

COVID-19: ESSENTIAL SERVICES AND WORKERS

FACTSHEET



Law Council
OF AUSTRALIA



AMA

INTRODUCTION

Australian Health Protection Principal Committee (AHPPC) advice to National Cabinet on 24 March 2020 [recommended](#), if necessary, a next step of considering the closure of 'all activity except essential industries and services'. AHPPC however did not define 'essential' in this context.

There is accordingly a need for clearer guidance as to what constitutes an 'essential service' and who is an 'essential worker'.

The term 'essential services' is not defined in Commonwealth legislation and is not consistently defined at the state and territory level. Further, at the state and territory level, such definitions often pertain to subject matters not related to the present circumstances, such as industrial action or emergency services. A summary of these definitions can be found at **Appendix A**.

DEFINITION

There is accordingly no clear definition of 'essential services' in the COVID-19 context. For the purposes of COVID-19, to the extent that 'essential services' are described rather than defined, these descriptions arise from the measures implemented by the National Cabinet, being the Prime Minister, the Premiers of the States and the Chief Ministers of the Territories.

While these measures are developed and coordinated at the level of the National Cabinet, the specifics are implemented by the states and territories through:

- Legislation such as the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1* (NSW).
- Declaration of public health emergencies under state and territory legislation to allow the relevant Health Minister or Chief Executive to make Directions to control the emergency. This has been done in:
 - Victoria (*pursuant to the Public Health and Wellbeing Act 2008* (Vic) s198);
 - Queensland (*Public Health Act 2005* (Qld) s319);
 - Australian Capital Territory (*Public Health Act 1997* (ACT) s119);
 - Western Australia (*Public Health Act 2016* (WA) s167);
 - Northern Territory (*Public and Environmental Health Act 2011* (NT), s52);
 - South Australia (*Public Health Act 2011* (SA) s87); and
 - Tasmania (*Public Health Act 1997* (Tas) s14).

- Orders under the following state and territory Acts:
 - *Public Health Act 2010* (NSW);
 - *Public Health and Wellbeing Act 2008* (Vic);
 - *Public Health Act 2005* (Qld);
 - *Public Health Act 1997* (ACT);
 - *Emergency Management Act 2005* (WA);
 - *Public and Environmental Health Act 2011* (NT);
 - *Emergency Management Act 2004* (SA); and
 - *Public Health Act 1997* (Tas).

Rather than define or describe 'essential services' or 'essential workers', the federal and state and territory governments have largely adopted the term 'gatherings'. By focusing on the act rather than the actors, this term applies to both service providers and workers.

At the time of writing, the National Cabinet currently [describes](#) 'essential gatherings' to be 'essential activities' including:

- essential workplaces, where you cannot work from home;
- health care settings;
- pharmacies;
- food shopping;
- schools and universities, where you cannot study from home; and
- public transport and airports.

As there is no definition for 'essential workplaces' in this context, an essential workplace (presumably) refers to workplaces relating to the other 'essential activities' listed.

The federal government, has clarified this matter by also providing descriptions of what gatherings are not essential: please see the following [link](#).

At the state and territory level, more detailed descriptions of essential (or non-essential) 'gatherings' or services have been provided.

The most up-to-date descriptions are summarised below.

State/Territory	Source	Description
NSW	<p>Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 (30 March 2020).</p>	<p>NSW has described 'essential gatherings' as those at:</p> <ul style="list-style-type: none"> • Airports • Public transportation facilities. • Hospital or other medical or health service facilities. • Emergency services. • Prisons, correctional facilities, youth justice centres or other place of custody. • Disability or aged care facilities. • Courts or tribunals. • Parliament • Supermarket, markets that predominately sells food, grocery stores or shopping centre (but not a retail store in a shopping centre other than a supermarket, market that predominately sells food or grocery store). • Retail store (other than a supermarket, market that predominately sells food or grocery store). • Offices, farms, factories, warehouses or mining or construction sites. • Schools, universities or other educational institution or child care facilities (but does not include a school event that involves members of the community in addition to staff and students) • Hotels, motels or other accommodation facilities. • A gathering at an outdoor space where two or more persons may be present for the purposes of transiting through the place.
VIC	<p>Directions from Deputy Chief Health Officer</p>	<p>Victoria has made a number of Directions including those relating to non-essential services and businesses, but has not defined 'essential services' in respect of COVID-19.</p> <p>Essential services regarding the aged care sector however have been further described: see this link and this link for more information.</p>

State/Territory	Source	Description
QLD	Chief Health Officer public health directions	<p>Queensland have more a number of Directions regarding non-essential services: see the Non-essential business, activity and undertaking Closure Direction (No.5) (9 April 2020).</p> <p>Queensland however has not further described or defined 'essential services'.</p>
ACT	Directions under <i>Public Health Act 1997</i> (ACT)	<p>The Australian Capital Territory Chief Minister has made a statement about non-essential services.</p> <p>The ACT however has not further described or defined 'essential services'.</p>
WA	State of emergency directions	<p>Western Australia has made a number of Directions including those relating to non-essential services and businesses.</p> <p>While WA not defined 'essential services', the gatherings exempted from the Direction largely reflect the NSW list of 'essential gatherings' (see above), although there are additional gatherings included:</p> <ul style="list-style-type: none"> • for the purposes of providing care or assistance (including personal care) to a vulnerable person or providing emergency assistance; and • provisions for live streaming (subject to conditions). <p>For more information see paragraph 11.</p>
NT	Northern Territory of Australia Public and Environmental Health Act 2011 COVID-19 Directions	<p>Northern Territory has made a number of Directions including those relating to 'gatherings'.</p> <p>'Gatherings' exempted from the Direction largely reflect the NSW list of 'essential gatherings' (see above), although gatherings in private motor vehicles or commercial passenger vehicles are also included: (see above).</p>

