



New South Wales

Public Health (COVID-19 Mandatory Face Coverings) 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 29 March 2021 (original order).

As amended on 6 May 2021, 9 May 2021, 17 May 2021, 18 June 2021 and 20 June 2021.

Minister for Health and Medical Research

Explanatory note

The object of this Order is to repeal and remake the *Public Health (COVID-19 Mandatory Face Coverings) Order 2021*, which would otherwise be repealed at the beginning of 2 April 2021. This Order requires persons to wear fitted face coverings in certain circumstances inside NSW airports and on domestic commercial aircraft.

Editorial note

This is the order as amended by the *Public Health (COVID-19 Greater Sydney) Order 2021*, the *Public Health (COVID-19 Greater Sydney) Amendment Order 2021*, the repeal of clause 5(1)(c)–(i), (1A)–(1D) and (6) of this order, the *Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) Amendment Order 2021* and the *Public Health (COVID-19 Mandatory Face Coverings) Order No 2 Amendment (No 2) Order 2021*.

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Part 1 Preliminary

1 Name of Order

This Order is the *Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021*.

2 Commencement

This Order commences at the beginning of 1 April 2021.

3 Definitions

(1) In this Order—

airport worker includes—

- (a) an engineer or other technical staff, and
- (b) a cleaner, and
- (c) a baggage handler, and
- (d) a person involved in the delivery or removal of food, goods or other things in connection with an aircraft, and
- (e) an employee of an airline other than flight crew, and
- (f) a person providing law enforcement or border security services.

domestic commercial aircraft means an aircraft being used to provide passengers with transportation, on a commercial basis, only within Australia.

employ an airport worker includes engage an airport worker as a contractor or subcontractor.

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.

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

NSW airport means an airport located in New South Wales.

NSW airspace means the airspace located over New South Wales.

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.

4 Grounds for concluding 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.

Part 2 Wearing fitted face coverings

5 Direction of Minister to wear fitted face coverings

- (1) The Minister directs that—
- (a) a person in an indoor area of a NSW airport, including a passenger waiting area, must wear a fitted face covering at all times when in the area, and
 - (b) a person on a domestic commercial aircraft that lands at, or takes off from, a NSW airport must wear a fitted face covering at all times when on the aircraft while—
 - (i) the aircraft is located at a NSW airport, including when the aircraft is landing at, or taking off from, the airport, or
 - (ii) the aircraft is flying in NSW airspace, and
 - (c) a person must wear a fitted face covering at all times when the person is at a public transport waiting area or in a vehicle or vessel being used to provide a public transport service, and
 - (d) a person must wear a fitted face covering at all times when the person is in an indoor area in any of the following premises, or parts of premises, in a relevant local government area—
 - (i) retail premises, or business premises, that provide goods or services to members of the public who attend the premises, including the following—
 - (A) supermarkets,
 - (B) shopping centres, but not a recreation facility (indoor) in a shopping centre,
 - (C) bank branches,
 - (D) post offices,
 - (E) hairdressing salons,
 - (F) nail salons,
 - (G) beauty salons,
 - (H) tanning salons,
 - (I) waxing salons,
 - (J) spas,
 - (K) tattoo parlours,
 - (L) massage parlours,
 - (M) betting agencies.

Note—
Premises that are used for the purpose of providing health services are not retail premises or business premises.
 - (ii) any part of premises licensed under the *Liquor Act 2007* that is used primarily for the purposes of gaming, including a gaming lounge,

Note—
Licensed premises include pubs, registered clubs and casinos.
 - (iii) entertainment facilities,
 - (iv) premises, including places of public worship, being used for public worship or religious services,
 - (v) residential aged care facilities, and

- (e) a person working at a hospitality venue in a relevant local government area whose functions require the person to deal directly with members of the public must wear a fitted face covering at all times while carrying out the functions.
- (f)–(i) (Repealed)
- (1A) The Minister directs that a person who employs an airport worker must ensure the airport worker complies with subclause (1).
- (1B) Subclause (1)(c) applies only in Greater Sydney.
- (1C) Subclause (1)(c), (d)(i)–(iv) and (e) do not apply to a person who is engaged in work on the premises if the person does not interact with members of the public.
- (1D) Subclause (1)(d)(v) does not apply to a person at a residential aged care facility who is a resident of the facility.
- (1E) The Minister directs that the operator of a hospitality venue in a relevant local government area must ensure all persons working at the venue comply with subclause (1)(e).
- (2) Subclause (1) 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.
- (3) Despite subclause (1), 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 the goods or service.
- (4) Without limiting subclauses (2) and (3), a person may remove a fitted face covering the person is otherwise required by subclause (1) to wear in the following circumstances—
 - (a) the person is a member of the flight crew of an aircraft who is not interacting directly with passengers, including because the person is on an aircraft with no passengers boarded,
 - (b) the person is an airport worker who is not interacting directly with passengers on an aircraft, including because the person is on an aircraft with no passengers boarded.
- (5) The Minister directs that a person who removes the person’s fitted face covering under subclause (3) or (4) must resume wearing the fitted face covering as soon as practicable after the circumstance ends.
- (6) In this clause—

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 City of Shellharbour and the City of Wollongong.

hospitality venue means the following—

- (a) a casino,
- (b) a food and drink premises,
- (c) a micro-brewery, small distillery holding a drink on-premises authorisation under the *Liquor Act 2007* or cellar door premises,
- (d) a pub,
- (e) a registered club,
- (f) a small bar.

public transport service includes a taxi service, rideshare service, passenger service and community transport service.

public transport waiting area means the following—

- (a) a station, including the platform, of a passenger railway or light rail,
- (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) Bayside,
- (b) Canada Bay,
- (c) City of Sydney,
- (d) City of Randwick,
- (e) Inner West,
- (f) Waverley,
- (g) Woollahra.

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.
- (7) Subclauses (1)(c)–(e), (1B)–(1E) and (6) and this subclause are repealed at the beginning of 24 June 2021.

Part 3 Miscellaneous

6 Relationship of Order with other orders

A person subject to a direction under this Order must continue to comply with any directions applicable to the person under—

- (a) the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2021*, or
- (b) an order that remakes, replaces or consolidates, whether in whole or in part, an order referred to in paragraph (a).

7 Exemptions

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

8 Repeal of Order and savings

- (1) The *Public Health (COVID-19 Mandatory Face Coverings) Order 2021* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Public Health (COVID-19 Mandatory Face Coverings) Order 2021* had effect under that Order continues to have effect under this Order.