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New South Wales

Public Health (COVID-19 Safety) Order 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 28 August 2021.

BRAD HAZZARD, MP
Minister for Health and Medical Research

Explanatory note

The object of this Order is to repeal the *Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021* and remake provisions of that Order that deal with the following—

- (a) COVID-19 Safety Plans,
- (b) COVID-19 Safe Check-ins,
- (c) the exchange of information,
- (d) residential aged care facilities.

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Public Health (COVID-19 Safety) Order 2021

under the

Public Health Act 2010

Part 1 Preliminary

1 Name of Order

This Order is the *Public Health (COVID-19 Safety) Order 2021*.

2 Commencement

This Order commences at the beginning of 29 August 2021.

3 Definitions

- (1) The Dictionary in Schedule 4 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) Words used in this Order have the same meaning as if they were in the *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021*.
- (3) Notes included in this Order do not form part of this Order.

4 Coastal waters taken to be part of local government areas

For the purposes of this Order, the coastal waters of the State are taken to form part of the local government area to which the particular waters are closest.

5 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 the ongoing COVID-19 pandemic.

Part 2 COVID-19 Safety Plans

6 Introduction

This Part sets out directions of the Minister about COVID-19 Safety Plans.

7 Definitions

In this Part—

approved COVID-19 safety checklist for premises or an event means the COVID-19 safety checklist—

- (a) approved by the Chief Health Officer for the premises or event, and
- (b) published on the NSW Government website, and
- (c) as in force for the time being.

COVID-19 Safety Plan, for premises or an event, means a plan that addresses the matters required by the approved COVID-19 safety checklist specified in Schedule 1 for the premises or event.

develop a COVID-19 Safety Plan includes adopt an appropriate COVID-19 Safety Plan.

8 Plans must be complied with and kept and made available for inspection

A person who is required to develop a COVID-19 Safety Plan under this Part for premises or an event must—

- (a) comply with the plan, and
- (b) keep a copy of the plan—
 - (i) for premises—at the premises, or
 - (ii) for an event—at the premises at which the event is held during the event, and
- (c) make the plan available for inspection, if requested to do so, by—
 - (i) an authorised officer, or
 - (ii) a police officer.

9 Premises

- (1) The occupier of premises listed in Schedule 1 must develop a COVID-19 Safety Plan for the premises.
- (2) For premises that are a short-term rental or tourist and visitor accommodation on Lord Howe Island, the owner or operator of the premises is taken to be the occupier of the premises.

10 Events

- (1) The responsible person specified in clause 11 for the following events must develop a COVID-19 Safety Plan for the event—
 - (a) a significant event,
 - (b) an event that is a large residential gathering,
 - (c) a relevant agricultural event,
 - (d) an event that is a religious service,
 - (e) a relevant sale or leasing event for real estate,
 - (f) an event that is a controlled outdoor public gathering.

- (2) A COVID-19 Safety Plan is not required for an event held at premises for which a COVID-19 Safety Plan is required under clause 9.

11 Responsible person for an event

The responsible person is—

- (a) for a significant event—
 - (i) if held in an outdoor public place—the person organising the event or conducting the service, or
 - (ii) otherwise—the occupier of the premises at which the event is held, or
- (b) for an event that is a large residential gathering—
 - (i) if held at premises being used for the purpose of a holiday home or a short-term rental—the occupier of the premises, or
 - (ii) otherwise—each adult member of the household, or
- (c) for a relevant agricultural event—
 - (i) if conducted by or on behalf of an entity registered under the *Associations Incorporation Act 2009*—the public officer of the entity, or
 - (ii) if conducted by or on behalf of another entity—the chief executive of the entity, however described, or
 - (iii) otherwise—the person who made the arrangements for the event, or
- (d) for an event that is a religious service—the person principally responsible for organising the event, or
- (e) for a relevant sale or leasing event for real estate—the real estate agent conducting the event, or
- (f) for an event that is a controlled outdoor public gathering—the person principally responsible for organising the event.

