

## **COVID-19 FAQs**

**Updated 28 April 2022**

1. Which areas of NSW does the [Public Health Order](#) apply to?

- The [Public Health Order](#) applies to the whole of NSW.

2. Who is "fully vaccinated"?

- You are fully vaccinated if you have:
  - had two doses of an approved COVID-19 vaccine; or
  - had one dose of a COVID-19 vaccine where a complete course consists of only one dose; or
  - a medical contraindication certificate or a medical contraindication recorded on the Australian Immunisation Register precluding you from obtaining an approved COVID-19 vaccine that is available in New South Wales.
- You are not fully vaccinated if you have only received one dose of the vaccine where two doses are required for a complete course.
- You must only provide, display or produce information or evidence about being fully vaccinated, or about another person being fully vaccinated, that is true and accurate.

3. Am I required to close the office to members of the public?

- No, you do not need to close the office. However, agents may wish to consider their own policy with respect to the safety of their staff on this issue. Refer to FAQ 12 for more information about COVID-19 Safety Plans.

4. *Do persons have to be fully vaccinated in order to enter the office?*

- No, the [Public Health Order](#) does not require you to be fully vaccinated to enter the office. However, real estate agents or agencies may wish to consider their own policy with respect to the safety of their staff on this issue. Real estate agencies have the discretion to refuse entry to a person who is not fully vaccinated under their Work Health and Safety Policy or COVID-19 Safety Plan (if the office has one, refer to FAQ 12) and may ask for proof of vaccination. While you are not obliged to provide this evidence, failing to do so may mean that you are refused entry to the premises.
- Refer to FAQ 5 for more information.

5. *Can real estate agents go into the office or do we need to work from home?*

- Employees can go into the office. There is no requirement in the [Public Health Order](#) to work from home, regardless of your vaccination status, but agencies may wish to consider their own policy with respect to the safety of their staff on this issue.
- Agents should contact REEF or NSW Fair Work for queries relating to employment matters.
- Refer to FAQ 6 and 7 for more information.

6. *Can an employer force an employee to go into the office if the employee does not want to go?*

- Agents should contact REEF or NSW Fair Work for queries relating to employment matters (for example, where vaccinated office staff refuse to work with unvaccinated staff in the office).

7. *What should an agency do if an employee is diagnosed with COVID-19?*

- Where an employee has been diagnosed with COVID-19, an agency should contact REEF and NSW Health to seek further guidance on the steps that

they should take. From 21 January 2022, an agency must only report to SafeWork NSW where an employee contracts COVID-19 at work and passes away from, or is hospitalised, as a result of the disease. An employee may have caught COVID-19 at work if they were in contact with another individual who had tested positive to the virus. NSW Government's website also provides some guidance for businesses who have had an employee test positive to COVID-19 [here](#).

8. *Do people need to wear a mask while in the office?*

- No. However, we suggest wearing face masks indoors, where possible.
- However, if you are a close contact or household contact of a person diagnosed with COVID-19 you must wear a mask indoors.

9. *Is there a maximum number of people allowed in the office and are they required to social distance?*

- The [Public Health Order](#) does not restrict the number of persons, nor specify the requirement to social distance within an office. However, we suggest social distancing practices of 1 person per 2 square metres.

10. *Can an employer insist on a team member having a COVID-19 test when they appear to have symptoms consistent with COVID-19?*

- Agents should contact REEF or NSW Fair Work for queries relating to employment matters.

11. *Is there any financial support for real estate agencies?*

- Agencies may be eligible for the 2022 Small Business Support Program if:
  - their annual turnover is between \$75,000 and \$50 million;
  - the impact of COVID-19 caused their revenue to decrease by at least 40% in January 2022 and the first fortnight of February 2022; and
  - they apply before 29 April 2022.

- Even if you don't meet the above criteria you may still be eligible under "alternative circumstances". You can find out more information here: [Apply for the 2022 Small Business Support Program](#).
- Agencies may also be eligible for a Rapid Antigen Test rebate. For more information see: [The Small Business Fees and Charges Rebate](#).

*12. Is a COVID-19 Safety Plan required for real estate agency offices, inspections or auctions?*

- No. [COVID-19 Safety Plans](#) are no longer required for businesses, inspections or auctions. However, they are optional and are highly recommended to ensure that businesses continue to operate in a COVID-safe way.

