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Public Health and Wellbeing Act 2008

Sections 190 and 200

DIRECTIONS FROM DEPUTY CHIEF HEALTH OFFICER (COMMUNICABLE DISEASE) IN ACCORDANCE WITH EMERGENCY POWERS ARISING FROM DECLARED STATE OF EMERGENCY

Non-Essential Activity Directions (No. 2)

I, Dr Annaliese van Diemen, Deputy Chief Health Officer (Communicable Disease), consider it necessary to eliminate or reduce the risk to public health – and reasonably necessary to protect public health – to give the following directions pursuant to sections 190(1)(a) and (g) and 200(1)(d) of the **Public Health and Wellbeing Act 2008** (Vic.) (**PHW Act**):

1 Preamble

- (1) The purpose of these directions is to prohibit the operation of non-essential businesses and undertakings in order to limit the spread of Novel Coronavirus 2019 (**2019-nCoV**).
- (2) These directions replace the **Non-Essential Activity Directions** given on 25 March 2020, and:
 - (a) remove hair salons and barber shops from the list of non-essential retail facilities, as well as the 30 minute time limit, thereby permitting those facilities to operate so long as they comply with the density, cleaning and signage requirements in clause 14;
 - (b) add ‘sex on premises’ venues to the list of non-essential entertainment facilities.
- (3) These directions must be read together with the **Prohibited Gatherings Directions** given on 25 March 2020.

2 Revocation

The **Non-Essential Activity Directions** are revoked with effect from midnight on 26 March 2020.

3 Citation

These directions may be referred to as the **Non-Essential Activity Directions (No. 2)**.

4 Pubs, bars, clubs, nightclubs and hotels

- (1) A person who owns, controls or operates a **licensed premises** in Victoria must not operate that premises between midnight on 26 March 2020 and midnight on 13 April 2020.
- (2) A **licensed premises** means a business characterised as a pub, bar, club, nightclub or hotel that supplies alcohol under a **general licence**, an **on-premises licence** or a **club licence**.
- (3) Despite subclause (1), a person who owns, controls or operates a licensed premises may operate that premises for the purposes of:
 - (a) operating a **bottleshop**; or
 - (b) providing food or drink to be consumed off the premises; or
 - (c) providing accommodation.

5 Recreational facilities

- (1) A person who owns, controls or operates a **recreational facility** in Victoria must not operate that facility between midnight on 26 March 2020 and midnight on 13 April 2020.

SPECIAL

- (2) A **recreational facility** means any of the following, whether operated on a for profit or not-for-profit basis:
- (a) a facility used predominantly for indoor physical recreation;
Examples: a gymnasium, indoor swimming pool, health clubs, fitness centres, yoga studio, barre and spin facility, sauna, bathhouse, wellness centre and health studio.
 - (b) a facility used predominantly for outdoor physical recreation;
Examples: a mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, go-kart track, rifle range and water-ski centre.
 - (c) a **personal training facility**;
 - (d) a community centre or community hall;
 - (e) a library (including a toy library);
 - (f) a gallery or a museum;
 - (g) a youth centre;
 - (h) a **play centre**.
- (3) For the purposes of this clause, a **personal training facility** means a facility at which personal training services are the predominant activity provided.
Example: boot camp.

Permitted operations – essential public service

- (4) Despite subclause (1), a person who owns, controls or operates a recreational facility may operate that facility for the purpose of hosting an essential public service (whether that service is provided on a voluntary basis or otherwise).
Examples: a food bank or service for homeless persons.

Permitted operations – personal training facilities

- (5) Despite subclause (1), a person who owns, controls or operates a personal training facility may operate that facility if its services are provided:
- (a) in an **outdoor space**; and
 - (b) to a number of persons that does not exceed the number calculated by dividing the total area of space that the service might reasonably be expected to use (measured in square metres) by 4; and
 - (c) in any case, the number of persons to whom its services are provided is not more than 10 persons at any one time.
- (6) A personal training facility operated in accordance with subclause (5) does not constitute a **social sport gathering** for the purposes of the **Prohibited Gatherings Directions**.

