

JIRS Updates related to COVID-19

Issue 1: 3 April 2020

This Newsletter contains a summary of legislation, case law and other material published on the Judicial Research Information System (JIRS) addressing changes to the administration of criminal justice as a result of the COVID-19 pandemic. Updates will be published as needed.

Public Health Amendment (Penalty Notices) Regulation 2020 27/03/2020

***Public Health Amendment (Penalty Notices) Regulation 2020* — amends [Public Health Regulation 2012](#) to enable offences under [ss 10, 11 and 70\(1\)](#) of the [Public Health Act 2010](#) committed within certain time period or in particular circumstances involving breach of public health order relating to COVID-19 to be dealt with by way of penalty notice — commenced 25 March 2020 (LW 25.03.2020)**

The *Public Health Amendment (Penalty Notices) Regulation 2020* amends the [Public Health Regulation 2012](#) to enable existing offences under the [Public Health Act 2010](#) (the Act), primarily associated with breaches of orders regarding social gatherings, self-isolation, use of retail/business premises etc, to be dealt with by way of penalty notice in response to the COVID-19 pandemic. The amendments commenced on 25 March 2020.

The *Public Health Amendment (Penalty Notices) Regulation 2020* inserted the *Public Health Act* offences under [ss 10, 11 and 70\(1\)](#) (when involving a contravention of public health order relating to COVID-19), when occurring between 26 March 2020 and 25 March 2021, into [Sch 4](#) of the [Public Health Regulation](#) so they may be dealt with by way of penalty notice.

The penalty notice amount for an individual in relation to each offence is \$1,000, and for a corporation in relation to the offences against ss 10 and 11 of the Act is \$5,000. The Act otherwise provides for the maximum penalties associated with these offences.

Section 10 of the Act provides for an offence of not complying with ministerial direction.

Section 11 of the Act provides for the Director-General's power to close public premises on public health grounds, and an associated offence of not complying with such direction.

Section 70(1) of the Act provides for an offence of not complying with public health order.

Relevantly:

- [Government Gazette No 54 of 23 March 2020](#) — published 23 March 2020, provides for Public Health (COVID-19 Places of Social Gathering) Order 2020 under the Public Health Act 2010.

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- [Government Gazette No 55 of 24 March 2020](#) — published 24 March 2020, provides for Public Health (COVID-19 Residential Aged Care Facilities) Order 2020 under the Public Health Act 2010.
- [Government Gazette No 56 of 25 March 2020](#) — published 25 March 2020, provides for Environmental Planning and Assessment (COVID-19 Development—Extended Operation) Order 2020.
- [Government Gazette No 57 of 25 March 2020](#) — published 25 March 2020, provides for Public Health (COVID-19 Self-Isolation) Order 2020 and Public Health (COVID-19 Gatherings) Order (No 2) 2020 under the Public Health Act 2010.
- [Government Gazette No 59 of 27 March 2020](#) — published 27 March 2020, provides for Public Health (COVID-19 Gatherings) Order (No 3) 2020 under the Public Health Act 2010.
- [Government Gazette No 61 of 28 March 2020](#) — published 28 March 2020, provides for Public Health (COVID-19 Maritime Quarantine) Order 2020 under the Public Health Act 2010.
- [Government Gazette No 62 of 28 March 2020](#) — published 28 March 2020, provides for Public Health (COVID-19 Air Transportation Quarantine) Order 2020 under the Public Health Act 2010.
- [Government Gazette No 63 of 29 March 2020](#) — published 28 March 2020, provides for Public Health (COVID-19 Air Transportation Quarantine) Amendment Order 2020 under the Public Health Act 2010.
- [Government Gazette No 65 of 30 March 2020](#) — published 30 March 2020, provides for Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 under the Public Health Act 2010.

For up-to-date details regarding the orders in force on any given day, see [NSW Legislation Notifications](#).

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COVID-19 Legislation Amendment (Emergency Measures) Act 2020 27/03/2020

[COVID-19 Legislation Amendment \(Emergency Measures\) Act 2020](#) — introduces temporary extraordinary measures as result of COVID-19 virus — amends *Criminal Procedure Act 1986* with respect to certain procedures for trials in the Supreme and District Courts — amends *Children (Detention Centres) Act 1987* — introduces restrictions on persons entering detention centres — amends *Crimes (Administration of Sentences) Act 1999* — introduces restrictions on persons entering correctional centres and enables grant of parole to certain inmates — amends *Crimes (Domestic and Personal Violence) Act 2007*, s 29 — temporarily extends 28-day period for listing to 6 months — amends *Evidence (Audio and Audio Visual Links) Act 1998* to facilitate greater use of audio and audio visual links in certain proceedings — amends *Jury Act 1977* to enable sheriff to exempt a person from jury selection — commenced on 25 March 2020 (s 2, LW 25.03.2020) — [Second Reading Speech](#) — [Explanatory Note](#)

The [COVID-19 Legislation Amendment \(Emergency Measures\) Act 2020](#) makes amendments to various Acts, the most relevant of which are discussed below. The amendments are generally intended to operate for a period of at least 6 months from 25 March 2020 but for not more than 12 months.

