

21 December 2020

COSBOA Communiqué

NSW Business needs certainty in respect of the Christmas COVID Outbreak

SYNOPSIS

COSBOA held an emergency meeting of members on 21 December to discuss the impact of the COVID outbreak in Sydney's Northern Beaches and the subsequent restrictions for Greater Sydney and surrounds.

During the meeting there was a discussion about what might happen after the expiry of the current restrictions (in the Northern Beaches, Greater Sydney and surrounding areas of Central Coast, Blue Mountains and Wollongong LGA). Specifically, roundtable members discussed the merits of a 'short and sharp' lockdown of the affected area versus a longer 'staged lockdown' of various geographic areas.

The group also discussed issues associated with the management of refunds for cancellations of hospitality bookings and food orders, as well as issues surrounding the management of staff in the face of large numbers of last-minute customer cancellations.

A summary of the key points of the discussion is provided below.

KEY THEMES

1. Extending or not extending current restrictions beyond 11.59pm on Wednesday 23 December 2020 is a difficult consideration for the NSW Government. On the one hand, there is a need to ensure that all practical measures are taken to minimise the risk of large-scale contagion, and on the other there is the risk of disproportionate economic and social-well being impact on the community.

- Any 'short and sharp' lockdown should be modelled on the NSW practices during the first national lockdown in March (i.e. not the Victorian approach of a 'hard' lockdown and community curfews), using the same definitions of 'essential service' businesses. This approach, combined with current familiarity of SMEs with the principles of this style of COVID operation, should serve to reduce confusion amongst business owners and customers alike.
- While there would appear to be some business merit in the implementation of 'lesser restrictions' over a longer period of time, thereby providing small businesses with the opportunity to trade over the Christmas/January period, this approach would not be attractive if the traditionally high rate of socialisation associated with the

Christmas/New Year period results in further spreading the outbreak (with consequent health, economic and social well-being impacts).

- The extension of the current restrictions (be they 'hard' lockdown or 'staged social gathering restrictions' over a longer period) will have a variable impact on small businesses according to the sector in which the businesses are operating. Hospitality and tourism businesses will be particularly hard hit – during the busiest trading period of the year – and may therefore require financial assistance if restrictions are extended. Other businesses, such as service-based businesses, are largely closed and will be less impacted by a 'short and sharp' lockdown. Accordingly, the NSW Government should consider business support measures for businesses that are likely to be severely impacted by any continuation of the current restrictions.
- The NSW Government should continue to engage actively with the small business community with respect to the design and implementation of COVID restrictions.

2. There is a need for NSW Fair Trading and equivalent regulators in other states and territories to provide clear guidance to small businesses and their customers about the rules surrounding payment of refunds for cancellations of hospitality bookings, restaurant bookings, and food orders.

- Members noted that the current restrictions are already causing significant cancellations of hospitality and accommodation bookings over the Christmas/New Year period. These cancellations are not confined to Sydney's Northern Beaches area but are felt in Greater Sydney and regional NSW as Sydney residents change their Christmas plans. Small businesses in states and territories that have closed their borders to residents of Sydney are also impacted.

3. There is a need for the Fair Work Ombudsman to provide information relating to the differences between abandonment of rosters due to customer cancellations and the operation of the stand-down provisions of the Fair Work Act (2009).

- The net effect of current restrictions concluding so close to Christmas – or continuing through the Christmas and New Year period – is to increase the probability of businesses being required to change staff rosters at short notice (i.e. shorter than required under the relevant Award or Enterprise Agreement). These circumstances create a significant industrial risk for small business owners, particularly those involved in hospitality, accommodation, tourism, and retail.
- Roundtable participants agreed that it would be desirable for the FWO to re-issue guidance for small business owners in respect of the management of these situations, with regard to utilisation (or otherwise) of the current stand-down Provisions of the Fair Work Act (2009).

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