



Covid-19 Update

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Summary

- 89,000 Confirmed cases globally – 33 in Australia
- 3,000 deaths
- 30,000 recovered
- Travel and isolation restrictions in place for China and Iran (subject to change)
- Significant economic impact in Australia and elsewhere
- There is a clear WHS risk and consequential duty on employers to manage this risk
- Workers should be granted 'special leave' in relation to COVID-19 given the significant public health risk and likely duration of the illness and requirement to self-isolate
- Casual workers most at risk of experiencing hardship in the event of an outbreak in Australia due to lack of available paid leave.
- Some casuals (such as in higher education and aviation) are already experiencing financial hardship
- Federal Government should take the necessary steps to ensure all workers, in particular insecure workers, are being provided the necessary financial support in the event of an outbreak.

What is Coronavirus [Covid-19]?

Coronavirus [COVID-19] is a virus in the same family as the common cold. It is passed between people by contact with droplets from the lungs of an infected person. That can occur through infected droplets in the air or on surfaces. About 80% of people with COVID-19 infection will have a mild illness, 20% will develop a form of pneumonia, a severe illness. The death rate in China is currently 3.4% and for those outside mainland China 1.4%. The consistent feature of the infection appears to be fever.¹

The current evidence is that it takes between 2 and 10 days before people who are infected become sick and develop a fever. A person may not be showing any signs of illness, hence the ability for the infection to spread. This is not unlike the common cold or influenza, but it appears to be more infectious.

Unlike influenzas, there is currently no vaccine and therefore the prevention of the spread of the virus can only be achieved by isolating cases and the practice of good respiratory and hand hygiene i.e.

- **Maintaining distance of at least 1 metre from anyone who is coughing or sneezing**
- **Covering of the mouth or sneezing/coughing into elbow**
- **Regular hand disinfection and washing hands with soap and water**
- **Disposal of tissues etc into closed bins immediately after use**
- **Staying at home if unwell, even with mild symptoms such as headache and slight running nose**

Coronaviruses can survive longer on surfaces than influenza virus.

- The current advice to prevent spread is **“Surface disinfection with 0.1% sodium hypochlorite or 62–71% ethanol significantly reduces coronavirus infectivity on surfaces within 1 minute of exposure time.”**

1 WHO <https://www.who.int/health-topics/coronavirus>
Commonwealth Department of Health – this site is updated regularly
<https://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov>

Current State of Covid-19 Virus

As at 3 March 2020 the COVID-19 Virus has been officially detected in 67 territories worldwide.

One territory, Indonesia, is being accused of ignoring the problem and is reporting no infections. There is significant international concern that Indonesia is woefully underprepared for a pandemic.²

Some 89,000 people have been infected with 3000 deaths and 30,358 people affected but since recovered.

Quarantines are in effect in parts of China, Italy and South Korea. Japan is preparing for potential quarantine and school closures.³ Iran, which has one of the highest numbers of infected people outside Asia, has decided against quarantine.⁴

Measures currently in place in Australia include a ban on all non-citizen travellers from China while Iran has been raised to a 'Do Not Travel' travel rating. Japan and South Korea have had their travel ratings raised to 'Exercise a High Degree of Caution', the highest level before 'Do Not Travel'.

COVID-19 is not currently considered to be a global pandemic. It is currently classified as epidemic in China. Pandemic merely refers to a disease that is spreading 'beyond expectations'. It should be noted that 'index cases', people who catch the disease in countries where it is epidemic and then travel to another country AND the people they infect, do not count towards pandemic 'status'.

If COVID-19 is declared to be pandemic, it will signal to governments that they should implement different and perhaps more strenuous methods to halt its spread. For example, travel bans are less likely to be effective in a pandemic while the cancelling of large social gatherings would be more likely.

The Impact of Covid-19 on the Australian Economy

The RBA has estimated that COVID-19, at its current level, will likely reduce Australian GDP growth by 0.4%.⁵

- This is largely due to the economic impact of the virus on the Chinese economy, both in terms of a reduction in demand for resources such as coal and iron ore, as well as disruptions to global supply chains.

