

# Responding to COVID-19: How will Australia's public health emergency powers affect you?

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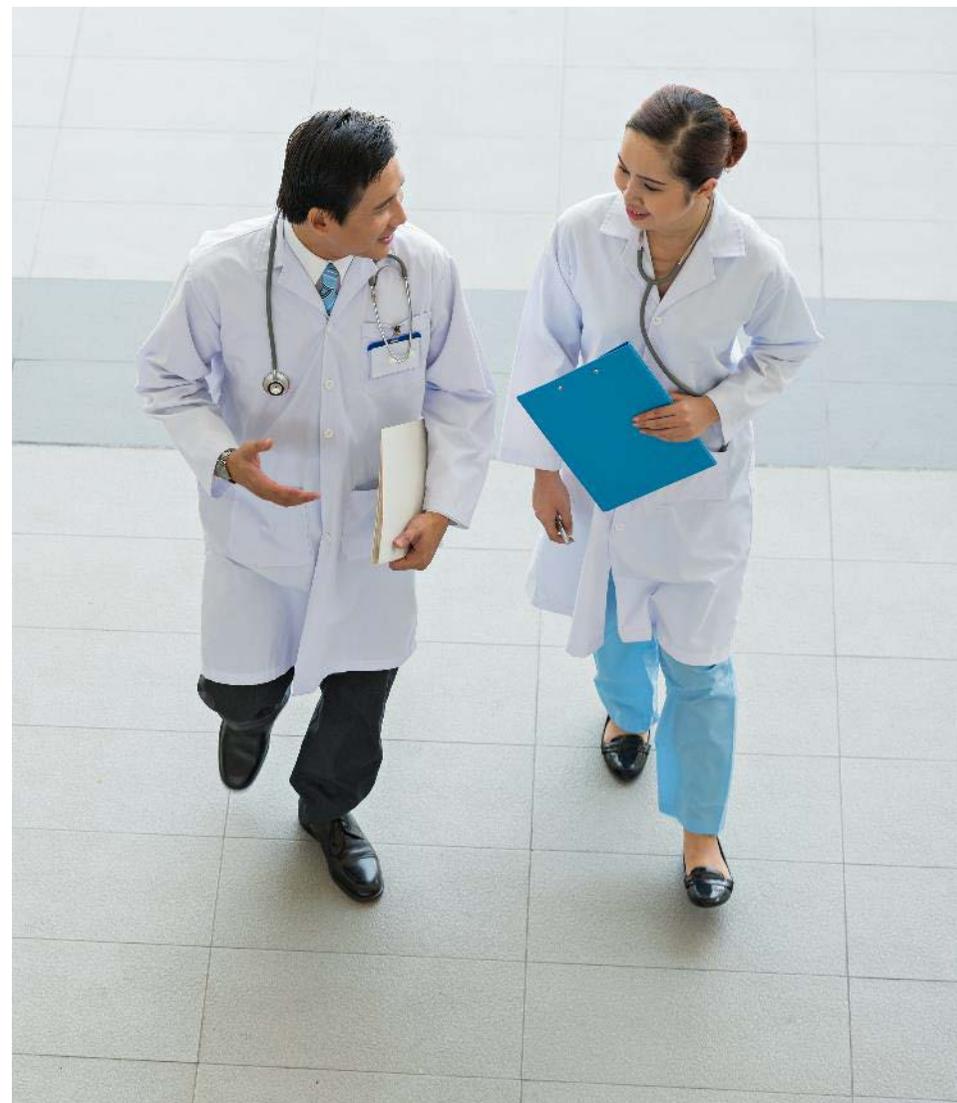
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The Federal, State and Territory powers to respond to public health emergencies in Australia have been exercised more thoroughly in the past few months than ever before.

There is no single 'emergency' law in Australia which gives one government all the power to formulate and implement a national response. Instead, ongoing communication and cooperation between the Federal and State and Territory governments, especially through the establishment and coordination of the 'National Cabinet', has been central to implementing a united front against the current and future impacts of COVID-19.

We have summarised the key powers of the government in every State and Territory, as well as the steps which have been taken to exercise those powers and the current steps being taken to relax restrictions across the country. The impacts on business have been significant and understanding how the restrictions are being imposed, eased, altered, or reintroduced, will materially impact your capability to adapt quickly and recover from these impacts.



**Kylie Diwell**  
**Partner**

[Kylie.Diwell@minterellison.com](mailto:Kylie.Diwell@minterellison.com)

## What might the future look like?

The powers available to State and Territory governments in responding to a public health emergency are broad.

These powers have enabled State and Territory governments to operationalise the measures proposed in the *Commonwealth Government Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)* and implement measures within their jurisdiction to reduce the spread of COVID-19. A range of directions or orders have been made by both the Commonwealth and State/Territory governments to respond to the COVID-19 pandemic to minimise risk to public health and safety, as set out in the table **below**. Each government has made it clear that these decisions are being made on the basis of expert medical advice, and the need for further measures will depend on the success of current measures that have been put in place.

**While it is expected that the majority of persons and organisations will comply with any directions given by government, there are broad powers to enable enforcement for non-compliance, including by police, with sanctions including significant fines and/or imprisonment (which have been exercised).**

### **Lifting the restrictions**

All Australian jurisdictions have now relaxed many restrictions that have previously been imposed, including by:

- increasing the number of people that can gather together;
- allowing specific venues to open that were previously prohibited from opening;
- allowing some services that were previously prohibited to recommence; and
- allowing persons to leave their house for a greater variety of reasons, including to visit other persons' households.

The restrictions in some jurisdictions have eased to the fullest extent likely in the short term. It is expected that these restrictions will remain steady if there are no marked increases in cases, with some restrictions (such as social distancing and border restrictions for overseas arrivals) remaining in place for some time.

The Victorian Government has recently announced that all of Victoria is now at 'Step Three' under the 'roadmap to reopening' for Metropolitan Melbourne and Regional Victoria. The progressive easing of restrictions in Victoria has now commenced, placing the State in alignment with the other Australian jurisdictions.

## What does this mean for business?

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The emergency powers exercised to date, and associated restrictions they have placed on a wide range of activities, have impacted business in a significant way, including:

- significant market down-turns
- disruption to business activities
- loss of or reduction in workforce
- sudden shifts in supply and demand of goods and services
- reduced cash flow, and
- flow-on impacts from worldwide economic disruption.

Although many restrictions have now been relaxed, we recommend that all businesses continue to review and update their workplace arrangements to:

- ensure compliance with current government directions and orders in place within your jurisdiction
- identify and plan responses to the relaxation or reintroduction of restrictions to maximise business opportunities while ensuring your business is compliant with the current restrictions and requirements, and
- determine appropriate long-term strategies to adapt to a 'new normal' in your industry.

When doing so, we suggest that you keep in mind key legal risks, and implement business continuity and contingency planning to address potential adverse business implications. This should include:

- ensuring you and your workforce are aware of the current (and future) restrictions which apply to your business within your relevant jurisdiction
- identifying the potential disrupters to your business posed by COVID-19

- managing the impact on workforce, business and employees. For more information, see [here](#) for the top five questions to manage risk to businesses and employees
- managing insurance risk. We suggest you immediately consider the extent of your existing insurance coverage, including general liability, professional liability, managerial liability, workers compensation and travel liability policies. See [here](#) for further guidance
- managing workplace health and safety obligations. We suggest you take proactive steps to ensure you are managing the risks to workers, as well as broader operational issues. Businesses will need to assess your workplace arrangements to ensure compliance with government response measures. For example, employees who are required to self-isolate should not be directed to attend work in contravention of their requirement to self-isolate. However, employers must be mindful of extra employee protections for employees who are required to be absent from work due. See [here](#) for further guidance
- reviewing the contractual arrangements in your supply chains in relation to delayed performance of obligations under the contract, or failure to perform those obligations
- considering renegotiating existing arrangements in light of the pandemic and continuing supply shortages
- anticipating a slowdown in economic activity and volatility in supply and demand. Given the likely volatility that may occur to [demand and supply globally](#), businesses need to consider their contractual relationships and their [exposure to supply chain cancellations or delays](#). In light of the expected continued slowdown in economic activity due to containment measures, businesses may also need to continually assess their insolvency and whether they are [able to continue to trade](#)
- ensuring compliance with directions and understanding the penalties that can be issued for failing to comply.

**For more guidance, see our dedicated [COVID-19 Response Page](#), or the following industry specific information we have published:**

**Business insights:**

- [COVID-19: What the Stay at Home Direction in South Australia means for business](#)
- [COVID-19: Business interruption insurance for COVID-19](#)
- [COVID-19 response - six month suspension of insolvency laws](#)
- [COVID-19: Temporary amendments to insolvency laws extended to 31 December 2020](#)
- [Going virtual this AGM season? Your questions answered...](#)
- [Purpose in the COVID-19 era: An interview with ANZ Bank CEO, Shayne Elliott](#)
- [COVID-19: How to build resilience and continuity in your technology supply chain](#)
- [Debt restructuring in uncertain times](#)
- [COVID-19: Directors and companies to be temporarily insulated from 'opportunistic class actions'](#)
- [COVID-19: Hayne reforms and DDO deferred six months](#)
- [The 'next normal': climate change risk governance in a pandemic age – Part 1](#)
- [COVID-19: Virtual AGMs and electronic execution given the nod](#)
- [COVID-19: What it means for incorporated associations with upcoming AGMs](#)
- [COVID-19: Payroll Tax relief and what this means for business](#)
- [COVID-19: guide on small business sole trader and NFP entitlements](#)
- [COVID 19: Anti-hawking and product disclosure rules temporarily relaxed](#)
- [Perspectives on Cyber Risk 2020](#)
- [COVID-19: Tax policy and administration measures recommended by the OECD](#)
- [COVID-19: Global collapse of shareholder activist activity?](#)
- [COVID-19 Restructuring Event businesses to survive and thrive](#)
- [COVID-19 and the not-for-profit sector](#)
- [Are you covered? COVID-19, directors' insurance & liability risks](#)
- [COVID-19: Easier faster access to credit for small business](#)
- [COVID-19: Putting Safe Harbour in the spotlight](#)
- [A capital idea - ASX and ASIC relax rules for COVID-19 raisings](#)
- [COVID-19: Navigating privacy laws in the workplace](#)
- [Consumer law during the COVID-19 crisis – risk areas for suppliers](#)
- [COVID-19: More FAQs on risks to employees and the workplace](#)
- [COVID-19: Use of Holding DOCAs](#)
- [Insurance cover for cancelled events during COVID-19](#)
- [How to address technology and cyber risk during the COVID-19 pandemic](#)
- [COVID-19 and material adverse change clauses](#)
- [Australian corporate taxation measures - responses to COVID-19](#)
- [Global mobility in the 'New Normal' managing a global workforce during COVID-19](#)
- [COVID-19: How to ensure your business is compliant with Stage 4 restrictions](#)
- [Incident notification during COVID-19: What employers need to know across Australia](#)

**Workplace and Education:**

- [What you need to know about the JobKeeper Announcement](#)
- [COVID-19: Managing your workers' compensation risks. Your key questions answered](#)
- [COVID-19 and managing the safe return to workplaces](#)
- [COVID-19: JobKeeper Rules clarified and critical guidance provided from the ATO](#)
- [COVID-19: JobKeeper payments and the decline in turnover test](#)
- [COVID-19: Clarification measures to the JobKeeper Rules announced](#)
- [COVID-19: ATO issues legislative instrument on JobKeeper Rules](#)
- [JobKeeper Legislation - What does it mean for businesses and workers?](#)
- [Understanding the COVID-19 'JobKeeper Payments'](#)
- [COVID-19: Immediate workplace needs and planning for the future](#)
- [How Australian universities can help China-based students during COVID-19 and dealing with China-based contractors](#)
- [Compliance, COVID-19 and the move away from face-to-face teaching](#)
- [Higher education providers and virtual meetings in the COVID19 pandemic](#)
- [Force majeure and frustration of university contracts during COVID-19](#)

**Energy and resources:**

- [COVID-19: Relief for mining exploration companies in SA, WA and QLD](#)
- [COVID-19: Relief for petroleum exploration companies in SA, WA and QLD](#)
- [Force majeure and the resources industry - managing the impact of COVID-19](#)
- [Keeping the lights on during the COVID-19 pandemic](#)
- [COVID-19 and its effect on Environmental Authority holders in Queensland](#)
- [COVID-19: Responses from energy market bodies and networks](#)
- [COVID-19 and the impacts on mining finance](#)
- [Western Australia COVID-19 - travel restrictions impacts on employers](#)
- [COVID-19: Understanding new restrictions on FIFO mine workers](#)

**Financial services:**

- [COVID-19: What does it mean for the Financial Services Industry?](#)
- [Catching PIPEs in the wave of COVID-19 capital raisings](#)
- [Is offshoring a victim of COVID-19?](#)

**Health:**

- [Managing possible medicine shortages in Australia during COVID-19](#)
- [Applying risk management strategies to support health care in COVID-19](#)
- [Managing cartel risks arising from COVID-19 in the health sector](#)
- [Supporting Australians living with disability during COVID-19](#)
- [COVID-19 and recent developments in the health regulatory space](#)
- [Fast drugs: accelerating the regulatory approval pathway for COVID-19](#)
- [COVID-19: Non-essential visitors restricted from Queensland hospitals](#)

**Infrastructure and construction:**

- [A chance to rethink infrastructure projects' contracting relationships](#)
- [Closing a construction deal in the age of COVID-19](#)
- [COVID-19: Force majeure and frustration of your contracts](#)

- [COVID-19: Injunctions on recourse to security in construction contracts](#)
- [Practical insolvency considerations for the construction industry](#)
- [Investing in maintenance to stimulate the economy](#)

#### **International:**

- [COVID-19 Migration update: A new priority skills list and strengthening labour market testing](#)
- [Getting the global deal done amid the COVID-19 crisis](#)
- [COVID-19: Temporary changes to foreign investment in Australia](#)
- [Options for temporary visa holders in response to the COVID-19 pandemic](#)
- [COVID 19: How the changed FIRB rules affect the ACCC and ATO](#)
- [COVID 19: New blanket restrictions on foreign investment](#)
- [COVID-19 FIRB screening - regulatory timing, relief and hurdles](#)
- [False Information in the Time of Coronavirus: Law and Regulation in the U.S. and Australia](#)

#### **Real estate:**

- [COVID-19: Managing electronic execution while keeping socially distant](#)
- [Development for administrators preserving business value during COVID-19 hibernation](#)
- [COVID-19: Land tax measures – relief for landowners](#)
- [Code of Conduct compendium: commercial leasing principles in COVID-19](#)
- [COVID-19: Navigating the Code of Conduct](#)

#### **Government:**

- [COVID-19: WA legislation provides relief for commercial tenants](#)
- [COVID-19: Queensland's new regulation-making powers impact the health industry](#)
- [The COVIDSafe app - five key considerations](#)
- [COVID-19: Force majeure and frustration of your contracts](#)
- [Greater flexibility to manage local government workforces through COVID-19](#)
- [How local Government Regulation amendments will impact borrowing, contracting and procurement due to COVID-19](#)
- [Covid-19: Government helps the securitisation industry and non-bank lenders compete](#)
- [Recent developments in WA local government regulation in response to the impacts of COVID-19](#)
- [COVID-19: Payroll Tax relief and what this means for business](#)

## Emergency powers: What can government do?

The COVID-19 pandemic was declared a human biosecurity emergency by the Governor-General on 18 March 2020. This declaration has been recently extended until 17 December 2020 and we expect it will continue to be extended until the end of the COVID-19 pandemic.

The federal government has broad powers under the *Biosecurity Act 2015 (Cth)* for managing human biosecurity emergencies. The Federal Minister may determine any requirement and give any direction to any person that he is satisfied is necessary to prevent or control the spread of COVID-19 including:

- introducing special requirements for persons or goods entering or leaving specified places;
- restricting or preventing the movement of persons between specified places;
- requiring that specified places be evacuated; and
- direct a person to close premises or prevent access to premises.

Any such determination or direction by the Minister may be made *despite any provision of any other Australian law*.

On 13 March 2020, the Commonwealth Government announced the creation of a National Cabinet, made up of the Prime Minister, Premiers and Chief Ministers, that will meet at least weekly to address the country's response to COVID-19. We have seen that most decisions on new restrictions have been made through the National Cabinet.

On 2 October 2020, the Prime Minister announced a Safe Travel Zone with New Zealand which is the first step towards allowing international travel. There is likely to be significant changes to border control restrictions at all levels of government over the next

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current measures announced by the Commonwealth Government include:

### 1. *Amendment to the Biosecurity (Listed Human Diseases) Determination 2016*

On 21 January 2020, the *Biosecurity (Listed Human Diseases) Determination 2016* was amended to include COVID-19.

### 2. *Ban on cruise ship arrivals*

From 11:59pm on 15 March 2020, the Commonwealth Government banned cruise ships from foreign ports (including round trip international cruises originating from Australia) from arriving at Australian ports for an initial 30 days. This restriction was implemented to help avoid the risk of a cruise ship arriving with a mass outbreak of the virus. The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020 (Cth)* was made on 18 March 2020 (and amended on 27 March 2020) to prohibit cruise ships from entering Australian territory or ports. The amendment requires all foreign cruise ships to leave Australian territory as soon as reasonably practicable.

A *superseded version* was registered on 25 May 2020.

An *amendment* to the direction was registered on 1 September 2020, to commence on 2 September 2020. The amendment removes references to 'before the cessation time' in the direction and makes a minor change under the requirement for foreign cruise ships to leave Australian territory.

### 3. *Aged Care and Older Australians*

On 18 March 2020, the Commonwealth Government stated the following persons should not be permitted to enter into aged care facilities:

- (a) persons who have returned from overseas in the last 14 days;
- (b) persons who have been in contact with a confirmed case of COVID-19 in the last 14 days;
- (c) persons with fever or symptoms of acute respiratory infection (eg cough, sore throat, runny nose, shortness of breath); and
- (d) persons who have not been vaccinated against influenza (after 1 May).

Visitors to aged care facilities should be limited to:

- (a) visits of short duration;
- (b) a maximum of two immediate social supports or professional service or advocacy at one time per day;
- (c) visits conducted in the resident's room, outdoors, or a specific area designated by the aged care facility;
- (d) no large group visits or gatherings, including school groups; and
- (e) no children aged 16 years or less.

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few months to give effect to the Safe Travel Zone in both Australia and New Zealand.

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In-person visitors should be encouraged to practice social distancing, including maintaining a distance of 1.5 metres between people. Phone and video calls must otherwise be accessible to all residents.

*On 29 March 2020, the National Cabinet issued advice* to older Australians to self-isolate if they are over 70 years of age, are over 60 years of age with an existing health condition or comorbidity, or are an indigenous Australian over the age of 50 with an existing health condition or comorbidity.

In *an announcement on 21 April 2020*, the National Cabinet reconfirmed the principles announced on 18 March 2020 to protect older Australians in aged care facilities.

In *a further announcement on 24 April 2020*, the National Cabinet stressed that it is not acceptable for facilities to place restrictions beyond the principles agreed by the Cabinet, including complete lockdowns or banning all visits from carers and families, except in circumstances of a specified facility outbreak.

*On 1 May 2020, the Prime Minister announced* that the National Cabinet had endorsed the draft *Aged Care Visitor Access Code*. The Code outlines when and how aged care facilities should allow visitors, and how other infection control measures should be implemented. The Prime Minister *also announced* additional funding for residential aged care providers.

### 4. Border Closure

On 19 March 2020, the Commonwealth Government announced that Australia was closing its borders to all non-citizens and non-residents from 20 March 2020. Exemptions to the entry ban apply for Australian citizens, permanent residents and their immediate family, including spouses, legal guardians and dependents. Exemptions also apply to New Zealand citizens and Pacific Islanders in specific circumstances.

### 5. Overseas Travel Ban

On 24 March 2020, the Commonwealth Government upgraded its *non-essential travel advice* to a 'do not travel' ban on Australians travelling overseas under the *Biosecurity Act 2015* (Cth), with a limited number of exemptions being managed by the Australian Border Force.

On 25 March 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* came into force.

The determination prohibits an Australian citizen or permanent resident from leaving Australian territory as a passenger on an outgoing aircraft or vessel on or after 25 March 2020, subject to certain exemptions for the public service, the Australian Defence Force, or an Australian citizen that is domiciled in a country other than Australia.

On 16 September 2020, some minor amendments were made to the determination making non-substantive changes. The amendments have not yet been consolidated.

