



# NFF COVID-19 Workplace Guidance

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National  
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# Introduction

The Australian agriculture industry faces a complex and dynamic challenge as the impacts of the COVID-19 (coronavirus) pandemic continue to unfold across Australia. This guide contains basic advice on managing the impact on farming workplaces, including relevant work health and safety and industrial relations considerations. It is intended to facilitate thinking and decision making about jobs and the health and safety of people on farm, including family and workers, and ongoing job and business security and continuity.

However, the document is by no means comprehensive, and while every effort has been made to ensure its accuracy, it is only intended to provide high level guidance and assistance of a very general nature. It is not legal advice and it certainly does not constitute mandatory directions. Furthermore, it's not tailored to the needs of individual farms, and given the rate at which the COVID-19 crisis is developing, may be quickly out of date. No responsibility will be taken if you rely on it to your detriment. Furthermore, care must be taken to follow the directives and recommendations of public health officials.

There is a wealth of guidance on the virus and developing situation, starting at:

- the Department of Health website [here](#)<sup>1</sup>;
- the World Health Organisation (WHO) website [here](#)<sup>2</sup>;
- Safe Work Australia website [here](#)<sup>3</sup>;
- The Fair Work Ombudsman website [here](#)<sup>4</sup>;
- Department of Home Affairs website [here](#)<sup>5</sup>.

In addition, specific requirements tend to vary from state to state. Links to the state WHS regulators are [here](#)<sup>6</sup> and links to the state's websites which contain their public health directions and important informant are at the end of the document. Although we have consolidated a lot of the existing advice and apply it to farming contexts, the best practice or if you need more information will be to review the source materials.

It also bears saying that, in addition to those authorities, there is a wealth of information being developed by different organisations. While we have attempted to synthesise a lot of that work here, one of our biggest concerns at present is that messages may be confused or contradictory. If anything in this guide conflicts with something you have read or been told elsewhere, then please let us know. You can reach us [here](#)<sup>7</sup>.

Finally, this advice was last updated on **1 April 2020** but as this crisis changes on a very frequent basis it may have to be updated regularly and you are encouraged to confirm you are reviewing the most recent edition.

<sup>1</sup> [www.health.gov.au/health-topics/novel-coronavirus-2019-ncov](http://www.health.gov.au/health-topics/novel-coronavirus-2019-ncov)

<sup>2</sup> [www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public](http://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public)

<sup>3</sup> [www.safeworkaustralia.gov.au/coronavirus-covid-19](http://www.safeworkaustralia.gov.au/coronavirus-covid-19)

<sup>4</sup> [coronavirus.fairwork.gov.au](http://coronavirus.fairwork.gov.au)

<sup>5</sup> [www.homeaffairs.gov.au/news-media/current-alerts/novel-coronavirus](http://www.homeaffairs.gov.au/news-media/current-alerts/novel-coronavirus)

<sup>6</sup> [www.safeworkaustralia.gov.au/covid-19-information-workplaces/other-whs-and-workers-compensation-resources](http://www.safeworkaustralia.gov.au/covid-19-information-workplaces/other-whs-and-workers-compensation-resources)

<sup>7</sup> [nff.org.au/contact-us](http://nff.org.au/contact-us)

# General Overview

As a new disease, there is presently no immunity to COVID-19 in the community. As such, infection spreads very quickly. Those most at risk include people who have compromised immune systems or chronic illnesses, the elderly, and the very young.

## Infection

According to the Department of Health, the virus is spread from 'person-to-person' contact through:

- Close contact with an infectious person (including in the 24 hours before they start showing symptoms);
- Contact with droplets from an infected person's cough or sneeze; and
- Touching objects or surfaces that have cough or sneeze droplets from an infected person and then touching your mouth or face.

## Symptoms

The symptoms of COVID-19 can range from mild illness to fatal pneumonia and include fever, coughing, sore throat, fatigue, and shortness of breath. The government has generated an on-line tool for checking symptoms [here](#)<sup>8</sup>.

## Length surfaces remain infectious

The current understanding is that COVID-19 can survive on any hard surface for a few hours. This will include both the skin of fruit and vegetables and packaging materials. However, it does not survive (for longer) on animal or vegetable matter.

The NSW Food Authority has published detailed advice on the food safety and COVID-19 [here](#)<sup>9</sup>.

<sup>8</sup> [www.health.gov.au/resources/apps-and-tools/healthdirect-coronavirus-covid-19-symptom-checker](http://www.health.gov.au/resources/apps-and-tools/healthdirect-coronavirus-covid-19-symptom-checker)

<sup>9</sup> [www.foodauthority.nsw.gov.au/help/covid-19-advice-for-businesses](http://www.foodauthority.nsw.gov.au/help/covid-19-advice-for-businesses)

# General Practices

Although the information and advice which governments are giving about social practices are applicable at all times throughout this crisis, it is especially relevant at workplaces. Managers, supervisors and persons conducting a business or undertaking should ensure staff are aware and practising both.

