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Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020

under the

Public Health Act 2010

I, the Minister for Health and Medical Research, under section 7 of the *Public Health Act 2010*, make the following Order.

Dated 30 March 2020.

Minister for Health and Medical Research

Explanatory note

The object of this Order is to give certain Ministerial directions to deal with the public health risk of COVID-19 and its possible consequences.

In particular, this Order directs that a person must not, without reasonable excuse, leave the person's place of residence. Examples of a reasonable excuse include leaving for reasons involving—

(a) obtaining food or other goods and services, or

(b) travelling for the purposes of work or education if the person cannot do it at home, or

(c) exercise, or

(d) medical or caring reasons.

In addition, this Order directs that a person must not participate in a gathering in a public place of more than 2 persons. Exceptions include—

(a) gatherings of members of the same household, and

(b) gatherings essential for work or education.

Section 10 of the *Public Health Act 2010* creates an offence if an individual fails to comply with a direction with a maximum penalty of imprisonment for 6 months or a fine of up to $11,000 (or both) plus a further $5,500 fine each day the offence continues. Corporations that fail to comply with a direction are liable to a fine of $55,000 and $27,500 each day the offence continues.

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Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020

under the

Public Health Act 2010

Part 1 Preliminary

1 Name of Order

This Order is the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020*.

2 Commencement

This Order commences at the beginning of 31 March 2020.

Note. Section 7(5) of the Act provides that, unless it is earlier revoked, an order under that section expires at the end of 90 days after it was made or on such earlier date as may be specified in the order. Accordingly, this Order will expire at the end of 29 June 2020 unless it is revoked earlier.

3 Definitions

(1) In this Order:

household means any persons living together in the same place of residence.

indoor space means an area, room or other premises that is or are substantially enclosed by a roof and walls, regardless of whether the roof or walls or any part of the roof or walls are—

(a) permanent or temporary, or

(b) open or closed.

Note. The *Public Health Act 2010* defines premises to include any land, temporary structure, vehicle or vessel.

outdoor space means a space that is not an indoor space.

parent, in relation to a child, includes a person who is not a parent of the child, but who has parental responsibility for, or who has care of, the child.

place of residence includes the premises where a person lives together with any garden, yard, passage, stairs, garage, outhouse or other area or thing attached to, or used in connection with, the premises.

public place has the same meaning as in the *Summary Offences Act 1988*.

the Act means the *Public Health Act 2010*.

work includes work done as a volunteer or for a charitable organisation.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.

(2) Notes included in this Order do not form part of this Order.

4 Grounds for concluding that there is a risk to public health

It is noted that the basis for concluding that a situation has arisen that is, or is likely to be, a risk to public health is as follows—

(a) public health authorities both internationally and in Australia have been monitoring international outbreaks of COVID-19, also known as Novel Coronavirus 2019,

(b) COVID-19 is a potentially fatal condition and is also highly contagious,

(c) a number of cases of individuals with COVID-19 have now been confirmed in New South Wales, as well as other Australian jurisdictions, including by means of community transmission.

Part 2 Movement

5 Direction of Minister concerning staying at home

(1) The Minister directs that a person must not, without reasonable excuse, leave the person's place of residence.

(2) For the purposes of subclause (1), a reasonable excuse includes doing an activity specified by Schedule 1.

Note. Examples of a reasonable excuse in Schedule 1 include leave for reasons involving—

(a) obtaining food or other goods and services, or

(b) travelling for the purposes of work or education if it is not possible to do it at home, or

(c) exercise, or

(d) medical or caring reasons.

(3) Subclause (2) does not permit a person to participate in a gathering in contravention of Part 3.

(4) Taking a holiday in a regional area is not a reasonable excuse.

(5) Subclause (1) does not apply to a person who is homeless.

Part 3 Gatherings of more than 2 persons

6 Direction of Minister concerning gatherings of more than 2 persons

(1) The Minister directs that a person must not participate in a gathering in a public place of more than 2 persons.

(2) Subclause (1) does not apply to the following—

(a) a gathering referred to in Schedule 2,

(b) a gathering of persons for the purposes of work,

(c) a gathering of persons all of whom are members of the same household,

(d) a gathering for a wedding at which there are no more than 5 persons (including the person conducting the service),

(e) a gathering for a funeral service at which there are no more than 10 persons (including the person conducting the service),

(f) a gathering to facilitate a move to a new place of residence (including a business moving to new premises),

(g) a gathering to provide care or assistance to a vulnerable person,

(h) a gathering to provide emergency assistance,

(i) a gathering necessary for the person to fulfil a legal obligation (including attending a court or tribunal, satisfying bail requirements or participating in legal proceedings).