There are two broad scenarios for economic impact in a worsening COVID-19 outbreak. Each of these two broad scenarios must also include two options for the level of international and domestic response:

Scenario 1 — Australia is largely spared from infection while other large nations are experiencing outbreaks

- Mild measures: Ports and airports are open, but trade is slowed. Travel is allowed but is significantly slowed and volume is decreased.⁶ Work continues but some large workplaces are shut as outbreaks occur.
- Harsh measures: Airports are shut. All non-essential trade is effectively halted. Entire cities or regions are placed into mandatory quarantine with no work being done in them.

2 <https://www.theage.com.au/world/asia/us-embassy-raises-critical-coronavirus-concerns-with-indonesia-20200223-p54313.html>

3 <https://www.japantimes.co.jp/news/2020/02/26/national/hokkaido-school-close-coronavirus/#.XlckEagzZhE>

4 <https://www.bbc.com/news/world-middle-east-51651454>

5 <https://www.smh.com.au/politics/federal/reserve-bank-under-pressure-to-cut-rates-in-response-to-coronavirus-20200226-p544kv.html>

6 Hong Kong has experienced a, voluntary, 99% drop in passenger arrivals since the virus appeared there. <https://www.forbes.com/sites/grantmartin/2020/02/17/hong-kong-visitors-plunge-99-in-february/#4094cb486a75>

Scenario 2 – Australia suffers an outbreak as part of the global pandemic.

- Mild Measures (assumes milder outbreak): Same as mild measures internationally with additional domestic measures such as the cancellation of large events, small-scale quarantine or workplace closures. Mandatory health checks at airports, train stations etc.
- Harsh measures (assumes greater outbreak): Harsh measures internationally, domestically public transport is shut down in infected cities. Large workplaces are closed with workers told to stay home. Cities or suburbs are placed into quarantine.

Current Active Measures in Australia

The provisions of the Biosecurity Act were triggered in January 2020 so the government was able to take border control measures and request individuals practice infection control measures. This includes compelling people reasonably suspected of having COVID-19 to comply with the biosecurity measures and requests. Thus far these measures have been effective.

When implementing these actions, the following values are considered,

- Equity
- Individual liberty
- Proportionality
- Provision of care
- Reciprocity
- Stewardship
- Trust in health system.

Australia is currently in the initial preparedness phase of minimising transmission, managing initial cases and contacts and providing information to enable community members to manage their own risk of exposure.

If there is community acquired infection, governments will be able to enact further restrictions eg cancelling of public events, closing schools and workplaces, limiting transport etc. Border controls become ineffective once there is community acquired infection.

Isolation – Who cannot go to work – as of 3 March 2020

In the following scenarios people cannot go to work if they have:

- left or transited through mainland China in the last 14 days (they must isolate themselves for 14 days from leaving mainland China).
- in or transited through Iran on or after 1 March 2020
- been in close contact with a confirmed case of coronavirus in the last 14 days (they must isolate themselves for 14 days after the date of last contact with the confirmed case)

Isolation is for 14 days from date of last contact with proven case or leaving mainland China or Iran.

If well, the person stays at home but is advised not to attend public places including work, school, child-care, university or public gatherings. Visitors are not permitted and the person is to arrange for others to obtain food and necessities. If the person leaves isolation to obtain medical care, they need to wear a surgical mask and practice good respiratory and hand hygiene.

If suffering mild symptoms, the person is to isolate themselves from others at home, use a separate bath-

room if available, use a surgical mask and practice good sneeze/cough and hand hygiene. They are to notify doctor of symptoms and any travel history.

Casual Contact

A casual contact is someone who has been in the same general area as someone **who has tested positive for the coronavirus while infectious**.

A casual contact is someone who has had less than 15 minutes face-to-face contact with a symptomatic confirmed case in any setting; or has shared a closed space with a symptomatic person for less than two hours.

Casual contacts do not need to be excluded from work or school while well. Casual contacts need to closely monitor their health and if there are any symptoms they are advised to self-isolate and contact their doctor. A casual contact who subsequently becomes ill, will need to put on a surgical mask to prevent spreading infections to others.

