



FACT SHEET (NO 2)

**UPDATE – THE IMPACT OF COVID-19 ON YOUR
BUSINESS**

8 APRIL 2020

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DISCLAIMER: This Fact Sheet was prepared by Integra Legal and we have taken great care to ensure the accuracy of the contents. However, it is written in general terms and you are strongly recommended to seek specific professional advice before taking any action based on the information it contains.

1. INTRODUCTION

This fact sheet follows on from our first fact sheet in relation to leases and COVID-19 (**Fact Sheet (No 1)**).

The purpose of this fact sheet (**Fact Sheet (No 2)**) is to provide an update on recently amended and/ or additional government directions, mandated restrictions and legislative action likely to impact landlords and businesses.

2. MANDATED RESTRICTIONS

2.1. Mass Gatherings

As at 8 April 2020, the State Government directions in relation to mass gatherings have been amended to prohibit gatherings of more than two (2) or more persons in public places (both indoors and outdoors) as well as indoor gatherings of two (2) or more persons where there is not at least 4 square metres of space for each person at the gathering.

Any person who **owns, controls** or **operates** a premises must not **permit, organise** or **allow** a gathering on their premises that is in contravention of this Direction and to do so would constitute an offence. Again, this applies to landlords and business owners/ tenants.

2.2. Closures

As at 8 April 2020, the State Government has released two subsequent directions in addition to the Closure of Certain Places of Business, Worship and Entertainment Directions, namely:

- Closure of Certain Places of Business, Worship and Entertainment Directions (No 2); and
- Closure of Certain Places of Business, Worship and Entertainment Directions (No 3).

In addition to those places mentioned in our Fact Sheet (No 1), the following places are now required to close:

- Nail salons, spas, massage parlours, and beauty parlours (other than to the extent of hair salons and barber shops);
- Tattoo parlours;
- Amusement parks and arcades;
- Play centres (both indoors and outdoors);
- Saunas, bath houses and wellness centres,
- Galleries, museums, libraries, historic sites;

- Private and public swimming pools;
- Boot camps, group fitness venues;
- Playgrounds, skateparks and outdoor gyms;
- Community and recreation centres and youth facilities (other than to the extent of essential voluntary public services).

Every **owner, occupier or person apparently in charge** of place subject to mandatory closure who fails to comply with the mandatory closure commits an offence punishable by a fine of up to \$50,000 for individual and \$250,000 for bodies corporate.

Again, these updated Directions are applicable to landlords as well as tenants/ business owners; **a landlord cannot knowingly permit, allow or otherwise facilitate an offence under the Directions** and faces the same penalty as a tenant/ business owner.

2.3. Penalties

As at 8 April 2020, the State Government has amended the relevant legislation to enable the WA Police to issue \$1,000 (individuals) and \$5,000 (businesses) on-the-spot fines for any breach of the Directions.

If you have been issued an on-the-spot fine, you are **still liable** for the financial penalty attaching to the relevant offence under the Directions.

3. LEASES

3.1. Government Buildings and Land

The State Government will waive rent payments for small businesses and not-for-profit groups leasing state-owned buildings and/ or state-owned land for 6 months.

This waiver will be automatically applied by the State Government.

3.2. Moratorium

The Federal Government has declared a 6-month moratorium on evictions and lease terminations due to non-payment of rent for commercial tenants suffering financial distress as a result of the COVID-19 pandemic, the moratorium to be enacted by the states and territories. As at 7 April 2020, the State Government has not yet enacted the moratorium.

Updates on the enactment and particulars of the moratorium can be accessed via the below link.

<https://www.smallbusiness.wa.gov.au/coronavirus>

This moratorium will not eliminate or reduce financial liability for unpaid rent during the period in which the moratorium is in force.

Landlords should note the industry code of practise announced yesterday (**see Fact Sheet (No 3)**) and relief measures which provide for interest free payment plans for landholder duty and land tax as well as utility bill reductions (**see 4.1**).

3.3. Industry Code of Practise

Please see Fact Sheet No 3 for further information on this.

4. STATE ECONOMIC HEALTH AND RELIEF PACKAGE

On 31 March 2020 the State Government has announced a \$1 billion COVID-19 economic relief package. Key provisions under the package are detailed below and the complete details of the relief package can be accessed via the link below.

[https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/03/\\$1-billion-COVID-19-economic-and-health-relief-package-unveiled.aspx](https://www.mediastatements.wa.gov.au/Pages/McGowan/2020/03/$1-billion-COVID-19-economic-and-health-relief-package-unveiled.aspx)

<https://www.smallbusiness.wa.gov.au/coronavirus>

4.1. Small Businesses

Small businesses suffering financial distress as a result of COVID-19, are now eligible for:

- An electricity bill reduction by way of a one-off \$2,500 credit to Synergy and Horizon Power customers (available 1 May 2020);
- Waiver of payroll tax for a 4-month period (between March 1 and June 30);
- Waiver of licence fees in COVID-19 impacted industries, including licence fees relating to settlement agents, building services and statutory planning; and
- Interest free payment plans and waiver of late penalties for payroll tax, transfer duty, landholder duty and land tax.

