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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 29th March 2021.

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is to repeal and remake the *Public Health (COVID-19 Mandatory Face Coverings) Order 2021*, which would otherwise be repealed at the beginning of 2 April 2021.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.

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Public Health (COVID-19 Mandatory Face Coverings) 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 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.
- (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.

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.