

The essential state: confused about the latest NSW lockdown rules? We asked a lawyer to pick through the law...

The Berejiklian government thinks we should all instinctively know the answers to questions the government says are too hard to answer.



(IMAGE: AAP/MICK TSIKAS)

This is what happens when you keep digging down. You end up at a place where NSW Health Minister Brad Hazzard is telling the assembled media at the daily COVID press conference that the contradictory messages he and Gladys Berejiklian have just been giving about essential workers make perfect sense. And getting angry when the reporters ask how that can be.

To be precise: they want all non-essential workers to stay home. Asked to define an essential worker, Hazzard said that's impossible, but employers and employees "know" who is essential, and please everyone just use your common sense.

That is, we should all instinctively know the answer to the question that the government says is too hard to answer.

So then we lawyers get the question from our clients: what the fuck did that mean? How have the rules changed today? What's the law now?

According to the latest version of NSW's *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021*, which commenced on 26 June and has since been amended seven times, this is the law from July 14 until it's amended again:

Firstly there is no definition of "essential" worker in the order. In that respect, nothing has changed. The law, applying to everyone in greater Sydney, still says that nobody can leave their

residence except for one of four “reasonable excuses”, including to go to work if it is “impossible” to work from home.

Secondly there are now two extra specific rules in place. Workers who live in the Fairfield local government area in south-west Sydney (the hottest hot spot currently) can’t leave that area for work unless they’ve had a COVID-19 test in the previous 72 hours, and no workers can leave the greater Sydney area to work more than 50 kilometres away unless they’ve been tested in the previous seven days.

“Impossible” and “essential” are two quite different things. Remember there is still no public health order preventing any type of business in Sydney from opening its doors. We continue to be told each day that Berejiklian doesn’t want shops to stop trading, it’s just that they shouldn’t have any customers.

So, if the owner of a jewellery store decides to remain open for business then the employees who work in that store will need to turn up for work (subject, if they live in Fairfield, to getting tested). They meet the requirements of the reasonable excuse, and it is therefore lawful for them to travel across Sydney to get to the shop, for the purpose of not serving the customers who won’t be coming in because they’re complying with the premier’s preference.

Mind you it is a “reasonable excuse” still to leave home for the purpose of obtaining food or other goods or services in greater Sydney if they are for personal or other needs of the household. There is no legal requirement of essentiality and no distance limits on travel. If you want to go out to buy jewellery, because that’s a personal need, then you can. The public health order says, in its notes, that it doesn’t authorise “browsing”, but it doesn’t prohibit it either.

Every day, the media asks Berejiklian why she persists in leaving gaps in the lockdown rules wide enough to drive an army of COVID-infected tradies and retail workers to the furthest corners of the city every day without anyone breaking a law.

Every day she insists that she can’t make a rule for everything and we just all need to do the “right thing”. This is something everyone probably agrees with, and would support, if not for the question Berejiklian never answers: why are you creating so much obvious confusion with rules that contradict each other? The lack of sense is obvious.

ABOUT THE AUTHOR

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