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New South Wales

Public Health (COVID-19 Greater Sydney) Order (No 2) 2021

under the

Public Health Act 2010

I, Brad Hazzard, the Minister for Health and Medical Research, make the following Order under section 7 of the *Public Health Act 2010*.

Dated 23 June 2021 at 6.20pm.

BRAD HAZZARD, MP
Minister for Health and Medical Research

Explanatory note

The object of this Order is to respond to cases of community transmission of COVID-19 in Greater Sydney by placing certain restrictions on gathering and movement. The restrictions include the following—

- (a) restrictions on travelling outside of certain areas in Greater Sydney,
- (b) restrictions on singing in non-residential premises,
- (c) restrictions on consuming alcohol while standing in non-residential premises,
- (d) a limit on the number of visitors to residential premises, holiday homes and short-term rentals,
- (e) restrictions on number of persons in certain non-residential premises,
- (f) requirements to wear fitted face coverings in indoor areas of non-residential premises and at COVID-safe outdoor gatherings or controlled outdoor public gatherings.

Public Health (COVID-19 Greater Sydney) Order (No 2) 2021

under the

Public Health Act 2010

Part 1 Preliminary

Division 1 Introduction

1 Name of Order

This Order is the *Public Health (COVID-19 Greater Sydney) Order (No 2) 2021*.

Division 2 Interpretation

2 Definitions

(1) In this Order—

controlled outdoor public gathering has the same meaning as in the *Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021*.

COVID-19 safe outdoor public gathering has the same meaning as in the *Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021*.

exempted gathering means a gathering referred to in Schedule 2.

fitted face covering means a mask or other covering that—

- (a) fits securely around the face, and
- (b) is designed or made to be worn over the nose and mouth to provide the wearer with protection against infection.

Greater Sydney means—

- (a) the Greater Sydney Region within the meaning of the *Greater Sydney Commission Act 2015*, and
- (b) the local government areas of the Central Coast, the City of Shellharbour and the City of Wollongong.

hospitality venue means the following—

- (a) casinos,
- (b) food and drink premises,
- (c) micro-breweries, small distilleries holding a drink on-premises authorisation under the *Liquor Act 2007* and cellar door premises,
- (d) pubs,
- (e) registered clubs,
- (f) small bars.

household means persons living together in the same place of residence.

indoor area includes an area in a building or other structure, whether or not temporary, which has a roof, ceiling or other top covering, but does not include an area with at least 2 sides open to the weather.

Metropolitan Sydney area means the Greater Sydney Region within the meaning of the *Greater Sydney Commission Act 2015* except for the following local government areas—

- (a) Blue Mountains,
- (b) Hawkesbury,
- (c) Wollondilly.

nightclub means premises that are the subject of an on-premises licence in force under the *Liquor Act 2007* that relates to a public entertainment venue, other than a cinema or theatre.

non-residential premises means premises other than a place of residence.

occupier of premises includes the operator of a vehicle or vessel.

place of residence includes the premises where a person lives and a garden, yard, passage, stairs, garage, outhouse or other area or thing attached to, or used in connection with, the premises.

short-term rental means premises to which a short-term rental accommodation arrangement, as defined in the *Fair Trading Act 1987*, section 54A applies.

the Act means the *Public Health Act 2010*.

work includes work done as a volunteer or for a charitable organisation.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.

- (2) A reference to a type of premises in this Order has the same meaning as it has in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.
- (3) Notes included in this Order do not form part of this Order.

3 Calculation of spaces available for persons

- (1) When calculating both the space available for each person on premises and the number of persons on the premises, the following persons are not to be included in the calculations—
 - (a) a person engaged in work on the premises for the occupier of the premises,
 - (b) a person on the premises because of an emergency,
 - (c) if the premises are food and drink premises, a person ordering or collecting food or drink to consume off the premises.
- (2) When calculating the space available for each person on premises, only the areas that are open to the public are to be included in the calculations.