The critical steps to minimising both the risk of getting infected and infecting others are:

1. Good hygiene; and
2. Social distancing.

The federal government has generated a number of flyers and posters covering relevant information which can be found [here](#)<sup>10</sup>.

Naturally if a staff member develops symptoms of COVID-19 then they should immediately self-isolate and seek medical advice from a doctor, emergency department, or from [healthdirect](#)<sup>11</sup>.

## Good Hygiene

Although good hygiene is obviously always important, it is particularly critical while the COVID-19 virus remains a real and significant risk.

Good hygiene includes:

- Washing hands often with soap and water particularly before and after eating or using the toilet;
- Using an alcohol-based hand sanitizer
- Cover the mouth when coughing or sneezing; generally, it's advised to cover with a tissue or elbow (for obvious reasons hands are not a good option)
- Dispose of a used tissue immediately and safely (in a bin).
- Avoid touching eyes, ears or mouth.
- Regularly cleaning and disinfecting frequently used objects (like phones and tools) and hard surfaces (like benches and doorknobs)
- Avoiding shared/ing food (e.g. communal bowls of chips).

<sup>10</sup> [www.health.gov.au/resources/collections/coronavirus-covid-19-campaign-resources](http://www.health.gov.au/resources/collections/coronavirus-covid-19-campaign-resources)

<sup>11</sup> At 1800 022 222 see also [www.healthdirect.gov.au](http://www.healthdirect.gov.au)

## Social Distancing

The basic rule is that you should **always** maintain 1.5 metres (approximately two arms-lengths) from anyone else. This applies at all times, including at work and while traveling. Furthermore, quarantine yourself if you have good reason to suspect that you have been exposed to the virus, and eliminate or minimise activities which may increase your risk of contracting or spreading COVID-19. For example:

- Minimising — which also means, to the extent possible, eliminating — direct and indirect contact with anyone else such as shaking hands or sharing tools;
- Avoiding 'hotspots' (such as locations and institutions known to have an occurrence of contagion) and large gatherings;
- Monitoring the health and safety of yourself and others for signs and symptoms of COVID-19 (described above);
- If you see or suspect symptoms in someone else (whether in the workplace or otherwise), keep a safe distance and notify a manager or supervisor;
- If you suspect symptoms in yourself or anyone you have had contact with then immediately isolate yourself and notify a manager or supervisor and seek medical advice.

With the introduction of stage 3 restrictions from midnight on 30 March 2020, no more than 2 people may congregate at any one place.

### One frequently asked question

#### **How does social distancing apply in vehicles?**

For example, when workers are being bused to/from the worksite. The position would not vary from that which applies at the workplace generally. Ideally, no more than 2 people in the vehicle. Otherwise, maintain adequate distance between passengers use any other reasonable measures (such as PPE) to minimise the risk of exposure, and if in doubt contact the WHS regulators for guidance. And, of course, if there is a real chance one of the passengers may be infectious, they should not be allowed in the vehicle and should be quarantined immediately.

# Access to Labour and Workforce Planning

## Generally

One of the biggest impacts on farming business of COVID-19 pandemic will be access to labour.

Obviously, like all workplaces, farms will have to manage occasions on which staff cannot attend work because of quarantine requirements or because they develop COVID-19. We will cover some of the industrial relations implications below.

On a practical level, however, farms should develop contingency arrangements for the possibility — or likelihood — that staff may be unable to work as a result of the crisis. For isolated rural farms this could become a significant issue but establishing contact with job placement agencies and (legitimate) labour hire providers that can provide workers with the right skills would be a good first step.

Lists of labour hire providers which are licensed under state schemes are [here](#)<sup>12</sup> (VIC), [here](#)<sup>13</sup> (QLD), and [here](#)<sup>14</sup> (SA). There are a number of job placement agencies who can link you with prospective employees, but the Harvest Labour Services providers ([here](#)<sup>15</sup>) and the WA government's Jobs in Food and Ag ([here](#)<sup>16</sup>) are good places to start. Services such as Farm Ready Hub ([here](#)<sup>17</sup>) are also good resources, and state farming and commodity bodies may also be able to assist.

## Travel and Border Arrangements

We are expecting government to make an announcement which will enable farms who need workers to link with workers looking for jobs (and vice-versa). We fully expect that the [governments](#)<sup>18</sup> will maintain the view that food and fibre production are 'essential services' and so do not need to be shut down during the crisis. However, we may be more significantly affected by the closure of state and national border closures and restrictions on people movement than other industries.

### At the time of writing:

1. State borders are generally open for people traveling for farm work, but there are restrictions. Those restrictions will vary from state to state and you can check the specifics here, but as a general statement the worker should have proof that they are traveling for farm work — that is a declaration from the farm employer — and that the employer has a COVID-19 management plan. They may also need to apply for a specific exemption or permit.
2. The national borders are closed to all travel, including international migrants who would otherwise have the right to work on farms such as backpackers and seasonal worker program workers.
3. The government has yet to make a final decision on the fate of international migrants in Australia whose visas expire while borders (both Australian and International) remain closed. For obvious reasons, they may wish to remain in Australia, and given no other workers are incoming it is our view that they must be permitted.