Part 4 Closure of certain premises

7 Directions of Minister concerning closure of certain premises

(1) The Minister directs that the following must not be open to members of the public except as provided in this clause—

(a) pubs and registered clubs, except for the purposes of—

(i) selling food or beverages for persons to consume off the premises, or

(ii) if the premises include hotel or motel accommodation, providing that accommodation including by providing food or beverages to persons using that accommodation to consume in their rooms,

(b) food and drink premises (other than pubs), except for the purposes of—

(i) selling food or beverages for persons to consume off the premises, or

(ii) if the premises are part of hotel or motel accommodation, providing food or beverages to persons using that accommodation to consume in their rooms, or

(iii) if the premises are part of a shopping centre, selling food or beverages for persons to consume outside of the shopping centre,

(c) entertainment facilities,

Note. The streaming of a live performance would not be prohibited as the venue is not open to the public.

(d) amusement centres,

(e) casinos, except for the purposes of, if the premises include hotel or motel accommodation, providing that accommodation including by providing food or beverages to persons using that accommodation to consume in their rooms,

(f) micro-breweries or small distilleries holding a drink on-premises authorisation under the *Liquor Act 2007* or cellar door premises, except for the purposes of selling food or beverages for persons to consume off the premises,

(g) recreation facilities (indoor),

(h) places of public worship, except for the purposes of conducting the following—

(i) a wedding service at which there are no more than 5 persons (including the person conducting the service),

(ii) a funeral service at which there are no more than 10 persons (including the person conducting the service),

(i) business premises that are spas, nail salons, beauty salons, waxing salons, tanning salons, tattoo parlours or massage parlours,

(j) business premises that are auction houses or betting agencies,

(k) markets, but not markets that predominantly sell food,

(l) information and education facilities,

(m) caravan parks and camping grounds, except for purposes of—

(i) accommodating permanent residents of the caravan park or camping ground or other persons who have no other place of permanent residence, and

(ii) allowing visitors to visit persons referred to in subparagraph (i),

(n) community facilities,

(o) sex services premises.

(2) The Minister directs that the following must be closed to members of the public—

(a) a public swimming pool,

(b) a property (other than a retail shop) operated by the National Trust or the Historic Houses Trust,

(c) a gaming lounge,

(d) a strip club,

(e) any outdoor playground equipment in a public place,

(f) any outdoor gymnasium equipment in a public place,

(g) a skate park.

(3) The Minister directs that a person must not do the following—

(a) conduct an open inspection of premises for the purposes of the sale or lease of the premises but a person may show a single person the premises after the person has made an appointment for that purpose,

(b) conduct an auction at which persons attend in person (except a livestock auction conducted outside for food supply purposes).

(4) Nothing in this clause prevents the use of premises—

(a) to provide a service to assist vulnerable members of the public, for example a food bank or a service providing for the needs of homeless persons, or

(b) as an early education and care facility.

(5) Subclause (1)(m) does not apply to a person who was staying at a caravan park or camping ground immediately before 26 March 2020 and who is continuing to stay at the caravan park or camping ground under a booking—

(a) that was made before that date, and

(b) that has not been extended after that date.

(6) A word or expression used in this clause has the same meaning as it has in the Standard Instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

Note. The Standard Instrument includes the following definitions—

Amusement centre means a building or place (not being part of a pub or registered club) used principally for playing—

(a) billiards, pool or other like games, or

(b) electronic or mechanical amusement devices, such as pinball machines, computer or video games and the like.

Business premises means a building or place at or on which—

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis.

Camping ground means an area of land that has access to communal amenities and on which campervans or tents, annexes or other similar portable and lightweight temporary shelters are, or are to be, installed, erected or placed for short term use.

Caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

Cellar door premises means a building or place that is used to sell wine by retail and that is situated on land on which there is a commercial vineyard, and where most of the wine offered for sale is produced in a winery situated on that land or is produced predominantly from grapes grown in the surrounding area.

Community facility means a building or place (other than educational establishment, hospital, retail premises, place of public worship or residential accommodation)—

(a) owned or controlled by a public authority or non-profit community organisation, and

(b) used for the physical, social, cultural or intellectual development or welfare of the community.

Early education and care facility means a building or place used for the education and care of children, and includes a centre-based child care facility, home-based child care and school-based child care.

Entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like.

Food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes a restaurant or cafe, take away food and drink premises, a pub or a small bar.

Information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Market means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.

Place of public worship means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

Pub means licensed premises under the *Liquor Act 2007* the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

Recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation.

Registered club means a club that holds a club licence under the *Liquor Act 2007*.

Part 5 Obligations of owners and occupiers of premises

Note. The direction in this Part prevents (subject to some exceptions) owners and occupiers of premises in New South Wales from allowing persons to enter or stay on the premises to avoid overcrowding. However, Part 3 applies to individuals and (subject to some exceptions) prevents them from gathering in groups of more than 2 persons.

