

# **Employment Update**

## ***Implications of Government Directives to Shut down***

**Updated 26 March 2020**

*Sascha Cook & Alexandra Klimovics, SIAG Lawyers  
Andrew Lloyd, CCV*



# What are we discussing today?

1. Latest Update on Federal and Victorian Government directives
2. Stand down
3. Redundancy
4. Questions (FAQ document will be distributed 26.03.20)

# Federal Government Directives

- Refer to SIAG circulars issued on 13, 17 and 23 March 2020
  - From 9pm AEDT 20 March 2020, only Australian citizens, residents and immediate family members can travel to Australia.
  - All travellers arriving into Australia on and from 16 March 2020 are required to self-isolate for 14 days.
  - <https://www.health.gov.au/resources/publications/coronavirus-covid-19-isolation-guidance>

# Federal Government Directives

- Prime Minister media statement 22 March 2020
  - The following facilities were restricted from opening from midday local time 23 March 2020:
    - Pubs, bars, registered and licenced clubs (excluding bottle shops attached to these venues), hotels (excluding accommodation)
    - Gyms and indoor sporting venues
    - Isolated remote community hubs are not included in these restrictions.
    - **These measures also apply to outdoor spaces associated with the above venues.**
  - <https://www.pm.gov.au/media/update-coronavirus-measures-220320>

# Victorian Government Directives

- Premier Andrews' media statement 23 March 2020
  - The businesses that will close due to the Stage 1 shutdown include pubs, clubs, nightclubs, Crown Casino, and licensed venues in hotels and pubs.
  - It also includes gyms, indoor sporting venues, places of worship, cinemas and entertainment venues.
  - Victoria Police enforcement squad of five hundred officers to audit containment measures that have been put in place
  - <https://www.premier.vic.gov.au/statement-from-the-premier-33/>

# Victorian Government Directives (cont.)

- Directions from the Vic Deputy Chief Health Officer

## Direction

3. A person who owns, controls or operates a **non-essential business or undertaking** in the State of Victoria must not operate that business or undertaking between noon on 23 March 2020 and midnight on 13 April 2020.

## Definition of non-essential business or undertaking

4. A **non-essential business or undertaking** means any of the following, whether operated on a for profit or not-for-profit basis:
  - a. a business characterised as a pub, bar or club that supplies alcohol under a **general licence**, an **on-premises licence** or a **club licence**, but not including any part of the business constituted by a **bottleshop**;
  - b. a hotel, whether licensed or unlicensed, but not:
    - i. to the extent that it provides accommodation, takeaway meals or a meal delivery service; or

## Other definitions

5. **Bottleshop** means an area physically attached to the premises of a business characterised as a pub, bar or club referred to in paragraph 4(a), or a hotel referred to in paragraph 4(b), that is for the sale of packaged alcohol to be consumed off the premises of the pub, bar, club or hotel.
6. **Casino** has the same meaning as in the **Casino Control Act 1991**.
7. **Club licence** has the same meaning as in the **Liquor Control Reform Act 1998**.
8. **General licence** has the same meaning as in the **Liquor Control Reform Act 1998**.
9. **On-premises licence** has the same meaning as in the **Liquor Control Reform Act 1998**.
10. **Place of worship** has the same meaning as in the **Heritage Act 2017**.

- <https://www.dhhs.vic.gov.au/sites/default/files/documents/202003/Directions-Non-Essential-Business-Closure.pdf>

# Victorian Government Directive 23/3

- Directive of 23 March may appear unclear, however:
  - Definitions of the *Liquor Control Reform Act 1998* (Vic) must be taken into account
    - If your business is the holder of a general license, on-premises license or club license under the above Act, then **you are not permitted to operate** under the Vic Gov directive
  - **HOWEVER**
    - 23/3 NEBC Directive has now been replaced by 25/3 NEA Directive
    - AND read in conjunction with new 25/3 Prohibited Gatherings Directions  
<https://www.dhhs.vic.gov.au/sites/default/files/documents/202003/Prohibited%20Gatherings%20Direction%20-%2025%20March%202020.pdf>



# Victorian Government Directive 25/3

## • Non-Essential Activity Directive of 25 March 2020

- (2) These directions replace the **Non-Essential Business Closure Direction** given on 23 March 2020, and:
  - (a) add to the existing categories of non-essential activity;
  - (b) impose signage and cleaning requirements upon businesses and undertakings that remain open (see clause 14).
- (3) These directions must be read together with the **Prohibited Gatherings Directions** given on 25 March 2020.

