



COVID-19 factsheet

Changes at the Federal level

CAN CREDITORS STILL ISSUE STATUTORY DEMANDS?

Yes.

However, the Australian Government has temporarily increased the threshold for creditors issuing a statutory demand under the Corporations Act 2001 from \$2,000 to \$20,000.

This will apply for six months.

ARE THE TIMEFRAMES FOR RESPONDING TO A STATUTORY DEMAND THE SAME?

No.

The statutory timeframe for responding to a statutory demand has been increased temporarily from 21 days to six months, meaning you will have six months to respond to a statutory demand.

This will apply for six months.

CAN CREDITORS STILL INITIATE BANKRUPTCY PROCEEDINGS?

Yes.

However, the Australian Government has temporarily increased the threshold for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings from \$5,000 to \$20,000.

This will apply for six months.

ARE THE TIMEFRAMES FOR RESPONDING TO A BANKRUPTCY NOTICE THE SAME?

No.

The time a debtor has to respond to bankruptcy proceedings has been temporarily extended from 21 days to six months.

This will apply for six months.

CAN CREDITORS STILL ENFORCE DEBTS AGAINST COMPANIES OR INDIVIDUALS?

Yes.

Creditors are still able to seek recourse through the courts.

WILL DIRECTORS BE PERSONALLY LIABLE FOR INSOLVENT TRADING?

Not necessarily.

Directors will not be personally liable for insolvent trading and are temporarily relieved of their duty to prevent insolvent trading in relation to debts incurred in the ordinary course of business. This will apply for six months.

However, egregious cases of dishonesty and fraud will remain subject to criminal penalties and any debts that are incurred by the company will remain payable by the company.

CAN YOU RELY ON COVID-19 TO AVOID PERFORMANCE UNDER A CONTRACT?

Maybe.

This will depend on the contract itself. The contract may contain a "Force Majeure" clause which may cover instances such as pandemics. If the clause does not provide specific relief then it is unlikely to provide any entitlement to relief as such clauses are narrowly construed.

For further advice, click [here](#).

IF THERE IS NO FORCE MAJEURE CLAUSE, IS THERE ANY WAY TO TERMINATE THE CONTRACT?

Maybe.

There may be grounds to argue that the contract has been frustrated. This will apply where the contract can no longer be performed





or the contractual obligation has become fundamentally different than what was originally envisaged, through no fault of either party.

Importantly, it is not enough that a party endures hardship or an economic downturn to rely on frustration.

WILL CONSUMER LAW GUARANTEES STILL APPLY TO THE SUPPLY OF SERVICES?

Maybe.

The ACCC has released guidance that if a trader is unable to perform contractual obligations due to a government ban, the services may be deemed illegal and consumer law guarantees will not apply. In this instance, the parties will need to refer to the contract to determine the rights of the parties.

Further information can be found [here](#).

AS A PUBLIC COMPANY, DO WE STILL NEED TO HOLD AN AGM?

Yes.

However, for companies with a 31 December financial year, ASIC has announced that it will take no action against those entities if they need to postpone their AGM until the end of July or they choose to hold a 'virtual meeting'.

CAN EMPLOYERS STAND DOWN THEIR EMPLOYEES DURING A STOPPAGE OF WORK?

Maybe.

Under s524 of the Fair Work Act 2009 (Cth) (FW Act), an employer may stand down an employee during a period in which the employee cannot usefully be employed because of, "...a stoppage of work for any cause for which the employer cannot reasonably be held responsible".

Directives from the State and Federal Government to shut-down the respective business would mean that an employer could utilise s524 of the FW Act.

In the first instance, we recommend you liaise with us if you are an employer or employee and have or are contemplating s524 of the FW Act.

HOW DOES THIS AFFECT A BUSINESS'S TAX IMPLICATIONS AND CASH FLOW?

The ATO has announced that it will boost cash flow of small businesses who are suffering during the downturn caused by COVID-19 by providing two payments totalling up to \$100,000.

Further information can be found [here](#).

ARE THERE ANY OTHER WAGE SUBSIDIES FOR BUSINESSES?

Yes.

The Australian Government has announced it will provide a \$130 billion JobKeeper payment to assist 'eligible employers' that have been impacted by COVID-19. The payment will provide the equivalent of approximately 70% of the national median wage.