*The present advice is that the government will be flexible in granting bridging visas in individual cases. However, we maintain our call (with those of other industries) for a general extension of all visas. More information can be found [here](#)<sup>19</sup>.*

<sup>12</sup> [register.labourhireauthorityvic.gov.au](https://register.labourhireauthorityvic.gov.au)

<sup>13</sup> [ols.oir.qld.gov.au/licence-register/search](https://ols.oir.qld.gov.au/licence-register/search)

<sup>14</sup> [secure.cbs.sa.gov.au/OccLicPubReg/index.php](https://secure.cbs.sa.gov.au/OccLicPubReg/index.php)

<sup>15</sup> [jobsearch.gov.au/serviceproviders/search](https://jobsearch.gov.au/serviceproviders/search)

<sup>16</sup> [www.jobsinwafoodandag.com](https://www.jobsinwafoodandag.com)

<sup>17</sup> [farmreadyhub.com](https://farmreadyhub.com)

<sup>18</sup> [www.interstatequarantine.org.au/state-and-territory-border-closures](https://www.interstatequarantine.org.au/state-and-territory-border-closures). Although there is a general misunderstanding that this is a decision of the Federal Government, it is actually a decision of state governments so rules and criteria may vary from jurisdiction to jurisdiction.

<sup>19</sup> [covid19.homeaffairs.gov.au](https://covid19.homeaffairs.gov.au)

# Access to Labour and Workforce Planning

## Protocols – Managing Risks Posed by Itinerate Workers

We will address workplace health and safety more broadly below. However, it is imperative that every farm that engages itinerant workers, such as backpackers during harvest, have very solid protocols in place to manage risk and that those protocols are strictly observed.

The following **10 Steps** are of general application when engaging itinerate workers. Without more we would strongly urge you to follow them.

1. Always know where both new and current workers have been for the previous 14 days, including where they are living and, at least generally, who they have been associating with.  
*The declaration/checklist (see point 4 below) will address this requirement.*  
*Although it may seem slightly be invasive, in the current crisis any worker should expect their employer to ask these questions and provided you maintain their privacy it should not present an issue.*
2. Ensure that any new worker with no prior exposure to your workforce observes a 14-day isolation period prior to commencing work.  
*New workers can be isolated on the farm if they observe social distancing requirements with the farm gate and do not share accommodation with other workers.*  
*The authorities are aware of the issue of paying for expenses such as food and accommodation whilst the worker is isolated but at present the hard truth is that the worker must find a way to cover it themselves.*
3. Ask new/potential workers to share accommodation with the others in their work team — especially if you can provide the it for them — provided they do not mix with existing workers.  
*If you've already got workers on farm they must not share accommodation with new workers.*  
*You are entitled to give priority to applicants who can demonstrate a willingness to observe that request.*
4. Before each shift, obtain a declaration covering movements and potential exposure (such as the checklist at the end of this guide) and retain it as a workplace record.  
*Although this may be tedious, it will not only allow you to plan and prepare, it may also influence the employees' behaviour while away from work.*
5. Hold a toolbox talk before each shift explaining social distancing and hygiene requirements, and the other protocols you have put in place.
6. Adopt and/or change work practices and procedures to reflect current circumstance and enable workers to observe hygiene and social distancing requirements while working.  
*Appropriate protocol will vary from farm to farm, but consider limiting staff to essential duties, staggering shifts, and ensure cleaning and disinfectant facilities are available and used before during and after each shift.*
7. Ensure you know where your staff are at all times, ideally keeping good records of where and what they are doing
8. If any workers demonstrate any symptoms follow the steps at page 12:
  - a. Immediately isolate the suspected infectious person and direct them to be tested for the virus;
  - b. Identify and immediately isolate anyone who the infectious person may have contacted and direct them to be tested for the virus;
  - c. Thoroughly clean and disinfect any places or things which were in contact with the persons and the people that he/she contacted;

## Access to Labour and Workforce Planning

8d. Contact your local WHS regulator for further advice. Provided that you have followed the advice of reliable sources then you shouldn't need to be concerned that the regulator will penalise you.

9. Advise workers that they will be subject to appropriate disciplinary action where they violate the protocols you put in place.

*For example, if they provide misleading information on declarations or disobeying social distancing requirement.*

10. Report any workers who are violating social distancing and isolation requirements to the worksafe regulator, police, local councils, or other appropriate authorities and consider appropriate disciplinary action.

*Please bear in mind, however, you may need to tailor these steps to your worksite and industry, and they must be subject to any changes in rule or directions given by state and federal governments. Link to each of the authorities is at the end of this document*

### Accommodation

If you provide accommodation to your staff during the pandemic there will be a few basic tenets which you should observe:

- The principles relating to social practice, especially hygiene and social distancing, continue to apply.
- Obviously, the premises should be thoroughly cleaned and disinfected before the worker arrives, after they leave, and as regularly as possible during their stay.
- To quarantine the risk of infection, staff who work in teams should be housed and travel within the same teams.
- You may be obliged to comply with any governmental requirements which are issued to commercial accommodation providers.<sup>20</sup>
- In most jurisdictions WHS obligations extend to accommodation which is provided by employers<sup>21</sup> so the principles discussed below would also apply.

