



COVID-19: What you need to know about Safety and Workers Compensation

SUMMARY

Over the last two months Ai Group has been providing many safety resources on our website to assist members through these challenging times of COVID-19, including fact sheets, guidance material and webinars. This material has covered the risks and controls for those continuing to work in the workplace and those working from home.

This Member Advice now provides an update on some important legislative changes and other Government initiatives focused on supporting organisations to establish and/or maintain practices that will minimise the risk of COVID-19 transmission in the workplace, and some that provide financial assistance to employers.

It also includes information about changes to workers' compensation legislation for COVID-19 in New South Wales that will apply to workers in prescribed employment.

At the end of this Advice we also provide links to some of the key resources.

Ramping up, returning to the office or restarting as restrictions ease

Most Ai Group members did not completely shut down when the highest level of pandemic response restrictions were implemented. Many members did shut offices and restructure how their remaining operations functioned in order to meet social distancing and hygiene protocols. Ai Group's guidance on how to achieve this was first published within days of the restrictions being announced and has been a very popular document with our members.

Now that Australia has successfully reduced new cases to a low level, restrictions on movement and gatherings are being relaxed and some workplaces that were forced to close are able to reopen. Others that continued are returning to more normal operations.

There is a clear duty for all businesses to operate in a way that minimises the risk of new outbreaks and respond responsibly if a COVID-19 case does occur to avoid even greater economic damage if restrictions have to be reinstated.

All businesses must plan for the impact of the upcoming changes to workplaces and the way work is done. We weren't expected to know immediately what to do as we went into higher level restrictions. However, we will be expected to know exactly what we are doing as we come out of them.

WHS Regulations for COVID-19

The ACTU has proposed that WHS Regulations should be amended to include specific requirements related to pandemics including Covid-19. This is still under discussion and would require the agreement of six of the nine governments for the Model WHS Laws to be amended.

It is Ai Group's view that regulations are not necessary. An employer is required by the relevant WHS legislation to eliminate or minimise any risks so far as is reasonably practicable. This includes introducing controls to prevent the spread of COVID-19 in the workplace.

However, the Tasmanian Government has introduced an amendment to their version of the WHS Regulations to include specific [COVID-19 provisions](#), that will expire after 6 months. It is our understanding that the Regulations will be made within the coming week.

The Tasmanian Regulations are part of a [Framework](#) that includes establishing a COVID-19 Safety Plan. This only applies in Tasmania at this stage.

Ai Group is not currently aware of any other government considering the establishment of specific Regulations. If this does occur, we will notify members.

NSW COVID-19 Amendments to Workers Compensation Act

On 13 May NSW Parliament passed the [COVID-19 Legislation Amendment \(Emergency Measures – Miscellaneous\) Bill 2020](#). Section 1.34 of the Bill inserts section 19B into the Workers Compensation Act 1987 and establishes that it is presumed that workers in prescribed employment who contract COVID-19 will have an entitlement to workers' compensation unless it can be demonstrated that they did not contract the disease out of or in the course of employment. Described as "presumptive legislation", this effectively reverses the onus of proof in relation to these circumstances.

A full description of prescribed employment is included in the Bill and summarised as:

- the retail industry
- the health care sector
- educational institutions
- police and emergency services
- refuges, halfway houses and homeless shelters
- passenger transport services
- libraries
- courts and tribunals
- correctional centres and detention centres
- restaurants, clubs and hotels
- the construction industry
- places of public entertainment or instruction (including cinemas, museums, galleries, cultural institutions and casinos)
- the cleaning industry
- any other type of employment prescribed by the regulations for the purpose of this definition

Section 19B(8) also allows for various amendment to be made to the Act, by regulation, to accommodate these changes. Sub regulations (c) and (d) allow for the premium calculation to be amended to change the way in which COVID-19 claim impact an employer's premium and to enable the sharing of financial risk between insurers.

Ai Group will be working with SIRA (State Insurance Regulatory Authority) and icare (the nominal insurer) to ensure employer interests are considered when any regulations are developed.

At present these amendments only apply in NSW. However, a similar non-government Bill is currently before the SA parliament and other jurisdictions may also consider introducing presumptive legislation.

We will keep members informed.

Workers Compensation Premium – Are you classified correctly?

The calculation of the workers' compensation premium for a workplace starts with an industry rate that is determined by the classification of your business or workplace in each state/territory

where you operate. The classification is determined by the predominant/primary activity of the business/workplace.

If COVID-19 has resulted in a change to what you do, or how you do it, you may need to advise your workers' compensation insurer and change your classification – either permanently or temporarily. For example, if your normal product range is not selling and you have started making something different, such as office furniture or medical supplies; or if you normally operate a retail outlet, but you are now selling everything online.

If you are not sure about how a change of operations should be considered for workers compensation purposes, Ai Group can assist you.