The payment will be made to eligible employers for up to six months for each 'eligible employee' that was on their records as of 1 March 2020 and continues to be engaged by that employer. The Australian Government has stated that employers should expect to receive \$1,500 per fortnight per eligible employee and every eligible employee must receive \$1,500 per fortnight before tax.

The assistance package will be paid out via the current ATO system commencing in the first week of May 2020 with the payment backdated to 30 March 2020.

Eligible employers will be those with:

- more than 30 per cent reduction in their turnover compared to the same period last year – if turnover is less than \$1 billion; or
- more than 50 per cent reduction in their turnover compared to the same period last year if turnover is \$1 billion or more.

Eligible employers include business that are partnerships, trusts, sole traders and companies as well as not for profit entities and charities. Businesses subject to the Major Bank Levy will be ineligible for the payment.

Eligible employees will include:

- full time and part-time employees, including any employees that have been stood down as a result of COVID-19 (however they will need to be reinstated by their employers to qualify for the payment)





- casual employees who have been with their employers for longer than 12 months and are at least 16 years of age
- self-employed individuals
- New Zealand citizen who hold a subclass 444 special category visa.

Note that temporary visa holders will be ineligible for this assistance package.

Businesses should register with the ATO for JobKeeper updates [here](#).

If you have any questions regarding the wage subsidies (either as an employer or employee), in the first instance we recommend you contact us.

For example - Adam owns a real estate business with two employees. The business is still operating at this stage but Adam expects that turnover will decline by more than 30 per cent in the coming months.

The employees are:

- Anne, who is a permanent full-time employee on a salary of \$3,000 per fortnight before tax and who continues working for the business
- Nick, who is a permanent part-time employee on a salary of \$1,000 per fortnight before tax and who continues working for the business.

Impact for the business on Anne's payments

The business continues to pay Anne her full-time salary of \$3,000 per fortnight before tax, and the business will receive \$1,500 per fortnight from the JobKeeper Payment to subsidise the cost of Anne's salary and will continue paying the superannuation guarantee on Anne's income;

Impact for the business on Nick's payments

The business continues to pay Nick his \$1,000 per fortnight before tax salary and an additional \$500 per fortnight before tax, totalling \$1,500 per fortnight before tax. The business receives \$1,500 per fortnight before tax from the JobKeeper Payment which will subsidise the cost of Nick's salary. The business must continue to pay the superannuation guarantee on the \$1,000 per fortnight of wages that Nick is earning. The business has the option of choosing to pay superannuation on the additional \$500 (before tax) paid to Nick under the JobKeeper Payment.

Changes at the State level

WHAT IS THE PAYROLL TAX REFUND BEING OFFERED BY THE VICTORIAN GOVERNMENT?

The Victorian Government will provide full payroll tax refunds for the 2019/20 financial year for small to medium sized businesses.

Payments commenced on 27 March 2020.

IS MY BUSINESS ELIGIBLE FOR THE VICTORIAN GOVERNMENT'S PAYROLL TAX REFUND?

To be eligible the business must have an annual payroll of up to \$3 million.

ARE BUSINESSES ABLE TO ACCESS ANY RELIEF FOR RENT OF THEIR COMMERCIAL PREMISES?

Only commercial tenants in government buildings can apply for rent relief. Private landlords are being encouraged by the Government to adopt this move.

WILL BUSINESSES STILL BE REQUIRED TO PAY LAND TAX?

No.

Small businesses are able to defer their land tax payments for the year 2020. The Victorian Government has not provided any further guidance as to what amounts to a "small business" for these purposes.

DO HOSPITALITY VENUES STILL HAVE TO PAY LIQUOR LICENCING FEES?

No.

The Victorian Government has waived the requirement to pay liquor licence fees for 2020 for affected venues.

IS THERE ANY OTHER RELIEF AVAILABLE FOR BUSINESSES AND WORKERS?

\$500m Business Support Fund

The Victorian Government will contribute \$500 million to support the industries hit hardest by COVID-19 measures – tourism, hospitality, accommodation, the arts, entertainment and retail.

\$500m Working for Victoria Fund

This fund will assist those who have lost their jobs to find new opportunities which may include cleaning public infrastructure or delivering food during this period of pandemic.





Next steps

If you are a business or an individual and consider your business or yourself to be affected by COVID-19 and the legislation changes on a Federal and State level, please do not hesitate to contact us.



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Disclaimer

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