Division 3 Application

4 Application of Order

- (1) This Order applies in Greater Sydney.
- (2) However, subclause (1) does not limit the application of clauses 6 and 15(2).
- (3) If there is an inconsistency between this Order and any of the following Orders, this Order prevails to the extent of the inconsistency—
 - (a) the *Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021*,
 - (b) the *Public Health (COVID 19 Mandatory Face Coverings) Order (No 2) 2021*,

- (c) an order that remakes, replaces or consolidates, whether in whole or in part, an order referred to in paragraph (a) or (b)

Division 4 Grounds for Order

5 Grounds for concluding that there is a risk to public health

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 and responding to outbreaks of COVID-19, which is a condition caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
- (b) COVID-19 is a potentially fatal condition and is highly contagious,
- (c) a number of cases of individuals with COVID-19 have recently been confirmed in New South Wales and other Australian jurisdictions, including by means of community transmission, and there is an ongoing risk of continuing introduction or transmission of the virus in New South Wales.

Part 2 Restrictions on movement

6 Direction of Minister for affected persons not to leave Metropolitan Sydney area

- (1) The Minister directs that a person must not, without reasonable excuse, travel from the Metropolitan Sydney area to a place in New South Wales outside of the area if the person's place of residence or usual place of work is in any of the following local government areas—
 - (a) Bayside,
 - (b) City of Sydney
 - (c) Canada Bay,
 - (d) Inner West,
 - (e) Randwick,
 - (f) Waverly,
 - (g) Woollahra,
 - (h) any other local government area in Greater Sydney specified by the Chief Health Officer in a notice published in the Gazette as an area of concern for the purposes of this clause.
- (2) Subclause (1) does not prevent a person who was already outside the Metropolitan Sydney area on the commencement of this clause from travelling to other places outside the area, but only while the person remains outside the area.
- (3) For the purposes of subclause (1), a reasonable excuse includes—
 - (a) travelling to the person's place of residence, or
 - (b) doing another activity specified by Schedule 1.
- (4) Subclause (2) does not permit a person to participate in a gathering in contravention of Part 3.
- (5) Taking a holiday is not a reasonable excuse.

Part 3 Restrictions on gatherings and premises

Division 1 Residential premises

7 Directions of Minister about number of visitors to a place of residence

- (1) The Minister directs that each adult member of a household must not allow more than 5 visitors to be at the place of residence of the household at any one time.
- (2) The Minister directs that a visitor to a place of residence must not participate in a gathering at the residence consisting of more than 5 visitors.
- (3) For the purposes of this clause, a person is not a visitor to a place of residence if—
 - (a) the person is a member of the household of the place of residence, or
 - (b) the person is at the place of residence for any of the following purposes—
 - (i) to engage in work,
 - (ii) for childcare,
 - (iii) to fulfil carers' responsibilities,
 - (iv) to provide care or assistance, including personal care, to a vulnerable person,
 - (v) to give effect to new or existing arrangements for spending time with, and providing contact between, parents and children under the age of 18 or between siblings,
 - (vi) to assist a person moving to or from the place of residence,
 - (vii) to avoid an injury or illness or to escape a risk of harm,
 - (viii) because of an emergency or for compassionate reasons,
 - (ix) to view or inspect real property for sale or lease or participate in an auction of real property.

8 Directions of Minister about holiday homes and short-term rentals

- (1) The Minister directs that the occupier of premises must not allow the premises to be used for the purpose of a holiday home or a short-term rental for more than 5 persons unless all of those persons are from the same household.
- (2) The Minister directs that a visitor to premises that are being used as a holiday home or short-term rental must not participate in a gathering at the premises consisting of more than 5 visitors.
- (3) Subclause (1) does not apply to a holiday home or short-term rental if—
 - (a) more than 5 persons were staying in the premises immediately before the commencement of this Order, and
 - (b) no additional person moves into the premises after the commencement of this Order.

Division 2 Non-residential premises

9 Direction of Minister about number of persons allowed on premises

- (1) An occupier of premises is directed not to allow more persons on the premises than the greater of—
 - (a) the number of persons that is equivalent to 1 person per 4 square metres of space in the premises, or
 - (b) 25 persons.

- (2) This clause does not apply to the following—
- (a) a place of residence,
 - (b) an entertainment facility,
 - (c) a recreation facility (major),
 - (d) a vessel used for commercial tours for scuba diving, snorkelling or whale, dolphin or marine animal watching, but only if there are 50 or fewer persons on the vessel,
 - (e) caravan parks and camping grounds,
 - (f) holiday homes and short-term rentals,
 - (g) an exempted gathering.

