



# IN DEMOCRACY WE TRUST

ACCOUNTABILITY IN THE TIME OF  
COVID-19

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**GRATA FUND**  
8 APRIL 2020

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We acknowledge the Bedegal people who are traditional owners of the land on which we work. We pay our respect to the tens of thousands of years of stories and community life that has thrived in the Eora Nation and to the Elders past, present and emerging. Always was and always will be Aboriginal land.

# ABOUT GRATA FUND



Grata Fund supports people and communities to advocate for their legal rights. We do this by removing the financial barriers that prevent test cases in the public interest from getting to court. Our areas of focus are democracy, human rights and climate change. For further information about Grata Fund visit [www.gratafund.org.au](http://www.gratafund.org.au).



Grata Fund is grateful for the research support provided for this report by Hall & Wilcox.

Grata Fund is grateful to be supported by UNSW Law



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# EXECUTIVE SUMMARY

The world is facing a crisis of enormous magnitude that has rapidly affected every aspect of our lives. In order to manage the crisis,

Australian politicians are making decisions of enormous magnitude. These decisions will have life and death implications for Australians, while also reshaping our entire economy, social security system and widening the powers of law enforcement and its relationship with us.

These decisions will change the face of our nation for decades to come. To do this, Government politicians are asking that we trust them.

In our democracy, public trust is contingent on good government, confidence in leadership and integrity of processes.

Australian democracy has three arms enshrined in our Constitution. The Parliament is designed to be the voice of the people in our representative democracy and has powers designed to support scrutiny of Government and to make laws. Second, the Executive or the Government is made up of the party elected to government, the Prime Minister and Ministers, with powers including carrying out and enforcing laws. Thirdly, the Judiciary, or the Courts, which are impartial and designed to hold the powerful, including the Executive, accountable through interpreting the law and making binding decisions. The separation of powers is vital as it ensures too much power is not concentrated in one arm, and protects Australians from abuse of government power.

Within a matter of weeks, since Covid-19 hit our shores, the two accountability arms of our democracy were curtailed.

Responding to health advice, the Courts have been forced into various stages of closure and are attempting to transition to digital methods of operation. Parliament was adjourned until 11 August this year meaning that the Government will not have to answer to the Parliament for 4 months.

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The adjournment of Parliament is a decision of historic proportions not even seen during the World Wars.

In recent weeks, we've seen the introduction of tough measures most Australians have not experienced in our lifetimes. Our freedom of movement and association have been curtailed. Australians have lost their jobs, been placed in quarantine, and been separated from their loved ones. Children have stayed home from school. Court processes have been adjourned and Courts are shifting to online methods of working. Police have been given powers to move on, fine, and charge people for engaging in activities we previously took for granted, such as having a picnic, sitting on a park bench or going for a drive. Major telecommunications companies have provided data to the Federal Government to assist in tracking peoples' movement in Australia.

There is no doubt that extraordinary measures are necessary to manage this crisis, however extraordinary powers must be balanced with strong public accountability mechanisms. The strongest institutions that can provide the confidence in leadership necessary to maintain public trust throughout Covid-19 are those set out in our Constitution -- the Courts and the Parliament.

Democratic oversight is crucial to ensuring that any measures to address COVID-19 are necessary, proportionate, reviewable, non-discriminatory and time-limited. These institutions must not be watered down or cease to function at a time where Government is given extraordinary power, rather they should be strengthened so they can rise to the challenge and fulfil their democratic role enshrined in our Constitution.

Outside of the Parliament, we need our law enforcement authorities to implement the public health orders in a way that is careful and proportionate to the public health aims. We cannot allow the law to be applied in an arbitrary or discriminatory manner. The State and Territory police conduct commissions and independent ombudsmen need to continue their important work overseeing our law enforcement authorities.

A Select Senate Committee to scrutinise the Government's Covid-19 measures will be established following calls from Grata Fund, Human Rights Law Centre, National Aboriginal and Torres Strait Islander Legal Service, People with Disability Australia, Public Interest Advocacy Centre, The Centre for Public Integrity, Amnesty International and NSW Council for Civil Liberties<sup>[1]</sup> and calls from a group of eminent former judges convened by The Australia Institute.

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<sup>1</sup> Grata Fund, 'Parliamentary scrutiny of COVID-19 response is vital in public health emergency: Civil society and legal groups', available at: [https://www.gratafund.org.au/parliamentary\\_scrutiny\\_covid19](https://www.gratafund.org.au/parliamentary_scrutiny_covid19).



But in order to weather this crisis and maintain vital public trust we need more. Emergency sittings of Parliament will not fill our democratic deficit. All adjourned Australian parliaments must be reconvened in a safe manner as soon as possible. Oversight committees like the Public Accountability Committee of NSW should be set up to oversee all State and Territory Governments' COVID-19 response measures. Courts should be provided with additional resources to transition to digital operations and address the backlog of matters created by the crisis. Legal assistance organisations should be provided with additional funding to meet the increased need for legal advice and representation caused by COVID-19.

At a time when public trust is our best defense against COVID-19, steps to strengthen our democracy must be a cornerstone to every Australian government's response.

This report provides an outline of the pillars of our democracy - the Parliament, Courts and Executive, and how their operation has been impacted by COVID-19. We provide an overview of the measures introduced by Australian governments in response to the pandemic, and what impact these have on our democratic rights. We make 10 key recommendations required to ensure public trust and to protect and strengthen our democracy during this time.



# RECOMMENDATIONS

In order to preserve public trust in the management of the Covid-19 crisis Australian Governments should:

- 1 Parliaments across Australia that have been suspended should be recalled in a safe form in order to fulfil their key functions of scrutiny, legislation and representation.
- 2 The Federal Parliament should establish a Senate Select Committee to review and assess the Federal Government's measures in response to COVID-19.
- 3 State and Territory Parliaments should establish parliamentary oversight committees, such as the Public Accountability Committee established by the NSW Parliament, to review and assess their governments' measures in response to COVID-19.
- 4 The Federal, State and Territory governments should urgently provide additional funding to the Courts to enable proceedings to be moved online, and to deal with the backlog of cases efficiently. Resources should be provided for the training of Judicial officers, court staff and legal practitioners in online court systems.
- 5 The Federal, State and Territory governments should provide increased resourcing to legal assistance services to ensure they can manage the increased need for legal advice and representation caused by COVID-19.
- 6 The Executive must be held accountable through the Parliament for its actions. To achieve this, Parliaments across Australia that have been suspended should be recalled in a safe form as per recommendation 1.
- 7 The Executive should provide timely access to information to enable the press and the public to scrutinise the information the government is using to justify its COVID-19 measures.
- 8 In implementing measures in response to COVID-19, the Executive should direct law enforcement agencies to implement these measures in the least restrictive manner possible, in order to protect our democratic rights.
- 9 The Executive should also ensure these new police powers are assessed, reviewed and monitored by an independent oversight body such as ombudsmen. Terms of review should include an assessment of whether the measures are having a disproportionate impact on over-policed groups such as Aboriginal and Torres Strait Islander People.
- 10 Federal, State and Territory governments in Australia should ensure that any measures in response to COVID-19 are provided for in law; have a legitimate aim; are strictly necessary in a democratic society to achieve that aim; are the least intrusive and restrictive measures available to reach that aim; are based on scientific evidence; are not arbitrary or discriminatory in application; and are of limited duration, respectful of human dignity and subject to review.

# OUR DEMOCRATIC INSTITUTIONS

Australia has a proud history of democracy, with strong checks and balances through the separation of powers (the Parliament, the Judiciary and the Executive). The separation of powers is vital as it ensures too much power is not concentrated in one arm of government, and protects Australians from abuse of government power.

Public trust in Government is built on the effective functioning of each of these arms of our democracy. Our democracy has traditionally promoted the right to vote, freedom of assembly and political participation, freedom of expression, the rule of law, and accountability of government action.

In times of national emergency, such as during the COVID-19 pandemic, it is vital that public trust in the system is protected, that government is answerable to the people through the Parliament, and that the Courts continue to operate to hear disputes.

