



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, 20 June 2021 and 22 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is to repeal and remake the *Public Health (COVID-19 Mandatory Face Coverings) Order 2021*, which would otherwise be repealed at the beginning of 2 April 2021.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*, the *Public Health (COVID-19 Mandatory Face Coverings) Order No 2 Amendment (No 2) Order 2021* and the *Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) Amendment (No 3) Order 2021*.

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## Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 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 Greater Sydney—
    - (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 Greater Sydney 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.
- (1CA) Subclause (1)(d)(i) does not apply to a hospitality venue or a kiosk.
- (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 Greater Sydney 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.

**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.

## **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.