stand down without pay a real prospect for employers. There are limited circumstances under the Fair Work Act where a stand down may be initiated; in relation to COVID-19, these circumstances are likely to be a stoppage of work for which you cannot be held responsible. Your employment contracts or enterprise agreements may also impose additional requirements to those in the Fair Work Act. If employees cannot work because of COVID-19 issues, we recommend you contact an AMMA consultant to discuss the application of stand down provisions to your employees and other options you have available to you.

Q. What should I pay employees who are observing a period of self-isolation?

A. If an employee is unwell, the employee should be paid using Personal Leave. If the employee is not unwell but is required to self-isolate, the employee could be asked to work from home. If working from home is not a viable option, the employee may elect to take paid leave they have accrued (e.g. annual leave or long service leave), or may be granted a period of leave without pay. You may, at your discretion, continue paying an employee who is required to self-isolate notwithstanding that the employee cannot perform work while in isolation.

Q. Can employees use accrued Personal Leave during periods of self-isolation?

A. AMMA does not recommend approving Personal Leave outside of confirmed cases of illness. If you allow an employee to access Personal Leave in circumstances where the employee is not sick, you may be required under the National Employment Standards to provide that employee with further entitlements to Personal Leave for future illnesses. If you want to continue to pay employees in self-isolation who are not sick, AMMA recommends offering other forms of accrued paid leave or providing 'special paid leave'.

Q. Should we continue to pay casual employees who cannot work because of COVID-19?

A. AMMA is aware of advice being provided to employers that employees' casual loadings are structured to provide compensation for time off work due to illness and other factors. While this is technically correct, AMMA recommends its members assess this question from the point of view of risk management and the need to discourage presenteeism.

Q. Can we cancel employees' future annual leave as part of our COVID-19 response?

A. You should review your employees' future annual leave bookings and consider whether it remains appropriate to allow that leave to be taken, especially following interstate travel restrictions announced on 22-23 March.

Q. What action should we take with employees who work extended roster patterns and we know reside overseas during their time off?

A. Employers should initiate discussions with any of their employees who they know normally reside overseas during their rostered time off. Given the Australian Government's international travel ban is in place for an indefinite period, any employee who chooses to locate themselves outside of Australia is going to have ongoing problems meeting their obligation to be ready, willing and able to work at the commencement of each work cycle. Such employees should be advised to relocate their usual place of residence to Australia for the duration of the COVID-19 emergency.

Q. If employees are unable to attend their rostered shifts/cycles due to domestic travel restrictions, what obligations do employers have to pay wages for any period of absence?

A. AMMA's understanding, based on the latest information available on 23 March 2020, is resource sector employees considered "essential" to operations are widely treated as exempt to these travel restrictions. Where an employee is unable to attend for the start of their rostered working hours, you may consider allowing them to access their accrued annual leave entitlements.

Q. Have any employers considered incentivising employees to temporarily relocate to be closer to their workplace (eg FIFO workers residing interstate to their workplaces)?

A. AMMA is aware of some resources employees which are actively considering this strategy.

For example, one member has offered to temporarily relocate employees and their families who reside in the eastern states to Perth for an indefinite period to ensure they are more able to get to work. Another AMMA member offered to provide temporary relocation and cover the cost of meals for an internationally residing employee returning early to undertake the 14-day self-isolation period.

Generally, members should appreciate this may mean an employee is away from their families and support networks for an extended period and therefore extra attention and support must be applied.

Before implementing these arrangements you should review employees' contracts and any applicable enterprise agreements to be aware of allowances or other payments that may apply to relocation. If implementing such arrangements, you should also be clear about what payments your organisation is committing to, whether by reimbursement or per diem or otherwise. Contact an AMMA consultant to discuss these arrangements.

WORKING FROM HOME ARRANGEMENTS

Q. If temporary relocation is offered and an employee is not prepared to temporarily relocate, is there an obligation to pay them if domestic travel becomes an issue? What is the distinction on payment obligations for those who are prepared to relocate and those who are not?

A. The steps an employee takes and has not taken may impact employer policies regarding pay during absenteeism. Employees have a responsibility to present for their rostered shift and should account for any delays, restrictions or limits on domestic travel arrangements in planning their journey to work. Where an employee is unable to attend for the start of their rostered working hours, you may consider allowing them to access their accrued annual leave entitlements.