## PARLIAMENT

The Parliament has a key role to play in Australia - including making laws, scrutinising laws and executive action, authorising the spending of public money, and representation by members of parliament of their constituents. Parliament is a key mechanism for debating decisions and laws made by government, and forms a key pillar of our democratic system. However, at a time where we need transparency and scrutiny of government action more than ever, Australian parliaments at the Federal, State and Territory level have shut down in response to COVID-19.

Parliament	Status of operation	Date of return
Federal	Closed	11 August
ACT	Closed	No scheduled return date
NSW	Closed	September 2020
QLD	Closed	No scheduled return date
SA	Open	N/A
TAS	Closed	August 2020
VIC	Closed	No scheduled return date
WA	Open	N/A



Politicians across the country are exercising emergency powers to restrict our liberty, freedom of movement and assembly, and spending billions of dollars in stimulus packages. With Parliaments suspended, these decisions are not subject to scrutiny and debate, and governments are not being held to account for issues such as the Ruby Princess debacle which would normally arise during Parliamentary processes such as Question Time.

Parliaments should be recalled in order to retain public trust and confidence in our democratic systems. Parliamentary sessions could be held online or with paired down numbers in order to meet social distancing requirements. Parliaments overseas in the US, Europe and Asia continue to operate. It is essential that Australian Parliaments do the same.

We also need proper scrutiny of COVID-19 measures through strong parliamentary processes. Grata Fund, along with 7 other expert legal and community organisations, has called for the establishment of a Senate Select Committee to oversee the Federal Government's measures in response to COVID-19.

### **Recommendations**

**In order to preserve public trust:**

- 1. Parliaments across Australia that have been suspended should be recalled in a safe form in order to fulfil their key functions of scrutiny, legislation and representation.**
- 2. The Federal Parliament should establish a Senate Select Committee to review and assess the Federal Government's measures in response to COVID-19.**
- 3. State and Territory Parliaments should establish parliamentary oversight committees, such as the Public Accountability Committee established by the NSW Parliament, to review and assess their governments' measures in response to COVID-19.**

## THE COURTS

The Judiciary is independent from the Parliament and the Executive, and the role of judicial officers is to resolve disputes impartially. Courts have the power to make legally binding decisions on whether actions are lawful. The core role of the courts is to interpret the law, and apply it to the facts in a case. Courts are a key pillar of our democracy, as they provide accountability for government action, and allow individuals to access justice.

As a body which is completely independent from not only the Executive and its politics, but also the Parliament, courts play a crucial role in checking whether the government has acted lawfully. Access to the courts is an important way in which Australians are able to seek justice for wrongs not only done to themselves, but also to hold corporations and governments legally accountable for their actions and decisions.

The power of courts is not unrestricted. Courts are required to give public reasons for their decisions, and all decisions (except for those in the High Court) are subject to review through appeal to a higher level court.

COVID-19, however, has forced many courts to suspend or cancel their operations,[2] meaning that disputes awaiting a decision are being delayed, generating costs and prolonging uncertainty for all parties. In criminal trials, people who have not yet received a trial are spending extended amounts of time in custody, as new jury trials are not being listed and existing trials are being suspended, raising concerns about the right to a fair trial.

While some progress has been made through the use of technology to facilitate court business such as hearings online, barriers remain. Many people do not have access to the internet in rural, regional and remote areas, and those with disabilities who may not be able to use this technology face additional barriers to accessing justice.

Given the speed at which the government is making decisions and laws are being passed, there is little to no oversight of whether these decisions are legal, from the body of the most esteemed legal professionals in the country.

The scale of disruption that is occurring in public is unprecedented. The types of disputes in which resolution is being delayed include those around personal debts, mortgages, tenancy, employment terminations and family court matters. These are issues which can have tremendous immediate and ongoing impacts on people's lives.

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2 The Law Society of NSW, 'COVID-19 court updates for the legal profession', available at: <https://www.lawsociety.com.au/news-and-publications/news-media-releases/impact-covid-19-legal-profession/courts>.

The effective administration of justice is dependent on public trust in the justice system. We need to put safeguards in place to allow our Courts to continue operating, and to ensure public trust in the Judiciary and the Courts remains while justice is shifted online.

### **Recommendations**

In order to preserve public trust:

4. The Federal, State and Territory governments should urgently provide additional funding to the Courts to enable proceedings to be moved online, and to deal with the backlog of cases efficiently. Resources should be provided for the training of Judicial officers, court staff and legal practitioners in online court systems.
5. The Federal, State and Territory governments should provide increased resourcing to legal assistance services to ensure they can manage the increased need for legal advice and representation caused by COVID-19.

## **THE EXECUTIVE**

The Executive branch of government includes the Federal and State organisations led by the Prime Minister, Chief Ministers and Premiers. The Prime Minister, Chief Ministers and Premiers lead the 'Cabinet', or as it is sometimes called the 'Ministry', which includes the ministers responsible for leading all of the Federal and State departments including the Department of Health, Services Australia (including Centrelink and Medicare), the Departments of Education, and the Department of Home Affairs.

The core business of the Executive is to enforce the laws that are passed by the Parliament, or legislature. As laws cannot cover all situations that arise, often the Executive is given the discretion to make their own policies to fill in the gaps. The Executive however, does not have the power to make laws, and cannot mandate anything that is contrary to parliament or court-made law.

Throughout the COVID-19 response, the Executive has been playing a pivotal frontline role in Australia's response. This has included the implementation of social distancing measures, administration of payments to unemployed Australians through Centrelink, the engagement of police to enforce rules and issue fines for breach of these rules, and the management of schools to decide whether they open or shut.

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Traditionally, the Executive is held accountable to the Parliament through mechanisms like Question Time, where state and federal elected parliamentary representatives (back-benchers) will confront ministers (front-benchers) with questions on behalf of their electorate to vet the executive's policies and government business. With some parliaments shutting down, legislative sitting days so sparse, and the breakneck speed at which government regulations are being introduced and amended, question time is becoming increasingly insufficient in critiquing and reviewing executive function.

Access to information is vitally important in ensuring that the government is accountable to scrutiny by all Australians. This can range from information available to the Department of Health when they allowed everyone from the Ruby Princess cruise ship to disembark, or access to the statistical modelling data which the government relies on to justify restrictive measures.

An effective representative democracy requires the executive to be accountable and answerable to the people, whether this is through the elected representatives in our parliament, or otherwise.

An independent media is crucially important in broadcasting and communicating the executive's policies, and to ask questions vetting their reasons. This alone, however, is not enough, and must be aided by a functioning parliament so that the Australian people know what decisions are being made in their name, and the justifications for these decisions.

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## **Recommendations**

In order to preserve public trust:

6. The Executive must be held accountable through the Parliament for its actions. To achieve this, Parliaments across Australia that have been suspended should be recalled in a safe form as per recommendation 1.

7. The Executive should provide timely access to information to enable the press and the public to scrutinise the information the government is using to justify its COVID-19 measures.

8. In implementing measures in response to COVID-19, the Executive should direct law enforcement agencies to implement these measures in the least restrictive manner possible, in order to protect our democratic rights.

9. The Executive should also ensure these new police powers are assessed, reviewed and monitored by an independent oversight body such as ombudsmen. Terms of review should include an assessment of whether the measures are having a disproportionate impact on over-policed groups such as Aboriginal and Torres Strait Islander People.



# DEMOCRATIC RIGHTS IMPACTED BY THE COVID-19 MEASURES

Australia is a party to the 7 core international human rights treaties. This means Australia has agreed to protect and promote the rights contained in these instruments. A number of measures introduced by the Federal, State and Territory governments restrict some of our key democratic rights, including freedom of assembly, movement and expression which are essential to our democracy.

While these rights may be restricted for reasons of national emergency or public health, any restrictions on these rights should be, at a minimum:

1. provided for and carried out in accordance with the law;
2. directed toward a legitimate objective;
3. strictly necessary in a democratic society to achieve the objective;
4. the least intrusive and restrictive available to reach the objective;
5. based on scientific evidence and neither arbitrary nor discriminatory in application; and
6. of limited duration, respectful of human dignity, and subject to review.[3]

## FREEDOM OF ASSEMBLY

Freedom of assembly protects the rights of individuals and groups to meet and engage in peaceful protests.[4] Freedom of assembly can be restricted only if prescribed by law, and for reasons including the protection of public health. Freedom of assembly is protected under various human rights charters in Australia, and under the implied freedom of political communication in the Australian constitution.