Of course, encouraging staff to live with the teams they work in is best practice and you should consider facilitating it to the extent that you can when, for example considering shifts.

### Financial Support Packages

The government has announced a number of changes to taxation and social security arrangements that will help keep business employing their staff and will help those who are displaced from work.

- The stimulus packages which provide assistance business are describe [here](#)<sup>22</sup>
- The packages which are available to help displaced worker are [here](#).<sup>23</sup>
- Information tailored to the needs of farm business on farmhub [here](#).<sup>24</sup>

# Workplace Health and Safety Obligations

### Staff Management & General Principles

At a very high-level, work health and safety laws are consistent across Australia. We will attempt to advise generally in accordance with those laws for the purposes of agricultural workplaces. The specifics of those laws, however, vary from jurisdiction to jurisdiction and you are strongly advised to check in with your local WHS regulator [here](#).<sup>25</sup>

The basic tenet is that a person conducting a business or undertaking must take all reasonably practicable steps to minimise or eliminate a risk to health or safety at the workplace. As indicated above, each of the WHS regulators provide advice tailored to their jurisdictions. Furthermore, a detailed guide on what this means in the context of the Covid-19 pandemic has been produced by the law firm Corrs Chambers Westgarth and is available [here](#).<sup>26</sup>

However, there are several steps which you can take at a practical level:

- **Require and enable your staff to observe good hygiene principles identified above.**

This means providing and directing workers to use hand washing facilities and making sure the worksite is kept clean and properly stocked with cleaning products. It also means disinfecting potentially contagious surfaces, such as those which have been exposed to 'respiratory droplets' after someone has coughed and obviously thoroughly cleaning any site where an infectious worker has been. The Federal Government has generated detailed guidelines [here](#).<sup>27</sup>

- **Requiring and enabling your staff to observe the social distancing principles identified above.**

This will include, to the extent that it is reasonably practicable, enabling workers to work at a distance of 1.5 metres from each other. Other options to consider include:

- Breaking staff into teams;
- Adjusting rosters to minimise the numbers of staff at the site, and stagger shift and break times to reduce overlap between teams;

- Adjusting the physical layout of the workspace and any common areas; e.g. divide the workspace into zones; remove chairs from lunchrooms;
- Streamlining processes to reduce cross-contact; e.g. ensuring materials used on the packline are handled within the team;
- Making sure the workplace is very well ventilated.

Of course, this may not always be 'reasonably practicable' in, for example, a small packing shed, so other arrangements may have to be considered. For example, providing and requiring workers who are in close proximity to each other to use physical barriers (e.g. perspex screens) and personal protective equipment (PPE) such as gloves and masks.

- **Require staff who may have been exposed to the virus to remain away from the workplace.**

Obviously, this is critical and will have industrial relations implications which are considered below.

- **Posting the materials and resource which the Federal government is distributing [here](#).<sup>28</sup>**

- **While respecting personal privacy, requiring staff to regularly complete a disclosure form.**

This will indicate where they have been for the previous 14 days, that they are not aware of any contact with any infectious persons, and that they have no symptoms or signs of infection themselves.

Ideally the declaration would be made before the commencement of each shift.

You should also make it clear that being untruthful or misleading in the disclosure may be cause for disciplinary action. Although the information the employee provides may or may not be reliable, it is important that you are able to demonstrate that you made the enquiries and having them sign a document attesting to their claims may cause them to think twice about misleading statements.

<sup>20</sup> We are not aware of any specifically relating to the provision of accommodation but will update this guide if/when we do.

<sup>21</sup> s 19(4) of the harmonized Work Health and Safety legislation

<sup>22</sup> [www.business.gov.au/Risk-management/Emergency-management/Coronavirus-information-and-support-for-business](http://www.business.gov.au/Risk-management/Emergency-management/Coronavirus-information-and-support-for-business)

<sup>23</sup> [www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19](http://www.servicesaustralia.gov.au/individuals/subjects/affected-coronavirus-covid-19)

<sup>24</sup> [farmhub.org.au](http://farmhub.org.au)

<sup>25</sup> [www.safeworkaustralia.gov.au/coronavirus-covid-19/other-whs-and-workers-compensation-resources](http://www.safeworkaustralia.gov.au/coronavirus-covid-19/other-whs-and-workers-compensation-resources)

<sup>26</sup> [corrs.com.au/site-uploads/images/PDFs/Insights/article-employment-coronavirus-implications-for-employers.pdf](http://corrs.com.au/site-uploads/images/PDFs/Insights/article-employment-coronavirus-implications-for-employers.pdf)

<sup>27</sup> [www.health.gov.au/sites/default/files/documents/2020/03/environmental-cleaning-and-disinfection-principles-for-covid-19.pdf](http://www.health.gov.au/sites/default/files/documents/2020/03/environmental-cleaning-and-disinfection-principles-for-covid-19.pdf)

<sup>28</sup> [www.health.gov.au/resources/collections/coronavirus-covid-19-campaign-resources](http://www.health.gov.au/resources/collections/coronavirus-covid-19-campaign-resources)

# Workplace Health and Safety Obligations

Similar declaration should be obtained from contractors and labour hire providers.

