



COVID-19 Public Health Response (Protection Framework) Amendment Order (No 3) 2021

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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Order

1 Title

This order is the COVID-19 Public Health Response (Protection Framework) Amendment Order (No 3) 2021.

2 Commencement

- (1) This order comes into force at 11.59 pm on 23 December 2021.
- (2) However,—
 - (a) Part 5 comes into force at 11.59 pm on 30 December 2021; and
 - (b) Part 6 comes into force at 11.59 pm on 31 December 2021.

Part 1

Preliminary provisions

3 Principal order

This order amends the COVID-19 Public Health Response (Protection Framework) Order 2021.

4 Clause 5 amended (Interpretation)

- (1) In clause 5(1), insert in their appropriate alphabetical order:

DOC visitor accommodation means a hut, lodge, cottage, camp, or other facility that—

- (a) is available for public accommodation on a temporary basis; and
- (b) is administered and managed by the Department of Conservation

MSD service premises means premises to the extent that they are—

- (a) operated by the Ministry of Social Development to deliver services to the public; or
- (b) premises where services are provided by the Ministry of Social Development to the public

specified composite class means a class in which more than half of the students are in years 1 to 3

specified KiwiRail service means any of the following services of KiwiRail Holdings Limited:

- (a) the TranzAlpine service;
- (b) the Coastal Pacific service;
- (c) the Northern Explorer service

- (2) In clause 5(1), replace the definition of **food and drink business or service** with:

food and drink business or service—

- (a) means a business or service that sells, offers, or provides food or drink to customers and clients for consumption at the premises of the business or service, such as—
 - (i) a restaurant, cafe, bar, or club; and
 - (ii) a soup kitchen or other place where food or drink is provided without charge; and
- (b) includes a business or service that sells, offers, or provides food or drink to customers and clients—
 - (i) in a shopping mall, for consumption in the shopping mall; or
 - (ii) as part of an event, for consumption at that event; but
- (c) excludes—
 - (i) a business or service to the extent that it sells, offers, or provides food or drink to its workers;
 - (ii) a business or service to the extent that it provides food or drink on the premises of a health service to patients of the health service;
 - (iii) a business or service to the extent that it provides food or drink in connection with a specified social service;
 - (iv) a school hostel or an accommodation service that is tertiary student accommodation

- (3) In clause 5(1), replace the definition of **gym** with:

gym—

- (a) means an indoor exercise facility operated by a business or service for which access is—

- (i) limited to its members; or
 - (ii) otherwise controlled by the facility (whether through ticketing, fees, registration, or any other means); and
 - (b) excludes an exercise facility that is available for use only by the residents of the premises on which the facility is located
- (4) In clause 5(1), definition of **public facility**, after paragraph (b), insert:
- (ba) excludes DOC visitor accommodation; and

5 Clause 10 amended (Meaning of designated premises)

- (1) After clause 10(e)(ii), insert:
- (iii) a specified KiwiRail service:
- (2) After clause 10(m), insert:
- (n) MSD service premises.

6 Clause 13 amended (Meaning of gathering)

- (1) In clause 13(c)(iv), delete “hearings at”.
- (2) After clause 13(b), insert:
- (ba) excludes events (*see* clause 5(1)); and

Part 2

Amendments to Part 2 (COVID-19 provisions)

7 Clause 23 amended (Person must comply with face covering rule in specified premises or circumstances)

Replace clause 23(2) with:

- (2) However, subclause (1) does not apply to the following workers, provided that they are complying with the 2-metre physical distancing rule:
- (a) an entertainer performing at those premises:
 - (b) a person presenting to an audience at those premises, for example,—
 - (i) a person presiding over, or assisting in leading, a faith-based gathering;
 - (ii) a person presenting at a university lecture.

8 Clause 31 amended (Person must not be denied access to certain premises on vaccination grounds)

- (1) In clause 31(2)(a)(i), replace “enrolled at those premises” with “(including a person seeking to enrol at those premises)”.
- (2) After clause 31(3), insert:
- (3A) However, in relation to MSD service premises, subclause (1) applies only to—

- (a) a person seeking to access services provided by the Ministry of Social Development; and
- (b) a family member of a person described in paragraph (a) who is accompanying that person; and
- (c) a person who is supporting or assisting a person described in paragraph (a).

9 Clause 32 amended (Person must not be denied access to goods or services from certain premises on vaccination grounds)

After clause 32(3), insert:

- (3A) However, in relation to MSD service premises, subclause (1) applies only to persons to whom clause 31(3A)(a) applies.

