



The COVID-19 pandemic: second report

A special report under section 31 of the *Ombudsman Act 1974*

7 September 2022

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President
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The Hon Jonathan O'Dea MP
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SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Pursuant to section 31 of the *Ombudsman Act 1974*, I am providing you with a report titled *The COVID-19 pandemic: second report*.

I draw your attention to the provisions of s 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Miller". The signature is fluid and cursive.

Paul Miller
NSW Ombudsman

7 September 2022

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Foreword

This report follows on from the report we published last year entitled *2020 hindsight: the first 12 months of the COVID-19 pandemic*.

Our aim has been to look back on the second year of the pandemic and provide an account of what we have seen, again primarily through the lens of the complaints we received from individuals about the actions taken by NSW Government agencies.

At the time we were completing our previous report in early 2021, there appeared good reason to be optimistic even if (as the title to our report suggested) it was well understood that the pandemic was far from over. Unfortunately, the second year of the pandemic has in many ways proved no less challenging than the first. It has presented new issues, including some well-publicised troubles associated with the vaccine rollout and the availability of at-home rapid antigen tests. The second year of the pandemic has also seen greater impacts on frontline services such as health, aged care, schools and prisons, due to staff shortages related to the increasing volume of community infections.

As we observed last year, while everyone has been affected by the pandemic, the impacts have not been evenly distributed, and some groups – typically those that are already more disadvantaged – have been disproportionately impacted. They may be more vulnerable both to the disease itself and to government actions taken in response to it. This year it has also become apparent that these same groups may also be disproportionately affected by further 'downstream' impacts like staff shortages. Those living in aged care and custodial settings are clear cases of high vulnerability to all 3 impacts – the disease (for example, more likely to catch or get seriously ill from COVID), government action taken in response to it (for example, more highly impacted by lockdowns and limits on or prohibition of visits), and staff shortages (for example, reduced service provision and de facto 'operational' lockdowns).

Complaints to us

The number of complaints to the Ombudsman about COVID-related conduct of government agencies and community service providers has been significantly higher in the second year of the pandemic than the first.

A simple comparison by financial year shows that COVID-related actionable complaints in 2021-22 (1,046) were 125% higher than in 2020-21 (463). The biggest increase in complaints to us was in the custodial system. We received more than 5 times the number of COVID-related complaints about custodial services in 2021-22 (444) than we did in 2020-21 (78). This likely reflects the fact that until mid-2021, the prison population (both inmates and staff) remained relatively free of COVID. Since then, and as it became impossible to seal the prison system from the increasing prevalence of

COVID in the broader community, the combination of lockdowns and staff shortages has had far reaching, deleterious effects on the quality of life in custody.

We also saw a significant spike in complaints about Service NSW, which became responsible for the rollout of various COVID-related small business grants. As Service NSW told us at the time, prior to the recent flood, fire and COVID-related grants programs its business had primarily been to perform licensing and other similar transactions. It, like many, found itself having to pivot to do different things, and in its case that included implementing grant-administration systems, teams and processes in a very short timeframe.

As I noted in the foreword to our previous report, absent a constitutional bill of rights or a human rights act, one of the few express statutory rights that people in NSW do have is the right to complain to the NSW Ombudsman if they believe the conduct of a public authority has been unlawful, unreasonable, unjust or otherwise wrong.

A visible, accessible and properly functioning complaint-handling system is particularly important during a crisis like the pandemic. Even with the best planning possible, a crisis is inherently a time when government agencies must respond rapidly and adaptively. During times of crisis we may see ordinary parliamentary governance and oversight 'sidelined' in favour of emergency executive powers – those powers being used to impose significant and unusual incursions on individual rights; and less opportunities for comprehensive evidence gathering, consultation and public debate *before* action is taken. Together, these mean that mechanisms to identify and address issues as quickly and effectively as possible *after* action has been taken – such as complaint mechanisms – become all the more important.

Recognition of dedication and effort, while learning lessons for the future

NSW Government agencies and their staff – especially those on the front lines, and those involved in the planning and delivery of usual government services – are to be acknowledged and thanked for their dedication and efforts during the last 2 years. There is nothing we have seen in either of our reports to fault the genuine dedication and commitment to public service, and the tireless hard work, of the public authorities we have oversighted as they have sought to manage and mitigate this pandemic.

We hope that the work we do, and the complaints that are brought to us by the public, are seen as contributing positively to those efforts.

Complaining is not the same as blaming. This has been no more apparent than during the current pandemic. People complain to us because they want something to change – they have experienced or seen something,

and they want to make it better. Frequently during the pandemic, people contacted us not because they necessarily wanted to make things better just for themselves (sometimes it was too late for them – for example if they were complaining after having already completed their period of hotel quarantine). Rather, they complained because they wanted to improve the situation for other people, and because they saw ways to improve the overall crisis response.

Importantly, responding to this crisis has not been simply about doing anything and everything possible to limit the spread of COVID itself, without regard to other objectives or consequences. Even accepting the public health objective will be the first priority, this does not mean that other priorities and values cannot also be given full and proper consideration. It is possible to care about and deliver good public health outcomes (in terms of COVID containment) alongside other important imperatives. These include promoting and supporting broader physical and mental health, respecting individual rights, ensuring fair administration and safeguarding non-discrimination – even delivering the best 'customer experience' possible in the circumstances. Indeed, confidence that those other priorities are also respected is likely to enhance broader confidence in the public health response, and thereby increase its effectiveness.

A note about the timing of this report

The rolling waves of this pandemic, and the associated responses of government to them, have not aligned neatly with either calendar or financial years.

Our 2020 COVID report dealt with the first year of the pandemic by reference to a period of almost exactly 12 months – from late January 2020, when the first case of COVID was detected in Australia, to the start of February 2021, at which time general community lockdowns had ended and only 3 new COVID cases had been reported in NSW in the previous week.

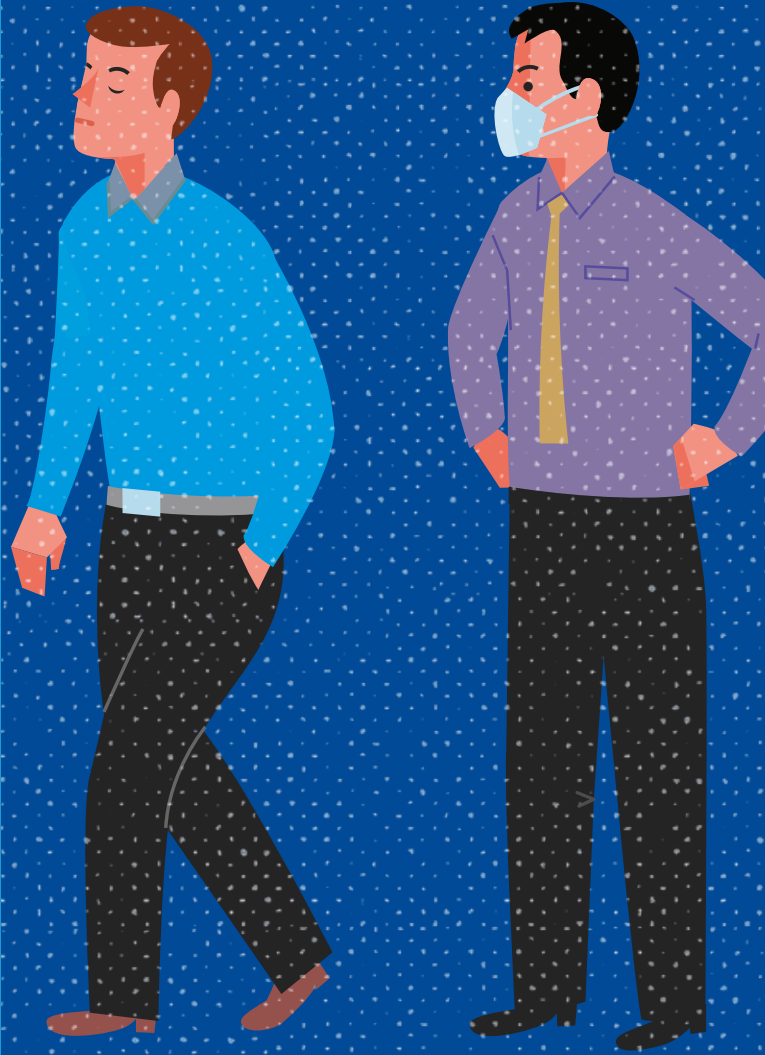
In this report, although we loosely refer to the second 'year' of the pandemic, we deal with a longer time frame of around 15 months from February 2021 until the end of April 2022. This is to better reflect the timing of the waves of infection, and to provide as complete a picture as possible given we do not currently anticipate a further report next year. For the same reason, we have included some observations in this report about the period May to August 2022, as this is when the most recent wave appears to have peaked.



Paul Miller
NSW Ombudsman

1

2021: The pandemic continues





1.1. 2020: our first COVID report

In March 2021 we presented to Parliament our report entitled *2020 hindsight: the first 12 months of the COVID-19 pandemic (2020 COVID report)*.

We looked back at the first year of the pandemic – from 25 January 2020, when the first COVID-19 (**COVID**) case was detected in Australia, to the end of January 2021. We reported on what we saw, primarily through the lens of complaints we received from individuals about actions taken by NSW Government agencies and community service providers. We also recognised the dedication and effort of staff on the front line, and all those who continued to deliver ordinary and essential government services despite the challenges and changed delivery models necessitated by the pandemic.

At the time we completed the 2020 COVID report the prognosis appeared positive, and it seemed the worst may have been behind us. It was widely acknowledged, certainly by international standards, that the public health response to the pandemic in NSW and Australia had been highly effective.

On the last day of January 2021, there were only 3 new COVID cases reported in NSW. Up to that date, NSW had experienced 4,915 confirmed cases and 56 deaths.¹

Nevertheless, and as the title of our report alluded to, it was clear that the pandemic was by no means over.



1.2. 2021: moving into a second year of the pandemic

With the benefit of hindsight, the pandemic in NSW to date appears to be characterised by 5 'waves':

1st wave: 27 January 2020 – 1 July 2020

2nd wave: 2 July 2020 – 7 December 2020

3rd wave: 14 December 2020 – 30 December 2020

4th wave: 'Delta variant': June 2021 – November 2021

5th wave: 'Omicron variant': December 2021 – present.

As we finalise this report, it has been suggested that July 2022 marked the start of a distinct new wave of the more highly infectious BA.4 and BA.5 sub-variants of the COVID Omicron strain.²

The nationwide vaccination program began with the first doses of the Pfizer vaccine administered in Sydney on 21 February 2021. Initially, the vaccination rollout was slow to progress,³ but by 9 November 2021 NSW had reached a full vaccination rate of 90% of those then eligible.⁴

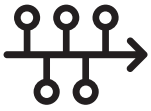
Responses to the pandemic continued to evolve as the vaccination program was rolled out, as particular outbreaks occurred or were contained, and as new variants of the disease (and new information and tools) became available. New evidence and official advice continued to emerge, including on the following topics:

- the benefits of wearing a mask
- the chance of repeat infection
- the impact of new variants
- the possibility of achieving 'herd immunity'
- the benefits of vaccine boosters.

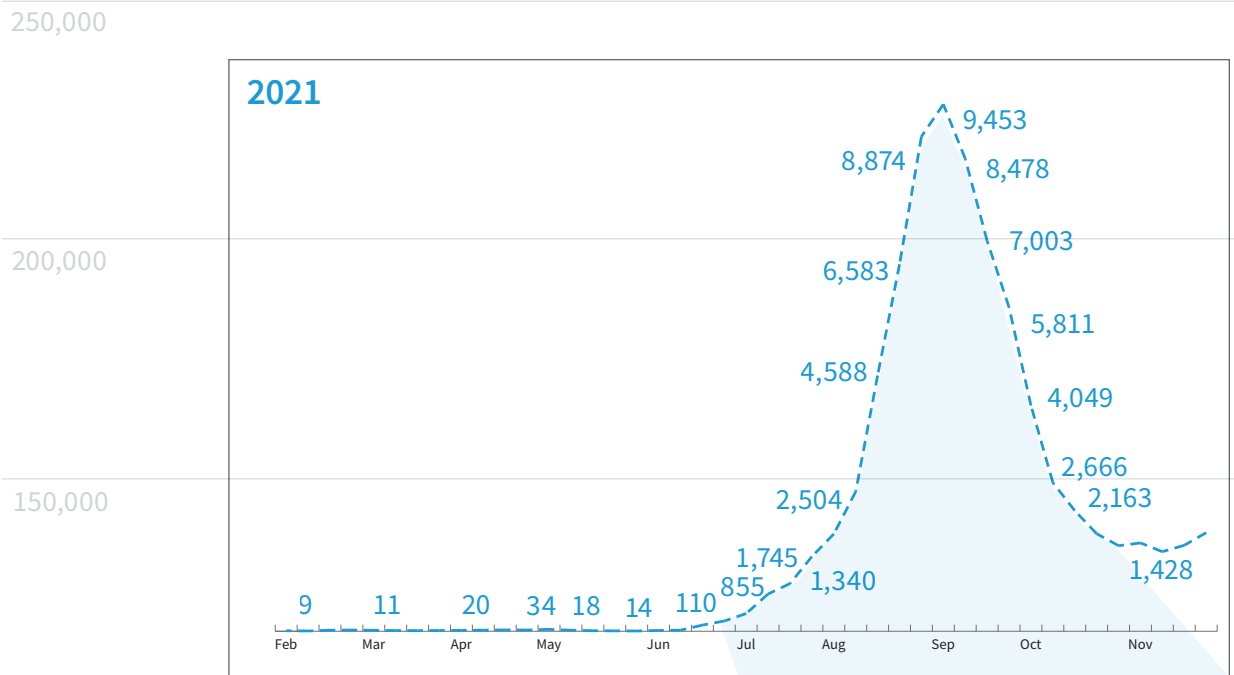
These contributed to shifting policies and actions by governments, businesses and other organisations. All had to weigh up the benefits of adapting their pandemic response to account for new information against the inefficiencies, confusion and frustration that could result from frequent changes.

A chronology of key events, together with a chronology of COVID related public health orders between 1 February 2021 and 30 April 2022 is set out in **chapter 6**.

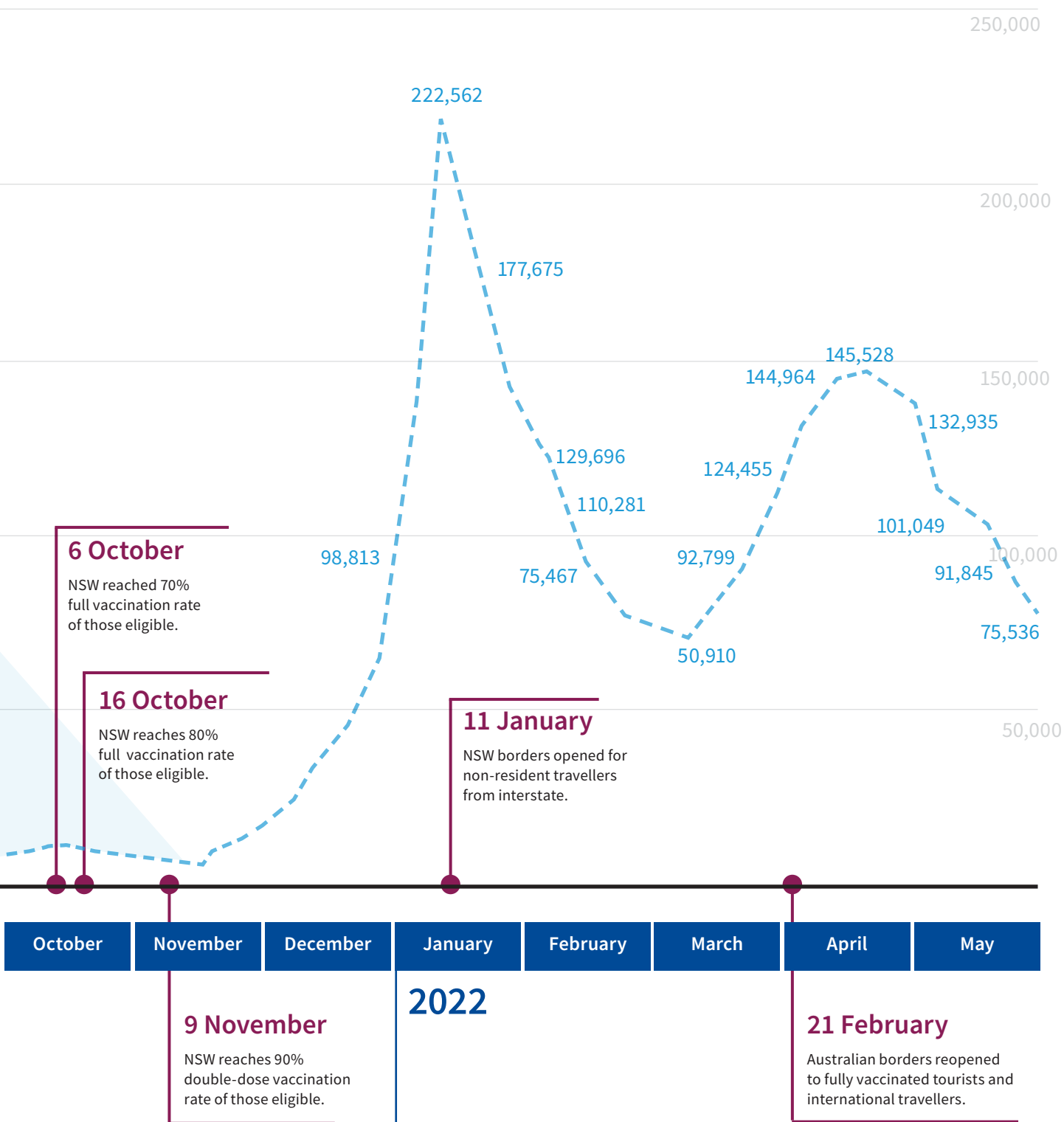




1.3. Key events and responses in 2021



February	March	April	May	June	July	August	September
2021							
				<p>16 June</p> <p>First community case of Delta detected in what became known as the Eastern Suburbs/Bondi cluster.</p>	<p>25 June</p> <p>Sydney CBD entered lockdown.</p>		
				<p>23 June</p> <p>Restrictions on movement imposed for residents of Bayside, Canada Bay, Inner West, Randwick, Waverly and Woollahra Local Government Areas.</p>	<p>26 June</p> <p>Lockdown extended to cover Greater Sydney, including the Blue Mountains, Central Coast and Wollongong.</p>		
					<p>17 July</p> <p>Lockdown tightened in Western Sydney 'Local Government Areas (LGA) of concern' (Canterbury-Bankstown, Fairfield and, Liverpool).</p>		



----- Weekly COVID-19 cases in NSW from February 2021 to May 2022

2

COVID-related complaints to the Ombudsman





2.1. The NSW Ombudsman's jurisdiction

As explained in our 2020 COVID report, many of the complaints that arose out of the Government's response to the pandemic are ones we cannot deal with due to a lack of jurisdiction. In particular, we cannot deal with complaints about the Minister, such as his conduct in issuing particular public health orders, and nor can we deal with complaints about the NSW Police Force, such as their conduct in enforcing those orders.

Where we could not deal with a complaint, we still sought to provide complainants with what information and support we could. In some cases, we referred them to other relevant oversight bodies who could provide more help.

Where we do have jurisdiction, we generally aim to resolve complaints by facilitating communication between the person complaining and the agency in question, and by undertaking inquiries and making suggestions to resolve the complaint and improve future practice. In addition, where it appears to us that there may be evidence of unlawful or otherwise wrong conduct, we can investigate a matter using our statutory powers and make formal findings and recommendations.

To date, we have not commenced any formal investigation into any conduct relating directly to COVID. We have, however, made inquiries with agencies about a range of topics to further understand relevant issues and inform our decision making about whether an investigation is warranted. Some of those inquiries are ongoing at the time of finalising this report.



2.2. Complaints at a glance

Our 2020 COVID report outlined the complaints and inquiries we received in the 13-month period from 1 January 2020 to 31 January 2021 (the **2020 reporting period**). In this report, we outline the complaints and inquiries (also referred to as 'contacts') we received in the following 15 months, from 1 February 2021 to 30 April 2022 (the **2021 reporting period**). We have chosen this approach to better reflect the timing of the 'waves' of infection (which did not coincide neatly with the calendar or financial year), to provide the most up-to-date information possible, and because we do not expect to produce another special report specific to COVID next year.

For comparison purposes, it is necessary to compare monthly averages rather than totals because the reporting periods of our 2 reports differ.

In the 2020 reporting period, we received 913 complaints and inquiries specifically related to the NSW Government's response to the pandemic (monthly average of 70). This represented 3.5% of all the contacts we received during that period. In the 2021 reporting

period, we received 1,758 complaints and inquiries related to the NSW Government's response to the pandemic (monthly average of 117). This represented 6% of all the contacts we received during the period.⁵ Of these complaints and inquiries about COVID:

- 1,098 (62%) were actionable complaints, which are complaints we have jurisdiction to receive
- 305 (17%) were excluded complaints, which are complaints about 'excluded conduct' of NSW public authorities that our legislation prevents us from investigating (such as the conduct of the NSW Police Force)
- 259 (15%) were misdirected contacts, which are complaints about bodies that are generally outside of our jurisdiction (such as Commonwealth Government bodies or private companies)
- 96 (5%) were requests for information.

In summary, we received more COVID-related contacts in the 2021 reporting period than in the 2020 reporting period, and they made up a larger proportion of all the complaints and inquiries we received in that period.

Contacts about hotel quarantine were lower in the 2021 reporting period (an average of 29 per month) than the 2020 reporting period (an average of 40 per month). However, contacts about correctional centres increased significantly, with 27 received in an average month (compared with 6 on average per month in the 2020 reporting period).⁶ Complaints and inquiries about other departments and authorities also increased, with 42 contacts received on average per month in the 2021 reporting period (compared with 21 on average per month in the 2020 reporting period).

The volume of complaints and inquiries we received about COVID-related matters in the 2021 reporting period appears correlated with the timing of lockdowns (see **figure 4** below). Perhaps unsurprisingly, COVID-related contacts to our office tended to increase in those periods when lockdowns and other public health orders were more stringent, and to decline when they were relaxed.

Figure 1. Contacts received from 1 February 2021 to 30 April 2022 by contact classification (excluding youth justice notifications)

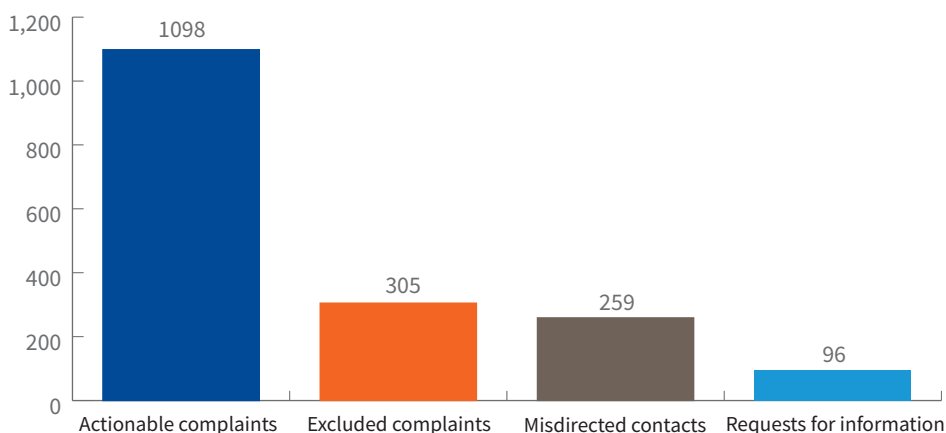


Figure 2. Actionable complaints received from 1 February 2021 to 30 April 2022 by case type

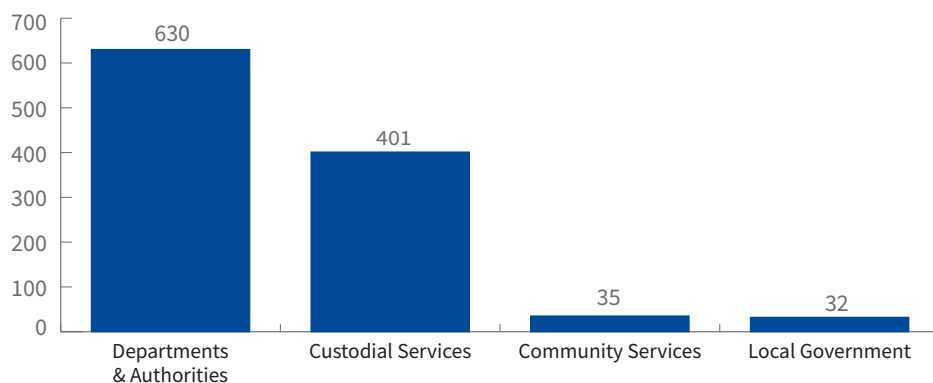


Figure 3. Comparison of the number of contacts received between 1 February 2020 – 31 January 2021 (P1), 1 February 2021 – 31 January 2022 (P2) and 1 February 2022 – 30 April 2022 (P3) (excluding youth justice notifications)