Sample disclosure forms are annexed to this document.

- **Discouraging staff from coming into contact (e.g. touching) anything unnecessarily (such as sharing tools or moving around the workplace unnecessarily)**

- **Limiting site access to essential staff and support workers.**

This may mean implementing extraordinary measures to deal with deliveries and logistics. If possible, support services, such as consultants/agronomists should be directed to wear PPE and not have direct contact with any staff or interact via electronic methods.

- **Requiring the use of a contactless payment systems.**

- **If someone who has a potential been exposed (e.g. someone had been exposed to the virus) has been at the worksite, then everywhere that person has been should be cleaned and disinfected.**

- **Maintaining good records of staff and staff movement**

This should make it possible to track where an employee was and who they may have been in contact with at any given time. This will obviously be crucial to containing any outbreak if an employee is diagnosed with the virus.

- **Encouraging and, to the extent that you can, requiring staff to regularly undergo fever testing.**

Some regions offer fever testing clinics (see [here](#)<sup>29</sup>) but ideally you should have facilities at the worksite to take a worker's temperature before they enter the site to commence work. This should be done in a non-invasive manner and ideally by consent, although if you have strong evidence to suspect the person is infected then you may

have cause (or even be obliged) to require them to wear PPE or even prevent them from attending the workplace until they have undertaken testing; again, we consider the industrial relations issue below.

- **Communication is key, especially as there is a WHS obligation to consult with workers on matters relating to the COVID-19**

Keep workers informed of the steps in minimising infection, of any developments at the workplace, and of the decisions and declarations which are made by government and could affect them. Seek and listen to their views. And make sure that know they can raise any concerns or issues with you.

- **Make sure any staff handbooks and WHS policies & procedures are up to date and available to staff.**

Make sure that it is updated to deal with this crisis – e.g. to include cleaning and sanitising procedures – and that your staff is familiar with it in its most current form.

- **Finally, be supportive of your staff.**

Be conscious of the effects of isolation may have on mental health, and the anxiety and stress which the present situation may foster. Resources can be found [here](#).<sup>30</sup>

Safe Food Production Queensland has generated a workforce checklist which identifies most of the things you should be aware of when managing a workplace. It is available [here](#)<sup>31</sup> and there are tips on dealing with mental health issues associated with COVID 19 [here](#)<sup>32</sup> and [here](#)<sup>33</sup>.

## Workplace Health and Safety Obligations

### What to do in case of a suspected exposure

Perhaps the most concerning prospect for any business, including farms, in the present environment is the prospect of an infectious person attending the workplace and directly or indirectly infecting the entire workforce potentially effectively causing the entire business to shut down.

Following the steps outlined above will limit the prospect of this happening and will limit the impacts if it does. Good preparation will not only help your farm remain virus free, but it may be the difference between mild inconvenience and a total collapse.

***It goes without saying that this is a very real risk for which all businesses have to prepare.***

Aside from doing everything you can to avoid exposure, the best thing you can do in advance is prepare contingency arrangements. It would be advisable to prepare changes in staff roles and responsibilities. Consider ways in which roles could be merged and leaving non-essential duties aside over the short/medium term. Consider and prepare emergency training to make sure staff has the necessary skills if there are role changes and consider which staff may be suitable for a changed role e.g. identify who may be appropriate and motivated to move into a supervisory position.

Also, identify good and reputable sources of casual workers including labour hire providers (see above) to make up for any staff you may lose, and confirm that can provide workers on short notice with the skills you need when you need them.

You should also prepare your customers, and keep them updated on your preparedness and contingency plans.

That aside, in the event of a potential outbreak best practice will be to:

1. Immediately isolate any suspected infectious person and direct them to be tested for the virus;
2. Identify anywhere and anyone else that the infectious person may have been in contact with;
3. Immediately isolate anyone who the infectious person contacted and direct them to be tested for the virus;
4. Thoroughly clean and disinfect any places or things the persons and the people that he/she contacted;
5. Contact your local WHS regulator for further advice. Provided that you have followed the advice of reliable sources then you shouldn't need to be concerned that the regulator will penalise you.

Aside from those recommendation, your response will have to be risk based and site/situation specific. You may or may not need to shut down, depending on the particulars. Unfortunately, there is no easy solution, and the best defence will be to minimise the risk of an outbreak and plan effectively so that you are in a position to respond and actually do respond very quickly.

