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New South Wales

Public Health (COVID-19 Northern Rivers) Order 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 31 March 2021.

BRAD HAZZARD, MP
Minister for Health and Medical Research

Explanatory note

The object of this Order is to provide for the following—

- (a) restrictions on certain gatherings in the local government areas of Ballina Shire, Byron Shire, the City of Lismore and Tweed Shire,
- (b) a prohibition on music festivals, including the Byron Bay Bluesfest, in the local government areas of Ballina Shire, Byron Shire, the City of Lismore and Tweed Shire,
- (c) a requirement for persons in the local government areas of Ballina Shire, Byron Shire, the City of Lismore and Tweed Shire to wear fitted face coverings in particular circumstances.

Contents

	Page
Part 1 Preliminary	
1 Name of Order	3
2 Commencement	3
3 Definitions	3
4 Interpretation generally	4
5 Grounds for concluding that there is a risk to public health	5
Part 2 Restrictions on gatherings and use of premises	
Division 1 Non-residential premises	
6 Minister's direction about number of persons on non-residential premises	6
7 Minister's direction about use of non-residential premises for certain activities	6
Division 2 Residential premises	
8 Minister's directions about number of persons allowed on residential premises	6
Division 3 Use of premises for specific activities	
9 Minister's direction about holiday homes and short-term rentals	6
10 Minister's direction about music festivals	6
Part 3 Wearing fitted face coverings	
11 Minister's direction to wear fitted face coverings	8
Part 4 Miscellaneous	
12 Relationship of Order with other orders	10
13 Exemptions	10
Schedule 1 Exempted gatherings	11

Public Health (COVID-19 Northern Rivers) Order 2021

under the

Public Health Act 2010

Part 1 Preliminary

1 Name of Order

This Order is the *Public Health (COVID-19 Northern Rivers) Order 2021*.

2 Commencement

This Order commences at 5pm on 31 March 2021.

3 Definitions

(1) In this Order—

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.

hospitality venue means the following—

- (a) a casino,
- (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.

non-residential premises means premises that are not a place of residence.

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

Note. The *Public Health Act 2010* defines the occupier of premises or a part of premises to mean the owner of the premises or part of premises or if any other person is entitled to occupy the premises or part to the exclusion of the owner, that person.

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.

public transport waiting area includes any of the following—

- (a) the platform of a passenger railway or light rail station,

- (b) a ferry wharf,
- (c) a bus stop or light rail stop, including any area where persons queue or gather when waiting at the stop,
- (d) a taxi rank, including any area where persons queue or gather when waiting at a taxi rank.

relevant local government area means the following local government areas—

- (a) Ballina Shire,
- (b) Byron Shire,
- (c) City of Lismore
- (d) Tweed Shire,
- (e) another local government area declared by the Chief Health Officer, by written notice published on the Ministry of Health's website, to be a local area to which this Order applies.

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

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) 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*.

Note. The Standard Instrument includes the following definitions—

cellar door premises means a building or place that is used to sell wine by retail and that is situated on land on which there is a commercial vineyard, and where most of the wine offered for sale is produced in a winery situated on that land or is produced predominantly from grapes grown in the surrounding area.

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

pub means licensed premises under the *Liquor Act 2007* the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

registered club means a club that holds a club licence under the *Liquor Act 2007*.

take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

4 Interpretation generally

- (1) In calculating both the space available for each person on any premises and the number of persons on the premises, the following persons are not to be included in any calculations—
 - (a) any person engaged in work on the premises for the occupier of the premises,
 - (b) any person on the premises because of an emergency,

- (c) if the premises are food and drink premises, any person ordering or collecting food or drink to consume off the premises.
- (2) In calculating the space available for each person on any premises, only the areas that are open to the public are to be included in the calculations.

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) there is an ongoing risk of continuing introduction of COVID-19 into the New South Wales community,
- (d) there have been recent cases in Queensland, establishing a substantial risk of transmission in the community requiring restrictions on gatherings and other control measures in certain local government areas in New South Wales.

Part 2 Restrictions on gatherings and use of premises

Division 1 Non-residential premises

6 Minister's direction about number of persons on non-residential premises

- (1) The Minister directs that an occupier of non-residential premises in a relevant local government area must not allow a person—
 - (a) to enter an indoor area on the premises, if the size of the indoor area is insufficient to ensure there is at least 4 square metres of space for each person in the indoor area, or
 - (b) to enter an outdoor area on the premises, if the size of the outdoor area is insufficient to ensure there is at least 2 square metres of space for each person in the outdoor area.
- (2) Subclause (1) does not apply to a gathering referred to in Schedule 1.