6. *Action to prevent price gouging and exportation of critical sanitary and medical products*

The Commonwealth Government also announced on 24 March 2020 that it will be taking measures to prevent exploitative price gouging and exporting products that are essential in preventing and controlling the spread of COVID-19, including face masks, hand sanitiser and vital medicines. These measures will not impact normal consumer purchase of goods, commercial imports and exports or other appropriate bulk sales.

7. *Non-urgent elective surgery*

Following initial restrictions on non-urgent elective surgery announced on *25 March*, *26 March* and *21 April* 2020, the Prime Minister announced on 15 May 2020 that a staged reintroduction of elective surgery would be implemented by each state and territory. The stages are Stage 1 with up to 50% of normal surgical activity, Stage 2 with up to 75%, and Stage 3 with a return to 100% or as close to normal activity levels as is safely possible.

8. *Emergency Requirements for Remote Communities*

From 11:59pm on 26 March 2020, individuals are to remain outside a 'designated area' (a description of which is contained in Schedule 1 of the Determination) unless they fall within the listed categories, which generally include: a person who is entering to escape an immediate threat to their life, a member of the ADF, persons at low risk of transmitting COVID-19, a person entering to engage in or provide transport for an essential activity, a person has permission to enter, a person in transit through the area, a person moving without exposure between designated areas or parts of designated areas or to cross a State border between designated areas. Persons who enter the designated areas are to minimise contact with others in those areas.

On 8 April 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 1) Determination 2020 (Cth)* came into force which made minor amendments to the primary Determination, including allowing persons engaging in an essential service to enter a designated area without having to be isolated for 14 days, if there is an urgent need for that service.

On 24 April 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 2) Determination 2020 (Cth)* came into force, which, amongst other things, alters the areas in which the primary Determination applies.

On 23 May 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 3) Determination 2020 (Cth)* came into force, which amends the primary Determination by, amongst other things, including actions related to voting as essential activities, and implementing requirements relating to persons who enter a designated area on board a vessel.

*On 15 May 2020, the Prime Minister announced* that the National Cabinet agreed to a framework to inform decisions around lifting remote area travel restrictions as they move through the three-step plan for a COVIDSafe Australia to ensure remote communities are kept safe.

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## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

On 5 June 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 4) Determination 2020 (Cth)* came into force, which removes the list of Designated areas in Western Australia, and the associated relevant decision-makers for those areas.

On 12 June 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 5) Determination 2020 (Cth)* came into force, and removed the list of Designated areas in Queensland and the associated relevant decision-makers for those areas. This determination was *repealed* on 10 July 2020.

On 19 June 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 6) Determination 2020 (Cth)* came into force, which removes the Maralinga Tjarutja Lands, the Point Pearce community and the Nepabunna community in South Australia from the determination. This determination was *repealed* on 10 July 2020.

### 9. Expansion of coronavirus testing criteria

On 26 March 2020, it was announced that the National Cabinet agreed to an Australian Health Principal Protection Committee recommendation to expand the current coronavirus testing criteria to include testing people with fever or acute respiratory infection in:

- (a) all health workers;
- (b) all aged/residential care workers;
- (c) geographically localised areas where there is elevated risk of community transmission as defined by the local public health unit;
- (d) hospitalised patients with fever and acute respiratory symptoms of unknown cause; and
- (e) where no community transmission is occurring, high risk settings where there are two or more plausibly-linked cases, for example:
  - (i) aged and residential care;
  - (ii) rural and remote Aboriginal and Torres Strait Islander communities;
  - (iii) detention centres/correctional facilities;
  - (iv) boarding schools; and
  - (v) military bases (including Navy ships) that have live-in accommodation.

**10. Exit requirements**

On 26 March 2020, the Commonwealth made the *Biosecurity (Exit Requirements) Determination 2020* (Cth) pursuant to the *Biosecurity Act 2015* (Cth) mandating that individuals leaving Australia on aircraft bound for a number of Pacific island nations must be screened by a biosecurity officer. Requirements only apply to aircraft travelling to nations listed in the Determination, leaving from International Airports listed in the Direction (Brisbane, Cairns, Darwin, Gold Coast, Melbourne and Sydney International Airports).

**11. Quarantining restrictions for returning travellers**

On 27 March 2020, the National Cabinet agreed that by no later than 11:59pm on 28 March 2020, all travellers arriving in Australia will be required to undertake their mandatory 14 day self-isolation in designated facilities. The travellers will be transported to the facilities after appropriate immigration, customs and enhanced health checks. Designated facilities are to be determined by the relevant state or territory government. These requirements are to be implemented by the relevant state or territory, with the Australian Defence Force assisting to ensure compliance with the requirements.

*On 26 June 2020, the Prime Minister announced* that the National Cabinet confirmed that the current hotel quarantine arrangements would remain in place and agreed that further testing would be conducted for all those in hotel quarantine, including within the first 48 hours in quarantine and then on day 10-12 of quarantine.

**12. Retail Outlets in International Airports**

On 28 March 2020, the Commonwealth made the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – Retail Outlets at International Airports) Determination 2020*, mandating the closure of retail outlets in designated international airports. Pharmacies are exempt from this determination. An *amendment was made on 31 July 2020* to make designated retail outlets in departure areas exempt from the determination, subject to relevant conditions. **Prohibited Exports**

On 29 March 2020, the Commonwealth passed the *Customs (Prohibited Exports) Amendment (COVID-19 Human Biosecurity Emergency) Regulations 2020* prohibiting the exportation from Australia of:

- (a) any of the following that, when worn, is capable of limiting the transmission of organisms to humans:
  - (i) disposable face masks;
  - (ii) disposable gloves;
  - (iii) disposable gowns;
  - (iv) goggles, glasses or eye visors;
- (b) any of the following disinfectant products:
  - (i) alcohol wipes;

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- (ii) hand sanitizer.

The Minister is permitted to add further items to this list by legislative instrument.

### 13. **Commercial and residential tenancies**

*On 29 March 2020, the Prime Minister announced* a moratorium on evictions over the next six months for commercial and residential tenancies in financial distress.

*On 3 April 2020, the Prime Minister made a further announcement* regarding commercial tenancies, stating that the National Cabinet had agreed that a mandatory code of conduct should be developed and legislated by State and Territory Governments to apply where a tenant is eligible for the Commonwealth Government's JobKeeper assistance and is a small or medium-sized enterprise (less than \$50 million turnover).

*On 7 April 2020, the Prime Minister provided an update* regarding the measures for commercial tenancies and released the *National Cabinet Mandatory Code of Conduct: SME Commercial Leasing Principles During COVID-19*. The Code states a number of principles that landlords and tenants should apply in temporary COVID-19 arrangements, including no lease terminations due to non-payment of rent; tenants to remain committed to the terms of their lease; landlords to offer rent waivers of no less than 50%; reductions in statutory charges to be passed on to tenants; and freezes on rent increases.

### 14. **COVIDSafe application**

On 26 April 2020, the COVIDSafe application (**COVID app**) was launched to assist in tracing the spread of COVID-19. On 25 April 2020, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Public Health Contact Information) Determination 2020 (Cth)* commenced, which prohibits persons from collecting, using or disclosing the COVID app data except in a number of specified ways. The Determination also prohibits the mistreatment or decryption of the COVID app data, and prohibits coercion regarding the COVID app and its data.

### 15. **Resumption of sport**

On 1 May 2020, the Prime Minister announced that the National Cabinet had endorsed the *National Principles for the Resumption of Sport and Recreation Activities* and agreed that the Australian Institute of Sport's *Framework for Rebooting Sport in a COVID-19 Environment* provides a guide to the staged resumption of sport and recreation in Australia. These documents state that outdoor activities are a lower risk setting for COVID-19 transmission and a staged resumption of sport and recreation activity is appropriate. The stages include a slow increase in the number of participants and the level of contact.

### 16. **Key metrics to relax restrictions**

On 1 May 2020, the Prime Minister announced that the National Cabinet had endorsed *medical advice from the Australian Health Protection Principal Committee* which sets out key metrics to support decision making on the

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relaxation of restriction measures. The Committee's advice is that 15 precedent conditions need to be in place to consider relaxing restrictions and Australia is currently on track to meet 11 conditions. Governments would expediate four conditions, being surveillance (ie testing), surveillance plans and resources, use of the COVID app and stocks of personal protective equipment.

### 17. Trans-Tasman COVID-safe travel zone

Prime Ministers Jacinda Ardern and Scott Morrison have announced that Australia and New Zealand will introduce a trans-Tasman COVID-safe travel zone as soon as it is safe to do so. The announcements states that such an arrangement would be put in place once it is safe to do so and necessary health, transport and other protocols had been developed and met, to ensure the protection of public health. It was acknowledged, however, that any arrangement would need to take into account state and territory movement restrictions.

### 18. Removing baseline restrictions

On 5 May 2020, the Prime Minister announced that the National Cabinet had agreed to establish a three step framework to gradually remove baseline restrictions in Australia. It was noted that individual states and territories would determine the timeframe for graduating between steps and identifying individual restrictions to remove.

On 8 May 2020, the Prime Minister announced the steps agreed with National Cabinet to gradually remove restrictions. Step 1 involves carefully reopening the economy and having persons return to work and social activities, including gatherings of up to 10 people, including 5 visitors in a residence. Step 2 involves allowing gatherings of up to 20 persons and having more businesses reopen, including gyms, beauty services and entertainment venues. Step 3 involves having gatherings of up to 100 people and a transition to the 'new normal' while COVID-19 remains a threat. The Australian Government has also published two infographics regarding these changes – a [3 step framework for a COVIDSafe Australia](#), and a [Roadmap to a COVIDSafe Australia](#). The States and Territories will operationalise measures consistent with this roadmap which are considered appropriate for their jurisdiction.

On 12 June 2020, the Prime Minister announced that the National Cabinet had agreed to:

- (a) remove the 100 person limit on non-essential indoor gatherings under the Step 3 Framework and replace it with restrictions including the 1 person per 4 square metre density requirement, social distancing of 1.5 metres whenever and wherever possible, staying home if unwell, practising good hygiene, downloading the COVIDSafe app, and developing COVIDSafe plans;
- (b) outdoor venues of up to 40,000 spectator capacity to have ticketed and seated events with no more than 25% of the total capacity in the Step 3 Framework, with similar restrictions to those for indoor gatherings (outlined above), but not for the purposes of music festivals; and

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(c) permitting the return of international students on a small, phased scale through a series of controlled pilots.

*On 26 June 2020, the Prime Minister announced* that the National Cabinet had asked the Search Results Australian Health Protection Principal Committee to develop a roadmap for re-opening arts and entertainment venues, in particular to enable planning for productions to commence. This is meant to assist in safely returning crowds to stadiums, arenas and large theatres. In the same announcement, it was stated that states and territories could allow small premises to have one person per two square metres, rather than the common requirement of at least four square metres per person.

### 19. Localised health response

On 26 June 2020, it was announced that the National Cabinet had agreed to a new plan to improve long term sustainability of the public health workforce for the remainder of COVID-19 and beyond. The six actions stated in the plan for the state, territory and Commonwealth governments were:

- (a) strengthening a formal surge plan for the public health response workforce and review the ongoing structure of the public health units;
- (b) progressing the national interoperable notifiable disease surveillance system (NINDSS) project and prioritise appropriate interfaces;
- (c) establishing a national training program for surge workforce;
- (d) better support the Communicable Disease Network of Australia (CDNA), including shared costs;
- (e) prioritising enhancing the public health physician workforce capacity; and
- (f) considering options for developing a formal public health workforce training program.

### 20. Limit on international passengers

On 7 August 2020, the National Cabinet agreed that existing caps on international passenger arrivals would continue. The following limits apply for passenger arrivals until 24 October 2020: Sydney – 350 per day; Perth – 525 per week; Brisbane – 500 per week; Adelaide – 500 per week; Canberra and Darwin discussed on case by case basis; Hobart has no international flights. The suspension of international flights to Melbourne continues.

On 4 September 2020 the National Cabinet *announced* that all states and territories agreed to work with the Commonwealth to increase the number of international flights to their jurisdiction to enable more Australians to return home.

On 17 September 2020 the Prime Minister *announced* that the National Cabinet agreed to the following:

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- (a) New South Wales and South Australia will continue to implement existing plans to accommodate more returning Australians, by increasing their current international passenger arrival caps by 28 September 2020, by 500 and 100 passengers respectively; and
- (b) Queensland and Western Australia will adopt a two-stage increase in their international passenger arrival caps over the next three weeks that will see an additional 500 Australians returning through each jurisdiction each week. Queensland will commence with additional 200 passengers from 28 September 2020, increasing to 500 passengers from 5 October 2020. Western Australia will commence with an additional 200 passengers from 28 September 2020, increasing to 500 passengers from 12 October 2020.

### 21. Domestic Border Control Freight Movement Control

On 24 July 2020, the Prime Minister announced that the National Cabinet had considered and agreed a Domestic Border Control Freight Movement Protocol to allow freight to move safely and efficiently across borders, and to upgrade the Protocol to an Enforceable Code by state and territory jurisdictions. On 7 August 2020, the National Cabinet agreed to formalise the Freight Movement Code, and this will be implemented and enforced by jurisdictions between 5 to 10 business days from that date.

### 22. Suppression Strategy

On 24 July 2020, the Prime Minister announced that the National Cabinet had recommitted to the suppression strategy to address COVID-19. The goal of the suppression strategy is to have no local community transmission until a vaccine or effective treatments are available.

### 23. COVID-19 vaccination

On 7 September 2020, the Prime Minister announced that Australia had entered into manufacturing agreements for COVID-19 vaccination. The announcement states that the vaccination will be free for all Australians and could be available from January 2021.

### 24. Agriculture Workers' Code

On 4 September 2020, the Prime Minister announced that New South Wales, Victoria, South Australia, Northern Territory and the Australian Capital Territory agreed to adopt the National Agricultural Workers' Code. The announcement noted that Western Australia, Queensland and Tasmania will consider the Code as a part of their border restriction arrangements.

The Code facilitates the movement of critical agricultural industry workers across domestic borders where border restrictions are in place, and is important in mitigating animal health, welfare and biosecurity risks. On 17

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September 2020, the National Cabinet noted progress with the implementation of the Agriculture Workers Code, which is on track to be implemented by Victoria, NSW, ACT and the Northern Territory by 25 September 2020.

### 25. Contact tracing by domestic airlines

The National Cabinet noted that domestic airlines will progressively implement four mandatory contact tracing data fields (name, email address, mobile phone number, and state of residence) from 1 October 2020, during the period of the COVID-19 pandemic.

### 26. **Safe Travel Zone with New Zealand**

The Prime Minister *announced* a one-way Safe Travel Zone with New Zealand on 2 October 2020. This allows persons travelling from New Zealand to enter Australia from 16 October 2020, however, the New Zealand Government will require persons returning to New Zealand to quarantine for 14 days upon re-entry. Agreement has been reached for the first stage of quarantine-free travel from New Zealand with New South Wales and the Northern Territory.

Even though the Commonwealth permits entry, whether persons travelling from New Zealand will be required to quarantine will depend on the border control measures for international travellers in the Australian State or Territory that they are travelling to.

The Minister for Health has made the following declarations under the *Biosecurity Act 2015* (Cth) to facilitate the Safe Travel Zone with New Zealand:

- (a) On 16 October 2020, the *Biosecurity (Entry Requirements – Human Coronavirus with Pandemic Potential) Determination 2020* requires that all incoming passengers entering an Australian State or Territory from New Zealand must provide a statement to the Australian Border Force with information relating to COVID-19 and a declaration that they have only been in New Zealand for the last fourteen days.

### Penalties

There are substantial penalties for non-compliance with a determination or direction of the Minister in relation to a human biosecurity emergency including 5 years imprisonment and/or a maximum fine of 300 penalty units, amounting to **\$63,000.00** for an individual at the time of writing, or **\$315,000.00** for a corporation.

The Commonwealth Government is publishing frequent updates in relation to the COVID-19 pandemic, available [here](#).

## Emergency powers: What can government do?

A public health emergency was declared in Queensland on 29 January 2020 under the Public Health Act 2005 (Qld). As of 2 October 2020, the public health emergency has been extended until 11:59pm on Thursday 31 December 2020 .

The emergency powers are broad and include the ability to:

- require a person to go to, stay at or in, not enter or remain at, or stop using a place;
- direct the movement of people;
- require the provision of information; and
- require action in relation to property.

In addition, overnight on 18 March 2020, the Queensland Government passed the Public Health and Other Legislation (Public Health Emergency Amendment) Act 2020 (Qld), which includes additional specific powers to respond to COVID-19. The Chief Health Officer is now empowered to make public health directions if she believes it is reasonably necessary to help contain COVID-19 including:

- restricting the movement of persons;
- requiring persons to stay at or in a stated place;
- requiring persons not to enter or stay in a stated place;
- restricting contact between persons; and
- directions otherwise considered by the Chief Health Officer necessary to protect public health.

The Chief Health Officer is also empowered to make recommendations to owners or operators of businesses in relation to the conduct of their business, including about opening, closing or limiting access to a business facility (for example, a recommendation in relation to supermarket trading hours).

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current measures in Queensland include:

### 1. School and Early Childhood Service Exclusion Direction

From 11:59pm on 29 March 2020, a principal, teacher or staff member of a school, or a person in charge, educator or staff member of an early childhood service, who reasonably suspects a child is unwell can determine that the child must be removed from the school or service and notify the child's parent of that determination. If a parent of a child is notified of a determination that the child must be removed, then the parent must ensure the child is removed from the school or early childhood service as soon as reasonably practicable, and not allow the child to return until the child could no longer be contagious for the illness they are suspected of having or otherwise is no longer exhibiting symptoms of the illness.

### 2. Prescribing, Dispensing or Supply of Hydroxychloroquine Direction

This direction commenced 7 April 2020 and prohibits the prescription, dispensation or supply of hydroxychloroquine except in one of the circumstances stated in the directions.

### 3. Point of Care Serology Tests Direction

This direction commenced on 23 April 2020 and prohibits the use of point of care serology tests as a tool to detect or diagnose COVID-19. The direction does not apply to persons employed or engaged in the provision of pathology services for Pathology Queensland, public health services for the Department of Health or a Hospital and Health Service, or pathology services as a National Association of Testing Authorities accredited medical pathology service with scope of accreditation in microbiology.

### 4. Seasonal Workers Health Management and International Quarantine Plans Direction (No. 2)

This direction commenced at 12:40pm on 3 November 2020 and requires persons who owns, controls or operates one of a number of specified businesses to have a health management plan and operate in accordance with the plan. Approved employers of Pacific Labour Scheme (PLS) / Seasonal Worker Programme (SWP) workers must also have an endorsed international PLS/SWP quarantine plan that covers each PLS/SWP worker arriving in Queensland from overseas (unless the individual has completed quarantine in government-nominated accommodation. A PLS/SWP worker is a person employed by an approved employer under the Australian Government Pacific Labour Scheme or Seasonal Worker Programme. The businesses covered by the direction include agribusinesses, commercial fisheries businesses and labour hire firms that employ seasonal workers; accommodation facilities that house seasonal workers; or a private or charter workforce transportation provider that provides services to one of the aforementioned businesses.

### 5. Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction (No. 3)

This direction commenced on 15 May 2020, revokes the previous direction of the same name and prohibits persons intentionally spitting at, coughing or sneezing on, or threatening to spit at or cough or sneeze on certain persons in a

### Emergency powers: What can government do?

The amending legislation prevents a person from being able to claim compensation for loss of damage arising from an exercise of power in relation to the COVID-19 emergency.

Fines may be imposed for refusal to comply with a direction made under the amending legislation and an emergency officer has the ability to use 'necessary and reasonable force' to enforce a direction.

On 22 March 2020, Queensland declared a 'disaster situation' under s 69 of the Disaster Management Act 2003 (Qld) for the whole of the State of Queensland. The disaster situation has been extended and we expect it will continue to be extended until the end of the COVID-19 pandemic. During a disaster situation, a district disaster coordinator or a declared disaster officer can, relevantly:

- control and regulate the movement of persons within, into, out of or around the declared area;
- evacuate persons from the declared area;
- close to traffic any road;
- maintain, restore, or prevent destruction of, essential services; and
- require a person to give the relevant district disaster coordinator or declared disaster officer reasonable help to exercise the coordinator's or officer's powers under this subdivision.

These powers can only be exercised for particular reasons, including to ensure public safety or public order, prevent or minimise loss of human life, prevent illness or injury to persons, and otherwise prepare for, respond to, or recover from the disaster situation.