12 COVID-19 safe outdoor public gatherings

- (1) The person principally responsible for organising an event that is an outdoor public gathering may elect to make the event a *COVID-19 safe outdoor public gathering* by—
- (a) developing a COVID-19 Safety Plan for the event, and
 - (b) complying with the plan, and
 - (c) keeping a copy of the plan at the premises at which the event is held during the event, and
 - (d) making the plan available for inspection, if requested to do so, by—
 - (i) an authorised officer, or
 - (ii) a police officer.
- (2) This clause does not apply to the following—
- (a) an event held at premises for which a COVID-19 Safety Plan is required under clause 9,
 - (b) an event for which a COVID-19 Safety Plan is required under clause 10,
 - (c) a gathering referred to in Schedule 2,
 - (d) a gathering to provide emergency assistance to a person.

Part 3 COVID Safe Check-in

13 Introduction

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.

14 Certain events taking place in outdoor public place or residential premises

- (1) Where 1 of the following events is taking place at premises that is an outdoor public place, the person who is required to develop a COVID-19 Safety Plan for the event under Part 2, is taken to be the occupier of the premises for the purposes of this Part—
 - (a) a significant event,
 - (b) a relevant agricultural event,
 - (c) an event that is a religious service.
- (2) For an event that is a large residential gathering, the person who is required to develop a COVID-19 Safety Plan for the event under Part 2, is taken to be the occupier of the premises for the purposes of this Part.

15 How contact details are to be registered

- (1) This clause applies to a person who enters premises specified in Schedule 3, subject to the exceptions in the Schedule.
- (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.
- (3) The occupier of the premises may refuse entry to a person who fails to comply with this direction.
- (4) The occupier of the premises must take reasonable steps to ensure a person complies with this clause when entering the premises.
- (5) If the premises are a vehicle, the registered operator of the vehicle must ensure that the vehicle is not used as a taxi or hire vehicle unless—
 - (a) the vehicle is registered with Service NSW, and
 - (b) provision is made to enable passengers, when entering the vehicle, to register contact details using a phone in accordance with this clause.
- (6) A person is not required to register the person’s contact details when entering premises contained within and only accessible through other premises (the *main premises*) unless—
 - (a) the premises being entered are—

- (i) a gym, or
 - (ii) an entertainment facility, or
 - (iii) a hospitality venue, or
 - (iv) a nightclub, or
 - (v) retail premises, or
 - (b) the person was not required to register the person's contact details in accordance with this clause when entering the main premises.
- (6) In this clause—
phone includes a device.
registered operator has the same meaning as in the *Road Transport Act 2013*.

16 Record keeping by occupiers concerning contact details

- (1) This clause applies to the occupier of premises if a person's contact details are provided to the occupier under clause 15(2) rather than Service NSW.
- (2) The occupier 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).

17 Use and disclosure of information

To avoid any doubt, it is directed that contact details provided under clause 15 are to be used or disclosed only for the purposes of contact tracing during the COVID-19 pandemic.

Part 4 Other directions

18 Introduction

This Part sets out other directions of the Minister.

19 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.

20 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 face masks 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.

Part 5 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 17.

22 Repeal

The *Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021* is repealed on the commencement of this Order.

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 under the repealed Order immediately before the commencement of this Order for a person to keep a record of a person's name and contact details continues under this Order as if the repealed Order remained in force, and
 - (b) an exemption granted by the Minister under the repealed Order 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 Gathering Restrictions) Order (No 2) 2021*.

Schedule 1 COVID-19 Safety Plans

clause 7

Column 1	Column 2	Column 3
Item	Premises or event	Approved COVID-19 safety checklist
1	Agricultural shows or agricultural field days	Major recreation facilities
2	Amusement centres	Entertainment facilities
3	Aquariums	Information and education facilities
4	Auctions, open houses or other inspections or viewings of real property for sale or lease	Retail and auctions
5	Business premises that are used for auction houses, other than clearing houses	Retail and auctions
6	Business premises that are used for betting agencies	Retail and auctions
7	Business premises that are used for nail salons, beauty salons, waxing salons, tanning salons, spas, tattoo parlours and massage parlours	Beauty and other services
8	Caravan parks and camping grounds	Accommodation
9	Casinos	Hospitality
10	Community centres	Gyms and indoor recreation
11	COVID-19 safe outdoor public gatherings	Outdoor events
12	Construction sites in Greater Sydney	Construction sites in Greater Sydney
13	Controlled outdoor public gatherings	Outdoor events
14	Crematoria	General
15	Drive-in cinemas	Entertainment facilities
16	Entertainment facilities	Entertainment facilities
17	Food and drink premises	Hospitality
18	Food courts	Hospitality
19	Function centres	Hospitality
20	Funeral homes	General
21	Funerals and memorial services and gatherings after funerals and memorial services	Significant events
22	Information and education facilities	Information and education facilities
23	Large residential gathering	Significant events
24	Markets	Retail and auctions
25	Micro-breweries, small distilleries holding a drink on-premises authorisation under the <i>Liquor Act 2007</i> or cellar door premises	Hospitality
26	Nightclubs	Hospitality
27	Party buses	Hospitality