10 Clause 33 amended (Business or service in control of premises must allow people access to designated premises)

- (1) After clause 33(1)(c), insert:

- (d) must have systems and processes to ensure that they are able to access other parts of premises A only in compliance with all applicable COVID-19 provisions.

- (2) After clause 33(1), insert:

- (1A) However, in relation to MSD service premises, subclause (1) applies only to persons to whom clause 31(3A)(a) to (c) applies.

- (1B) In subclause (1), **other parts of premises A** means any part of premises A except—

- (a) designated premises that can be accessed only by entering premises A; and
- (b) identified access ways for those designated premises.

11 Clause 43 amended (Gathering of CVC compliant people permitted)

- (1) In clause 43(1), replace “(5)” with “(4)”.
- (2) Revoke clause 43(5).
- (3) In clause 43(6), delete “, and a breach of subclause (5) is a medium risk infringement offence,”.

12 Clause 44 amended (Gathering of fixed number of CVC compliant people permitted)

- (1) In clause 44(1), replace “(7)” with “(6)”.
- (2) Revoke clause 44(7).
- (3) In clause 44(8), delete “or (7)”.

13 Clause 45 amended (Gathering of CVC compliant people permitted if capacity limit met)

- (1) In clause 45(1), replace “(7)” with “(6)”.
- (2) Revoke clause 45(7).
- (3) In clause 45(8), delete “or (7)”.

14 Clause 46 amended (Gathering of CVC compliant people permitted if fixed capacity limit met)

- (1) In clause 46(1), replace “(7)” with “(6)”.
- (2) Revoke clause 46(7).
- (3) In clause 46(8), delete “or (7)”.

15 Clause 47 amended (Fixed capacity gathering permitted)

- (1) In clause 47(1), replace “(5)” with “(4)”.
- (2) Revoke clause 47(5).
- (3) In clause 47(6), delete “, and a breach of subclause (5) is a medium risk infringement offence,”.

16 Clause 48 amended (Fixed number gathering permitted)

- (1) In clause 48(1), replace “(5)” with “(4)”.
- (2) Revoke clause 48(5).
- (3) In clause 48(6), delete “, and a breach of subclause (5) is a medium risk infringement offence,”.

17 Clause 49 amended (Limited purpose gathering permitted)

Revoke clause 49(4) and (6).

18 Clause 50 amended (Limited outdoor gathering permitted)

- (1) In clause 50(1), replace “to (4)” with “and (3)”.
- (2) Revoke clause 50(4) and (5).

19 Clause 55 amended (Business or service must have systems and processes to prevent customers entering workplace except to enable contactless collection of goods)

Add to clause 55:

Examples

Food and drink businesses or services must comply with CVC rules or non-CVC rules under Orange and Red (see Schedules 6 and 7). For the following examples, assume that clause 55 is one of the non-CVC rules that applies under Orange and Red.

Example 1: clause 55 applies to a restaurant that chooses to operate without CVCs

Business A operates a restaurant, which includes the option to dine in. If A chooses to operate without CVCs, it must comply with this clause.

Example 2: clause 55 does not apply to a business or service that sells, offers, or provides takeaways only

Business B operates a fish and chip shop offering food for takeaway only. B is not a food and drink business or service (as defined in clause 5) because it does not sell food to its customers for consumption at its premises.

Clause 55 does not apply to B because it is not a food and drink business. Instead, B must comply with the rules applicable to retail businesses and services (such as clauses 23 and 40).

20 Clause 68 amended (Business or service must have systems and processes to comply with no consumption of food or drink requirement)

- (1) In clause 68(2)(b), replace “providing food or drink” with “to the extent that it sells, offers, or provides food or drink”.
- (2) Replace clause 68(2)(c) and (d) with:
 - (c) a business or service to the extent that it provides food or drink on the premises of a health service to patients of the health service:
 - (d) a business or service to the extent that it provides food or drink in connection with a specified social service:

21 Clause 69 amended (Customers and clients at food and drink business or service must comply with seating requirements)

Revoke clause 69(3)(b) and (c).

22 Clause 74 amended (How face covering rule applies to education entities)

After clause 74(3), insert:

- (4) In this clause, **face covering rule** has the same meaning as in clause 11, except clause 11(a)(i) does not apply.

23 Clause 76 replaced (Registered school, licensed early childhood service, and school hostel must have systems and processes to keep appropriately sized and stable groups)

Replace clause 76 with:

76 Education entities must have systems and processes to keep appropriately sized and stable groups

An education entity must have systems and processes in place to keep children, students, and staff, so far as is reasonably practicable, in groups that are appropriately sized and stable.

