

COVID19 and potential school closures: What this means for your workforce

COVID19 and potential school closures: What this means for your workforce

With announcements by governments about the shut-down of non-essential services, employers across Australia are assessing the implications for their workforce and operations, and the impact of potential school and childcare facility closures and the ability for working parents to elect to keep their children at home.

Schools

The Federal Government's [official position](#) is that schools will remain open until the end of the current school term, and recommence at the end of the school break, subject to advice from the Australian Health Principal Protection Committee. This [advice has not changed](#) for a number of weeks. Information regarding the position in each state and territory is listed at the end of this article.

Early childhood and childcare facilities

The Federal Government has [announced](#) that around 1 million families will receive free child care during the coronavirus pandemic. Further arrangements for early childhood and childcare facilities will be considered at the National Cabinet's next meeting on 3 April 2020.

Workforce response to school closures

If further school or childcare facility closures occur, or in circumstances where an employee with caring responsibility decides to keep a child at home because of COVID-19, many challenges are likely to arise for employers. When deciding how to respond to the potential for workforce disruption caused by school and childcare facility closures, employers should be mindful of their obligations under state and federal law.

There may also be various relevant obligations that apply under applicable enterprise agreements, contracts of employment or workplace policies that must also be considered when employers are considering their response to any closures and the resulting impact on their employees.

To appropriately respond, employers should ensure they are aware of their obligations and develop appropriate procedures to properly respond to any requests that may be made.

The things employers should be aware of are:

- 1. Access to carer's leave:** under the National Employment Standards (NES) in the *Fair Work Act 2009* (Cth), employees are permitted to access carer's leave to care for a member of their immediate family or household in the case of an unexpected emergency. It is arguable that school or childcare facility closures amount to an unexpected emergency and that impacted employees should be able to access carer's leave – at least for an initial period until alternate arrangements can be made.
- 2. Requests for flexible working arrangements:** under the NES, employees may request flexible working arrangements in circumstances where they are the parent or have responsibility for the care of a child who is of school age or younger. Employers are only able to refuse these requests on reasonable business grounds.

Factors that may be taken into account when determining the reasonable business grounds question include that the cost of the new working arrangements, the potential for significant loss in



productivity and the difficulty in having to change the working arrangements for all employees in order to accommodate an employee's request for flexible working arrangements.

3. **Accommodating family and caring responsibilities:** under federal and state anti-discrimination legislation, employers must not directly or indirectly discriminate against their employees based on their family and caring responsibilities. For example:

VIC: Under the *Equal Opportunity Act 2010* (VIC), employers must not discriminate against employees, either directly, or indirectly, by unreasonably refusing to accommodate their family and caring responsibilities.

NSW: Under the *Anti-Discrimination Act 1977* (NSW), it is unlawful for an employer to discriminate, directly or indirectly, against an employee on the grounds of their caring responsibilities. Employers have obligations under that act to accommodate employees' caring responsibilities where reasonable.

QLD: The *Anti-Discrimination Act 1991* (QLD) prohibits employers from treating workers unfavorably in any way in connection with work on the basis of their parental status, unless doing so is necessary to protect public health or to protect the health and safety of the worker.

In Queensland, under the *Human Rights Act 2019* (QLD), public entities are also obliged to consider children's fundamental right to be protected and are prohibited from making decisions that are incompatible with this right.

WA: Under the *Equal Opportunity Act 1984* (WA), it is unlawful for an employer to discriminate, either directly or indirectly, based on a person's family responsibility or family status. Potential discrimination could include denying employees access to benefits associated with their employment, dismissing them, or subjecting to any other detriment.

ACT: Under the *Discrimination Act 1991* (ACT), employers must not discriminate, either directly or indirectly against employees based on their parental, family, carer or kinship responsibilities. Potential discrimination could include denying employees access to benefits associated with their employment, dismissing them, or subjecting to any other detriment.

NT: Under the *Anti-Discrimination Act 1992* (NT), employers must not discriminate, either directly or indirectly, including by varying a worker's terms and conditions of work, denying a worker the benefits associated with their work, dismissing the worker or treating them less favourably in any way in connection with work, as a result of their parenthood.

SA: Under the *Equal Opportunity Act 1984* (SA) employers must not discriminate against employees, either directly or indirectly on the basis of their association with a child. Employers must also not discriminate against employees based on their caring responsibilities.

What should employers do?

- Continue to show compassion and empathy to employees during this unprecedented time.
- Employers should tread carefully in having a 'one size fits all' approach. If an employee requests access to carer's leave or flexibility as a result of school or childcare closures, employers should consider that request based on the employee's personal circumstances.

Current Status of School Closures Across Australia

The current status of school closures across Australia is as follows:

- **VIC:** The Victorian Government brought forward the start of the school holidays to 24 March 2020. Any decision on whether to re-open schools after Term 1 holidays will be [determined following advice](#) from the Chief Health Officer.



- **ACT:** Public schools are having [pupil-free days](#) until school holidays begin on 10 April 2020. This is occurring to prepare for a transition to alternative teaching methods for Term 2. Where pupil-free days are not possible, no child will be turned away from public schools.
- **NSW:** The New South Wales Government has [announced](#) that schools will remain open based on health advice, however, parents are encouraged to [keep their children at home](#). No child will be turned away from school.
- **QLD:** The Queensland Government has [announced](#) five student free days have been declared for Monday 30 March – Friday 3 April 2020. Staff of state schools and community kindergartens will begin their Term 1 break on Monday, 6 April 2020. Schools will reopen to students and staff on Monday, 20 April 2020 unless health authorities advise otherwise. During the period from 30 March to 3 April 2020, schools will continue to provide a program of care and supervision for children of essential workers.
- **TAS:** In Tasmania, there are no education sites that have been closed and the Tasmanian Government has cited concerns regarding the potential impact of school closures on the [healthcare workforce](#). Tasmanian schools sites [remain open](#) for those children and young people who cannot be supervised and supported to learn at home.
- **NT:** At this stage, [no government schools are closing](#) in the Northern Territory, consistent with advice from the Federal Government.
- **WA:** In Western Australia, the WA Government [announced](#) that from Monday, March 30 to Friday April 3, all students who attend school will continue to be taught, however, parents are encouraged to keep children at home if they can access online and other learning resources.
- **SA:** The South Australian Government has [advised](#) that schools, preschools and out of school hours care will remain open until national health advice changes, however, parents can choose to keep their children at home.

We would also like to acknowledge the contribution of Ben Keenan, Kate Minton and Layla Langridge