Freedom of assembly is essential to our democracy as protest is a vital tool available to the public to push for accountability of government and social change.

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3 UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4, available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

4 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 21 ('ICCPR').

Orders introduced by Governments in response to COVID-19 have led to the restriction of the right to protest. For example, a cavalcade protest planned to abide by social distancing restrictions to advocate for the health of detained asylum seekers was banned by local police in Victoria in early April 2020.[5] There are concerns that banning a protest planned to abide by social distancing restrictions impinges on the right to freedom of assembly to a greater degree than is necessary. We need to ensure that restrictions on freedom of assembly are proportionate and removed once the COVID-19 crisis is over.

## **FREEDOM OF MOVEMENT**

The right to freedom of movement means people who are lawfully in Australia can move freely within Australia, and are free to leave the country.[6] Restrictions on freedom of movement are allowed if provided by law, and necessary to protect public health. Restrictions on freedom of movement must be the least intrusive means of achieving the result.

Orders introduced by Governments in Australia in response to COVID-19 have led to the restriction of the right to freedom of movement, including restrictions on social gatherings (detailed in the 'Covid-19 Measures' section of this report), travel bans, and returning travellers being placed in quarantine in hotels. Any policing of these measures must not be arbitrary or discriminatory in nature.

## **FREEDOM OF EXPRESSION**

The right to freedom of expression includes the right to make written and oral communications, to engage in media and protest.[7] It also includes the freedom to seek, receive and give information. Restrictions on freedom of expression are permitted if provided by law and when necessary to protect public health.

Australian governments at all levels need to ensure they are providing clear information on COVID-19 and measures they have put in place to restrict movement and other rights. This information should be accessible, accurate, easy to understand, timely and readily available.

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5 Melbourne Activist Legal Support, Statement of Concern: Unique protest squashed by police due to COVID restrictions (4 April 2020), available at: <https://melbourneactivistlegalsupport.org/2020/04/04/statement-of-concern-unique-protest-squashed-by-police-due-to-covid-restrictions/>.

6 ICCPR, art 12.

7 ICCPR, art 19.

The press needs to have access to parliamentarians, government officials and timely access to relevant information in order to report on COVID-19, and provide scrutiny of Government action. Sharing information as it becomes available, including government modelling of the spread of COVID-19, will increase public trust in government and the community's understanding of the measures put in place.

### **Recommendations**

In order to preserve public trust:

10. Federal, State and Territory governments in Australia should ensure that any measures in response to COVID-19 are provided for in law; have a legitimate aim; are strictly necessary in a democratic society to achieve that aim; are the least intrusive and restrictive measures available to reach that aim; are based on scientific evidence; are not arbitrary or discriminatory in application; and are of limited duration, respectful of human dignity and subject to review.

# APPENDIX 1: COVID-19 MEASURES

On Sunday 29 March 2020, Prime Minister Scott Morrison announced new lockdown measures in response to COVID-19, including limitations on the number of people who can assemble. Since then, the States and Territories have brought in sweeping new laws (detailed below) that provide restrictions on freedom of assembly and movement. The laws generally restrict gatherings to members of a household or two -ten people only, and permit leaving the home only for 'essential' reasons such as work, healthcare or grocery shopping. Many in the community are confused about what behaviour is still allowed under these new laws. In some cases, Police Commissioners or Premiers have said that certain behaviour is allowed, when it appears to not be allowed on the face of the law.

The laws are being enforced by police officers, who have broad discretion to issue fines or charge people under the laws. Penalties range from fines to imprisonment. A key concern about these laws is how they will be enforced, particularly for groups such as Aboriginal and Torres Strait Islander People and migrants who already experience high levels of policing. It is vital that these new police powers are overseen by law enforcement commissions and ombudsmen, and that data about the use of these powers by police is made readily available.

The pace of introduction of these lockdown measures and the confusing nature of the measures demonstrate the need for clear and accurate information to be provided to the public. Measures that provide such draconian restrictions on key rights need to be subject to scrutiny in order to protect our democracy.

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# NEW SOUTH WALES

## Two person rule

This rule is implemented in NSW via the 'Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020' made under section 7 of the Public Health Act 2010 (NSW). Under the Order, persons are directed to not leave their place of residence without reasonable excuse, and must not participate in a gathering in a public space or more than 2 persons.

## Exceptions

Under the order, the 2 person gathering rule does not apply to:

- a gathering for the purposes of work;

- essential gatherings referred to in Schedule 2 (such as a gathering in an airport necessary for the normal business of the airport);
- a gathering for persons all of whom are members of the same household;
- a gathering for a wedding of under 5 people or a funeral of under 10 people and that otherwise complies with the requirements of the Order;
- to provide care or assistance to a vulnerable person;
- to provide emergency assistance; to move to a new place of residence (including a business moving to a new premises);
- and to fulfil a legal obligation (such as attending court or satisfying bail requirements).

## Penalties

Under the Public Health Act 2010 (NSW), the penalty for breaching this Order, or any other Ministerial Direction or public health order is as follows: an individual is guilty of an offence carrying a maximum penalty of imprisonment for 6 months or a fine of up to \$11,000 (or both) plus a further \$5,500 fine for each day the offence continues; and a corporation is liable to a fine of \$55,000 and \$27,500 for each day the offence continues.

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## How the COVID-19 measures have been implemented

In NSW the COVID-19 measures have been implemented under the COVID-19 Legislation Amendment (Emergency Measures) Act No 1 2020 (NSW), amending the Public Health Act 2010 No 127 (NSW).

The power to make Directions is found under sections 7 and 8 of the Public Health Act 2010 (NSW), where the Minister considers on reasonable grounds that a Direction is necessary to deal with a public health risk, or where a state of emergency has been declared. Directions are made by way of public health order.

The NSW amending legislation amends the Public Health Act 2010 (NSW) to the following effect:

Public health orders of indefinite length may be made:

- The amendments allow public health orders of any length to be made in relation to the COVID-19 pandemic generally, and additionally in relation to people who are at risk of contracting COVID-19. Previously, a public health order would ordinarily expire at the end of 3 business days unless confirmed by the NSW Civil and Administrative Tribunal.

Police may arrest persons who contravene COVID-19 public health orders without a warrant:

- Police can arrest a person suspected on reasonable grounds to be contravening a COVID-19 related public health order. Once arrested, the person may be returned to their home or usual residence, a place specified in the public health order, or their place of detention if the person is a public health detainee. Previously, Police were required to obtain an arrest warrant after obtaining a certificate from an authorised medical practitioner confirming that the person was breaching a public health order.

Police may demand the name and address of specified persons:

- The Police may direct a person suspected of contravening a public health order or the Public Health Act 2010 (NSW), or a person who is apparently in charge of premises where such a contravention is occurring or evidently has occurred, to provide their full name and address. Previously, only 'authorised officers' under the Act had such powers.

The amendments are temporary, and will expire 12 months from commencement, on 25 March 2020.

## Public health orders

The following relevant public health orders have been made in NSW:

Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 which directs that:

- a person must not, without reasonable excuse, leave their place of residence. Reasonable excuses include obtaining food or other goods and services, travelling for work or education if it cannot be done at home, exercise, or for medical or caring reasons (plus others).
- a person must not participate in a gathering in a public place of more than 2 persons, except in the case of gatherings of members of the same household and gatherings essential for work or education.
- certain premises (such as pubs and clubs) are to be closed.
- occupiers or owners of all premises open to the public (and excluding private residences) are required to follow limits on the maximum number of people permitted into the premises, and ensure that at least 4 square metres of space is available for each person on the premises.

Public Health (COVID-19 Self-Isolation) Order 2020 which directs that:

- a person diagnosed with COVID-19 must immediately travel to a residence, hospital, or other place determined to be suitable. The diagnosed person must, except in specified circumstances (such as an emergency), remain at the residence or place and not permit any other person to enter the residence until the diagnosed person is medically cleared. Any other person who lives at the residence may enter the residence.