Q. In the event employees are required to work from home, can employers force those employees who cannot be gainfully employed from home to take compulsory accrued annual leave, including the use of future leave in advance?

A. AMMA members are assessing this on a case-by-case basis. Like many areas with COVID-19, it is impractical to provide blanket policies that would account for all scenarios and mitigating factors.

There is a sense that the working from home arrangements will be increasingly necessary, even for operational roles or where a role would not normally be able to be performed from home. While there are obvious roles where working from cannot occur, employers are broadly looking at ways to facilitate working from home for as many employees as possible.

For example, one AMMA member intends to continue to “pay as normal” employees who cannot physically do their work from home on compassionate grounds. Another intends to place employees with operational roles on annual leave but preserve their “pre-COVID-19” leave balances.

Q. Are employees working from home covered by workers' compensation in the event of an injury? How can employers mitigate health and safety risks to staff working from home?

A. Generally speaking employees working from home are covered by workers' compensation. Claims for work-related injuries occurring whilst working from home can be complex, however should such a claim be made it would be assessed by the insurer just like any other claim for injury or illness that occurs in the course of employment.

Managing health and safety risks is always a consideration when implementing working from home arrangements. Best practice would see an employer make a thorough OHS assessment of an employee's home workstation, however this is unrealistic during the COVID-19 crisis due to the high volumes of employees either electing or being directed to work from home simultaneously.

Under current circumstances employers can provide employees with self-assessment questionnaires to complete in relation to ensuring their home workstation is a fit, proper and safe environment. For example, one member is utilising the self-assessment option accompanied by a photograph of the employees' workstation to make a general hazard assessment of the area.

Q. Should there be a network crash, IT issue or issues with the NBN that disrupt working from home arrangements, is it still incumbent on the employer to pay staff?

A. Having access to adequate IT infrastructure and networks is always a consideration when implementing working from home arrangements. However, any concerns about stress on the NBN or general internet access is not a fatal restriction for people being able to work from home.

There are always work-around options, or other productive tasks an employee can do, when there is a network crash or technology issues. Generally, when implementing working from home arrangements, employees are required to continue to adhere to the company's IT and security policies including in relation to confidentiality and security of the network. Employers are encouraged to review their IT and security policies to see if there is any flexibility in those policies.

GENERAL

Q. If an employee believes they have contracted COVID-19 "from within the workplace" does this give rise to a Workers Compensation claim?

A. A number of members have sought advice regarding workers compensation for confirmed cases of COVID-19. The advice is that if an employee makes a claim for workers' compensation, it will be assessed by the insurer just like any other claim for injury or illness that occurs in the course of employment.

The employee would need to prove the connection between contracting COVID-19 and the workplace. Where an employee has a confirmed case, is required to be quarantined and has an accepted claim then the insurer will pay benefits to the employee for that period. This highlights the need for employers to implement preventative and precautionary measures to prevent COVID-19 from entering their workplace.

Q. Have any AMMA members commenced with identifying at risk or higher risk demographics in their workforce i.e. older employees or those with pre-existing medical conditions? What precautionary measure are being taken?

A. Many AMMA members have assessed their workforce demographics, identified those employees who might be at risk and provided them with opportunities to work from home or alternative working arrangements earlier than other workers. There is no issue with discrimination as these groups are not being disadvantaged, it is about giving them the opportunity to do so rather than a directive.

For example, one member has a medical coordinator who has been assessing workforce demographics on a case-by-case basis and providing the option for individuals to self-report where they have greater exposure. Another member identified high risk people, including those with sick family members or compromised immune systems and where appropriate and practical those employees have been able to work from home.

Sources of information

For the most up-to-date medical advice and information about COVID-19, please refer to the Australian Government Department of Health website: <https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert>

For the most up-to-date information about travel restrictions and the status of COVID-19 internationally, please refer to the Department of Foreign Affairs and Trade website: <https://www.smartraveller.gov.au/news-and-updates/coronavirus-covid-19>

The World Health Organisation is also regularly updating its advice about COVID-19: <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> . The WHO has also issued practical guidance for employers to ready their workplaces to protect against the spread of COVID-19: <https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf>

Further assistance

AMMA will continue to update its members on material developments in relation to the COVID-19 coronavirus. If you have any specific questions about COVID-19 issues in your organisation, please contact one of the following AMMA consultants.

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