On 23 April 2020, the COVID-19 Emergency Response Act 2020 (Qld) received royal assent and came into

### What emergency powers have been exercised to date?\* \*as at 3pm on 19 November 2020

way that would reasonably be likely to cause apprehension or fear of being exposed to COVID-19. The persons covered by this direction are:

- (a) public officials (including health workers); and
- (b) workers (being retail workers, persons who work at an airport, persons who work for an electricity, gas, water or other utility company, persons who work in the transport or a transport-related industry, and members of the Australian Defence Force) when they are at, or travelling to or from, their place of work.

The direction clarifies that if the worker's place of work is their residential premises, the place of work does not include any part of the premises used solely for residential purposes.

The latest version of the direction clarifies that a public official includes a person employed by any Commonwealth Department or agency.

#### 6. Self-Isolation for Diagnosed Cases of COVID-19 Direction (No. 4)

This direction commenced 26 October 2020, revokes the previous direction of the same title and extends the duration of the direction until 31 December 2020. The direction requires a person who has received a positive diagnosis of COVID-19 to travel directly to a premises that is suitable for them to reside in, or a hospital for medical treatment, until the person is given clearance from self-isolation. The latest version of the direction provides for circumstances in which a person may leave the premises, namely to go to hospital or to obtain medication that cannot be delivered in a rural or regional location, to avoid injury or illness or to escape a risk of harm, in the event of an emergency situation or as required by a direction given by an emergency officer. The direction clarifies that any travel for the purposes of obtaining essential medical care or supplies must be by private vehicle or taxi or ride share (with a shield between the driver and passenger, or distance between the two persons that allows for physical distancing), or transport arranged by a government authority, or with the person wearing a protective mask in a taxi or ride share (and sitting in the back seat on the passenger side). The directions also define the meaning of essential medical supplies.

#### 7. Corrective Services Facilities Direction (No. 2)

This direction commenced 19 May 2020, revokes the previous direction of the same title and maintains the prohibition on personal visitors from entering a corrective services facility. The latest version of the direction makes no substantive changes to the previous direction.

#### 8. Restricting Cruise Ships from Entering Queensland Waters Direction (No. 2)

This direction commenced on 11 June 2020, revoking the previous direction of the same title and extending the prohibitions on operators of foreign flagged cruise ships from allowing the ships to enter Queensland waters, unless permitted by Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential)

### Emergency powers: What can government do?

force. The Act, among other things, allows Parliament to be conducted by electronic means, allows the implementation of the residential and commercial tenancy principles as agreed by the National Cabinet, establishes the Small Business Commissioner, allows extensions of legislation that would otherwise expire, and introduces a modification framework to modify requirements in legislation regarding attending meetings in person, statutory timeframes, and proceedings of courts and tribunals.

Due to the recent COVID-19 cluster in Adelaide, from 16 November 2020, specific parts of South Australia have been declared *hotspots*. Anyone who has been in one of these hotspots within the past 14 days will be unable to enter Queensland.

### What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

(Emergency Requirements) Determination 2020 (Cth) (discussed in paragraph 2 in the Commonwealth section above).

#### 9. Restricted Access to Remote Communities Direction (No. 3)

This direction commenced at 12pm on 3 July 2020, revokes the previous direction of the same title, and predominantly maintains the prohibition on persons entering the designated areas specified in Schedule 1 to the direction. Persons are allowed to enter the designated area in specified circumstances, including where they are a member of the Australian Defence Force, are an official performing functions under Australian law, are entering to avoid injury or escape harm, there are entering for an essential activity, are transiting through the area, are a resident of the designated area, are visiting family members, or are otherwise exempt by the Chief Health Officer.

Residents of the area or persons who are entering to visit family members must travel to a suitable place, quarantine for a period of 14 days and most not leave or allow others to enter, except in specified circumstances. A person who otherwise would be permitted to enter the designated area are nevertheless prohibited to enter the area if, in the last 14 days, they have returned from a place outside Australia, have had known contact with a person who has a confirmed case of COVID-19, have symptoms consistent with COVID-19, or have been to a COVID-19 hotspot.

The Chief Health Officer may consult with certain community representatives when considering whether to grant an exemption under the direction. The direction also specifies that residents of a declared travel zone for the designated area who enter the area to attend a funeral are permitted to enter the area without quarantining.

The latest version of the directions significantly reduces the number of designated areas and declared travel zones listed in Schedule 1 to the direction. The latest version of the direction also clarifies who is required to quarantine after entering a designated area, noting the previous direction had an inconsistency as to whether a resident or a person visiting a family member must quarantine upon entry to the area.

#### 10. Self-quarantine for persons arriving in Queensland from overseas Direction (No. 6)

This direction commenced at 1:20pm on 26 October 2020, revokes the previous direction of the same title, extends its duration until 31 December 2020 and continues to require persons who arrive in Queensland from overseas to self-quarantine in nominated premises for 14 days in order to limit the spread of COVID-19. The person must not leave or allow other persons to enter the premises except in the limited circumstances stated in the direction. If the person is permitted to leave pursuant to the direction, they are required to wear a protective mask and any travel undertaken is to be done via private vehicle, taxi with protective shield between driver and passenger, ambulance service, or arranged by a government authority. Special provisions apply for airline and maritime crew, unaccompanied minors, consular employees, and people unable to live independently without ongoing or regular support. The latest version of the directions allows air crew to leave their accommodation or residence to carry out essential regulatory or safety flight related duties.

The directions require persons who are not tested for COVID-19 after being requested to do so, to remain in quarantine for a further period of 10 days after the scheduled end of their original quarantine period. The direction also includes permitting people to leave the premises in which they are quarantining in the event of an emergency situation or to obtain essential medical care or supplies if alternate delivery arrangements are not reasonably practicable.

**11. Restrictions on Businesses, Activities and Undertakings Direction (No. 9)**

This direction commences as at 4 PM on 17 November 2020, revokes the previous direction of the same title and makes minor amendments to the restrictions on restricted businesses, activities and undertakings. School formals and end of year 12 events may allow all attendees to dance. Restricted businesses, activities and undertakings include specified businesses, activities and undertakings related to food and drink, retail, beauty and personal care services, entertainment venues, leisure and recreation, residential facilities, outdoor recreation, non-residential institutions, professional elite sport, and high risk businesses, activities and undertaking (nightclubs and adult entertainment venues).

The directions permits most of the listed restricted businesses, activities and undertakings to open with up to 50 people (increased from 20 people under the previous directions). Where a venue has an Approved Plan, it may be permitted to have a larger number of persons at the venue in accordance with that plan.

Where a business, activity or undertaking has an Approved Plan or COVID Safe Checklist, the directions permit a maximum density of no more than one person per two square metres in either indoor or outdoor spaces.

Persons who own, control or operate a restricted business, activity or undertaking are still required to keep contact information about all guests and staff for contact tracing purposes, including name, address and mobile phone numbers for a period of at least 56 days. Further, the direction specifies various specific restrictions for certain types of restricted business, activities and undertakings.

A restricted business hosting a wedding, limited to a maximum of 200 attendees, may allow people to participate in dancing on the dance floor. Similarly, a maximum number of 200 people are permitted to attend funerals.

The latest version of the direction details the restrictions and allowances for food and drink, entertainment venues, gaming and events where more than 1500 people are expected. The seated capacity for both indoor and outdoor stadiums has increased up to 100 per cent or one person per 2 square metres.

**12. Aged Care Direction (No. 13)**

This direction commenced at 1.00am on 3 November 2020 and is substantially the same as its predecessor. An operator of a residential aged care facility may allow a resident to leave the facility to attend a funeral (no longer subject to group restrictions). The direction inserts the definition of Border zone (as defined under the Border Restrictions Direction) as an exclusion to the COVID-19 hotspot definition. The direction clarifies requirements for PPE usage at facilities and now references [PPE Guidance \(found here\)](#) from Queensland Health. The direction allows for an emergency officer (as defined in the direction) to require an operator of a facility to comply with

additional directions if they believe the direction is reasonably necessary to assist in containing, or responding to, the spread of COVID-19 within the community. Additional Workforce Management requirements have been added in the latest version, requiring operators to identify how workforce surge requirements will be met if there is a COVID-19 event at the facility as well as reporting a critical workforce shortage to the local Health Emergency Operations Centre.

The current restrictions permit anyone to enter or remain on the premises of an aged care facility, unless they have a temperature equal to or higher than 37.5 degrees or symptoms consistent with COVID-19; do not have an up to date vaccination against influenza if the vaccine is available to the person (with some exceptions); or have, during the last 14 days, arrived from a place outside Australia, been to a COVID-19 hotspot, or had known contact with a person who has a confirmed case of COVID-19, or the person has been tested for COVID-19 and not yet received their results. The direction clarifies that these restrictions do not prevent a resident of the facility from entering or remaining upon the premises. Further, operators of aged care facilities may permit residents to leave for certain reasons, but not for external excursions with a group of residents. The direction also maintains that care and support visits are limited to a maximum of two visitors at a time per resident, but there is no restrictions on the frequency or duration. Students may enter a facility for the purpose of completing a placement. The latest version of the direction contemplates visitors from a COVID-19 hotspot or overseas and permits them to enter a facility if it is for an end of life visit for a resident and if the person has been granted an exemption by the CHO to enter Queensland for an end of life visit.

The directions make it a requirement for operators of aged care facilities to develop a Workforce Management Plan that requires employees, contractors and volunteers to notify the facility of their additional places of employment and if they become aware of a COVID-19 case identified at that place of employment. The direction also adds a requirement for the operator to keep contact information for contact tracing purposes for a period of 56 days. The latest version of the directions expands on this section, including a recommendation for employees, contractors and volunteers not to work across multiple care facilities, (and where this does occur, the subject persons must not enter, or remain on, the premises of the facility without wearing a single use surgical face mask).

The directions add requirements for 'restricted residential aged care facilities', being facilities in particular designated areas. These requirements include greater restrictions on the persons who can enter the facility, adds a requirement for visitors to wear a face mask, and includes a requirement for staff to wear PPE. The latest version of the directions includes some example of 'personal care' purposes, and clarifies that personal visits are not permitted other than in the context of end of life visits.

**13. Disability Accommodation Services Direction (No 5)**

This direction commenced at 01:00am on 3 November 2020, is substantially the same as its predecessor and extends the duration of the direction to 31 December 2020. The direction revokes the previous direction of the same title and prohibits persons from entering or remaining at a shared disability accommodation service if they have a temperature equal to or higher than 37.5 degrees or symptoms consistent with COVID-19 or, in the last 14 days,

have arrived from a place outside Australia, or have been in a COVID-19 hotspot, or have had known contact with a confirmed case of COVID-19 in the last 14 days, or have been tested for COVID-19 and are yet to receive their results. The operator of a shared disability accommodation service must take all reasonable steps to ensure that prohibited persons do not enter or remain at the service.

All persons are prohibited from entering or remaining at a disability accommodation service located in a 'restricted area' (being areas prescribed as such on the Queensland Health website), unless they are a person permitted to do so by the direction. Students (under the supervision of an employee or contractor) are permitted to enter the premises of the accommodation service. Persons permitted to enter or remain at a service in a restricted area include employees and contractors; persons providing goods or services necessary for the effective operation of the service; persons providing health, medical, therapeutic, essential disability support or pharmaceutical services; persons providing end of life support for a resident; and persons required for emergency management and law enforcement. All persons entering a service in a restricted area must wear a face mask. Further, operators of these services must ensure that employees, contractors and volunteers wear appropriate PPE and do not work across multiple services. Readers are referred to the RACF Disability Accommodation PPE Guidance for guidance about the use of masks and shields. The latest version of the direction contemplates visitors from a COVID-19 hotspot or overseas, and permits them to enter a shared disability accommodation service, with the permission of the operator if it is for an end of life visit, and if the person has been granted an exemption by the CHO to enter Queensland for an end of life visit.

The direction has updated its guidance to ensure physical distancing and risk mitigation measures by stating that a staff roster should be structured to minimise staff movement between care facilities (including facilities such as hospitals, retirement villages, and residential aged care facilities), and encouraging residents to exercise appropriate caution when accessing the community. The direction also clarifies that nothing in the direction should be taken as limiting the right of people living in shared disability accommodation services from leaving the service. Further, for services in restricted areas, persons are permitted to wear a face shield (rather than a face mask) to communicate with a resident where visibility of the mouth is essential, or where it is reasonably anticipated that the person with disability may become distressed because the person is wearing a mask.

14. *Hospital Visitors Direction (No. 7)*

This direction commenced at 1am on 3 November 2020, revokes the previous direction of the same title and predominantly maintains the restrictions on persons who can enter hospitals in Queensland, including public hospitals, private and day hospitals, and multi-purpose facilities within the meaning of the *Subsidy Principles 2014*, made under the *Aged Care Act 1997* (Cth).

Persons who are prohibited from entering a hospital are those who have been diagnosed with COVID-19 (unless they are no longer subject to a direction to self-isolate), who are subject to a direction to self-isolate, who have a

temperature of 37.5 degrees or higher or have symptoms of acute respiratory infection, who, in the last 14 days, have returned from a place outside of Australia or been in contact with someone confirmed as having COVID-19, or who have been tested for COVID-19 and are yet to receive the results of their test. The latest version of the direction contemplates visitors who are subject to self-quarantine or are from overseas to enter a hospital if it is for an end of life visit for a patient, and if the person has been granted an exemption by the CHO to enter Queensland for an end of life visit. Persons under the age of 16 years are no longer excluded from entering or remaining at a hospital.

A patient must not have more than two visitors at the same time, unless it is an end of life visit.

The latest version of the directions prescribes restrictions on hospitals in a restricted area, being an area declared as such on the Queensland Government website. Patients in these hospitals may only have visitors in accordance with the hospital's clinical guidelines for COVID-19 and if the patient is a child; or is being provided with end of life care; or is being provided with pregnancy or maternity-related care, or the operator of the hospital believes it is necessary to have visitors for emergency or other compassionate grounds, or is disabled and is being provided with disability support from a support worker or informal carer.

**15. Movement and Gathering Direction (No. 6)**

This direction commenced at 4pm on 17 November 2020, revokes and replaces the previous direction of the same title, and details restrictions on gatherings. The latest version is substantially the same as the previous and adds a minor clarification that workers or volunteers are not prevented from entering a place of residence, and that they are not counted as visitors. The direction prohibits gatherings of more than 50 persons whether outdoors, in residences or in non-residences. The direction also prohibits gatherings of more than 10 persons in restricted areas, being areas prescribed as such on the Queensland Health website. There are a number of exempt gatherings listed in the direction, including at office buildings, airports, public transport, medical or health facilities, prisons, courts or tribunals, supermarkets, educational facilities and residential aged care facilities. A gathering for the purposes of an investigation or action by a law enforcement authority, for the purposes of complying with or giving effect to the exercise of power or function of a government agency or entity under a law, or for the purposes of natural security is also exempt. The latest version adds that an owner, resident, tenant, occupier, temporary occupier or person in control of a premises being used for short term rental accommodation may only allow the number of persons permitted under the specific booking, letting or rental agreement to remain there overnight.

Under the direction, an owner, resident, tenant, occupier, temporary occupier or person in control of a premises, including a residence, must take reasonable steps to encourage visitors to the premises to practice social distancing to the extent reasonably practicable. Further, a person who leaves their principle place of residence is also obliged to practice social distancing to the extent reasonably practicable.

**16. Border Restrictions Direction (No. 17)**

This direction commenced at 1:00 AM on 3 November 2020, replaces the previous directions of the same title.

The direction can be divided into four key sections: requirements to provide an entry declaration; restrictions on people entering from a COVID-19 hotspot; special requirements for residents of the border zone between New South Wales and Queensland; and quarantine requirements.

*Entry Declaration*

The direction requires that every person entering Queensland from another Australian State or Territory must:

- (a) have not been in a COVID-19 hotspot in the previous 14 days or be permitted under Part 2 of the direction to enter regardless of having been in a COVID-19 hotspot;
- (b) not be a confirmed or cleared case of COVID-19;
- (c) not have been tested for COVID-19 and still be awaiting their results;
- (d) provide a valid Queensland Border Declaration Pass;
- (e) provide an undertaking that the person will present for a COVID-19 test if the person develops symptoms consistent with COVID-19; and
- (f) comply with the undertaking while present in Queensland.

When a person completes the form for a Queensland Border Declaration Pass, a person is giving a declaration to the best of their knowledge that in the last 14 days prior to entering Queensland the person has not:

- (a) been overseas;
- (b) been in a COVID-19 hotspot;
- (c) had known contact with person who is or was a confirmed case of COVID-19;
- (d) had symptoms consistent with COVID-19;
- (e) been a confirmed or cleared case of COVID-19; or
- (f) been tested for COVID-19 and is yet to receive their results.

A person is exempt from requiring to provide a Queensland Border Declaration Pass if:

- (a) a person is responding to an emergency in Queensland performing an **essential activity**;
- (b) they are a passenger of an ambulance or aeromedical service;
- (c) they are maritime crew (see Protocol for Maritime Crew as approved by the Chief Health Officer); or

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- (d) a person remanded or held in custody subject to an extradition order or otherwise and is required to enter Queensland to appear before a court or assist with an investigation.

### *Restrictions on people entering from a COVID-19 hotspot*

A person must not enter Queensland if they have been in a COVID-19 hotspot in the last 14 days unless the person is a Queensland resident or moving to Queensland as a new resident. The declared COVID-19 hotspots currently are all of Victoria and some parts of New South Wales and South Australia. There are a number of exceptions to this restriction set out in detail in the direction. For example, a person is exempt if they perform an **essential activity** subject to the special conditions of entry that apply to persons performing essential activities.

The Queensland Government has recently amended the direction to include a new exception for essential activity undertaken by specialist or essential workers. A person can apply for designation as a **specialist or essential worker** on the basis that the services cannot be obtained in Queensland (among other factors). A designation must be approved by a Queensland Government Agency, as sponsor of the application.

### *Quarantine requirements*

Any person may enter Queensland without being required to quarantine. However, a person entering Queensland still has to quarantine if in the last 14 days prior to entering Queensland they have:

- (e) been overseas;
- (f) been in a COVID-19 hotspot;
- (g) had known contact with a confirmed case of COVID-19;
- (h) had symptoms consistent with COVID-19; or
- (i) been a cleared case of COVID-19.

A person who is a cleared case of COVID-19 is not permitted to enter Queensland and must apply to the Chief Health Officer or her delegate for an exemption.

The quarantine requirement that is applicable (if any) is prescribed in detail in Schedule 2 of the direction and depends on individual circumstances. For example, a person who has had contact with a confirmed case of COVID-19 must comply with the global quarantine requirements set out in Schedule 2. The global quarantine requirements are that a person must quarantine in a place nominated by an emergency officer for a 14-day period, which could in most cases mean hotel quarantine at the person's own expense.



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### Penalties

Persons who do not comply with the above directions commit an offence and are liable to a maximum penalty of 100 penalty units, being **\$13,345.00** for individuals, or **\$66,725.00** for a body corporate at the time of writing or 6 months imprisonment.

The Queensland Government is publishing frequent updates in relation to the COVID-19 pandemic, available [here](#).

## Emergency powers: What can government do?

A state of emergency has not yet been declared in New South Wales in relation to COVID-19. Nonetheless, the New South Wales Minister for Health has powers under the [Public Health Act 2010 \(NSW\)](#) to deal with public health risks generally. He may take action and make orders as he considers necessary to deal with the risk of COVID-19, which may include segregating or isolating people or preventing access to an area.

If a state of emergency is declared in New South Wales, the emergency powers under the [State Emergency and Rescue Management Act 1989 \(NSW\)](#) are broad and far reaching. These include:

- requiring a person to leave a premises or not enter an emergency area;
- the closure of roads or the closure of public or private places; and
- taking possession of or removing or destroying material that may be dangerous to life or property or that may interfere with the response of emergency services.

Additionally, if a state of emergency exists, the powers of the New South Wales Health Minister are broadened. Under the [Public Health Act 2010 \(NSW\)](#), after consultation, the New South Wales Health Minister may take such action or give such directions as he considers necessary to deal with the risk of COVID-19 and its possible consequences, which may include directing persons (including groups of people) to undergo a medical examination.