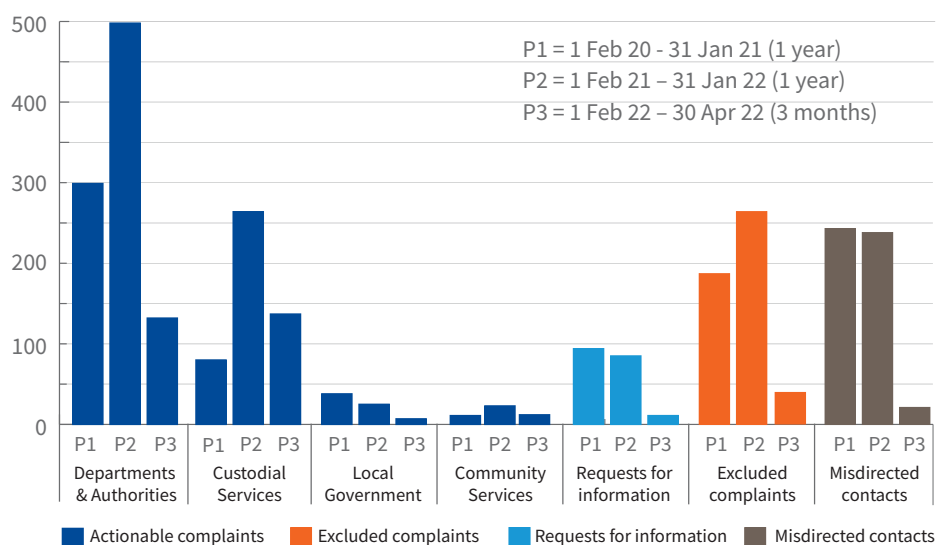
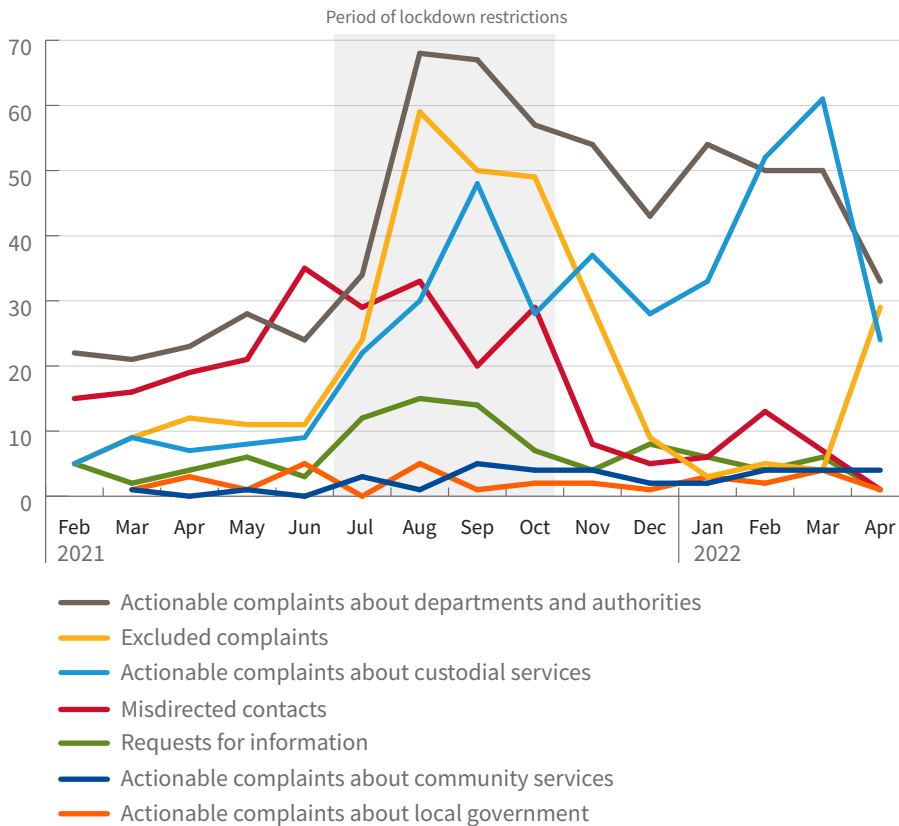


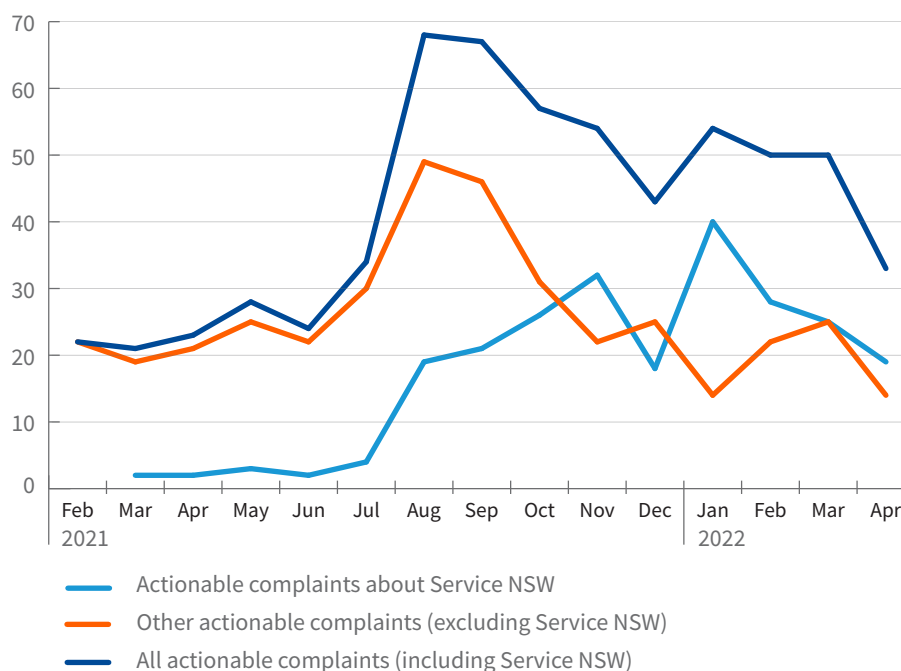
Figure 4. Monthly contacts received by case type, 1 February 2021 – 30 April 2022 (excluding youth justice notifications)



The increase in actionable complaints we received about departments and authorities was partly driven by an increase in complaints about Service NSW. These complaints started steadily increasing from July 2021 and predominantly related to the rollout of the various grants aimed at supporting small businesses from the effects of the lockdowns. When we made inquiries of Service NSW about the increasing complaints, it advised that, until the implementation of the various flood, fire and COVID-related grants, Service NSW's primary role had been to perform licensing and other transactions. The administration of grants of this scale was unprecedented and new systems, teams and processes had to be stood up in a very short time.

The rise in complaints about Corrective Services NSW (**CSNSW**) coincides with the implementation of new ways to manage the more transmissible Delta and Omicron variants and challenges with staff shortages in custodial facilities as COVID cases increased in the community – see **section 2.12** further below in this chapter.

Figure 5. Monthly actionable complaints about Service NSW and other departments and authorities, 1 February 2021 – 30 April 2022



2.3. Complaints relating to public health orders

In the second year of the pandemic, public health orders continued to place restrictions on venue capacity and travel – however the effects of these orders were more widely felt, and they had some unforeseen consequences. For example:

- There was a spike in the number of people changing their registered residential address. This may have been partly due to people seeking to avoid the restrictions imposed in Local Government Areas (**LGA**s) of concern and greater Sydney. To prevent people from circumventing the lockdown orders, Service NSW temporarily disabled the online change of address function of their website.⁷
- There were limits placed on the number of visitors a person could have at their home (meaning certain maintenance work could not be undertaken by tradespeople). Such scenarios were explicitly provided for in later public health orders.
- There was confusion over what was and was not permitted under the public health orders (the consequences of this are discussed in greater detail in **section 4.2**).

Public health orders were also introduced to regulate newly emerging aspects of pandemic management, including vaccination and registration of a positive COVID test result.

The case studies below provide examples of some of the concerns people contacted us about in the second year of the pandemic.

The imposition of public health orders in general

During the 2021 reporting period we only received 24 complaints simply raising objections to the fact that certain ministerial orders, directions or decisions had been made. However, we are unable to handle complaints about public health orders or other decisions that are made by the Minister personally.

Case study 1.⁸

I'm unhappy with the lack of supporting evidence to justify various decisions taken by the NSW Premier and the Minister for Health in response to the COVID pandemic.

Case study 2.

The NSW Government has designated the LGA I live in as an 'area of concern.' I would like this designation reviewed.

Case study 3.

I want to complain about the public health order. I'm upset the police can require me to provide my vaccination status.

Confusion over the rules

Case study 4.

I want to complain about the public health orders in general - the length of the public health order and the current end date. Also, I want up-to-date information on the public health orders as they keep changing.

Case study 5.

I work in a pub. NSW Police have come around and advised I would need to be wearing a mask as a frontline hospitality worker, but I have been given an exemption from mask wearing. I am confused about what is the correct information.

Driver licencing

Case study 6.

I sat my learners test a couple of months ago, right when lockdown restrictions started to be implemented in NSW. Service NSW staff must have made a typo when entering my details into the system. My licence has an incorrect address printed on it and it was delivered to that neighbouring house. There is currently a COVID-related restriction in place which prevents anyone in NSW from changing their address on their licence.

After escalating my complaint to a team leader, they agreed to amend the licence and send out a new one. They posted a new licence to the correct address, but it still has the incorrect address printed on it. When I followed up with Service NSW they advised there really isn't anything they can do and I should apply for a change of address once the restrictions ease.

Case study 7.

Driver licence testing is currently suspended in several locations in NSW because of the COVID lockdowns. My son has a disability and I need to take him to medical appointments. I contacted Service NSW to find out if I can apply for an exemption so I could sit the test and was directed to fill in a particular form. I was told they would notify me of their decision within 2 weeks, but this did not happen. I made several calls and was finally informed that my application had been denied. I applied again and have still not heard anything. If my application is being denied I at least expect a reason in writing and information about how I can appeal the decision.





2.4. Complaints about vaccines

The COVID vaccination rollout generally, as well as mandatory vaccination requirements for certain cohorts were also the subject of complaint to our office. A phased rollout of vaccines was set in motion with the most vulnerable Australians set to be vaccinated first and young, healthy individuals last.⁹ The initial aim was to have all eligible Australians fully vaccinated by the end of 2021.¹⁰ On 21 February 2021 the Prime Minister, Chief Medical Officer, Chief Nurse, and a small group of aged care staff and residents became the first Australians to receive the Pfizer vaccine.¹¹ However, a number of issues with the rollout were reported in the media:

- **Delays** – vaccine supplies did not arrive in Australia as expected.
- **Insufficient supply** – Australia's initial vaccination plan relied heavily on the AstraZeneca vaccine. On 8 April 2021, the Australian Technical Advisory Group on Immunisation recommended the Pfizer be preferred over the AstraZeneca vaccine in people under the age of 50.¹² As a result Australia experienced a shortage of alternative vaccines that could be administered to this cohort of the population.
- **Inadequate booking systems** – people not yet eligible for vaccination were easily able to exploit weaknesses in the systems to book and receive a vaccination.
- **Inequality in access** – information and education campaigns in languages other than English were slow to commence. Vaccines were slow to reach regional and remote communities. Data suggests that by the end of September 2021, a gap of 17.2% in full vaccination rates of Indigenous and non-Indigenous Australians had emerged.¹³

We received a range of complaints about:

- delays and supply constraints
- the legal requirement for health care professionals, paid care givers and teachers at primary or high schools amongst others to get vaccinated
- differences in the way regulations would apply depending on a person's vaccination status.

We have been unable to deal with most of these complaints, as they have been about conduct that is excluded from our jurisdiction – including where the conduct relates to a Commonwealth agency rather than a NSW Government agency. However, we do have jurisdiction to receive complaints about the systems and processes developed by NSW Government agencies involved in the administration of the vaccination program, including NSW Health and Service NSW.

Some of the concerns raised by people who contacted our office about the vaccination program are set out below.

Access to a vaccine of choice early in the program

Case study 8.

I live in regional NSW and want to get vaccinated but as I am over 65 years old, I only have access to AstraZeneca. I have underlying health conditions and desperately want the vaccine but will only consider Pfizer or Moderna. My GP told me he could get a \$10,000 fine if he gives me the Pfizer vaccine.

Mandatory vaccines

Case study 9.

I'm a casual cleaner and my employer is requiring me to get the jab. Who will be liable if I get sick and am hospitalised because of receiving the jab?

Case study 10.

I received an email from NSW Health advising me of the requirement to be vaccinated against COVID by 30 September. I refer to my rights as prescribed in the Constitution and object to 'mandatory vaccination'. I was working in a clinical area, but since voicing my objections, my duties have been re-classified to administration work. I wrote to NSW Health to complain. They acknowledged my concerns but advised me they are acting in accordance with the public health order as invoked by the Minister for Health.

Case study 11.

I work at a big public hospital, and I do not intend to receive the COVID vaccination. I am concerned about the possible ramifications to my employment. My direct manager has reassured me that there will be no loss of employment, but there are mandates that state that if workers do not receive their first vaccination dose by 30 September 2021, they cannot return to work. Can you clarify the situation for me?

Case study 12.

I work for a government department; they are mandating that all caseworkers get the vaccine. This is not in line with the current public health order. The department set a deadline of 25 October 2021 to get vaccinated. Staff were not consulted before the directive was issued. I have raised it with the department in writing and asked for information about the risk assessment. They responded but didn't really address my concerns.

Rules for the unvaccinated**Case study 13.**

I would like information about the vaccine mandates for people with disabilities. I am vaccinated but my husband has a brain injury and has been given medical advice that the vaccine would put him at risk of stroke. I would like to know what the rules are going to be for people who cannot get the vaccine, as opposed to those who don't want to.

Case study 14.

I am required to attend campus for practical classes. I am concerned about this as some people may not be vaccinated. The ventilation in the classrooms is inadequate. I have spoken to the teacher, but they have simply said I have to attend.



2.5. Complaints about mandatory quarantine

In NSW, mandatory hotel quarantine was introduced on 28 March 2020 for all arrivals by sea,¹⁴ and on 29 March 2020 for all arrivals by air.¹⁵ Quarantine requirements were lifted for fully vaccinated air arrivals on 1 November 2021,¹⁶ with quarantine for unvaccinated arrivals remaining in place until 30 April 2022.¹⁷

Mandatory hotel quarantine initially required all travellers who arrived in Australia by air and sea to quarantine at a 'designated quarantine facility' for 14 days. Hotel quarantine was a joint operation led by the NSW Police Force and NSW Health. The terms of quarantine were governed by the *Public Health (COVID-19 Air Transportation Quarantine) Order* and the *Public Health (COVID-19 Maritime Quarantine) Order* in place at the relevant time. As previously noted, the conduct of both the Minister for Health and the NSW Police Force are excluded from our jurisdiction. However, we do have jurisdiction to receive complaints about other agencies that are involved in the quarantining system, including NSW Health and NSW Treasury.

From 1 February 2021 to 30 April 2022, we received 436 complaints and inquiries about police-managed and Special Health Accommodation hotel quarantine.¹⁸ The issues most often raised were similar to those raised in 2020, such as the condition and cleanliness of hotel facilities and quarantine fees. Contacts about mandatory hotel quarantine remained stable from February to October, and unsurprisingly began to taper off as quarantine was phased out for arrivals by air in late 2021.

Figure 6. Actionable complaints about hotel quarantine vs other COVID-related complaints 1 February 2021 – 30 April 2022

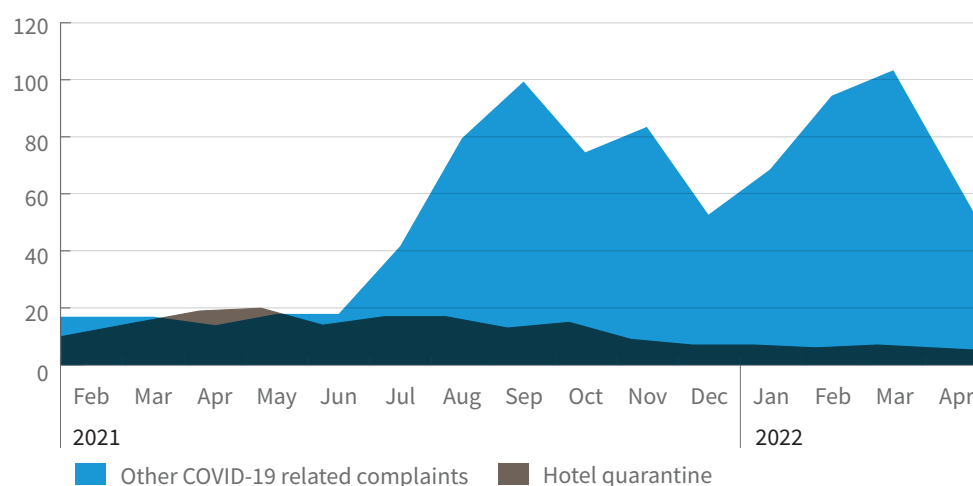
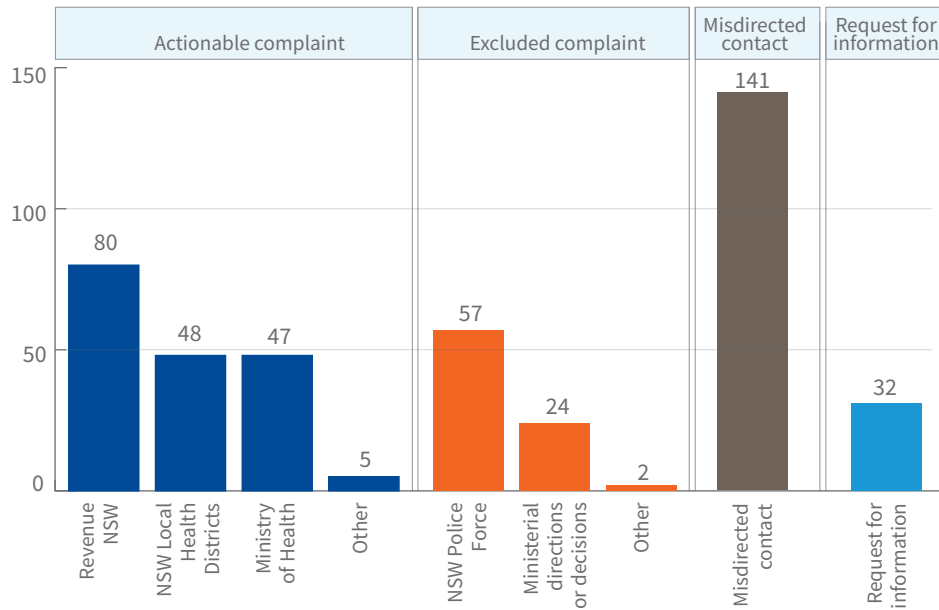


Figure 7. Contacts about hotel quarantine by agency and jurisdiction, 1 February 2021 – 30 April 2022



2.6. Complaints about self-isolation

Since the earliest days of the pandemic, public health orders have required those diagnosed with COVID to stay at home and remain separated from others. This applied even if the person is feeling well and even if they are vaccinated. Individuals can be required to self-isolate in a quarantine facility, hospital, or other medical facility if a designated health practitioner or an authorised contact tracer has determined they cannot safely isolate at home.

In NSW, the self-isolation system is administered by NSW Health. The terms of self-isolation are set out in the *Public Health (COVID-19 Self-Isolation) Order*, which has been in place since 26 March 2020, and was (as amended from time to time) still in place as this report was being written.

People with COVID-19 can only leave self-isolation after being 'medically cleared'. The only other circumstances in which people in self-isolation are permitted to leave their home is to get a COVID test, for medical care or in an emergency (including to avoid injury or escape the risk of harm from domestic violence).

Between June 2021 and April 2022, the requirements around who had to isolate and for how long changed significantly. Some of the key shifts are outlined below.

Definition of 'medical clearance'

In March 2020 when self-isolation was first required, medical clearance meant that a person had been assessed to be free of COVID. From 23 June 2020 until 21 September 2021, medical clearance was defined as the person having been assessed by a medical practitioner as not infectious for COVID.

After that date, medical clearance required the receipt of a notification of clearance to that effect from a medical practitioner or registered nurse or NSW Health because the person was required to carry and produce that for inspection on request.¹⁹ The purpose of the medical clearance notice was to deem the individual to be fully vaccinated for the purposes of other public health orders. A registered nurse would typically contact individuals by SMS or phone call at the end of their isolation period to confirm if they could be released, and the medical clearance notice was also provided at this time.

On 30 December 2021, the definition of medical clearance was amended so that people diagnosed with COVID could leave isolation 7 days after the day they first returned a positive COVID test (via either a rapid antigen test or a polymerase chain reaction test).²⁰ Individuals could stop self-isolating sooner than 7 days if the person was notified, by NSW Health or a medical practitioner they could do so.

Definition of 'close contact of person with COVID'

The July 2020 self-isolation guidelines for close contacts required a person who had been in contact with a person with confirmed COVID infection while they were ill to isolate for 14 days after seeing that person or attending a place where they visited.²¹

In January 2021 this changed to a person who spent 4 hours or more with a confirmed case in a household or 'household-like' setting.²² As vaccination rates increased, different isolation periods were introduced for fully vaccinated close contacts, and those not vaccinated.

On 22 April 2022, medical advice was changed, and guidance issued by NSW Health stated close contacts did not need to self-isolate, rather they were encouraged to monitor symptoms, where practicable to work from home and to take a daily rapid antigen test before meeting anyone outside their household.²³

Both the NSW Ombudsman and the Health Care Complaints Commission have a role in overseeing NSW Health. In the second year of the pandemic, we continued to liaise with the Commission to coordinate our oversight activities. The Commission handled complaints that raised concerns about the expert opinion or professional conduct of a health care practitioner, such as complaints about the standard of health care while in isolation. We dealt with complaints about administrative issues, such as delays in communication with those in isolation.

Many of those who complained to us from isolation raised concerns that they had not received a clearance letter or contact from relevant staff to authorise their release from isolation. We made inquiries with NSW Health to ensure these cases had not been overlooked and were being processed in accordance with policy.



Case study 15.

My wife and I tested positive for COVID and have been in quarantine at our home for 3 weeks. We have completed the isolation period but have not received any clearance letter so we can't leave the house or go back to work. We received a call from NSW Health and were given verbal consent to return to normal and told that a letter would be sent out to confirm this as soon as possible. Verbal consent does not mean anything, and my workplace will not approve my return to work without written confirmation.

Case study 16.

My wife and I tested positive for COVID. My wife and I were due to be released from home quarantine almost a week ago however we have been unable to contact NSW health to get authorisation to leave home. We have not received any updates from NSW Health about our release.

Case study 17.

My son and I are being held in COVID isolation at an apartment past our release date. I tested positive to COVID and spent time in hospital, I was released from hospital and sent to the apartment to isolate. Shortly after this my son tested positive to COVID and was sent to isolate with me. I have contacted the release team several times regarding our release however they are unable to provide any information about when a doctor will be able to see us to approve our release.

Case study 18.

I am currently in NSW Health accommodation due to testing positive to COVID. I had been staying at my mother's house and was isolating in the garage. NSW Health determined that as I had no shower or toilet facilities in the garage, I should be moved into health accommodation. I don't know the date I was taken to the health accommodation and am unclear on when I will be released. I feel like I am a prisoner.

Case study 19.

My daughter and I are 'locked up' in Special Health Accommodation after we both tested positive to COVID. We are due to be released Friday and Saturday respectively. My daughter has special needs, and we need to leave 'as a team'. I have been trying to contact the hospital throughout the day as advised by the nurses at the Special Health Accommodation.



2.7. Complaints about COVID fines and enforcement

The NSW Police Force holds the primary responsibility for enforcing the public health orders. In the case of an individual, the maximum penalty for breach is \$11,000, imprisonment for 6 months, or both, and a further \$5,500 penalty may apply for each day the offence continues.²⁴

NSW Police Force officers can also issue on-the-spot fines to individuals of:

- \$40 for failure to comply with a direction to wear or carry a mask for those aged 15 or younger
- \$80 for failure to comply with a direction to wear or carry a mask for those aged 16 or 17 years of age
- \$500 for failure to comply with a direction to wear or carry a mask for those aged 18 years or older
- \$1,000 for breach of a public health order relating to COVID (on or after 26 March 2020)
- \$1,000 for failing to register a COVID positive result from a rapid antigen test through Service NSW
- \$5,000 for failure to comply with the obligation to truthfully answer questions asked by a contact tracer, and for spitting or coughing on a public official or other worker
- \$5,000 for failure to comply with obligations to self-isolate if diagnosed with COVID, including staying at home or in hospital; providing details of close contacts; and complying with NSW Health guidelines
- \$5,000 for failure to comply with obligations to self-isolate if found to be a close contact of a person diagnosed with COVID
- \$5,000 for providing, displaying, or producing information or evidence showing a person is fully vaccinated (such as vaccination evidence) that is not true and accurate.²⁵

A person can seek an administrative review of a fine if they believe there was a mistake in issuing the fine or there are other reasons that contributed to the offence. Reviews are conducted by Revenue NSW, an agency which provides a processing service for over 250 organisations (including the NSW Police Force) that issue fines in NSW. A person may request Revenue NSW review the fine if they believe a fine was issued in error or that extenuating circumstances may apply.²⁶

In late June 2022 Revenue NSW advised us that, in any given year, it will usually receive about 300,000 to 400,000 review requests each year. It also advised that it had received about 10,000 requests for a review of COVID fines since the start of the pandemic.

While we cannot handle complaints specifically about the conduct of the NSW Police Force, including in terms of officers' activities in enforcing

COVID fines, we can handle complaints about Revenue NSW, including about the policies and practices it has in place and the decisions it makes in respect of requests for a review of COVID fines.

Fines and their enforcement are also discussed further below in **chapter 4**.

Case study 20.

My neighbour has been breaching COVID rules by having 15 people in their property and playing loud music. The real estate agency that manages my neighbour's property has not taken any action. I called the police but didn't get an incident number and the neighbours just start partying again once the police leave.

Case study 21.

My son spent some time at the beach and was issued with infringements for breaching a public health order totalling \$2,000. My son is going through some challenges at the moment – he doesn't really understand lockdown or the repercussions of his actions. What are my son's rights?

Case study 22.

I received a fine for not wearing a mask despite having a medical exemption. The reason given by the issuing officer was that the medical exemption did not state my health condition. Can they do this?

Case study 23.

I want to dispute a \$1,000 fine I received for breaching a public health order. My residential address is in [Suburb A]. According to the public health order in force at the time of the incident, the LGA I live in was not designated a 'high risk' area, so I was permitted to exercise within a 10 km radius of my address. My partner lives in [Suburb B] – this is within the 10km radius. We walked to [Suburb C], where we were stopped by police. [Suburb C] is outside the 10km radius from my home, but it is within the 10km radius from my partner's home. I thought I could be in [Suburb C] as long as I was with my partner. The public health order states: 'to permit people who live alone to nominate a person as a social visitor ... and accompany the person when undertaking exercise or outdoor recreation.' The police did not issue on-the-spot fines and instead said they would decide later if the fines would be issued. A short time later I received a fine in the mail for breaching the public health order by travelling beyond a 10km radius from my home.



2.8. Complaints about refunds and waivers

During the second year of the pandemic, we continued to receive complaints about refunds and waivers when services or events were impacted or cancelled.

Case study 24.

I want to complain about the childcare centre my child attends. The centre is charging fees for the days my child would usually attend irrespective of whether he attends or stays at home during the lockdown period. When I didn't pay the fees, they proceeded to recover the payment owing from the bond. They subsequently refunded this to me, but the whole process was unfair.

Case study 25.

I have an annual membership with a wilderness park. Now that the lockdown has lifted, they have unfrozen my membership, however they won't allow me access unless I am vaccinated. I have not been able to visit my specialist to get proof of vaccine exemption and would like the park to place my membership back on hold until I can get the exemption.



