

NSW COVID-19 Public Health Laws and Police Powers



NSW Police have authority to enforce new social distancing and isolation orders made under the *Public Health Act 2010* (NSW) and *Biosecurity Act 2015* (Cth).

The powers given to police are changing quickly. Redfern Legal Centre will aim to update this factsheet as changes occur. Download here: <http://bit.ly/covid-19NSWpol>

Part A: Individuals

When am I allowed to leave the house?

You may only leave your place of residence if you have a 'reasonable excuse' to do so.

What is a 'reasonable excuse'?

Below are examples of 'reasonable excuses' provided by the NSW government. This not a complete list, and acceptable reasons may depend on the circumstances.

A 'reasonable excuse' includes:

- Obtaining food or goods for household (including pets)
- Travelling for work, if the person cannot work from home
- Travelling to drop off or pick up children from child care
- Travelling to and from school or other education institution, if the person cannot learn from home
- Exercising
- For medical care or health supplies
- Attending a wedding or a funeral
- Moving residence or business or inspecting these premises
- Providing care or assistance to a vulnerable person
- Providing emergency assistance
- Donating blood

- Undertaking legal obligations
- Accessing public services (i.e. Centrelink, domestic violence, mental health, or victims' services)
- Children moving between parental households
- Priest, minister of religion or member of religious order going to place of worship or providing pastoral care
- Avoiding injury or illness or to escape a risk of harm
- An emergency, or for compassionate reasons

Taking a holiday in a regional or rural area is not a reasonable excuse.

What if I am homeless?

The direction to not leave your place of residence does not apply to someone who is homeless.

If I leave my house with a 'reasonable excuse', are there restrictions on what I can do?

Yes. Gatherings of more than two people in a public place are not allowed. However, the two-person limit does not apply to people within your household.

If there is shared custody of children, can you and your child visit the shared custody household?

Yes. It is a 'reasonable excuse' to visit the other household in order to continue the existing arrangements for access and contact between, parents and children or siblings.

Are there places where this two-person rule does not apply?

Yes. You can participate in a public gathering of more than two people in certain circumstances, including:

- Gatherings of members of the same household
- Gatherings at a wedding of no more than 5 people
- Gatherings at a funeral of no more than 10 people
- To move to a new place of residence (either home or work)
- To provide care or assistance to a vulnerable person
- To provide emergency assistance
- To fulfil a legal obligation (such as attending court or participating in legal proceedings).
- To catch public transport
- At a hospital, correctional facility, disability or aged care facility, courts or tribunals, supermarkets and retail stores (for the purpose of ordinary business), office buildings, schools, hotels, and educational facilities.

Are there restrictions when travelling in my car?

Yes. Under the law a car is classified as a “premises”. You cannot travel in your car in a public place unless you have a ‘reasonable excuse’. You do not have to meet the two-person gathering rule, if you are gathering for the purpose of transportation (i.e. using vehicle to get to and from work, emergency, shops, university, child care). But every person in the car must meet the ‘reasonable excuse’ test to leave their place of residence.

Can I be fined or arrested for not standing not 1.5 metres away from a person?

No. There is no specific offence for not standing 1.5 metres between yourself and another person.

Is it an offence to not self-isolate or quarantine myself?

Yes. It is an offence to not abide by the following public health directions:

- A person diagnosed with COVID-19 must immediately self-isolate and must not permit any other person to enter the residence where self-isolation is taking place unless that person resides there too, until medically cleared.
- A person who arrives in NSW and who has been in a country other than Australia within 14 days must isolate themselves for a quarantine period of 14 days. If the Commissioner of Police directs that you go to a quarantine or medical facility, you must do so.
- A person who has arrived in NSW on a cruise ship that has come from a port outside of NSW must not leave the vessel unless authorised to do so by police, or because of an emergency. If a person is ordered to disembark by police, they must go directly to a quarantine facility specified by police, or directly to a hospital or medical facility for 14 days.

The only reasons a person is permitted to leave their residence is to obtain medical care or medical supplies, or in an emergency. A person is also permitted to allow someone into their premises for the same reasons, or where that person is also member of the same household.

Can I visit an aged-care facility?

No. There are strict orders regarding aged-care facilities. A person must not enter or remain on the premises of residential aged-care facilities (exemptions include, but are not limited to: employees, contractors, people providing goods or services, health, medical or pharmaceutical services, care and support visit, end-of-life support).

Do I have to provide police with my name and address?

Yes. Under, s.112 of the *Public Health Act 2010*, a police officer can direct you to provide your name and address if they suspect you have breached a public health order, or you are the person in charge of the premises where the breach occurred.

Can police issue on-the-spot fines for these offences?

Yes. Police can issue an on-the-spot fine for breaching the directions. The fine for individuals is \$1000 and for corporations is \$5000. Fines can be issued to adults and children aged 10 to 18.

In some circumstances police may also decide not to issue a fine and may instead take you into custody or serve you with a Court Attendance Notice and bring you before a court.

Can I elect to take my penalty notice offence to court?

Yes, you can decide to have your matter heard by the Local Court. To do this you go to the Revenue NSW website: <https://www.revenue.nsw.gov.au/fines-and-fees/go-to-court/apply>

Do police have to issue a fine?

No. Issuing a fine is not mandatory and police have the discretion to take the most appropriate action given the circumstances of each individual case. For example, police can decide to give you a warning and not issue a fine.

Can police arrest me if I do not follow a public health direction?