The New South Wales Government has made some legislation to respond to the COVID-19 pandemic, including:

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current Public Health Orders in place within New South Wales include:

1. [Public Health \(COVID-19 Residential Aged Care Facilities\) Order \(No 3\) 2020](#)

This direction commenced on 18 September 2020 and repeals the directions made on 23 June 2020 under the same name. It gives effect to restrictions on visitors entering residential aged care facilities. The directions are largely similar to their predecessor, however the most recent directions have removed the restrictions on persons under 16 from entering a facility, allows for persons wanting to enter a facility to demonstrate they have a medical contraindication to the influenza vaccination, and allows for those providing goods and services as per cl 5(1)(c)(i) or emergency management or law enforcement as per cl 5 (1)(c)(i) to not have to comply with directions regarding influenza vaccinations. The most recent amendment only makes a minor drafting amendment to the temperature check requirement.

2. [Public Health \(COVID-19 Self-Isolation\) Order \(No 4\) 2020](#)

This direction commenced on 19 October 2020 and repeals the previous order under the same name. The previous directions expired on 23 June 2020. The new directions have the same effect as its predecessor, and requires that a person who has received a positive diagnosis of COVID-19 must, directly after receiving that diagnosis, travel directly to a residence or place determined as suitable for them to reside in (as determined by their health practitioner) or a hospital if determined necessary. That person must not leave their residence except to obtain medical care or medical supplies or in another emergency situation. The diagnosed person must also not permit any person to enter the premises they are isolated at unless the person lives at the residence, is providing medical or emergency services or for the purpose of delivering food or other essential items. The new direction also requires that close contacts of persons diagnosed with COVID-19 must self-isolate for the period of time, not exceeding 14 days, as determined by an authorised contact tracer. In addition, the direction provides that a diagnosed person must, if required to do so by the Chief Health Officer or another authorised medical practitioner, provide details of their contact with other persons and places of travel within the previous 28 days of their diagnosis.

3. [Public Health \(COVID-19 Air Transportation Quarantine\) Order \(No 3\) 2020](#) and [Public Health \(COVID-19 Maritime Quarantine\) Order \(No 3\) 2020](#)

These directions commenced on 16 October 2020 and revoked the previous directions of the same name. They give effect to the requirements announced by the Commonwealth Government relating to persons quarantining in a quarantine facility for 14 days after arriving from overseas. The newest version provides for the arrival of New Zealanders to New South Wales and includes directions for persons arriving from a New Zealand hotspot to immediately go to a quarantine facility, medical facility for treatment or leave Australia by air. The Maritime Order does not allow any persons to disembark from a vessel that has come from a port outside New South Wales unless they are authorised to do so by the Commissioner of Police, or are required to do so because of an emergency.

## Emergency powers: What can government do?

- the [Evidence \(Audio and Audio Visual Links\) Amendment \(Emergency Measures–COVID-19\) Regulation 2020](#), which allows evidence to be taken by audio and audio visual link in a court; and
- the [Crimes \(Administration of Sentences\) Amendment \(COVID-19\) Regulation 2020](#), which allows the Commissioner of Corrective Services to release an inmate on parole if their health is at a higher risk from COVID-19 or their earliest possible release date is within 12 months.

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Both Orders requires persons upon arrival in New South Wales to go directly to a quarantine facility specified by the Commissioner of Police, or a hospital or other medical facility for treatment, and remain there for 14 days. There are limited specified exemptions in each order.

The new Maritime order is largely identical to its predecessor, save for some phrasing changes to the '14 day' requirement for quarantine (ie the 14 days begins from arriving in the state, not from disembarking the vessel). It also clarifies the position of those already subject to quarantine, designation or direction by the Commissioner, or a Ministerial exemption. The previous Air Transportation direction expired on 25 June 2020. The newest directions include directions for flight crew, such that members of flight crew on an aircraft who have been in another country within 14 days of arrival to Australia, must go to their residence or accommodation until the quarantine period ends or the person departs on another flight leaving the state (whichever is sooner). They can only leave their residence or accommodation in specific circumstances, and can only allow others into their residence or accommodation under specific circumstances. In addition, there are obligations imposed on the person's employer, including arranging for transportation to residence or accommodation, for example.

Amendments were made to both orders on 29 June 2020 to, among other minor things, amend the 'quarantine period' to make it end on the sooner of 24 full days or at least 14 full days and the Chief Health Officer being satisfied that the person does not pose a risk of infecting other persons with COVID-19.

Amendments were made to the Maritime Quarantine Order on 6 August 2020 to, among other things, provide the Commissioner of Police with more powers in directing persons disembarking a vessel in New South Wales; require employers of crew to arrange transportation and provide PPE in certain circumstances; permit persons to disembark a vessel to undertake essential tasks; require occupiers of wharves to develop and comply with a COVID-19 safety plan; and prescribe more classes of persons who are authorised to board and disembark a vessel.

Further amendments were made to the Maritime Quarantine Order that commenced on 21 September 2020. These amendments allow for boarding and disembarkation from vessels entering New South Wales waters for the purpose of undertaking essential tasks necessary for maritime operations, such as loading and unloading cargo.

Amendments were made to the Air Transportation Directions on 7 August 2020 to predominantly add savings and transitional provisions due to the changes made to the Border Control Directions.

Amendments were made to the Air Transportation Directions that commenced on 21 September 2020. These amendments permit flight crew members to quarantine at their residence or accommodation if, before leaving the airport, they provide contact details to NSW Health and give a written declaration that they have not been in contact with a person with COVID-19 and does not have (or has not had) any symptoms of COVID-19 72 hours immediately before their arrival. There is also a requirement that an employer of a flight crew member must arrange:

- (a) accommodation for that crew member if the member does not have a place of residence to quarantine; and

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

(b) transportation to that person's residence or accommodation.

4. *Public Health Amendment (COVID-19 Spitting and Coughing) Regulation 2020 and Public Health (COVID-19 Spitting and Coughing) Order (No 3) 2020*

This order commenced on 25 September 2020 and maintains the prohibition on persons intentionally spitting at, or coughing on, a public official or other workers in a way that would reasonably be likely to cause fear about the spread of COVID-19. Public officials include health workers, police officers, other persons exercising public functions under a law of New South Wales, Immigration and Border Protection workers, and other persons employed or otherwise engaged by the Commonwealth Department of Health. An amendment made on 20 April 2020 extended the order to cover any other workers when they are at their place of work or travelling to or from that place of work. The regulation introduced a \$5,000 penalty for an offence against the order. The latest version of the order expands on the meaning of 'worker' to include retail workers, people who work at an airport, or for an electricity, gas, water or utility company, or in the transport or transport-related industries, or a member of the Australian Defence Force. The order is to be repealed on 18 December 2020.

5. *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No. 5) 2020*

This order commenced on 16 October 2020, and revokes the previous order of the same title and provides the restrictions relating to gatherings and movement. The newest version removes the limitations restricting the definition of corporate event to events held on premises that are function centres. The current restrictions imposed by the order include the following:

*Restricted use of premises:* The order lists almost 30 different 'restricted premises' in schedule 1 and requires these premises to develop and comply with a COVID-19 Safety Plan. The order clarifies how this process occurs, and there is now a requirement for certain premises to register as a COVID-19 Safe business.

Premises are no longer restricted by a specific maximum number of person, and are instead permitted to have the number of persons where there is still at least four square metres of floor space for each person.

Schedule 1 to the order provides a number of types of businesses that require a COVID-19 Safety Plan. On 21 September 2020, Schedule 1 was amended to require that the following businesses develop and comply with a COVID-19 Safety Plan: casinos, community sporting activities, corporate events, food and drink premises, food courts, function centres, micro-breweries, pubs and wedding services.

*Weddings, religious services, corporate events and funerals:* For a corporate event, the latest amendments increase the maximum number of persons permitted to (the lesser of) 300 people or 1 person per 4 square metres. For a wedding, the maximum number of (the lesser of) 150 people or the number of persons equivalent to one person per 4 square metres of space in the premises. The same applies to funerals or memorial services or religious

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

services (however the maximum number of people is 100). The amendments on 11 September contemplate places of worship with more than one separate area and provides directions that the maximum number of people permitted in each area is the lesser of the equivalent of one person per 4 square metres or 100 people. It also requires that the occupier of a place of worship (comprised of more than one separate area) must ensure that a religious service, activity or event must not commence or end at the same time as one in another area of the facility.

*Residential premises:* An adult member of a household must not allow, and take reasonable steps to avoid having, more than 20 visitors to be at their place of residence. The clause does not apply for weddings, a funeral or memorial service or a gathering immediately after such events. Certain specified persons are not considered to be a visitor, including persons who are a member of that household; persons at the residence for the purposes of work, childcare or carers' responsibility; to provide care or assistance to a vulnerable person; to assist a person moving to or from the place of residence; to avoid injury or illness or to escape a risk of harm; or because of an emergency or compassionate reasons. A person attending a residential premises to view or inspect the property for sale or lease or participate in an auction is now not considered a visitor.

*Major recreation facilities:* A major recreation facility, being a place for a large-scale sporting or recreation activity, must not allow persons to enter unless their admission is ticketed and the total number of persons is the lesser of 25% of the capacity or 10,000 people. Alternatively, the facility may allow persons to enter where admission is limited to a maximum of 5,000 persons and there is at least four square metres of space per person.

*Entertainment facilities:* The order specifies that the occupier of an entertainment facility must ensure that the maximum number of people on the premises is equivalent to 1 person per 4 square metres, or the lesser of 50% of the capacity of the venue or 1,000 people if admission to the premises is by way of a ticket and seating has been assigned.

*Place of work:* The order specifies that an employer must allow an employee to work at the person's place of residence if it is reasonably practicable to do so.

*Community sporting activities:* Community sporting activities have a maximum participant limit of 500 persons and any activities of over 20 persons requires that the organizer develop and comply with a COVID-19 Safety Plan.

*Outdoor public gatherings:* The order prohibits public gatherings of more than 20 persons. There are many exempt gatherings, including, among other specified gatherings, gatherings for work, providing care or assistance to vulnerable persons, gatherings of persons from one household, a gathering at a 'restricted premises' listed in schedule 1, an 'essential gathering' listed in schedule 2, gatherings for weddings and funerals and gatherings for inspections. The latest version now allows for music rehearsals or performances of more than 20 people if a COVID-19 Safety Plan has been developed and complied with.

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Other specific premises: Music festivals and nightclubs are not permitted to open. An occupier of premises must not permit the premises to be used for the purposes of a holiday home or a short-term rental for more than 20 persons, unless all those persons are from the same household.

Records and exchanges of information: Any person who is required to record information by this order must keep the record for at least four weeks and must provide the record to the Chief Health Officer on request. Further, the order authorises a government sector agency or a NSW Minister to collect information from, or use or disclose information to, a related agency if they consider it necessary to do so for the purposes of protecting the health or welfare of members of the public during the COVID-19 pandemic.

The amendments on 31 July 2020 permit persons to leave their contact details at a venue by electronically registering their details with Service NSW.

Hospitality venues: A maximum of (the lesser of) 300 persons or one person per 4 square metres indoors or one person per 2 square metres of space outdoors are allowed in a hospitality venue that consist of more than one separate areas. A similar requirement applies to all other hospitality venues. There are also requirements regarding bookings for significant events, for persons to remain seated at premises, and a COVID-19 Safety Hygiene Marshal. Specific directions apply separately to premises on which significant events are held, that is, ensuring that the number of persons on the premises for that event is not more than what is permissible. The latest amendments provide that for significant events on the premises, people are not required to remain seated if they are playing a game (such as pool or darts) that requires them to stand and are not drinking alcohol.

Public Worship: There is a requirement that a maximum of (the lesser of) 100 persons or one person per 4 square metres at a place of public worship.

Auctions, open houses or other inspections: A real estate agent engaged to sell or lease a property must ensure that an auction, open house or other inspection or viewing be conducted in compliance with a COVID-19 Safety Plan that addresses what is required by the approved COVID-19 safety checklist for auction and open homes.

Lord Howe Island: The latest amendments include provisions that an owner or operator of a short-term rental, or tourist and visitor accommodation on Lord Howe Island must develop and comply with a COVID-19 Safety Plan that addresses the matters required by the recent checklist released on 24 September 2020. The plan must be kept and made available for inspection by an authorised office or police on request, and must register the plan with the NSW Government. The same applies for community centres and vessels used for hosting functions or commercial tours at or near Lord Howe Island.

### 6. Public Health (COVID-19 Border Control) Order (No 2) 2020

This order commenced on 16 October 2020 and is substantially the same as its predecessor. The order restricts entry into New South Wales for certain persons. The order prohibits persons entering New South Wales if they have

been in Victoria within the previous 14 days before entry, unless they are an authorised person who holds a current entry permit (if required), and comply with the conditions specified in the direction. The latest version of the direction allows for persons other than a Victorian resident to enter New South Wales by air after transiting at a Victorian airport from another State or Territory, provided they did not leave the terminal while in Victoria.

An authorised person must self-isolate on entering New South Wales for a period of 14 days, and must not leave their usual place of residence or other suitable place of accommodation unless it falls under a specified exemption. The direction also specified requirements for people accompanying authorised persons entering New South Wales. There are further requirements about information being provided if requested by an enforcement officer, to allow a decision to be made regarding whether a person is an affected person and, if so, whether they are authorised to enter New South Wales. The order also specifies when an affected person can enter New South Wales, that is, for the sole purpose of travelling by the most practicable direct route to another state or territory, or to an airport for the purpose of leaving New South Wales.

By amendment commencing on 17 September 2020, the order was amended to ease the restrictions imposed on residents within the Victorian and New South Wales border region. The updates include:

- (a) the permitted purpose condition no longer being required (i.e. a border zone resident is no longer restricted on why they enter New South Wales or Victoria);
- (b) a Victorian border zone resident does not have to comply with Victorian stay at home directions while in the border zone; and
- (c) the border region is expanded to include some areas around Pleasant Hills, Lockhart, Benalla, Bright and Mount Beauty.

It remains a requirement that New South Wales border region residents only go to the Victorian side of the border region and they must not go to a Restricted Area or COVID-19 area of concern. In other words, New South Wales residents can cross the Victorian border, but they must remain within the border region between New South Wales and Victoria as declared by the Minister for Health in the [\*Public Health \(COVID-19 Border Control\) Map \(No 3\)\*](#).

Reasonable steps must be taken to ensure that a person who has been in a Restricted Area or a COVID-19 area of concern does not enter a vessel on the Murray River, except for the purpose of disembarkation.

**Other legislative changes in New South Wales related to COVID-19 includes:**

**7. [\*COVID-19 Legislation Amendment \(Emergency Measures\) Act 2020 No 1\*](#)**

On 24 March 2020, the New South Wales Parliament passed this Act, which makes a range of amendments to existing laws to assist in the continuation and normal operation of businesses and certain other institutions, including, among other things: changes to how courts and tribunals can operate and hear evidence; extensions for

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

specific limitation periods and timeframes; changes to how a regulation can be made for the purposes of altering arrangements for electronic signatures and witnessing; and restrictions to residential tenancy and retail lease laws regarding recovery of possession of property and other similar matters.

### 8. A number of Environmental Planning and Assessment Orders, including:

#### (a) *Environmental Planning and Assessment (COVID-19 Development – Extended Operation) Order 2020*

This direction was made on 25 March 2020 to permit retail premises to trade, and receive deliveries, 24 hours a day. This is to enable grocery stores (such as Coles and Woolworths) to meet increased demand due to COVID-19.

#### (b) *Environmental Planning and Assessment (COVID-19 Development – Health Services Facilities) Order 2020*

This order commenced 1 April 2020 and allows for changes of use to a health services facility and the construction or installation of a structure for a health service facility to be carried out without the need for approval under the Environmental Planning and Assessment Act 1979 (NSW). The Order also allows for such development to be carried out without restrictions as to hours of construction, the frequency or movement of vehicles, noise, or any thing required to be done before the building is occupied.

#### (c) *Environmental Planning and Assessment (COVID-19 Development – Takeaway Food and Beverages) Order 2020*

This order commenced 2 April 2020 and allows existing food and drink premises to cook meals solely for delivery, provided they can abide by social distancing rules. The order also allows food trucks to operate on any land, at any time, provided they have the consent of the landowner.

#### (d) *Environmental Planning and Assessment (COVID-19 Development – Construction Work Days) Order 2020*

This order commenced 2 April 2020 and allows the carrying out of any building work or work, or the demolition of a building or work, on a Saturday, Sunday or public holiday, provided it complies with all other conditions of the development consent, does not involve certain loud activities, and all feasible and reasonable measures to minimise noise are taken. A similar order titled *Environmental Planning and Assessment (COVID-19 Development – Infrastructure Construction Work Days) Order 2020* commenced on 14 April 2020, which permits certain infrastructure construction to be carried out on on a Saturday, Sunday or public holiday.

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

### Penalties

The [Public Health Act 2010 \(NSW\)](#) 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.

On 26 March 2020, the [Public Health Amendment \(Penalty Notices\) Regulation 2020 \(NSW\)](#) allowed on-the-spot fines of \$1,000 for individuals and \$5,000 for corporations to be issued for failing to comply with a Ministerial direction, failing to close premises and failing to comply with a public health order.

On 13 August 2020, the [Public Health Amendment \(COVID-19 Border Control – Transiting ACT Residents\) Regulation 2020 \(NSW\)](#) was made. The amending regulation allows on-the-spot fines of \$5,000 to be given to persons who are transiting through New South Wales to the Australian Capital Territory and fail to comply with the requirements in the Border Control Order.

The New South Wales Government is publishing frequent updates relating to the COVID-19 pandemic, available [here](#).

## Emergency powers: What can government do?

A State of Emergency has been declared in Victoria, pursuant to section 199 of the Public Health and Wellbeing Act 2008 (Vic). The State of Emergency has been extended and we expect it will continue to be extended until the end of the COVID-19 pandemic. This declaration provides the Chief Health Officer with additional powers to do whatever is necessary to contain the spread of COVID-19 and reduce its risk to the health of Victorians, and to exercise public health risk powers and emergency powers contained in the Public Health and Wellbeing Act 2008 (Vic). The emergency powers, which apply throughout Victoria, allow the Government to:

- detain any person or group for as long as reasonably necessary to eliminate or reduce a serious risk to public health;
- restrict the movement of any person within Victoria;
- prevent any person or group from entering Victoria; and
- give any other direction reasonably necessary to protect public health.

On 23 April 2020, the Victorian Parliament passed the COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic). The Act makes numerous amendments to other pieces of legislation and creates additional regulation making powers. The regulations that can be made under this Act include those to implement the residential and commercial tenancy principles agreed by the National Cabinet. The amendments by the Act also include introducing judge-alone criminal trials, WorkCover extensions, and virtual meetings for parliamentarians. There is a sunset clause of six months. On 14 October 2020, the COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current directions in place in Victoria include:

### 1. Direction and detention notice (No 7) – arrivals from overseas

This notice commenced on 19 July 2020 to extend the operation of the previous direction and detention notice that were otherwise due to expire. Persons who arrive in Victoria from overseas on or after 11:59pm 19 July 2020 will be given this 'direction and detention notice', which detains the person at a specified hotel and room number for 14 days. The notice also directs the person to proceed immediately to the vehicle provided to take them to a hotel and then to the specified room once they have arrived at the hotel.

The notice states the person is not permitted to leave except in an emergency situation or where the person has been granted permission to do so for the purposes of attending a medical facility to receive medical care, where it is reasonably necessary for the person's physical or mental health, or on compassionate grounds. The person must also not allow other persons to enter the room, except where the other person is being detained with them or there is another specific purpose, such as where the person is providing food or for medical reasons.

The notice also requires a person who refuses to be tested to be detained for a further period of 10 days after the end of the detention period.

It is noted that international passenger flights are currently diverted from Victoria.

### 2. Hospital Visitors Direction (No 14)

This direction commenced at 11:59pm on 8 November 2020, and revokes the previous direction of the same title. The new version is substantially the same as the previous version and extends the relevant period to 11:59pm on 6 December 2020. The new version now permits one household per day to visit hospital patients, removed the time limit on visits to patients in maternity wards and provides that persons aged under 16 are no longer excluded from entering or remaining at a hospital where they are permitted to do so.

The directions require hospitals to take reasonable steps to facilitate electronic communication to support the physical, emotional and social wellbeing of patients and their parents, guardians, partners, carers and support persons. The restrictions are similar to those imposed in the Care Facilities Directions, prohibiting persons from entering or remaining on the premises of a hospital unless they are a patient, worker or visitor, with visitors only being permitted to enter for specified reasons listed in the direction. Visitors now include parents, carers or guardians of patients under 18 years of age (limited to two parents, carers or guardians at any one time for a child under 18 with no time limit). For patients over the age of 18, a visitor may attend for the purpose of providing emotional, cultural, spiritual or social support that cannot be reasonably provided via electronic contact. Certain persons are entirely prohibited from entering a hospital, such as if they have been diagnosed with 2019-nCov and have not yet been given clearance from isolation, have in the last 14 days returned from a place outside Australia or had known contact with a person who has been diagnosed with 2019-nCov, or have a temperature higher than 37.5 degrees or symptoms of acute respiratory infection.