2.9. Complaints about education and student placements

The issues most often raised in complaints about education providers were similar to those raised in 2020, such as cancelled courses, the quality of the course following its movement to online delivery, and the fees charged for courses that were moved online part way through a teaching period.

However, the issue of student placements appeared to be more challenging in 2021. Many hospitals reduced their capacity to supervise students as they struggled to maintain staffing levels during the pandemic. Universities managed to accommodate student placements earlier in the pandemic by reorganising student schedules. However, as the pandemic has worn on, this became less feasible. Hospitals prioritised students who were in their final year of study and fully vaccinated.²⁷

Case study 26.

I am enrolled in a 3-year nursing degree that I was due to complete in January 2022. A requirement of the degree is 808 hours of placement. I still have 8 weeks of this requirement outstanding, however the university has not been able to organise a placement. This means I will not be able to graduate on time. I requested an internal review and was told there was nothing the university could do as there were simply fewer placements available due to COVID.



2.10. Complaints about support payments

The Commonwealth and NSW Governments introduced numerous programs to provide financial assistance to individuals and small businesses, including the JobSaver, the COVID micro-business grant, and the COVID business grant.²⁸

JobSaver: the JobSaver payment was designed to provide cash flow support to impacted businesses throughout NSW to help maintain their NSW employee headcount. Payments ended on 30 November 2021. The payment was equivalent to 40% of the weekly payroll for work performed in NSW:

- minimum payment was \$1,500 per week
- maximum payment was \$100,000 per week.

JobSaver payments decreased to 30% of weekly payroll for all eligible businesses after 70% of the NSW population was fully vaccinated. Payments further decreased to 15% of weekly payroll when 80% of the NSW population was fully vaccinated. Payments decreased at a lower rate for businesses located in regional NSW.²⁹

COVID-19 micro-business grant: the 2021 COVID micro-business grant was designed to provide cash flow support for micro-businesses in NSW who had their work impacted by the restrictions while continuing to incur business costs. To be eligible, businesses needed to demonstrate they experienced a turnover decline of 30% or more in the past fortnight due to the impact of the public health order, and that they were maintaining their employee headcount.³⁰

COVID-19 business grant: the 2021 COVID business grant provided support for businesses that experienced reduced demand or had to close due to the public health orders. It supported businesses across NSW for the first 3 weeks of the restrictions (26 June to 17 July 2021). This was a one-off grant of either \$7,500, \$10,500 or \$15,000.³¹

These 3 grants could be used for business costs incurred due to the impacts of the public health order in NSW and for which no other government support was available, including:

- salaries and wages
- utilities and rent
- financial, legal or other advice
- marketing and communications
- perishable goods
- other business costs.

Common complaints about these grant schemes included delays in processing applications, decisions to decline an application at the outset or the cessation of payments without warning after a compliance audit.

In response to our inquiries:

- Service NSW provided information about how the delays had arisen and the steps they had taken to triage new applications and reduce the existing backlog of applications. With this information in mind, we temporarily altered our complaint referral processes to Service NSW so as not to place additional burdens on the agency. Rather than directly referring complaints about delayed grant applications to Service NSW for them to respond to, we informed complainants about the advice we had received from Service NSW and suggested a timeframe for when the complainant may consider following up directly with Service NSW if their matter remained unresolved.
- Service NSW adapted its processes to ensure all applicants would receive a telephone call prior to any fund recall action was initiated through the bank. Service NSW also apologised to individuals who had not been clearly notified that their application had been audited and any funds they had received would be recalled.

Case study 27.

I was approved for a small business grant back in 2020 and received \$10,000. Over the next 5 months I spent a bit over half the money to keep my business running. Towards the end of the year, I received a letter stating Service NSW are conducting a compliance check, and that they needed further information to be able to process my application. I provided all the information and didn't hear anything further from Service NSW. I thought that because nobody had made further contact with me, the information I had sent to them was sufficient.

A month or so later, I received a letter from my bank advising that \$10,000 has been frozen in my account as they have been notified the \$10,000 small business support grant I had received was an error. When I phoned Service NSW I was told I was not eligible for the grant and the money had to be returned.

Case study 28.

My JobSaver application was approved, and I received the first payment, but have not received any payments since. I called Service NSW and was told there was a glitch in the system for applications around the same time my application was approved and that it should be sorted soon.



2.11. Complaints about community service providers

We handle complaints about community services that are provided, funded, authorised or licensed by the Minister for Families, Communities and Disability Services. This includes both the Department of Communities and Justice itself, as well as a large number of non-government organisations which provide community services including: community support and development; child protection; short-term accommodation and homelessness support; out-of-home care and permanency support; assisted boarding houses; and early intervention and family support services. Aged care and residential disability services are generally outside of our jurisdiction, as primarily Commonwealth government responsibilities.

Lockdowns prevented people across the state from visiting loved ones. This reduction in human connection was challenging for everyone, but for some it jeopardised their only line of support from the outside world or the implementation and oversight of a safety plan, a care plan, or a restoration plan. Various reports show the demand for housing and homelessness services and support for children, young people, and families spiked during the pandemic.³²

The Department of Communities and Justice, in connection with service providers, developed a library of resources to support service providers and members of the community navigate their way through changing modes of service delivery and feelings of loneliness and depression. In 2021, service providers continued to experiment with using online technologies to maintain connections with the most vulnerable members of society. For example:

- community centres arranged 'online drop-in' hours and established programs to call isolated individuals on a regular basis
- parenting programs, playgroups, youth events, story time and information sessions were run online
- case workers, at times, conducted home visits virtually.

Case study 29.

I have 3 adopted children and one foster child supported by a non-government service provider. A case worker came to my house to assist with my foster son's home schooling despite my concerns about the COVID risk. We live in an area that is not in lockdown, but the case worker travels out from an LGA that is in lockdown. While the case worker was here, she received a message from NSW Health advising that she was a close contact of a COVID positive work colleague and to immediately self-isolate. I immediately contacted NSW Health to ask for guidance in this scenario and they recommended that I remove the children from school; everyone in the family get tested immediately; and to self-isolate. I contacted the service provider but no one has responded to me in the last 2 days. This could have been avoided if the service provider had followed my wishes of not sending a worker out to assist with the home-schooling. I feel they neglected the health and safety of their clients by sending workers to make house calls.

Case study 30.

My niece, Monique, is receiving support services from a community services provider. I'm in the process of applying to become Monique's primary carer. The provider has failed to meet Monique's concerns again and again. Monique has had more than 17 caseworkers throughout her life. There has been an ongoing history of neglect, and instances where case workers have forgotten her and left her alone at shopping centres, most recently they have not organised a COVID vaccine for Monique despite her returning to school shortly.

Contact visits**Case study 31.**

I want to complain about a service provider. I don't live in NSW, but I was forced to sign my daughter, Elena, over to carers in NSW. Elena has been in NSW for about 4 years now. I get 4 face-to-face visits per year and phone calls or FaceTime once a week. I know the COVID border closures are not the provider's fault, but I have only had 1 visit this year and the carers have not facilitated any other contact with me. I have only had 5 video calls and 2 phone calls with Elena in the past few months. The provider has not done anything to help me have contact with my daughter.

Case study 32.

My son is currently in care. I am currently going through the process of having him restored to my care. Before COVID, I was having 1 supervised contact visit for 2 hours every month. However, during COVID the visits were suspended and calls only resumed recently. I want the supervised visits to start again as soon as the COVID restrictions ease.



2.12. Complaints about correctional centres and detention facilities

Until mid-2021 the adult and youth custody systems had largely avoided COVID entering their centres on any scale. That changed with the Delta and Omicron variants. With both variants being highly transmissible – and many people being asymptomatic while having the virus – it was carried into both systems. This was despite routine quarantining of all fresh admissions, temperature testing of staff, the use of personal protective equipment, including masks, and the suspension of in-person visits.

On 31 August 2021, CSNSW ordered a state-wide lockdown while data on positive cases of both inmates and staff was collated and plans for managing inmates with COVID and their close contacts were refreshed. Since then, due to groups of inmates having COVID or because of staff shortages (caused by them contracting COVID or being a close contact of someone who has contracted COVID), centres have had periods where inmates have been frequently locked in their cells. The combination of lock-ins and staff shortages have had far reaching effects on life in prison.

Many inmates have had reduced access to shower facilities, clean clothes, programs, work, works release, external leave and contact with loved ones, including in-person visits. This has understandably caused frustration and complaints. The experience of inmates has not been uniform across correctional centres. Overall, those inmates at modern facilities with access to showers and tablet devices in their cells have had a better experience than those in other centres which have communal showers or are awaiting Wi-Fi infrastructure for a tablet rollout. Tablets, which are being rolled out across centres, provide an additional means for inmates to contact their families. Depending on the time of day tablets are distributed, inmates may also use them to call us.

We receive complaints from inmates and detainees primarily by phone (inmates generally don't have immediate access to call our office if they are in a centre or wing which is in lockdown – unless they have access to a tablet and it is within their cell after 9am or before 4pm). We also receive complaints in writing and during our visits to custodial centres. Our custodial visits program was significantly interrupted during the pandemic, however between 1 February 2021 and 30 April 2022 we visited 26 custodial facilities (22 correctional centres for adults – 2 of which we visited twice – and 4 youth justice centres).

During the 2021 reporting period, we received 401 actionable complaints from inmates and young people in youth justice centres directly relating to COVID (an average of 27 per month). This is likely an

underestimate, given that it is often not immediately apparent whether a particular issue in a custodial centre (eg a lock-in or lack of access to services) is directly related to COVID. The complaints were about:

- conditions while in quarantine upon intake
- lock-ins across all centres and the impact this reduced time out in the yard was having on inmates' mental health³³
- movements (eg moving from one centre to another)
- the impact of the inability to participate in programs on classification and parole consideration
- cancelled court dates
- testing positive to COVID while in custody
- the lack of information provided to family and friends when their loved one tested positive for COVID in custody.

We have continued to review and keep abreast of changes to procedures and routines in custodial settings and have provided advice about the reasonableness and lawfulness of the changes to relevant agencies. We also gave feedback to CSNSW and Youth Justice NSW (**YJNSW**) about the matters being raised with us by those in custody. This communication has facilitated the refinement of procedures. Our ongoing liaison with agencies has also helped to ensure our staff have accurate up-to-date information which we can share with those in custody who contact us about their concerns.



Quarantine

In early March 2020, CSNSW changed inmate intake processes with the aim of preventing COVID being introduced into the correctional system. All new inmates entering the system were quarantined for a 14-day period (this was subsequently reduced to 10 and, recently, 7 days). Inmates were initially 'cohorted' based on their intake dates and could interact with a small group of other inmates also in quarantine. However, due to the increased transmissibility of the Delta strain these intake processes were amended, and thereafter inmates generally were housed by themselves or with one other person (depending on specific needs) for the 14-day period. They were tested for COVID when they first arrived at the centre and on day 12, before being cleared to join the main population.

After it became apparent that quarantine and isolation practices were not preventing all inmates who were carrying the virus undetected from bringing it into centres which were otherwise COVID-free, additional measures were introduced to the management of inmates transferred between centres. CSNSW implemented a staging process which involved inmates in regional centres being quarantined from the main population for several days after transfer from reception centres in metropolitan Sydney. Prior to being cleared to join the main population, an inmate had to return a negative COVID test. Although this measure appears to have been effective, and arose from a clear need, it has caused significant frustration to inmates affected by it, particularly if they had recently completed other periods of quarantine, isolation or were under lockdown.

In some cases, there were delays in release from quarantine, and following our inquiries we were told that these were due to backlogs at the pathology service. In particular, we were told that backlogs were caused by the increase in case numbers within correctional centres and thus the increased number of people being tested and moving between quarantine wings and the general population. We confirmed that inmate tests were prioritised and delays in release from quarantine generally did not exceed more than a few days. This issue was resolved when rapid antigen tests became available for inmate testing.

Similar quarantine measures were also implemented in the youth justice system, with young people also subject to a mandatory 14-day period of quarantine on entry. This system of quarantine upon intake has continued throughout 2021 but was reduced to 10 days in December.

Case study 33.

I have been in isolation for 6 weeks now. I was deemed a close contact of a COVID-positive inmate, so I spent 14 days in isolation. I was then placed in isolation again because I was being transferred to another centre. When I arrived at the new centre, I was put on another 14 days isolation. During this time, I've had 7 negative COVID tests and I am double vaxxed.

Case study 34.

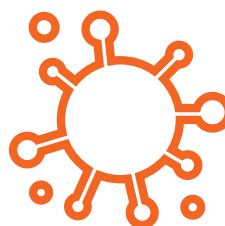
I am double vaxxed but have been in quarantine in custody for 7 weeks. I have not received any outside time and am struggling with the amount of quarantine I have had. On intake I was placed into 2 weeks quarantine, then I was transferred to another area of the centre and had to quarantine for another 2 weeks. Then, I was transferred to another centre and have been in quarantine for nearly 3 weeks now.

Case study 35.

I've been in custody for 12 days but have only had one COVID test. I know I need 3 negative results to get out of quarantine, but this is now impossible within the 14 day period. My cell mate is on day 18 and has produced 3 negative results but is still in quarantine. Another guy in the quarantine unit is on day 21.

Case study 36.

I have taken several tests in the past 3 weeks and tested negative to COVID. But I'm not able to leave my cell because my cell mate is refusing to take tests. They told me that even though I tested negative I will have to remain in isolation for another week. This is unfair and I'm being punished because of my cell mate's actions. I've asked to be transferred to a different cell but my request has not been acknowledged.



Lock-ins and transfers

The broader community lockdowns across greater Sydney under public health orders, coupled with the increasing case numbers had an impact on staffing at correctional centres across the state. For example, the impact of public health orders for LGAs of concern had a significant impact on centres in Western Sydney. Changes in staffing meant that many centres had to scale back their operations. This meant inmates not in quarantine also spent less time out of their cells, and escorts between centres, medical appointments and to funerals happened less frequently. We made inquiries in many instances to ensure:

- inmates with a minimum-security classification stuck in a maximum-security centre were prioritised for transfer to the centre they had been classified to
- health staff were appropriately involved in the triage of inmates prioritised for medical escort
- external leave requests had been received and considered by all relevant decision makers.

Case study 37.

The lock-ins at the centre are having a negative impact on the inmates' mental health. I have had both jabs. It's unfair that I should be punished by being locked in all the time. When we are locked in, we don't get to shower.

Case study 38.

The centre was locked down on Friday and we were told it could go for another 2 weeks. The General Manager told us that once everyone was double jabbed lockdowns like this would not occur anymore. We are getting very frustrated with the lack of information provided during this lockdown and this is likely to lead to problems at the centre. During the last lockdown, the previous General Manager sent messages out informing inmates of what was happening, but this has not occurred for this lockdown. We want the information to be disseminated on our tablets.

Case study 39.

Our pod and wing have been locked in for 9 days, and we only get out for an hour a day if that. As a result, we haven't been able to work for 9 days. It is difficult to get in contact with the CSNSW support line when we are locked in for so long. The support line has been ringing out or giving an engaged tone. We have been talking to the officers, but they have said there is nothing they can do; the centre does not have enough staff to allow inmates normal time outside of their cells.

Case study 40.

I was classified 4 weeks ago, and I have still not moved from the maximum to the minimum area. I have put in 3 forms regarding my classification and called the CSNSW support line, but there has been no information about my transfer. When I spoke to staff, they told me they will 'sort it out after COVID'.

Case study 41.

I have a broken ankle and it's not been looked at or taken care of. I broke my ankle in the yard on the weekend. It was x-rayed on Monday, but I have not had any update or outcome. I'm on crutches and in a lot of pain. The ankle is all black. The officers have said because of COVID I can't go to the clinic.

Case study 42.

I missed my father's funeral. The Governor and executive services said that all external leave requests are currently suspended due to COVID as they need to ensure the wellbeing and safety of inmates and staff. Can CSNSW still use COVID as an excuse not to approve an Inmate leave request to attend a funeral?



Reduced access to programs and delayed parole

Since the beginning of the Delta COVID outbreak in June 2021, there has been a far greater impact on criminogenic program delivery in custody.³⁴ Based on instructions of the Commissioner for CSNSW, 8 of the 16 centres that run group-based criminogenic programs (including all centres in the Greater Sydney area) stopped delivering these courses.³⁵ This has impacted most on intensive therapeutic programs – sex offender programs, the Violent Offender Therapeutic Program and the Intensive Drug and Alcohol Treatment Program. The number of available places in these courses fell by half from 1,300 places to 520.³⁶ With the limited number of places available, we were told that priority was given to:

- participants who have almost completed a discrete program
- participants past their Earliest Possible Release Date
- special category offenders (High Risk Offenders under the *Crimes (High Risk Offenders) Act*, Offenders of Special Interest, and Serious Offenders managed by the Serious Offender Review Council)
- other State Parole Authority releases with sufficient time to serve to complete a program
- participants with a very high-risk rating or current problematic behaviour (eg active drug use).

Complaints from people in custody frequently raised concerns about the reduced access to programs and how the inability to complete required programs would delay the approval of parole applications. While we do not have jurisdiction over decisions made by the State Parole Authority, we were able to make inquiries with CSNSW to find out whether an inmate due for parole consideration had been prioritised for participation in a program and if not, why such a decision had been made.

Case study 43.

My release on parole is being affected because I can't progress through my course. My parole officer said I need to complete a course before I'm released. I have been trying to do the course since June but participant numbers were reduced because of COVID. They have organised one on one sessions with the trainer, but I have only met the trainer 3 times. I was originally told it would take 6 months to complete, but now I've been told it may take 7 to 11 months. I was hoping my application for parole would be approved in November, but that's not possible now.

Case study 44.

I am going to miss my parole date because I can't complete my programs in time. I've been in gaol for 4 years and have only done some of the programs in my case plan. I was supposed to do one starting in January this year, but my centre has been locked down a few times because of COVID and so the program hasn't started. Now even if it does start it won't be finished before I'm considered for my parole. One officer has told me I'll be able to do another course next week but then someone else has said I'm not enrolled in that course. I'm really frustrated.

Case study 45.

I'm in the Violent Offenders Therapeutic Program and the number of lock ins at this centre is hindering our ability to complete the program. The course was supposed to resume 2 weeks ago but we've only had 2 days of courses because of being locked in during the week. This is affecting our parole and release dates. We've been told we are a priority, but it doesn't seem that way.

Visits

In-person visits were suspended in June 2021, but audio-visual link (**AVL**) visits continued to be available. Visits were reinstated again in late 2021, only to be suspended shortly after as the Omicron variant began to spread. AVL visits were also impacted by the large number of staff unable to work due to sickness or being required by public health orders to isolate as a close contact.

Since the start of the pandemic, inmates were given 3 free phone calls credited to their account each week. This includes 1 international and 2 domestic calls or 3 domestic calls. While community restrictions eased at various times, CSNSW was slower to reintroduce in-person visits, and this resulted in complaints being made to us.

Case study 46.

There are lots of lock-ins at the centre and AVL visits are being cancelled. My partner is pregnant and this is very hard.

Trials delayed and court appearances cancelled

In response to concerns about the spread of COVID the District and Supreme Courts implemented several procedural changes:

- New jury trials commencing across NSW from 28 June 2021 were temporarily suspended while the empanelment process was reviewed to limit close social contact among jurors. Where a jury had already been selected and empanelled, the matter continued. Steps were taken to enable judge alone trials, bail applications and civil trials to proceed in accordance with medical advice concerning the virus.³⁷
- Processes and templates were developed so that simple court proceedings and appearances could be conducted via email.³⁸
- The courts were prepared to stand matters over if CSNSW advised they could not bring the inmate to the AVL room or the visits area for their court appearance.
- Local courts cannot impose a sentence of imprisonment (amongst other penalties) if the offender is not physically present in the court.³⁹ In response to both the Delta and Omicron outbreaks, the courts issued new practice notices to delay sentencing until it could be done in person.

The conduct of a court is excluded from our oversight. However, we contacted CSNSW to ensure inmates were not denied access to their legal representatives.

The impact of changes to court procedures are discussed further in **section 4.6**.

Case study 47.

Twice this week my legal AVL visits have been cancelled without any explanation.

Case study 48.

Can you tell me that my court appearance won't be moved on Monday? All the cases keep being cancelled. I'm only in for petty offences – if my previous court dates hadn't been moved, I would be out by now. Also, I should have been given a tablet to attend my court dates, but they didn't organise that. They told me it's because I was in quarantine, but I don't think that's a reasonable excuse - all they had to do was give me the tablet.



Having COVID in custody

Generally, COVID positive male inmates are transferred to a designated area of the Metropolitan Remand and Reception Centre in Silverwater. Female inmates who test positive for COVID are transferred to and managed at Silverwater Women's Correctional Centre. Any inmate who requires acute care is transferred to a public hospital. When case numbers first started to rise in custody and the severity of illness caused by the Omicron variant was still not well understood, testing positive for COVID in custody caused a lot of anxiety for individuals and their loved ones. People naturally wanted information about their or their loved one's health and the standard of care they would receive. In these situations, we made sure:

- inmates had been seen by medical staff and received information
- inmates knew about the support services they could call
- the inmate's family had been told if the inmate had been moved to one of the centres identified to manage COVID positive inmates
- inmates in isolation could access a phone to the extent this was practicable.

Case study 49.

I'm concerned the centre my husband is at is trying to hide the fact they have COVID positive inmates there. I haven't been able to speak to my husband for 3 days and I'm worried about his wellbeing.

Case study 50.

I have not been able to communicate with my son, Amir, who is currently in hospital for COVID. He has been in hospital for 1 week. The Nursing Unit Manager is not taking my calls and tells me to speak to CSNSW about it. I'm stressed because I know that once Amir returns to custody he will have to undergo further isolation and will be restricted from accessing the phone.

Youth justice notifications

The *Children (Detention Centres) Regulation 2015* requires youth justice centres to notify us when children and young people are in *segregation* (for protection) beyond 24 hours duration.⁴⁰ By agreement, YJNSW also notifies us if a child or young person is *separated* (eg for health reasons) for more than 24 hours or when a combination of segregation, separation and/or confinement (used for punishment) meets the 24 hour threshold. Reviewing these notifications allow us to consider the person's current situation, how they are being managed, and to make inquiries if appropriate.

The introduction of quarantine upon intake meant that all children entering detention were placed in separation for longer than 24 hours. Consequently, the number of notifications we received tripled at the start of the pandemic and has remained high as quarantine upon intake continues. In 2019, we received an average of 37 notifications per month. This increased to an average of 110 per month in 2020 and by 2021 it had increased again to 149 notifications per month.

YJNSW actively supported young people to meet bail conditions so they could be eligible for release from custody during their quarantine period.

In custody, YJNSW have taken steps to ensure young people have time out of their room each day, as well as extra activities to keep them engaged while locked in their rooms (such as movies, learning materials, puzzles, and phone and tablet contact with family members).

3

Examples of other oversight activities in NSW



During the second year of the pandemic, other NSW oversight bodies also engaged in a range of work to ensure that the NSW Government's response to the pandemic was lawful, fair and reasonable, and to determine what lessons could be learned to improve future crises response planning.

A dedicated Parliamentary Committee was also established for this purpose.

In this chapter we look at just some of the work done by others in overseeing government agencies' responses to the COVID-19 pandemic.



3.1. Public Accountability Committee Inquiry into the NSW Government's management of the COVID pandemic

On 27 March 2020, the Legislative Council's Public Accountability Committee established an inquiry into the NSW Government's management of the COVID pandemic. The terms of reference for the inquiry included 'any matter relating to the NSW Government's management of the COVID pandemic.' Between 7 May 2020 and 11 February 2022, the Committee held 18 hearings. The Committee heard from a broad cross-section of interests about both the concerns held, and new initiatives introduced by government departments and community organisations.

The Ombudsman was invited to appear at the hearing, and was a witness on 17 September 2021, appearing virtually at a hearing about custodial services. During the hearing, the Ombudsman reiterated the importance of oversight during a crisis:

I have heard occasional comments that might seem to suggest that being in the midst of a global pandemic or other crisis is not the time for oversight and scrutiny. I just want to put on record the Ombudsman's fundamental disagreement with that proposition. Since the outset, some 18 months ago, we have noted that in many respects appropriate oversight and—of particular relevance to us—avenues for external complaint handling need to be embedded as an essential part of crisis response. This is particularly so when normal mechanisms of accountability like Parliament itself may be impeded. Where Government and its agencies are exercising extraordinary, intrusive powers and where they are reacting to unprecedented situations in new and untested ways, the value of people having an avenue to question and to complain is not important just because it is a fundamental democratic right—although it is—but also because there are always opportunities to learn, adjust and improve and because it can enhance public confidence and trust in what is being done.

Issues raised during the Parliamentary Inquiry⁴¹

'One of the things we [the Community Working Party] wanted foolproof was the overcrowding situation. We needed that plan to be foolproof so that in the likely event—and this is 12 months ago—that COVID got into our community, we would find somewhere to put our people that are living in overcrowding situations. I felt at that time that nobody really listened; nobody really cared what our opinion was.' (Community Spokesperson, Wilcannia)

'Starting with the lack of information or coordinated information. I continually look at briefs that are coming out that are 12 pages long. Our people do not want to read 12 pages about the incidence of COVID. We need fact sheets that are specific to our people that they can understand and that get straight to the point.' (Deputy Chair, NSW Aboriginal Land Council)

'We need good old-fashioned public health messaging. We need on-the-ground collaboration to get our community vaccinated, and we need to tell the community why it is important to be vaccinated.' (Mayor, Broken Hill City Council)

'If you just focus on the south-west part of Sydney, since the start of last year's pandemic we handed out 30,000 free meals to people who were already serving in their communities and could not cook or provide for themselves ... the community is asking, "What can you do apart from just sharing this information?" That is already there. Information will not feed people's stomachs. It might feed their mind and it might put them at ease, but people still need to put food on the table for kids.' (President, Turbans 4 Australia)

'The New South Wales State's response to COVID in western and south-western Sydney has had the effect of criminalising nearly 50 per cent of our city ... That is what happens when the State shifts the blame and treats an entire community as suspect and noncompliant ... We acknowledge that the New South Wales Government has rolled out additional funds of support during this crisis. But like much of the messaging and the approach throughout this outbreak, it is confusing, restrictive and unclear about who can access what and how this is done. That is why we have kept asking the Premier to include community leaders in the response before and not after the fact.' (CEO, Arab Council Australia)

'What we are finding is there has been confusion over the health orders. We have found them difficult to interpret at times ourselves and we are an advocacy organisation. I think trying to then relay the information to communities who have a second language—English is not their primary language—has been a real problem ... There has not been that link with the community leaders that needs to be there so that that information is considered by the community leaders and advice is given on how best to provide that information to communities and the formats it should be in. Sending out pamphlets, the written word, to people is for many communities not the best way to do it. It is through your community language, having leaders talk, radio, those sorts of things.' (Secretary, Unions NSW).