10 Directions of Minister about entertainment facilities and recreation facilities (major)

- (1) The occupier of an entertainment facility is directed to ensure the maximum number of persons on the premises does not exceed the greater of—
- (a) the number of persons equal to 50% of the fixed seating capacity of the facility, or
 - (b) the number of persons equivalent to 1 person per 4 square metres of space in the facility.
- (2) The occupier of a recreation facility (major) is directed to ensure the maximum number of persons on the premises does not exceed the greater of—
- (a) the total of—
 - (i) 50% of the fixed seating capacity of the facility, and
 - (ii) the number of persons equal to 1 person per 4 square metres of space of any unfixed seating areas of the facility,
 - (b) the number of persons equivalent to 1 person per 4 square metres of space in the facility.
- (3) If the occupier of an entertainment facility or recreation facility (major) calculates the maximum number of persons allowed to be on the premises based on the percentage of the fixed seating capacity of the facility, the occupier is directed to ensure—
- (a) admission to the premises is by way of a ticket, and
 - (b) all persons, other than persons engaged in work, are assigned to specific seats.

11 Directions of Minister about gymnasiums and indoor recreation facilities

- (1) The Minister directs that an occupier of a gymnasium must ensure the maximum number of persons attending any individual class or activity carried out at the gymnasium does not exceed 20 persons.
- (2) The Minister directs that the occupier of an indoor recreation facility must ensure the maximum number of persons attending any individual dance class or activity carried out at the facility does not exceed 20 persons.
- (3) The Minister directs that—
- (a) the occupier of a gymnasium must ensure that persons attending individual classes or activities in the gymnasium wear fitted face coverings over both their noses and mouths while participating in the class or activity, and
 - (b) the occupier of an indoor recreation facility must ensure that persons attending dance classes or activities in the facility wear fitted face coverings over both their noses and mouths while participating in the class or activity

12 Direction of Minister about singing on non-residential premises

- (1) The Minister directs that the occupier of non-residential premises must ensure that persons in an indoor area of the premises do not sing.
- (2) Subclause (1) does not apply if—
 - (a) the persons singing are performers engaged in a performance or rehearsing for a performance, or
 - (b) the premises are an educational establishment, or
 - (c) the persons are singing for the purpose of instruction in singing, or
 - (d) the premises are a place of public worship, and the persons singing are members of a choir.

13 Direction of Minister about consuming alcohol on non-residential premises

The Minister directs that the occupier of a hospitality venue or a nightclub must ensure that persons in an indoor area of the premises do not consume alcohol unless seated.

14 Direction of Minister about dancing in indoor hospitality venue or nightclub

- (1) The Minister directs that the occupier of a indoor hospitality venue or a nightclub must ensure that persons on the premises do not dance.
- (2) Subclause (1) does not apply to dancing at a wedding by members of the wedding party if there are no more than 20 dancers at the one time.

Part 4 Directions about face coverings

15 Direction to wear fitted face coverings

- (1) The Minister directs that—
 - (a) a person must wear a fitted face covering over both the person's nose and mouth while in any indoor area of non-residential premises, and
 - (b) a person must wear a fitted face covering over both the person's nose and mouth while attending a COVID-safe outdoor gathering or a controlled outdoor public gathering.
- (2) The Minister directs that a person must comply with subclause (1) outside of Greater Sydney if the person was in Greater Sydney in the previous 14 days.
- (3) Subclauses (1) and (2) does not apply to the following persons—
 - (a) a person aged 12 years or under,
 - (b) a person with a physical or mental health illness or condition, or disability, that makes wearing a fitted face covering unsuitable including, for example, a skin condition, an intellectual disability, autism or trauma.
- (4) Despite subclauses (1) and (2), a person may remove a fitted face covering the person is otherwise required to wear in the following circumstances—
 - (a) the person is eating or drinking,
 - (b) the person is engaging in strenuous physical exercise,
 - (c) the person is communicating with another person who is deaf or hard of hearing,
 - (d) the person is at work and the nature of the person's work—
 - (i) makes the wearing of a fitted face covering a risk to the person's, or another person's health and safety, or
 - (ii) means clear enunciation or visibility of the person's mouth is essential,
 - (e) the person is asked to remove the fitted face covering to ascertain the person's identity,
 - (f) because of an emergency,
 - (g) the removal of the fitted face covering is necessary for the proper provision of the goods or service,
 - (h) the person is in correctional centre or other place of custody,
 - (i) the person is in a public hospital or private health facility,
 - (j) the person is a resident of a residential aged care facility,
 - (k) the person is in a school or an early education and care facility,
 - (l) the person is a guest in a hotel, motel or other accommodation facility and is in the person's own room,
 - (m) the person is on a construction site,
 - (n) the person is in the process of getting married,
 - (o) the person is working alone in an indoor area like an office until another person enters the area,
 - (p) the person is in a vehicle alone or with another person of the same household.
- (5) The Minister directs that a person who removes the person's fitted face covering under subclause (4) must resume wearing the fitted face covering as soon as practicable after the circumstance ends.