Permitted operations – weddings and funerals

- (7) Despite subclause (1), a person who owns, controls or operates a recreational facility may operate the facility for the purpose of a wedding or funeral, if that wedding or funeral is permitted by clause 8(3) of the **Prohibited Gatherings Directions**.
Note: the Prohibited Gatherings Directions limits the number of people who may attend a wedding (5 people) or funeral (10 people).

6 Entertainment facilities

- (1) A person who owns, controls or operates an **entertainment facility** in Victoria must not operate that facility between midnight on 26 March 2020 and midnight on 13 April 2020.
- (2) An **entertainment facility** means any of the following, whether operated on a for profit or not-for-profit basis:
- (a) a theatre;
 - (b) a cinema;

- (c) a music hall, concert hall or auditorium;
- (d) an arena, stadium or convention centre;
- (e) an arcade;
- (f) an amusement park;
- (g) a **casino** or **gambling business**;
- (h) a **brothel**, **sex on premises venue**, strip club or other adult entertainment venue.

Permitted operations

- (3) Despite subclause (1), a person who owns, controls or operates an entertainment facility may operate that facility for the purpose of allowing a **recorded performance** to occur at the facility.
- (4) For the purposes of subclause (3), a **recorded performance** is a performance at which:
 - (a) the only persons in attendance at the facility are those necessary for the performance and the recording of that performance; and
 - (b) in any case, the number of persons in attendance at the facility does not exceed 10 at any one time.

7 Places of worship

- (1) A person who owns, controls or operates a **place of worship** in Victoria must not operate that place of worship between midnight on 26 March 2020 and midnight on 13 April 2020.

Permitted operations

- (2) Despite subclause (1), a person who owns, controls or operates a place of worship may operate that place of worship for the purpose of a wedding or funeral, if that wedding or funeral is permitted by clause 8(3) of the **Prohibited Gatherings Directions**.

Note: the Prohibited Gatherings Directions limit the number of people who may attend a wedding (5 people) or a funeral (10 people).

- (3) Despite subclause (1), a person who owns, controls or operates a place of worship may operate that facility for the purpose of hosting an essential public service (whether that service is provided on a voluntary basis or otherwise).

Examples: a food bank or service for homeless persons.

8 Non-essential retail facilities

- (1) A person who owns, controls or operates a **non-essential retail facility** in Victoria must not operate that facility between midnight on 26 March 2020 and midnight on 13 April 2020.
- (2) A **non-essential retail facility** means the following:
 - (a) a **beauty and personal care facility**;
 - (b) an auction house, other than for the purpose of conducting auctions remotely;
 - (c) a market stall, whether indoor or outdoor, other than a market stall the predominant business of which is the provision of food and drink for consumption off the premises of the market.
- (3) A **beauty and personal care facility** means the following:
 - (a) a beauty therapy salon, tanning salon, waxing salon or nail salon;
 - (b) a spa;
 - (c) a massage parlour;
 - (d) a tattoo parlour.

Permitted operations – delivery of goods

- (4) Despite subclause (1), a person who owns, controls or operates a non-essential retail facility may operate that facility for the purposes of providing, by delivery, goods to a person's private residence.

Markets – density

- (5) Despite anything contained in the **Prohibited Gatherings Directions**, a person who owns, operates or controls a market (including a food market) must not allow a gathering of persons for the purpose of the business of the market between midnight on 26 March 2020 and midnight on 13 April 2020, unless the total number of persons present at the market does not exceed the number calculated by dividing the total area occupied by the market (measured in square metres) by 4.

9 Food and drink facilities

- (1) A person who owns, controls or operates a **food and drink facility** in Victoria must not operate that facility between midnight on 26 March 2020 and midnight on 13 April 2020.
- (2) A **food and drink facility** means any of the following, whether operated on a for profit or not-for-profit basis:
- (a) a cafe;
 - (b) a restaurant;
 - (c) a fast-food store;
 - (d) a cafeteria;
 - (e) a canteen.