On 25 March 2022 the Committee tabled its report in Parliament. The report did not contain any recommendations to government, but rather summarised key issues that arose during the inquiry. The report acknowledged increased financial support through grants, welfare payments and fee waivers; moratoriums on evictions and certain debt collection actions; and stimulus packages. However, it also outlined a range of concerns raised about the Government's response to the pandemic.

Concerns included:

- **Confusion** over which rules applied and who had responsibility for what
- **Increased vulnerability** of various individuals and communities financially, physically and socially
- **Poor communication** about lockdowns and vaccinations (both in English and in community languages)
- **Limited consultation** with relevant stakeholders
- **Shortages** of staff, PPE and medical equipment, vaccines, rapid antigen tests, crisis accommodation and food
- **Strained services** including in areas such as health, mental health, family and community services and policing
- **Implementation gaps** arising out of the challenges associated with the practical implementation of policy across a federated system of government
- **Delays** in action and service delivery
- **Financial burdens** on individuals, small businesses and councils.

Such inquiries are a valuable means of informing Parliament and the public about issues of concern and the lessons learned that will inform future planning and service delivery. However, by their nature, parliamentary committee processes are unlikely to be the most effective mechanism for rapidly and efficiently identifying and addressing issues that require speedy resolution in a crisis situation. Inquiries are often held over many months (in this case 12 months) and the government thereafter has 6 months to respond to any recommendations made.



3.2. Inspector of Custodial Services review

The Inspector of Custodial Services inspects custodial facilities and manages the Official Visitor Program. Shortly after the pandemic began, the Inspector indicated that she would take a 'do no harm' approach ensuring that her oversight activities did not place any burden on relevant authorities and staff that might reduce or impede their capacity to respond to the pandemic.⁴²

On 15 September 2021, the Inspector of Custodial Services announced a review into the response to COVID in youth and adult custodial centres in NSW since the start of the pandemic. The review is focusing on:

- legislation and policy informing the response to COVID in NSW custodial centres and services
- governance structures within the key agencies
- minimising the risk of COVID entering a custodial centre
- reducing the risk of transmission to staff, inmates and detainees in custodial centres and services
- managing COVID illness in custody
- continuity of services for young people and adults in custody during the pandemic
- managing safe release from custody.

On 5 October 2021, we wrote to the Inspector offering any assistance with the review, including providing relevant data about complaints received and information we are hearing from inmates, detainees and other stakeholders (such as their family members) that might assist the review or identify issues for examination.



3.3. Law Enforcement Conduct Commission review

During 2020-21 the Law Enforcement Conduct Commission (the agency responsible for overseeing the NSW Police Force) conducted a review of complaints against police around COVID.⁴³



3.4. Auditor-General's reports

The Auditor-General for NSW helps the Parliament of NSW hold government accountable for its use of public resources. The Auditor-General is responsible for audits of NSW Government entities, universities, and local councils and provides certain assurance services for Commonwealth grants and payments to the State under Commonwealth legislation.

In May 2022, the Auditor-General released a report that considered the financial impact of COVID on the agencies integral to responses across the state government sector. It found (perhaps unsurprisingly) the pandemic significantly impacted the financial performance and position of state government agencies. Revenue from providing goods and services decreased while expenses for most agencies increased due to additional operating requirements to respond to the pandemic. The shortfalls were offset by increases in appropriations, borrowings

and grants and contributions from the Commonwealth. Response measures for COVID have meant the NSW Government is unlikely to meet targets in the *Fiscal Responsibility Act 2012*, being:

- annual expense growth kept below long-term average revenue growth
- elimination of State's unfunded superannuation liability by 2030.⁴⁴

The Auditor General is also currently conducting an audit into the effectiveness and efficiency of NSW Health's COVID vaccine rollout.⁴⁵



3.5. Decisions of the NSW Civil and Administrative Tribunal

The NSW Civil and Administrative Tribunal (the **NCAT**) decides a range of civil and administrative cases in NSW.

Only recently, the NCAT Appeal Panel has confirmed that it has jurisdiction to hear applications for merit reviews of directions given by the Minister (or delegate) under public health order (see **section 4.1**). As at the date of finalising this report NCAT has not decided any application for a review of a direction made under a public health order.

The NCAT has also had a role in the application of special COVID regulations within its jurisdiction, and COVID has been a factor in matters coming before it.

From 1 April 2020 – 30 April 2022:

- The Consumer and Commercial Division made 27 decisions relating to the application of special COVID regulations with reference to existing legislation such as the *Residential Tenancies Act 2010* and the *Retail Leases Act 1994*⁴⁶ The Appeal Panel heard and decided internal appeals from 16 of those decisions.
- The Guardianship Division made 13 decisions that considered the effects of COVID on the individuals subject to or potentially subject to a Guardianship or Financial Management Order.

During the second year of the pandemic, the NCAT decisions continued to reflect the challenges of navigating the ever-shifting realities of life during a pandemic. In our 2020 report, we noted cases where guardianship orders were varied 'as a COVID response.' In those cases, restrictive powers were granted to guardians that would have the effect of confining the individual subject to the order to their home or respite accommodation. However, between 1 February 2021 – 30 April 2022 the terms of guardianship orders were more frequently modified to permit the guardian to consent to COVID vaccination.⁴⁷

Another common theme visible across decisions mentioning COVID were challenges associated with maximizing the participation of the person in guardianship proceedings when hearings are held remotely (either via phone or AVL). The Australian Guardianship and Administration Council's guideline *Maximising the participation of the Person in guardianship proceedings* states 'the Person's participation is encouraged (unless to do so would be detrimental to the Person)'.⁴⁸

In a number of guardianship matters decided during the pandemic, the proceedings were heard by way of telephone or videoconference and without the participation of the individual subject to the order. In most cases, the nature or extent of the individual's impairment was such that the person was not able to participate in the proceedings or provide their views.⁴⁹

It is apparent that the restrictions necessitated by the pandemic would have posed practical challenges to these individuals accessing the same level of support and representation that might otherwise have been available.⁵⁰ The Tribunal also lost the benefit of being able to view the reactions of the individual to the proceedings or questions.⁵¹

As a result, a consequence of lockdowns appears to have been that people who required decision-making support may not have been able to access support and representation that could have supported and facilitated their participation in guardianship hearing.



3.6. Media

The media has long played a role in enabling 'the public to keep the government and public institutions generally, accountable for their actions'.⁵² It is appropriate to acknowledge the particularly important role that has been played by the media in this regard throughout the COVID pandemic.

The media not only shares and amplifies community service information with the community, it also frames messaging, shapes debate and highlights issues of concern. Some of the benefits of media, particularly today with the proliferation of social media, is the ability for news stories to be disseminated quickly to large, geographically dispersed audiences.

During the pandemic the media has played a significant role in shining a light on issues affecting segments of the community. In August 2021, for example, significant concerns were raised in the media about the slow rollout of vaccines in certain Aboriginal communities in Western NSW, and the risks associated with COVID spreading in populations where people often live in crowded accommodation where social distancing is difficult, and health services are limited.⁵³

It is understandable that concerned members of the community turn to high-profile media organisations to publicise their plight and advocate for remedies when they feel a government agency is not responding to concerns raised, or perhaps if it is unclear to them which agency (or even which government) is responsible for addressing an issue.

In such circumstances, the media may be uniquely placed to demand agencies provide quick, clear and comprehensive responses. Indeed, in some cases the pandemic has demonstrated that adverse media attention (or the threat of it) can be a particularly powerful incentive for expeditious government responses to issues.

By contrast, throughout the pandemic we have regularly heard from agencies that, because they are dealing with COVID itself, they are unable to respond to complaints we have received, or inquiries we are making (even within extended timeframes). While we have always sought to ensure that our actions do not unduly distract or burden agencies it is important, even in the midst of a global pandemic, that legitimate issues of complaint are addressed and systems improvements are considered.

People may be less likely to resort to contacting the media – or independent oversight bodies – to have their concerns acknowledged and addressed if agencies:

- maximise transparency about how decisions are made (eg by publishing relevant guidelines, data and reports on their websites)
- provide clear and cogent reasons for decisions
- have clear and accessible complaints processes
- handle complaints in a timely manner.



4

Stretching the limits of law to meet the challenges of the pandemic



During the pandemic, the way in which relevant legal rules were made, how they were communicated, the speed at which they were prepared and implemented, the frequency of changes, and the manner in which they were enforced, has differed in some important respects from what we would expect, or accept, during ordinary times.

At times, some of those differences have rubbed against what might ordinarily be considered essential elements for a system of democratic government based on 'the rule of law'. These elements include that:

1. Laws should be made by or with the authority of Parliament.
2. Laws, and what they demand, should be clear and known by the public.
3. Laws should be enforceable.
4. Laws should be enforced consistently.
5. Penalties should be proportionate.
6. Enforcement action should be subject to appropriate review.

In this chapter, we briefly examine the ways in which some features of law making and enforcement during the pandemic have sat uncomfortably with these elements of the rule of law.



4.1. The 'sidelining' of Parliament's law-making role

Laws should be made by or with the authority of Parliament

The standard model of law-making is that legislation is made by the people's duly elected Parliament (by passing an act of Parliament) and then administered by the Government. In modern times, much legislation is also made by the Government through powers delegated (under acts) to make regulations and other sub-ordinate legislative instruments.

In NSW, the primary tool used to 'legislate' the pandemic response was neither acts nor regulations, but public health orders made (usually) by the Minister for Health under the *Public Health Act 2020* (**Public Health Act**).⁵⁴ (See **chapter 6** for a full chronology of orders and legislative amendments made in the period covered by this report).

As we observed in our 2020 COVID report, these public health orders allowed for rapid and flexible action to meet unforeseen and evolving circumstances. However, they also allowed for Executive action – which was extraordinary in its application and reach, and which imposed extraordinary and significant incursions on individual rights – to be taken without ordinary parliamentary consideration and oversight.

The orders have continued to be the primary mechanism for imposing COVID-related restrictions throughout 2021 and 2022.

Are public health orders reviewable?

A public health order made by the Minister for Health or their delegate can be challenged in the Supreme Court on limited grounds of judicial review. Challenges to a number of public health orders have been made during the pandemic; to date, none has been successful.

The question of whether public health orders in NSW are also subject to administrative review by the NCAT has only recently been resolved. In April 2022, the NCAT ruled in *Davis v Minister for Health* that while the decision to make a public health order itself cannot be reviewed, any directions made under such an order are reviewable.⁵⁵

The NSW Government had argued that, if a public health order substantially comprises only one direction, then that direction could not be subject to review by the NCAT as that would be tantamount to the NCAT reviewing the public health order itself. The NCAT rejected this argument, noting that it contradicted the words of the legislation (which provides that 'any direction given by such an order' is reviewable). The NCAT also noted that, if the Minister's argument were accepted, the Minister could avoid review simply by ensuring that each public health order contained only one substantive direction.

The NCAT's decision means that a person who has a relevant interest in a direction given under a public health order may seek a review of that direction in the NCAT. (The direction in contention in *Davis v Minister for Health* was a direction that certain health workers be vaccinated.)

In reviewing a direction made under a public health order, the NCAT's role is to determine not just whether the direction is legally valid, but also whether the decision to make that direction is the 'correct and preferable' decision.

This is particularly important because, even if a direction is ultimately upheld, in defending the decision the Minister will presumably need to provide the NCAT with a full and clear statement of their reasons for having made the direction, including the considerations and advice that was taken into account.

Similar public health order regimes have been the norm in all Australian jurisdictions. Some noteworthy features of the NSW regime include:

- Public health orders are not disallowable instruments.⁵⁶ This means that, unlike regulations and other ordinary subordinate legislative instruments, a house of Parliament does not have the power to disallow (annul) a public health order with which they disagree.
- Public health orders in NSW may be made (by the Minister for Health) without there needing to be in place at the time any declaration (by the Premier) of a state of emergency.⁵⁷ This is of particular importance as a state of emergency declaration is time limited (and can be repeatedly renewed). Accordingly, if pandemic public health orders were only able to be made during a declared state of emergency (as is the case in some other jurisdictions) then this would effectively mean that there would be an in-built requirement to reconsider, at set intervals, the necessity of continuing the state of emergency (and the public health orders made because of it).⁵⁸
- The power to make a public health order may be delegated by the Minister for Health, and on occasion in NSW public health orders relating to COVID have been made or amended by a delegate for the Minister (generally the Chief Health Officer) rather than the Minister.⁵⁹ The appropriateness of orders of this kind being made by a health adviser rather than by the Minister (presumably taking into account health advice, as well as other relevant considerations) has raised considerable controversy in other states, and in Victoria legislation has recently been enacted to provide that such orders may now only be made by the Minister (see below).
- Some public health orders have given significant discretionary powers to officials. For example, one of the earliest public health orders made in 2020 made provision for the Commissioner of the NSW Police Force to choose quarantine facilities and required any person being held there to comply with any 'direction' given by the Commissioner.⁶⁰ Another public health order provides that a person who tests positive to COVID must 'comply with' certain 'guidelines' issued by NSW Health.⁶¹

Victoria's new pandemic legislation

In late 2021, Victoria enacted new pandemic-specific legislation.⁶² This framework supplemented its existing system that required a general State of Emergency to be declared and renewed every 4 weeks up to a maximum of only 6 to 9 months.

The legislation gives Victoria's Premier the power to declare a pandemic, and the Minister for Health to impose and enforce relevant orders. A declaration can initially be made for only 4 weeks but can be renewed for 3-month periods until the pandemic no longer presents a serious risk to the community. The Minister may issue pandemic orders to all persons, a specific classification of person or group, and may also differentiate persons by their location, participation at an event or activity, or a particular characteristic such as age, vaccination status, residence, occupation or living arrangements.⁶³

Importantly, despite debate in Victoria about whether additional safeguards should have been included in the legislation,⁶⁴ the Victorian Act contains a range of significantly enhanced transparency and accountability measures not present in NSW:

- A clear statement that Victoria's Human Rights Charter applies to pandemic restrictions and other acts and decisions made under the new law.
- A clear statement that health restrictions can only treat people differently on the basis of their age or other personal attributes when there is a clear public health reason for doing so.
- The maintenance of a dedicated Parliamentary Committee on Pandemic Declaration Accountability and Oversight, including with an ability to refer a pandemic order to Parliament to be disallowed.
- The establishment of an Independent Pandemic Management Advisory Committee comprising experts and community representatives to advise on the pandemic response and management powers.
- A requirement to publish within 7 days a statement of reasons for the decision to make pandemic orders, relevant Chief Health Officer advice, and a statement as to how each order affects human rights under the Charter of Human Rights and Responsibilities; any advice of the new Independent Pandemic Management Advisory Committee is also required to be tabled in Parliament.
- An express duty to inform detained persons of their right to make a complaint to the Victorian Ombudsman.
- An express right of a detained person to seek independent review of a detention decision.

Public health orders were not the only instrument used to respond to the pandemic. In 2020 the NSW Government made 54 different regulations relating to COVID. Between 1 January 2021 – 30 April 2022, 61 relevant regulations were made or amended.



4.2. Challenging to know what the law was, and what it required, at any given time

Laws, and what they demand, should be clear and known by the public

Mere ignorance of the law is generally considered no excuse for a failure to comply. On the other hand, that laws are *knowable* (that is - known to exist, sufficiently clear and certain, and accessible) by those who are subject to them is a fundamental requirement of the rule of law.

When laws are introduced, it is important they are known and predictable so that people understand what they are permitted and not permitted to do and what services they are entitled to expect. It is also important there is clarity regarding the consequence of non-permissible actions, and options for redress if services are not delivered to expected standards.

However, people who contacted our office reported that the frequent changes to the rules left them feeling overwhelmed, confused and uncertain about what they could and could not do on any given day, and what services they could expect to receive. This is consistent with reports of other organisations.⁶⁵ Community service providers and private businesses also struggled to keep abreast of the changes which meant they could not confidently and consistently provide advice and deliver services to their respective clients.

The ability of any individual or business to be able to know what was required of them under the public health orders in effect at any given time was increasingly challenged throughout the pandemic by:

- **The sheer number of public health orders made** – in NSW, the first public health order of the pandemic was issued on 15 March 2020.⁶⁶ By 31 January 2022, 266 principal and amending public health orders had been issued – averaging to an order every 2.5 days for the almost 2 years between 15 March 2020 – 31 January 2022. There were 53 days on which at least 2 public health orders were either made or amended.
- **The frequency with which public health orders were modified**
 - during the second year of the pandemic, from 1 February 2021
 - 31 January 2022, the Minister for Health made 155 principal and amending public health orders. This regulatory activity was largely concentrated in the 7 months from May to November 2021, during the Delta wave.

- **Limited or no specific prior consultation or debate about a particular order and limited or no notice period before an order came into effect** – frequently orders were announced in morning press conferences, and became law at midnight of the same day.
- **The lack of pre-announced 'triggers' or criteria for the making of public health orders** – generally speaking, throughout the pandemic public health orders were made responsive to the circumstances and health advice available at the particular time. The Government also did not generally adopt or announce standing 'principles' or criteria for the making of future orders – in other words, it did not say that 'if *X* occurs then a public health order to *Y* effect will be made'. For example, 'if case numbers in a certain area exceed a certain number, then social distancing restrictions of one person per 4 square metres will be put in place'.

There were attempts at various points to develop 'plans' and 'roadmaps' to provide some forward visibility around the making of future public health orders, for example the Commonwealth's 'National Plan'⁶⁷ or the NSW Government's, roadmap to 'Reopening NSW'.⁶⁸ However, it appears that in each case these were soon abandoned as circumstances changed or issues arose in ways not expected by the plans, and a generally agile approach returned.

(A notable exception was the pre-announcement by the Premier in November 2021 that certain restrictions would be lifted after the State reached the target of 95% of the population fully vaccinated or 15 December, whichever came first.⁶⁹ That lifting of lockdown orders took place as foreshadowed, despite circumstances having changed in the meantime that led the Chief Health Officer to advise that at least some elements of the lockdown orders should continue.⁷⁰ This highlights the dilemma faced by Government in seeking to meet both the demand for certainty at least into the near future, as well as the need to be appropriately responsive to unpredictable circumstances and changing health advice.)

- **The manner in which the public health orders were drafted and published** – public health orders were drafted by the Parliamentary Counsels Office, which is also responsible for drafting bills, regulations and other legislative instruments. They were typically highly prescriptive and drafted in the traditional form of such legal instruments. They were written and published only in English. Many were necessarily drafted in circumstances of unusual urgency for legal instruments.

They were often lengthy; the final version of the public health order, *Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order* runs to 56 pages.

Even foundational concepts in the public health orders were often legally complex and subject to change. The central definition of

'Greater Sydney', for example, required cross-referencing to a definition in another unrelated Act but also made modifications to that other definition.⁷¹

- **Ambiguities and vagueness in the terms of the public health orders** – there has been much commentary throughout the pandemic about the uncertainties and confusion around the wording and meaning of particular provisions of the public health orders.⁷² The legalistic and highly-prescriptive form of the public health orders contrasted with this lack of definition and vagueness around concepts of critical practical importance, such as 'outdoor recreation' and 'compassionate reasons'.
- **Confusion between 'rules' (hard law) and 'guidance' (soft law)** – it is likely most members of the public seeking information about the requirements of the public health orders would have sought information from relevant government websites (including in particular the health.nsw.gov.au website) rather than seeking to navigate the primary legal instruments on the Parliamentary Counsel website (legislation.nsw.gov.au).

This meant, however, that people may have been unaware of all the rules, where the government website merely included a summary. For example, the website might list what were considered the most important exceptions, without listing all of them.

On the other hand, the government websites also included information not contained in the orders themselves, such as general health advice or guidance. This meant those accessing these sites faced the additional challenge associated with a lack of clear distinction between what are the legal rules under the public health order then in operation and what is 'merely' published health guidance and advice. That distinction is, however, critically important particularly in circumstances where the penalties for non-compliance with the rules were both strict and severe.

The distinction between rules and guidance has to some extent collapsed in a recent public health order which itself seeks to incorporate and mandate compliance with published health guidance. The *Public Health (COVID-19 Self-Isolation) Order (No 2) 2022* provides that a person who has tested positive for COVID must, among other listed requirements: 'otherwise comply with the NSW Health Self-Isolation Guidelines.'⁷³

That creates a new set of potential areas of confusion. Those guidelines, published on the NSW Health website, have been prepared (presumably by non-lawyers) as general advice rather than in a way that could be understood or applied as strict legal rules, and subject to strict legal penalties. For example, the guidelines state: 'Wear a mask when near or talking to other people... for a further 3 days [after

7 days of self-isolation]’ but provides no information as to what counts as being ‘near’ other people and includes no exceptions.⁷⁴

Further, the guidelines do not use the same terminology which is typically used in legal instruments (such as ‘must’ or ‘may’), making it unclear whether in order to ‘comply with the Guidelines’ as required by the public health order, that particular piece of advice is mandatory or merely advisory. For example:

- ‘If you are self-isolating in a building with other people in it, *you will need to...*’
- ‘If you have a sore throat, runny nose, cough or shortness of breath... *please...*’
- **Lack of ‘common sense’ in the rules** – it is not necessary to know the particular details of the law that makes murder a criminal offence to know that it is generally unlawful to kill another person. By contrast, the legal obligations and prohibitions in place at various times during the pandemic concerned matters that were not things that ‘common sense’ would necessarily have conveyed to any reasonable person – certainly not in ordinary times but even during the circumstances of the pandemic.

Many of the public health orders prohibited the doing of things that would, at any other time, be perfectly benign and permissible, even encouraged. While some requirements might arguably be said to have become common sense over time (eg travelling on public transport with a mask) others would not (eg the number of persons allowed to visit a household, and whether children are included in that limit). In some cases, the criteria used to deem conduct unlawful became (perhaps unavoidably) arbitrary and was not intuitively connected to concepts of danger or immorality (such as the frequent changes to the number of people permitted to attend a gym class).

This is not to say the rules were not sensible, only that they were not so common sensical as to be obvious to any ordinary person that they could be expected to have known them without needing to be told.

Despite the above challenges, there also does not appear to have always been a rigorous process for ensuring that the information in the public health orders was quickly, comprehensively and clearly translated into and available in non-legal language and user-friendly form.

The Government took steps to make information available, including of course through regular (and during most of 2020 and 2021, daily) morning press conferences, as well as the page on the NSW Legislation website dedicated to public health orders, and the page on the NSW Health COVID website dedicated to relevant health advice and guidelines.⁷⁵

However, there was no single site that comprehensively, but in an easy-to-navigate and accessible form, communicated all the health guidance and rules in force under the public health orders. More than 2 years into

the pandemic, hindsight suggests that improvements could be made – perhaps a service allowing a person to enter their suburb or postcode and call up a comprehensive list of those rules that currently apply to them in their particular locality, with options to read that information in different community languages.

The failure to provide clear and comprehensive information in community languages has been identified as a significant gap, particularly when orders were made affecting LGAs with a high population of non-English speakers. On 31 March 2022, the Legislative Assembly Committee on Community Services self-referred an inquiry into *Improving crisis communications to culturally and linguistically diverse communities*.⁷⁶ The NSW Government provided a detailed submission about the steps taken to communicate with culturally and linguistically diverse communities through the pandemic.⁷⁷

Figure 8. Number of public health orders passed and fines issued each day, 1 February 2021 – 30 April 2022

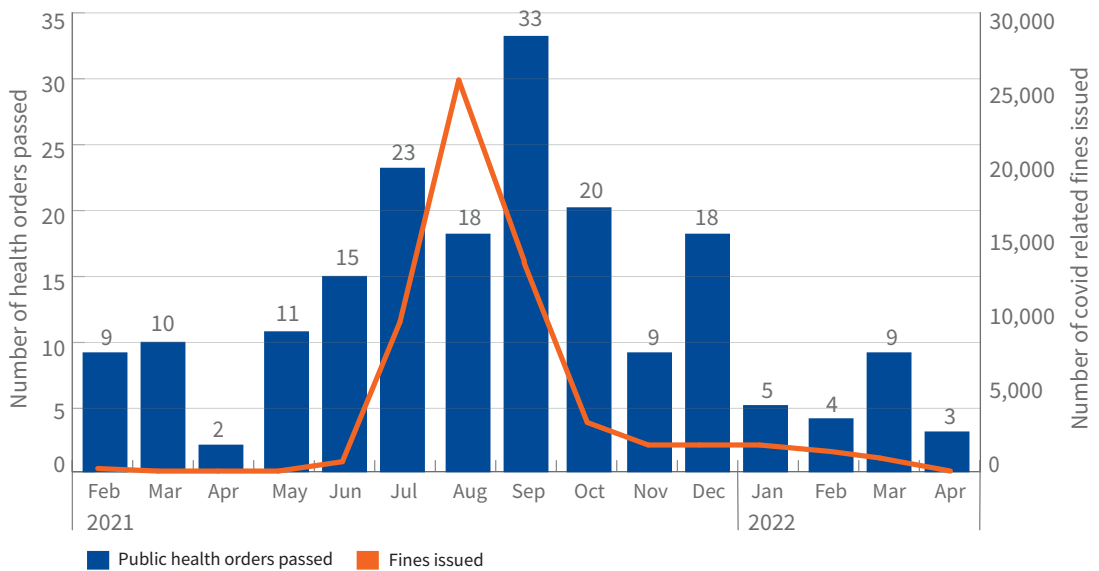
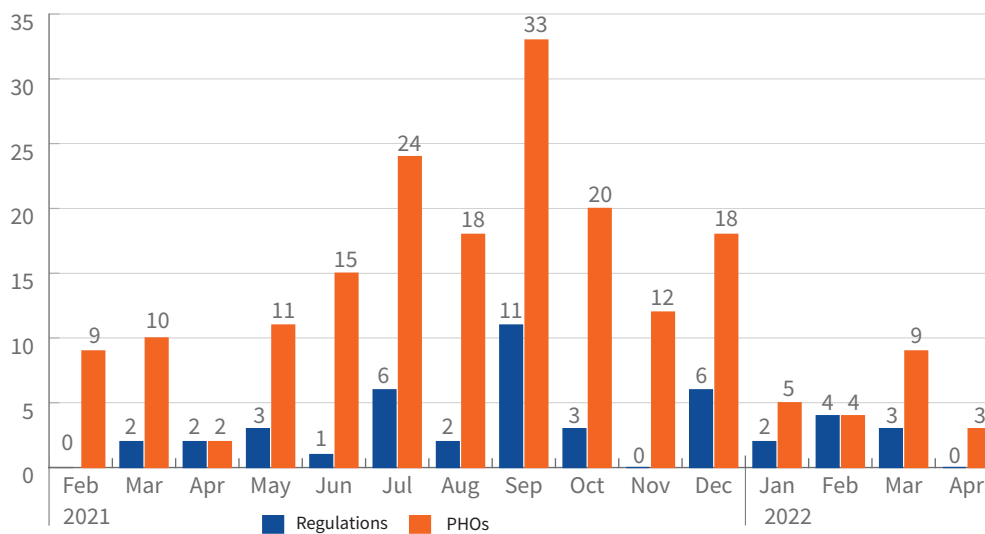


Figure 9. Number of public health orders and regulations issued or amended, 1 February 2021 – 30 April 2022



Is a religious summer camp a music festival?