National COVID-19 Planning Tool

The National COVID-19 Coordinating Commission (NCCC) has recently released a [Business Planning Tool](#).

The Planning Tool covers three major topics - keeping people safe; adapting your business; and accessing support and assistance. It brings together information from across government.

The key WHS topics covered are undertaking a risk assessment; maintaining good hygiene and cleaning; physical distancing; getting specific WHS advice for your business or industry; and responding to a COVID-19 infection. The tool complements the [Safe Work Australia online hub](#), which remains the definitive source of information for businesses to understand their work health and safety obligations. Additional resources are also available on the Ai Group website, with some important documents listed below.,

Ai Group encourages members to utilise this planning tool as part of adjusting or reopening operations as restrictions ease.

Safe Work Australia Resources

The National Cabinet gave Safe Work Australia the task of compiling a central hub of resources to support organisations to identify and address the various WHS risks associated with COVID-19. This [hub](#) now has large amounts of guidance material (and continues to grow), with specific guidance for particular industries. It also has links to the various state and territory regulators where local information will also be available.

Ai Group encourages members to access these resources which have been developed in consultation with WHS regulators, employer representatives (including Ai Group) and union representatives.

Workers' Compensation and JobKeeper Payments

Ai Group has been providing members with detailed information about eligibility requirements for JobKeeper Payments (JKP). For more information on this topic, see the [Member Advice](#) which is updated as more information becomes available.

The legislation that established JKP only addresses one issue in relation to workers' compensation - workers who are totally incapacitated and receiving weekly compensation are not entitled to JKP; workers who are earning some income from attending work are entitled to JKP.

This leaves open important questions about:

- the impact of JKP on workers' compensation premiums;
- the impact on compensation paid to a worker who was injured before JKP; and
- the calculation of weekly benefits for a worker who is injured whilst in receipt of JKP.

All these questions need to be answered by individual state and territory workers compensation systems.

JKP and Workers' Compensation Premiums (and other wages on-costs)

In relation to workers' compensation premiums, Ai Group has developed a [separate Fact Sheet](#) outlining how each of the relevant wages on-costs are being treated in relation to JKP - workers' compensation premiums, superannuation and payroll tax.

The Fact Sheet also provides a summary of the various payroll tax exemptions and deferrals available; how to seek a reduction in premium if your payroll has reduced due to COVID-19; and how to negotiate a payment plan for premiums if you are experiencing COVID-19 related financial difficulties.

Workers' Compensation Claims and Benefits

We have been advised by some of the workers' compensation schemes that the relationship between JKP and weekly compensation is a complex issue and may take a bit longer to finalise.

Ai Group is currently gathering the information that is available to better understand how the each of schemes is approaching these issues. A Fact Sheet will be populated and updated as jurisdictional approaches become clearer.

Mental Health During COVID-19

Widespread concern about being infected with COVID-19, restrictions on movement and gatherings; and people working differently in the workplace or from home, pose a risk for the mental health of the community.

Employers have an obligation to ensure that they eliminate or minimise the risks associated with the work-related components that may impact negatively on a person's mental health. Ai Group has resources to assist you in considering what some of these risks might be and how to address them.

In addition, to help employers equip managers and employees to identify and respond to mental health issues that workers may be experiencing, our mental health awareness training is available on-line.

The Digital Classroom

Ai Group has converted some of our most popular training programs to online delivery. These include *mental health awareness programs* and *Safety 101 for Employees*. Also added to our offerings as an online response to COVID-19 are *Leading Through a Crisis* and *Infection Control in the Workplace*.

Do you require further advice?

Ai Group has set up a special [section on our website](#) to provide access to all advice and assistance relating to the COVID-19 pandemic.

Some specific WHS and workers compensation resources that our members have found valuable are:

- WHS Factsheet: When working from home doesn't work – Managing COVID safety in manufacturing, warehousing and other industrial workplaces
- Member Resource: Health & Safety Resource Centre COVID-19 Resources
- Member Resource: Safety: Pandemic Preparation, Response and Recovery
- Mental Health Resources
- On demand webinar : Working from Home
- On demand webinar 29 April 2020: COVID-19: What next for business?



AUSTRALIAN INDUSTRY GROUP

COVID-19 CORONAVIRUS

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For further information or assistance, please contact Ai Group's Workplace Advice Line on 1300 55 66 77 or access Ai Group's [Health and Safety Resource Centre](#).

For information about our safety and workers' compensation consulting and training services, contact:

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A handwritten signature in black ink, appearing to read 'Tracey Browne'.

Tracey Browne

Manager – National Safety & Workers' Compensation Policy and Membership Services

FURTHER INFORMATION

For further information or assistance, please contact the Ai Group Workplace Advice Line on 1300 55 66 77.