24 Clause 77 replaced (Education entities must have systems and processes to manage numbers of students on site)

Replace clause 77 with:

77 Education entities must have systems and processes to manage numbers of students and children on site

An education entity must have systems and processes in place to manage numbers of students and children on site.

Compare: LI 2021/263 Schedule 2 item 16

25 Clause 81 amended (Outdoor sports facilities must close indoor parts)

In clause 81(2), after “clients”, insert “, except toilets and any indoor part of the facility to which access is required for access to those toilets”.

Part 3**Amendments to Part 4 (Exemptions)****26 Clause 104 amended (Other exemptions)**

In clause 104(n), after “Groups”, insert “, except to the extent that clause 10(m) applies in this order”.

Part 4**Amendments to schedules that come into force at 11.59 pm on
23 December 2021**

Subpart 1—Amendments to Schedule 2 (category 1 and 2 businesses or services)

27 Schedule 2 amended

- (1) In Schedule 2, item 32, replace “Entities required to provide distance or online learning for primary or secondary education” with “Businesses or services required to provide distance or online learning for primary, secondary, or tertiary education”.
- (2) In Schedule 2, item 33, delete “(except licensed early childhood services)”.
- (3) In Schedule 2, revoke item 34.

Subpart 2—Amendments to Schedule 3 (purposes for which cross-boundary travel is permitted and related travel conditions)

28 Schedule 3 amended

- (1) In Schedule 3, item 2, second column, replace paragraph (b) with:
 - (b) education entities

- (2) In Schedule 3, item 8, replace “If the person is a student in years 0 to 13 at a registered school, attend that registered school” with “If the person is a child or student at an education entity, attend that education entity”.

Subpart 3—Amendments to Schedule 6 (Orange)

29 Schedule 6 amended

- (1) In Schedule 6, Part 2, item relating to clause 23, third column, replace paragraph (a) with:
- (a) when on public transport services, except—
 - (i) when on a ship that does not have an enclosed space for passengers; and
 - (ii) when they are a passenger within their allocated carriage on a specified KiwiRail service:
- (2) In Schedule 6, Part 2, item relating to clause 23, third column, revoke paragraph (c).
- (3) In Schedule 6, Part 2, item relating to clause 23, third column, paragraph (e)(iv), after “Police”, insert “, except DOC visitor accommodation”.
- (4) In Schedule 6, Part 2, item relating to clause 23, third column, after paragraph (h), insert:
- (i) if the person is a worker at a permitted gathering, but only when they are working with customers or clients at the permitted gathering.

Subpart 4—Amendments to Schedule 7 (Red)

30 Schedule 7 amended

- (1) In Schedule 7, Part 2, item relating to clause 23, third column, replace paragraph (a) with:
- (a) when on public transport services, except—
 - (i) when on a ship that does not have an enclosed space for passengers; and
 - (ii) when they are a passenger within their allocated carriage on a specified KiwiRail service:
- (2) In Schedule 7, Part 2, item relating to clause 23, third column, revoke paragraph (c).
- (3) In Schedule 7, Part 2, item relating to clause 23, third column, paragraph (e)(iv), after “Police”, insert “, except DOC visitor accommodation”.
- (4) In Schedule 7, Part 2, item relating to clause 23, third column, replace paragraph (g) with:
- (g) when indoors at tertiary education premises, while they are—

- (i) on the parts of the premises that are open to the public; or
- (ii) attending formal teaching or learning activities:
- (5) In Schedule 7, Part 2, item relating to clause 23, third column, paragraph (h), replace “clause 74(2)” with “clause 74(3)”.
- (6) In Schedule 7, Part 2, item relating to clause 23, third column, after paragraph (j), insert:
- (k) if the person is a worker at a permitted gathering, but only when they are working with customers or clients at the permitted gathering.
- (7) In Schedule 7, Part 2, replace the item relating to clause 48 with:
- | | | | |
|-------|------------------------------------|-----|--|
| cl 47 | Fixed capacity gathering permitted | (1) | For the purposes of clause 47(2)(a) and (b), the fixed number is 25. |
| | | (2) | For the purposes of clause 47(2)(a), the specified physical distancing rule is the 1-metre physical distancing rule. |

Subpart 5—Amendment to Schedule 8 (travelling in and out of extended Auckland area)

31 Schedule 8 amended

In Schedule 8, Part 2A, item 6, replace “If the person is a student in years 0 to 13 at a registered school, attend that registered school” with “If the person is a child or student at an education entity, attend that education entity”.