In January 2022, singing and dancing was banned at major recreational facilities. However, churches and places of worship were exempt from these restrictions. A NSW Health spokesperson stated:

Singing and dancing in hospitality venues and nightclubs is deemed high risk due to increased movement and mingling within and across these venues, the influence of alcohol consumption, and the removal of masks in these settings to consume food and drink. People attending religious services generally remain in fixed positions and masks are mandatory for these indoor gatherings.⁷⁸

This public health order became subject of media scrutiny when young people at a faith-based organisation's summer camp were recorded singing and dancing to non-devotional music, with NSW Health deeming the location to be a major recreational facility.⁷⁹

How many fully vaccinated people can attend an outdoor event?

Under NSW's roadmap out of lockdown, from 11 October 2021 up to 500 people could attend ticketed and seated outdoor events (for example, to observe a sporting match), but only 30 vaccinated people could congregate together in a park or attend a protest, and 20 vaccinated people could gather for sport or exercise.

When 80% of the eligible population had been fully vaccinated, 3,000 people were permitted to attend outdoor events, but only 50 vaccinated people could attend protests.



4.3. Some laws may not always have been enforceable in practice

Laws should be enforceable

A law can be said to be fully 'operable' if 'there is no risk of successful defiance to it.'⁸⁰ Few laws meet that description. However, to be considered a law at all, a rule needs to be enforceable⁸¹ or operable at least to some extent.

There have been times during the pandemic when questions have been raised about the practical enforceability of some of the rules that have been made.

On 12 January 2022, for example, the NSW government mandated that anyone who returned a positive COVID result on a rapid antigen test was legally required to report their result (through the Service NSW Mobile App or website).⁸² Failing to do so was subject to a \$1,000 fine. Given rapid antigen tests were available from pharmacies and administered at home by the person themselves, the NSW Premier acknowledged that this rule would be hard to enforce.⁸³ In response to queries about what purpose the offence served, the NSW Customer Service Minister conceded it was primarily about messaging: 'If we didn't put a fine on it, then people would say you're not taking it seriously...'⁸⁴



4.4. Laws appear to have been enforced inconsistently

Laws should be enforced consistently

Laws must be enforced in a lawful, impartial, and reasonable manner. These principles distinguish the operation of the law from the arbitrary exercise of power.⁸⁵

On one occasion, in August 2021, an announcement was made that new laws would be enforced against people before they came into force.⁸⁶ (It is unclear whether any such 'enforcement' was in fact attempted.)

While police were responsible for enforcing most COVID laws, inspectors from Liquor & Gaming, SafeWork NSW and the Food Authority were also deployed across NSW, with 'compliance blitzes' utilised to identify individuals and businesses acting in contravention of the law. At times, the focus was on LGAs of concern.⁸⁷

From the start of the pandemic in 2020 to 31 January 2022 Revenue NSW, responsible for recovering debts on behalf of the people of NSW, loaded a total of 59,958 COVID related fines into the Infringement Management System.⁸⁸

The overwhelming majority of COVID fines were issued during the last quarter of the 2021 calendar year. From 1 June 2021 to 31 January 2022, 56,904 COVID related fines were issued.⁸⁹ In this period, Revenue NSW reported processing 10,310 requests for review, relating to 8,327 COVID penalty notices.⁹⁰

Table 1. COVID-related fine notices loaded into Infringement Management System as of 31 January 2022⁹¹

Status	All		Under 18	
	Penalty Notices	Face Value	Penalty Notices	Face Value
Overdue	25,265	\$22.93 million	1566	\$1.15 million
Paid	10,985	\$9.98 million	640	\$328,900
Active payment plan	13,253	\$12.58 million	263	\$247,180
Outstanding	3,181	\$2.04 million	407	\$81,080
No Actioned	1,112	\$1.14 million	174	\$98,200
CAN issued	2,858	\$3.66 million	82	\$96,380
Active WDO	2,552	\$2.32 million	316	\$244,000
WDO hours served	574	\$476,180	101	\$67,480
Cautioned	42	\$46,800	7	\$9,000
Annulled	28	\$67,080	6	\$13,080
Written off	78	\$69,800	1	\$1,000
Withdrawn	11	\$9,700		
Insufficient information	17	\$13,100		
Fine Adjustment	2	\$5,500		
	59,958	\$55.33 million	3,563	\$2.33 million

CAN = Court Attendance Notice, WDO = Work Development Order.

The NSW Bureau of Crime Statistics and Research (**BOSCAR**) has published information about breaches of public health orders between 26 June 2021 (when stay-at-home orders were reintroduced for the whole of Greater Sydney) to 31 August 2021. This found:

- Nearly 70% of the breaches related to failing to comply with ministerial directions (eg non-essential travel or visiting others) and approximately 30% related to failing to wear or carry a face covering, with the remainder related to travel and other restrictions.
- The overwhelming majority of breaches (89%) were dealt with by way of infringement notices (fines); 8% proceeded to court, and 3.3% involved youth court diversion.
- More than 7 out of 10 fines were for offences with a maximum fine of \$1,000, 24% were for offences with a maximum fine of \$500 and only 2.3% of fines were for offences with a maximum fine of \$2,000 or more.⁹²

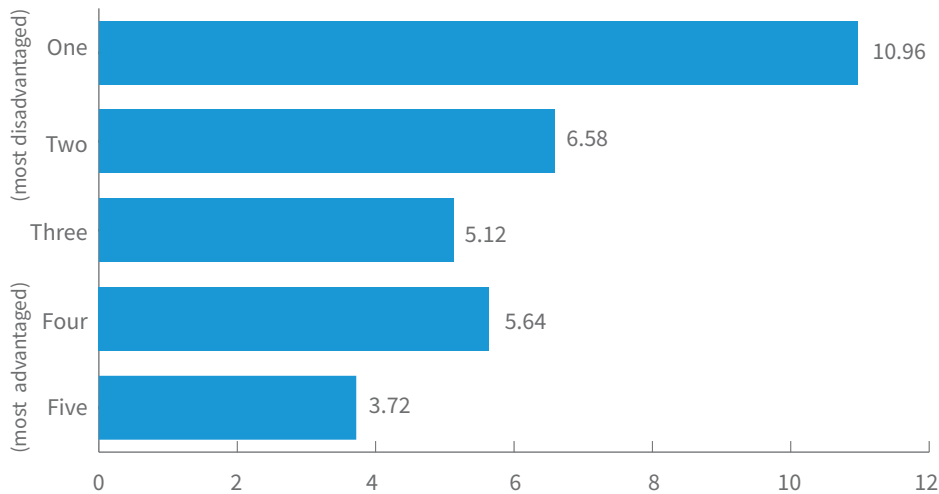
BOCSAR also found: 'While only a small proportion of these matters add to criminal courts' workload, the large volume of breaches means that COVID breaches result in 2,854 additional matters for the Local Court'. This did not include contested infringement notices.⁹³

Disproportionate enforcement action against marginalised groups

Data suggests the public health orders have been disproportionately enforced against less advantaged groups. Between 1 July 2020 and 10 October 2021, the 5 NSW LGAs where the most public health order related fines were issued (adjusted for population size) were Walgett, Brewarrina, Wilcannia, Coonamble, and Bourke. According to the Australian Bureau of Statistics' Index of Relative Advantage and Disadvantage (**IRSAD**), these LGAs are some of the most disadvantaged in NSW. They are also home to a significant population of Aboriginal people.⁹⁴

Taking into consideration the 20 LGAs where the most fines were issued per 1,000 residents, these also include LGAs that are home to culturally and linguistically diverse populations such as Mount Druitt, Merrylands, and Villawood. In contrast, 12 of the 20 LGAs with the fewest number of COVID-related fines were issued (per 1,000 residents) are among the most socio-economically advantaged in NSW.⁹⁵

Figure 10. Average number of fines per 1,000 people for postcodes grouped by Index of Relative Advantage and Disadvantage quintiles for the period 1 July 2020 – 10 October 2021⁹⁶



BOCSAR has found that people in LGAs of concern, younger people, men, and those with recent involvement with police were most likely to receive a fine.⁹⁷ Roughly half the breaches during July and August 2021 – about 18,204 – involved a person who police had charged with another offence in the preceding 5 years.⁹⁸ BOCSAR found:

The complexity and uncertainty associated with the interpretation of fines is likely to have contributed to inconsistent enforcement of laws. The probability of this occurring is increased given that law enforcement officers have broad discretion in determining how to respond to perceived breaches.

Discretion enables officers to consider the individual circumstances of an incident when determining which action to take. This flexibility is useful and can lead to people's individual circumstances being considered and therefore fairer outcomes. However, wide variation in how officers interpret the law and use their discretion when enforcing it has the potential to lead to inconsistency and unjust outcomes.

The over-policing of Aboriginal communities in particular, is an issue which has received significant attention over the years.⁹⁹

Enforcement action taken against children (between the ages of 10-17)

Determining the appropriate use of fines for offences by young people and children can be a difficult task given their circumstances and ability to pay.¹⁰⁰ Those issues are very much at the forefront when considering the issue of penalty notices for breaches of public health orders against children and young people. Fines for breach of a public health order are issued pursuant to s 10 of the *Public Health Act 2010*. This means that those penalty notices (including those in the order of \$1,000 or more) can be issued to all people over 10 years of age, although individual fines for more than \$1,100 may not be upheld if the person who receives it elects to have the matter heard by a court.¹⁰¹

From 1 June 2021 to 31 January 2022, 3,563 COVID fines (valued at \$2.33 million) had been issued to children (see **table 1** above). While fines can be issued to children between the ages of 10 and 17, Revenue NSW has advised us that the youngest child issued with a COVID related fine was 13 years old.

Unless issued on the spot, fines will be posted to a person's home address. Some young people may contact Revenue NSW to seek advice about a fine they feel was issued unfairly, or because they do not have the capacity to pay. However, for a range of reasons, others are unlikely to do so. Without explicit permission, Revenue NSW does not have authority to engage with the young person's parent or guardian to discuss the fine or the young person's financial and social circumstances. Young people may, for a variety of reasons, be reluctant to discuss receiving a large fine with their parents or carers, or to seek advice from others about how to deal with it.

The issue of fines disproportionately impacting young people and other vulnerable groups has been canvassed previously by our office and others.¹⁰²

Revenue NSW has advised us that it has initiated a youth engagement strategy to resolve COVID fines issued to people under 18 years, with over 95% resolved as of August 2022 (including paid, on a payment plan, on a work development order, cautioned, withdrawn, or written off). However, Revenue NSW does not support withdrawal of all public health order fines issued to children.



4.5. Some penalties appeared to lack proportionality

Penalties should be proportionate

As outlined in **chapter 2**, people who breach public health orders are subject to significant penalties. At the start of the pandemic, the generic penalty for a breach of any public health order was \$1,000. As the pandemic took hold, higher penalties began to be introduced for breaches of specific public health orders or a particular provision of an order, such as not providing true and accurate information when entering NSW (\$4,000), breaches of the ACT border exemption (\$5,000). High penalties remain in effect for breaches of particular orders relating to requirements for self-isolation (\$5,000), international arrivals (\$5,000) and provision of contact tracing information (\$5,000).

At times, changed or increased penalties were announced and took effect at short notice. For example, increased penalties for failing to comply with the health orders relating to the Delta outbreak and self-isolation were announced on 14 August 2021,¹⁰³ and took effect on 16 August. These changes increased penalties in many cases from \$1,000 to \$3,000 (for example, breaching the 2 person limit on outdoor exercise) and as high as \$5,000 in other cases (breaching self-isolation rules, providing inaccurate information to contact tracers).

These penalty amounts are generally higher than penalty amounts for similar breaches in other Australian jurisdictions. For example, in NSW an adult who fails to wear a face mask has been subject to a \$500 fine. In Victoria the relevant fine amount is \$100¹⁰⁴ and Queensland \$206.¹⁰⁵ Similarly, in NSW breaching self-isolation rules can result in a \$5,000 penalty, in Victoria the relevant fine amount is \$2,726 and Western Australia, \$1,000.¹⁰⁶

The significant dollar amount of the penalties for COVID-related breaches of public health orders is particularly important in circumstances where:

- **the rules were complex, changeable and open to interpretation** – people are more likely to have felt a sense of unfairness when significant financial penalties were issued for breaching rules that they may not have known about or fully understood, or in respect of which they had formed a reasonable but different interpretation about what they meant. This sense of unfairness was likely exacerbated given that the fines were typically issued for behaviour that, in ordinary circumstances, is morally benign.

- **The fines were available to be issued even to children** – penalty notices issued under the *Public Health Act 2010* (including those in the order of \$500 or more) can be issued to all people above the age of criminal responsibility, that is, 10 years of age.¹⁰⁷ This contrasts with some other penalty notice schemes, such as the police power to issue penalty notices for certain minor offences under the *Criminal Procedure Act 1986*, which provides (at s 335) that a penalty notice cannot be issued to a person under the age of 18 years. Children are not normally subject to large fines because they are less likely to understand that they have received a fine, why it has been issued, the systems and processes to request a review of the fine, and the consequences of not paying the fine. Children and young people are, of course, also less likely to independently have the means to pay the fine. The Children's Court itself may only impose fines up to a maximum of 10 penalty units or \$1,100.¹⁰⁸

Concerns raised about fines

In December 2021 a coalition of legal and advocacy bodies raised concerns about COVID related penalty notices. Concerns were raised about people being issued with fines for lawful recreation activities such as sitting in parks away from others, and the heavy reliance on fines to encourage compliance with the public health orders more generally.¹⁰⁹ Calls were made for fines that have been wrongfully issued by police to be revoked, a 4-month pause on enforcement action on all COVID fines over the Christmas holidays, and support for people already experiencing hardship with additional time to obtain advice about the fines.¹¹⁰

Legal bodies also criticised the issuing of fines to children, with the Aboriginal Legal Service noting that some children they are assisting received multiple \$1,000 fines in a single day. As a result, in December 2021 calls were made to revoke all COVID fines issued to children.¹¹¹ More recently, the NSW Law Society has called on the Government to urgently review thousands of COVID fines:

The punitive and flow on effects of fines are well-known in relation to increasing individuals' vulnerability to cycles of debt and disadvantage ... public health order fines can lead to incarceration in NSW, either through conviction if a person elects to take the matter to court, or through driving while unlicensed. We understand from our members that almost half of those who were issued a public health order fine already have existing fines debt.¹¹²



4.6. Avenues for reviewing enforcement decisions and actions are limited

Enforcement action should be subject to appropriate review

People have different options to challenge a penalty notice if they believe it has been issued in error or if there are circumstances justifying it being waived. People can request an administrative review of the penalty notice and challenge the penalty notice in court.¹¹³

Relevant to the prospects of successfully reviewing a fine, offences under public health orders have been made 'strict liability offences'. Where strict liability applies an individual will be liable for their actions regardless of their intent or state of mind when acting - it is only necessary to prove the individual engaged in the unlawful conduct.¹¹⁴

Administrative review of a penalty notice

An administrative review is undertaken by Revenue NSW and can result in one of 3 possible outcomes:

- **Penalty to Stand** – Revenue NSW believes the offence was committed and the fine was issued properly.
- **Caution** – Revenue NSW believes the offence was committed and the fine was issued properly, however it believes a caution is more appropriate given the individual's circumstances. In this case, the individual does not need to pay the fine. (If the offence is a driving offence, it will appear on the individual's driving record, but demerit points won't be applied.)
- **Cancellation** – Revenue NSW believes the fine was not issued correctly, does not properly state the offence, or was issued by mistake.

The *Fines Act 1996* permits Revenue NSW to perform this review on behalf of issuing authorities. In practice, Revenue NSW exercises its powers to issue a caution or cancel a fine only for a 'relatively small number' of requests.¹¹⁵ This practice has extended to COVID-related fines.¹¹⁶

Challenge the penalty notice in court

The court can make one of the following decisions on a case:

- **Guilty** – the individual must pay a penalty (the amount will be determined by the court) and pay court costs. If the offence is a driving offence, demerit points will be applied.
- **Guilty, no conviction recorded** – the individual is found guilty, but does not have to pay a penalty. The individual will have to pay court costs. If the offence is a driving offence, it will appear on the individual's driving record, but demerit points won't be applied.

- **Not guilty** – the individual will not have to pay the fine, lose demerit points or pay court costs.

However, the proper functioning of this 2-tier system of review assumes the courts can operate at full capacity and individuals have the time and resources necessary to exercise their rights—including having a clear understanding about whether their behaviour breached the law at the relevant time.

The reality is that many people were unlikely to have the resources (both time and money) to challenge a COVID-related fine in court. During the pandemic people experienced heightened levels of stress and uncertainty, may have been separated from their usual supports and prevented from physically leaving their house to seek advice or assistance.¹¹⁷ Compounding these challenges, as mentioned above in **chapter 2**, there were periods during 2021 when a number of matters had to be adjourned while courts improved capacity to hear matters remotely and in person. This has resulted in a backlog of cases and had implications for the timely resolution of disputed matters.¹¹⁸

As outlined above, the significant number of public health order breaches also added to the case load of the local court.

5

Progress on the suggestions we made in our first COVID report





5.1. Key messages in our first report

A key message of our 2020 COVID report was the importance of effective complaint handling in supporting and improving frontline activities during the crisis response.

Complaints provide an avenue for obtaining and acting on on-the-ground intelligence and the early identification of risks before they escalate. In this way, far from getting in the way of public health measures, oversight and complaints offer an opportunity to reinforce and enhance them. Another benefit, of course, is that complaints give agencies the opportunity to improve the experience and wellbeing of those who are receiving their services, voluntarily or otherwise.

One of the lessons we drew from the first 12 months of the pandemic was that the current oversight and complaint handling system was not well suited to a crisis of the nature and magnitude we have witnessed with the COVID pandemic. The response to COVID has involved multiple agencies across state and federal government, working sometimes in close partnership, sometimes in loose alignment and sometimes separately, and generally by way of a variety of formal and informal coordination mechanisms. Through 2020 and into 2021, the system of mandatory hotel quarantine served as a good example of this, and in 2021 the rollout of the vaccine program has provided another case in point.

In contrast, the oversight and complaint handling system is highly fragmented by jurisdiction, agency and activity. These arrangements work well enough in ordinary times by providing a (more or less) comprehensive patchwork of oversight. However, in the context of a crisis like COVID it can and has resulted in confusion about who has jurisdiction to do what, delays as complaints are bounced from agency to agency, and potential anomalies and gaps – for example in respect of complaints about the conduct of private contractors.

A key proposal we put forward in our 2020 COVID report is that oversight and complaint handling be consciously considered as part of (and if necessary, designed into) crisis response planning activities. This is because, during times of crises:

- Ordinary oversight mechanisms such as parliamentary processes may be 'sidelined', such as through the exercise of emergency powers like public health orders.
- There may be significant and unusual incursions on individual rights to bring the crisis under control.
- There may be a reduction in informal oversight mechanisms.
- More people may find themselves in positions of vulnerability.
- The unique circumstances of a crisis mean that responses may need to be rapid, adaptive and novel. Standard *pre*-implementation mechanisms such as stakeholder consultation, broad public

debate, pilot studies, and extensive evidence-gathering and testing are not always feasible. This means that mechanisms for *post-implementation* issue identification, such as complaints, become even more important.



5.2. Our suggestions for improvements

In concluding our 2020 COVID report, we made the following specific suggestions to the NSW Government:

- Recommit all NSW agencies to the NSW Government's Complaint Handling Improvement Principles, including by affirming that those principles should be included as an element of any major crisis response plan.
- Ensure that external oversight and complaint handling are integrated into crisis response planning, including by:
 - identifying and briefing the relevant independent oversight bodies before the introduction of any new measure if possible (and otherwise as soon as practicable after), and keeping them informed of developments
 - where appropriate, designating a single oversight body as the 'front door' for any external queries or complaints relating to a crisis response measure
 - where appropriate, conferring on the designated oversight body a function of also monitoring or 'keeping under scrutiny' the internal complaint handling mechanisms of relevant agencies involved in delivering crisis response measures.
- Move quickly to nominate, fund, and operationalise National Preventive Mechanisms in accordance with Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).¹¹⁹

We also proposed that the Department of Premier and Cabinet convene a meeting of the various agencies involved in the provision of mandatory hotel quarantine in NSW, together with the oversight bodies that may receive complaints about those services.



5.3. Progress since our first report

While the NSW Government has not (yet) taken steps to implement some of the suggestions (eg to formally commit to ensuring the Complaint Handling Improvement Principles are explicitly adopted in crisis planning, or to nominate, fund and operationalise National Preventive Mechanisms under the OPCAT) some actions have been taken in furtherance of the suggestions and in ways that will further strengthen oversight particularly during a crisis.

Hotel quarantine roundtable and improved communication channels

On 12 May 2021, we participated in a roundtable with representatives from:

- Department of Premier and Cabinet
- NSW Health
- Sydney Local Health District
- NSW Police Force
- NSW Procurement, within NSW Treasury
- Revenue NSW, within Department of Customer Service
- Independent Commission Against Corruption
- Law Enforcement Conduct Commission
- Health Care Complaints Commission
- Information and Privacy Commission.

The primary purpose was to provide a forum in which:

- oversight bodies could be briefed on the quarantine system and the way quarantine related responsibilities had been allocated between the various service agencies
- processes and contact points could be established so that when questions, concerns or complaints are raised about quarantine or decisions associated with it, the receiving agency could respond to, refer on, or resolve the matter expeditiously, accurately and effectively.

This roundtable proved useful and established more direct ongoing communication between the various agencies involved.

Hotel quarantine review

A 2020 review of hotel quarantine, commissioned by the National Cabinet, included a recommendation to improve 'access to timely decision-making, review processes and complaints mechanisms, including pathways for escalation'.¹²⁰ On 12 October 2021 a report on the second commissioned review of quarantine arrangements was published. This stated that in the 2020-21 reporting period the Human Rights Commission received 6 complaints relating to hotel quarantine and the Commonwealth Ombudsman had registered 30 complaints since March 2020, while 'a large volume of quarantine-related complaints have also been lodged with state and territory ombudsmen'.¹²¹ The review found that the recommendation in the first report about improving access to timely decision-making, review processes and complaints mechanisms had been implemented.¹²²

Explicit power to pro-actively 'monitor' complaint-handling systems

In August 2022 the NSW Parliament passed legislation which will enable the Ombudsman to review and report on (or 'keep under scrutiny') the complaint handling systems of public authorities under the Ombudsman Act.¹²³

This new function will enhance our existing complaint handling function by allowing us to proactively and more constructively assist government and relevant public authorities to ensure they have adequate and effective complaint handling mechanisms in place. Importantly, this new function applies to all public authorities in NSW, including those in respect of which we do not otherwise have jurisdiction to receive and investigate complaints (for example, NSW Police or Ministers). Accordingly, had this power been in place at the commencement of the pandemic, it would have enabled us to proactively scrutinise and help improve the overall complaint-handling system for hotel quarantine.

Where we do receive complaints about a public authority whose conduct is in our jurisdiction, we will also now be able to refer that complaint back to that public authority for it to investigate, together with a requirement that the authority must report back to us on the outcome of the investigation.¹²⁴

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

We suggested in our 2020 COVID report that the NSW Government move expeditiously to nominate, fund and operationalise National Preventive Mechanisms in accordance with Australia's obligations under OPCAT.

Since that report was published, the Committee Against Torture granted Australia's request for a one-year postponement of its obligation under OPCAT to establish National Preventive Mechanisms, extending time for compliance to 20 January 2023. The UN Subcommittee on Prevention of Torture also announced that it will visit Australia in the second half of 2022, to inspect places of detention and examine the treatment of people held there as part of our obligations under OPCAT.

NSW is the only state that has yet to make any public progress on the implementation of OPCAT, having neither announced National Preventive Mechanisms nor introduced OPCAT legislation.

The experience of countries around the world that have well-established National Preventive Mechanisms, including the UK and New Zealand, show that National Preventative Mechanisms have had an important role to play in enhancing proactive oversight during a crisis like COVID.

