



New South Wales

## Public Health (COVID-19 Aged Care Facilities) Order (No 2) 2020

under the

Public Health Act 2010

I, Brad Hazzard, the Minister for Health and Medical Research, under section 7 of the *Public Health Act 2010*, make the following Order.

Dated 22 June 2020.

A handwritten signature in blue ink, appearing to read 'Brad Hazzard', written over a horizontal line.

Minister for Health and Medical Research

### Explanatory note

The object of this Order is to deal with the public health risk of COVID-19 and its possible consequences by giving a Ministerial direction that, for 90 days, restricts persons entering or remaining on the premises of residential aged care facilities.

Section 10 of the *Public Health Act 2010* creates an offence if an individual fails to comply with a direction with a maximum penalty of imprisonment for 6 months or a fine of up to \$11,000 (or both) plus a further \$5,500 fine each day the offence continues. Corporations that fail to comply with a direction are liable to a fine of \$55,000 and \$27,500 each day the offence continues.

## Public Health (COVID-19 Aged Care Facilities) Order (No 2) 2020

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### 1 Name of Order

This Order is the *Public Health (COVID-19 Aged Care Facilities) Order (No 2) 2020*.

### 2 Commencement

This Order commences on 23 June 2020.

**Note.** This Order commences at the beginning of 23 June 2020. See section 24 of the *Interpretation Act 1987*.

### 3 Definitions

(1) In this Order—

*care and support visit*, in relation to a resident of a residential aged care facility, means a visit made to the resident, by no more than 2 persons together, for the purposes of providing care and support to the resident.

*operator*, of a residential aged care facility, means a person who owns, controls or operates the facility.

*residential aged care facility* means a facility at which the following services are provided to a person in relation to whom a residential care subsidy or flexible care subsidy is payable under the *Aged Care Act 1997* of the Commonwealth—

- (a) accommodation,
- (b) personal care or nursing care.

*the Act* means the *Public Health Act 2010*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.

(2) Notes included in this Order do not form part of this Order.

### 4 Grounds for concluding that there is a risk to public health

It is noted that the basis for concluding that a situation has arisen that is, or is likely to be, a risk to public health is as follows—

- (a) public health authorities both internationally and in Australia have been monitoring international outbreaks of COVID-19, also known as Novel Coronavirus 2019,
- (b) COVID-19 is a potentially fatal condition and is also highly contagious,
- (c) a number of cases of individuals with COVID-19 have now been confirmed in New South Wales, as well as other Australian jurisdictions.

**5 Direction—entering and remaining on premises of residential aged care facility**

- (1) The Minister directs that a person must not enter or remain on the premises of a residential aged care facility unless—
- (a) the person is an employee or contractor of the operator of the residential aged care facility, or
  - (b) the person is a representative of a union to which a person described in paragraph (a) belongs, or
  - (c) the person is on the premises of the residential aged care facility for one of the following purposes—
    - (i) providing goods or services that are necessary for the effective operation of the facility, whether for consideration or for free,
    - (ii) providing health, medical or pharmaceutical services to a resident of the facility, whether for consideration or for free,
    - (iii) providing personal care services to a resident of the facility, whether for consideration or for free,
    - (iv) making a care and support visit to a resident of the facility,
    - (v) end-of-life support for a resident of the facility,
    - (vi) emergency management or law enforcement, or
  - (d) the person is on the premises in the person's capacity as a prospective resident of the residential aged care facility, or
  - (e) the person is on the premises in accordance with an exemption given by the Minister under clause 8.
- (2) Subclause (1) is subject to clause 6.

**6 Direction—persons not to enter or remain on premises of residential aged care facility in certain circumstances**

- (1) The Minister directs that a person mentioned in clause 5(1)(a)–(d) must not enter or remain on the premises of a residential aged care facility if—
- (a) during the 14 days immediately before the proposed entry, the person arrived in Australia from a place outside Australia, or
  - (b) during the 14 days immediately before the proposed entry, the person had known contact with a person who has a confirmed case of COVID-19, or
  - (c) the person has a temperature higher than 37.5 degrees or symptoms of acute respiratory infection, or
  - (d) the person does not have an up-to-date vaccination against influenza, unless—
    - (i) the vaccination is not available to the person, or
    - (ii) the person presents to the operator of the residential aged care facility a certificate in the approved form, issued by a medical practitioner, certifying that the person has a medical contraindication to the vaccination against influenza.
- (2) If the proposed entry of a person described in clause 5(1)(c)(i) or (vi) is for the purpose of responding to an emergency, subclause (1)(d) does not apply.

**7 Direction—responsibility of operator of residential aged care facility**

The Minister directs that the operator of a residential aged care facility must take all reasonable steps to ensure that a person does not enter or remain on the premises of the facility in contravention of clause 5 or 6.

**8 Exemption**

The Minister may, in writing and subject to any conditions the Minister considers appropriate, exempt a person from the operation of this Order if the Minister is satisfied it is necessary to protect the health and well-being of the residents or staff of a residential aged care facility.

**9 Residents of residential aged care facility**

To remove any doubt, nothing in this Order is to be taken to prevent a resident of a residential aged care facility from entering or remaining on the premises of the facility.

**10 Repeal and savings**

- (1) The *Public Health (COVID-19 Aged Care Facilities) Order 2020* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Public Health (COVID-19 Aged Care Facilities) Order 2020*, had effect under that Order continues to have effect under this Order.

**11 Repeal of Order**

This Order is repealed at the beginning of 21 September 2020.