Part 5

Amendments to Schedule 7 relating to changes from Red to Orange that come into force at 11.59 pm on 30 December 2021

32 Schedule 7 amended

- (1) In the Schedule 7 heading, replace “(Northland, Auckland, and specified areas in North Island)” with “(Northland)”.
- (2) In Schedule 7, Part 1, replace clause 2 with:

2 Description of area

The area includes the area within the boundaries of the Northland region as shown on LG-01-2019-Con-1.

Guidance note

See the Government COVID-19 website (<https://covid19.govt.nz/>) for a detailed boundary map, or see Schedule 4 for indicative maps of the boundaries of each region and each territorial authority district in New Zealand.

Part 6
Amendments to schedules that come into force at 11.59 pm on
31 December 2021

33 Schedule 6 amended

In Schedule 6, Part 2, item relating to clause 23, third column, after paragraph (b), insert:

(c) when on school transport services:

34 Schedule 7 amended

(1) In Schedule 7, Part 2, item relating to clause 23, third column, after paragraph (b), insert:

(c) when on school transport services:

(2) In Schedule 7, Part 2, after the item relating to clause 71, insert:

cl 74	How face covering rule applies to education entities	(1)	For the purposes of clause 74(1)(a) and (b), the education services are education services provided at a registered school to a student who—
		(a)	is in year 4 to 13; and
		(b)	is not in a specified composite class.
		(2)	Clause 74(1)(c) applies only to visitors to a registered school.

Dated at Wellington this 21st day of December 2021.

Hon Chris Hipkins,
Minister for COVID-19 Response.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order amends the COVID-19 Public Health Response (Protection Framework) Order 2021 (the **principal order**). This order comes into force at 11.59 pm on 23 December 2021, except—

- *Part 5*, which comes into force at 11.59 pm on 30 December 2021;
- *Part 6*, which comes into force at 11.59 pm on 31 December 2021.

Part 1 of this order inserts new definitions and also amends existing definitions in the principal order.

Part 2 of this order amends certain provisions in Part 2 of the principal order, including the following amendments:

- *clause 7* amends clause 23 of the principal order, which applies the face covering rule in specified premises or circumstances. This amendment provides for further exceptions for workers from the application of clause 23(1), including workers presiding over, or assisting in leading, a faith-based gathering, and workers presenting to an audience (such as university lecturers):
- *clauses 8 to 10* amend clauses 31 to 33 of the principal order, which prohibit people from being denied access to certain goods, services, and premises on vaccination grounds, as well as access to designated premises. In relation to premises where the Ministry of Social Development provides services to the public, this amendment clarifies that the prohibition extends to people seeking to access those services as well as certain persons accompanying them:
- *clause 10* also amends clause 33 of the principal order to provide that a business or service in control of premises (**premises A**) must have systems and processes to ensure that people accessing designated premises via premises A are able to access other parts of premises A only in compliance with applicable COVID-19 provisions:
- *clauses 22 to 24* amend clauses 74, 76, and 77 of the principal order in relation to education entities and education services as they operate under the principal order:
- *clause 25* amends clause 81 of the principal order to enable toilets at an outdoor sports facility to remain open when the facility is otherwise closed under that clause.

Part 3 of this order amends clause 104 of the principal order, which provides for exemptions from the application of the principal order. This minor amendment ensures that the exemption in clause 104 does not apply to premises used to provide shelter or emergency and temporary housing for people in a civil defence emergency for the purposes of the definition of designated premises in the principal order.

Part 4 of this order amends certain schedules of the principal order. These amendments come into force at 11.59 pm on 23 December 2021 and include,—

- at Orange and Red, for the purposes of clause 23 of the principal order, exempting the following persons from the face covering rule:
 - passengers within their allocated carriage on a specified KiwiRail service:
 - persons in visitor accommodation administered and managed by the Department of Conservation:
- at Red, removing the application of clause 48 of the principal order and replacing this with clause 47:

- other amendments to the principal order in relation to education entities and education services as they operate under the principal order.

Part 5 of this order amends the principal order so that, at 11.59 pm on 30 December 2021, only the Northland region is subject to Schedule 7 (Red) of the principal order, while the rest of New Zealand is subject to Schedule 6 (Orange).

Part 6 of this order amends the principal order in relation to education services. The amendments—

- make clause 23 of the principal order have effect at Red and Orange with respect to persons while on school transport services, applying the face covering rule to those people:
- make clause 74 of the principal order have effect at Red with respect to certain persons at registered schools while they are indoors, applying the face covering rule to those people.

This order must be approved by resolution of the House of Representatives before the expiry of the period described in section 16(2) of the COVID-19 Public Health Response Act 2020. If this does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 21 December 2021.

This order is administered by the Ministry of Health.