Public Health (COVID-19 Air Transportation Quarantine) Order 2020 which directs:

- that a person who arrives in NSW by aircraft from a country other than Australia must immediately undertake mandatory quarantine for a period of 14 days in a quarantine facility or medical facility. The order does not apply to flight crew of aircraft.

Public Health (COVID-19 Maritime Quarantine) Order 2020 which directs that:

- a person who arrives in NSW on a vessel originating from a port outside of NSW must not disembark unless authorised by the Commissioner of Police or unless required because of an emergency. Once authorisation is provided, that person must then disembark and go directly to a quarantine facility or a hospital or other medical facility. Certain persons (such as dock workers and border security personnel) are exempt from this order.

Public Health (COVID-19 Residential Aged Care Facilities) Order 2020 which directs that:

- a person cannot enter a residential aged care facility, except for specified persons such as employees or contractors. Additionally, those specified persons (such as employees and contractors) are directed to not enter a residential aged care facility in certain circumstances, such as if they have been exposed to COVID-19, are within the 14 day quarantine period, or if the person has a temperature of higher than 37.5 degrees Celsius.

## Penalties

Under the Public Health Act 2010 (NSW), for breaching a Ministerial Direction or public health order:

- an individual is guilty of an offence carrying a maximum penalty of imprisonment for 6 months or a fine of up to \$11,000 (or both) plus a further \$5,500 fine for each day the offence continues; and
- a corporation is liable to a fine of \$55,000 and \$27,500 for each day the offence continues.

# QUEENSLAND

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## Two person rule

The 'two person' rule is implemented in Queensland via the 'Home Confinement, Movement and Gathering Direction' made under the Public Health Act 2005 (Qld) following the declaration of a public health emergency under section 319(2) of the Act.

Under the Direction, Queensland residents are directed to not leave their principal place of residence subject to certain exceptions. Where the resident leaves their residence due to an exception, they are not to attend an outdoor gathering with more than 1 other person other than members of their household unless the person, for example, requires physical assistance due to a disability. Residents are also permitted to receive no more than 2 visitors in their residence (such as family members and close friends), subject to certain exceptions. However, gatherings are not permitted in non-residences.

## Exceptions

A resident can leave their principal place of residence only for the extent reasonably necessary to achieve the following:

- to obtain food or other essential goods or services;
- to obtain medical treatment or other health care services;
- to engage in physical exercise;
- to perform work or volunteering, or carry out or conduct an essential business, activity or undertaking, and the work, business activity or undertaking to be performed is of a nature that cannot reasonably be performed from the person's principal place of residence
- :to visit another person's residence in accordance with the 2 visitor rule
- :education and early childhood workers may travel to and from their home centre over the term 1 break;
- to visit a terminally ill relative or to attend a funeral or wedding, subject to any applicable restrictions under other relevant Directions
- :to provide assistance, care or support to an immediate family member;
- to attend any court or tribunal of Australia or to comply with or give effect to orders of the court or tribunal of Australia
- :to attend a childcare facility, school, university, or other educational institution, to the extent care or instruction cannot reasonably be obtained in the person's principal place of residence
- to assist with or participate in an investigation or other action by a law enforcement authority, whether voluntarily or not;

- for children under 18 years who do not live in the same household as their biological parents or siblings or one of their parents or siblings, continuing existing arrangements for access to, and contact between, parents and children and siblings, but not allowing access or contact with vulnerable groups or persons;
- avoiding injury or illness or to escape a risk of harm; or
- to comply with or give effect to the exercise of a power or function of a government agency or entity under a law.

### Penalties

- A person who does not comply with a Direction of the Chief Health Officer (such as this Direction) is liable to pay \$13,345.
- A person who does not comply with a Direction made by an emergency officer without a reasonable excuse, including to provide reasonable help to the emergency officer, is liable to pay \$13,345.
- A person who does not comply with a detention order is liable to pay \$26,690.

### How the COVID-19 measures have been implemented

The QLD government has implemented their COVID-19 measures through passing the Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020 (11 of 2020) (Qld), amending the Public Health Act 2005 (Qld).

The Directions made by the Chief Health Officer are made under the Public Health Act 2005 (Qld) following a declaration by the Minister of a public health emergency due to COVID-19 made under section 319(2) of the Act.

Further, once a public health emergency is declared, the Chief Executive may appoint emergency officers and emergency officers (medical) to exercise the powers listed in Parts 6 and 7 of the Act. The Chief Health Officer may also make Directions under Part 7A of the Act.

The public health emergency currently expires on 19 May 2020 unless extended.



## Emergency powers

Emergency officers have the following powers under the Public Health Act 2005 (Qld) when a public health emergency is in effect:

The following emergency powers, found in section 345 of the Act, can be used if the emergency officer reasonably believes that it is necessary to respond to the public health emergency:

- enter a place to prevent or minimise serious adverse effects on human health;
- require a person not to enter or remain within a place
- require a person to stop using a place for a stated purpose;
- require a person to go to a stated place;
- require a person to stay at or in a stated place; and
- other powers authorised under the Act.

Emergency officers also have the power to make COVID-19 specific Directions under Part 7A of the Act, such as to require that a person remain at a specific location or facility subject to specific conditions.

Emergency officers (medical) have the following powers under the Public Health Act 2005 (Qld) when a public health emergency is in effect:

- To order detention for 14 days if the emergency medical officer reasonably suspects that a person has or may have a serious disease or illness constituting an immediate risk to public health, and their detention is necessary to effectively respond to the declared public health emergency. The detention order must be in writing and specify certain things, such as the place of detention. The detention order may be enforced with reasonable help and force, however, a person must be given the opportunity of voluntarily complying with the order before it is enforced. Other requirements apply to the exercise of this power, for example that the person be tested to see if they have a serious illness as soon as practicable.
- To establish an isolation area to accommodate persons subject to a detention order.

## Directions

The following Directions have been made by the Chief Health Officer:

- Non-essential business, activity and undertaking Closure Direction (No.4): which directs that all non-essential business and activities (as set out in the table) must not operate until the end of the public health emergency.

- Home confinement Direction: which directs that all Queensland residents must not leave homes other than for a specified reason (such as to obtain necessary goods or services, for work and education, exercise, or for care or other compassionate reasons). The Direction also prohibits meetings with more than one other person not from a person's household, subject to certain exceptions (such as weddings and funerals that meet the requirements of the Direction).
- Self-quarantine for persons arriving in Queensland from overseas Direction: which directs that anyone arriving in Queensland from overseas must immediately travel to the hotel or accommodation they are directed to, where they are to remain for 14 days unless seeking medical care or in an emergency. The Direction also applies to air and maritime crew, who must also self-quarantine in their accommodation until their next trip or for at least 14 days.
- Restrictions in Private Residences Direction: which directs that Queensland residents cannot have more than 10 people in their private residences at any one time (unless the household ordinarily has more than 10 residents).
- Self-isolation for Diagnosed Cases of COVID-19 Direction: which directs that which directs that a person who is diagnosed with COVID-19 must immediately self-isolate and remain in isolation until clearance to exit isolation is given, or travel directly to a hospital for treatment before returning to isolation until clearance is granted unless an exception applies (such as an emergency).

## Penalties

- A person who does not comply with a Direction of the Chief Health Officer is liable to pay \$13,345.
- A person who does not comply with a Direction made by an emergency officer without a reasonable excuse, including to provide reasonable help to the emergency officer, is liable to pay \$13,345.
- A person who does not comply with a detention order is liable to pay \$26,690.

# ACT

## Two Person Rule

This rule is implemented in the ACT via the 'Public Health (Non-Essential Gatherings) Emergency Direction 2020' made under section 120 of the Public Health Act 1997 (ACT).

Under the direction, it is prohibited for more than 2 persons to be present in a residential premises that they are not ordinarily residents of. Social distancing of 1 person per 4 square metres must be observed.

## Exceptions

1. For medical care and providing medical supplies;
2. Law Enforcement Operations;
3. Emergency Services;
4. In the event of other emergency situations;
5. To provide necessary care or support; and
6. Carrying out urgent or essential repairs.