Yes, under certain circumstances. If police suspect on reasonable grounds that someone has, or is committing an offence, they have the power to arrest. But they can only arrest if they are satisfied that the arrest is necessary for the specific reasons outlined in the law (i.e. to prevent the further commission of the offence, to protect a person's safety or welfare, or because of the seriousness and nature of the offence). An arrest should always be a last resort, especially for minor offences.

What is the maximum penalty a court can impose for these public health offences?

Instead of issuing you a fine, police may decide to either arrest you and/or issue you with a Court Attendance Notice requiring you to attend Court. The Court may impose a higher maximum

penalty than police. The maximum penalty a court can impose is for an individual imprisonment for 6 months or a fine of up to \$11,000 (or both); plus a further \$5,500 fine each day the offence continues. The maximum for a corporation is a fine of \$55,000 and \$27,500 each day the offence continues.

Can I appeal a fine or seek a reduction or waiver if I can't afford to pay?

Yes. Further information can be found on the Revenue NSW and Law Access websites:

<https://www.revenue.nsw.gov.au/fines-and-fees>

https://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_fines/lawassist_fines.aspx

If you are under 18, see:

https://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_fines/lawassist_fines.aspx

Contact your local community legal centre for assistance:

<https://www.clcnsw.org.au/resource/community-legal-centres-nsw-directory-2018>

Where can I get legal advice if I'm prosecuted for an offence?

Law Access/Legal Aid NSW: 1300 888 529
Aboriginal Legal Service: 1800 765 767

Part B: For those operating a business

Occupiers or operators of premises in NSW are prohibited from:

- Holding mass gatherings of 500 or more people in outdoor spaces
- Holding mass gatherings of 100 people or more in indoor spaces
Allowing people to enter or stay on premises (indoor or outdoor) if they cannot ensure four square

metres of space for each person – this also applies to retail stores (other than supermarkets or stores that predominately sell food).

A business must abide by the following public health directions (if not it constitutes an offence):

- Some businesses must restrict public access: pubs, cafes, micro-breweries and restaurants and other food and drink premises (except if selling food and beverages via take away), places of worship (unless weddings or funerals are being conducted in accordance with person limits), hotel and motels accommodation (except to provide accommodation and to consume food in their rooms), shopping centres must only sell food to be consumed outside of premises, casinos (except to provide accommodation and food), caravan parks and camping grounds (except for permanent residents and other specific exceptions).
- Some business must be closed to the public: these businesses include indoor recreational facilities (gyms, swimming pools, bowling alleys etc.), amusement centres (including video game centres), spas, nail salons, beauty salons, waxing salons, tanning salons, tattoo parlours, massage parlours, community facilities, sex services, gaming lounges, strip clubs, outdoor playgrounds in a public place, outdoor gymnasiums in a public place, skate parks, art galleries, museums, libraries and visitor information centres.

Part C: The legislation

The COVID-19 public health orders are available at: <https://www.legislation.nsw.gov.au/#/>. A brief summary of each order is below.

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

Restrictions: a person cannot, without reasonable excuse, leave the person's place of residence. The Order prohibits occupier or operator of premises in NSW from holding mass gatherings of

500 or more people in outdoor spaces at the same time, or 100 people or more in indoor spaces at the same time and prohibits persons from allowing entry to premises (indoor or outdoor) if there is not 4 square metres of space for each person on the premises. This also applies to retail stores (other than supermarkets or store that predominately sell food).

Public Health (COVID-19 Self-Isolation) Order 2020

Requires a person diagnosed with COVID-19 to immediately go to their place of residence or to a hospital for assessment. On leaving or being discharged from the hospital, the diagnosed person must travel directly to a residence or place of that kind. The diagnosed person must, except in specified circumstances, remain at the residence or place and not permit any other person to enter the residence or place until medically cleared.

Public Health (COVID-19 Places of Social Gatherings) Order 2020

Requires non-essential public places to be closed to the public. Non-essential includes: pubs, cafes and restaurants (except if selling food and beverages via take away), indoor recreational facilities (i.e. gyms, swimming pools, bowling alleys etc) , places of worship (unless weddings or funerals are being conducted in accordance with person limits), amusement centre (includes video game centres) and casinos (except to provide accommodation and food).

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

Requires a person who arrives in NSW by aircraft and has been in a country other than Australia within 14 days before that arrival to undertake mandatory quarantine for a period of 14 days. The direction does not apply to flight crew of aircraft.

Public Health (COVID-19 Maritime Quarantine) Order 2020

Requires a person who has arrived in NSW on a vessel that has come from a port outside of NSW to not disembark from the vessel unless the person is authorised to do so by police, or is required to do so because of an emergency. If a person is ordered to disembark by police they must go directly to a quarantine facility specified

by police, or directly to a hospital or medical facility.

Public Health (COVID-19 Residential Aged Care Facilities) Order 2020

Requires a person not to enter or remain on the premises of a residential aged care facility (as defined under the *Aged Care Act 1997*) during the relevant period (24 March 2020 to 22 June 2020), unless they have been exempted under the Order.

Public Health (COVID-19 and Lord Howe Island) Order 2020

Requires persons not to enter Lord Howe Island, unless they are residents of Lord Howe Island, a non-residents of Lord Howe Island but only to leave the Island, persons required to provide, or support, health services and other essential services to persons on the Island, persons who are part of the crew of an airplane or ship referred

Public Health Act

There have also been amendments passed to the *Public Health Act 2010* (NSW) that give police powers to enforce public health orders under the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW) (commenced 25 March 2020).

See:

<https://www.legislation.nsw.gov.au/acts/2020-1.pdf>

Published on 3 April 2020. Produced by Redfern Legal Centre.

This factsheet is not a substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre.