## Emergency powers: What can government do?

2020 passed the upper house of Victorian parliament, having previously passed the lower house on 17 September 2020. The Bill has now gone to the Governor to receive royal assent. The purpose of the Bill is to extend the operation of, and introduce new, temporary modifications to the laws of Victoria, for the purpose of responding to the COVID-19 pandemic. The Bill will extend until 26 April 2021

On 2 August 2020, Victoria's Premier declared a State of Disaster pursuant to s 23(1) of the Emergency Management Act 1986 (Vic) for the whole of Victoria in relation to COVID-19. A declaration of a State of Disaster cannot last more than one month, but another declaration may be made before, at or after the end of the one month period. During a State of Disaster, the Minister for Police and Emergency Services has broad powers, including to:

- direct any government agency to do (or refrain from doing) any act, or to exercise or perform (or refrain from exercising or performing) any function, power, duty or responsibility;
- to suspend the operation of any legislation if it would inhibit response to or recovery from the disaster;
- take possession and make use of any person's property;
- control and restrict entry into, movement within and departure from the disaster area; and
- compel the evacuation of any or all persons from the disaster area.

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Visitors are constrained to more defined categories with limits specified on their visits. Hospitals are required to keep a record of the contact details, date and time of persons who enter or remain at a hospital for at least 28 days.

### 3. Care Facilities Directions (No 16)

These directions commenced at 11:59pm on 8 November 2020, and revoke the previous direction of the same title. The new version extends the relevant period to 11:59pm on 6 December 2020. The new version also now permits one household per day to visit residents in care facilities state-wide, removes the restriction on hairdressers attending a care facility in metropolitan Melbourne, permits parents and guardians to make declarations on behalf of children visiting care facilities and permits family members to visit children in care facilities. Family members are taken to include parents, guardians and persons with temporary care of a child, and people with kinship ties who may not be blood relatives.

The directions provide that persons required to self-quarantine under the *Diagnosed Persons and Close Contact Directions (No 13)* are excluded from entering a care facility. Despite this, persons who have arrived from overseas during the 14 days immediately preceding entry to the care facility, may be permitted to enter the care facility in order to provide end of life support. In order to do so, an exemption must be granted by both the Chief Health Officer and the Director of the care facility. If granted the authorisation to enter the care facilities, the person must comply with any directions or conditions to which that authorisation is subject.

The category of SARS-CoV-2 symptoms has been expanded that will result in a person being excluded from entering or remaining on the premises of a care facility. Symptoms include a fever (>37.5 degrees) or consistent fever of less than 37.5 degrees (such as night sweats or chills), acute respiratory infection, loss of smell and loss of taste.

People under the age of 16 are no longer excluded from entering or remaining at a care facility. Operators of care facilities are now required to require visitors to make written declarations prior to entering a care facility. Visitor declarations made prior to entering a facility must state whether the visitor is free of SARS-CoV-2 symptoms, whether they have been in contact with a confirmed case in the previous 14 days and if they are currently required to self-isolate or self-quarantine. The directions provide circumstances which permit certain workers who might otherwise be excluded from entering, or remaining on, the premises of a disability residential service or an eligible SDA enrolled dwelling, to continue work in that premises where they have been authorised to do so by the Director of the particular facility and the CHO (or authorised person). The reasons for which a person may visit a resident in a care facility have been amended to include the provision of emotional, cultural, spiritual or social support that could not otherwise be provided electronically or through other non-contact means. The limit to one person (being a parent, carer or guardian) visiting at any time has now been increased to two. Care facilities are now required to take reasonable steps to provide electronic communication means to support the physical, emotional and social wellbeing of residents and their parents, guardians, partners and support persons. Care facilities includes alcohol and drug residential services,

## Emergency powers: What can government do?

On 15 September 2020, the Victoria's Premier announced a [\*Roadmap to Reopening\*](#) for Metropolitan Melbourne and Regional Victoria.

- Metropolitan Melbourne is currently at the third step (as at 27 October 2020); and
- Regional Victoria is currently at the third step (as at 15 September 2020).

On 8 November 2020, the naming convention used in each of the directions to refer to the virus was changed from 2019-nCov to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

homelessness residential services, residential aged care facilities, disability residential services, eligible SDA enrolled dwellings, secure welfare services, short-term accommodation and assistance dwelling, supported residential services, and the Thomas Embling Hospital. An operator of a care facility have a duty to take all reasonable steps to ensure a person does not enter or remain on the premises of the care facility, unless they are a permitted resident, worker or visitor.

Workers and visitors may nevertheless be prohibited from entering or remaining on the premises of a care facility for a number of reasons stated in the directions, including if they have some specified symptoms of SARS-CoV-2 or been in contact with a person who has SARS-CoV-2, or have been tested for SARS-CoV-2 and have not yet received the results of that test. The directions also permit workers who would otherwise be excluded from entering and remaining on the premises to do so where authorised by the Director of the facility and the Chief Health Officer, subject to conditions. Persons are no longer prohibited from entering or remaining on the premises of a care facility if they do not have an up to date vaccination against influenza.

In addition to the changes listed above, the directions have also changed the meaning of a 'visitor' and prescribes limits on these visits. The categories of visitors are listed in the directions, and includes family members of residents under 18 years of age, a 'nominated person' of the resident under the *Mental Health Act 2014 (Vic)*, persons providing essential care and support, persons providing language support; persons providing end of life support, prospective residents, persons accompanying prospective residents, persons visiting the resident alone or with any other person who reside at the same premises. The directions also prescribe limits on these visits, such as limits on the number of visitors at one time or in one day, and limits on the duration of visits.

#### 4. [\*Diagnosed Persons and Close Contacts Directions \(No 13\)\*](#)

These directions commenced at 11:59pm on 8 November 2020, revoke the previous direction of the same title and continue restrictions requiring persons diagnosed with COVID-19 to self-isolate and persons residing with that diagnosed person to self-quarantine. The relevant period under the new directions ends at 11:59pm on 6 December 2020. The new directions clarify the circumstances in which a close contact's period of self-quarantine may be extended as a result of a failure to take a test for COVID-19.

Under the directions, a person who is a close contact of a confirmed COVID-19 case notify the Department of the premises at which they have chosen to self-quarantine, along with the name of any other person residing at those premises. The directions provide that in the event an authorised officer requests that a close contact take a COVID-19 test during their self-quarantine, and the person refuses to do so or otherwise fails to take the test, then that person's period of self-quarantine is extended by 10 days. The directions also provide for the circumstances in which a person may be determined to be a close contact to include where the person has close contact with a diagnosed person.

Under the directions, a person who is diagnosed with COVID-19 must self-isolate until they are given clearance from self-isolation. They must notify others who reside at the premises where they are self-isolating that they have been diagnosed with COVID-19 and also notify the Victorian Department of Health and Human Services of the address of the premises where they are self-isolating and the names of others residing at the premises. A person is given clearance from self-isolation when an officer of the Department makes a determination that the person meets the criteria for discharge from self-isolation under the National Guidelines.

Others who reside with a person who is diagnosed with COVID-19 must self-quarantine until 14 days after the person diagnosed with COVID-19 receives clearance from isolation. Close contacts of persons who have been diagnosed with COVID-19 must also self-quarantine for a period specified in a notice given to them. Persons self-isolating or self-quarantining must not leave or allow others to enter the premises except in circumstances specified in the directions.

The directions also permit persons who are required to self-quarantine to visit a patient in a hospital when permitted to do so by the Hospital Visitor Directions, and allows persons required to self-isolate or self-quarantine to receive assistance with personal care or household assistance if needed by reason of the person's age, disability or chronic condition.

The directions remove the permission for persons self-isolating or self-quarantining to leave the premises for exercise. The directions allow for an additional exemption to leaving premises when under self-isolation/self-quarantine, for the purposes of being tested for COVID-19.

5. *Restricted Activity Directions (Victoria)*

These directions commenced at 11:59pm on 8 November 2020 and revoke and replace the *Restricted Activity Directions (Melbourne)* and the *Restricted Activity Directions (Non-Melbourne) (No 11)*. The restricted activity period remains in place and continues until 11:59pm on 6 December 2020. The directions have now been renamed to encompass all of Victoria and provide for circumstances in which the following can take place:

- (a) outdoor sport and physical recreation at physical recreational facilities;
- (b) indoor religious gatherings or ceremonies;
- (c) operation of community facilities;
- (d) outdoor community sport;
- (e) operation of beauty and personal care facilities;
- (f) outdoor service and limited indoor service at food and drink facilities;
- (g) operation of food courts;
- (h) outdoor live music performance at a food and drink facility;
- (i) operation of an animal facility; and

(j) licensed tourism services.

Pubs, bars, clubs, nightclubs and hotels are only permitted to operate for the purposes of operating a bottle shop, operating a retail betting venue (pursuant to clause 8(12) of the direction), operating a gaming machine area (pursuant to clause 8(14) of the direction), providing food or drink (pursuant to clause 12 of the direction), providing accommodation (pursuant to clause 13 of the direction), or providing a venue for music (pursuant to clause 19 of the direction). Such facilities are permitted to operate a retail betting venue provided they comply with the density quotient, members of the public are served on a seated service basis only and the operator complies with the signage, records and cleaning requirements for licensed premises.

Physical recreation facilities are now permitted to operate but only in accordance with the directions. Such facilities include predominantly indoor sport facilities (gyms, health clubs, yoga studios, etc), predominantly outdoor facilities (golf club, tennis club, lawn bowls, etc), personal training facilities, play centres, skateparks and trampolining centres. They do not include outdoor skateparks, outdoor trampolining centres, outdoor communal exercise equipment, or swimming pools.

Food and drink facilities may operate provided the number of members of the public at a food court indoors is limited to the lesser of the number calculated by dividing the total publicly accessible area of the indoor space by 8 (in square metres) or 25% of the maximum fixed seating capacity of the food court, and the total people at each table is limited to two. At an outdoor space at the food court, the number must be limited to the lesser of the number permitted by the density quotient, or 50 total people.

6. Workplace Directions (No 9)

These directions commenced at 11:59pm on 8 November 2020, revoke the previous directions of the same name and extend the directions to apply until 11:59pm on 6 December 2020.

The new directions are substantially the same as the previous version and alter the records requirement and the definition of the density quotient. The previous version clarified that the density quotient does not apply to childcare or early childhood services in addition to schools. Importantly, the density quotient still applies to spaces in schools or early childhood service centres that are only used by staff and any publicly accessible areas. Workplaces can calculate the density quotient by dividing the total accessible space by two for outdoor spaces, by four for other shared spaces and by eight for indoor spaces of a food court.

An employer must not permit a worker to perform work at the premises if it is reasonably practicable for the worker to work at their place of residence or another suitable premises. When at the work premises, workers must wear face coverings unless an exception applies. A COVID Safe Plan must be in place (a template can be accessed online) and be adhered to. There are also record keeping requirements for employers in circumstances where workers or visitors attend on the premises for longer than 15 minutes (at a minimum). These requirements may now be met by having

workers or visitors record their visit to the Work Premises using a digital system provided by the Service Victoria CEO (and other parts of the Victorian Government for that purpose). Where a digital system is not utilised, employers must not collect personal information unless that information is necessary to meet the requirements of the direction. Employers must also use reasonable endeavours to notify the person whose information is being collected that the primary purpose of the collection is for contact tracing, and that their information may be collected and stored by the Victorian Government for this purpose. A density quotient as defined must be adhered to at the work premises, and there are also requirements for signage in particular circumstances. An employer has obligations in relation to the cleaning of the premises on a regular basis, as explained in detail in the directions. The directions generally prohibit work across multiple sites.

The directions specify a process that must be followed by employers for suspected or confirmed cases of COVID-19 at the work premises, which includes for suspected cases advising the worker to self-isolate immediately and to be tested as soon as practicable. Further, the directions state the employer must take all reasonably practicable steps to manage the risk, including cleaning areas in which the employee worked and high-touch surfaces. If an employer becomes aware of a confirmed case, they must, in addition to several other requirements, notify the Department, WorkSafe Victoria and the organisation's health and safety representative. A previous version of the directions clarified the meaning of the 'Relevant Period', being the period of time relevant in determining when an employee may have been capable of transmitting the virus to others. A number of the employer's obligations in relation to a confirmed case of COVID-19 at the Work Premises depend on this Relevant Period (eg, cleaning of the areas the employee worked during the Relevant Period; identifying the persons who during the Relevant Period would be close contacts with the person, etc).

7. *Workplace (Additional Industry Obligations) Directions (No 12)*

These directions commenced at 11:59pm on 15 November 2020, revoke the previous directions of the same name, and end at 11:59pm on 6 December 2020. The latest version clarifies the requirements for additional health screening for abattoirs and meat processing facilities, poultry processing facilities and seafood processing facilities.

The directions apply to 'Additional Obligation Industries' (defined in the direction to include poultry processing; abattoirs and meat processing facility; seafood processing; supermarkets; warehouse and distribution centres; manufacturing facilities; and care facilities). Employers are obligated to use reasonable endeavors to protect the personal information of workers (kept under this direction) from use or disclosure other than in accordance with a request from an Authorised Officer, and a requirement to destroy the information as soon as reasonably practicable, unless another statutory requirement permits or requires the information to be retained.

High risk food industries (including poultry, abattoirs, meat processing, seafood and supermarkets) are subject to additional health screening requirements, namely to designate a COVID Marshall and group workers together consistently so different groups remain separate.

All Additional Obligation Industries Work Premises must have a High Risk COVIDSafe Plan, which is comprised of a COVIDSafe Plan, an Additional Obligation Industry attachment, and any relevant guidance issued by the Victorian Government. An employer and the employer's workers must comply with the High Risk COVIDSafe Plan. Care facilities are exempt from this requirement, however are still required to abide the records-keeping obligations as well as obligations in relation to the collection of information pursuant to the record-keeping obligations.

The directions specify the requirements for Work Premises in specific Additional Obligation Industries. For example, the directions requires these industries to ensure its workers wear PPE as per the guidance in the direction; have a cleaning log on display in all shared workplaces and publicly accessible areas; require workers to declare certain COVID-19 related issues as defined; and ensure workers do not attend a work premises if tested for COVID-19 because they are symptomatic whilst awaiting the result of that test or while their symptoms persist. There are also additional health screening for abattoirs and meat processing facilities, poultry processing facilities and seafood processing facilities, as set out in the directions. The directions also refer to obligations for other forms of facilities, sites and centres as well.

Care facility employers are obliged to require workers to declare in writing at the start of each shift that the worker is free of SARS-CoV-2 symptoms, and has in the preceding 14 days not been in contact with a confirmed case (except in the course of their duties while wearing appropriate PPE) and is not currently required to self-isolate or self-quarantine. Care facility employers are now required to carry out surveillance testing for SARS-CoV-2 on its employees where directed by the Health Officer or their delegate and keep records of this testing, as well as comply with cleaning and PPE requirements. Contractors or employees are not permitted to enter the facility if they have worked at another care facility on or after 4 October 2020 and a confirmed case was present at that particular facility at the time. A 14-day rest period is now required to be taken by workers who have worked at a care facility with an active case prior to working at another care facility in Victoria. Exceptions apply once 14 days have elapsed and the person tests negative to 2019-nCoV within 4 days of them attempting to enter the facility.

#### 8. Stay Safe Directions (Victoria)

These directions commenced at 11:59pm on 8 November 2020 and revoke both the Stay Safe Directions (Melbourne) and Stay Safe Directions (Non-Melbourne). These new directions require everyone residing in Victoria to wear a face covering and limit interactions with others by restricting gatherings. The stay safe period now ends on 6 December 2020.

These directions set out the framework for persons to stay safe while leaving the home, to give effect to all areas of Victoria, progressing to step four in the roadmap to reopening announced by the Premier of Victoria.

A person can leave their premises, subject to the following requirements:

- (a) people must continue to comply with the face covering requirement (unless an exemption specified in the directions applies);

- (b) persons leaving to go to work or for higher education services must comply with the requirements under this direction;
- (c) people must comply with the restrictions on gatherings under this direction; and
- (d) people must otherwise abide by the Restricted Activity Directions (Victoria).

In terms of private gatherings, it remains a requirement that a person must not enter a premises in which they do not ordinarily reside, subject to specified circumstances (such as to undertake work or education services, to provide childcare, being required or authorised by law or it is necessary to enter for a medical or emergency purpose). However, the direction permits one person to visit another premises for a social gathering (provided the premises does not have more than two visitors per day for social gatherings) provided no one else is at the premises besides those who ordinarily reside there (and any person who is in a relationship with someone residing at the premises) and no more than one other person who is also visiting for a social gathering.

In terms of public gatherings, it remains a requirement that a person must not arrange to meet or organise or intentionally attend a gathering of more than nine other persons. However, this requirement is subject to a number of more relaxed exceptions including for religious gatherings, weddings and funerals.

The relaxed exceptions are set out in the direction, and are briefly summarised as follows:

- (a) Religious gatherings are permitted with no more than nine other persons (indoors) and 49 other persons (outdoors), plus one faith leader;
- (b) Weddings are permitted if it involves only the two persons being married, the authorised celebrant, the photographer and no more than ten guests including the two persons witnessing the marriage;
- (c) Funerals are permitted if it involves no more than 20 members of the public (excluding infants under the age of one and subject to the density quotient) if held indoors and no more than 50 members of the public if held outdoors; and
- (d) End of life activities (for the person experiencing end of life and either any other person who resides at the same premises as that person or 10 other people) are permitted if a person is experiencing end of life (death expected within days, or is at risk of death from a sudden acute event but does not mean where a person has an advanced, progressive, incurable condition meaning the person is expected to die within 12 months), and the CHO or Deputy CHO may permit them to conduct an end of life activity.

#### 9. Roadmap to reopening – Victoria

The Victorian Government has amended its 'roadmap to reopening' to merge the metropolitan Melbourne and regional Victorian roadmaps, thereby creating the same restrictions across the entire State.

The roadmap can be summarised as 'four steps' to reopening, for which the State is now at the third step:

- (a) *First step.* From 14 September, stage 4 restrictions will continue for another two weeks, but there will be minor relaxations of the restrictions, including permitting two hours outdoors for exercise and small public outdoor gatherings, the reopening of playgrounds and the night-time curfew is expanded from 8pm to 9pm.
- (b) *Second step.* From 28 September, provided the average daily cases is between 30 and 50, public gatherings will increase to allow people from two households to gather, schools can host a staged return, weddings can be held for compassionate reasons, outdoor pools and childcare can reopen, and small outdoor training and religious gatherings can recommence.
- (c) *Third step.* From 26 October, provided the daily cases is less than five for the previous two weeks, the curfew will be lifted, there will be no restrictions on reasons or distance when leaving home, outdoor public gatherings and weddings will be increased to 10 persons, up to five visitors will be allowed in the home, hospitality businesses can reopen for predominantly outdoor seated service and there will be staged return of outdoor non-contact adult sport.
- (d) *Last step.* Once there are no new cases for the previous two weeks, outdoor public gatherings will be increased to 50 persons, up to 20 visitors will be permitted in a home, all retail can open, hospitality venues can have up to 20 persons for seated service, gyms and other indoor recreation centres can reopen, weddings and funerals can have up to 50 persons outdoors and 20 indoors, and accommodation providers can open fully.

As of 8 November 2020, Victoria has increased reopening for sport, recreation, ceremonies and special occasions. The Victorian Premier has announced that, subject to meeting the requisite trigger points, Victoria will enter the last step from 22 November 2020.

#### Penalties

Persons who do not comply with the above directions are subject to a maximum penalty of 120 penalty units for an individual, amounting to **\$19,826.40** at the time of writing and 600 penalty units for a corporation, amounting to **\$99,132.00** at the time of writing.

The [Public Health and Wellbeing Amendment \(Infringements\) Regulations 2020 \(Vic\)](#) introduced on-the-spot fines of \$1,652.20 for individuals and \$9,913.20 for failing to comply with a public health or emergency direction.

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

From 4 August 2020, a *new infringement offence* for a breach of the Chief Health Officer directions will be introduced to target those people who are failing to self-isolate after testing positive to COVID-19 or being identified as a close contact. A fine of \$4,957 can be issued to a person who is found to breach the requirement to be self-isolating for a second or subsequent time – the current highest on the spot infringement that can be issued to a person for breaching public health directions. This was introduced by the *Public Health and Wellbeing Further Amendment (Infringements) Regulations 2020 (Vic)*.