6

Supporting information



6.1. Chronology of key events from 1 February 2021

Date	Details
2021	
1 February	A total of 28,818 cases of COVID-19 had been confirmed in Australia, including 909 deaths, and there were approximately 59 active cases. More than 12,982,000 tests had been conducted nationally. Of those tests, 0.2% were positive. ¹²⁵ Australia's borders were still closed.
5 February	National Cabinet decided to increase the number of international passenger arrivals to Australia. Starting from mid-February NSW returned to a weekly cap of 3,010 people and Queensland to 1,000. South Australia increased by 40 people a week to 530, and Victoria by almost 200 to 1,310. Western Australia remained at a reduced arrival cap of 512. The total national weekly cap of 4,127 increased to 6,362. ¹²⁶
8 February	A returned overseas traveller tested positive for COVID after being released from hotel quarantine at the Sofitel Wentworth. NSW Health commenced investigating the source of the case. ¹²⁷
11 February	A cluster of cases connected to the Holiday Inn quarantine hotel in Victoria grew to 11. ¹²⁸ NSW Health released a public health alert calling on anyone who had arrived from Victoria to check whether they had attended venues of concern in Victoria. ¹²⁹
12 February	NSW tightened entry requirements for NSW residents returning from Victoria. Arrivals from Victoria had to remain in their residence for a 5-day period. This did not apply to NSW residents living along the Victorian border unless they had visited Greater Melbourne after 12 February 2021. ¹³⁰
21 February	The Prime Minister, Chief Medical Officer, Chief Nurse, and a small group of aged care staff and residents became the first Australians to receive the Pfizer vaccine. ¹³¹
22 February	NSW Health opened vaccination hubs at Liverpool, Royal Prince Alfred and Westmead hospitals, beginning an extensive network of vaccination clinics. ¹³²
24 February	The New Zealand Government reported 3 additional cases of COVID in Auckland. NSW Health contacted travellers who arrived from New Zealand since Saturday 20 February on quarantine-free flights to check if they went to any venues of concern. ¹³³
10 March	The number of doses of a vaccine administered reached 100,000. ¹³⁴
18-22 March	Heavy rainfall led to flooding across NSW including: the mid-north coast, Hunter Valley and Sydney. ¹³⁵
24 March	NSW Health deployed a specialist Medical Assistance Team to North Richmond to help provide emergency care for people cut off from hospitals due to flooding. ¹³⁶
26 March	A COVID case was detected in Brisbane. From 27 March 2021, anyone who had travelled Brisbane City Council or Moreton Bay Regional Council areas in the past 14 days was required to fill out a passenger declaration form upon entry to NSW, which included confirmation of whether they visited any venues of high concern. ¹³⁷
28 March	NSW Health announced it was in the process of contacting more than 20,000 people who entered NSW on flights between 20 and 26 March 2021 to tell them to get tested and isolate if they visited any venues of concern listed by Queensland Health. ¹³⁸
29 March	People in NSW, who had been in Greater Brisbane between 20 - 29 March had to comply with the same stay-at-home restrictions that applied to Greater Brisbane, regardless of their location at the time. People who only transited through Brisbane Airport were excluded from these restrictions. ¹³⁹

Date	Details
31 March	The Minister for Health signed a public health order cancelling the music festival Bluesfest, planned for the Easter period. ¹⁴⁰
1 April	The NSW Chief Health Officer reached out to the leaders of culturally and linguistically diverse communities across the state to help spread accurate information on COVID-19 vaccination. ¹⁴¹ NSW Health and the NSW Multicultural Health Communication Service continued to engage with multicultural groups, providing COVID information in 57 languages. ¹⁴²
8 April	The Australian Technical Advisory Group on Immunisation recommended the Pfizer be preferred over the AstraZeneca vaccine in people under the age of 50. This advice followed further evidence connecting the administration of AstraZeneca vaccine to those under 50 and a rare but serious side effect involving blood clotting. ¹⁴³
21 April	NSW Health investigated transmission of COVID within the Mercure quarantine hotel. Three people staying in adjacent rooms tested negative on swabs taken on the second day of quarantine but tested positive for COVID later during their quarantine periods. ¹⁴⁴
23 April	NSW Health teams were deployed to Sydney Airport to screen flights from Perth to identify passengers who attended any venues of concern identified by Western Australia Health. People arriving in Sydney from Western Australia were required to complete a declaration confirming they have not attended a venue of concern. ¹⁴⁵
5 May	A man in his 50s from the eastern suburbs of Sydney returned a positive result for COVID. Urgent investigations and contact tracing commenced. NSW Health identified new venues of concern. ¹⁴⁶
11 May	NSW Health closely monitored the situation in Victoria as another COVID case was detected in the Greater Melbourne community. People arriving in NSW from the Greater Melbourne area were required to complete a declaration to confirm they had not attended a venue of concern. ¹⁴⁷
24 May	NSW Health continued to monitor the situation in Victoria as local health authorities investigated 4 more COVID cases detected in Melbourne's northern suburbs. ¹⁴⁸
27 May	NSW reached a milestone in its fight against COVID, with more than 6 million tests conducted since the beginning of the pandemic. More than 3.5 million people had been tested for COVID in NSW, with almost 1.4 million people tested more than once. ¹⁴⁹
27 May	People in NSW, who had been in Victoria on or after 27 May had to comply with the same stay-at-home restrictions that applied to Victoria, regardless of their location at the time. This meant staying at home for 7 days. Different requirements were applied to NSW residents in border communities in recognition of the daily interaction residents in these communities have with regional Victoria. ¹⁵⁰
3 June	NSW Health extended stay-at-home restrictions for people in NSW who were in Victoria on 27 May for a further 7 days. These measures were in line with Victoria's restrictions. ¹⁵¹
4 June	NSW Health announced the Vaccine, Infection and Immunology Collaborative Research Group would receive more than \$4.5 million in funding from the NSW Government over 3 years to study the clinical and immunological responses to COVID vaccines in NSW recipients. ¹⁵²
10 June	The stay-at-home order imposed on those who had been in Melbourne on 27 May 2021 was lifted. ¹⁵³

Date	Details
16 June	The first case was reported in a series of cases that would later become known as the 'Bondi Cluster'. ¹⁵⁴ The Bondi Cluster would later evolve into the 'Delta Wave' that spread across NSW and resulted in lengthy lockdowns.
18 June	Additional venues of concern in the eastern suburbs were identified. ¹⁵⁵
22 June	As COVID cases rose in NSW, New Zealand paused the travel bubble that permitted quarantine free travel between Australia and New Zealand. ¹⁵⁶
22 June	As cases continued to rise, the wearing of masks was mandated in public indoor spaces in Greater Sydney, the Blue Mountains, Wollongong and Shellharbour. ¹⁵⁷
23 June	Restrictions on movement were introduced as case numbers showed no sign of dropping. Anyone who lived or worked in the following LGAs: Bayside, City of Sydney, Canada Bay, Inner West, Randwick, Waverly, and Woollahra, was not permitted to leave metropolitan Sydney. ¹⁵⁸
24 June	NSW Health's ongoing sewage surveillance program detected fragments of the virus at the Bourke sewage treatment plant in western NSW. Additional testing capacity was urgently arranged for the local community. ¹⁵⁹
26 June	Case numbers continued to rise, so Greater Sydney was placed in lockdown. <ul style="list-style-type: none"> • Employers were directed to allow an employee to work from home where practicable. • People in Greater Sydney were not permitted to leave their home/accommodation except to buy food, attend work, exercise or for medical and caring reasons. • Outdoor public gatherings of more than 10 people were not permitted unless a special exemption applied. • Certain premises were required to close.¹⁶⁰
3 July	The stay-at-home requirements introduced in May for people in NSW who have been in Western Australia, the Northern Territory, and certain LGAs in Queensland were lifted. This was in line with the public health advice in those states. ¹⁶¹
13 July	Given the high number of COVID cases and exposure venues in the Fairfield LGA, Fairfield residents who worked in other LGAs had to be tested for COVID every 3 days, even if they did not have symptoms. Additionally, workers from across Greater Sydney who worked at locations more than 50km from the outer boundary of the Shellharbour, Wollongong, Wollondilly, Blue Mountains, Hawkesbury and Central Coast LGAs had to be tested for COVID every 7 days, even if they did not have symptoms. ¹⁶²
20 July	Stay-at-home orders were applied to all people living in the Orange City Council, Blayney Shire Council, and Cabonne Shire Council areas, or who had been there on or after Saturday July 17. This lockdown occurred after a COVID positive truck driver visited the region. ¹⁶³
22 July	With the onset of the Delta outbreak, the Legislative Council's Public Accountability Committee recommended its inquiry into the NSW Government's management of the COVID pandemic. ¹⁶⁴
27 July	There was no further transmission of COVID detected in Orange, Blayney or Cabonne. NSW Health announced the stay-at-home orders would be lifted the following day. ¹⁶⁵
28 July	NSW Health announced up to 40,000 Pfizer doses would be reallocated to help Year 12 students in south-west and western Sydney return to school for face-to-face learning on 16 August 2021. These doses were drawn from the rural and regional supply of vaccines. ¹⁶⁶

Date	Details
29 July	<p>The Minister for Defence confirmed he had approved a request from the Commissioner of the NSW Police Force for support from the Australian Defence Force.</p> <p>Up to 300 Defence personnel would commence deployment on Friday 30 July. They would undertake training over the weekend and commence working under the direction of the NSW Police Force on Monday 2 August.¹⁶⁷</p>
30 July	<p>Given the high number of COVID cases in western and south-western Sydney, additional restrictions were introduced. People living in the 8 LGAs of concern – Canterbury-Bankstown, Fairfield, Liverpool, Blacktown, Cumberland, Parramatta, Campbelltown and Georges River, were required to:</p> <ul style="list-style-type: none"> • limit their shopping and exercise to no more than 5km from home • always carry proof of their address and show it to police upon request • wear a mask whenever outdoors (except when in common property such as the backyard of an apartment block).¹⁶⁸
31 July	<p>'Authorised workers'¹⁶⁹ from Canterbury-Bankstown had to have been tested for COVID in the previous 72 hours to work outside their LGA. Previously, this testing requirement only applied to aged care or healthcare workers residing in Canterbury-Bankstown.</p> <p>The surveillance testing of residents in the Fairfield and Cumberland LGAs who worked outside these areas was relaxed to only apply to health and aged care workers.¹⁷⁰</p>
2 August	<p>Non-urgent elective surgery was temporarily postponed at public hospitals in Greater Sydney. This excluded the Illawarra Shoalhaven and Central Coast Local Health Districts.¹⁷¹</p>
7 August	<p>A cluster of cases was identified in the Hunter New England region. New restrictions were introduced for the Armidale Regional LGA, including the towns of Armidale and Guyra. The restrictions would be in place until 15 August 2021.¹⁷²</p>
9 August	<p>In response to cases identified in North Queensland, stay-at-home orders were issued to anyone in NSW who had been in the Cairns or Yarrabah LGAs since 4pm on 8 August 2021.¹⁷³</p>
9 August	<p>In response to rising cases across the state, stay-at-home orders were issued for Tamworth, Byron Shire, Richmond Valley, Lismore and Ballina Shire LGAs.¹⁷⁴</p>
11 August	<p>Following the identification of 2 COVID cases in the Western NSW LHD, new stay-at-home restrictions were introduced for the LGAs of Bogan, Bourke, Brewarrina, Coonamble, Gilgandra, Narromine, Walgett and Warren. These would be in place until 19 August 2021.¹⁷⁵</p>
12 August	<p>Anyone in NSW who had been in the Australian Capital Territory since 5 August was directed to stay at home. Additional restrictions were applied to Bayside, Burwood and Strathfield LGAs and restrictions were extended in the Newcastle and the Hunter region.¹⁷⁶</p>
14 August	<p>Case numbers continued to increase across regional NSW. Stay-at-home orders were put in place for regional NSW meaning all of NSW was under stay-at-home restrictions.¹⁷⁷</p>

Date	Details
16 August	Case numbers continued to increase in Western NSW. Non-urgent elective surgery was temporarily suspended in Dubbo. ¹⁷⁸ Eligible authorised workers in western and south-western Sydney LGAs of concern were prioritised for COVID vaccinations. The following professions were eligible: <ul style="list-style-type: none"> • health care, aged care and disability care • construction • freight and transport; including bus drivers • meat processing • food production/processing/retail • primary, secondary and early childhood school staff.¹⁷⁹
18 August	The Commonwealth provided an additional 530,000 doses of Pfizer to NSW Health. Those aged 16-39 living in the 12 LGAs of concern were given priority access to these vaccines. ¹⁸⁰
5 September	The deadline for authorised workers from LGAs of concern to get vaccinated to allow them to continue to work outside of the LGA where they live was extended to 19 September, provided they had booked their vaccination by 8 September. ¹⁸¹
9 September	The NSW Government unveiled its 'roadmap to freedom.' The roadmap was informed by modelling from the Burnet Institute and pegged various freedoms such as lifting lockdown and increasing the number of people permitted to gather against state-wide vaccination rates. ¹⁸²
14 September	A case of COVID was confirmed in the Yass area. This followed a recent positive sewage detection. A stay-at-home order for Yass Valley Council LGA was issued and would be in place for 2 weeks. ¹⁸³
16 September	A number of changes were made to stay-at-home orders for regional NSW LGAs. Orders were extended in some LGAs until 11 October, while they were lifted in others. A new order was introduced for the Snowy Monaro LGA. ¹⁸⁴
17 September	Stay-at-home orders were introduced for Hilltops and Glen Innes LGAs for 7 days. ¹⁸⁵
18 -19 September	NSW Health held a state-wide COVID vaccination blitz over the weekend (18 – 19 September 2021) to increase vaccinations among Aboriginal people. ¹⁸⁶
20 September	A 7 day stay-at-home order was introduced for Cowra LGA. The stay-at-home order was lifted for Yass Valley LGA. ¹⁸⁷
21 September	Stay-at-home orders for Kempsey, Byron Shire, and Tweed LGAs. They would be in place for 7 days. ¹⁸⁸
22 September	Stay-at-home orders lifted for Albury and Lismore LGAs. ¹⁸⁹
22 September	Stay-at-home orders lifted for Gilgandra, Brewarrina, and Narromine LGAs. ¹⁹⁰
23 September	Stay-at-home orders lifted for Glen Innes and Orange LGAs. ¹⁹¹
28 September	Stay-at-home orders extended for Cowra LGA until 5 October 2021. ¹⁹²
28 September	Stay-at-home orders lifted for Tweed and Byron Shire LGAs. ¹⁹³
28 September	Seven day stay-at-home orders for Port Macquarie and Muswellbrook were introduced. ¹⁹⁴

Date	Details
29 September	A 7 day stay-at-home order was introduced for the Oberon LGA. ¹⁹⁵
30 September	Stay-at-home orders were re-introduced for Kyogle and Narromine LGAs and were to remain in place until 11 October 2021. ¹⁹⁶
1 October	Gladys Berejiklian announced her resignation from the office of NSW Premier.
1 October	NSW Health announced that due to declining community transmission of COVID and increasing vaccination rates within NSW, non-urgent day surgery would recommence from 5 October 2021 at private facilities where it had been temporarily postponed. ¹⁹⁷
2 October	A stay-at-home order was introduced for the suburb of Casino. It was scheduled to remain in place until 11 October 2021. ¹⁹⁸
3 October	A stay-at-home order was introduced for Lismore LGA. It would remain in place until 11 October 2021. ¹⁹⁹
4 October	Due to continued transmission of COVID, changes were made to a number of stay-at-home orders for regional NSW LGAs. ²⁰⁰
5 October	Dominic Perrottet became the 46th Premier of NSW.
6 October	NSW reached 70% full vaccination rate. ²⁰¹
11 October	NSW started to reopen after reaching 70% full vaccination rate, allowing up to 10 visitors (not counting children 12 and under) to a home (previously 5), lifting the cap on outdoor gatherings to 30 people (previously 20) and increasing the cap for weddings and funerals to 100 (previously 50). ²⁰² NSW residents who were in the ACT for work, to receive medical care, or to accompany someone receiving treatment were no longer required to complete a declaration or follow stay-at-home rules after they returned to NSW. ²⁰³
14 October	The ACT and Queensland were no longer considered an area of concern or affected area and people entering NSW from these states no longer needed to complete a declaration form upon entry or follow stay-at-home rules on arrival. ²⁰⁴
16 October	NSW reached 80% full vaccination rate. ²⁰⁵
18 October	NSW further relaxed restrictions after reaching 80% vaccination rate, including allowing more visitors to people's houses, an increase to people gathering outdoors and ticketed events. ²⁰⁶
25 October	Non-urgent elective surgery at both public and private facilities resumed across Greater Sydney, including the Nepean Blue Mountains region. ²⁰⁷
1 November	NSW Health started to provide booster shots of the Pfizer vaccine to individuals aged 18 and over at its vaccine clinics. ²⁰⁸ The Therapeutic Goods Administration approved certain rapid antigen tests for supply in Australia. ²⁰⁹
1 November	Travel Bubble with New Zealand re-commenced. ²¹⁰
9 November	NSW reached 90% vaccination rate. ²¹¹
12 November	There was heavy rainfall across the state. This triggered several flood warnings. ²¹²
15 November	Elective surgery returned to full capacity for patients in Greater Sydney. ²¹³
28 November	Two cases of the Omicron variant were detected in Sydney. ²¹⁴

Date	Details
23 December	NSW recorded 5,715 new cases of COVID in the 24 hours to 8pm on 22 December. ²¹⁵ The NSW Government reintroduced mask mandates in indoor non-residential settings and compulsory QR code check-ins. ²¹⁶
2022	
9 January	Isolation exemptions were announced for workers critical to food supply. Workers were only eligible to leave self-isolation (if furloughed as a close contact) if their employer determined that their absence from the workplace posed a high risk of disruption to the delivery of critical services or activities, and they were unable to work from home. ²¹⁷
12 January	The NSW Premier introduced a mandatory reporting system. Individuals over the age of 16 were required to report any positive result they received on a rapid antigen test through an online portal administered by Service NSW. This requirement was backdated to 1 January 2022. ²¹⁸ The federal health department bought \$62 million worth of rapid antigen tests using the 'extreme urgency or events unforeseen' provision of its procurement rules as it sought to secure stock to meet its commitment to provide free rapid antigen tests to lower-income Australians. ²¹⁹
14 January	Critical workers from certain sectors isolating as close contacts were permitted to leave self-isolation to attend work if they have no symptoms of COVID. Critical workers included those employed in: <ul style="list-style-type: none"> • utilities • information and telecommunications • social assistance and welfare services • funeral, crematorium and cemetery services • seaport operations • air and sea freight and logistics • the operation of correctional centres and community corrections • Resilience NSW. It also included various those performing volunteer work in organisations such as Surf Life Saving NSW, Volunteer Marine Rescue NSW and NSW Volunteer Rescue Association Inc. ²²⁰
24 January	The Commonwealth Government announced it would provide up to 10 free rapid antigen tests over a 3-month period to eligible concession card holders, including: <ul style="list-style-type: none"> • Commonwealth Seniors Health Card • Health Care Card • Low Income Health Care Card • Pensioner Concession Card • Department of Veterans' Affairs Gold, White or Orange card. The program was subsequently extended for a further 3 months. ²²¹
17 February	The NSW Premier announced COVID restrictions would be eased. From 18 February: <ul style="list-style-type: none"> • density restrictions would no longer apply • singing and dancing was allowed at all hospitality venues • QR code check-ins was only required for nightclubs and music festivals • the direction for employees to work from home was also changed and left to the 'employer's discretion.'²²²

Date	Details
22 February	By the one-year anniversary of NSW's COVID vaccination program more than 16.6 million doses had been delivered to the people of NSW. ²²³
3 March	Heavy rains caused flooding across the state. NSW Health issued the following advice to people who were isolating due to COVID and needed to evacuate their home due to the threat of rising floodwaters: 'If you are told to evacuate, you must evacuate...Under no circumstances should you remain in self-isolation at your residence – your safety is our highest concern and an emergency evacuation is a valid reason to leave your home.' ²²⁴
25 March	<p>The advice from the Australian Government for residential aged care facilities was updated.</p> <p>Key updates included:</p> <ul style="list-style-type: none"> • a reminder to be alert given increasing community transmission • a recommendation that each visitor shows evidence of a negative rapid antigen test result taken within 24 hours of entry • simplified testing advice for residents leaving the facility to attend a family gathering or event • updated routine testing advice for staff.²²⁵
22 April	<p>Close contacts (defined as a household contact or an individual deemed by NSW Health to be a close contact) were no longer required to isolate, provided they have no symptoms and comply with the following guidelines:</p> <ul style="list-style-type: none"> • do not visit aged care, hospitals, disability, and correctional centres unless a special exemption applies • wear a face mask in indoor settings outside the home • undertake daily rapid antigen tests before coming into close contact with people outside their household, where practicable • avoid contact with elderly and immunocompromised persons where possible • work from home where practical • notify their employer/educational facility that they are a close contact, and that they are not required to isolate as long as they comply with the above.²²⁶

6.2. Chronology of COVID-related public health orders from 1 February 2021

Date	Details
2021	
2 February	The <i>Public Health (COVID-19 Western Australia) Order 2021</i> was amended to require persons from affected areas to wear a mask at all times except when at their residence, in a vehicle with members of the same household or exercising outdoors.
5 February	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2020</i> was amended. Designated airport workers could not carry out, or continue to carry out, functions or services at an airport unless the worker was tested for COVID in accordance with the requirements set out in the NSW Testing Program.
5 February	The <i>Public Health (COVID-19 Interstate Travellers) Order 2021</i> was made. Any person over 16 who entered NSW from an affected area had to complete a self-declaration in the 24 hours prior to entry or upon entry. Residents re-entering NSW who had been in a place of high concern were required to self-isolate. Non-residents were not permitted to enter the state if they have been in a place of high concern.
12 February	The <i>Public Health (COVID-19 Mandatory Face Coverings) Order 2021</i> was amended to relax mask requirements in Greater Sydney. Masks were required only while travelling on public transport and public transport waiting areas, and in airports and on aircraft in NSW.
12 February	The <i>Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 7) 2021</i> remade existing restrictions, with some changes. The 4 square metres per person rule in Greater Sydney was reduced to 2 square metres. Special restrictions on attending major sporting events in affected areas were repealed.
13 February	The <i>Public Health (COVID-19 Interstate Travellers) Order 2021</i> was amended to enable the Chief Health Officer to identify places outside NSW as places of concern. Persons in a place of concern within the previous 14 days were required to self-isolate.
18 February	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2020</i> was amended to require quarantine for air arrivals and flight crew travelling from New Zealand if any other person on the flight had been in a country other than Australia or New Zealand in the 14 days before arrival.
25 Feb - 8 March	The <i>Public Health (COVID-19 Sydney Gay and Lesbian Mardi Gras Arrangements) Order 2021</i> was made and permitted police and authorised officers to request people to leave the zone where the event was occurring.
26 February	The <i>Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2021</i> remade but eased some existing restrictions. In Greater Sydney, the number of visitors permitted to a residence was increased to 50 and the number of persons able to attend a class or activity in a gymnasium was also increased to 50. Across the state, the remade Order provided for an increase in the permitted capacity of indoor cinemas. It also increased to 30 the number of people who may dance at a wedding and persons who may sing in an indoor area. Special arrangements applied to places of public worship where there was singing, including a requirement to wear face masks.

Date	Details
11 March	<p>The <i>Public Health (COVID-19 Maritime Quarantine) Order 2021</i> was remade with no substantive changes.</p> <p>The <i>Public Health (COVID-19 Air Transportation Quarantine) Order 2021</i> was also remade, with changes requiring persons arriving from New Zealand to provide contact information, and persons entering quarantine facilities to provide contact information electronically. Persons providing transportation services to persons going into or leaving quarantine were required to comply with the NSW Testing Program for COVID.</p>
11 March	<p>The <i>Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2021</i> was amended to include a requirement that residential aged care facilities consider health advice about visitors, masks and vaccinations. The separate Aged Care facilities public health order was repealed.</p>
12 March	<p>The <i>Public Health (COVID-19 Spitting and Coughing) Order 2021</i> remade prohibitions against spitting at and coughing on public officials and health and other workers to cause fear of infection.</p>
19 March	<p>The <i>Public Health (COVID-19 Self-Isolation) Order 2021</i> remade and continued self-isolation requirements.</p>
23 March	<p>The <i>Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2021</i> was amended to clarify the number of persons allowed when premises were used as a nightclub and for other purposes.</p>
29 March	<p>The <i>Public Health (COVID-19 Mandatory Face Coverings) Order 2021</i> was amended to relax requirements to wear masks in most circumstances, excepting in airports and on domestic commercial aircraft.</p>
29 March	<p>The <i>Public Health (COVID-19 Gathering Restrictions) Order 2021</i> replaced the <i>Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2021</i>.</p> <p>This Order increased the maximum number of people permitted for places of residence, holiday homes and short-term rentals, nightclubs and gymnasiums, indoor entertainment facilities (including cinemas), major recreation facilities and outdoor public gatherings, community sporting activities and outdoor performing arts, and controlled outdoor gatherings.</p> <p>It removed requirements for COVID safety hygiene marshals, and lifted restrictions on indoor singing (including at places of public worship and dancing at weddings).</p>
31 March	<p>The <i>Public Health (COVID-19 Northern Rivers) Order 2021</i> was made. It imposed restrictions in the LGAs of Ballina Shire, Byron Shire, the City of Lismore and Tweed Shire.</p> <p>Capacity restrictions on gatherings were imposed, and dancing, singing and drinking in non-residential premises was prohibited. Music festivals such as the Byron Bay Bluesfest were not permitted to proceed. Gatherings at residential premises were limited to 30 visitors. Masks were also required when indoors and on public transport and related waiting areas.</p>
1 April	<p>The <i>Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021</i> remade and continued mask requirements when in airports and on domestic aircraft.</p>
9 April	<p>The <i>Public Health (COVID-19 Gathering Restrictions) Order 2021</i> was amended to explicitly state that contact details provided when entering non-residential premises were to be used for contact tracing purposes only.</p>
3 May	<p>The <i>Public Health (COVID-19 Gathering Restrictions) Order 2021</i> was further amended to make clear that the Minister for Health could not grant an exemption to the use of contact information.</p>
4 May	<p>The <i>Public Health (COVID-19 Interstate Travellers) Order (No 2) 2021</i> remade requirements and powers in relation to interstate travel.</p>

Date	Details
6 May	The <i>Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021</i> was amended to require the wearing of masks in Greater Sydney in a range of retail and commercial premises, including licenced premises, entertainment facilities, places of public worship, and on public transport.
6 May	The <i>Public Health (COVID-19 Greater Sydney) Order 2021</i> was made. It included restrictions such as prohibiting singing and dancing in non-residential premises, requiring that alcohol could only be consumed by patrons when sitting down, and limiting gatherings at a place of residence, holiday homes and short term lettings to 20 visitors.
9 May	The <i>Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021</i> was amended to remove the requirement for retail customers to wear masks. However, public-facing staff in retail stores and hospitality venues were required to continue wearing masks
9 May	The <i>Public Health (COVID-19 Greater Sydney) Order 2021</i> was extended until 17 May 2021.
12 May	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order 2021</i> and <i>Public Health (COVID-19 Maritime Quarantine) Order 2021</i> were amended to require quarantined persons to undergo a COVID test 2 days after leaving quarantine.
17 May	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order 2021</i> was amended to provide that air arrivals and flight crew from New Zealand were not required to enter quarantine just because another person on the flight had been in the Cook Islands within the previous 14 days.
17 May	The <i>Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021</i> was amended. Mask rules were relaxed again, and masks were required only in indoor areas of NSW airports and while on an aircraft that took off or landed at an NSW airport.
28 May	The <i>Public Health (COVID-19 Spitting and Coughing) Order (No 2) 2021</i> remade prohibitions against spitting at and coughing on public officials and health and other workers so as to cause fear of infection.
2 June	The <i>Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021</i> remade restrictions on movements and gatherings.
7 June	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 2) 2021</i> remade international air arrival requirements, with no significant change except that arrivals from New Zealand were not required to quarantine just because another person on the flight had been in Niue or the Cook Islands. The <i>Public Health (COVID-19 Maritime Quarantine) (No 2) Order 2021</i> remade maritime arrival requirements with no significant change except that persons allowed to disembark for vessel related purposes were required to provide contact details.
11 June	The <i>Public Health (COVID-19 Self-Isolation) Order (No 2) 2021</i> remade self-isolation requirements.
18 June	The <i>Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021</i> was amended to temporarily require masks in Greater Sydney when on public transport and in related waiting areas. Employers of airport employees or airport contractors and subcontractors were also required to ensure they wore masks when at work.
20 June	The <i>Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021</i> was amended to impose more mask requirements. Masks were required in more indoor settings in Bayside, Canada Bay, City of Sydney, City of Randwick, Inner West, Waverley, Woollahra. Public transport mask requirements were also extended to Shellharbour and Wollongong.
22 June	The <i>Public Health (COVID-19 Mandatory Face Coverings) (No 2) Order 2021</i> was amended to extend stricter mask requirements for indoor settings to Greater Sydney generally, including Shellharbour and Wollongong. The expiry date for mask requirements was removed.