Permitted operations

- (3) Despite subclause (1), a person who owns, controls or operates a food and drink facility may operate that facility:
- (a) for the purposes of providing food or drink to be consumed off the premises; or
Note: This paragraph permits both delivery and collection of takeaway food and drink.
 - (b) if the food and drink facility is located inside a **food court**, for the purpose of providing food or drink to be consumed outside a food court; or
 - (c) if the facility is located:
 - (i) on the premises of a **hospital**, if the facility is located within an area of the hospital that has been exempted from the operation of the **Hospital Visitors Directions** pursuant to paragraph 11 of those directions;
 - (ii) on the premises of a **residential aged care facility**; or
 - (iii) on the premises of a school; or
 - (iv) on the premises of a prison, correctional facility, youth justice centre or other place of custody; or
 - (v) on land that is owned or held under lease by the Commonwealth and used, or intended for use, for the purposes of defence; or
 - (d) for the purposes of providing food or drink to homeless persons.

10 Accommodation facilities

- (1) A person who owns, controls or operates an **accommodation facility** in Victoria must not operate that facility between midnight on 26 March 2020 and midnight on 13 April 2020.
- (2) For the purposes of this clause, an **accommodation facility** means any of the following, whether operated on a for profit or not-for-profit basis:
- (a) a camping ground;
 - (b) a caravan park.

Permitted operations

- (3) Despite subclause (1), a person who owns, controls or operates an accommodation facility may operate that facility for the purposes of providing accommodation to:
- (a) a person whose place of residence is the accommodation facility; or
 - (b) a person who is ordinarily a resident of Victoria but has no permanent place of residence in Victoria; or
 - (c) a person who has a permanent place of residence in Victoria, but that place is temporarily unavailable; or
 - (d) a person, on a temporary basis, who has travelled to Victoria for work purposes; or
 - (e) a person who was a temporary guest of the accommodation facility on the date that these directions were given; or
 - (f) a person who requires emergency accommodation, including in relation to family violence and other vulnerable groups.

11 Swimming pools

A person who owns, controls or operates premises in Victoria at which there is a swimming pool must not permit any person to use the swimming pool, unless the pool is at the person's private residence and not available for communal use.

12 Animal facilities

- (1) A person who owns, controls or operates an **animal facility** in Victoria must not operate that facility for the purposes of allowing the public to visit that facility between midnight on 26 March 2020 and midnight on 13 April 2020.
- (2) An **animal facility** means the following:
- (a) a **zoological park**;
 - (b) a wildlife centre;
 - (c) a petting zoo;
 - (d) an aquarium;
 - (e) an animal farm that is not for the purpose of producing food.
- (3) Despite subclause (1), a person who owns, controls or operates an animal facility may continue to operate the facility for the purposes of:
- (a) treating or caring for animals; and
 - (b) performing an animal rescue function; and
 - (c) maintaining the facility.

13 Real estate auctions and inspections

An **estate agent** in Victoria must not organise:

- (1) any auction to take place for the sale of a **residential property**, between midnight on 26 March 2020 and midnight on 13 April 2020, unless that auction is to be conducted remotely; and
- (2) a person to inspect a **residential property** between midnight on 26 March 2020 and midnight on 13 April 2020 for the purposes of a prospective sale of the property, other than by private appointment.

14 Open retail facilities – density, signage and cleaning requirements

- (1) For the purpose of this clause:
- (a) an **open retail facility** means a **retail facility** (or part thereof) that is not prohibited from operating by these directions.

- (b) a **retail facility** includes any facility that is used wholly or predominantly for:
 - (i) the sale or hire of goods by retail; or
 - (ii) the retail provision of services.