The Victorian government is publishing frequent updates regarding the COVID-19 pandemic, available [here](#).

## Emergency powers: What can government do?

A public health emergency was *declared*, pursuant to section 119 of the *Public Health Act 1997 (ACT)* on 16 March 2020. The public health emergency has been *extended* and we expect it will continue to be extended until the end of the COVID-19 pandemic. COVID-19 has also been *declared* a notifiable condition pursuant to section 101 of the *Public Health Act 1997 (ACT)* until 3 August 2020. On 31 July 2020, the temporary notifiable condition determination was replaced by the *Public Health (Notifiable Conditions) Determination 2020*, which lists, among other things, COVID-19 as a notifiable condition.

The *Public Health Act 1997 (ACT)* gives the Minister for Health and the ACT Chief Health Officer emergency powers to respond to the COVID-19 outbreak. While an emergency declaration is in force, the ACT Chief Health Officer may take action or give directions she considers necessary or desirable to alleviate the emergency. This includes:

- reduction, removal or destruction of any threat to public health, including directing a person to undergo a medical examination or to remain within a specified area;
- segregation or isolation of any person within the ACT;
- evacuation of any persons from the ACT;
- prevention or permission of access to the ACT; and
- direction in relation to the movement of vehicles within the ACT.

On 8 April 2020, the *COVID-19 Emergency Response Act 2020 (ACT)* commenced, which makes amendments to 20 pieces of legislation. The amendments include providing flexibility for the hearing of evidence in court, prohibiting the sale of

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current directions in place in the Australian Capital Territory include:

1. *Public Health (Residential Aged Care Facilities) Emergency Direction (No. 3) 2020*

This direction commenced at 11:59pm on 26 June 2020, revokes the previous direction of the same title and maintains restrictions on who can enter or remain on the premises of a residential aged care facility in the ACT. The directions are very similar to those currently implemented in Queensland. The latest version of the directions specifies that residents of the facility are permitted to enter and remain on the premises of the facility; removes the prohibition on persons under the age of 16 years from entering the premises; permits a child under 6 months of age to enter the facility even if they do not have an up to date vaccination against influenza; and removes the time limitation on care and support visits for persons providing care and support (service providers are still limited to no more than 2 hours, and there may only be a maximum of two persons at the same time).

2. *Public Health (COVID-19 Interstate Travellers) Emergency Direction 2020 (No 3)*

This direction commenced at 11:59PM on 6 November 2020 and revokes the previous direction under the same name. It directs that an affected person must not enter the Australian Capital Territory unless they fall under one of the specified exemptions (e.g. transiting, urgent medical, law enforcement or emergency purposes). A person who has undergone an unbroken 14-day period of hotel quarantine following a flight that originated from overseas may also enter the ACT. If a person tests positive to COVID-19 during their period of quarantine, they must comply with the *Public Health (Self-Isolation) Emergency Direction 2020 (No 4)*.

An affected person is a person who has been in Victoria at any time in the previous 14 days excluding a person who is ordinarily a resident of the Australian Capital Territory. A person who does fall under the latter, must notify ACT Health prior to their arrival, travel immediately to designated premises to undertake a period of quarantine and not leave that premises other than in an emergency, not allow anyone to enter those premises unless under certain circumstances, and comply with requests from authorised persons to produce proof of ID.

Risk mitigation guidance for affected persons who transit into or through the ACT by road for business or freight purposes is set out in Attachment A to the direction.

3. *Public Health (Self-Isolation) Emergency Direction 2020 (No 4)*

This direction commenced at 9:00 AM on 9 October 2020, revokes the previous direction of the same title and maintains previous requirements, including quarantining requirements for close contacts of a person who is diagnosed with COVID-19. This direction is substantially the same as its predecessor. The direction now includes a comment by the CHO confirming they have had regard to relevant human rights in making the direction. The direction maintains its quarantining requirements for persons who have been diagnosed with COVID-19, which requires the person to self-isolate in suitable premises until they receive a clearance from self-isolation from an authorised medical officer. The direction also requires persons who have been notified by ACT Health that they are a close contact to self-isolate until they receive clearance from isolation. As with persons diagnosed with COVID-19, close contacts must inform others

## Emergency powers: What can government do?

firearms, prohibiting commercial and residential lease terminations or recoveries of possession, changes to long service leave, and allowing trial by judges (ie without juries).

On 31 July 2020, the Australian Capital Territory introduced a Code of Practice for reporting of notifiable conditions. The Code of Practice makes it an obligation on certain persons, including medical practitioners, pathologists, nurses and hospitals, to notify the Chief Health Officer if they believe a person has or may have a notifiable condition. The Code of Practice, which is given effect under the *Public Health Act 1997 (ACT)*, sets out minimum standards and guidelines for the purposes of the Act.

On 14 August 2020, the Australian Capital Territory introduced the Public Health (Quarantine Fees) Determination 2020. Essentially, the Determination requires particular fees payable (by a person, to the Territory) in relation to a person required to quarantine for the standard quarantine period. The standard fee for an adult is \$3,000.00. This is where persons are quarantined in a hotel room, serviced apartment or another approved accommodation.

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

- of their status as a close contact or a confirmed case, must provide proof of identification, must not leave the premises or permit any other person to enter the premises other than for the permitted reasons specified in the direction.
- Public Health (Returned Travellers) Emergency Direction 2020 (No 8)*

This direction commenced at 9:00 AM on 9 October 2020, revokes the previous direction of the same title and maintains quarantining requirements for persons arriving in Australia from overseas. This direction is substantially the same as its predecessor. The latest direction now includes a comment by the CHO confirming they have had regard to relevant human rights in making the direction. The direction requires a person who enters the Australian Capital Territory (other than a diplomatic visa holder) following a flight that originated from a place outside Australia to travel directly to premises approved by the Chief Medical Officer to reside in until clearance from quarantine is given by an authorised medical officer. The directions state how members of an international flight crew and unaccompanied minors (whom are both exempt from the standard mandatory quarantining requirements) must quarantine. Members of an international flight crew must quarantine in their usual place of residence or a hotel room for either a period of 14 days or until their next flight departing the Australian Capital Territory. An unaccompanied minor is permitted to quarantine in approved premises, with all persons in that household being required to quarantine in that premises for a period of 14 days.
  - Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 13)*

This direction commenced at 9:00 AM on 13 November 2020, revokes the previous direction of the same title and makes changes to the directions on gatherings, businesses and undertakings imposed by that previous direction. The direction includes a comment by the CHO confirming they have had regard to relevant human rights in making the direction. The direction contemplates the use of the Check In CBR app developed by ACT Health for contact tracing purposes as an alternative to the provision of contact details by each person attending the premises.

*Non-Essential Gatherings:* The direction prohibits an outdoor gathering that exceeds 1 person per 2 square metres, or 500 people per usable outdoor space, whichever is lesser. In non-residential premises, outdoor gatherings should not exceed the sum of 1 person per 2 square metres of space or a maximum of 25 people across the whole premises. For indoor gatherings, that total is 1 person per 4 square metres per usable indoor space up to 500 people, whichever is greater. There are a number of exempt gatherings, including, among other things, for emergency purposes, for the provision of medical care or supplies, at supermarkets, at an office building, at a hotel, at certain educational facilities (including an end of year event at a school), at a court or tribunals, at medical or health facilities, for public transport or at an airport.

*Non-Essential Business or Undertaking:* The direction permits a non-essential business or undertaking to operate, provided it complies with the updated requirements for a non-essential business or undertaking, and does not have

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

gatherings exceeding 1 person per 4 square metres or the maximum person limit (excluding a worker) per usable space in the premises, or 25 people across the whole premises (for licenced premises) or 50 people across the whole premises if it is a hotel providing food or beverages. Similarly, restaurants, cafés and canteens now have a maximum of 500 people permitted in either an indoor or outdoor space with a limit of 1 person per 2 square metres for indoor space, and 1 person per 4 square metres for outdoor spaces. The direction provides a list of businesses or undertakings defined as being 'non-essential'; however, many of these also have specific exceptions and requirements. The latest directions specify that all non-essential businesses and undertakings must develop and adhere to a COVID-19 Safety Plan (as defined); produce it when requested by an authorised person; display a sign specifying the maximum occupancy; and ask that each person who attends the business or undertaking record their attendance via the CBR app (as defined) or provide specific details (i.e. first name and phone number along with date and time of attendance).

### Penalties

The maximum penalty for failing to comply with any of these directions, without a reasonable excuse, is **\$8,000** for an individual, and \$40,500 for a body corporate. For a body corporate that is a utility the maximum penalty is **\$1,620,000**.

The Australian Capital Territory Government is publishing frequent updates regarding the COVID-19 pandemic, available [here](#).

## Emergency powers: What can government do?

On 15 March 2020, a public health emergency was declared under the Public Health Act 2011 (SA). The public health emergency has been extended and we expect it will continue to be extended until the end of the COVID-19 pandemic. The Chief Executive must take any necessary action to implement the Public Health Emergency Management Plan and cause such response and recovery operations to be carried out as he or she thinks appropriate.

In addition to the public health emergency, on 22 March 2020 a Declaration of a Major Emergency was made under the Emergency Management Act 2004 (SA). As with the public health emergency, we expect the Major Emergency to continue being extended until the end of the COVID-19 pandemic. The most recent extension has been made for a period of 28 days, commencing on 14 November 2020.

Powers that may be exercised under that Act, including powers to:

- make directions to property owners;
- direct or prohibit the movement of persons;
- direct a person to remain isolated or segregated from other persons, or to take other measures to prevent the transmission of a disease;
- direct a person to undergo medical assessment;
- direct a person to stop any work or close any premises; and
- require information be provided.

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current directions in place in South Australia include:

1. *Emergency Management (COVID-19) (Isolation Following Diagnosis or Close Contact) Direction 2020*  
Consistent with other states and territories, this direction requires people who have been diagnosed with COVID-19 to self-isolate. A person is to remain at the premises except for the purposes of obtaining medical care or medical supplies, in any other emergency situation, or for any reason approved in advance by the State Coordinator, his delegate or an authorised officer. A person isolating must also ensure others do not enter the premises, unless they usually live at the premises, they are also complying with a direction to isolate, or for medical or emergency purposes. Further, the direction allows an authorised officer to direct a person who has had, or is likely to have had, close contact with a person who has been diagnosed with COVID-19 to remain isolated and segregated from other persons.
2. *Emergency Management (Continuation of Overseas Travel Self-Quarantine)*  
This direction commenced 28 March 2020 and continues orders made under the previous self-quarantine following overseas travel directions.
3. *Emergency Management (Prohibition of Point of Care Serology Tests) (COVID-19) Direction 2020*  
This direction commenced on 2 April 2020 and prohibits the use of a point of care serology (blood) test (including an assay or device) as a tool to detect or diagnose COVID-19. The direction does not apply to a person employed or engaged in the provision of pathology services within SA Pathology or public health services within the Department of Health and Wellbeing.
4. *Emergency Management (Reporting on COVID-19 Testing No 2) Direction 2020*  
This direction commenced at 1:40pm on 5 June 2020 and imposes a number of requirements on pathology services testing for COVID-19. The direction, among other things, imposes a number of quality and safety controls on pathology laboratories, requires pathology services to advise the Chief Public Health Officer of details of each COVID-19 test conducted, and requires the pathology service to notify a person who has been tested for COVID-19 the result of that test in a timely manner.
5. *Emergency Management (Residential Aged Care Facilities No 13) (COVID-19) Direction 2020*  
The latest version of the direction commenced on 17 November 2020 at 12:01 AM and revokes the previous directions of the same name. In general, the direction imposes restrictions that are largely similar to those imposed in other jurisdictions. In the latest version, the definition of a care and support visit is limited to one person, or two persons together. Further, the number of care and support visits is limited to one per day, unless an additional care and support visit is approved by the operator of the facility. Persons entirely prohibited from entering or remaining on an aged care facility include those who have arrived from a place outside South Australia which was not a low community transmission zone arrival, those who have been in contact with a confirmed case of COVID-19 within the last 14 days, and those who have not been vaccinated against 2020 season influenza (from 1 May 2020) except if they are unable to receive the vaccine. Excluded persons also include those with specified COVID-19 symptoms, and as per the latest

direction, a person who has undertaken a COVID-19 test and is awaiting the test result (unless the person submitted to the COVID-19 test in accordance with routine testing required to be undertaken under a direction relating to cross-border travel). The direction also includes a restriction that residents who leave the facility after the direction is in effect are not permitted to re-enter the facility, unless in circumstances specified in the direction. The directions allow for a person, despite the general prohibition against a person who has not been in a low community transmission zone in the last 14 days before arriving in South Australia, to enter a facility. Further, persons who are not ordinarily residents of South Australia or ordinarily residents in Victoria within 70 kilometres of a South Australian border, must not enter a facility.

The directions, among other things:

- (a) allows persons who are providing professional services, other than those necessary for the effective operation of the facility, to enter and remain on the facility;
- (b) clarifies that end of life support is available for person's who death is imminent and likely within two weeks;
- (c) allows up to two persons to enter for a 'prospective resident visit', being a visit of no more than two hours for the purposes of considering whether a person holding a valid Aged Care Assessment Team approval for residential aged care will become a resident at the facility;
- (d) excludes persons from entering if they have had a history of fever or chills in the preceding 72 hours, or the loss of taste or smell; and
- (e) additional limitations and requirements in relation to personal, nursing, medical and allied care apply from 27 August 2020, as well as added obligations for operators of facilities in this context. Further, an operator of a facility must have adopted a Workforce Management Plan that is compliant with the directions. An operator of a facility must also submit a COVID-19 Infection Control Plan to the Department, as described in the directions.

The requirement to wear PPE whilst providing personal care to residents has been removed, unless that person is awaiting a COVID-19 test result or has been in contact with a confirmed case of COVID-19. Workforce Management Plans must identify if, and where, personal care workers have provided personal care to residents of another aged care facility, and make the operator aware of this information. The direction has amended the definition of low community transmission zone to include New Zealand, New South Wales, as well as the Australian Capital Territory, the Northern Territory, Queensland, Tasmania and Western Australia.

6. *Emergency Management (Cross Border Travel No 18) (COVID-19 Direction 2020)*

The latest version of the direction commenced on 4 November 2020 at 12:01 AM, and revokes the previous direction of the same title, continues to prohibit persons entering South Australia from Victoria unless they are an 'essential traveller', and allows persons to enter South Australia from a place outside South Australia (other than Victoria) subject to compliance with 'self-quarantine requirements'. However, entry from Victoria is now permitted if a person is only transiting through South Australia via certain highways and main roads specified in the direction.

The directions define 'low community transmission zone arrival' to permit a person to enter South Australia from a low community transmission zone, which includes, New South Wales, the Australian Capital Territory, the Northern Territory, Tasmania, Western Australia, New Zealand and Queensland.

The direction requires persons arriving in South Australia to isolate for 14 days (and a further 10 days if a person refuses to submit to a COVID-19 test). Persons arriving from overseas must reside and remain at a place determined by an authorised officer for 14 days (and if the person arrives via a connecting flight through a low community transmission zone, the quarantine period will start on the date they arrived in that zone, not the date of arrival in South Australia). The direction does not apply to persons who do not leave an airport or do not disembark a vessel. These restrictions also do not apply to 'essential travellers', which are defined in the direction. The directions exclude persons who arrive from, and in the last 14 days have only been in, a low community transmission zone from the quarantining requirements of the direction.

The direction requires certain persons who are permitted to enter South Australia to wear a face mask for the first 14 days after their arrival in South Australia. The direction also requires persons travelling from New South Wales, the Australian Capital Territory and Victoria, and returning South Australians who are non-essential travellers to undergo mandatory COVID-19 testing on days 1 and 12 after entry into South Australia. There is an exclusion to this requirement for emergency services workers, cross border community members, seasonal workers in an essential sector, commercial transport and freight (general and Victoria resident) and remote or isolated workers and persons under the age of 16 years, if they produce on request evidence of a COVID-19 test or result relating to a test undertaken within the preceding 7 days. Persons entering from Victoria upon the end of the school or tertiary education year who previously departed South Australia to study in Victoria may now also enter provided they reside and remain quarantined from other people at a place determined by an authorised officer (for 14 days not including the day of arrival).

Ordinary residents of South Australia, those who live near a South Australian border, and ordinary residents of Victoria who live within 70 kilometres of a South Australian border, can travel to South Australia for any purpose, however they must not travel outside of the cross border corridor. The cross border corridor is the area 70km to the west and 70km east of the length of the border between South Australia and Victoria. The latest version of the directions also define that maritime crew who arrive in South Australia from overseas by aircraft must quarantine in a specified place for a 14 day period. Further, the self-quarantine requirements have been amended to clarify that the self-quarantine ends at midnight on the 14th day after their arrival and, if the person is residing in short-term accommodation, they must inform the owner or operator that they are self-quarantining.

A new requirement for the provision of information has been inserted which makes it a requirement that a person must not provide false or misleading information to an authorised officer, nor can a person refuse or fail to answer a question asked by an authorised officer.

**7. Emergency Management (COVID-19) (Parafield Cluster Isolation) Direction 2020**

This direction commenced on 18 November 2020 at 08:20PM. The direction applies to persons who were physically present at various locations in South Australia on specific days during November 2020. A person to whom the direction applies must isolate for 14 days at their residential address, isolated and segregated from other persons. They must remain at those premises except for the purpose of obtaining medical care, in an emergency situation, for the purpose of obtaining a COVID-19 test, or for any reason approved in advance by the State Co-ordinator. A mask must be worn when being tested for COVID-19.

**8. Emergency Management (Stay at Home) (COVID-19) Direction 2020**

This direction commenced on 19 November 2020 at 12:01AM and applies in addition to other directions under the *Emergency Management Act 2004*. The direction provides that all persons in South Australia must stay at home for the duration of the defined period (being between 12:01AM on 19 November 2020 and ending at 12:01AM on 25 November 2020) unless to obtain essential goods and services, such as to buy groceries or go to a pharmacy. A person may also leave home for the purposes of obtaining essential health services, to undergo a COVID-19 test, or access childcare or schooling services for a child if the child is a child of an essential worker, the child resides in the care of the State or if due to vulnerability, education or care outside the family home is considered necessary. Only one person per household per day may leave the premises for the above purposes, however they may be accompanied by a dependent.

Further, a person may leave home for care and compassionate reasons such as for the purpose of shared parenting arrangements, to provide care and support to a relative or other person with particular needs (such as a disability or a chronic health condition), to escape harm (including harm relating to family violence), to provide end-of-life support to a member of the person's immediate family, to provide child minding assistance or to provide care to animals that are situated away from home.

Essential workers may leave home to attend work. A person may also use public transport for any purpose permitted by the direction, as long as they travel by the most direct and practicable means to their destination.

**9. Emergency Management (Public Activities No 11) (COVID-19) Direction 2020**

This direction commenced on 17 November 2020 at 12:01 AM, revokes and replaces the previous direction of the same title, and imposes restrictions on defined public activities and prescribed gatherings, and maintains the prohibition on 'prohibited gatherings' and the prohibition on 'restricted premises' from opening and 'restricted public activities' from occurring. A restricted public activity means indoor or outdoor community sport and training, any class

or activity at a gymnasium, health club, fitness centre, yoga, barre and spin facilities and dance and Pilates studio, and swimming (other than for fitness or rehabilitation purposes).

*Defined public activities:* A defined public activity are onsite purchase and consumption of food or beverages, fitness or recreation activities, indoor public meetings, ceremonies, provision of personal care services, provision of public entertainment, auctions and inspections of premises for the purpose of sale or rental of any property, driver instruction, the operation of relevant licensed premises, a casino or gaming area and operation of a night club. The directions now allow weddings and funeral services to be attended by up to 150 people (up from 100 persons from 5 September). The directions permit the persons being wed to undertake one dance at the wedding ceremony or reception or event conducted at a relevant licensed premises. Unless general and specific compliance principles are followed, there is a general prohibition on persons allowing a defined public activity to be conducted at a place occupied by the person, a person conducting a defined public activity, and a consumer or member of the public participating in a defined public activity. The general compliance principles include a density requirement, maximum occupancy requirements, physical distancing principles, restrictions on communal facilities, and requirements relating to a COVID Safe Plan and contact tracing records. Each of the defined public activities have specific compliance rules that must also be met.

The directions prescribe a density requirement of one person per two square metres (reduced from four square metres). The latest version of the directions permits food and beverages to be consumed at a bar in certain circumstances.