Date	Details
23 June	<p>The <i>Public Health (COVID-19 Greater Sydney) Order (No 2) 2021</i> was made and imposed more restrictions in Greater Sydney. These included:</p> <ul style="list-style-type: none"> • Restricting people who lived or worked in Bayside, City of Sydney, Canada Bay, Inner West, Randwick, Waverly or Woollahra LGAs, from travelling outside Metropolitan Sydney. • Limiting visitors to a place of residence, holiday homes and short-term rentals to 5. • Permitting non-residential premises to have a minimum capacity of 25 persons. More people than the minimum were permitted if space allowed for 4 square metres per person. • Entertainment facilities and major recreational facilities were limited to 50% of fixed seating capacity, or more if space permitted 4 square metres per person. • Gyms and indoor recreational facilities were limited to 20 persons for classes and activities, and participants were required to wear masks. • Singing indoors was not permitted except by performers, for the purpose of instruction, or the premises were an educational establishment. Choirs singing in a place of public worship were also permitted. • Masks were required to be worn in indoor areas of non-residential premises, when attending COVID-safe outdoor gatherings and controlled outdoor public gatherings. Several exceptions to this rule applied, for example if the person was in custody, hospital or school.
25 June	<p>The <i>Public Health (COVID-19 Greater Sydney) Order (No 2) 2021</i> was amended to require employers in Greater Sydney to allow their employees to work from their places of residence if reasonably practicable. Persons who had a reasonable excuse to travel outside the Sydney metropolitan area were not permitted to remain outside the area for longer than necessary.</p>
25 June	<p>The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 2) 2021</i> was amended to clarify quarantine transport related requirements.</p> <p>Designated travel providers transporting declared flight crew to their residence, as well as those transporting passengers to and from quarantine facilities, were required to wear a face mask while doing so. Transport providers were also required to comply with NSW Health Air Transportation Guidelines and testing requirements. Their employers were required to provide employee contact details to police.</p> <p>Employers of quarantine facility workers, airport workers and transporter service providers were not to allow people to work unless tested.</p> <p>Arrivals and flight crew entering quarantine were required to wear a mask while being transported to or from a quarantine facility, and also required to wear a mask when outside their assigned room.</p>
26 June	<p>The <i>Public Health (COVID-19 Mandatory Face Coverings) Order (No 3) 2021</i> remade mask requirements with minor changes.</p>
26 June	<p>The <i>Public Health (COVID-19 Greater Sydney) Order (No 2) 2021</i> was amended to impose stay-at-home restrictions on people living in the City of Sydney, Randwick, Waverley, and Woollahra.</p>

Date	Details
26 June	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> replaced the <i>Public Health (COVID-19 Greater Sydney) Order (No 2) 2021</i>. More restrictions were imposed throughout the State and higher level restrictions applied to Greater Sydney. The Order was to expire on 10 July 2021.</p> <p>Throughout the state:</p> <ul style="list-style-type: none"> • Visitors to households were limited to 5 guests (including children). • Masks were compulsory in all indoor non-residential settings, including workplaces, and at organised outdoor events. • Drinking while standing was not allowed at indoor venues. • Singing by audiences at indoor shows or by congregants at indoor places of worship was not allowed. • Dancing was not allowed at indoor hospitality venues or nightclubs. An exception was made for wedding parties but limited to 20 people dancing. • Dance and gym classes were limited to 20 per class and masks had to be worn. • The one person per 4 square metres rule was re-introduced for all indoor and outdoor settings, including weddings and funerals. • Outdoor seated events were limited to 50% of seated capacity. <p>In Greater Sydney:</p> <ul style="list-style-type: none"> • Stay-at-home requirements were extended to all LGAs in the Greater Sydney area including the Blue Mountains, Central Coast, Wollongong and Shellharbour. Residents (and those staying in temporary accommodation) of Greater Sydney were not permitted to leave their home/accommodation without reasonable excuse, eg to buy food, attend work, exercise or for medical and caring reasons. • People living outside Greater Sydney were not permitted to enter Greater Sydney without a reasonable excuse. • Taking a holiday was not a reasonable excuse for leaving a residence or for entering or leaving Greater Sydney. • Outdoor public gatherings of more than 10 people were not permitted unless a special exemption applied. • Certain premises were required to close altogether including: hairdressers and beauty salons, auction houses and betting agencies, caravan parks and camping grounds, public pools and properties operated by the National Trust. • Other premises were closed except for certain purposes, for example: <ul style="list-style-type: none"> o providing take-away food and beverage (pubs and restaurants). o hosting a gathering following a wedding or funeral service (entertainment venues). o Hosting a wedding or funeral service (places of worship). o Auctions and open house inspections were not permitted.
28 June	<p>The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 2) 2021</i> was amended to impose testing and vaccination requirements.</p> <p>Quarantine facility workers, transportation service providers and airport workers were not permitted to work unless they had been tested and received at least the first dose of a COVID vaccine or had a medical contraindication to vaccination.</p>
28 June	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended to allow overnight travellers and workers in the local area to stay in caravan parks and camping grounds.</p>
2 July	<p>The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 2) 2021</i> was amended to confirm that COVID testing and vaccination requirements applied to drivers transporting air arrivals to destinations other than quarantine facilities eg to a person's accommodation for self-isolation.</p>

Date	Details
8 July	The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was extended to 17 July 2021.
8 July	The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended to place additional restrictions on the number of visitors to residences in Greater Sydney. Visitors were only permitted for specific purposes.
9 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended to impose further restrictions.</p> <p>In Greater Sydney:</p> <ul style="list-style-type: none"> • Outdoor public gatherings were limited to 2 persons. • Only one person per household could go out to buy food each day. • Persons exercising were restricted to the LGA in they lived, and no more than 10 km from their home. • Funeral services were limited to 10 attendees, including the person conducting the service. • Carpooling to a place for exercise was limited to passengers from the same household. • An exemption to mask requirements for construction sites was removed. <p>Other restrictions:</p> <ul style="list-style-type: none"> • Reasons for entering Greater Sydney were limited to obtaining goods and services and attending funerals and memorial services. It did not include exercise or recreation. • Persons permitted to leave Greater Sydney were required to carry and show their address details on request by police. • Persons permitted to leave Greater Sydney to attend a funeral or memorial service were limited to close family members.
11 July	The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended so that capacity limits for funerals and memorial services did not count the person conducting the service or any other person necessary to conduct or prepare the service.
12 July	The <i>Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021</i> was amended to expand the types of premises requiring electronic check-in, including early education and care facilities. The obligations of occupiers to register and provide contact details of those unable to check-in electronically were clarified.
13 July	The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended to require the wearing of masks on common property in residential premises.
14 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended. The City of Fairfield was designated an 'affected area.' Workers from affected areas were not permitted to attend work outside of their LGA of residence unless they could demonstrate a negative test result for COVID within the preceding 72 hours.</p> <p>Residents of Greater Sydney were not permitted to attend work if it was further than 50km outside of Greater Sydney unless they could demonstrate a negative test result for COVID within the preceding 7 days.</p>
16 July	The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was extended until 31 July 2021.

Date	Details
18 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended to impose further requirements in Greater Sydney as well as across the State.</p> <p>State-wide, employers were required to have employees work from home. In Greater Sydney:</p> <ul style="list-style-type: none"> • People had to wear masks outdoors when near or next to food/drink or retail premises as well as when at indoor and outdoor food markets. They were required to carry a face mask on their person at all times when away from their place of residence. • Work was not permitted on construction sites in Greater Sydney, unless the work was urgently required or needed to maintain the integrity of plant, equipment or assets, or to prevent deterioration of partially completed works. • People could only travel together in a vehicle in Greater Sydney if all from the same household. • People in City of Fairfield, City of Liverpool and Canterbury LGAs or any other LGAs designated as affected areas were not permitted to work outside their LGA unless they were an authorised officer (as listed on the NSW government website).
19 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended in relation to Greater Sydney restrictions:</p> <ul style="list-style-type: none"> • Unless it was an emergency, trades people were not permitted to visit a place of residence in Greater Sydney to carry out work. • Retail stores were directed to close unless they were supermarkets, chemists, or predominantly supplied office, pet, maternity, building or garden related items, amongst other things.
20 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended.</p> <p>The state-wide work from home provision was amended to permit employers to allow (rather than require) employees to work from home.</p>
21 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended:</p> <ul style="list-style-type: none"> • Stay-at-home requirements were imposed in affected regions, being the LGAs of Blayney, Cabonne and the City of Orange. • The Chief Health Officer was permitted to specify new affected regions by a notice published on the NSW Health website. • People outside affected regions could not enter those regions without reasonable excuse unless they were travelling through the region. • Outdoor gatherings in affected regions could not exceed 2 people.
22 July	<p><i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended to require persons exempt from wearing a mask to carry and produce their personal details and evidence of the relevant illness, condition or disability on request by police.</p>
24 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended.</p> <p>The following LGAs were added to the list of affected areas: City of Blacktown and Cumberland. (The following day, Canterbury-Bankstown was specified as an affected area by the Chief Health Officer).</p>
27 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i>. A number of miscellaneous minor amendments were made.</p>

Date	Details
28 July	The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended by removing stay-at-home requirements and other restrictions for Blayney, Cabonne and the City of Orange.
29 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended.</p> <p>The definition of affected area was expanded to include these LGAs: City of Campbelltown, Georges River and the City of Parramatta. At this time, other affected areas were the City of Blacktown, Canterbury-Bankstown, Cumberland, City of Fairfield and the City of Liverpool. Certain work on construction sites was permitted to recommence if the construction site was not in an affected area.</p>
30 July	<p>The <i>Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021</i> was amended (and renamed as the <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i>).</p> <ul style="list-style-type: none"> • All Greater Sydney residents undertaking exercise or outdoor recreation away from their homes were required to carry and produce details of their address if requested by police. • Those living within affected areas were not permitted to travel further than 5km to obtain goods or services (if not reasonably obtainable within the area) or for exercise. • People in higher risk areas were required to wear a mask when outside. • Construction sites in Greater Sydney were able to operate if not in higher risk areas.
31 July	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended. A singles 'bubble' was introduced, which allowed a nominated visitor to visit a single person at their residence and/or travel with the person for exercise/ outdoor recreation.</p> <p>Tradespeople were permitted to recommence carrying out necessary work at residences if not in an affected area, provided there was no more than 2 workers and no contact with residents. Up to 5 workers were permitted in outdoor areas.</p>
31 July	The <i>Public Health (COVID-19 Interstate Travellers) Order (No 3) 2021</i> remade requirements for interstate travellers with minor changes.
31 July	<p>The <i>Public Health (COVID-19 Gathering Restrictions) Order (No 2) 2021</i> was amended.</p> <ul style="list-style-type: none"> • The definition of Greater Sydney was clarified to mean the Greater Sydney Region within the meaning of the <i>Greater Sydney Commission Act 2015</i>, and included the Central Coast, City of Shellharbour and City of Wollongong LGAs. • Coastal waters were taken to form part of the LGA to which the waters are closest.
5 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended to extend Greater Sydney restrictions to the Newcastle and the Hunter areas. Specifically, this applied to the LGAs of the City of Cessnock, City of Lake Macquarie, City of Maitland, City of Newcastle, Dungog, Muswellbrook, Port Stephens and Singleton.</p> <p>The 25 person minimum for non-residential premises in Greater Sydney was removed. Capacity was to be calculated only by using the 4 square metres per person social distancing rule.</p>
7 August	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended to extend the restrictions applicable to Greater Sydney to the Armidale area.
8 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended to provide that restrictions could be imposed on part of a LGA (a 'declared area') as well as the entire LGA.</p> <p>Parts of the City of Penrith were specified as 'declared areas' to which additional restrictions applied: Caddens, Claremont Meadows, Colyton, Erskine Park, Kemps Creek, Kingswood, Mount Vernon, North St Marys, Orchard Hills, Oxley Park, St Clair and St Marys.</p>

Date	Details
9 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended.</p> <p>The restrictions applicable to Greater Sydney were extended to the Tamworth Regional LGA and Northern Rivers Areas. The Northern Rivers Area was defined as including the LGAs of Ballina, Byron, City of Lismore, and Richmond Valley.</p>
11 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended. Restrictions relating to construction sites were amended to provide that:</p> <ul style="list-style-type: none"> • The occupier of a construction site in Greater Sydney could not allow more people on the construction site than the lesser of the number of persons equivalent to 1 person per 4 square metres of space on the site or, if there was a current site resourcing plan, the number of persons equal to 50% of the maximum daily workforce of the site. • Those who lived in an affected area and worked on a construction site anywhere in Greater Sydney were required to have had: <ul style="list-style-type: none"> o 2 doses of a COVID vaccine, or o 1 dose of a COVID vaccine at least 21 days ago, or o 1 dose of a COVID vaccine within the preceding 21 days and has been tested for COVID within the preceding 72 hours, or o a certified medical contraindication and has been tested for COVID within the preceding 72 hours.
11 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended to extend restrictions applicable to Greater Sydney to the Dubbo Regional LGA.</p>
11 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended.</p> <p>The restrictions applicable to Greater Sydney were applied to the Far North Area. The Far North Area comprised the following LGAs: Bogan, Bourke, Brewarrina, Coonamble, Gilgandra, Narromine, Walgett, and Warren.</p>
12 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended.</p> <p>The Bayside, Burwood and Strathfield LGAs were added as declared areas and subject to higher restrictions. The higher level restrictions that were in force in the Newcastle and Hunter areas were extended until 20 August 2021.</p>
14 August	<p><i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended to extend the restrictions applicable to Greater Sydney to the rest of the state until 10 August 2022.</p>
16 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended:</p> <ul style="list-style-type: none"> • Work at residential premises was allowed in all areas of Greater Sydney if no more than 5 workers at the residence at any time. • Persons in declared areas not permitted to leave home for outdoor recreation but were permitted to do so to supervise a child exercising or at play. • The distance that persons were permitted to travel outside their area for food or services or for exercise and recreation was reduced to 5 km. • A requirement to answer questions from contact tracers was introduced. • Persons leaving Greater Sydney to inspect a potential new residence were permitted to do so only if genuinely intending to move to and live in the new residence as soon as practicable.
21 August	<p>The <i>Public Health (COVID-19 Spitting and Coughing) Order (No 3) 2021</i> remade existing prohibitions.</p>

Date	Details
21 August	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> remade restrictions relating to the Delta outbreak.
23 August	The <i>Public Health (COVID-19 Self-Isolation) Order (No 2) 2021</i> was amended to require persons residing or present at COVID risk premises to respond to any request by a police officer for information about who was residing or present at the premises.
23 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended:</p> <ul style="list-style-type: none"> • Police officers who suspected a person did not have a reasonable excuse for leaving their residence could direct the person to return to their residence. • Masks were required to be worn outdoors in stay-at-home areas. • A curfew was imposed in areas of concern. This meant that between 9pm and 5am, the reasons for which a person could leave their residence were more limited. • Authorised workers allowed to leave an area of concern for work were required to have a permit and have had at least one dose of a COVID vaccine. • Persons allowed to enter an area of concern for work were also required to have a permit. • Certain care workers who resided or worked in an area of concern were required to have had at least one dose of a COVID vaccine. • Certain retail premises, including hardware stores and garden centres in an area of concern, were to be open only to trade or business customers. Home delivery and click and collect service for members of the public remained available. • An exception for shops predominantly selling office supplies or pet supplies to open in areas of concern was removed. • Educational institutions, other than schools, in an area of concern were not permitted to conduct face to face teaching or assessment. • The expiry date of the Order was removed.
25 August	<p><i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended. The amendments:</p> <ul style="list-style-type: none"> • clarified that the 2 person outdoor gathering limit did not apply to small funerals and memorial services • defined compassionate reasons for leaving a residence to include accompanying a person that was being visited for compassionate reasons for exercise or permitted outdoor recreation.
26 August	The <i>Public Health (COVID-19 Vaccination of Health Care Workers) Order 2021</i> was made. Health care workers were required to have received the first dose of a COVID vaccine by 30 September 2021 and the second dose of a COVID vaccine by 30 November 2021.
28 August	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended.</p> <p>The amendments clarified the vaccination requirements for authorised workers living or working in areas of concern, including that the mandate would commence on 6 September. The amendment also set dates on which restrictions for stay-at-home areas and areas of concern would be lifted.</p>
29 August	The <i>Public Health (COVID-19 Safety) Order 2021</i> requirements for COVID safety plans and check-ins as well as provisions for the exchange of information between public authorities, and requirements for residential aged care facilities to consider health advice.
29 August	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to update references to the COVID Safety order.

Date	Details
1 September	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 3) 2021</i> and <i>Public Health (COVID-19 Maritime Quarantine) Order (No 3) 2021</i> remade quarantine requirements for overseas travellers. The remade Air Quarantine Order amended vaccination requirements for specified classes of Airport and Quarantine Workers to add second dose requirements. These came into force on 1 September 2021.
1 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to clarify that directions preventing workers in areas of concerns from leaving the areas to work was limited to workers who lived in the areas. It also clarified the circumstances in which people could attend small wedding services held in areas of concern or attend a service outside the area if they lived in an area of concern.
2 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to allow single persons to select another nominated visitor to replace a person unable to be their nominated visitor.
3 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to remove the 1 hour limit on exercise in areas of concern.
5 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to postpone the COVID vaccination requirement for authorised workers able to leave an area of concern to 9 September 2022.
6 September	The <i>Public Health (COVID-19 Self-Isolation) Order (No 3) 2021</i> remade self-isolation requirements and imposed further requirements as follows. People living in 'high contact risk premises' or who were on the premises when the Minister for Health declared it to be a high risk premises were not allowed to leave unless: <ul style="list-style-type: none"> • instructed to do so by an authorised medical practitioner or the Commissioner of the NSW Police Force, or • in cases of emergency. COVID High risk premises were defined as a place that: <ul style="list-style-type: none"> • contain 2 or more dwellings, at least 1 of which is a COVID-19 risk premises, and • which the Minister for Health declared, by a published notice, should be closed following health advice of a risk of COVID transmission between residents of the premises.
11 September	The <i>Public Health (COVID-19 Safety) Order 2021</i> was amended to remove provisions for controlled outdoor public gatherings and events.

Date	Details
11 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> repealed the Mandatory Face Coverings Order and incorporated its requirements. A number of businesses and gatherings were permitted to reopen as long as the number of people on the premises did not exceed the following distancing requirements:</p> <ul style="list-style-type: none"> • Hairdressers and beauty salons: the lesser of 1 person per 4 square metres of space or 5 people. • Significant events: the lesser of 1 person per 4 square metres of space or 50 people. • Certain outdoor events: 500 people for a controlled outdoor public gathering; 50 people for a COVID safe outdoor public gathering; 20 people for another outdoor public gathering. • Regional NSW was reclassified from a stay-at-home area to general areas with lower level requirements. • Stay-at-home requirements continued to apply to number of LGAs: Bathurst Regional, Bega Valley, Blayney, Bogan, Bourke, Brewarrina, City of Broken Hill, Cabonne, Central Coast, Central Darling, City of Cessnock, Dubbo Regional, Dungog, Eurobodalla, Forbes, Gilgandra, Goulburn Mulwaree, Kiama, City of Lake Macquarie, City of Lithgow, City of Maitland, Mid-Western Regional, Muswellbrook, Narrabri, Narromine, City of Newcastle, City of Orange, Parkes, Port Stephens, Queanbeyan-Palerang Regional, City of Shellharbour, City of Shoalhaven, Singleton, Snowy Monaro Regional, Upper Hunter Shire, Walgett and Wingecarribee.
13 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to allow fully vaccinated persons to undertake additional activities in stay-at-home areas and areas of concern.</p> <p>Outdoor public gatherings of 5 fully vaccinated people over the age of 16 were permitted in stay-at-home areas. Outdoor recreation in stay-at-home areas and areas of concern was permitted for fully vaccinated persons for up to 2 hours within a 5 km radius.</p>
14 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to temporarily include Yass Valley LGA as a stay-at-home area.</p>
15 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to remove the curfew in areas of concern.</p>
16 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add and remove certain regional stay-at home areas.</p> <p>Stay-at-home restrictions in 9 regional areas were lifted: Cabonne, Dungog, Forbes, Muswellbrook, Narrabri, Parkes, Singleton, Snowy Monaro Regional, and Upper Hunter Shire.</p> <p>Two other regional areas were reclassified as stay-at-home areas: Albury (from 10 September) and Lismore (from 7 September).</p>
17 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order 2021</i> was amended to add the Hill Tops and Glen Innes Severn Shire LGAs as stay-at-home areas until 24 September 2021.</p>
17 September	<p>The <i>Public Health (COVID-19 Aged Care Facilities) Order 2021</i> was made, requiring persons employed at residential aged care facilities and contractors providing health and personal care to have received at least 1 dose of a COVID vaccine from 17 September 2021.</p> <p>Health practitioners and students at aged care facilities were also required to have had at least 1 dose of a COVID vaccine after 31 October 2021.</p>

Date	Details
20 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to make further provision about public swimming pools, visits and activities in stay-at-home areas and areas of concern.
20 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the Cowra LGA as a stay-at-home area until 28 September 2021.
21 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended. A residential social bubble for up to 3 young people was introduced for recreation or study purposes in stay-at-home areas and areas of concern. This required that the young people all lived in the same area and all adults at the residence were fully vaccinated.</p> <p>The maximum number of people permitted on a construction site was the number equal to 1 person per 4 square metres if fully vaccinated. Otherwise only 50% of the maximum daily workforce of the construction site was permitted, provided there was a site resourcing plan.</p> <p>The Byron Shire, Tweed and Kempsey LGAs were added as stay-at-home areas until 29 September 2021.</p>
22 September	The <i>Public Health (COVID-19 Self-Isolation) Order (No 3) 2021</i> was amended to make further provisions regarding persons diagnosed with COVID, persons medically cleared of COVID and high COVID risk premises. These amendments included medical clearance certificates for close contacts which exempted them from further self-isolation and deemed them to be fully vaccinated and compliant with any testing requirements for 6 months.
23 September	The <i>Public Health (COVID-19 Vaccination of Education and Care Workers) Order 2021</i> was made. Education and care workers were required to be fully vaccinated by 8 November 2021. Similarly, all residents over the age of 18 in family day care residences were required to be fully vaccinated by 8 November 2021.
23 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to remove Brewarrina and Gilgandra LGAs as stay-at-home areas.
23 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to require masks in the general area for persons who had been in a stay-at-home area or an area of concern in the previous 14 days. Masks were required in outdoors area other than a residence, and on common property in residential premises.</p> <p>Stay-at-home requirements for the Hilltop LGA were extended to 1 October 2021.</p>
23 September	The <i>Public Health (COVID-19 Safety) Order 2021</i> was amended to update the approved COVID safety checklist for swimming pools in stay-at-home areas and areas of concern.
24 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to remove the City of Orange as a stay-at-home area.
24 September	The <i>Public Health (COVID-19 Self-Isolation) Order (No 3) 2021</i> was amended to update a reference.
25 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to remove the Narromine as a stay-at-home area.
27 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to remove the 5 worker limit for outdoor work at a place of residence in a stay-at-home area or an area of concern.

Date	Details
27 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to retain the Cowra LGA as a stay-at-home area until 5 October 2021, and to extend all other stay-at-home areas and areas of concern until 11 October 2021.
28 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the Port Macquarie-Hastings and Muswellbrook LGAs as stay-at-home areas until 6 October 2021.
28 September	The <i>Public Health (COVID-19 Self-Isolation) Order (No 3) 2021</i> was amended to prevent certain residents of high COVID risk premises from using common property of the premises unless authorised by a public health officer.
29 September	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the Oberon LGA as a stay-at-home area until 7 October 2021.
29 September	The <i>Public Health (COVID-19 Vaccination of Health Care Workers) Order 2021</i> was amended to exempt certain health care workers who remotely provided non-health services from vaccination requirements.
30 September	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the Snowy Monaro Regional LGA as a stay-at-home area until 8 October 2021.</p> <p>The LGAs of Mid-Western Regional, Central Darling and Walgett were removed as stay-at-home areas. However, stay-at-home requirements continued to apply to the suburbs of Menindee, Sunset Strip (until 8 October 2021) and Wilcannia (until 11 October 2021).</p> <p>Stay-at-home requirements were also extended to 11 October 2021 for the following: Bathurst Regional, Bourke, City of Broken Hill, Central Coast, Central Darling, City of Cessnock, Dubbo Regional, Eurobodalla, Goulburn Mulwaree, Kiama, City of Lake Macquarie, City of Lithgow, City of Maitland, Mid-Western Regional, City of Newcastle, Port Stephens, Queanbeyan-Palerang Regional, City of Shellharbour, City of Shoalhaven, Walgett and Wingecarribee.</p>
1 October	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the Kyogle and Narromine LGAs as stay-at-home areas until 11 October 2021.
2 October	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the suburb of Casino as a stay-at-home area until 11 October 2021.
4 October	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the City of Lismore LGA as a stay-at-home area until 11 October 2021.
5 October	The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended to add the Gunnedah LGA and suburbs with postcodes 2428 or 2430 as stay-at-home areas until 11 October 2021. Stay-at-home requirements for the Muswellbrook LGA were also extended to 11 October 2021.
6 October	<p>The <i>Public Health (COVID-19 Additional Restrictions for Delta Outbreak) Order (No 2) 2021</i> was amended. Provision was made to repeal this Order when the <i>Public Health (COVID-19 General) Order 2021</i> commenced on 11 October 2021 as part of the roadmap for easing restrictions.</p> <p>Regional stay-at-home restrictions were extended to 11 October 2021 for the LGAs of Oberon, Snowy Monaro Regional, and the suburbs of Menindee and Sunset Strip.</p>
8 October	The <i>Public Health (COVID-19 Self-Isolation) Order (No 3) 2021</i> was amended to update a reference.