7 Minister's direction about use of non-residential premises for certain activities

The Minister directs that the occupier of non-residential premises in a relevant local government area must ensure that a person at the premises does not do any of the following in an indoor area on the premises—

- (a) dance,
- (b) sing,
- (c) drink alcohol other than when seated.

Division 2 Residential premises

8 Minister's directions about number of persons allowed on residential premises

- (1) The Minister directs that each adult member of a household in a relevant local government area must not allow more than 30 visitors to be at the place of residence of the household in the relevant local government area at any one time.
- (2) The Minister directs that a visitor to a place of residence in a relevant local government area must not participate in a gathering at the residence consisting of more than 30 visitors.
- (3) For the purposes of this clause, a person is not a visitor to a place of residence if the person is a member of the household of the place of residence.

Division 3 Use of premises for specific activities

9 Minister's direction about holiday homes and short-term rentals

- (1) The Minister directs that the occupier of premises in a relevant local government area must not allow the premises to be used for the purpose of a holiday home or a short-term rental for more than 30 persons unless all the persons are from the same household.
- (2) The Minister directs that a person must not participate in a gathering at premises in a relevant local government area used for the purpose of a holiday home or a short-term rental if the gathering consists of more than 30 persons.

10 Minister's direction about music festivals

- (1) The Minister directs that an occupier of premises in a relevant local government area must not allow an outdoor area of the premises to be used for the purpose of a music festival, including the Byron Bay Bluesfest.

- (2) A person must not organise or participate in a music festival, including the Byron Bay Bluesfest, held in an outdoor area on premises in a relevant local government area.
- (3) In this clause—
 - music festival* means an event that—
 - (a) is music-focused or dance-focused, and
 - (b) has performances by a series of persons or groups that are engaged to play or perform to live or pre-recorded music or to provide another form of musical or live entertainment, and
 - (c) is held within a defined area, and
 - (d) is a ticketed event.

Part 3 Wearing fitted face coverings

11 Minister's direction to wear fitted face coverings

- (1) The Minister directs that a person must wear a fitted face covering at all times when the person is in an indoor area on non-residential premises in a relevant local government area.
- (2) The Minister directs that a person—
 - (a) in a relevant local government area must wear a fitted face covering at all times when the person is at a public transport waiting area, or
 - (b) in a vehicle or vessel in a relevant local government area that is being used to provide a public transport service, including a public transport service between a place in a relevant local government area and an airport (whether or not the airport is in a relevant local government area), must wear a fitted face covering.
- (3) The Minister directs that the employer of a person working in an indoor area on non-residential premises in a relevant local government area must ensure the person complies with subclause (1).
- (4) Subclauses (1)–(3) do not apply in relation 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.
 - (c) a person who is at work and performing functions that do not involve dealing with members of the public,
 - (d) a person who is in a part of tourist and visitor accommodation that is used for guests to sleep and stay.

Example. a hotel or motel room, a serviced apartment or a bedroom in backpackers' accommodation.
- (5) Despite subclauses (1)–(3), 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 communicating with another person who is deaf or hard of hearing,
 - (c) 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,
 - (d) the person is asked to remove the fitted face covering to ascertain the person's identity,
 - (e) because of an emergency,
 - (f) the removal of the fitted face covering is necessary for the proper provision of goods or service.

Example. a person having a facial or a beard trim
- (6) The Minister directs that a person who removes the person's fitted face covering under subclause (5) must resume wearing the fitted face covering as soon as practicable after the circumstance ends.
- (7) In this clause—

public transport services includes the following—

- (a) a taxi service,
- (b) a rideshare service,
- (c) a bus service being operated by an individual, body or another entity.

Example of a bus service. a shuttle bus or charter bus service

Part 4 Miscellaneous

12 Relationship of Order with other orders

- (1) A person subject to a direction under this Order must continue to comply with any directions that apply to the person under—
 - (a) the *Public Health (COVID-19 Gathering Restrictions) Order 2021*, or
 - (b) the *Public Health (COVID-19 Mandatory Face Coverings) Order 2021*, or
 - (c) an order that remakes, replaces or consolidates, whether in whole or part, an order mentioned in subclause (1)(a) or (b).
- (2) To the extent of any inconsistency between this Order and an order mentioned in subclause (1)(a)–(c), this Order prevails.

13 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.

Schedule 1 Exempted gatherings

Clause 6(2)

- 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 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
- 9 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
- 10 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
- 11 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
- 12 Gathering at an outdoor space for the purposes of transiting through the place
- 13 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
- 14 Gathering at premises that is necessary to provide the services of an early education and care facility