*Prescribed gatherings:* The directions prohibits persons from allowing a prescribed gathering to occur at a place occupied by the person, and organising or attending a prohibited gathering, unless there is an approved COVID Management Plan in respect of the prescribed gathering. The latest directions impose requirements for the submission of a COVID Management Plan where a place is being used for defined public activities, meetings or prescribed gatherings conducted by people different to the owner or persons with care and control. A prohibited gathering is a gathering of more than 10 at a residential premises or 50 at a private place that is not a residential premises, other than an excluded gathering or a gathering occurring as part of a defined public activity. Gatherings excluded from the definition of a prohibited gathering, include gatherings, among other places, at an airport, for the purpose of public transport, at a medical or health related facilities, at a disability or aged care facility, at a prison or other correctional facility, at a court or tribunal, at food market or shopping centre, at a school or other educational institutions, at a hotel or other accommodation facility, and at an office building or other pace of work.

*Prescribed operations:* Prescribed operations include onsite purchase and consumption of food or beverages, ceremonies, operations as specific places, any defined public activity in respect of which a COVID Management Plan is required and any operations specified as prescribed operations for the purposes of this definition by the State Co-ordinator. A number of special compliance rules are required to be followed for prescribed operations, which are predominantly related to the requirement of a COVID Marshal.

### Penalties

The maximum penalty for not complying with the above directions is **\$20,000.00** for a natural person and **\$75,000.00** for a body corporate. On 28 March 2020, the [South Australian Government announced](#) new on-the-spot fines of \$1,000 for individuals failing to self-isolate and \$5,000 for businesses failing to follow laws relating to the pandemic.

The South Australian Government is publishing frequent updates regarding the COVID-19 pandemic, available [here](#).

## Emergency powers: What can government do?

On 18 March 2020, a public health emergency was declared for the whole of the Territory under the Public and Environmental Health Act 2011 (NT). The public health emergency has been extended and we expect it will continue to be extended until the end of the COVID-19 pandemic.

The Chief Health Officer has broad powers under the Public and Environmental Health Act 2011 (NT) to take actions the Chief Health Officer considers '*necessary, appropriate or desirable*' to alleviate the public health emergency contained in the declaration. The actions the Chief Health Officer is able to take to exercise this power include:

- segregating or isolating persons;
- evacuating persons from a particular place;
- preventing persons from accessing or entering areas or a particular place; and
- controlling the movement of vehicles.

Additionally, a state of emergency or disaster may be declared under the Emergency Management Act 2013 (NT). Powers during an emergency situation include the power to direct a person to evacuate from, and remain outside, a specified place in the affected area. For the purposes of this update, we have only discussed the powers under a public health emergency, as these are the powers currently available to the Northern Territory Government in relation to COVID-19. We will update this document if a state of emergency or disaster is declared under the Emergency Management Act 2013 (NT).

In addition to the above, we note that under the Territory Emergency Plan 2019, closure of schools or government offices due to an impending threat can be made by the Chief Minister on advice from the Territory Emergency Management Council.

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

### Current directions in place in the Northern Territory include:

1. *Direction for Assistance of Police Officers*  
On 22 March 2020, the COVID-19 Directions (No. 5) 2020 was made, requiring all Police Officers who are authorised officers under the Public and Environmental Health Act 2011 (NT) to assist the Chief Health Officer in exercising his powers under the legislation. The direction also requires these Police Officers to ensure, by means the Chief Health Officer considers necessary, appropriate and desirable, compliance with directions made by the Chief Health Officer.
2. *Directions for infected persons*  
The COVID-19 Directions (No. 7) 2020 require persons, when notified that they are infected with COVID-19, to self-isolate by remaining isolated in an appropriate place until notified in writing.
3. *Directions for Potentially Infected Persons*  
The COVID-19 Directions (No. 21) 2020 commenced at 11:59pm on 16 April 2020 and require persons who are suspected of being infected with COVID-19 or who have been in close contact with a person who is infected with COVID-19 to submit to a test for COVID-19 and remain isolated until notified in writing that they no longer need to remain isolated. If the person is notified they are infected with COVID-19, these directions cease to apply and the COVID-19 Directions (No. 7) 2020, discussed above, apply to the person. These directions prevail to the extent of any inconsistency with other existing directions.
4. *Directions for Safety Measures at Reopened Places, Businesses, Activities and Services*  
The COVID-19 Directions (No. 36) 2020 commenced 12:00pm on 5 June 2020, revokes the previous direction related to venue closures and restrictions, and gives effect to Northern Territory's Stage 3 easing of restrictions (as discussed above). The direction applies to the places, businesses, activities and services that were closed to the public or required to cease under the COVID-19 Directions (No. 28) 2020 and the COVID-19 Directions (No. 35) 2020, and requires them to:
  - (a) complete and submit a COVID-19 safety plan checklist before reopening or resuming;
  - (b) provide hand sanitiser to the public on its premises, unless handwashing facilities are available; and
  - (c) display signage stating that a person should consider practising physical distancing, practising hand hygiene, staying home if unwell, and download the COVIDSafe app.
5. *Directions for Major Public Events*  
The COVID-19 Directions (No. 39) 2020 commenced 19 June 2020 and require the organiser of a major public event (as defined) that is expected to have more than 500 people to complete and submit a COVID-19 event safety plan, in the approved form, before holding the event. Further, the organiser must not hold the major public event unless the

safety plan has been approved by the Chief Health Officer. The organiser must comply with the approved safety plan and any conditions on the approval during the major public event.

6. [Directions for Aged Care Facilities](#)

The COVID-19 Directions (No. 40) 2020 commenced 24 June 2020 and revoked the previous direction (No. 24) of the same name. implements restrictions on visitors to aged care facilities. The most recent changes remove the restrictions placed on those under 16 years of age entering a facility; remove the limit of 2 hours placed on those remaining on premises of a facility; allow for those who do not have an up-to-date influenza vaccination to enter and remain on premises for the period reasonably required to deliver an item or provide emergency services necessary for the effective operation of the facility or to protect the health and safety of staff and residents (those entering or remaining on the premises for these purposes must practise social distancing where possible, and where reasonably practicable leave the item to be delivered without entering any building on the premises).

7. [Directions for Territory Border Restrictions](#)

The COVID-19 Directions (No. 49) 2020 commenced on 24 August 2020, revoke the previous direction of the same title (although the revoked directions remain in force for anyone who was quarantined under those directions) and maintain the Northern Territory's border restrictions. A [consolidated version](#) of the directions takes into account the newly introduced freight workers directions. The direction requires persons entering into the Northern Territory to provide specific information regarding their contact details, the places they have been in the last 28 days, whether they have been in a COVID-19 hotspot in the past 14 days, and if they are an exempt person the details of the social distancing measures they intend to take whilst in the Northern Territory and the place in which they intend to stay. Persons entering the Northern Territory must also submit to a screening procedure for COVID-19 before entering. The direction also details requirements when a person has, before entering the Northern Territory, been to a place outside of the Territory that subsequently gets declared or ceases to be a COVID-19 hotspot. As of 16 October 2020, amendments to Direction (No. 49) now insert New Zealand into the definition of COVID-19 hotspot to provide for persons entering from New Zealand.

The direction requires certain persons to quarantine for a period of 14 days, including persons who have entered the Territory from a place outside Australia, have been in a COVID-19 hotspot in the last 14 days, or have refused to provide the required information upon their arrival in the Territory (including a child for whom a declaration as to required information is not made). There are a few exemptions specified in the direction, including flight crew, persons who have not been to a COVID-19 hotspot and persons providing essential services.

The directions also require persons that must quarantine to submit to a COVID-19 testing procedure and remain quarantined for a further 10 days if they refuse to do so.

The directions remove the ability for an unaccompanied child to quarantine in the child's place of residence, instead requiring that the child and a parent or responsible adult must quarantine at a place specified by the Chief Health Officer where they must both remain quarantined for the same period. The direction also allows for authorised officers and health practitioners (in addition to persons approved by the Chief Health Officer) to conduct the COVID-19 testing on persons in quarantine.

The *COVID-19 Directions (No. 46) 2020 (Commercial Vessels – Crew Directions)* commenced on 17 July 2020 and maintain the exemption for members of the crew of a ship from the primary border restriction direction as introduced by previous directions of the same title. The directions are similar to the border restriction direction, requiring persons be subject to screening and provide information, but only require persons to quarantine in more limited circumstances specified in the direction.

**8. Directions for Freight Workers**

The COVID-19 Directions (No. 50) 2020 – Directions for Freight Workers commenced on 28 August 2020. The directions specify certain requirements for freight workers before and as they enter the Northern Territory. This includes the submission of a 'freight risk mitigation management plan' in order to receive a 'certificate' which is valid for a specified time period. Certain information must be declared by freight workers entering the Northern Territory and they are required to undergo COVID-19 screening procedures. Certain freight workers must quarantine themselves as specified when they are not working, and particular requirements are imposed on these freight workers as to their movement when under quarantine, and the wearing of a face mask if they cannot be 1.5m away from other people when working.

**9. Directions for Maritime Crew**

The COVID-19 Directions (No. 51) 2020 – Directions for Maritime Crew commenced on 28 August 2020. The directions specify certain requirements of crew members of commercial vessels that enter the Northern Territory or crew members who enter the Northern Territory to join a commercial vessel in the Northern Territory. This includes submitting to COVID-19 screening procedures and declaring specified information on entering the Northern Territory. The directions also require particular documentary evidence as specified about the vessel and its crew. Quarantine requirements are imposed on certain crew members who enter the Northern Territory on a commercial vessel, including a requirement to quarantine in the vessel, or if that is not available, approved hotel accommodation. Further, certain crew members entering the Northern Territory to join a commercial vessel are also subject to quarantine requirements. The directions also specify how crew members can leave the Northern Territory, and what social distancing measures apply during the quarantine period.

**10. Directions for Quarantine Facilities**

The COVID-19 Directions (No 55) 2020 – Directions for Quarantine Facilities commenced on 12 November 2020, revoking the previous directions of the same name. The directions aim to facilitate the NT Government's Mandatory Supervised Quarantine program.

A person may be quarantined in the Howard Springs Quarantine Facility. A person must not leave the quarantine zone in which the person's allocated room is located unless the person is escorted by an authorised officer, except in an emergency. The direction also permits leave from a person's allocated room for two periods of 20 minutes as directed by an authorised officer. A person must also wear a face mask during transit to or from a quarantine facility, or if outside their allocated room. When a person is not in their allocated room, the person must stay at least 1.5m away from any other person in the quarantine facility, except for the person's spouse, de facto partner, child or parent.



### Penalties

Failure to comply with the directions without reasonable excuse carries a maximum penalty of 400 penalty units, at the time of writing, **\$62,800.00** for an individual or **\$314,000.00** for a body corporate.

The *Public and Environmental Health Amendment Regulations 2020 (NT)* introduced on-the-spot fines of \$1,099 for individuals and \$5,459 for body corporates for failing to comply with emergency declarations and directions.

The Northern Territory Government is publishing frequent updates regarding the COVID-19 pandemic, available [here](#).

## Emergency powers: What can government do?

On 15 March 2020 a State of Emergency was declared under the Emergency Management Act 2005 (WA). This declaration has been extended a number of times and we expect they will be extended until the end of the COVID-19 pandemic. On 16 March 2020 a Public Health State of Emergency was declared under the Public Health Act 2016 (WA). These declarations allow emergency powers, under both pieces of legislation to be exercised, including:

- order persons undergo medical observations or procedures.
- directing or prohibiting the movement of persons;
- entering, searching or taking control of any place;
- closing any road, access route or area;
- issuing directions to public authorities; and
- directing owners/occupiers of places of business to close to the public.

On 3 April 2020, the Western Australian Parliament passed the Emergency Management Amendment (COVID-19 Response) Act 2020 (WA). This Act gives the State Emergency Coordinator the power to issue people or classes of people with directions in order to mitigate the risk of the COVID-19 pandemic. The Act also has retrospective effect from 16 March 2020 to remove any doubt about directions previously made under the Emergency Management Act 2005 (WA). Among other things, the Act also confers a broad power on relevant officers to take or direct a person or a class of persons to take any action that the officer considers is reasonably necessary to prevent, control or abate risks associated with the emergency.

The Act will also allow the State Emergency Coordinator to direct persons to be subject to

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current directions in place for Western Australia include:

1. Delivery of goods and collection of rubbish and refuse  
These directions were made on 20 March 2020 and permit grocery shops to receive deliveries, dispose of waste, and stay open, 24 hours, 7 days a week.
2. Prohibition on the Use of Point of Care Serology Tests Direction  
These direction commenced 1 April 2020 and prohibits the use of a point of care serology (blood) test (including an assay or device) as a tool to detect or diagnose COVID-19. The direction states the use of such tools may adversely affect the prevention, control and abatement of the serious public health risk present by COVID-19.
3. COVID Testing Reporting Directions  
These directions commenced on 4 April 2020 and require a pathologist to notify the Chief Health Officer of the details of each analysis involving testing for COVID-19 since 13 March 2020 in the approved form as soon as practicable. The maximum timeframes as stated in the direction is within 72 hours of the direction coming into force for analyses undertaken between 13 March 2020 and 4 April 2020, and within 24 hours of performing an analysis from 4 April 2020.
4. Mental Health Infection Control Directions (No 2)  
These directions commenced at 11:59pm on 2 September 2020, revoke the previous directions of the same name and requires medical practitioners (including psychiatrists) and authorised mental health practitioners to use infection control measures when conducting mental health assessments and examinations under the Mental Health Act 2014 (WA) where the patient has or is suspected of having COVID-19. The most recent directions now include a revised definition for 'symptoms'.
5. Authorisation to supply or prescribe a poison without a prescription  
This direction was made on 14 April 2020 to authorise prescribers to prescribe a schedule 4 or schedule 8 poison through the provision of a digital image or a copy of a prescription to a pharmacist. The direction correspondingly allows pharmacists to supply these poisons upon receiving a digital image or a copy of a prescription for that poison. Certain measures and record keeping requirements stated in the directions must be followed.
6. COVID-19 Testing Directions (No 2)  
These directions commenced on 2 September 2020 at 11:59 PM and revoke the directions under the same name. The directions prohibit persons from requesting that a test be conducted, unless they are a medical practitioner, the Chief Health Officer, or an approved requester. A medical practitioner is prohibited from requesting that a test be

## Emergency powers: What can government do?

electronic monitoring while the person is in quarantine, which may include a device the person wears or a device installed in their residence. A penalty of 12 months imprisonment or a fine of \$12,000 will apply where a person fails to comply with a direction, hinders or obstructs an authorised officer retrieving a device, or removes or interferes with an electronic device.

### The WA Government has activated the following Emergency Plans:

- [WA Pandemic Plan](#)
- [State Hazard Plan – Human Biosecurity](#)

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

conducted unless the sample is taken from a person who falls within the testing requirements, or the Chief Health Officer authorises the test. Persons are prohibited from conducting a test unless they: conduct it in a pathology lab and are authorised to conduct the test by the pathologist responsible for the lab; they are an approved tester; or the test is authorised by the Chief Health Officer.

A person who falls within the testing requirements means a person who has a fever of at least 37.5 degrees, has a recent history of fever, or has acute respiratory symptoms (including, but without limitation, shortness of breath, a cough or sore throat, or loss of smell or loss of taste).

The Chief Health Officer has made the following approvals under the directions:

- [Approval to conduct COVID-19 testing people isolated or quarantined \(No 2\)](#), made on 1 September 2020;
- [Approval to conduct COVID-19 PCR testing before proceeding with organ donation or organ transplantation \(No 2\)](#), made on 1 September 2020;
- [Approval to conduct COVID-19 PCR testing at point of care in remote clinics \(No 2\)](#), made on 1 September 2020;
- [Approval to request COVID-19 testing in relation to repatriation of Mauritian evacuees \(No 2\)](#), made on 1 September 2020;
- [Requesting COVID-19 testing on patients who are required to provide evidence of a negative COVID-19 test to meet the entry requirements of overseas Governments \(No 2\)](#), made on 1 September 2020;
- [Presentation for testing directions \(No 7\)](#), made on 3 November 2020;
- [Approval to request COVID-19 testing on persons who have been to New South Wales or Victoria who are required to be tested under the Presentation for testing directions \(No 5\)](#) made on 17 September 2020;
- [Approval to request COVID-19 testing and authorisation to inform in relation to COVID-19 Detect Borders Initiative](#), made on 10 September 2020; and
- [Approval to request COVID-19 testing on persons who are exempt travellers who are required to be tested under the Transport, Freight and Logistics Directions \(No 2\)](#), made on 1 September 2020.

### 7. [Visitors to Residential Aged Care Facilities Directions \(No. 4\)](#)

These directions came into effect on 18 September 2020, revoke the previous directions of the same title and limit access to residential aged care facilities. The direction prohibits those from entering who:

- in the preceding 14 days have returned from overseas or been informed they are a close-contact;

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

- (b) have COVID-19 symptoms, a temperature of 38 degrees or above or symptoms of acute respiratory infection;
- (c) have not had an up to date influenza vaccination unless they fall under an exemption; or
- (d) are providing services to a resident where it is reasonably practicable the service could be held via telehealth or some other adaptive model of care or the resident could attend an external facility to receive the service.

The most recent amendment to the directions inserts a new definition of COVID-19 symptoms that is consistent with the amendment to the *COVID-19 Testing Directions (No 2)*.

### 8. Quarantine and Isolation (Undiagnosed) Directions

These directions commenced 11:59pm on 9 May 2020 and requires three types of persons who have not yet been diagnosed with COVID-19 to self-isolate. *First*, a person who is informed that they are a close contact to someone diagnosed with or suspect of having COVID-19 must quarantine for 14 days. *Second*, a person who has been tested for COVID-19 must isolate until they are informed of their test result. *Third*, a person who is quarantined and develops symptoms of COVID-19 must isolate until they are informed that they are no longer required to isolate. A person required to isolate or quarantine must remain in the place they ordinarily reside, or specified premises if directed, and not leave except in circumstances specified in the direction.

Persons who must isolate must truthfully answer questions about their health and follow infection control measures. Persons who must quarantine must truthfully answer questions about their health and also report the symptoms of COVID-19. The direction also prohibits persons from entering premises in which a person is isolating or quarantining, unless they are a relevant officer, complying with a direction or instruction of a relevant officer, entering for medical or emergency purposes, or usually live in the premises.

### 9. Isolation (Diagnosed) Directions

These directions commenced at 11:59pm on 9 May 2020 and require a person who tests positive for COVID-19 to isolate until they are informed they are no longer required to isolate. A person who is informed of the diagnosis must go to a specified premises and remain there until directed or instructed otherwise. The person must not leave the premises and other persons must not enter the premises except in limited specified circumstances. A person who is isolating under these directions must truthfully answer questions about their health, comply with other directions and instructions, and follow appropriate infection control measures.

### 10. Remote Aboriginal Communities Directions (No. 3)

These directions commenced at 10:30pm on 4 June 2020, revokes the previous direction of the same title and restrict the persons who may enter onto the land or waters within a remote Aboriginal community. In summary, the directions only permit a person to enter a remote Aboriginal community if they do not have symptoms of COVID-19,

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

are not a close contact, are not awaiting a test result, have not returned from overseas or been exposed to a person with COVID-19, etc, and they are entering for one of the specified purposes (such as if they normally work or reside in the area, for family or cultural purposes, for core services, for emergencies, etc).

A number of variations have been made to exclude parts of communities in schedule 1 from the operation of the directions, including:

- (a) *Variation of Schedule 1* for the Karalundi community made on 23 June 2020;
- (b) *Variation of Schedule 1* for the Djarindjin community made on 1 July 2020;
- (c) *Variation of Schedule 1* for the Imintji community made on 9 July 2020;
- (d) *Variation of Schedule 1* for the Mimbi community made on 18 July 2020;
- (e) *Variation of Schedule 1* for the Wuggubun community made on 19 July 2020;
- (f) *Variation of Schedule 1* for the Baulu Wah community made on 19 July 2020; and
- (g) *Variation of Schedule 1* for the Caranya community made on 20 July 2020.
- (h) *Variation of Schedule 1* for the Doon Doon community made on 24 July 2020;
- (i) *Variation of Schedule 1* for the Gnylmarung community made on 24 July 2020;
- (j) *Variation of Schedule 1* for the Goombaragin community made on 24 July 2020;
- (k) *Variation of Schedule 1* for the Gumbarnun community made on 24 July 2020;
- (l) *Variation of Schedule 1* for the Mercedes Cove community made on 24 July 2020;
- (m) *Variation of Schedule 1* for the Mowanjum community made on 24 July 2020;
- (n) *Variation of Schedule 1* for the Burrduk community made on 4 August 2020;
- (o) *Variation of Schedule 1* for the Embulgun community made on 4 August 2020;
- (p) *Variation of Schedule 1* for the Googar Goonyool community made on 4 August 2020;
- (q) *Variation of Schedule 1* for the Lombadina community made on 4 August 2020; and
- (r) *Variation of Schedule 1* for the Ilkulka community made on 11 August 2020.