(6) In this clause—

correctional centre has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*, and includes a detention centre within the meaning of the *Children (Detention Centres) Act 1987*.

private health facility has the same meaning as in the *Private Health Facilities Act 2007*

public hospital has the same meaning as in the *Health Services Act 1997*.

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.

Part 5 Miscellaneous

16 Exemptions

The Minister may, in writing and subject to the conditions the Minister considers appropriate, grant an exemption to this Order or specified provisions of this Order.

17 Repeal

This Order is repealed at the beginning of 1 July 2021.

Schedule 1 Reasonable excuses

clause 6(3)(b)

- 1 Obtaining food or other goods or services for the personal needs of the household or other household purposes, including for pets, and for vulnerable persons if they cannot be obtained in the Metropolitan Sydney area
- 2 Travelling for the purposes of work if the person cannot work from the person's place of residence
- 3 Travelling for the purposes of attending childcare, including picking up or dropping another person at childcare
- 4 Travelling for the purposes of facilitating attendance at a school or other educational institution if the person attending the school or institution cannot learn from the person's place of residence
- 5 Obtaining medical care or supplies or health supplies or fulfilling carer's responsibilities
- 6 Moving to a new place of residence, including a business moving to new premises, or between different places of residence of the person or inspecting a potential new place of residence
- 7 Providing care or assistance, including personal care, to a vulnerable person or providing emergency assistance
- 8 Undertaking any legal obligations
- 9 Accessing public services, whether provided by Government, a private provider or a non-Government organisation, if they cannot be accessed in the Metropolitan Sydney area, including—
 - (a) social services, and
 - (b) employment services, and
 - (c) domestic violence services, and
 - (d) mental health services, and
 - (e) services provided to victims, including as victims of crime
- 10 For children who do not live in the same household as their parents or siblings or one of their parents or siblings—continuing existing arrangements for access to, and contact between, parents and children or siblings
- 11 Avoiding injury or illness or to escape a risk of harm
- 12 For emergencies or compassionate reasons, including where 2 persons are in a relationship but do not necessarily live together.

Schedule 2 Exempted gatherings

Clause 2(1), definition of “exempted gathering”

- 1 Gathering at an airport that is necessary for the normal business of the airport
- 2 Gathering for the purposes of or related to transportation, including in vehicles or at truck stops, stations, platforms or stops or other public transportation facilities but not a gathering on a vehicle being used as a party bus
- 3 Gathering at a hospital or other medical or health service facility that is necessary for the normal business of the facility
- 4 Gathering for the purposes of emergency services, including the provision of training by an emergency service
- 5 Gathering at a prison, correctional facility, youth justice centre or other place of custody
- 6 Gathering at a disability or aged care facility that is necessary for the normal business of the facility
- 7 Gathering at a court or tribunal
- 8 Gathering at Parliament for the purpose of its normal operations
- 9 Gathering at a supermarket, market that predominately sells food, grocery store or shopping centre (but not a retail store in a shopping centre other than a supermarket, market that predominately sells food or grocery store) that is necessary for the normal business of the supermarket, market, store or centre
- 10 Gathering at an office building, farm, factory, warehouse, commercial fishing operation or mining or construction site or on a commercial vessel (excluding vessels providing tours or hosting functions) that is necessary for the normal operation of the tenants within the building, farm, factory, warehouse, commercial fishing operation or site or of the commercial vessel
- 11 Gathering at a school, university or other educational institution or child care facility that is necessary for the normal business of the school, university, institution or facility but does not include a school event that involves members of the community in addition to staff and students
- 12 Gathering at a hotel, motel or other accommodation facility that is necessary for the normal operation of accommodation services at that hotel, motel or other facility
- 13 Gathering at an outdoor space for the purposes of transiting through the place
Example. Pitt St Mall
- 14 Gathering to provide a service to assist vulnerable members of the public, including, for example, a food bank or a service providing for the needs of homeless persons
- 15 Gathering at premises that is necessary to provide the services of an early education and care facility