<sup>29</sup> [www.goldcoast.health.qld.gov.au/coronavirus-covid-19/visiting-fever-clinic-getting-tested](http://www.goldcoast.health.qld.gov.au/coronavirus-covid-19/visiting-fever-clinic-getting-tested)

<sup>30</sup> [www.safeworkaustralia.gov.au/covid-19-information-workplaces/mental-health-and-covid-19](http://www.safeworkaustralia.gov.au/covid-19-information-workplaces/mental-health-and-covid-19)

<sup>31</sup> [www.safefood.qld.gov.au/covid-19-advice/](http://www.safefood.qld.gov.au/covid-19-advice/)

<sup>32</sup> [www.lifeline.org.au/get-help/topics/mental-health-and-wellbeing-during-the-coronavirus-covid-19-outbreak](http://www.lifeline.org.au/get-help/topics/mental-health-and-wellbeing-during-the-coronavirus-covid-19-outbreak)

<sup>33</sup> [www.health.gov.au/resources/publications/covid-19-national-health-plan-supporting-the-mental-health-of-australians-through-the-coronavirus-pandemic](http://www.health.gov.au/resources/publications/covid-19-national-health-plan-supporting-the-mental-health-of-australians-through-the-coronavirus-pandemic)

# Industrial Relations

## Generally

The rights and obligations of employers and employees under the *Fair Work Act* will be seriously tested during this pandemic. The Fair Work Ombudsman (**the FWO**) has published a thorough and current guidance [here](#),<sup>34</sup> and ACCI and the VCCI have generated their own guidance which is publicly available [here](#).<sup>35</sup>

We will touch on some of the key issue here, but please bear in mind that this is general advice and given we are discussing legal rights and duties, the legal position will vary from case to case. It will be affected by things like the situation at work, the position and circumstances of the employee, any applicable employment contracts and enterprise agreements, etc. You would be strongly advised to seek specific advice from an industrial relations specialist before taking any action which may affect your employees' pay or work rights. Your state and commodity farming organisation usually offer such services, the FWO has established a dedicated hotline which can be reached at **13 13 94**<sup>36</sup>, and the Fair Work Commission's advice service is still operating (see [here](#))<sup>37</sup>.

## Giving Directions

The extent of an employer's right to issue direction to the employee in relation to matters which aren't strictly related to the performance of duties is never clear, but will be informed not just by industrial relations instruments but, in the current context, also work health and safety duties, anti-discrimination laws, etc.

If an employee presents for work demonstrating symptoms of COVID-19 and the employee has a reasonable and genuinely held belief that the employee may have COVID-19 then:

1. The employer may ask or, if the employee refuses, direct the employee to consult a GP and/or undergo testing (paying for the time involved).
2. If the employee tests positive, then the employer may direct the employee to take sick leave (with or without pay).
3. If they test negative, then there is minimal risk<sup>38</sup> and the employee may continue work.

If the employee refuses to be tested or testing is unavailable and the employee is displaying symptoms, then the employer will have to use the best alternatives available to determine the likelihood that the person is sick. If they believe that the employee poses a health risk to themselves or other staff, they have a duty to take reasonable steps which may include requiring them to wear PPE (masks and gloves) and even sending them home on some form of leave (we cover leave entitlements below). Unfortunately, however, there are no clear rules around doing so. As such, taking this controversial step should be avoided if possible, and again we would suggest you seek specific advice.

The situation is even more difficult where the employee is not showing symptoms but may have been exposed to the virus; e.g. because a member of the household engaged in risky behaviour such as congregating at a crowded hotspot. If possible, the employee should be directed to work from home, but that is not an option in relation to most farm jobs. If it isn't then ideally the employee would agree to take annual leave. If they refuse however — and depending on the circumstances — an employer would probably still have the power to direct them not to attend work for the quarantine period of 14 days however it is likely that a permanent employee would still have to be paid. Again, this is a very tricky situation, so specific advice should be obtained.

<sup>34</sup> [coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/ending-employment-during-coronavirus](https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/ending-employment-during-coronavirus)

<sup>35</sup> [www.victorianchamber.com.au/-/media/files/vcci/covid-19/covid19--employer-guide-ed](https://www.victorianchamber.com.au/-/media/files/vcci/covid-19/covid19--employer-guide-ed)

<sup>36</sup> [coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-information](https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/contact-information)

<sup>37</sup> [www.fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service](https://www.fwc.gov.au/resources/where-get-legal-advice/workplace-advice-service)

<sup>38</sup> [www.washingtonpost.com/science/2020/03/26/negative-coronavirus-test-result-doesnt-always-mean-you-arent-infected/](https://www.washingtonpost.com/science/2020/03/26/negative-coronavirus-test-result-doesnt-always-mean-you-arent-infected/): "A negative result does not rule out COVID-19 and should not be used as the sole basis for treatment or patient management decisions..." "When diagnostic testing is negative, the possibility of a false negative result should be considered in the context of a patient's recent exposures and the presence of clinical signs and symptoms consistent with COVID-19."

