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New South Wales

# Public Health (COVID-19 General) 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 the *Public Health Act 2010*, section 7.

Dated 13 December 2021.

Time 5:10pm

BRAD HAZZARD, MP  
Minister for Health and Medical Research

## Explanatory note

The object of this Order is to repeal and remake the *Public Health (COVID-19 General) Order 2021* as part of the roadmap for easing restrictions concerning COVID-19.

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## Public Health (COVID-19 General) Order (No 2) 2021

under the

Public Health Act 2010

### Part 1 Preliminary

#### 1 Name of Order

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

#### 2 Commencement

This Order commences at the beginning of 15 December 2021.

#### 3 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 infection with 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 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.

#### 4 Interpretation

- (1) The Dictionary in Schedule 1 defines words used in this Order.  
**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 instrument (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.

## Part 2 Directions about fitted face coverings

### 5 Purpose of Part

This Part sets out directions of the Minister about the use of fitted face coverings.

### 6 Fitted face coverings

- (1) A person who is over 12 years of age must wear a fitted face covering while the person is—
  - (a) in an indoor area of an airport, or
  - (b) at a public transport waiting area or in a vehicle or vessel being used to provide a public transport service, or  
**Note—** A public transport service includes a taxi and rideshare service.
  - (c) not a fully vaccinated person working in an indoor area of a hospitality venue and dealing directly with members of the public, or
  - (d) on a domestic commercial aircraft, including when the aircraft is flying above New South Wales.
- (2) The operator of a hospitality venue must ensure all persons working at the venue comply with subclause (1)(c).
- (3) The following persons must ensure that a worker who carries out work at an airport complies with this Part when working at the airport—
  - (a) a person who employs the worker to carry out the work,
  - (b) a person who engages the worker to carry out the work as a contractor or subcontractor.
- (4) The fitted face covering must be worn so that it covers the person's nose and mouth.

### 7 Exceptions for certain persons

- (1) A person is not required to wear a fitted face covering if the person—
  - (a) has a physical or mental health illness or condition, or disability, that makes wearing a fitted face covering unsuitable, and
  - (b) carries evidence showing—
    - (i) that the person has the illness, condition or disability, and
    - (ii) the illness, condition or disability makes wearing a fitted face covering unsuitable, and
    - (iii) the person's name and place of residence, and
  - (c) produces the evidence for inspection if requested to do so by a police officer.
- (2) Evidence for the purposes of subclause (1)(b)(i) and (ii) must be in the form of—
  - (a) a medical certificate or other written evidence signed by a registered health practitioner or a registered NDIS provider within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth, or
  - (b) a statutory declaration by the person.
- (3) A person may remove a fitted face covering the person is otherwise required to wear if the person is—
  - (a) eating or drinking, or
  - (b) communicating with a person who is deaf or hard of hearing, or
  - (c) engaging in work if—

- (i) wearing the covering is a risk to the person's, or another person's, health and safety, or
  - (ii) enunciation or visibility of the person's mouth is essential, or
  - (iii) the work is in an indoor area and no other person is in the area, or
  - (d) requested to remove the covering as part of an identity check, or
  - (e) required to remove the covering—
    - (i) because of an emergency, or
    - (ii) for the proper provision of goods or a service.
- (4) A person who removes the person's fitted face covering under subclause (3) must resume wearing it as soon as practicable after the circumstance ends.

## Part 3 COVID-19 Safe check-ins

### 8 Purpose of Part

This Part sets out directions of the Minister about—

- (a) COVID-19 Safe check-ins, and
- (b) information obtained as a result of check-ins.

### 9 Registration of contact details for funeral or memorial services and gatherings following services

- (1) A person must not participate in a funeral or memorial service, or gathering following a service, unless the person ensures the person's contact details are registered electronically—
- (a) by using the person's phone to register the details with Service NSW, or
  - (b) by having another person use a phone to register the details with Service NSW on the person's behalf if the person is not able to use the person's phone to register the details with Service NSW, or
  - (c) by providing the details to the organiser of the service or gathering if—
    - (i) it is not possible to register the person's details under paragraph (a) or (b), or
    - (ii) it would be unsafe to use a phone because of the nature of the service or gathering.