Density quotient

- (2) Despite anything contained in the **Prohibited Gatherings Directions**, a person who owns, operates or controls an **open retail facility** must not allow a gathering of persons (including employees) between midnight on 26 March 2020 and midnight on 13 April 2020 in a single undivided indoor space, unless the total number of persons present in the indoor space at the same time does not exceed the **density quotient**.

Note: the density quotient of a single undivided indoor space is the number calculated by dividing the total area of an undivided indoor space (measured in square metres) by 4 (see clause 4 of the Prohibited Gatherings Directions).

Signage

- (3) A person who owns, control or operates an **open retail facility**, which involves members of the public entering any single undivided **indoor space**, must display a sign at the entry to each such space that states the maximum number of people that may be present in the space at a single time is the **density quotient**, rounded down to the nearest whole number.

Cleaning

- (4) A person who owns, controls or operates an **open retail facility** in Victoria must between midnight on 26 March 2020 and midnight on 13 April 2020:
 - (a) **clean** frequently touched surfaces at least twice on any given day; and
 - (b) clean any surface when visibly soiled; and
 - (c) immediately clean any surface after a spill on the surface.
- (5) To **clean** for the purposes of this clause, a person must wipe the surface with a disinfectant:
 - (a) the label states a claim by the manufacturer that the disinfectant has anti-viral properties; or
 - (b) made by the person according to instructions issued by the Department of Health and Human Services.

15 Other definitions

For the purposes of these directions:

- (1) **brothel** has the same meaning as in the **Sex Work Act 1994**;
- (2) **bottleshop** means an area:
 - (a) that is physically attached to a licensed premises, as defined in clause 4(2); and
 - (b) where packaged alcohol is sold to be consumed off the premises;
- (3) **casino** has the same meaning as in the **Casino Control Act 1991**;
- (4) **density quotient**, in relation to a single undivided indoor space, has the same meaning as in the **Prohibited Gatherings Directions**;
- (5) **food court** has the same meaning as in the **Liquor Reform Control Act 1998**;
- (6) **gambling business** has the same meaning as in the **Gambling Regulation Act 2003**;
- (7) **hospital** has the same meaning as in the **Hospital Visitors Directions**;
- (8) **indoor space** has the same meaning as in the **Prohibited Gatherings Directions**;
- (9) **outdoor space** has the same meaning as in the **Prohibited Gatherings Directions**;
- (10) **pharmacy** has the same meaning as in the **Pharmacy Regulation Act 2010**;
- (11) **premises** has the same meaning as in the PHW Act;

- (12) **place of worship** has the same meaning as in the **Heritage Act 2017**;
- (13) **play centre** means a premises, whether indoor or outdoor, that has play equipment to be used predominantly by children under the age of 12 years, but does not mean play equipment in a public park;
- (14) **residential aged care facility** has the same meaning as in the **Aged Care Facilities Direction**;
- (15) **sex on premises venue** has the same meaning as in section 3B of the **Sex Work Act 1994**;
- (16) **social sport gathering** has the same meaning as in the **Prohibited Gatherings Directions**;
- (17) **zoological park** has the same meaning as in the **Zoological Parks and Gardens Act 1995**;
- (18) The following expressions have the same meanings as they have in the **Liquor Control Reform Act 1998**:
 - (a) general licence;
 - (b) on-premises licence;
 - (c) club licence;
- (19) The following expressions have the same meaning that they have in the **Estate Agents Act 1980**:
 - (a) estate agent;
 - (b) residential property.

16 Penalties

Section 203 of the PHW Act provides:

Compliance with direction or other requirement

- (1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.

Penalty: In the case of a natural person, 120 penalty units.
In the case of a body corporate, 600 penalty units.
- (2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction or requirement.

Dated 26 March 2020

DR ANNALIESE VAN DIEMEN
Deputy Chief Health Officer (Communicable Disease)
as authorised to exercise emergency powers by the Chief Health Officer
under section 199(2)(a) of the PHW Act

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