

First Nations Guide to COVID-19 Laws - NSW

15 May 2020

Governments have introduced wide-ranging temporary measures to help prevent the spread of coronavirus (COVID-19) and keep communities safe. The Police have powers to enforce these public health directions.

This may change your daily life and what communities can do together.

This information sheet explains the public health directions in New South Wales and the powers of the police.

Directions and police powers are changing regularly and so it is important to check for any updates.

A. Public health laws - Social distancing and travel within communities

When can I leave the house?

You must stay in your place of residence unless you have a reasonable excuse for leaving, including to:

- visit another household (subject to limits on the number of visitors and their dependent children);
- shop for food and essential goods for your household or for vulnerable people;
- travelling for work, education, or childcare;
- exercising;
- obtaining medical care or health supplies;
- attending a funeral or wedding (subject to limits on the number of attendees);
- moving to a new home and moving between two places of residence;
- providing care or assistance to a vulnerable person, or to providing emergency assistance;
- donating blood;
- undertaking any legal obligations;
- accessing public services such as social services, employment services, domestic violence services, mental health services and services provided to victims;
- for children who do not live in the same household as both, or one of, their parents or

siblings, continuing to adhere to existing arrangements for visitation;

- for a priest, minister or member of a religious order, going to their place of worship or providing pastoral care;
- avoiding injury or to escape a risk of harm; and
- an emergency, or for compassionate reasons.

Travelling between two places of residence is permitted. For example, if you genuinely maintain a place of residence in a city and another community, you may be able to travel between locations if the travel is necessary. If that community is in another state or a designated biosecurity area, you may need to quarantine for 14 days in order to travel there.

Taking a holiday in a regional area is not considered a reasonable excuse.

What do I have to do if outside of the home with a reasonable excuse?

Gatherings of more than 10 people in public places have been banned to help prevent transmission of the coronavirus. When you are in a public place, ensure you comply with social distancing recommendations. This includes reducing close physical contact by standing at least 1.5 meters apart and avoiding touching people, for example, handshakes.

The aim of social distancing is to maintain space between yourself and others, in order to prevent the spread of COVID-19.

When does this not apply?

The ban on gatherings of more than 10 people does not apply to:

- people who live together;
- visits to another household of up to 5 people;
- workplaces (for example farms, factories, offices, mines and constructions sites);
- travelling in cars and public transport or waiting at stations, stops, platforms and airports;

- providing care or assistance to a vulnerable person;
- providing emergency assistance;
- schools, childcare and other education institutions;
- retail stores, supermarkets and grocery stores, accommodation facilities, aged care facilities and health service facilities and airport, in the normal operation of those businesses;
- cafes and restaurants (limited to 10 patrons at any one time, as long as there is enough space for 1 person per 4 square metres);
- weddings (limited to 10 guests) and funerals (limited to 20 mourners for an indoor funeral or 30 mourners for an outdoor funeral);
- religious gatherings/places of worship (limited to 10 worshippers)
- moving people to a new home or business premises; and
- fulfilling a legal obligation, for example attending a court or tribunal and satisfying bail requirements, as well as gatherings at prisons, correctional facilities and youth justice centres.

What about family in other houses, can we visit each other?

Up to 5 people can visit another person, including family and friends, at home.

Families that have existing shared parenting arrangements across different households can continue these arrangements.

You should continue to be careful about visiting people who may be vulnerable to more serious complications of COVID-19, including:

- People over the age of 70;
- People over the age of 65 that have pre-existing medical conditions; and
- Aboriginal and Torres Strait Islander people over the age of 50 that have pre-existing medical conditions.

What if I am homeless?

The stay at home order does not apply to a person who is homeless.

What if I don't feel safe in my home?

You are allowed to leave your home to avoid injury, escape a risk of harm or for the purposes of accessing domestic violence services.

If you are experiencing violence, abuse or neglect at home, you can contact 000 in the case of an

emergency, or 1800 65 64 63 (Domestic Violence Line).

When do I have to self-isolate or quarantine?

Self-isolation means that if you are confirmed to have COVID-19, you must stay at home (or at other accommodation) until you are told by a Public Health Officer that you can go back to your usual activities.

Quarantine means staying in your home, hotel or health care setting for a minimum of 14 days, as a precaution in particular circumstances, in case you develop COVID-19.

If you:

- have been **diagnosed** with COVID-19, you must self-isolate until a doctor confirms you no longer have the virus;
- are **suspected** of having COVID-19, you must self-isolate until you receive a negative test result;
- had **close contact with a confirmed COVID-19 case**, you must self-isolate for 14 days after you last saw the person; and
- **returned from overseas**, you will be quarantined for 14 days. Accommodation is provided for the duration of the quarantine period.