**Example—** If using a phone would be inconsistent with the work health and safety requirements.

**Note—** The organiser may refuse participation to a person who fails to comply with this direction.

- (2) The organiser of the service or gathering must take reasonable steps to ensure a person complies with this clause before participating in the service or gathering.
- (3) In this clause—  
**organiser**, in relation a funeral or memorial service or gathering following a service, means the person principally responsible for organising the service or gathering.

### 10 Registration of contact details for entry to certain premises

- (1) This clause applies to a person who enters the following premises, subject to the exceptions specified—
- (a) pubs, registered clubs, small bars and nightclubs,
  - (b) strip clubs,
  - (c) sex on premises venues, being restricted premises where sex between patrons is permitted on the premises,
  - (d) sex services premises,
  - (e) places of public worship,
  - (f) business premises that are hairdressers, spas, nail salons, beauty salons, waxing salons, tanning salons, tattoo parlours or massage parlours,
  - (g) residential care facilities or hostels, but not in relation to the residents,
  - (h) hospitals, but not in relation to—
    - (i) hospitals with an electronic entry recording system that records sufficient information about persons entering the hospital to enable contact tracing to happen, or
    - (ii) patients of hospitals,

- (i) a gym that is a recreation facility (indoor) and that is open to members of the public, but does not include a dance, yoga, pilates, gymnastics or martial arts studio,
  - (j) musical festivals held in an indoor area of premises with more than 1,000 attendees.
- (2) The person must ensure the person's contact details are registered electronically when the person enters the premises—
- (a) by using the person's phone to register the details with Service NSW, or
  - (b) by having another person use a phone to register the details with Service NSW on the person's behalf if the person is not able to use the person's phone to register the details with Service NSW, or
  - (c) by providing the details to the occupier of the premises if—
    - (i) it is not possible to register the person's details under paragraph (a) or (b), or
    - (ii) it would be unsafe to use a phone on the premises because of the nature of the premises.
- Example—** If using a phone would be inconsistent with the work health and safety requirements at the premises.
- Note—** The occupier of premises may refuse entry to a person who fails to comply with this direction.
- (3) The occupier of the premises must take reasonable steps to ensure a person complies with this clause when entering the premises.

#### 11 Record keeping concerning contact details

- (1) This clause applies to the following persons (the *record keeper*)—
- (a) the organiser of a funeral or memorial service, or gathering following a service, if a person's contact details are provided to the organiser under clause 9(1) rather than Service NSW,
  - (b) the occupier of premises if a person's contact details are provided to the occupier under clause 10(2) rather than Service NSW.
- (2) The record keeper must—
- (a) keep, for at least 4 weeks, a record of the contact details in a way that ensures the record is readily accessible and in an appropriate form to provide to the Chief Health Officer under paragraph (b), and
  - (b) on request, provide the record, in electronic form, to the Chief Health Officer as soon as practicable, but no later than 4 hours, after the request is made, and
  - (c) ensure that a person is—
    - (i) responsible for requiring contact details to be provided in accordance with this clause, and
    - (ii) authorised to provide records to the Chief Health Officer under paragraph (b).

#### 12 Use and disclosure of information

To avoid any doubt, it is directed that contact details provided under this Part are to be used or disclosed only for the purposes of contact tracing during the COVID-19 pandemic.



## Part 4 Directions about premises and behaviour

### 13 Purpose of Part

This Part sets out directions of the Minister about the use of premises and behaviour.

### 14 Music festivals

- (1) A person must not be on premises at which a music festival is being held in an indoor area if more than 1,000 persons are attending the festival unless the person is a fully vaccinated person.
- (2) An occupier of premises at which a music festival is being held in an indoor area must take reasonable steps to ensure that only fully vaccinated persons are allowed to attend the festival if there are more than 1,000 persons attending the festival.
- (3) An occupier of premises at which a music festival is being held must ensure that no more than 20,000 persons attend the festival.

### 15 Residential aged care facilities

- (1) The operator of a residential aged care facility is directed to consider the advice of the Chief Health Officer in relation to the following matters—
  - (a) the management of visitors to the premises of the facility,
  - (b) the screening of staff and visitors before entering the premises of the facility,
  - (c) the conduct of group recreational or other activities for residents of the facility,
  - (d) the wearing of fitted face coverings by staff and visitors,
  - (e) vaccinations against influenza or COVID-19 for staff, visitors and residents.
- (2) In this clause—  
*operator* of a residential aged care facility means the person who owns, controls or operates the facility.