# Industrial Relations

Aside from those two circumstances, it is unlikely the employer will be entitled to issue directions to employees in relation to COVID-19. If, for example, an employee tells you that they intend to spend the weekend at the beach or will be traveling to a 'hot spot'. But again, the circumstances will vary from case-to-case, and if in any doubt we would recommend you seek specific advice.

Finally, where working from home is an option, the employer should ensure that the employee completes a working from home assessment which specifically contemplates WHS risks — which remain the employer's obligation — and measures to minimise those risks. A sample is linked from the Business Victoria page [here](#)<sup>39</sup> (under 'working from home'). The employer should also contact their insurance broker to confirm that workers compensation and other insurance covers working from home arrangements.

## Leave Entitlements

Generally, an employee should be encouraged to use available leave entitlements if they do not attend work because of coronavirus, whether because they are quarantined, the worksite is closed, or they are sick.

Annexed is a reference table stepping through leave entitlement for permanent employees and the circumstances in which they may be [used](#)<sup>40</sup>, but in general terms:

- Annual or long service leave may be used if the employee is unable to work because they are observing quarantine.
- Personal leave will be available where the employee is sick, caring for a sick member of immediate family, or dealing with an unexpected emergency affecting that family member.<sup>41</sup>

<sup>39</sup> [www.business.vic.gov.au/hiring-and-managing-staff/employer-responsibilities/occupational-health-and-safety](https://www.business.vic.gov.au/hiring-and-managing-staff/employer-responsibilities/occupational-health-and-safety)

<sup>40</sup> Credit to Page Seger Lawyers [www.pageseger.com.au](https://www.pageseger.com.au)

<sup>41</sup> According to ACCI: '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 personal leave for this purpose even if their child is not ill or injured.'

Although casual employees are entitled to be absent from work without repercussion if they are sick, they are not entitled to any paid sick leave. Accordingly, a casual employee who has COVID-19 is not entitled to pay if they are unable to work. In addition, where their hours are reduced (potentially to nothing) because of business slowdown or isolation requirements they will not be entitled to pay.

## Workers Compensation

In relation to worker's compensation, Gallagher Insurance Brokers have indicated as follows:

*A virus (like COVID-19) is likely to be considered under the occupational disease provisions of Worker Compensation legislation. For a disease to be covered it must be contributed to, to a significant degree, by the employee's employment. For coverage to exist, a determining insurer would need to be satisfied that the employment significantly contributed to the employee contracting the virus.*

*For viruses, it can be difficult to accurately determine the exact time and place of contraction. However, where an employee's employment puts them at greater risk of contracting the virus the significant contribution test may be easier to meet. For example, if the employment involves:*

- *travel to an area with a known viral outbreak;*
- *activities that include engagement or interaction with people who have/were likely to have contracted the virus;*
- *activities that contravene Department of Health recommendations.*

*What an approved Worker Compensation claim typically covers*

- *lost income and medical costs if a worker contracts an infectious disease in the course of their employment at work.*

# Industrial Relations

*What it doesn't cover?*

- employees putting themselves at risk through serious and wilful misconduct;
- lost income and medical costs if an employee contracts an infectious disease outside of their employment (i.e. through their community or attending a non-work public event such as music festival or church, etc.,)

*Each claim would need to be considered on its individual merits, having regard to the individual circumstances and evidence in relation to the claim.*

## Stand Down

Under the *Fair Work Act*, an employer may temporarily 'stand down' an employee without pay for a discrete period, where the employees cannot be 'usefully employed'<sup>42</sup> because of 'a stoppage of work for any cause for which the employer cannot reasonably be held responsible.'<sup>43</sup> That is, where there is genuinely nothing for the employee to do for reasons which are clearly beyond the employer's control.

The Fair Work Ombudsman (here) advises that in the present context stand down may be available where:

- the business has closed because of an enforceable government direction relating to non-essential services (which means there is no work at all for employees to do even from another location)
- a large proportion of the workforce is in self-quarantine meaning the remaining employees can't be usefully employed
- there's a stoppage of work due to lack of supply for which the employer can't be held responsible.

Employers must be careful, however. For example, the provisions won't apply just because trade has slowed down.

To rely on the stand down provisions, employers should ask themselves the following:

- Is there anything else the employee can do in the circumstances? Can they be redeployed (perhaps with some training)?
- Can you clearly establish that the employee is being stood down because there is no work?<sup>44</sup>
- Are there any other options available to the employee, such as paid leave (see above)?
- Has the employee been given adequate notice and otherwise been treated fairly?

Finally, these principles can be adjusted under employment contracts or enterprise agreements, so be sure there are no other principles you should be aware of. Neither the Horticulture nor the Pastoral Award directly touches on stand down arrangements, but the consultation provisions (see below) would probably apply.

## Reducing hours and changing operations

As a result of the spread of COVID-19 some employers may be considering varying their operations. For example, they may wish to mix-up shifts and alternate work times to reduce the risk of exposing employees or because of changes in demand patterns of their customers.