A person must not organise or attend a gathering of more than two people in an outdoor space unless they are all ordinarily resident at the premises. Funerals and weddings are exempt if they comply with the Public Health (Closure of Non-Essential Business or Undertaking) Emergency Declaration 2020 (No 4).

For other premises, no gathering of more than 2 people can occur, subject to exceptions within the Direction.

An authorised person may direct a person to do such things that are reasonably necessary to comply with this direction, including requesting to produce proof of identification. If a person fails to comply, the authorised person may take all reasonable steps to enforce compliance.

## Penalties

Under section 120 of the Public Health Act 1997 (ACT), failing to comply with a direction without a reasonable excuse has a maximum penalty of \$8,000 for individuals. In the case of a body corporate the maximum penalty is \$40,500. In the case of a utility that is a body corporate the maximum penalty is \$1,620,000.

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Under section 121 of the Act, an authorised person is the chief health officer, authorised public health officer, member of the ambulance service, a police officer or any person authorised by the chief health officer. These authorised persons have emergency powers to enter and use reasonable force to prevent harm to a person, prevent access to any place, close pedestrian or vehicle traffic and remove a person obstructing an authorised person.

### **How the COVID-19 measures have been implemented**

The Public Health (Emergencies) Amendment Act 2020 amending the Public Health Act 1997 (ACT) and the COVID-19 Emergency Response Act 2020 (ACT), amending a range of acts, were passed on 2 April 2020.

The Directions are made under section 119 the Public Health Act 1997 (ACT) following a declaration of an emergency due to COVID-19 made under the Public Health (Emergency) Declaration 2020 (No 1). The emergency declaration has been repeatedly extended to 3 April 2020.

Current Law: The Public Health Act 1997 (ACT)

Currently, an emergency declaration can only remain in force initially for 5 days and then be extended (and further extended) by up to 2 days each time. Section 120 allows the chief health officer to take any action or give any direction (orally or in writing) they consider necessary or desirable to alleviate the emergency.

The Public Health (Emergencies) Amendment Act 2020 (ACT)

This allows an emergency declaration to come into force immediately (previously it was 'on the day'). A COVID-19 Declaration is added in the Act. It also adds in the power to extend a COVID-19 Declaration for up to 90 days. Other declarations remain only able to be extended for 2 days. Furthermore a COVID-19 Declaration must be revoked if the Minister, on advice from the chief health officer, decides that the declaration is no longer justified. After 30 days of an extension, the chief health officer must advise the Minister every 30 days about the status of the emergency and whether the declaration is justified.

A Direction can now include directing the occupier of property to place the property under the control or disposal of the chief health officer. This particular direction must be given in writing.

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The following Directions have been made at the time of writing and remain in force:

- Public Health (Returned Travellers) Emergency Direction 2020:  
which requires those who have arrived in the Australian Capital Territory following a flight from overseas must self-isolate at a suitable premise for 14 days. They must not leave this premises except for the purposes of obtaining medical care or medical supplies and in any other emergency situation. They must not let anyone enter the premises unless they usually live there, they are also self-isolating for the same period or for medical or emergency purposes.
  - The Public Health (Returned Travellers) Emergency Direction 2020 (No 2):  
which requires that any person who enters the Australian Capital Territory (except for a member of the flight crew) following a flight that departed from outside Australia must quarantine inside a premises designated by the chief medical officer until clearance is given by an authorised medical officer. They must communicate that they are in quarantine to anyone they come into contact with and comply with any request by an authorised person to show proof of identification. Such an authorised person may use reasonable force and assistance as is necessary to ensure compliance. An authorised medical officer may give clearance from quarantine after 48 hours if they are satisfied the person can comply with the Public Health (Return Travellers) Emergency Direction 2020. The two Returned Travellers Directions operate together.
  - The Public Health (Residential Aged Care Facilities) Emergency Direction:  
which limits the people who can enter or remain on the premises an aged care facility.
  - The Public Health (Self-Isolation) Emergency Direction 2020:  
which requires those diagnosed with COVID-19 to travel directly to a hospital for treatment or to a premises that is suitable for the person to reside in until they are given clearance by an authorised medical officer. They must not leave the premises except to obtain medical care or medical supplies, in an emergency situation or in limited outdoor circumstances where it is possible to avoid close contact with other persons and not to enter any other buildings. A diagnosed person must also communicate their diagnosis to any person to whom they come into contact with until being cleared by an authorised medical officer. They must also comply with any request by a police officer or member of the ambulance service to produce proof of identification.
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- The Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (No 4):  
which requires non-essential businesses or undertakings to cease operating, unless they can operate in a way that no more than 2 people enter their premises and social distancing of 1 person per 4 square metres is observed. This does not include online or streaming services, delivery, take away or pickup. An authorised person may direct a person to do such things that are reasonably necessary to comply with this direction, including requesting to produce proof of identification. If a person fails to comply, the authorised person may take all reasonable steps to enforce compliance. This operates concurrently with the Non-Essential Gatherings Direction.
- The Public Health (Non-Essential Gatherings) Emergency Direction 2020:  
which prohibits more than 2 persons who are not ordinarily resident at a residential premises to enter and remain in a premises. They must also ensure social distancing of 1 person per 4 square metres. There are exceptions for medical care and medical supplies, law enforcement, emergency services, other emergency situations, necessary care or support or carrying out urgent or essential repairs. A person must not organise or attend a gathering of more than two people in an outdoor space unless they are all ordinarily resident at the premises. Funerals and weddings are exempt if they comply with the Public Health (Closure of Non-Essential Business or Undertaking) Emergency Declaration 2020 (No 4). For other premises, no gathering of more than 2 people can occur, subject to exceptions within the Direction. An authorised person may direct a person to do such things that are reasonably necessary to comply with this direction, including requesting to produce proof of identification. If a person fails to comply, the authorised person may take all reasonable steps to enforce compliance. Each Direction expires at the time specified in the Direction, unless extended.

## Penalties

Under section 120 of the Public Health Act 1997 (ACT), failing to comply with a direction without a reasonable excuse has a maximum penalty of \$8,000 for individuals. In the case of a body corporate the maximum penalty is \$40,500. In the case of a utility that is a body corporate the maximum penalty is \$1,620,000.

# NORTHERN TERRITORY

## Ten person rule (unless there is more than 4 square metres of space per person)

Under the 'Directions No 14 2020 - Directions for Gatherings' made under section 52 of the Public and Environmental Health Act 2011 (NT) following the declaration of an emergency under the Act, a person is prohibited from attending a prohibited gathering, organising a prohibited gathering, or if they occupy a space, allow a prohibited gathering to occur in that space.

A prohibited gathering is:

- in an outdoor space, one of 10 people or more in a single undivided area;
- in an indoor undivided space or a vessel, one of more than 10 people, unless there is more than 4 square metres of space per person present.

## Exceptions

A prohibited gathering is not a gathering:

- of people who all live at the same residence;
- for the purpose of conducting emergency services;
- an airport for its normal business or operation; a medical or health service facility;
- a residential facility;
- a prison, correctional centre, Youth Detention Centre or other place of custody or detention for its normal business or operation; a court or tribunal for its normal business or operation; the Legislative Assembly precinct for its normal business or operation;
- a food market, supermarket, grocery store, retail store or shopping centre for its normal business or operation;
- a school, university or other educational institution for its normal business or operation; a child care facility for its normal business or operation;
- an office building, factory, mine or construction site for its normal business or operation; a hotel, motel, mining accommodation or other place of accommodation for its normal accommodation business or operation;
- a gathering in a private motor vehicle or in a commercial passenger vehicle; or a place where people may be transiting through the place or for the purpose of, or related to, transportation, including travelling in vehicles or gathering at a garage or public transportation facility such as a station, platform or stop.

## Penalties

Under section 56 of the Public and Environmental Health Act 2011 (NT) it is an offence for a person to engage in conduct that contravenes the emergency declaration or any direction from the Chief Health Officer. The person is at fault if they intentionally engage in the conduct and are reckless as to whether the conduct would result in a contravention of the declaration or direction, without reasonable excuse. The maximum penalty is \$62,800.

