

Legal Alert

March 2020

Coronavirus – A Legal Overview

On 11 March 2020, the World Health Organisation (WHO) officially declared Coronavirus (COVID-19) a “pandemic”. The WHO defines a pandemic as “*the worldwide spread of a new disease*”. The onset of Coronavirus raises a myriad of legal issues.

Your Health and Safety

As at 12 March 2020, it was 65 days since the Coronavirus was first diagnosed. The [WHO](#) recommends that to prevent the infection spreading humans should regularly wash their hands, cover their mouths when coughing and sneezing, thoroughly cook meat and eggs and avoid close contact with anyone showing symptoms such as coughing and sneezing.

Travel has been affected, particularly at the international level. The Australian Government has restricted some travel and issued warnings in respect of some countries. [The Australian Government’s Department of Health website](#) regularly contains updates including relevant travel and health information.

Workplace Health and Safety

Both employers and employees have a statutory obligation to ensure that they operate within a healthy and safe work environment. Although the *Work Health and Safety Act 2012 (SA)* and its Northern Territory counterpart, the *Work Health and Safety (National Uniform Legislation) Act 2011* do not place a specific obligation on persons conducting a business or undertaking to develop and have in place relevant policies it is generally accepted that good governance and practice includes having relevant health and safety policies in place.

In order to ensure that everyone knows what is expected, all workplaces should develop policies detailing how they intend to respond to the variety of threats posed by exposure or potential exposure to Coronavirus. The policies should deal with issues such as:

1. Health and hygiene.
2. What to do in the event of a staff member contracting Coronavirus.
3. What to do in the event of a staff member having possibly come into contact with an infected person.
4. Travel and post-travel quarantine.
5. Visitors to the workplace.
6. Attendance at external events for work related purposes.

In the event that a staff member is required to quarantine, or you require a staff member to self-quarantine you will need to consider if and how that person is remunerated for the period of their absence from the workplace. The options may include:

- Access to sick leave.
- Access to other leave entitlements.
- Unpaid leave.
- Paying the employee normal remuneration.

There are however restrictions on when an employer can require an employee to take leave (whether paid or unpaid). You should have regard to any awards, registered agreements or employment contracts which may govern your employees. It may be that you will need to pay that employee their ordinary wage/salary. [The Fair Work Ombudsman’s](#) outlines the relevant information on this topic. You should also bear in mind the possible application of anti-discrimination legislation when framing your policies.

Federal and State Powers

The Federal, State and Territory Governments have a range of powers at their disposal that they can utilise.

For example, at the Federal level there is the *Biosecurity Act 2015* and the *National Health Security Act 2007*. On 26 January 2020, Coronavirus was included in the list of human diseases falling under the ambit of the *Biosecurity Act*. This enables restrictions to be placed on entry and exit from Australia and the imposition of individual control orders.

In South Australia, the Government declared Coronavirus a notifiable condition pursuant to the *South Australian Public Health Act (2011)*. Amendments to this Act enhancing the power to control people's movements and requiring people to undergo testing came into force on 5 March 2020.

On 6 February 2020, Coronavirus was declared a "notifiable disease" in the Northern Territory pursuant to the *Notifiable Diseases Act 1981*. This Act provides power to require persons to undergo treatment and to take steps preventing the possible spread of the disease. This could include a requirement that an infected person be removed and detained at a hospital.

Business Interruption

There are a myriad of ways in which your business could be affected. For instance:

1. If you had to close your workplace because of an infection.
2. Your supply chain is interrupted in turn affecting your production.
3. You are unable to fulfil existing contracts.

Where you are unable to complete or fulfil a contract the starting point is to examine all the relevant clauses. Most business contracts will contain a [force majeure clause](#).

If you do have an interruption to your business, whether because you had to close your workplace or because of a supply chain disruption you should have regard to all [relevant business insurance policies that you have in place](#).

In the event that you or one of your staff members contracts Coronavirus in the course of employment this may trigger a worker's compensation claim.

In the event that you are entering into new contracts you may wish to include specific provision relating to the potential affect on the performance of the contract in connection with Coronavirus interruption.

Event Cancellation

Organisations/employers are starting to restrict travel and attendance at events. This has a consequential flow on effect for event organisers who are now being forced to consider the viability of events. Putting aside the further effect on sub-contractors that may be effected such as caterers, security guards and the like the initial consideration for event organisers is whether or not there is any obligation to refund tickets or reservations already purchased. The answer to this question will depend on the terms and conditions upon which bookings were made and taken. This will require an individual analysis on an event by event basis.

Insurance is available for event cancellations and non-appearances of key personnel. Whether or not relevant policies are triggered is again a question that needs to be determined on an individual policy basis. [Read here on information in regards to Insurance Contracts](#).

As to what the rights are of affected sub-contractors will also need to be determined by reference to their supply contracts and/or any insurance (such as business interruption) that they may have in place. Once again this is dealt with in the separate contractual and insurance Alerts referred to above.

Conclusion

This content is current as at 13 March 2020. The speed with which Coronavirus is spreading and the varied responses both internally within Australia and externally change on a daily basis. It is important that you regularly keep up to date with all relevant information and be prepared to respond as the landscape in which the virus is moving changes.

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