



New South Wales

Public Health (COVID-19 General) Order (No 3) 2022

under the

Public Health Act 2010

I, Brad Hazzard, the Minister for Health, make the following Order under the *Public Health Act 2010*, section 7.

Dated 1 September 2022 (original Order).

As amended on 9 September 2022 and 20 September 2022.

Minister for Health

Explanatory note

The object of this Order is generally to repeal and remake the *Public Health (COVID-19 General) Order (No 2) 2022*, with minor changes, with effect from 2 September 2022.

Schedule 2 of this Order also provides that from 9 September 2022 it is no longer a requirement for persons over 12 years of age to wear a fitted face covering while the person is on a domestic commercial aircraft.

Editorial note

This is the order as amended by the *Public Health (COVID-19 General) Order (No 3) 2022*, Schedule 2 and the *Public Health (COVID-19 General) Order (No 3) Amendment (No 1) Order 2022*.

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Public Health (COVID-19 General) Order (No 3) 2022

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Part 1 Preliminary

1 Name of Order

This Order is the *Public Health (COVID-19 General) Order (No 3) 2022*.

2 Commencement

- (1) This Order, other than Schedule 2, commences at the beginning of 2 September 2022.
- (2) Schedule 2 commences at the beginning of 9 September.

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 Definitions

- (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 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.

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 any of the following—
 - (i) (Repealed)
 - (ii) a public hospital or private health facility,
 - (iii) a residential care facility or hostel, or
 - (b), (c) (Repealed)
- (2) The fitted face covering must be worn so that it covers the person's nose and mouth.
- (3) (Repealed)

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) 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) engaging in physical exercise, or
 - (c) communicating with a person who is deaf or hard of hearing, or
 - (d) 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
 - (e) requested to remove the covering as part of an identity check, or
 - (f) required to remove the covering—
 - (i) because of an emergency, or
 - (ii) for the proper provision of goods or a service, or

- (g), (h) (Repealed)
 - (i) in a public hospital or private health facility as a patient, or
 - (j) in a residential care facility or hostel as a resident, or
 - (k) in the process of getting married.
- (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 Directions about premises and behaviour

8 Purpose of Part

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

9 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.

10 Spitting at 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, rideshare 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 4 Directions about information

11 Purpose of Part

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

12 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.

13 Information provided must be true and accurate

- (1) A person must ensure information is true and accurate if it is provided under this Order or the Self Isolation 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 or the Self Isolation 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.
- (4) In this clause—

Self Isolation Order means the following—

 - (a) the *Public Health (COVID-19 Self-Isolation) Order (No 3) 2022*,
 - (b) an order under the Act, section 7 that remakes, replaces or consolidates, whether in whole or in part, an order referred to in paragraph (a).

14 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 5 Miscellaneous

15 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.

16 Repeal

The *Public Health (COVID-19 General) Order (No 2) 2022* is repealed.

17 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 given for a provision of the repealed Order and in force immediately before the commencement of this 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 (No 2) 2022*.

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 10 May 2022.

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.

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.

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.

private health facility has the same meaning as in the *Private Health Facilities Act 2007*.

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

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.

the Act means the *Public Health Act 2010*.

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 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—

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.

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.

Schedule 2 Amendment of this Order

Clause 6 Fitted face coverings

Omit clause 6(1)(c).