State/Territory	Source	Description
SA	Declarations and Directions made under the <i>Emergency Management Act 2004</i>	<p>South Australia has made a number of Directions including those relating to 'gatherings'.</p> <p>'Gatherings' exempted from the Direction reflect the NSW list of 'essential gatherings' (see above).</p>
TAS	Directions have been made under the <i>Public Health Act 1997</i>	<p>Tasmania has made a number of Directions including those relating to 'gatherings'.</p> <p>'Gatherings' exempted from the Direction largely reflect the NSW list of 'essential gatherings' (see above), however include:</p> <ul style="list-style-type: none"> • gathering in private vehicles; • gatherings in a large passenger vehicle operating as a passenger service within the meaning of the Passenger Transport Services Act 2011; • a ferry service or vessel service, operated between Australia, Tasmania or one or more islands; • for the purposes of providing assistance or support to a person with a disability, if more than one person, who does not ordinarily; • reside with the person with a disability; and • veterinary establishments.

FURTHER INFORMATION

For further information about whether or not your work or your business is essential, please see the following resources:

Commonwealth	National Coronavirus Health Information Line: 1800 020 080 Support for businesses Business Help Hotline: 13 28 46
New South Wales	National Coronavirus Health Information Line: 1800 020 080 For businesses and employment information Small business: Business Concierge Service (Service NSW): 17 77 88
Victoria	Coronavirus hotline: 1800 675 398 Coronavirus business support Business Victoria Coronavirus hotline: 13 22 15
Australian Capital Territory	ACT Government COVID-19 information COVID-19 Helpline: (02) 6207 7244
Queensland	COVID-19 information and contacts National Coronavirus Health Information Line: 1800 020 080 Small business: Small business hotline: 1300 654 686 Business Queensland hotline: 13 74 68
Western Australia	Coronavirus helpline: 13 26843 Business and industry advice Small business support services: 133 140

South Australia	COVID-19 Helpline: 1800 253 787 COVID-19 Business information and support Information for businesses and support: 1300 142 820
Northern Territory	Business support information National Coronavirus Health Information Line: 1800 020 080
Tasmania	Coronavirus information for businesses COVID-19 hotlines Business Tasmania Hotline: 1800 440 026

For organisations wanting to lobby for their service to be considered essential, it is suggested that you contact your state or territory Health Minister for [further information](#).

*DISCLAIMER

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The contents of any page of this factsheet does not constitute legal advice and should not be relied upon as such. The information in this factsheet is current at the time of writing.

17 April 2020.

APPENDIX A

- Commonwealth: no definition.
- Western Australia does not have a definition for 'essential services' (or a related definition).
- Tasmania does not have any definition for 'essential services' (or a related definition).
- The [Essential Services Act 1988](#) (NSW) defines 'essential services' in the context of 'disruption in the provision of essential services, whether the disruption arises from industrial action or otherwise' as:
 - the production, supply or distribution of any form of energy, power or fuel or of energy, power or fuel resources;
 - the public transportation of persons or the transportation of freight (including the provision of rail infrastructure for those purposes);
 - the provision of fire-fighting services;
 - the provision of public health services (including hospital or medical services);
 - the provision of ambulance services;
 - the production, supply or distribution of pharmaceutical products;
 - the provision of garbage, sanitary cleaning or sewerage services;
 - the supply or distribution of water;
 - the conduct of a welfare institution;
 - the conduct of a prison;
 - a service declared to be an essential service by order of the Governor; and
 - a service comprising the supply of goods or services necessary for providing any service referred to above.
- The [Essential Services Act 1981](#) (SA) defines 'essential services' as 'means a service (whether provided by a public or private undertaking) without which the safety, health or welfare of the community or a section of the community would be endangered or seriously prejudiced'.
- The [Essential Services Commission Act 2002](#) (SA) defined 'essential services' in the context of 'the protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services' to be:
 - electricity services;
 - gas services;
 - water and sewerage services;
 - maritime services; and
 - rail services.
- The [Utilities Act 2000](#) (ACT) defines 'essential service' to mean means electricity, gas or water in the context of 'regulat[ing] the provision of services by certain utilities'.
- The [Essential Services Act 1958](#) (Vic) defines 'essential service' in the context of 'protect[ing] the community against the interruption or dislocation of essential services' to be:
 - transport;
 - fuel;
 - light;

- power;
 - water;
 - sewerage; and
 - any service specified from time to time by order of the Governor in Council.
- Essential Services Commission Act 2001 (Vic) defined 'essential services' in the context of regulating the Commission 'in a manner that provides incentives for dynamic, productive and allocative efficiency and promotes the long-term interests of Victorian consumers' to be:
 - the electricity industry;
 - the gas industry;
 - the ports industry;
 - the grain handling industry;
 - the rail industry;
 - the water industry;
 - the non-cash payment transaction industry;
 - the commercial passenger vehicle industry; and
 - any other industry prescribed for the purpose.
 - [Disaster Management Act 2003](#) (QLD) provides the following examples of 'essential services' in s48A: gas, electricity, telecommunications, water, sewerage infrastructure.
 - The [Essential Goods and Services Act 1981](#) (NT) defined 'service' in the Act, in the context of 'control[ing] and manag[ing] prescribed goods or services during periods of shortage, and for related purposes' to be:
 - public transportation of persons or freight other than taxi-cab services;
 - fire fighting services;
 - hospitals administered under the *Medical Services Act 1982*;
 - electricity supplied by electricity entities (as defined in the *Electricity Reform Act 2000*)
 - water supply;
 - garbage collection, sanitary cleansing or sewerage; or
 - any other service or facility concerned with the maintenance of public health or a public utility, or a service upon which the maintenance of public health or a public utility depends.