The Chief Health Officer has also made the following authorisation:

- (a) *Authorisation made under the Quarantine (Closing the Border) Directions and Remote Aboriginal Communities Directions (No 3)*, which came into effect on 18 September 2020.

11. Closure and Restriction (Limit the Spread) Directions (No 7)

These directions commenced at 11:59pm on 23 October 2020, revokes the previous direction of the same title and further relaxes various restrictions regarding gatherings, activities and venue closures.

Prohibited gatherings: A person who owns, controls or operates premises in Western Australia must not *allow* a prohibited activity to occur on the premises. The numerical limit on the number of persons that constitutes a prohibited gathering, rather making it only a gathering of two or more people where there is not at least two square metres per person has not changed. There remains a number of exempted gatherings listed in the directions.

Prohibited activity: All activities that are *events* are prohibited, unless the event has been registered and has an approved COVID Event Plan, which may include a COVID Safety Marshal Condition. The exemption held by providers of beauty therapy services remain exempted, subject to maintaining a social distance of 1.5 metres.

The detail of what is required in a COVID Event Plan are set out in the directions and are otherwise explained in more detail in the authorisations made by the Chief Health Officer.

The Chief Health Officer has made the following authorisations under the directions:

- (a) Authorisation to approve COVID Event Plans made on 16 September 2020; and
- (b) Specification of criteria for a COVID Safety Marshal made on 16 September 2020.

Certain places of business, worship or entertainment: Every owner, occupier or person apparently in charge of a place that was listed as an affected place in previous directions must not open that place to the public, unless it is a playground, a skate park or an outdoor gym, or they comply with the re-opening requirements for that type of place. The re-opening requirements include completing a safety plan and displaying the safety plan certificate. Most venues that are permitted to open must not allow a gathering of two or more persons where there is not at least 2 square metres of space for each person. The directions permit Optus Stadium, HBF Park and RAC Arena to open with up to the number of people specified for that venue in the direction. Seated entertainment spaces as defined in the direction are also now permitted to open.

An amendment made on 18 July 2020 adds HBF Stadium to the list of stadiums permitted to open with a specified number of people.

12. Controlled Border for Western Australia Directions

These directions commenced at 12:01 AM on 14 November 2020 and replace the Closing the Border Directions. The new directions prevent people entering Western Australia if they have symptoms, or have received oral or written notice from a responsible officer that they are a close contact, or the person is awaiting a test result having been tested, or they have received a positive test and have not received evidence from a medical practitioner or

## Emergency powers: What can government do?

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

authorised officer certifying that they have recovered from COVID-19. Any person attempting to enter Western Australia must complete a G2G Pass Declaration (or updated Declaration if they have a change in circumstances) and present a G2G Pass Entry QR Code if required at their point of entry as well as completing a health screen. G2G Passes are available online at [www.g2gpass.com.au](http://www.g2gpass.com.au) or on the G2G Pass app.

Travellers who, in the 14 days prior, have come from a restricted location, New Zealand, another Australian State or Territory or have knowingly been in contact with a person who has been in a restricted location or outside Australia in the 14 days prior, must self-quarantine unless otherwise exempt. International arrivals must undertake quarantine at the quarantine centre as directed by an authorised officer.

The directions have been amended on 15 November 2020 by the [Controlled Border for Western Australia Amendment Directions](#) which add South Australia as a restricted location, alongside New South Wales and Victoria.

The directions have again been amended on 16 November 2020 by the [Controlled Border for Western Australia Amendment Directions \(No 2\)](#) which add that a person, other than an international arrival who has been in South Australia after 12:01 AM on 7 November 2020 and in the prior 14 days, must comply with the South Australian Outbreak Response Directions (No 2) and not these directions.

### 13. [South Australian Outbreak Response Directions \(No 2\)](#)

These directions commenced at 6:00 PM on 16 November 2020 for the purpose of preventing the importation of COVID-19 into Western Australia following the COVID-19 outbreak in South Australia. A person other than an international arrival who has been in South Australia after 12:01 AM on 7 November 2020 and in the prior 14 days may only enter Western Australia if they are an approved traveller or are subject to a specified arrangement (and are approved by the Police Commissioner and State Emergency Coordinator). An approved traveller means a person is either:

- (a) a senior Government official responsible for the safety of the nation or a State or Territory;
- (b) an active Australian military personnel;
- (c) a member of Commonwealth Parliament;
- (d) a person who is carrying out functions under a Commonwealth law;
- (e) the Premier of Western Australia (and any member of their staff);
- (f) a specialist or category of specialist required for the performance of time-critical services and whose skills are not otherwise reasonably available in Western Australia; and
- (g) any person who has been authorised by the Police Commissioner and State Emergency Coordinator.

14. *Special Presentation for Testing (South Australia) Directions*

These directions commenced on 15 November 2020 at the time of signing (7:28 PM) and impose a 48 hour and 11 day presentation for testing requirement on any person arriving from South Australia from 12:01 AM on 14 November 2020. Any person required to comply with these directions must go to the nearest COVID Clinic within 48 hours of entering Western Australia and inform a relevant officer there that they are required to attend under these directions, comply with any other instructions given to them by any office at the Clinic and answer truthfully in relation to the state of their health or symptoms if asked by the officer. Persons must remain at the clinic until they have been tested for COVID-19 or they have been instructed by an officer that they may leave. A person required to comply with these directions must repeat the above process on the 11th day within the State of Western Australia.

15. **AFL 2020 Perth Quarantine Hub**

The following directions and approvals have been made to facilitate the operation of the AFL 2020 Perth Quarantine Hub:

- (a) *AFL (Venues) Directions*, made on 11 July 2020;
- (b) *Approval for AFL 2020 Perth Quarantine Hub Umpires (No 3)*, made on 6 August 2020;
- (c) *Approval for AFL Team (Collingwood Football Club)*, made on 11 July 2020;
- (d) *Approval for AFL Team (Fremantle Football Club) (No 2)*, which came into effect on 21 September 2020;
- (e) *Approval for AFL Team (Geelong Football Club)*, made on 11 July 2020;
- (f) *Approval for AFL Team (West Coast Eagles)*, made on 11 July 2020;
- (g) *Approval for AFL Team (Carlton Football Club)*, made on 24 July 2020;
- (h) *Approval for AFL Team (Hawthorn Football Club)*, made on 24 July 2020;
- (i) *AFL Presentation for Testing Direction*, made on 21 July 2020;
- (j) *Approval for AFL Team (GWS Giants Football Club)*, made on 6 August 2020;
- (k) *Approval for AFL Team (Sydney Swans Football Club)*, made on 6 August 2020;
- (l) *Perth Glory Training Venue Directions*, made on 27 August 2020;
- (m) *Approval (Perth Glory Football Club)*, made on 27 August 2020; and
- (n) *AFL (Post Season Training Venues) Directions*, which came into effect on 21 September 2020.

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### 16. Omnibus Amendment Directions

These directions commenced at 11:59pm on 27 August 2020 and make changes to various directions including:

- (a) amending the definition of the term 'symptoms' wherever it appears in directions concerning COVID-19 made under the *Emergency Management Act 2005* (WA);
- (b) amending the *Quarantine and Isolation (Undiagnosed) Directions* and the *Isolation (Diagnosed) Directions* in regards to persons accessing premises where another is quarantining;
- (c) amending the *Chevron FIFO Worker Directions* and the *Woodside FIFO Worker Directions* in regards to a person not allowing another to access their allocated room; and
- (d) amending aspects of the *Presentation for Testing Directions (No 4)*.

### Penalties

Failure by a person to comply with a direction issued under the emergency powers is an offence carrying a penalty of **\$50,000** plus **\$5,000** for each separate and further offence for an individual and **\$250,000.00** plus **\$25,000.00** for each separate and further offence for a body corporate. Where the offence is committed by a body corporate, the officers of the corporation may also be personally liable.

A person is liable for **12 months imprisonment** or a fine of **\$12,000** if they fail to comply with a direction to wear or install an electronic monitoring device while quarantined, obstruct or hinder an authorised officer retrieving the device, or remove or interfere with the device.

The Western Australia Government is publishing frequent updates relating to the COVID-19 pandemic, available [here](#).

**Note:** on 25 March 2020 the sale of liquor in Western Australia was also restricted under the *Liquor Control Act 1988* (WA), it is unclear whether this was connected to COVID-19.

## Emergency powers: What can government do?

On 17 March 2020 a public health emergency was *declared* to exist in Tasmania under the *Public Health Act 1997 (Tas)*. The public health emergency has been extended and we expect it will continue to be extended until the end of the COVID-19 pandemic. While an emergency declaration is in force, the Director may take any action or give any directions to:

- manage a threat to public health or a likely threat to public health;
- quarantine or isolate persons in any area;
- evacuate any persons from any area;
- prevent or permit access to any area; and
- control the movement of any vehicle.

This may include a direction that:

- a clinical assessment be undertaken;
- any specified person move to, or stay in, a specified area; or
- any other action be taken the Director considers appropriate.

Additionally, on 20 March 2020, a *State of Emergency* was declared pursuant to section 42 of the *Emergency Management Act 2006 (Tas)*. The declaration of a State of Emergency authorises the use of Special Emergency Powers by the State and Regional Controllers, as specified in the Declaration. The Declaration provides this is Darren Hine, State Controller, who has subsequently authorised the use of powers by authorised officers. As of 23 March 2020, all police officers in Tasmania are empowered to exercise Emergency Powers under the *Emergency Management Act 2006 (Tas)*.

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

Current directions in place in Tasmania include:

1. *Regulation of aircraft movement*

These directions commenced 27 March 2020 and prohibit aircrafts whose flight commenced outside Tasmania from landing within Tasmania, except for a number of listed airports.

2. *Isolation – No. 2*

These directions were made on 17 April 2020 and require persons diagnosed with COVID-19 to isolate until they have been given 'release from isolation' on satisfaction of the criteria for discharge from isolation. A person may be released from isolation 10 days after they initially showed symptoms of the disease, or 3 days after the person stopped showing symptoms of the disease, whichever is later. Persons may only leave isolation to obtain medical care or in emergency situations.

3. *Quarantine – No. 1*

These directions were made on 17 April 2020 and require persons that have been, or are suspected of having been, exposed to COVID-19 to quarantine for a period of 14 days after they had been, or are suspected of being, exposed, or 14 days after each person with COVID-19 in the premises the person is quarantining has been released from isolation. The person quarantining must not leave the premises except in an emergency.

4. *Workplace COVID Plan – No. 1*

This direction commenced 15 June 2020 and requires persons conducting a business or undertaking to implement certain measures. The measures include distancing of no less than 1.5 metres between persons; having at least four square metres of floor area per person in an undivided space; reviewing information and guidance material at reasonable intervals to ensure the measures implemented are appropriate; ensuring appropriate cleaning and disinfecting; ensuring persons are observing appropriate hygiene measures; providing training and supervising workers; managing or controlling persons who show symptoms of COVID-19 or are required to be in quarantine or isolate; and ensure any records that would assist in notifying persons of any potential exposure for a period of at least 21 days. Persons implementing these measures must do so to eliminate the risk of COVID-19, or mitigate it if elimination is not possible, and must record the measures in writing.

## Emergency powers: What can government do?

The emergency powers contained in Schedule 1 to the *Emergency Management Act 2006* (Tas) are broad, and permit:

- the evacuation of persons and animals;
- the detention of persons;
- the prohibition, direction, regulation and other limiting of movement of persons within Tasmania;
- to order the medical examination, treatment or decontamination of any person, and the requirement that a person submit to medical examination, treatment or decontamination.
- to close public places, direction or close places to traffic;
- block, take possession of or restore the supply of electricity, liquids, gas, or any other substance;
- close public events or parts of public events; and/or
- lawfully enter premises or vehicles for a number of reasons.

On 27 March 2020, the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020* (Tas) received royal assent. This Act functions to, amongst other things:

- allow the Minister to declare that certain bodies to conduct meetings in a way that facilitates social distancing;
- restrict rent increases and prevent the termination of commercial tenancies;
- allow for the waiver of fees by the Treasurer;
- makes provision for the cessation of a state of emergency in Tasmania (an 'emergency cessation day'); and

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

### 5. Management of premises – No 4

This direction commenced on 25 September 2020, revokes the previous direction of the same name and continues to impose restrictions and requirements relating to persons in certain premises. The direction only makes a very minor amendment to the definition of licensed premises.

In relation to certain premises specified in Schedule 1 of the direction, the direction now differentiates between premises that are, and are not, a boat or a pontoon for determining the maximum number of people permitted to be in the premises. The direction requires that the occupier of residential premises must ensure that the total number of persons present on the premises does not exceed 20 persons (other than those who ordinarily resides on the premises). Most other premises, except those specified in Schedule 1, must comply with the maximum density requirement (being no more than one person per two square metres of floor area to a maximum of 500 persons in an undivided outdoor space and 250 persons in an undivided indoor space). The latest directions prohibit the organisation of an event held on premises other than residential premises where the premises does not comply with requirements in Schedule 2 of the direction and social distancing as specified.

Further, the direction requires organisers to ensure that persons maintain a distance of not less than 1.5 metres between themselves; persons are sufficiently separated when entering or existing, and while in areas designed for waiting; and the specific requirements for certain venues in Schedule 2 are complied with.

The requirements in Schedule 2 include that alcohol and food to be consumed on premises can only being served to seated patrons, that as a general rule an operator of a premises must not operate an area of the premises for dancing unless it falls under a number of specified exemptions and that in relation to premises used for sports, recreation, physical activity or wellness must ensure that at least one person (who is employed, engaged or authorised by the operator to supervise the premises) is present on the premises at all times while the premises is open to patrons and premises for sporting and fitness activities must ensure a staff member is present on the premises and that the activities undertaken are in compliance with the Australian Institute of Sport's Framework for Rebooting Sport in a COVID-19 Environment.

### 6. Residential aged care facilities (No. 10)

These directions commenced on 26 October 2020, revoke the previous direction of the same title and slightly amend restrictions on persons entering or remaining on the premises of an aged care facility. The direction prohibits persons entering or remaining on the premises of an aged care unless they are an exempt person listed in the directions, which including residents; employees and contractors of the facility; persons providing goods and services in specified circumstances; persons providing end of life support for a resident; persons who are key support persons for the resident, are present at the request of the operator to reduce distress or confusion of a resident; or persons required for emergency management or law enforcement. The latest version of the direction

## Emergency powers: What can government do?

- provide for the making of notices in relation to COVID-19 and the spread of that disease throughout the community.

Importantly, because of the Act, section 18 of the *Public Health Act 1997* no longer applies in relation to any loss or damage suffered as a result of anything done under Division 2 of Part 2 of the *Public Health Act* in relation to COVID-19.

## What emergency powers have been exercised to date\*? \*as at 3pm on 19 November 2020

broadens who can be a 'support person', previously being only a spouse, child or parent, to also include a sibling or grandchild.

Exempt persons are however prohibited from entering or remaining on the premises of an aged care facility if they have specified symptoms of COVID-19, do not have an up to date vaccination against influenza, or have in the last 14 days returned from a place outside Tasmania that is classified as a medium or high risk area or been in contact with someone confirmed or suspected of having COVID-19. The direction clarifies that residents who leave the aged care facility may return if they left for the purposes of attending medical or health care appointments or for medical treatment.

### 7. *Directions in Relation to Persons Arriving in Tasmania*

This direction commenced at 5:50 PM on 16 November 2020 and revokes the previous direction of the same name. The new version is substantially the same as the [previous version](#) it replaced. The directions direct that an affected person can only enter Tasmania if they are a resident of Tasmania or an authorised person. An authorised person is a person who falls within one of the categories in the schedule to the directions (including health services, national and state security and governance, police officers, paramedics and ambulance officers, etc) or has otherwise been given prior approval to enter by the State Controller. An affected person is a person who has spent any time in a high risk area within 14 days of their arrival in Tasmania other than through transiting as defined in the directions or has arrived from Antarctica and is a participant in an Australian Antarctic Division Antarctic program. A high risk area is a geographical area or location on the list as being somewhere with an elevated risk of transmission of the disease and is published on the website [coronavirus.tas.gov.au](https://coronavirus.tas.gov.au) and approved by the Director of Public Health. The concept of a medium risk area is also introduced and is defined in the same way as a high risk area but instead have a moderate risk of transmission.

A person subject to the directions who is permitted to enter Tasmania after the directions have come into effect must isolate themselves for 14 days at an accommodation facility specified to them by an authorised officer and comply with the rules discussed in the direction regarding compliance with directions and remaining in the room. This is now determined by whether they have arrived from a high or medium risk area. If a person has come from a medium risk area they may isolate in a private residence, an airbnb (or other short term rental), or other approved premises. Whereas, when arriving from a high risk area, the person must isolate at an accommodation facility specified to them by an authorised officer.

The directions state that an authorised person must comply with any directions applicable to persons arriving in Tasmania made under the *Public Health Act 1997* (Tas). If an authorised person does not comply with those directions, they need to immediately leave Tasmania and comply with directions concerning their departure from

Tasmania, or they need to isolate at an accommodation facility in accordance with the directions. The persons must also answer any question asked, or to provide any document or other information required, by an authorised officer. Please note that the Tasmanian government website flags that all travelers arriving in Tasmania are required to answer health symptom questions and have a temperature check as part of COVID-19 screening procedures.

**8. Assessment of persons from affected regions and premises – No. 2**

This direction commenced on 20 August 2020, revokes the previous direction of the same title and outlines how persons who are affected persons in the *Directions in Relation to Persons Arriving in Tasmania from Affected Regions and Premises* must have a clinical assessment following their arrival in Tasmania. The direction requires these persons to undergo a clinical assessment on their arrival, including answering questions as to their health, a check of their temperature and a test for the disease. These requirements do not apply to persons who enter into isolation at an accommodation facility in accordance with the *Affected Regions and Premises Direction*.

The latest version of the direction provides that an authorised person under the *Affected Regions and Premises Direction* in respect of transport, freight or logistics does not need to undergo the clinical assessment if they remain in Tasmania for a period of less than 24 hours and comply with the requirements of Annexure A of the *Affected Regions and Premises Direction*, which prescribes infection prevention and control measures.

**Penalties**

Failure to comply with a direction of the Director carries a maximum penalty of 100 penalty units or **\$16,800.00** for an individual at the time of writing or six months imprisonment, or both. If a body corporate is guilty of an offence under the *Public Health Act 1997* (Tas), each director of the body corporate is guilty of the offence unless it is proved that the director could not have reasonably prevented the commission of the offence by the body corporate.

Failure to comply with a direction made in accordance with the emergency powers carries similar maximum fines to those under the *Public Health Act 1997* (Tas), however a term of three months' imprisonment can also be ordered under the *Emergency Management Act 2006* (Tas).

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## Get in touch with us



**Nicole Green**  
Partner

T: +61 2 9921 4739  
E: [nicole.green@minterellison.com](mailto:nicole.green@minterellison.com)



**Kylie Diwell**  
Partner

T: +61 3 8608 2019  
E: [kylie.diwell@minterellison.com](mailto:kylie.diwell@minterellison.com)



**Amanda Story**  
Partner

T: +61 2 6225 3756  
E: [amanda.story@minterellison.com](mailto:amanda.story@minterellison.com)



**Katrina Groshinski**  
Partner

T: +61 2 9921 4396  
E: [katrina.groshinski@minterellison.com](mailto:katrina.groshinski@minterellison.com)



**Kate Plowman**  
Partner

T: +61 2 9921 8580  
E: [kate.plowman@minterellison.com](mailto:kate.plowman@minterellison.com)



**Andrew Rentoul**  
Managing Partner Brisbane

T: +61 7 3119 6196  
E: [andrew.rentoul@minterellison.com](mailto:andrew.rentoul@minterellison.com)



**Lee Rossetto**  
Partner

T: +61 8 6189 7885  
E: [lee.rossetto@minterellison.com](mailto:lee.rossetto@minterellison.com)



**Lachlan Drew**  
Partner

T: + 61 8 8901 5921  
E: [lachlan.drew@minterellison.com](mailto:lachlan.drew@minterellison.com)