GILSHENAN & LUTON
LEGAL PRACTICE



COVID-19 and Home Confinement Direction Queensland

Date: Thursday April 2, 2020

Updated 3 April 2020

In this rapidly changing environment, it can be difficult to understand what you can and cannot do in your day-to-day activities. After all, what the Prime Minister says in a press conference isn't binding on Queenslanders until and unless a direction is made under the *Public Health Act 2005*.

The *Public Health Act 2005* ('the Act') allows the Queensland government and health professionals to exercise certain powers in situations like that of the coronavirus outbreak.

Changes to the Public Health Act relative to coronavirus

On 19 March 2020, the Act was amended to insert a chapter granting the chief health officer the power to make directions in respect of the COVID-19 emergency.

Section 362B(2) allows the chief health officer to give directions which:

1. restrict the movement of people;
2. require people to stay at or in a stated place;
3. require people not to enter or stay at or in a stated place;
4. restrict contact between people; and
5. any other direction the chief health officer considers necessary to protect public health.

Home Confinement Direction

On 2 April 2020, the chief health officer issued the ‘home confinement, movement and gathering direction’ – the most restrictive direction so far.

It is to be noted that there are currently multiple, concurrent directions in force; such as the ‘school and early childhood service exclusion direction’ and the ‘non-essential business, activity and undertaking closure direction (no.4)’.

What does the ‘home confinement, movement and gathering direction’ specify?

Home Confinement

People are prohibited from leaving their residence except for permitted purposes.

The permitted purposes are:

1. to obtain food or other essential goods or services;
2. to obtain medical treatment or other health care services;
3. to engage in physical exercise;
4. to perform work on behalf of an employer that is engaged in an essential business, activity or undertaking if the work cannot reasonably be performed from the person’s principal place of residence;
5. to visit another person’s residence (in accordance with further directions below);
6. education and early childhood workers may travel to and from their home centre over the term 1 break;
7. to visit a terminally ill relative or to attend a funeral, subject to any applicable restrictions under other relevant public health directions;
8. to provide assistance, care or support to an immediate member of the person’s family;
9. to attend any Court of Australia or to comply with or give effect to orders of the Court; or
10. to attend a childcare facility, school, university, or other educational institution, to the extent care or instruction cannot reasonably be obtained in the person’s principal place of residence;
11. to assist with or participate in an investigation or other action by a law enforcement authority;
12. for children under 18 years who do not live in the same household as their biological parents or siblings or one of their parents or siblings, continuing existing arrangements for access to, and contact between, parents and children and siblings, but not allowing access or contact with vulnerable groups or persons (i.e. follow your Family Court orders);
13. avoiding injury or illness or to escape a risk of harm (i.e. escaping domestic and family violence);

14. to comply with or give effect to the exercise of a power or function of a government agency or entity under a law.

Outdoor Gatherings

You can accomplish these ‘permitted purposes’ with members of your household or alternatively, with one person who is not in your household.

If you require physical assistance to leave your principal place of residence, or it’s reasonably necessary for your safety or the public’s safety, and there is no other reasonable way for you to be able to accomplish the ‘permitted purposes’, you can be accompanied by more than one person (who is not a member of your household) and who is a carer or support worker.

Visitors at Home

You may allow two visitors, who are not ordinarily members of your household (i.e. friends and extended family) to visit, but you must take reasonable steps to encourage occupants and visitors to practice social distancing to the extent reasonably practicable.

This doesn’t apply to residential aged care facilities, corrective services facilities or detention centres.

Penalties for breaching Queensland’s home confinement direction

If you fail to comply with a direction, an ‘emergency officer’ may, with necessary and reasonable force, take action to enforce the requirement or direction.

There is an offence under section 362D of the Act for failing to comply with a public health direction.

In order to establish the offence, the police must prove beyond reasonable doubt that you:

1. failed to comply with the direction; and
2. did not have a reasonable excuse for that failure.

The maximum penalty is a fine of $13,345.00.

Police and ‘emergency officers’ can choose to give you an infringement notice for this offence.

Currently, for an individual the fine is $1,334.50 and for a corporation the fine is $6,672.50.

If you receive an infringement notice you have 28 days to pay the fine or enter into a voluntary repayment plan with the State Penalties Enforcement Registry (SPER).

Alternatively, if you disagree with the infringement notice, you can ask to have the offence heard by a court.

Legal advice and assistance during COVID-19

We are delighted to advise that we returned to normal operations from our CBD premises on Monday 29 June 2020.

We continue to provide the best criminal law services during the coronavirus pandemic.

You can contact us by phone or email to arrange a consultation.

Phone: 07 3361 0222 (24/7)

Email: gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.