What restrictions are there around using my car?

If you are travelling in your car, you must be travelling for one of the reasonable excuses listed in this fact sheet, for example going to the shops or dropping someone at school. Restrictions on gatherings do not apply to cars, so people from different households can ride in the same car if they have a reasonable excuse for travelling.

Can I care for Elders?

You can visit Elders and continue to provide care and assistance. For example, taking them medical supplies and shopping.

Visits to aged care facilities are restricted and you cannot visit the facility if:

- you have returned from overseas in the last 14 days;
- you have been in contact with a confirmed case of COVID-19 in the last 14 days;
- you have a fever or other symptoms of a respiratory illness (e.g. fever, sore throat, cough);

- you are a child under 16, except in special circumstances;

From 1 May 2020 all visitors to aged care facilities must have an influenza vaccination to enter the facility.

Can we still get together outside for community events?

Community events that are held outside will be subject to the limit of 10 people for outdoor gatherings.

What about Sorry Business and funerals?

Ceremony, such as large gatherings for Sorry Business, will need to be held differently due to the ban on public gatherings. Funerals and Sorry Business are limited to a maximum number of people. NSW Government recommends that communities look at options for broadcasting online and other electronic ways of being involved.

The Minister for Health or an approved delegate may be able to grant an exemption to this requirement for strong health or compassionate grounds. Any applications for exemptions will be considered on a case-by-case basis, and should be sent by email to MOH-COVID-MassGatherings@health.nsw.gov.au at least 48 hours prior to the funeral.

Travelling to attend a funeral or sorry business is considered a reasonable excuse for leaving your home, but you should be careful about travelling between communities and check on any restrictions that may be requested by that community.

What if I can't pay my rent?

If you have lost your job, or you are making less money because of COVID-19, you should get in touch with your landlord as soon as possible to speak about options.

If you fall behind in rent, until 15 June 2020, you can't be evicted if you can't pay rent because you are suffering hardship because of COVID-19. This applies if your household has lost more than 25% of its income. Your landlord must negotiate the rent conditions with you before they give you a termination notice.

You can still be evicted for other things, like damaging your property or not paying rent because of other reasons. Landlords are not allowed to increase rent at this time.

B. Police enforcement powers

What powers do the police have?

You commit a criminal offence (a crime) if you, without reasonable excuse, fail to comply with any of the directions (public health orders).

The police may take the following action:

- ask you to move on;
- give you a caution;
- arrest and charge you with the offence, leading to prosecution; or
- give you a penalty notice (also known as an "on-the-spot fine").

In deciding what action to take, the police will exercise judgment (discretion) on how to best proceed. The police may consider how serious the breach is, your attitude, and other contextual and mitigating factors. For example, the police may be more likely to issue a penalty notice if you have previously been issued a warning for failing to comply with a direction (public health order) but are then caught again.

You cannot be fined for not standing 1.5 metres away from another person.

The police can issue on the spot fines to a person aged 10 years or over.

What do I do if the police approach me?

If the police suspect you of breaching a public health order or if you are in charge of a premise where such a breach has occurred, the police can ask for your identification. You should give your full name, home address and, if you are not the occupier of the premises, the name of the occupier (if relevant). Failure to give this information, without reasonable excuse, is an offence.

If the police ask further questions, you generally have the right to remain silent, however, cooperating by giving the reasonable excuse for leaving your home, may mean no further action is taken.

You can film your interaction with police in a public place if you are concerned about your rights.

Could the police give an on-the-spot fine?

Instead of charging you, the police can issue a penalty notice ("on-the-spot fine") if you fail, without reasonable excuse, to comply with a public health order.

The fine costs \$1,000 for individuals but can be \$5,000 if you spit or cough on a public official, or any worker who is at work or travelling to or from work. The fine for corporations is \$5,000 for any breaches of a public health order.

What are the maximum penalties for the offence?

If you are found to be guilty or if you plead guilty to breaching a public health order, the Court can record a conviction against you. There can also be penalties or punishment such as community correction orders and conditional release orders.

The maximum penalty for breaching a public health order is \$11,000 and/or six months' imprisonment for an individual. The maximum penalty for a corporation is \$55,000. For each day the offence continues, an individual and corporation can be liable for a further maximum penalty of \$5,500 and \$27,500 respectively.

What are my options if I receive a penalty notice?

If you receive a penalty notice, you have several options:

- pay the fine by the due day as listed in the penalty notice;
- request an internal review of the penalty notice with Revenue NSW by the due day; or
- request an external review of the penalty notice by the Court.