### 16 Spitting or coughing on public official or other worker

- (1) A person must not intentionally spit at or cough on any of the following persons in a way that would reasonably be likely to cause fear about the spread of COVID-19—
  - (a) a public official,
  - (b) another worker while the worker is—
    - (i) at the worker's place of work, or
    - (ii) travelling to or from the place of work.
- (2) If the worker's place of work is the worker's residential premises, the place of work does not, for the purposes of this clause, include a part of the premises used solely for residential purposes.
- (3) Without limiting subclause (1)(b), a worker includes the following—
  - (a) a retail worker,
  - (b) a person who works at an airport,
  - (c) a person who works for an electricity, gas, water or other utility company,
  - (d) a person who works in the transport industry or a transport-related industry,
  - (e) a member of the Australian Defence Force.

**Example—** Public officials and workers include hospital staff, bus drivers, train drivers, ferry deckhands, taxi drivers, ride share drivers, food delivery workers, security guards, electricity, gas and water meter readers and postal delivery staff, including persons working for an entity under a contract, directly or indirectly, on behalf of the NSW Government.

(4) In this clause—

**health worker** means—

- (a) a person employed in the NSW Health Service within the meaning of the *Health Services Act 1997*, or
- (b) a person engaged by the Health Administration Corporation, within the meaning of the *Health Administration Act 1982*, to enable the Corporation to exercise its functions, or
- (c) a person engaged by a public health organisation, within the meaning of the *Health Services Act 1997*, to enable the organisation to exercise its functions, or
- (d) a member of staff of a licensed private health facility within the meaning of the *Private Health Facilities Act 2007*, or
- (e) a registered health practitioner, or
- (f) a person who works in a pharmacy or on other premises at which a registered health practitioner routinely practises the practitioner's profession, or
- (g) a member of staff of St John Ambulance Australia (NSW), or
- (h) a member of staff of the Royal Flying Doctor Service of Australia (NSW Section).

**public official** means—

- (a) a health worker, or
- (b) a police officer within the meaning of the *Police Act 1990*, or
- (c) another person exercising public functions under a law of New South Wales, or
- (d) an Immigration and Border Protection worker within the meaning of the *Australian Border Force Act 2015* of the Commonwealth, or
- (e) a person employed or otherwise engaged by the Commonwealth Department of Health.

## Part 5 Directions about information

### 17 Purpose of Part

This Part sets out directions of the Minister about providing and exchanging information.

### 18 Answering questions from contact tracers

- (1) A person must answer questions or provide other information about the person's movements if requested to do so by an authorised contact tracer.
- (2) A person must provide the person's contact details if requested to do so by an authorised contact tracer.

### 19 Information provided must be true and accurate

- (1) A person must ensure information is true and accurate if it is provided under this Order—
  - (a) in response to a request, or
  - (b) to Service NSW, or
  - (c) to an authorised contact tracer.
- (2) A person must ensure evidence is true and accurate if it is produced in response to a request under this Order.
- (3) A person must not provide, display or produce to another person information or evidence purporting to show the person is a fully vaccinated person, unless the information or evidence is true and accurate.

### 20 Information exchange

- (1) A government sector agency or a NSW Minister (the *first agency*) is authorised to collect or use information from, or disclose information to, a related agency if the first agency considers it necessary to do so for the purposes of protecting the health or welfare of members of the public during the COVID-19 pandemic.
- (2) In this clause—

*government sector agency* has the same meaning as in the *Government Sector Employment Act 2013*.

*information* includes personal information or health information.

*NSW Minister* means a Minister of the State.

*related agency* means—

  - (a) a government sector agency or NSW Minister, or
  - (b) an agency or Minister of the Commonwealth or another State or Territory.

## Part 6 Miscellaneous

### 21 Exemptions

- (1) 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.
- (2) The Minister may not grant an exemption to clause 12.

### 22 Repeal

The *Public Health (COVID-19 General) Order 2021* is repealed.

### 23 Savings

- (1) An act, matter or thing that, immediately before the repeal of the repealed Order, had effect under that Order continues to have effect under this Order.
- (2) Without limiting subclause (1)—
  - (a) a requirement for a person to keep a record of a person's name and contact details having effect immediately before the commencement of this Order under a provision of the repealed Order continues under this Order as if the provision remained in force, and
  - (b) an exemption granted by the Minister under the repealed Order and in force immediately before the commencement of this Order continues as if it were granted under this Order, and
  - (c) a delegation in force immediately before commencement of this Order given for a provision of the repealed Order continues to have effect for the corresponding provision of this Order.
- (3) In this clause—  
*repealed Order* means the *Public Health (COVID-19 General) Order 2021*.