Work Health and Safety Laws

Person Conducting a Business or Undertaking [PCBU] / employers are required to provide healthy and safe work, **so far as is reasonably practicable**. The obligation from the PCBU/employer requirement is to provide safe/healthy “work”, whilst workers are at work. There are also obligations for PCBUs to monitor, so far as reasonably practicable, working conditions and the health of workers.

Public health measures are not based on what is ‘so far as reasonably practicable’, but rather a precautionary approach which includes rapid detection, rapid response and then control of sources of infection.

PCBUs have an obligation to provide information and training for workers regarding potential health risks. This will apply differently across industries e.g. health where there are clear infection control procedures vs transport and retail where the general health advice will be applicable.

If current measures are unable to prevent cases of community acquired infection, PCBUs will have obligations to ensure that co-workers are not exposed to known cases or contacts. PCBUs will be required to provide any contacts of cases to public health authorities.

Workers also have obligations to take reasonable care that their acts or omissions do not adversely affect the H&S of other persons [section 28 WHS Act]. In the circumstances of an infectious disease/public health threat this is relevant to those who have COVID-19, are contacts or are casual contacts [see above].

Workers and HSRs have rights to be informed about precautions to be taken and to challenge preventative health measures.

Workers have rights to refuse to carry out work if the worker has **reasonable concern** the work would expose themselves to a **serious risk from an immediate or imminent exposure** to a hazard. The worker needs to have a **reasonable concern** and there need to be a **serious risk**. Such risks may include psychosocial risks arising from potential exposure to the virus. Given the public health response, serious risk will be dependant upon if there is a risk of contact with a confirmed case. It is less clear if there is a “suspected case”.

HSRs may direct a stoppage of work if the same circumstances exist.

Where there is potential exposure to COVID-19, workers should advise employers of exposure and the need to isolate in accordance with issued health guidance. Employers should be encouraging self-reporting of such instances and ensuring that there are not barriers or disincentives to reporting. Accordingly, in these instances employers should be providing paid leave to ensure that workers are not financially disadvantaged by making such reports.

Harassment and discrimination

Employers will need to ensure that no one is discriminated on the basis of sickness or for other reasons related to COVID 19.

Workers Compensation

While there is no community spread or while numbers are low, it will be possible to trace contacts. If a worker contracts COVID-19 and the contacts can be traced to work, the person will be able to claim workers compensation benefits for any time lost or medical care required.

This will become more difficult once there is evidence of community acquired infection, which is the case for illnesses such as influenza. However, high risk groups such as health workers, may well be able to apply and obtain workers compensation.

Industrial Relations

In broad terms, the industrial rights and obligation of most workers are set out in legislation (usually the National Employment Standards in the Fair Work Act), awards and/or enterprise agreements. It is often necessary to look at one or more of these to determine what a worker is entitled to. The following is based on the NES applying.

Casual and insecure workers are most financially vulnerable in the event of an outbreak of COVID-19 in Australia and a requirement to undertake mass scale quarantine. It is likely that casuals and insecure workers will be without work (and therefore pay) for significant periods of time. Further, it is likely that in the event of an economic downturn, casual workers will be let go or have hours significantly reduced.

Paid special leave and support for casuals

Specific measures should be considered to support casuals and other insecure workers who are impacted by COVID-19 and employers should be encouraged to provide 'paid special leave' for casuals. The Federal Government should also consider income support to any workers who are impacted financially to ensure that workers can meet their immediate needs, and for the overall benefit of the Australian economy. In the interests of WHS and public safety there should be no disincentives or barriers to workers who may be impacted by COVID-19 in self-isolating.

The following considerations apply to workers who contract, are exposed to or otherwise are affected by, COVID-19 **outside of** the course of their employment. Various considerations, including workers' compensation (discussed above) would apply to workers who are affected by COVID-19 in connection with their employment.

Workers who contract COVID-19

For a worker with a confirmed case of COVID-19, the situation is reasonably clear.

A permanent worker in Australia would have the right to take accrued paid personal leave to cover any absence.

