



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 and 17 May 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is to repeal and remake the *Public Health (COVID-19 Mandatory Face Coverings) Order 2021*, which would otherwise be repealed at the beginning of 2 April 2021.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* and the repeal of clause 5(1)(c)–(i), (1A)–(1D) and (6) of this order.

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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.

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)–(i) (Repealed)
- (1A)–(1D) (Repealed)
- (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) (Repealed)

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.