Criminal Procedure Act 1986: [Sch 1\[1\]](#)

A new Part 5 is inserted into Chapter 7 of the *Criminal Procedure Act 1986* which applies to Supreme and District Court trials. The new Part:

(a) enables particular witnesses, including those whom the court considers at a significantly greater risk from the COVID-19 pandemic than members of the community generally, to give evidence before the trial in a pre-recorded evidence hearing: [s 356](#). Access to the recording is to be given to the accused and their lawyers: [s 357](#).

(b) enables the recorded evidence of those witnesses to be used in a new trial: [s 362](#).

(c) empowers a court, of its own motion, to order a judge-alone trial: [s 365](#). The circumstances in which such an order might be made are broader than those in ss [132](#) and [132A](#) of the Act.

An exceptional regulation-making power is provided for in [s 366](#). This enables making regulations under various Acts, including the *Crimes (Domestic and Personal Violence) Act 2007*, the *Bail Act 2013* and the *Crimes (Sentencing Procedure) Act 1999* for the purpose of responding to the public health emergency caused by COVID-19 in relation to: altered arrangements for criminal proceedings, apprehended violence order proceedings, bail and sentencing and matters relating to the administration of sentences. These may only be made

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if Parliament is not sitting (or is unlikely to sit within 2 weeks) and the arrangements provided by the regulations accord with the advice of the Minister for Health or the Chief Health Officer.

Savings and transitional provisions: [Sch 1\[2\]](#)

Evidence recorded, in the jury's absence, before 25 March 2020 is taken to have been given at a pre-recorded evidence hearing for the purpose of Pt 5, Div 2 and may be heard or viewed after the Division is repealed: [s 111](#). The original evidence of a witness recorded in proceedings before 25 March 2020 is to be treated in the same way as the original evidence of a witness recorded after 25 March 2020 and may be heard or viewed after the Division is repealed.

Crimes (Domestic and Personal Violence) Act 2007: [Sch 2.6](#)

[Section 29](#), which concerns provisional orders (taken to be an application for an order under Pt 10 of the Act), has been amended to add ss 29(4) and (5). Ordinarily, a provisional order must direct a defendant to appear at an appropriate court on a specified date for the hearing of the application, which must be the next date on which the matter can be listed on a domestic violence list at an appropriate court, and must be no more than 28 days after making the order. During the "prescribed period" the reference to 28 days is taken to be a reference to 6 months: [s 29\(4\)](#). The "prescribed period" means the period starting on 25 March 2020 and ending 6 months later or a later day "not more than 12 months after the commencement": [s 29\(5\)](#).

If a matter can be listed, the obligation to list the matter on the next available date remains: [s 29\(3\)\(a\)](#).

Evidence (Audio and Audio Visual Links) Act 1998: [Sch 2.9](#)

New [s 22C](#) facilitates greater use of audio and audio visual links in trials and other physical appearance proceedings (defined in [s 3](#)). There is a presumption that bail proceedings will be heard by way of AVL unless the court otherwise directs: [s 22C\(2\)](#). Note [s 22C\(6\)](#) which provides that a direction under the section can only be given if it is in the interests of justice and is not inconsistent with advice given by the Chief Health Officer relating to the COVID-19 pandemic.

Jury Act 1977: [Sch 2.11](#)

[Section 25](#) is amended to enable a sheriff to exempt a person from jury selection if, in the sheriff's opinion, there is good cause for the exemption, including safety and welfare considerations relating to the person or the community at large: ss 25(4)-(6).

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Children (Detention Centres) Act 1987: Sch 2.2

New s 110 enables the Secretary of the Department of Communities and Justice to prohibit or restrict any person (other than the Ombudsman and the Inspector of Custodial Services) from entering or visiting a detention centre if satisfied it is reasonably necessary to protect the health of a detainee, any other person or the public from the public health risk posed by the COVID-19 pandemic.

Crimes (Administration of Sentences) Act 1999: Sch 2.5

New s 275 confers powers identical to those in the new s 110 of the *Children (Detention Centres) Act 1987* on the Commissioner of Corrective Services with respect to a correctional centre or other correctional premises.

New s 276 enables the Commissioner to grant parole to certain inmates if satisfied that is reasonably necessary because of the risk to public health or to the good order and security of correctional premises arising from the COVID-19 pandemic. See s 276(3) for the list of those inmates *not* entitled to early release.

Victorian Judicial College — summary of Australian court arrangements during COVID-19 pandemic **27/03/2020**

Judicial College of Victoria — [Coronavirus and the courts](#) — summary of court arrangements around Australia during COVID-19 pandemic

The Judicial College of Victoria has created a summary of court practices federally and by States for courts, and court users, to understand the different practices in place across all jurisdictions during the COVID-19 pandemic. The summary titled 'Coronavirus and the courts' can be accessed [here](#) and is updated as the situation evolves. It includes a link to the latest announcement from each Court.

Note: while every effort is made to ensure the accuracy of material contained in this newsletter, no responsibility can be taken by the Judicial Commission for any error or omission. Judicial Commission of NSW, Level 5, 60 Carrington Street, Sydney NSW 2000. GPO Box 3634 Sydney NSW 2001 • DX 886 Sydney • Phone (02) 9299 4421 • JIRS Help Desk 1800 043 623.