This would not apply to casual workers.

Paid personal leave may be taken for caring purposes (and on an unpaid basis for a casual).

Employees who have exhausted their paid personal leave can seek access to unpaid personal leave.

Compassionate leave is also available where an illness affects a person's family or household member.

A person who contracts COVID-19 overseas and remains overseas will have the same rights, however in practical terms, some difficulties may present - particularly with respect to evidentiary requirements.

Employers, in consideration of their broader duties to their entire workforce, would have an obligation to ensure that a worker with a known case of COVID-19 doesn't attend the workplace.

Workers' compensation is a relevant consideration for workers who contract COVID-19 in connection with their employment and is discussed above. Attributing the contraction of COVID-19 to the workplace could present difficulty if COVID-19 is widespread in the community.

It should be noted that given the requirement to self-isolate for 14 days it is likely that workers may exhaust personal leave entitlements and as such it is advisable that special leave be extended to assist all workers who are impacted by COVID-19.

Workers who may have contracted COVID-19

The situation is more complex for workers who suspect, or may be suspected of, having COVID-19.

An employer may direct a worker to remain at home until a medical clearance is obtained. If doing so, the employer would have to continue to pay that worker's wages. This should be the course adopted when exposure or potential exposure is work related.

Some complexity arises for a worker who (responsibly) self-excludes on the basis of their thinking that they may have contracted COVID-19. Subject to any EA provisions, personal leave is generally available when a worker has an illness or injury. If a worker does not attend work for fear they may have contracted COVID-19, they should seek medical advice and obtain medical certificates to assist them in claiming personal leave. Alternately, a worker could canvas other options, such as working from home. However, for the reasons stated above and also in relation to WHS duties it is advisable that those workers who are self-excluding are supported with paid special leave.

High risk workers

Some sectors such as [health, aged care](#) and [education](#) will be at an increased risk of exposure. Additional guidance has been produced to assist those workers.

Some older workers, or workers with immune suppression disorders may be at increased risk of contracting COVID-19. In the event of an outbreak in Australia these workers should carefully consider their need to attend work and take the necessary precautions to avoid exposure. If necessary they may consider self-isolation and be provided with 'special leave' as outlined above.

Workers affected by the Travel Ban

A worker affected by a travel ban (who was not travelling for work) – such as the current ban on incoming travel from China – should be able to draw down on existing leave entitlements and could subsequently have arguments to make in relation to the General Protections if they are prejudiced in seeking access to those entitlements.

A worker who was travelling for work should not lose wages as the result of a travel ban.

Discrimination

Employers cannot discriminate against workers on the basis of race or disability (which can include disease or illness).⁷

In addition to this, workers would have actions if they were discriminated against on the basis of being, for instance, Chinese or Asian. This does not prevent an employer acting in relation to a person who presents a particular risk, such as someone who has been to an affected area or who has in fact contracted COVID-19.⁸

Closures and stand downs

The Fair Work Act 2009 (Cth) (FW Act) allows employers to stand down employees in certain circumstances when employees cannot be usefully employed. This includes where the employer cannot be reasonably held responsible for a stoppage of work but needs to be for reasons beyond a mere downturn in business. In the event of an outbreak of COVID-19 in Australia, where large workplaces are shut down for quarantine purposes, it is possible that employers may seek to rely on stand down provisions. The scale of the outbreak would need to be significant for this to occur.

There are several alternatives to stand down, which employers should instead explore. These include access to accrued paid leave (e.g. annual leave), transfer to other sites, including work-share arrangements and flexible working arrangements, such as working from home.

Useful Links & Resources

[WHO, Getting your workplace ready for COVID-19](#)

[WHO, ePROTECT respiratory occupational health and safety](#)

[WHO Situation Reports \(Daily\)](#)

[Dept of Health](#)

[Fair Work Ombudsman](#)

[OECD](#)

[AMA](#)

7 See Disability Discrimination Act 1992 (Cth), Racial Discrimination Act 1975 (Cth) as well as state legislation.

8 See Disability Discrimination Act 1992 (Cth) s 48.