8 Direction of Minister concerning persons allowed on premises

(1) The Minister directs that a person who is the occupier or operator of premises in New South Wales must not—

(a) for premises comprised of an outdoor space—allow 500 or more persons to enter or stay on the premises at the same time, or

(b) for premises comprised of an indoor space—allow 100 or more persons to enter or stay on the premises at the same time, or

(c) allow persons to enter or stay on the premises (whether comprised of an outdoor or indoor space) if the size of the premises is insufficient to ensure there is 4 square metres of space for each person on the premises.

Note. The *Public Health Act 2010* defines the occupier of premises or a part of premises to mean the owner of the premises or part of premises or if any other person is entitled to occupy the premises or part to the exclusion of the owner, that person.

This clause does not prevent the conduct of events (such as sporting or racing events) subject to the limits referred to in this subclause.

(2) Subject to subclause (3), subclause (1) does not apply to—

(a) a person's place of residence, or

(b) a gathering referred to in Schedule 2.

(3) Subclause (1)(c) applies to a gathering referred to in item 10 of Schedule 2.

Note. This clause does not prevent the conduct of events (such as sporting or racing events) subject to the limits referred to in subclause (1).

Part 6 Exchange of information

9 Direction of the Minister concerning information exchange

(1) The Minister directs that a government sector agency or a NSW Minister (the ***first agency***) is authorised to collect information from, or use or disclose information to, a related agency if the first agency considers it necessary to do so for the purposes of protecting the health or welfare of members of the public during the COVID-19 pandemic.

(2) In this clause—

government sector agency means a government sector agency within the meaning of the *Government Sector Employment Act 2013*.

information includes personal information or health information.

NSW Minister means a Minister of the State.

related agency means—

(a) a government sector agency or NSW Minister,

(b) an agency or Minister of the Commonwealth or another State or Territory.

Part 7 Miscellaneous

10 Exemptions

The Minister may, in writing and subject to the conditions that the Minister considers appropriate, grant an exemption to this Order or specified provisions of this Order.

11 Revocation of existing Order

The *Public Health (COVID-19 Gathering) Order (No 3) 2020* is revoked.

Schedule 1 Reasonable excuses

1 obtaining food or other goods or services for the personal needs of the household or other household purposes (including for pets) and for vulnerable persons

2 travelling for the purposes of work if the person cannot work from the person's place of residence

3 travelling for the purposes of attending childcare (including picking up or dropping another person at childcare)

4 travelling for the purposes of facilitating attendance at a school or other educational institution if the person attending the school or institution cannot learn from the person's place of residence

5 exercising

6 obtaining medical care or supplies or health supplies or fulfilling carer's responsibilities

7 attending a wedding or a funeral in the circumstances referred to in clause 6(2)(d) and (e) or 7(1)(h)

8 moving to a new place of residence (including a business moving to new premises) or between different places of residence of the person or inspecting a potential new place of residence

9 providing care or assistance (including personal care) to a vulnerable person or providing emergency assistance

10 donating blood

11 undertaking any legal obligations

12 accessing public services (whether provided by Government, a private provider or a non-Government organisation), including—

(a) social services, and

(b) employment services, and

(c) domestic violence services, and

(d) mental health services, and

(e) services provided to victims (including as victims of crime)

13 for children who do not live in the same household as their parents or siblings or one of their parents or siblings—continuing existing arrangements for access to, and contact between, parents and children or siblings

14 for a person who is a priest, minister of religion or member of a religious order—going to the person's place of worship or providing pastoral care to another person

15 avoiding injury or illness or to escape a risk of harm

16 for emergencies or compassionate reasons

Schedule 2 Essential gatherings

1 a gathering at an airport that is necessary for the normal business of the airport

2 a gathering for the purposes of or related to transportation, including in vehicles or at stations, platforms or stops or other public transportation facilities

3 a gathering at a hospital or other medical or health service facility that is necessary for the normal business of the facility

4 a gathering for the purposes of emergency services

5 a gathering at a prison, correctional facility, youth justice centre or other place of custody

6 a gathering at a disability or aged care facility that is necessary for the normal business of the facility

7 a gathering at a court or tribunal

8 a gathering at Parliament for the purpose of its normal operations

9 a gathering at a supermarket, market that predominately sells food, grocery store or shopping centre (but not a retail store in a shopping centre other than a supermarket, market that predominately sells food or grocery store) that is necessary for the normal business of the supermarket, market, store or centre

10 a gathering at a retail store (other than a supermarket, market that predominately sells food or grocery store) that is necessary for the normal business of the store

11 a gathering at an office building, farm, factory, warehouse or mining or construction site that is necessary for the normal operation of the tenants within the building, farm, warehouse, factory or site

12 a gathering at a school, university or other educational institution or child care facility that is necessary for the normal business of the school, university, institution or facility but does not include a school event that involves members of the community in addition to staff and students

13 a gathering at a hotel, motel or other accommodation facility that is necessary for the normal operation of accommodation services at that hotel, motel or other facility

14 a gathering at an outdoor space where 2 or more persons may be present for the purposes of transiting through the place

Example. Pitt Street Mall

Reference number:(n2020-865)