

First Nations Guide to COVID-19 Laws - NSW

1 November 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 - Physical distancing and travel within communities

What am I able to do from 1 November?

There are currently no limits on your movement within NSW and you no longer need a 'reasonable excuse' to leave your house. You can now travel around NSW, visit businesses, and visit friends and family in other households – subject to limits on the amount of people gathered.

Business, venues and facilities, which are open, will need to allow for physical distancing restrictions and have limits on the number of people who can gather together, as set out below.

What do I have to do if outside of the home?

Gatherings of more than 30 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 physical 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 physical 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 30 people does not apply to:

- people who live together in the same household;
- 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;
- emergency services, including training by an emergency service
- schools, childcare and other education institutions;
- premises which must keep a COVID-19 Safety Plan including entertainment facilities, community centres, and gyms;;
- supermarkets, grocery stores and shopping centres;
- accommodation facilities;
- aged care facilities and medical or health service facilities;
- hospitality venues such as pubs, clubs, cafes, restaurants (limited to 300 people);
- weddings (limited to 150 people);
- funerals and sorry business (limited to 100 people);
- religious gatherings/places of worship (limited to 300 people);
- moving people to a new home or business premises;
- attending an open house, an auction or a display home;
- community sporting activities (limited to 500 people);
- corporate events (limited to 300 people);

- commercial vessels for diving or animal watching (limited to 50 people);
- major facilities for sporting and cultural events (limited to 25% capacity or 10,000 people, or 50% or 40,000 for Stadium Australia and Bankwest Stadium)
- caravan parks, camping grounds, national parks and state forests;
- 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;
- an outdoor music rehearsal or performance;
- a protest or demonstration about governmental or political matters (limited to 500 people and requires a COVID-19 Safety Plan).

It is recommended that you call ahead and check the requirements for the place you are to visit, as some businesses and facilities ask you to book ahead before you come.

Most indoor venue capacities are determined by the one person per 4 square metre rule, with no upper limit.

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

Up to 20 people can visit another person, including family and friends, at home.

A person will not be counted towards the 20 person limit at a household if they are visiting for one of the following reasons:

- to work;
- to fulfil carers responsibilities or to provide care or assistance to a vulnerable person;
- to attend a wedding, funeral or sorry business (in line with the limits discussed above);
- to spend time with parents, siblings or children under shared parenting arrangements;
- for childcare;
- helping a person move to a new place of residence;
- avoiding injury or illness or to escape a risk of harm;
- for emergencies and compassionate reasons; or
- to view or inspect property for the purpose of a sale, lease or auction.

Each adult member a household and every visitor are individually liable for breaches of the public health order if more than 20 people are in a private residence.

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 don't feel safe in my home?

There are no restrictions on movement in NSW. You are allowed to leave your home if you do not feel safe, including 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. You must not leave unless there is an emergency situation or to obtain medical care and you should only receive visitors for medical or essential purposes, such as delivering food.

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.

Can I care for Elders and older people?

There are no restrictions on movement in NSW. You can visit and stay with Elders and older people to provide them with care and assistance. You should

continue to be careful about exposing people who may be more vulnerable to COVID-19, by physical distancing, limiting visits wherever possible, and practicing good hygiene.

However, 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); or
- you have not had an influenza vaccination.

Can we still get together outside for community events?

Most community events that are held outside can have up to 30 people together, except for community sporting events, which can have up to a maximum of 500 people participating. Physical distancing should still be followed. The Minister for Health can provide an exemption on the restriction of gatherings if there are exceptional circumstances. 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 before the gathering.

What about Sorry Business and funerals?

Ceremony, such as large gatherings for Sorry Business and funerals can have up to 100 people. This is also subject to the 1 person per 4 square metre rule.

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 have fallen behind on your rent payments due to COVID-19, your landlord must negotiate rent conditions before you can be evicted.

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, however check for updates.

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.

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 happened, 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 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 \$11,000 if you spit or cough on a public official, or any worker who is at work or travelling to or from work.

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.

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.

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 allowed to put in additional quarantine and isolation requirements as conditions of entry or engagement of services.

Please call ahead if you intend to travel to a community to confirm arrangements and any requirements set by the community.

Can I travel outside of NSW?

Generally, you can only travel between states if you are an authorised person with an entry permit or if you fall under an exception to the restrictions. Otherwise, travel between states and territories is generally not permitted.

NSW residents can now enter South Australia without needing to quarantine.

Entry to and from Victoria is restricted. If you have been in Victoria in the last 14 days you may not be able to enter NSW. Failure to provide or falsifying information to an enforcement officer about travel to Victoria can lead to fines of up to \$4,000. However, if you live within 50km of the border to Victoria you can apply for a permit to travel across the border without needing to quarantine.

D. Businesses

All businesses can now open, except for nightclubs and music festivals. Businesses must have at least 4 square meters of space per person to ensure physical distancing. Hospitality venues with electronic entry recording may accommodate 1 patron 2 square meters in outdoor areas.

Special limits on trading have been imposed by the NSW Government for the following businesses:

- Hospitality venues, including pubs, cafes and restaurants are limited to 300 people per area and 30 people per group;
- Entertainment venues, including theatres, cinemas, and concert halls, are limited to the lesser of 50% capacity or 1,000 persons;
- Outdoor music rehearsals and performances are limited to 500 people;
- Religious gatherings/places of worship are limited to 300 people;
- major recreation facilities are limited to the lesser of 25% capacity or 10,000 persons (or 50% or 40,000 persons for Stadium Australia and Bankwest Stadium);
- premises conducting funerals and memorials are held are limited to 100 persons;

- premises conducting weddings are limited to 150 persons
- premises conducting corporate events are limited to 300 persons; and
- commercial vessels for diving and marine animal watching tours (limited to 50 people).

Businesses must also develop a COVID-19 safety plan that addresses the COVID-19 safety checklist approved by the Chief Health Officer. Hospitality venues with a capacity of more than 250 people and gyms with a capacity of more than 20 people must also nominate a COVID-19 Safety Hygiene Marshal who is responsible for enforcing the COVID-19 Safety Plan.

Hospitality venues, outdoor music events, crematoria, funeral homes, religious gatherings/places of public worship, community sporting events (of more than 30 people), gyms, real estate inspections and auctions, operators of rental or tourist facilities on Lord Howe Island, and premises holding significant events (including weddings, funerals, corporate events and religious service) are required to register with the Government as a COVID-19 Safe business.

Businesses that provide significant events (including weddings, funerals, religious services, and corporate events), casino services, or food and drink services must record the names and contact details of all attendees. These details must be kept for 4 weeks and provided to the Chief Health Officer if requested.

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

If you need to talk to someone about fines?

- **Aboriginal Legal Service (NSW/ACT):** 1800 765 767 or www.alsnswact.org.au
- **Legal Aid NSW:** 1300 888 529 or www.legalaid.nsw.gov.au

Updated 2 November 2020

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