The capacity to vary rosters and shifts or to shorten hours will be largely controlled by the applicable industrial instrument (e.g. enterprise agreement or award) or employment contract.

Clause 8 of both the Pastoral Award<sup>45</sup> and Horticultural Award<sup>46</sup> contain requirements for consulting with the employees where there is major workplace change which will have a significant effect on the employees, including terminations, restructures, and alteration of hours provided.

<sup>42</sup>According to ACCI: '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.

<sup>43</sup>Section 524(1)(c) of the Act

<sup>44</sup>i.e. not using it as backdoor to make the employee temporarily redundant

<sup>45</sup>[www.fwc.gov.au/documents/documents/modern\\_awards/award/ma000035/default.htm](http://www.fwc.gov.au/documents/documents/modern_awards/award/ma000035/default.htm)

# Industrial Relations

The consultation requirements include:

- Giving the employees notice of the changes, including the nature of the change, the likely effect on the employee;
- Discuss the changes with the employees, including the likely effect on them and measures to minimise adverse consequence; and
- Considering any matters raised by the employees about the changes.

Furthermore, under clause 8A the employee must consult about changes to rosters or ordinary hours of work. Those consultation requirements (which are less extensive) require that the employee be given notice of the changes and an opportunity to comment.

Finally, it may be useful to consider 'individual flexibility arrangements' (IFAs) in some circumstances.

## Ending Employment

As a final option an employer may need to end an employee's employment. The rules for doing so are complicated and will vary from business to business and depending on the situation. General rules can be found on the FWO website [here](#).<sup>47</sup> The Horticulture and Pastoral Awards both contain specific provisions dealing with redundancies at clause 12.

Although not strictly an industrial relations consideration, bear in mind that terminating employment may have visa implication for skilled migrant workers you are the sponsoring. Considering other options such as leave without pay may be more attractive.

However, terminating a person's employment is obviously always difficult, complicated and controversial so again you would be strongly advised to consult with an industrial relations specialist identified above before taking that course.

<sup>46</sup>[www.fwc.gov.au/documents/documents/modern\\_awards/award/ma000028/default.htm](http://www.fwc.gov.au/documents/documents/modern_awards/award/ma000028/default.htm)

<sup>47</sup>[www.fwc.gov.au/documents/documents/modern\\_awards/award/ma000028/default.htm](http://www.fwc.gov.au/documents/documents/modern_awards/award/ma000028/default.htm)

# Useful Links

## State and Regional Links

### Victoria

[Victorian Government](#)

[WorkSafe Victoria](#)

### New South Wales

[New South Wales Government](#)

[Safework New South Wales](#)

### Western Australia

[Western Australian Government](#)

[Western Australian Worksafe](#)

### Northern Territory

[Northern Territory Government](#)

[NT Worksafe](#)

### South Australia

[South Australian Government](#)

[Primary Industries and Regions SA](#)

[SafeWork SA](#)

### Tasmania

[Tasmanian Government](#)

[WorkSafe Tasmania](#)

### ACT

[ACT Government](#)

### Queensland

[Queensland Government](#)

[Workplace Health and Safety Queensland](#)

## Agricultural & Commodity Links and Resources

### Farmhub

- [COVID-19 Key Information](#)
- [COVID-19 Assistance and Support](#)

### Australian Pork

### GrainGrowers

- [Policy COVID-19](#)
- [COVID-19 Resource Guide](#)

### Grain Producers SA

### Livestock SA

### Shearing and Wool Production

### Dairy Australia

- [Dairy Australia](#)
- [Dairy Industry - COVID-19](#)

### Cotton Australia

### Growcom

### Berries Australia

### Canegrowers

### Cattle Council

### Ausveg

### Avocados Australia

- [Natural Resources](#)
- [Membership Area - COVID-19](#)

# Annexes

## ANNEX 1

### COVID-19 Personal Disclosure Statement

#### EMPLOYEE DETAILS

Employee Name

Address

Telephone number

Email Address

Do you have any underlying health conditions that make you more susceptible to infection? Yes No

Have you travelled overseas or interstate in the last 2 weeks? Yes No

Have any of your immediate family or household members travelled overseas or interstate in the last 2 weeks? Yes No

If 'YES' where did you travel?

How do you travel to work? (public transport, driving, walking) Please specify Yes No

Do you have school aged children or children who attend day care? Yes No

Do you have close contact with the elderly or immune compromised people? Yes No

Do you have any symptom of COVID-19? Yes No

If 'YES' please describe them

Have you been in contact with any person you think may have been infected with COVID-19 in the past 14 days? Yes No

\_\_\_\_\_ is collecting this information to help ensure your health and safety in the workplace given the current outbreak of COVID-19.

I acknowledge that the above information is correct and undertake to inform \_\_\_\_\_ of the following:

- Any personal travel plans, including actual locations visited
- Of contact with any individual who is diagnosed with COVID-19
- If I am diagnosed with COVID-19
- If I have visited a known outbreak hotspot
- Any other relevant information regarding potential exposure to COVID-19.

Employee Signature

Date





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