## Schedule 1 Dictionary

clause 4

**approved COVID-19 vaccine** means a vaccine approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia as a vaccine against COVID-19.

**authorised contact tracer** means a person engaged by NSW Health whose duties include—

- (a) identifying persons who may have come into contact with a person with COVID-19, or
- (b) notifying a person that the person has been identified as a close contact, being a person—
  - (i) likely to have come into contact with a person with COVID-19, and
  - (ii) at risk of developing COVID-19.

**contact details**, for a person, means—

- (a) the person's name, and
- (b) the person's telephone number or email address, and
- (c) for a person visiting or entering premises—the time at which the person entered the premises.

**COVID-19 vaccine** means—

- (a) an approved COVID-19 vaccine, or
- (b) a vaccine, other than an approved COVID-19 vaccine, recognised by the Therapeutic Goods Administration of the Commonwealth as an appropriate vaccine against COVID-19 for incoming travellers to Australia.

**Note—** On the making of this Order, the recognised vaccines were specified in the document titled "COVID-19 vaccines not registered in Australia but in current international use – TGA advice on "recognition", published on the website of the Therapeutic Goods Administration of the Commonwealth and dated 1 November 2021.

**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.

**fully vaccinated person** means a person who—

- (a) has had 2 doses of a COVID-19 vaccine, or
- (b) has had 1 dose of a COVID-19 vaccine for which a single dose is a complete course, or
- (c) has a medical contraindication certificate issued to the person, or
- (d) has a certificate issued by a medical practitioner—
  - (i) in a form approved by the Chief Health Officer, and
  - (ii) certifying that because of a specified medical contraindication, the person to whom the certificate has been issued cannot have any approved COVID-19 vaccine available in New South Wales, or
- (e) has a medical contraindication recorded on the Australian Immunisation Register kept under the *Australian Immunisation Register Act 2015* of the Commonwealth that prevents the person from receiving any approved COVID-19 vaccine available in New South Wales.

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

**hospitality venue** means the following—

- (a) a casino,
- (b) food and drink premises,
- (c) a micro-brewery or small distillery holding a drink on-premises authorisation under the *Liquor Act 2007*,

- (d) cellar door premises,
- (e) a pub,
- (f) a registered club,
- (g) a small bar.

**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.

**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,

but does not include a music-focused event that uses a single stage, is proposed to be held over a period of less than 5 hours and has not more than 2 headlining performers and not more than 4 performers in total, including supporting performers.

**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.

**occupier**, for premises at which a music festival is being held, includes a person principally responsible for organising the festival.

**phone** includes a device.

**place of residence** includes, for a person staying in temporary accommodation including hotel or motel accommodation or premises to which a short-term rental accommodation arrangement, as defined in the *Fair Trading Act 1987*, section 54A, applies, the temporary accommodation.

**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.

**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.

**standard instrument**—see clause 4(2).

**the Act** means the *Public Health Act 2010*.

**vehicle** does not include an aircraft.

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

**Note**— Clause 4(2) of this Order provides that 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*. The standard instrument includes the following definitions of certain premises—

**business premises** means a building or place at or on which—

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

**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.

**hostel** means premises that are generally staffed by social workers or support providers and at which—

- (a) residential accommodation is provided in dormitories, or on a single or shared basis, or by a combination of them, and
- (b) cooking, dining, laundering, cleaning and other facilities are provided on a shared basis.

**hotel or motel accommodation** means a building or place (whether or not licensed premises under the *Liquor Act 2007*) that provides temporary or short-term accommodation on a commercial basis and that—

- (a) comprises rooms or self-contained suites, and
  - (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,
- but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

**place of public worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

**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.

**recreation facility (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

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

**residential care facility** means accommodation for seniors or people with a disability that includes—

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

but does not include a dwelling, hostel, hospital or psychiatric facility.

**sex services premises** means a brothel, but does not include home occupation (sex services).

**small bar** means a small bar within the meaning of the *Liquor Act 2007*.