Column 1	Column 2	Column 3
Item	Premises or event	Approved COVID-19 safety checklist
28	Places of public worship and religious services on other premises	Places of worship
29	Properties operated by the National Trust or the Historic Houses Trust	Information and education facilities
30	Public swimming pools, other than natural swimming pools	Gyms and indoor recreation
31	Pubs, small bars and registered clubs	Hospitality
32	Recreation facilities (indoor)	Gyms and indoor recreation
33	Recreation facilities (major)	Major recreation facilities
34	Sex on premises venues, being restricted premises where sex between patrons is permitted on the premises	Beauty and other services
35	Sex services premises	Beauty and other services
36	Short-term rental or tourist and visitor accommodation on Lord Howe Island	Hotels and accommodation on Lord Howe Island
37	Strip clubs	Hospitality
38	Vessels used for hosting functions or for commercial tours	Hospitality
39	Wedding services and gatherings after wedding services	Significant events
40	Zoological parks and reptile parks	Information and education facilities

Schedule 2 Exempted gatherings

clause 12

- 1 Gathering at an airport that is necessary for the normal business of the airport
- 2 Gathering for the purposes of or related to transportation, including in vehicles or at truck stops, stations, platforms or stops or other public transportation facilities but not a gathering on a vehicle being used as a party bus
- 3 Gathering at a hospital or other medical or health service facility that is necessary for the normal business of the facility
- 4 Gathering for the purposes of emergency services, including the provision of training by an emergency service
- 5 Gathering at a prison, correctional facility, youth justice centre or other place of custody
- 6 Gathering at a disability or aged care facility that is necessary for the normal business of the facility
- 7 Gathering at a court or tribunal
- 8 Gathering at Parliament for the purpose of its normal operations
- 9 Gathering at a supermarket, market that predominately sells food, grocery store or shopping centre (but not a retail store in a shopping centre other than a supermarket, market that predominately sells food or grocery store) that is necessary for the normal business of the supermarket, market, store or centre
- 10 Gathering at an office building, farm, factory, warehouse, commercial fishing operation or mining or construction site or on a commercial vessel, excluding vessels providing tours or hosting functions, that is necessary for the normal operation of the tenants within the building, farm, factory, warehouse, commercial fishing operation or site or of the commercial vessel
- 11 Gathering at a school, university or other educational institution or child care facility that is necessary for the normal business of the school, university, institution or facility but does not include a school event that involves members of the community in addition to staff and students
- 12 Gathering at a hotel, motel or other accommodation facility that is necessary for the normal operation of accommodation services at that hotel, motel or other facility
- 13 Gathering at an outdoor space for the purposes of transiting through the place
Example. Pitt St Mall
- 14 Gathering to provide a service to assist vulnerable members of the public, including, for example, a food bank or a service providing for the needs of homeless persons
- 15 Gathering at premises that is necessary to provide the services of an early education and care facility

Schedule 3 COVID-19 Safe Check-ins

clause 15

Part 1 Premises

- 1 Amusement centres
- 2 Aquariums
- 3 Business premises, being premises at which—
 - (a) an occupation, profession or trade 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
- 4 Construction sites
- 5 Crematoria
- 6 Drive-in cinemas
- 7 Early education and care facilities, but not a child entering a facility for the purposes of being cared for at the facility
- 8 Entertainment facilities
- 9 Function centres
- 10 Hospitality venues
- 11 Hospitals, but not a hospital that has an electronic entry recording system that records sufficient information about persons entering the hospital to enable contact tracing to occur
- 12 Hotels or motels or other accommodation facilities, but not for a person who—
 - (a) has checked in and is staying overnight, or
 - (b) is a resident
- 13 Industrial premises, being premises used for the—
 - (a) manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with the activity, or
 - (b) handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes
- 14 Information and education facilities
- 15 Nightclubs
- 16 Office premises, being premises used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis

- 17 Parliament House
- 18 Party buses
- 19 Places of public worship
- 20 Properties operated by the National Trust or the Historic Houses Trust
- 21 Public swimming pools, other than a natural swimming pool
- 22 Recreation facilities (indoor)
- 23 Recreation facilities (major)
- 24 Residential care facilities or hostels, but not residents
- 25 Retail premises, being premises used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials or whether also sold by wholesale
- 26 School, university or other educational institution, but not a student of a school entering the school
- 27 Sex on premises venues, being restricted premises where sex between patrons is permitted on the premises
- 28 Sex services premises
- 29 Shopping centres
- 30 Storage premises
- 31 Strip clubs
- 32 Vehicles being used as taxis or hire vehicles
- 33 Vessels used for hosting functions or for commercial tours
- 34 Warehouse or distribution centres
- 35 Zoological parks and reptile parks

Part 2 Premises at which the following events are being held

- 36 a significant event
- 37 a large residential gathering
- 38 Agricultural shows or agricultural field days
- 39 Religious services and gatherings after religious services
- 40 Controlled outdoor public gatherings
- 41 COVID-19 safe outdoor public gatherings

Part 3 General exceptions

- 42** The following persons are not required to provide contact details when entering premises specified in this Schedule—
- (a) a person entering the premises in response to an emergency
 - (b) a person entering premises in a vehicle if the person does not exit the vehicle while on the premises
 - (c) a person entering the premises who is under the age of 18 years if it is not possible to register the person's details under clause 15 of this Order
 - (d) a person exercising law enforcement, intelligence or national security functions on behalf of a government agency of New South Wales or the Commonwealth
 - (e) a person entering any health or medical facility, other than a pharmacy, as a patient
- 43** Despite the other provisions of this Schedule, the following premises are not premises specified in this Schedule—
- (a) mines
 - (b) premises used by a government agency of New South Wales or the Commonwealth having law enforcement, intelligence or national security functions
 - (c) farms

Schedule 4 Dictionary

clause 3

agricultural field day means an agricultural field day conducted by a member of the Association of Agricultural Field Days of Australasia.

agricultural show means an agricultural show or show parade conducted by a society or association that is a member of the Agricultural Societies Council of NSW Ltd.

approved COVID-19 safety checklist, for Part 2—see clause 7.

cinema means a cinema that is an entertainment facility open to members of the public.

contact details, for a person visiting or entering premises, means—

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

controlled outdoor public gathering means an outdoor public gathering, other than a gathering referred to in Schedule 2, in an area—

- (a) that is enclosed or bounded by fencing or another form of barrier, and
- (b) access to which is controlled by way of a ticket, and
- (c) in relation to which all persons, other than persons engaged in work, are assigned to specific seats or to a seating area.

COVID-19 safe outdoor public gathering—see clause 12.

COVID-19 Safety Plan, for Part 2—see clause 7.

develop, for Part 2—see clause 7.

event includes a function.

gym means 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.

hire vehicle has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

large residential gathering means a gathering—

- (a) at a place of residence, including premises being used for the purposes of a holiday home or a short-term rental, and
- (b) at which there are more than 100 persons, not including members of the household, at any 1 time.

real estate agent has the same meaning as in the *Property and Stock Agents Act 2002*.

relevant agricultural event means an agricultural show or an agricultural field day at which there are more than 200 persons including participants and spectators.

relevant sale or leasing event for real estate means—

- (a) an auction of real estate, or
- (b) an open house, or other inspection or viewing of real estate.

taxi has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

the Act means the *Public Health Act 2010*.

Schedule 5 Amendment of Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021

[1] Clause 1.7 Order prevails over certain other Orders

Omit clause 1.7(a). Insert instead—

(a) the *Public Health (COVID-19 Safety) Order 2021*,

[2] Schedule 4 Dictionary

Omit “*Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021*” wherever occurring in the definitions of ***controlled outdoor public gathering*** and ***COVID-19 safe outdoor public gathering***.

Insert instead “*Public Health (COVID-19 Safety) Order 2021*”.