## How the COVID-19 measures have been implemented

The NT government passed the Emergency Legislation Amendment Act 2020 (NT) to amend the Public and Environmental Health Act 2011 (NT) in order to implement their COVID-19 measures. Previously, a public health emergency declaration could only be in force for 5 days and extended for another one or more further periods of 5 days. However both of these possible durations have been amended by the Emergency Legislation Amendment Act 2020 (NT) to 90 days. The Directions are made under section 52 of the Public and Environmental Health Act 2011 (NT) following a declaration of an emergency due to COVID-19. The Chief Health Officer can also delegate authority to authorised officers under the Act.

## Directions

The following directions have been made at the time of writing:

- Directions No 17 2020 - Directions to Close Public Places, Services and Activities: which closes a variety of places, activities and services to the public, including customers and members.
- Directions No 16 - Directions for Territory Border Restrictions: which requires arrivals to the NT to disclose details of the prior travel history of the last 30 days, their contact details, intended address while in the territory, and if a member of a certain exempt group, what social distancing and quarantine measures they will adopt. All non-exempt arrivals must quarantine for 14 days. This direction also states social distancing mechanisms.



- Directions No 14 2020 - Directions for Gatherings:  
which prohibits a person to organise or attend indoor or outdoor gatherings if they contain more than 10 persons. Gatherings of 10 or less persons are prohibited if the attendees exceed one person per 4 square meters. There are certain excepted gatherings.
- Directions No 7 2020 - Directions for Infected Persons:  
which requires a person who is notified by an authorised officer or health practitioner that they are infected with COVID-19 to travel directly to medical treatment or remain isolated until notified by the Chief Health Officer (or delegate) that they no longer need to.
- Directions No 5 2020 - Directions for Assistance of Police Officers:  
which requires police officers who are authorised officers under section 76(1)(f) of the Public and Environmental Health Act 2011 (NT) to assist the Chief Health Officer in exercising their powers.
- Directions No 2 2020 - Directions for Aged Care Facilities:  
which limits the people who can enter or remain on the premises of an aged care facility. Each Direction expires at the time specified in the Direction, unless extended.

## Penalties

Under section 56 of the Public and Environmental Health Act 2011 (NT) it is an offence for a person to engage in conduct that contravenes the emergency declaration or any direction from the Chief Health Officer. The person is at fault if they intentionally engage in the conduct and are reckless as to whether the conduct would result in a contravention of the declaration or direction, without reasonable excuse. The maximum penalty is \$62,800.

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# VICTORIA

## Two person rule

The 'two person' rule is implemented in Victoria via the 'Stay at Home Direction' made under sections 190(1)(a) and (g) and 200(1)(d) of the Public Health and Wellbeing Act 2008 (Vic).

Under the Direction, persons are required to stay at home and to not go into a single undivided indoor space or attend an outdoor gathering with more than 1 other person in that space.

## Exceptions

A person can go into a single undivided indoor space or attend an outdoor gathering with more than 1 person if:

- all of those other persons ordinarily reside at the same premises as the person;
- to attend a wedding or funeral that complies with the requirements of the Direction (such as the requirement that the space have at least 4 square metres of space per person present);
- for one of the five exceptions to the Stay at Home direction, being to obtain necessary goods or services, for work or education, for care and other compassionate reasons, for exercise, or for other specified reasons (such as in an emergency, or in order to move to a new premises, or moving between two or more of their ordinary residences).

## Penalties

Under section 203 of the Public Health and Wellbeing Act 2008 (Vic), the penalties for breaching the Stay at Home Direction, or any other Direction, without a reasonable excuse is:

- \$19,826.40 for an individual; and
- \$99,132 for a corporation. Further, Victoria

Police have also received powers to issue on the spot fines amounting to \$1,652 for individuals and \$9,913 for businesses that fail to comply with Directions made by the Chief Health Officer.

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## How the COVID-19 measures have been implemented

In Victoria, the COVID-19 measures have been implemented under the Public Health and Wellbeing Act 2008 (Vic). Once a state of emergency is declared under section 198(1) of the Public Health and Wellbeing Act 2008 (Vic), the Chief Health Officer is empowered to grant an authorisation to authorised officers to exercise the emergency powers listed in section 200 of the Act, which includes the power to make Directions. The state of emergency expires on 14 April.

### Emergency Powers

Under the Public Health and Wellbeing Act 2008 (Vic), once a state of emergency has been declared, the authorised officers have the following emergency powers:

- to detain any person for the period reasonably necessary to eliminate a serious risk to public health;
- to restrict the movement of any person;
- to prevent any person from entering Victoria; and
- give any other Direction reasonably necessary to protect public health.

The authorised officer must also warn the relevant person that a refusal or failure to comply with their exercise of an emergency power is an offence, unless it is not reasonably practicable to do so.

If a person is detained, the officer must:

- briefly explain the reason why a person is required to be detained, unless it is not practicable to do so (in which case it must be explained as soon as possible);
- facilitate any reasonable request for communication made by the detained person;
- at least once every 24 hours review whether the continued detention of the person is reasonably necessary to eliminate or reduce a serious risk to public health; and
- give written notice to the Chief Health Officer that a person is being detained as soon as is reasonably practicable.

## Directions

The following Directions have been made:

- Stay at Home Directions: which directs that a person must not leave their ordinary place of residence other than for a specified reason (being to obtain necessary goods or services, for work and education, exercise, for care or other compassionate reasons, or for other specified reasons). If a person has more than one ordinary place of premises, a person can travel between these residences. The Direction also prohibits both indoor and outdoor gatherings of more than 2 people who do not ordinarily reside at the same premises, subject to certain exceptions (such as weddings and funerals that meet the requirements of the Direction).
- Restricted Activity Directions: which directs that certain premises (such as pubs, cafes, cinemas and places of worship) must not operate subject to certain exceptions (such as if food/drink is to be consumed away from the premises), and directs that where premises operate according to the exceptions the density limit of 1 person per 4 square metres must not be exceeded;
- Isolation (Diagnosis) Direction: which directs that a person who is diagnosed with COVID-19 must immediately self-isolate and remain in isolation until clearance from isolation is given by DHHS, or travel directly to a hospital for treatment before returning to isolation until clearance is granted unless an exception applies (such as an emergency).
- Hospital Visitor Directions: which directs that a person cannot enter a hospital unless the person is a patient, a worker, or a visitor. Persons permitted under the Direction must not enter a hospital in certain circumstances, such as if they have been diagnosed with COVID-19 or are within the 14 day quarantine period.
- Aged Care Facilities Directions: which directs that a person cannot enter a residential aged care facility, except for specified persons such as employees or contractors. Additionally, those specified persons (such as employees and contractors) are directed to not enter a residential aged care facility in certain circumstances, such as if they have been exposed to COVID-19, are within the 14 quarantine period, or if the person has a temperature of higher than 37.5 degrees Celsius.

Each Direction expires at the time specified in the Direction, unless extended.

## Penalties

Under section 203 of the Public Health and Wellbeing Act 2008 (Vic), the penalty for failing to comply with a Direction or exercise of an emergency power by an authorised officer without a reasonable excuse is liable to pay a fine of:

- \$19,826.40 for an individual; and
- \$99,132 for a corporation.

Further, Victoria Police have also received powers to issue on the spot fines amounting to \$1,652 for individuals and \$9,913 for businesses that fail to comply with Directions made by the Chief Health Officer.



# SOUTH AUSTRALIA

## Ten person rule

Under the 'Emergency Management (Gatherings)(COVID-19) Direction 2020' made under section 25 of the Public Health Act 2016 (SA) following the declaration of a state of major emergency under section 23(2) of the Act, a person is prohibited from attending a prohibited gathering, organising a prohibited gathering, or (if they own, control or operate a premises), allow a prohibited gathering to occur on that premises. A person who is present at any gathering (even one that is permitted) is also directed to use their best endeavours to comply with the social distancing principles, having regard to all the circumstances.

A prohibited gathering is one of more than 10 persons, or a gathering of 10 persons or less where there is not at least 4 squares metres of space per person.