4.2. Guidelines

The State Government has reiterated guidelines that those businesses who are not suffering financial distress as a result of COVID-19, who would otherwise benefit from the relief package, should continue to pay tax and abstain from accessing government relief.

5. GOVERNANCE ISSUES, RESPONSIBILITIES & RECOVERY OF DEBT

The *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) (**Act**) provides for temporary amendments to the *Corporations Act 2001* (Cth) (**Corporations Act**) and other related legislation to limit the liability,

responsibilities and impact of adverse economic conditions on directors and business owners affected by the COVID-19 pandemic.

These amendments have now come into effect and will remain in place for a period of 6-months (i.e. from **24 March 2020** until **24 September 2020**) unless otherwise extended or reduced by the Federal Government (**Temporary Period**).

These amendments are detailed below and further information is available via the below links.

<https://www.business.gov.au/risk-management/emergency-management/coronavirus-information-and-support-for-business/temporary-relief-for-financially-distressed-businesses>

<https://asic.gov.au/about-asic/news-centre/articles/covid-19-information/>

<https://www.wa.gov.au/organisation/department-of-the-premier-and-cabinet/covid-19-coronavirus-business-and-industry-advice>

5.1. Insolvent Trading

Directors are relieved from the duty to prevent insolvent trading in relation to debts incurred in the ordinary course of business during the Temporary Period (**Temporary Safe Harbour**).

The Temporary Safe Harbour does not blindly apply to all debts incurred during the Temporary Period and is intended to provide relief in relation to debts incurred to facilitate the continuation of business during the Temporary Period. This includes:

- Debt incurred through continued of payment of employee wages and rent during the Temporary Period; and
- Debt incurred through ensuring compliance with mandated restrictions, such as the loans taken out to move the business online, erect Plexiglas screens and so forth.

The Temporary Safe Harbour only relieves directors from the consequences of insolvent trading during the Temporary Period, and **does not**:

- Reduce or eliminate liability for debts incurred during the Temporary Period;
- Relieve directors from any other duties and/ or criminal penalties that may be related to insolvent trading; and
- Relieve directors where they are not entitled to relief (i.e. the business has not been adversely impacted by COVID-19).

5.2. Statutory Demands

For any statutory demand served during the Temporary Period:

- Creditors can only issue a demand for more than AUD\$20,000 (temporarily replacing the previous minimum of AUD\$2,000); and
- Companies will have 6 months to respond to the statutory demand (temporarily replacing the previous response period of 21 days).

This amendment does not restrict the ability of a creditor to recover and enforce a debt through court order.

5.3. Bankruptcy Notices

For any bankruptcy notice or declaration issued during the Temporary Period:

- The threshold to initiate bankruptcy proceedings is \$20,000 (temporarily replacing the previous threshold of \$5,000);
- Debtors will have 6 months to respond to the notice (temporarily replacing the previous response period of 21 days); and
- The period of protection a debtor receives after making a declaration of intention to present a debtor's petition is 6 months (replacing the previous period of protection of 21 days).

5.4. Treasurer's Powers

The Federal Treasurer is empowered to make instruments which modify or exempt the operation of specific provisions of the Corporations Act or regulations for classes of companies.

The Treasurer can only make such instruments where a class of companies is unable to comply with the Corporations Act, because:

- It would not be reasonable to expect the companies in the class comply with the relevant provisions during the Temporary Period; or
- The exemption or modification is otherwise necessary or appropriate to facilitate continuation of business mitigate adverse economic impacts during the COVID-19 pandemic.

6. ADMINISTRATIVE MEASURES BY THE AUSTRALIAN TAX OFFICE (ATO)

The ATO is now offering tailored relief packages on a case-by-case basis to assist businesses encountering financial difficulty as a result of the COVID-19 impact. Businesses are encouraged to contact the ATO to discuss potential options for relief, including but not limited to:

- Payment deferral for up to 6 months;
- Monthly GST reporting to facilitate monthly GST refunds;
- Variation of PAYG instalments to zero; and

- Remitting interest and penalties on tax liabilities.

Please see the below link for further information on potential options, eligibility and applying for relief.

<https://www.ato.gov.au/Media-centre/Media-releases/Support-measures-to-assist-those-affected-by-COVID-19/>

7. JOBKEEPER PAYMENT

The Federal Government has announced that it will pay eligible employers up to \$1,500 a fortnight as a wage subsidy for eligible employees and is expected to enact this scheme today (8 April 2020).

You can register your interest for the JobKeeper payment and received email updates via the below link.

https://www.ato.gov.au/general/gen/JobKeeper-payment/?=redirected_JobKeeper

8. FURTHER RESOURCES

The State Government has launched an online learning portal for small businesses which offers resources, courses, guides, advisory services and online webinars for small businesses seeking assistance with accessing support services, maintaining compliance with the Directions and navigating business disruption.

The portal will remain a free service until 30 June 2020, but registration is essential.

The portal and registration can be accessed via the below link.

<https://www.smallbusiness.wa.gov.au/coronavirus>

9. CONCLUSION

For all your queries and concerns about the impact of COVID-19 on your business, call Janette Tavelli (0417926155), Michael Sonter (0419 900 299), or another team member on 08 92118 8588.