Date	Details
11 October	<p>The <i>Public Health (COVID-19 Aged Care Facilities) Order 2021</i> was amended to limit visitors to residents of an aged care facility. Residents were only permitted 2 visitors in each 24 hour period. Visitors were limited to people over 12 years of age, and who had had 2 doses of a COVID vaccine with the second dose administered at least 14 days previously.</p>
11 October	<p>The <i>Public Health (COVID-19 General) Order 2021</i> repealed the Delta Outbreak order as part of the roadmap for easing restrictions when the adult NSW population reached 70% full vaccination. It also incorporated matters dealt with by the <i>COVID-19 Safety Order</i> and the <i>COVID-19 Spitting and Coughing Order</i>.</p> <p>From 11 October 2021, all stay-at-home restrictions were removed across NSW. However, the Chief Health Officer was still empowered to identify stay-at-home areas by a published notice.</p> <p>Restrictions continued to apply but were relaxed. The following premises were permitted to increase their operating capacity from:</p> <ul style="list-style-type: none"> • 5 to 10 visitors (places of residence) • 5 to 10 visitors (holiday homes) • 50 to 100 people (significant events) • 20 to 30 people (certain outdoor events). <p>The exemption from wearing a mask while working at school was removed.</p> <p>Entering and leaving Greater Sydney remained restricted, but there were no longer any other restrictions specific to Greater Sydney.</p> <p>Different levels of restrictions applied to unvaccinated people. They were not permitted on certain premises including auction houses, betting agencies, gaming lounges, markets not predominantly sell food, or properties operated by the National Trust or the Historic Houses Trust.</p>
14 October	<p>The <i>Public Health (COVID-19 Care Services) Order 2021</i> (formerly the <i>COVID-19 Aged Care Facilities Order</i>) was amended to require people working in these facilities and people providing in-home and community aged care or disability support services to have received their first and second vaccine doses by specified dates.</p> <p>An employee or person who provided services for an aged care facility were prohibited from entering these facilities after 25 October 2021 unless fully vaccinated.</p> <p>Health practitioners and students were also not permitted to enter an aged care facility after 4 December 2021 unless fully vaccinated.</p> <p>Workers providing in-home and community aged care services and disability services were also prohibited from providing services after 29 November 2021 unless fully vaccinated.</p>
15 October	<p>The <i>Public Health (COVID-19 General) Order 2021</i> was amended.</p> <p>A reasonable excuse for entering or leaving Greater Sydney was extended to include attending a significant event.</p> <p>Provision was made to repeal restrictions on entering or leaving Greater Sydney from 1 November 2021.</p>

Date	Details
18 October	<p>The <i>Public Health (COVID-19 General) Order 2021</i> was amended.</p> <p>Social distancing restrictions were relaxed again. The following premises were permitted to increase their operating capacity from:</p> <ul style="list-style-type: none"> • 10 to 20 visitors (places of residence) • 10 to 20 visitors (holiday homes) • 500 to 3,000 people (controlled outdoor public gatherings) • 50 to 200 people (COVID safe outdoor public gatherings); and • 30 to 50 people (any other outdoor public gathering). <p>The limit for significant events was lifted and capacity was to be calculated by the capacity rules for where the event was held.</p> <p>Masks were no longer required for fully vaccinated persons working in offices.</p> <p>Certain restrictions still applied to unvaccinated adults. They were excluded from being on higher risk premises including entertainment and major recreation facilities, and hospitality venues (except if attending a small funeral, memorial or wedding). They were required to stay seated when consuming food and drink on non-residential premises or at significant events.</p>
19 October	<p>The <i>Public Health (COVID-19 General) Order 2021</i> was amended to allow up to 1,000 fully vaccinated persons to attend COVID-safe outdoor gatherings for community sporting activities in the general area.</p> <p>Hospitality venues in the general area would be permitted to start taking bookings for more than 20 people after 1 November 2021.</p>
20 October	<p>The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 3) 2021</i>, the <i>Public Health (COVID-19 Vaccination of Education and Care Workers) Order 2021</i> and the <i>Public Health (COVID-19 General) Order 2021</i> were amended to confirm that certain COVID vaccines administered outside Australia satisfied local vaccination requirements and that evidence of a medical contraindication from the Australian Immunisation Register was sufficient evidence for those Orders.</p>
21 October	<p>The <i>Public Health (COVID-19 General) Order 2021</i> was amended to lift requirements to wear a mask in indoor gym and dance classes.</p>
21 October	<p>The <i>Public Health (COVID-19 Self-Isolation) Order (No 3) 2021</i> was amended to require persons to notify employers, housemates and close contacts when diagnosed with COVID. The isolation period for fully vaccinated close contacts was reduced to 7 days.</p> <p>Diagnosed persons with a medical clearance notice after self-isolating were deemed to be fully vaccinated for only 6 weeks, and there was no longer any specific exemption from testing under any other Orders.</p>
22 October	<p>The <i>Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 2) 2021</i> remade the vaccination requirements for health care workers.</p>
27 October	<p>The <i>Public Health (COVID-19 General) Order 2021</i> was amended to clarify that any proof of vaccination presented by a person must be true and accurate.</p>
27 October	<p>The <i>Public Health (COVID-19 Interstate Travellers) Order (No 4)</i> remade interstate travel restrictions, with changes to reduce requirements for fully vaccinated persons. It permitted fully vaccinated non-residents of NSW who were close contacts to enter NSW if it was more than 7 days since the person was in the place of high concern.</p> <p>If already in NSW, a fully vaccinated person who was a close contact was not required to self-isolate if more than 7 days had passed since the person was in the place of high concern.</p>

Date	Details
1 November	The <i>Public Health (COVID-19 General) Order 2021</i> was amended to enable persons from overseas to use certain documents from Commonwealth Department of Home Affairs as evidence of vaccination.
1 November	The <i>Public Health (COVID-19 Care Services) Order (No 2) 2021</i> remade requirements relating to aged care facilities with no substantial changes. Vaccination conditions continued to apply to aged care and disability services workers.
1 November	<p>The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 3) 2021</i> was amended:</p> <ul style="list-style-type: none"> • Fully vaccinated arrivals no longer had to enter quarantine. Instead, they were required to comply with the <i>NSW Health Guidelines for Recent Fully Vaccinated Arrivals</i> for 14 days. These guidelines ceased to apply once the person returned a negative COVID test result between the 7th and 14th day after arrival. • Unvaccinated arrivals were still required to enter quarantine for the full quarantine period. • Unvaccinated overseas flight crew members were also still required to enter quarantine. • Provisions relating to the New Zealand travel bubble were removed.
2 November	The <i>Public Health (COVID-19 General) Order 2021</i> was amended to allow amusement centres and play centres in the general area to open to members of the public, other than unvaccinated adults.
5 November	<p>The <i>Public Health (COVID-19 General) Order 2021</i> was amended to make provision enabling unvaccinated persons to participate in elections and examinations.</p> <p>Unvaccinated adults were permitted to attend polling places and voting centres to participate in elections as well as attending HSC or International Baccalaureate examinations. This applied to both the general area and stay-at-home areas.</p> <p>The meaning of 'fully vaccinated person' was extended to include persons who receive a complete course that only involves one vaccine dose.</p>
8 November	<p>The <i>Public Health (COVID-19 General) Order 2021</i> was amended. Social distancing restrictions were relaxed again in the general area:</p> <ul style="list-style-type: none"> • Premises could generally not allow more persons on the premises than the number of persons equal to 1 person per 2 square metres of space. • Visitor limits for fully vaccinated households were removed. However unvaccinated persons were not allowed to visit other households. • Music festivals were not permitted. • Entertainment and major recreation facilities could have 100% of seating capacity or more if space allowed 2 square metres per person. • Outdoor public gatherings of up to 1,000 vaccinated persons were permitted. Unvaccinated persons were generally limited to outdoor public gatherings of 2 persons only. • Other restrictions on unvaccinated persons continued to apply, such as not attending many non-residential premises and were expanded to include other business types.
10 November	The <i>Public Health (COVID-19 General) Order 2021</i> was amended to remove the requirement for persons to be seated when consuming alcohol indoors in nightclubs and strip clubs.
27 November	The <i>Public Health (COVID-19 Maritime Quarantine) Order (No 4) 2021</i> remade quarantine requirements for those arriving by vessel.
27 November	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> remade quarantine requirements for those arriving by air.

Date	Details
28 November	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to make special provision in response to the Omicron variant. Fully vaccinated arrivals and flight crew from countries of concern were required to be tested and self-isolate at their residence for 14 days. Those arriving from other countries (apart from flight crew) were required to self-isolate for 3 days.
28 November	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to confirm that people required to self-isolate under the special Omicron provisions could travel by private vehicle (including rideshare and taxis) to their residence.
30 November	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to provide that the isolation requirement for those arriving from countries that were not of concern was a minimum of 3 days or until they tested negative for COVID.
3 December	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to clarify that the 3 day quarantine period for flight crew isolating under the special Omicron provisions began when they arrived in NSW.
4 December	The <i>Public Health (COVID-19 Self-Isolation) Order (No 4) 2021</i> remade self-isolation requirements with some changes. <ul style="list-style-type: none"> • The high-risk premises designations were removed. • Requirements to notify a positive COVID diagnosis were increased. People diagnosed with COVID were required to notify their employers, close contacts and education providers. Employers were required to notify SafeWork NSW if they become aware an employee was diagnosed with COVID. • A close contact was defined to mean a person identified by an authorised contact tracer as likely to have come into contact with a person with COVID, and at risk of developing COVID.
15 December	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to: <ul style="list-style-type: none"> • remove provisions relating to countries of concern in southern Africa • exempt certain persons arriving in NSW from another country from self-isolation and testing requirements if they had undergone these in another state or territory before arrival • provide that persons with a medical contraindication to COVID vaccinations were taken to be fully vaccinated, and • require that information provided under the Order, or information that states a person is fully vaccinated to be true and accurate.
15 December	The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> remade requirements under the previous Order.
16 December	The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was to prohibit music Festivals in the City of Newcastle LGA.
17 December	The <i>Public Health (COVID-19 Vaccination of Education and Care Workers) Order (No 2) 2021</i> remade vaccination requirements with minor changes.
18 December	The <i>Public Health (COVID-19 Self-Isolation) Order (No 4) 2021</i> was amended to specify that a diagnosed person was medically cleared under the Order when notified that they could stop self-isolating by NSW Health or a medical practitioner.
21 December	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to remove requirements for fully vaccinated arrivals to self-isolate for 72 hours.

Date	Details
23 December	The <i>Public Health (COVID-19 Care Services) Order (No 3) 2021</i> remade requirements relating to the vaccination of aged care and disability service workers.
23 December	<p>The <i>Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 3) 2021</i> was remade with vaccination requirements extended to introduce vaccination requirements for 'Stage 2 Health Care Workers'.</p> <p>Stage 2 Health Care workers were required to have received the first dose of a vaccination by 31 January 2022, and the second dose by 28 February 2022.</p>
23 December	The <i>Public Health Amendment (COVID-19 Medical Contraindication Certificates) Order 2021</i> amended a number of Orders to prohibit the issue of medical contraindication certificates by medical practitioners who were subject to a condition about issuing medical certificates. Persons who had already obtained such a certificate were required to stop work until they obtained a new certificate or, in the case of airport and quarantine workers, was fully vaccinated or had received one dose and would receive the second dose within 3 months or 28 days of the Order.
24 December	<p>The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was amended. The changes made were:</p> <ul style="list-style-type: none"> • a general requirement to wear masks in indoor areas, with certain exceptions • a requirement to use QR code check-in in retail premises and hospitality venues • capacity limits of no more than 1 person per 2 square metres of space in indoor areas of hospitality venues and nightclubs.
27 December	The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was amended to clarify that electronic check-in was not required for retail premises within a shopping centre if details were provided when entering the shopping centre.
30 December	<p>The <i>Public Health (COVID-19 Self-Isolation) Order (No 4) 2021</i> was amended to provide that household contacts (ie people who live with a diagnosed person) must self-isolate for 7 days regardless of whether they receive a written direction from a contact tracer.</p> <p>The meaning of medically cleared for a diagnosed person was extended to include persons who had self-isolated for 7 days from the day of their positive test.</p>
31 December	The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to clarify testing requirements for people arriving in NSW from other countries. People were permitted to leave self-isolation once they had undergone a rapid antigen test for COVID and were notified that the test was negative for COVID.
2022	
5 January	The <i>Public Health (COVID-19 Self-Isolation) Order (No 4) 2021</i> was amended to include nominated staff from the Department of Education as authorised contact tracers.
8 January	The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was amended to prohibit singing and dancing in certain entertainment venues. The ban on music festivals in Newcastle was lifted.
11 January	<p>The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was amended.</p> <p>Rules around music festivals were clarified to prohibit singing and dancing by anyone other than the performers.</p>

Date	Details
12 January	<p>The <i>Public Health (COVID-19 Self-Isolation) Order (No 4) 2021</i> was amended to provide that:</p> <ul style="list-style-type: none"> • Persons testing positive through a rapid antigen test were subject to the usual self-isolation requirements and required to notify Service NSW of their positive test. • Household contacts and close contacts were not required to self-isolate if the contact had already completed an earlier self-isolation period within the previous 28 days.
12 January	<p>The <i>Public Health (COVID-19 General) Order (No 4) 2021</i> was amended to require that information given to Service NSW under the Self-Isolation Order must be true and accurate.</p>
18 February	<p>The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was amended to relax the requirements on providing contact details when entering premises. The list of places where registration was required was reduced from 10 premises and event types to just 4:</p> <ul style="list-style-type: none"> • nightclubs • strip clubs • sex on premises venues, being restricted premises where sex between patrons is permitted on the premises • music festivals with more than 1,000 attendees. <p>The social spacing rule restricting the number of people permitted in hospitality venues and nightclubs was repealed. Singing and dancing restrictions were also lifted.</p>
21 February	<p>The <i>Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021</i> was amended to reduce the quarantine period from 14 days to 7 days for persons arriving by air from outside Australia.</p>
23 February	<p>The <i>Public Health (COVID-19 Air and Maritime Arrivals) Order (No 1) 2022</i> repealed and replaced the separate Air Quarantine and Maritime Quarantine Orders.</p>
25 February	<p>The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was amended to change requirements about when masks were required.</p> <p>Masks no longer had to be worn indoors or by staff working in hospitality venues who dealt with the public.</p> <p>Masks were still required on public transport and related waiting areas, on domestic aircraft and in airports, and at large indoor music festivals. Masks were also now required for students over 12 at schools, and in correctional centres and places of custody. Capacity limits on music festivals were also removed.</p>
1 March	<p>The <i>Public Health (COVID-19 Care Services) Order (No 3) 2021</i> was amended to provide that vaccination requirements for aged care workers and disability services workers included obtaining a third booster dose.</p>
2 March	<p>The <i>Public Health (COVID-19 General) Order (No 2) 2021</i> was amended to update a reference.</p>
2 March	<p>The <i>Public Health (COVID-19 Self-Isolation) Order 2022</i> remade self-isolation requirements with some changes, including the following.</p> <ul style="list-style-type: none"> • Unless directed to do so, household contacts were not required to self-isolate again because another resident tested positive less than 14 days after their earlier self-isolation ended. • Close contacts were not required to self-isolate again if they had already completed self-isolation previously for a positive diagnosis which ended less than 8 weeks before becoming a close contact. • Employers were no longer required to notify SafeWork NSW of COVID diagnoses. • Medical clearance notices were able to be issued by or on behalf of NSW Health.

Date	Details
2 March	The <i>Public Health (COVID-19 Air and Maritime Arrivals) Order (No 1) 2022</i> was amended to require persons entering a quarantine facility to provide their name and contact details if asked to do so by police.
11 March	The <i>Public Health (COVID-19 General) Order 2022</i> remade requirements under the prior COVID General Order.
11 March	The <i>Public Health (COVID-19 Vaccination of Education and Care Workers) Order 2022</i> remade and continued vaccination requirements for these workers.
21 March	The <i>Public Health (COVID-19 Care Services) Order 2022</i> remade and continued vaccination requirements for aged care and disability service workers.
21 March	The <i>Public Health (COVID-19 Vaccination of Health Care Workers) Order 2022</i> remade and continued vaccination requirements for health care workers.
28 March	The <i>Public Health (COVID-19 Self-Isolation) Order 2022</i> was amended to relax the self-isolation requirement for certain close contacts and household contacts. These contacts were exempt from self-isolation if they had recovered from COVID recently. The exemption period was increased to 12 weeks since recovery.
22 April	The <i>Public Health (COVID-19 Self-Isolation) Order 2022</i> was amended. Household contacts and close contacts were no longer required to isolate. Instead, they had to comply with NSW Health Household and Close Contact Guidelines for 7 days from when a household member tested positive or when informed they were a close contact.
22 April	The <i>Public Health (COVID-19 General) Order 2022</i> was amended. With the recommencement of travel by cruise ships, the rules around masks were updated to mandate mask wearing in cruise ship terminals.
30 April	The <i>Public Health (COVID-19 Air and Maritime Arrivals) Order (No 1) 2022</i> was amended to remove the quarantine requirements for unvaccinated international air and maritime arrivals.

Endnotes



- 1 'COVID-19 (Coronavirus statistics)', *NSW Health* (Web Page) www.health.nsw.gov.au/news/Pages/20210131_00.aspx.
- 2 Stephanie Dalzell, 'Therapeutic Goods Administration approves Moderna COVID-19 vaccine for young children' *ABC News* (online, 19 July 2022) www.abc.net.au/news/2022-07-19/moderna-kids-vaccine-covid-19-tga/101250472.
- 3 Australian National Audit Office, *Australia's COVID-19 Vaccine Rollout* (17 August 2022) [Australia's COVID-19 Vaccine Rollout | Australian National Audit Office \(anao.gov.au\)](http://Australia's COVID-19 Vaccine Rollout | Australian National Audit Office (anao.gov.au)).
- 4 Department of Health and Aged Care, Operation COVID Shield, *COVID-19 Vaccine Roll-out (Report, 10 November 2021)* www.health.gov.au/sites/default/files/documents/2021/11/covid-19-vaccine-rollout-update-10-november-2021.pdf. The term 'fully vaccinated' generally refers to people who have received a complete COVID-19 vaccination course comprising 2 doses of an approved vaccine (See Select Committee on COVID-19: Final Report (The Senate, April 2022) [2.72]). There are exceptions to this, for example, on 5 November 2021 the Public Health (COVID-19 General) Order 2021 extended the meaning of fully vaccinated person to include persons who received a complete course that only involved one vaccine dose. In addition, on 1 March 2022 the *Public Health (COVID-19 Care Services) Order (No 3) 2021 was amended to provide that vaccination requirements for aged care workers and disability services workers included obtaining a third booster dose*.
- 5 Youth justice notifications are not included in these COVID-related contacts and are discussed separately. See **section 2.12**.
- 6 Note: This excludes notifications received from youth justice centres.
- 7 Harriet Alexander, 'Crackdown on people changing their address to avoid restrictions', *Sydney Morning Herald* (online, 25 August 2021) www.smh.com.au/national/nsw/crackdown-on-people-changing-their-address-to-avoid-restrictions-20210824-p58lg0.html.
- 8 Material in case studies has been paraphrased, and pseudonyms used.
- 9 Department of Health and Aged Care, 'Health Australia's COVID-19 vaccine roll-out strategy' (Strategy, January 2021). www.health.gov.au/sites/default/files/documents/2021/01/covid-19-vaccination-australia-s-covid-19-vaccine-national-roll-out-strategy.pdf.
- 10 For a discussion of the vaccine rollout see Commonwealth of Australia, *Select Committee on COVID-19: Final Report* (The Senate, April 2022) from [2.66].
- 11 Jade Macmillan, 'Scott Morrison among small group to receive first coronavirus vaccines administered in Australia' *ABC News* (online 21 February 2021) www.abc.net.au/news/2021-02-21/australia-covid-vaccinations-begin-first-shots-administered/13176288.
- 12 Department of Health (Cth), Therapeutic Goods Administration, 'Updated safety advisory – rare and unusual blood clotting syndrome (thrombosis with thrombocytopenia)' (Media release, online, 9 April 2021) www.tga.gov.au/media-release/astazeneca-chadox1-s-covid-19-vaccine.
- 13 Paul Karp, Lorena Allam and Nick Evershed, 'Indigenous vaccination gap grows as NSW outbreak claims seven Aboriginal lives' *The Guardian* (online, 1 October 2021) www.theguardian.com/australia-news/2021/oct/01/indigenous-vaccination-gap-grows-as-nsw-outbreak-claims-seven-aboriginal-lives.
- 14 *Public Health (COVID-19 Maritime Quarantine) Order 2020* [legislation.nsw.gov.au/file/Public%20Health%20\(COVID-19%20Maritime%20Quarantine\)%20Order%202020.pdf](http://legislation.nsw.gov.au/file/Public%20Health%20(COVID-19%20Maritime%20Quarantine)%20Order%202020.pdf).
- 15 *Public Health (COVID-19 Air Transportation Quarantine) Order 2020* [legislation.nsw.gov.au/file/Public%20Health%20\(COVID-19%20Air%20Transportation%20Quarantine\)%20Order%202020.pdf](http://legislation.nsw.gov.au/file/Public%20Health%20(COVID-19%20Air%20Transportation%20Quarantine)%20Order%202020.pdf).
- 16 *Public Health Amendment (COVID-19 Border Provisions) Order 2021*. Mandatory quarantine for maritime arrivals continued until 22 February 2022, regardless of the individual's vaccination status. Quarantine requirements for fully vaccinated maritime arrivals was no longer required when *Public Health (COVID-19 Air and Maritime Arrivals) Order (No 1) 2022* commenced on 23 February 2022.
- 17 On 20 April 2022 the Premier announced that international returning travellers will not be required to undertake hotel quarantine from 30 April. NSW Premier and Minister for Health, 'Update on COVID Settings' (media release, 20 April 2022) www.nsw.gov.au/media-releases/nsw-covid-update-april-2022. See also: *Public Health (COVID-19 Air and Maritime Arrivals) Order (No 1) 2022*, as amended by *Public Health (COVID-19 Air and Maritime Arrivals) Order (No 1) Amendment (No 2) Order 2022* from 30 April 2022.
- 18 Special Health Accommodation was used to accommodate people who are medically fragile or required closer supervision (for health reasons), unaccompanied minors and others with special needs.
- 19 *Public Health (COVID-19 Self-Isolation) Order (No 3) 2021* as amended on 22 September 2021 by the *Public Health (COVID-19 Self-Isolation) Order (No 3) Amendment Order 2021*.
- 20 *Public Health (COVID-19 Self-Isolation) Order (No 4) Amendment (No 2) Order 2021*.
- 21 NSW Health self-isolation guidelines for close contacts (July 2020).
- 22 Alexis Moran, 'What is the new national definition of a close contact? And what were the rules before?' *ABC News* (online 30 December 2021) www.abc.net.au/news/2021-12-30/national-cabinet-close-contact-definition-household-covid/100731190.
- 23 The Premiers and the Minister for Health, 'Update on COVID settings' (Media release, 20 April 2022). Online at: www.nsw.gov.au/media-releases/nsw-covid-update-april-2022.
- 24 *Public Health Act 2010*, s 70.
- 25 'Legislation and Penalties', *NSW Government*, (Web Page, 1 June 2022) www.nsw.gov.au/covid-19/stay-safe/rules/legislation-penalties; and *Public Health Regulation 2012*, Schedule 4.
- 26 *Fines Act 1996*, s 24A.
- 27 See for example, 'Current COVID-19 Placement Advice, Restrictions and Vaccinations', *Western Sydney University* (Student Guidance, 3 March 2022) www.westernsydney.edu.au/_data/assets/pdf_file/0004/1860466/Covid-19_Placement_Information_2021.pdf.
- 28 For a full list see: 'Grants, loans and financial assistance', *Service NSW* (Web Page) www.service.nsw.gov.au/campaign/covid-19-help-businesses/grants-loans-and-financial-assistance#jobsaver-payment.
- 29 'JobSaver Payment Guidelines', *Service NSW* (Web Page, 20 June 2022) www.service.nsw.gov.au/jobsaver-payment-guidelines.

- 30 '2021 COVID-19 micro-business grant Guidelines', *Service NSW* (Web Page, 20 June 2022) www.service.nsw.gov.au/2021-covid-19-micro-business-grant-guidelines.
- 31 '2021 COVID-19 business grant Guidelines', *Service NSW* (Web Page, 20 June 2022) www.service.nsw.gov.au/2021-covid-19-business-grant-guidelines.
- 32 See for example: 'Community services under strain amidst COVID-19', *University of NSW* (Web Page, 20 December 2021) www.unsw.edu.au/news/2021/12/community-services-under-strain-amidst-covid-19;
Tim Swanston, 'NSW Lockdown sees increase in demand for domestic violence services', *ABC News* (Online 27 July 2021) www.abc.net.au/news/2021-07-25/nsw-lockdown-sees-increase-in-demand-for-crisis-services/100320370;
'Mental health services in Australia', *Australian Institute of Health and Welfare* (Web Page, 17 May 2022) www.aihw.gov.au/reports/mental-health-services/mental-health-services-in-australia/report-contents/covid-19-impact-on-mental-health.
- 33 For more on lock-ins during normal operational activities, see: Corrective Services NSW, *Musters, let-go and lock-in* (Policy, D18/248926, 16 December 2017). Online at: correctiveservices.dcj.nsw.gov.au/content/dam/dcj/corrective-services-nsw/documents/copp/musters-let-go-lock-in.pdf.
- 34 'Impact of, and response to, ongoing COVID restrictions on custody-based criminogenic programs', *Department of Communities and Justice* (Web Page, 6 January 2022) www.coronavirus.dcj.nsw.gov.au/services/corrective-services/impact-of-covid-restrictions.
- 35 'Impact of, and response to, ongoing COVID restrictions on custody-based criminogenic programs', *Department of Communities and Justice* (Web Page, 6 January 2022) www.coronavirus.dcj.nsw.gov.au/services/corrective-services/impact-of-covid-restrictions.
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