## Exceptions

A prohibited gathering is not a gathering:

- at an airport that is necessary for the normal business of the airport; or
- for the purposes of or related to public transportation, including in vehicles or at public transportation facilities such as stations, platforms and stops; or
- at a medical or health service facility that is necessary for the normal business of the facilities; or
- for the purposes of emergency services; or
- at a disability or aged care facility that is necessary for the normal business of the facility; or
- at a prison, correctional facility, training centre or other place of custody; or
- at a court or tribunal; or
- at Parliament for the purpose of its normal operations; or
- at a food market, supermarket, grocery store, retail store or shopping centre that is necessary for the normal business of those premises; or
- at an office building, factory, mining site or construction site that is necessary for the normal operation of those premises; or
- at a school, university, educational institution or childcare facility that is necessary for the normal business of the facility; or
- at a hotel, motel or other accommodation facility that is necessary for the normal operation of accommodation services; or

- at a place where persons are present for the purposes of transiting through the place; or
- specified as exempt from this direction by the State Co-ordinator (or authorised officer) in writing; or
- delivered by an operator who has a social distancing policy approved in writing by the State Co-ordinator (or authorised officer).

## Penalties

See below. The penalty framework in South Australia is quite complex.

## How the COVID-19 measures have been implemented

SA has existing emergency management legislation, and has amended its emergency management regulations in response to COVID-19. Once a state of major emergency is declared under section 23(2) of the Emergency Management Act 2004 (SA), the State Co-ordinator or an authorised officer is empowered to exercise the emergency powers listed in section 25 of the Act, which includes the power to make Directions. These authorised officers include police officers and any other persons whom the State Co-ordinator appoints, per section 3 of the Act. The state of major emergency expires on 2 May.

Further, in South Australia, there is a mechanism to expiate offences. Per section 5 of the Expiation of Offences Act 1996 (SA).

"If an expiation fee is fixed by or under an Act, regulation or by-law in respect of an offence, an expiation notice may be given under this Act to a person alleged to have committed the offence and the alleged offence may accordingly be expiated in accordance with this Act.... Subject to this Act, if the offence, or offences, to which an expiation notice relates are expiated in accordance with this Act, the alleged offender is not liable to prosecution for that offence or those offences or any other expiable offence arising out of the same incident.

"These can be issued by a member of the police force, a person who is authorised by the Minister or council responsible for the relevant act or a person who is authorised by the Act.

Under the Emergency Management (Expiation Notices) Variation Regulations 2020, a breach of Directions can be expiated as per below.

#### 4—Insertion of regulation 6

After regulation 5 insert:

#### 6—Authorised officers may give expiation notices

(1) Subject to the Expiation of Offences Act 1996, an authorised officer is authorised to give expiation notices for alleged offences against section 28 of the Act.

(2) The expiation fee for an offence against section 28 of the Act is fixed at—

- (a) in the case of a natural person—\$1 000; or
- (b) in the case of a body corporate—\$5 000.

### Directions

The following Directions have been made under Section 25 of the Emergency Management Act 2004 (SA):

- The Emergency Management (Appropriate Surgery During COVID-19 Pandemic No 2) Direction 2020: which prohibits non-emergency and non-urgent surgery.
- The Emergency Management (Non-Essential Business and Other Activities No 2) (COVID-19) Direction 2020: which closes certain categories of premises and prohibits members of the public from entering such premises. There are certain exceptions in the Direction.
- The Emergency Management (Residential Aged Care Facilities) (COVID-19) Direction 2020: which limits those who can enter and remain in aged care facilities.
- The Emergency Management (Cross Border Travel No 2) (COVID-19) Direction 2020: which establishes certain requirements on those entering South Australia, including a 14 day quarantine.
- The Emergency Management (COVID-19) (Isolation following Diagnosis or Close Contact) Direction 2020: which requires persons diagnosed with COVID-19 to isolate at a suitable premises or facility and remain there unless obtaining medical care/supplies, an emergency, or for an approved reason. Another person who has had or is likely to have close contact with a diagnosed person must follow an authorised officer's directions.
- The Emergency Management (Continuation of Overseas Travel Self-Quarantine) (COVID-19) Direction 2020: which continues the quarantine arrangements for certain overseas arrivals that were in place before the revocation of a prior direction.
- The Emergency Management (Gatherings) (COVID-19) Direction 2020: which makes it an offence for a person to organise or attend indoor or outdoor gatherings if they contain more than 10 persons. Gatherings of 10 or less persons are prohibited if the attendees exceed one person per 4 square meters. There are certain excepted gatherings.

Each Direction expires at the time specified in the Direction, unless extended.



## Penalties for breach of a Direction

If the offence is prosecuted, under section 28 of the Emergency Management Act 2004 (SA), it is an offence for a person to fail or refuse to comply with a Direction without reasonable excuse during a declared major emergency, major incident or disaster.

The maximum penalty is as follows:

- \$20,000 for an individual; and
- \$75,000 for a body corporate.

Each director and the manager of the body corporate is guilty of an offence and liable to the penalty for individuals unless they each prove that they could not by the exercise of due diligence have prevented the offence. Such a person can be convicted even if the body corporate itself has not been. If the offence is expiated, the fee is:

- \$1,000 for an individual.
- \$5,000 for a body corporate.

## Penalties for General Public Health Offences

Under section 57 of the Public Health Act 2011 (SA):

‘A material risk to public health occurs if the health of 1 or more persons has been, or might reasonably be expected to be, harmed by an act or omission of another, but does not include a case where the harm, or risk of harm, is trivial or negligible.’

A person who causes a material risk to public health can receive a maximum penalty of \$250,000 or imprisonment for 5 years or both. Depending on circumstances, particularly if the offence was reckless or intentional and the person had knowledge of the harm, the penalties can be lower.

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# WESTERN AUSTRALIA

## The two person rule

The 'two person' rule is implemented in Western Australia via the 'Prohibited Gathering Direction' made under section 174(2) of the Public Health Act 2016 (WA) following the declaration of a public health state of emergency under section 167 of the Act.

Under the Direction, a person is prohibited from attending a prohibited gathering, organising a prohibited gathering, or (if they own, control or operate a premises), allow a prohibited gathering to occur on that premises. A prohibited gathering is one of more than 2 persons in any public space, or in a private single undivided indoor space or outdoor space where there is not at least 4 square metres of space for each person present at the gathering.

## Exceptions

A prohibited gathering is not a gathering:

- at an airport that is necessary for the normal business of the airport; or
  - for the purposes of or related to public transportation, including in vehicles or at public transportation facilities such as stations, platforms and stops; or
  - at a medical or health service facility that is necessary for the normal business of the facility; or
  - at a disability or aged care facility that is necessary for the normal business of the facility; or
  - for the purposes of providing care or assistance (including personal care) to a vulnerable person or providing emergency assistance;
  - for the purposes of emergency services; or
  - at a prison, detention centre, lock up or other place of custody for the purposes of or related to the operation of that place of custody; or
  - at Parliament for the purposes of its normal operations; or
  - at a court or tribunal; or
  - at a food market, supermarket, grocery store, retail store or shopping centre that is necessary for the normal business of those premises; or
  - at an office building, factory, mining site (including mining site accommodation), construction site or other place of work that is necessary for the normal business of those premises, except premises described in the paragraph below; or
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- at a school, university, educational institution or childcare facility that is necessary for the normal business of the facility; or
- at a hotel, motel or other accommodation facility that is necessary for the normal operation of accommodation services; or
- at an outdoor place where a gathering of persons which would otherwise constitute a mass gathering may be present for the purpose of transiting through the place; or
- at an indoor place where a gathering of persons which would otherwise constitute a mass gathering may be present for the purpose of transiting through the place; or
- at an indoor place or an outdoor place where everyone in the gathering is a member of the same household; or
- specified as exempt from this direction by the Chief Health Officer in writing

## Penalties

A person who does not comply with a Direction of the Chief Health Officer or emergency officer (such as this Direction) is liable to pay a fine of up to \$20,000. A corporation that does not comply with a Direction of the Chief Health Officer or emergency officer is liable to pay a fine of up to \$100,000.