### 4 Pubs, bars, clubs, nightclubs and hotels

- (1) A person who owns, controls or operates a **licensed premises** in Victoria must not operate that premises between midnight on 25 March 2020 and midnight on 13 April 2020.
- (2) A **licensed premises** means a business characterised as a pub, bar, club, nightclub or hotel that supplies alcohol under a **general licence**, an **on-premises licence** or a **club licence**.
- (3) Despite subclause (1), a person who owns, controls or operates a licensed premises may operate that premises for the purposes of:
  - (a) operating a **bottleshop**; or
  - (b) providing food or drink to be consumed off the premises; or
  - (c) providing accommodation.

— <https://www.dhhs.vic.gov.au/sites/default/files/documents/202003/Non-Essential%20Activity%20Directions%20-%2025%20March%202020%20%281%29.pdf>



# Victorian Government Directive 25/3 (cont.)

- Non-Essential Activity Directive of 25 March 2020

5 **Recreational facilities**

- (1) A person who owns, controls or operates a **recreational facility** in Victoria must not operate that facility between midnight on 25 March 2020 and midnight on 13 April 2020.
- (2) A **recreational facility** means any of the following, whether operated on a for profit or not-for-profit basis:
  - (a) a facility used predominantly for indoor physical recreation;  
*Examples: a gymnasium, indoor swimming pool, health clubs, fitness centres, yoga studio, barre and spin facility, sauna, bathhouse, wellness centre and health studio.*
  - (b) a facility used predominantly for outdoor physical recreation;  
*Examples: a mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, go-kart track, rifle range and water-ski centre.*
  - (c) a **personal training facility**;
  - (d) a community centre or community hall;
  - (e) a library (including a toy library);
  - (f) a gallery or a museum;
  - (g) a youth centre;
  - (h) a **play centre**.

– What does this all mean???

– From midnight Wednesday 25 March 2020:

- Allows for take away food & drink (subject to liquor licensing) to operate from RSL kitchen
- Confirms adjoining sporting venue (outdoor or indoor) **not to be operated**

# What does this mean for the workforce?

- If ***suspension of the business is due to government directive*** then, subject to applicable terms of:
  - your workplace enterprise agreement (if any)
  - contracts of employment or workplace policiesstaff who cannot be usefully employed may be stood down without pay to the extent that the stoppage of work is outside of the control of the employer.

*s.524(1)(c) of the Fair Work Act 2009 (Cth)*

# What does this mean for the workforce?

- Before standing down, employers MUST consider whether staff can be (re)deployed to other useful duties - including remote working, assuming:
  - some duties remain available, and
  - it is safe for that work to continue.
- How might this apply to:
  - Office / Back-end staff?
  - Maintenance / Grounds staff?

# Remote working

- Workplace health and safety obligations continue to apply to remote work
  - Employees who injure themselves in the ‘home workplace’ whilst working may be eligible to workers’ compensation payments.
  - Business are unlikely to be able to undertake safety inspections at employees’ homes.
    - Consider “self-assessment” checklists, and ask employees to agree to these if they are to work from home
    - Useful resources are available on WorkSafe Victoria website

# Stand down

- Employee remains employed
- Service continues for the purpose of accrued entitlements
- Once stand down in effect leave requests DO NOT need to be approved
  - Although good practice to allow staff to access annual and/or long service leave during these periods (use leave agreement template available on SIAG/CCV portal)
  - Employees accessing leave unlikely to be eligible to access Fed Gov 'jobseeker' allowance

# Redundancy

- Decision made that job no longer required and/or to permanently close the business
- Process
  - Consult with affected staff in accordance with RLC Award or applicable enterprise agreement terms
  - Consider alternative (suitable) redeployment options
  - Make decisions regarding termination fairly, and based on lawful reasons;
  - Make applicable termination payments to staff

# Redundancy (cont.)

- Termination payments (FT/PT employees)
  - Notice or payment in lieu
  - Accrued ADOs or TOIL (if applicable)
  - Accrued annual leave (and leave loading)
  - Accrued long service leave (7+ years' service)
  - Severance / Redundancy pay
    - Excludes small business employers  
ie. fewer than 15 employees (head count includes regular and systematic casuals)
    - Limited capacity to seek to reduce obligation to pay severance pay – seek advice and assistance re: application to FWC under s.120 of the *Fair Work Act 2009* (Cth)

Redundancy pay period		
	<u>Employee's period of continuous service with the employer on termination</u>	<u>Redundancy pay period</u>
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks



Questions – refer to FAQs



# Thank you for attending

## If in doubt please call SIAG on **03 9644 1400**

The information provided is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying it to specific issues.