What is internal review?

An internal review of the penalty notice is done by Revenue NSW. You can lodge a request for internal review online on Revenue NSW's webpage. Depending on the reason you are requesting a review, Revenue NSW may ask for further documents such as medical records.

What is external review?

You may choose for the Court to review your penalty notice. It is best to seek legal advice before doing so because it can be a complex process with potentially serious consequences. If your challenge is unsuccessful, you may be found guilty, have to pay a higher fine and pay other costs.

You can apply by making an online application on Revenue NSW's webpage, completing a form or sending a written request to Revenue NSW. Revenue NSW will then send you a Court Attendance Notice (CAN). The CAN will give details about where and when you need to attend Court.

As at 22 April 2020, Revenue NSW is not listing any new CANs until 1 October 2020.

Are there time limits for starting external review?

Yes, there are time limits on when you must make the Court application:

- if you have not paid the fine, you need to apply by the due date on the penalty notice; and
- if you have already paid the fine, you have 90 days from the date the penalty notice was issued to apply.

You can go to Court even if you have requested an internal review. In this case, Revenue NSW will continue with the internal review and will only list the matter for Court if the outcome of your internal review is unsuccessful.

If you do not apply within the time limit, the process can be more difficult. You may be required to prove why you could not apply within the time limit.

Are there other options?

Yes. If you fail to pay the fine by the due day listed in the penalty notice and the penalty reminder notice and are then given an overdue fine but still want to challenge the fine in Court, then you can apply to have it annulled (or cancelled).

The annulment application is done online on Revenue NSW's webpage. There is no time limit on making this application, but you should do it as soon as possible.

If the annulment application is successful, your case will be heard by the Local Court.

Can I be arrested?

The police can arrest you if they:

- have reasonable grounds to suspect that you are committing or have committed a criminal offence, such as failing to comply with a public health order without reasonable excuse; and
- are satisfied that the arrest is reasonably necessary because of the nature and seriousness of the offence or for other reasons.

Examples of those other reasons include to stop you from repeating the offence, fleeing from the police officer, and to preserve evidence and protect the safety or welfare of any person.

If you are arrested, the police must tell you their name, place of duty and reason for your arrest. Resisting arrest is an offence. If you use violence, you may be charged with assaulting police.

C. Restrictions on movement into Aboriginal communities

There are currently no internal restrictions for travel into communities within NSW, however, you are not permitted to leave your home unless you have a 'reasonable excuse' as detailed above.

It is recommended that all non-essential travel to remote and regional Aboriginal communities be postponed.

The Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) Management Plan has recommended that individual communities in remote settings may decide to further restrict access of non-essential personnel and visitors to delay or prevent exposure to the virus. Communities are permitted to apply additional quarantine and isolation requirements as conditions of entry or engagement of services. Please call ahead if you intend to travel to community for an essential purpose to confirm arrangements and any requirements.

Can I travel to another state for work or to shop?

If you live near the State borders, you are still allowed to make cross-border travel from NSW to QLD, VIC, ACT and SA provided you are making the cross-border movement for essential travel, workforce movements, freight or on specific compassionate grounds.

D. Businesses

The Government has implemented restrictions on trading and directions that ban or limit the operations of certain businesses.

Businesses that currently cannot be conducted include pubs, registered and licensed clubs, restaurants and cafes (except to the extent it provides accommodation or takeaway food, or subject to the limit of 10 seated patrons at any one time); casinos (except to the extent it provides accommodation); cinemas; night clubs; beauty therapy, tanning, waxing, nail salons and tattoo parlours; spas and massage parlours; and gyms, outdoor sport venues, health clubs and fitness centres (with the exception of outdoor equipment and outdoor pools).

However, if you run a business that provides accommodation, education and childcare, food and beverages, healthcare, auctions, food and essential needs, charitable volunteering work and other types of work that cannot be completed at home, you may be permitted to stay open. Businesses that are allowed to operate will still need to comply with the existing public health directions. For example, you must be able to accommodate at least four square metres of space per person (the four square metre rule) and there must not be more than 100 people on indoor premises at the same time (the 100 person rule); or more than 500 people on outdoor premises at the same time (the 500 person rule).

E. Who to call for help or information

General information and helplines

- For advice on travel within NSW please contact Services NSW 13 77 88 or at NSW.gov.au for a one-stop website on COVID-19 in NSW
- National Coronavirus Health Information Line number is 1800 020 080

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This guidance sheet is not a substitute for legal advice. You should contact a lawyer for specific legal advice or referral.