## How the COVID-19 measures have been implemented

In WA, the measures have been implemented through Directions made under section 174(2) of the Public Health Act 2016 (WA) following a declaration by the Minister of a public health state of emergency due to COVID-19 made under section 167 of the Act.

Once a public health state of emergency is declared, appointed emergency officers may also exercise the emergency powers listed Part 12 of the Act. The public health state of emergency will expire unless extended.

Further, new amending legislation has been made to the Emergency Management Act 2005 (WA) and the Criminal Code Act 1913 (WA) in response to the COVID-19 crisis that provide additional powers to authorities and an additional criminal offence involving COVID-19.

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New powers under the Emergency Management Act 2005 (WA) - awaiting Assent

The amendments introduced in the Emergency Management Amendment (COVID-19 Response) Bill 2020 (WA) introduce the following powers:

- The State Emergency Coordinator may direct that a person who is in quarantine be subject to an approved electronic monitoring device if it is satisfied that this is necessary to monitor the person's location during the quarantine period, which is either to be worn on their person, installed in their house, or implemented in any other reasonable way.
- An authorised officer may enter a place where an approved electronic monitoring device has been installed to retrieve the device at any time.

A failure to comply with a direction relating to an electronic monitoring device, or an attempt to obstruct an authorised officer or to remove or impede the functioning of an electronic monitoring device, may result in a penalty consisting of 12 months imprisonment or a fine of \$12,000.

New offences under the Criminal Code Act 1913 (WA) - awaiting Assent

The amendments introduced in the Criminal Code Amendment (COVID-19 Response) Bill 2020 (WA) expand the crime of serious assault against a public officer (such as a police officer or an ambulance officer) to include assaults where the offender at the commission of the offence knows that the offender has COVID-19, or if the offender makes a statement or makes any other act that creates a belief, suspicion or fear that the offender has COVID-19.

This additional offence applies in the 12 month period beginning on the day the amendment comes into operation, and carries a penalty of 10 years imprisonment. This is the same penalty as if the offender were armed with a dangerous or offensive weapon or is in the company of other people.

Emergency powers under the Public Health Act 2016 (WA) Emergency officers have the following powers under the Public Health Act 2016 (WA) when a public health state of emergency is in effect:

- To obtain identifying particulars of a person (i.e. their name and address) where reasonably required for emergency management purposes.
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- To move and evacuate persons, animals and vehicles in, out or around the emergency area.
- To use any vehicle, or to control or use premises or property of any person for emergency management purposes, subject to certain restrictions.
- To exercise and enforce powers in relation to quarantine, such as directing a person to remain in a specified area or to undergo quarantine or decontamination.
- Other emergency powers prescribed by the Act.

### Directions of the Chief Health Officer

The following Directions have been made by the Chief Health Officer:

- Prohibited Gatherings Directions: which prohibit gatherings of more than 2 persons in public places, and gatherings of more than 2 persons in any other place (such as a private residence) where there is not at least 4 square metres of space for each person, subject to certain exceptions, such as for members of the same household.
- Self-Isolation Test and Close Contact Directions: which directs that a person who is tested for COVID-19, who is informed that they have been in close contact with a COVID-19 positive person, or who develops symptoms while in quarantine must immediately self-isolate and remain in isolation until clearance to exit isolation is given, or travel directly to a hospital for treatment before returning to isolation until clearance is granted unless an exception applies (such as an emergency).
- Self-Isolation Following Interstate Travel Directions and the Self-Isolation Following Overseas Travel Directions: which directs people to self-isolate for 14 days following interstate or overseas travel.
- Closure of Certain Places of Business, Worship and Entertainment Directions: which direct certain places of business, worship and entertainment to close.

### Penalties for breach of Directions

A person who does not comply with a Direction of the Chief Health Officer or emergency officer is liable to pay a fine of up to \$20,000. A corporation that does not comply with a Direction of the Chief Health Officer or emergency officer is liable to pay a fine of up to \$100,000. See offences under the Emergency Management Act 2005 (WA) and the Criminal Code Act 1913 (WA) above.

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# TASMANIA

## Three person rule

Under the 'Direction under s16 (Gatherings)' made under section 16 of the Public Health Act 1997 (TAS) following the declaration of an emergency under the Act, a person must not organise, attend or (if they own, control or operate a premises) allow a gathering specified by the Direction to occur.

The type of gathering prohibited is one of 3 or more persons in a single indoor or outdoor space, irrespective of whether the space is public or private, subject to the exceptions.

## Exemptions

The following gatherings are not prohibited:

- gatherings of persons that ordinarily reside at the same private premises;
- at an airport that is necessary for the normal business of the airport;
- for the purposes of, or related to, public transportation, including in vehicles or at public transportation facilities such as stations, platforms and stops
- in a private vehicle;
- in a large passenger vehicle operated as a passenger service within the meaning of the Passenger Transport Services Act 2011;
- on a ferry service or vessel service, operated between Australia, Tasmania or one or more islands, and certain requirements are met;
- at a medical or health service facility, including such part of the facility used to provide physical rehabilitation services, that is necessary for the normal business of the facility;
- for the purposes of emergency services;
- at a disability or aged care facility that is necessary for the normal business of the facility;
- at a prison, correctional facility, youth justice centre or other place of custody;
- at a court or tribunal;
- at Parliament for the purpose of its normal operations;
- at a supermarket, grocery store, retail store or shopping centre for the purpose of the normal business of those premises;
- at an office building, factory, mining site or construction site that is necessary for the normal operation of those premises;
- at a school, university, educational institution or childcare facility that is necessary for the normal business of the facility and does not involve members of the community other than the staff and students of the school, university or educational institution;

- at an outdoor place where three (3) or more persons may be present for the purposes of transiting through the place;
- at a veterinary establishment, within certain requirements;
- at a premises operated for commercial or other purposes, other than premises specified in Schedule 1 or residential premises, within certain requirements; and
- at a premises where services are provided, subject to certain requirements.

However, the following additional requirements apply to any gathering that does occur (even those within the exceptions):

- each person must maintain a distance of no less than 1.5 metres where safe and practicable;
- the total number of persons present in any single undivided space, at the same time, must not exceed the number calculated by dividing the total area of the space used, as measured in square metres, by 4, unless the gathering is of persons who ordinarily reside at the same premises, or who share custody or care arrangements, or of persons involved in maintaining or renovating premises, delivering items to the premises, or in the case of emergency, in which case the additional requirements are not required and the gathering is permitted.

## Penalties

See below. The penalty framework in Tasmania is quite complex.

## Directions

The following Directions have been made by the Director of Public Health under s16 of the Public Health Act 1997 (TAS):

- Direction under s16 (Gatherings) which relevantly directs that an individual must not organise or attend a gathering of three or more persons in a single outdoor or indoor space at the same time subject to a range of exceptions.
- Direction under s16 (Isolation) which directs that individuals must stay home without a reasonable excuse.

Each Direction expires at the time specified in the Direction, unless extended.

## Penalties

Under the Public Health Act 1997 (TAS), for breaching a Direction of the Director of Public Health an individual is guilty of an offence carrying a maximum penalty of imprisonment for 6 months or a fine of up to \$16,800 (or both) under the following conditions:

- the Director may apply to a magistrate for a warrant in relation to a person, if the person failed to comply with a Direction and in the opinion of the Director compliance with the Direction is necessary “for the purposes of managing a threat to public health or a likely threat to public health”, then
- the magistrate may only issue the warrant if they are similarly satisfied of this. The person is to then be brought before a magistrate as soon as practicable, unless they pose a health risk. In that case their representation can appear, or the court can agree not to bring the person forward.

A magistrate may then order:

- that the person comply with the Direction.
- a variation of the Direction (if such a variation could have been directed by the Director).
- the person complies with a requirement (if the Director could have imposed such a requirement) and continues to do so until it is satisfied or the Director gives a declaration in relation to such an order.

However, due to the amended Regulation an authorised officer or council may also issue an infringement notice to a person over 16 imposing a fine of \$756. An authorised officer or council may also issue an infringement notice to a body corporate imposing a fine of \$4,998.





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