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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.

BRAD HAZZARD, MP

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

under the

Public Health Act 2010

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.

Reference number:(n2020-1862)