*13. Do I need a QR Code for real estate agency offices, inspections or auctions?*

- Real estate agencies are not required to have a QR Code for businesses, inspections or auctions. While we suggest it is best practice to provide a QR Code, they are optional.

*14. I am a buyer/tenant, do I need to be fully vaccinated to attend inspections and onsite auctions for residential properties or commercial/non-residential properties?*

- No. There are no vaccination requirements under the [Public Health Order](#). However, some real estate agents or agencies may have their own policies on this issue and have the discretion to refuse entry under their Work Health and Safety Policy or COVID-19 Safety Plan (if they have one – refer to FAQ 12), if a vendor/landlord elects not to admit entry to their home to persons who are not fully vaccinated or if a tenant seeks to limit access to persons who are not fully vaccinated. Refer to FAQ 17 for more information.
- If this is the case, a real estate agent may ask to seek proof of vaccination. While attendees are not obliged to provide such information, they may be refused entry if they do not. We recommend contacting the real estate agent

prior to attending an onsite auction or inspection to find out that agency's policies on vaccination.

15. *Do third party workers, landlords, tenants and agents need to be fully vaccinated to attend a (residential or commercial/non-residential) property?*

- No. There are no vaccination requirements for persons attending. Refer to FAQ 17 in relation to tenants seeking to limit access to persons who are not fully vaccinated.

16. *Do people need to be fully vaccinated to attend auction houses?*

- No

17. (a) *What right does a vendor have with allowing vaccinated and unvaccinated attendees at opens of a tenanted property, where the tenant seeks to limit access to vaccinated attendees only (including office staff)?*

(b) *Is there any legal recourse available to the vendor against the tenant, if they are unable to give access to all prospective purchasers as a result of the tenant's refusal to allow access?*

(c) *What right does a landlord or landlord's agent have to inspect a tenanted property, if unvaccinated and the tenant is refusing access to the unvaccinated?*

- There are no vaccination requirements in the [Public Health Order](#) for inspections or auction.
- Although tenants must not unreasonably refuse an inspection in accordance with the *Residential Tenancies Act*, if seeking to limit access to unvaccinated people (whether unvaccinated agents, prospective purchasers or landlords) agents should try to accommodate that tenant's request so far as is reasonable. E.g. an agent could try to organise a private inspection or a virtual inspection of the property.

- Where a tenant is unreasonably limiting access to a property then the relevant party should apply to NCAT.

*18. How many people can attend an open and auction?*

- The [Public Health Order](#) does not specify a limit. However, social distancing of 1 person per 2 square metres is suggested.

*19. What happens with strata meetings?*

- Notice of a strata and community scheme meeting, or documents in relation to such meetings, can be given by email.
- Strata and community schemes can meet and vote electronically. If the owners corporation or association has not adopted an electronic means of voting by resolution, the person who exercises the secretary's functions should take reasonable steps to make sure that lot owners or members can vote and participate in the meeting.
- To determine quorum, persons are deemed to be present if they vote or intend to vote by a permitted means.
- Strata and community schemes can also use an electronic alternative to affixing the common seal.

*20. Where the property for sale is tenanted, how many inspections can take place each week?*

- Under section 53(4) of the *Residential Tenancies Act 2010* (NSW), a tenant is only required to allow two inspections each week.
- Please note that tenants are not obliged to leave their home during an inspection.

*21. What happens if a tenant refuses to allow a periodic inspection?*

- This is a practical matter.

- If the tenant unreasonably refuses to allow an inspection then the agent will need an order from NCAT having regard to the parties' rights and obligations under sections 58 and 60 of the *Residential Tenancies Act 2010* (NSW).

*22. What if a tenant says they can't move out because they have COVID-19 and need to isolate?*

- The requirement for the tenant to self-isolate does not automatically mean they can continue to occupy the property as they could self-isolate at another property. If the tenant is unable to find other accommodation, the details will need to be negotiated between the landlord and tenant.
- In most circumstances, it is likely to be more practical to allow the tenant to remain in the property for those isolation days. Refer to FAQs 32 and 33 below for more information.

*23. Do people need to wear a face mask at auctions, inspections (including outgoing or routine inspections) or on common property?*

- While indoors, face masks are strongly encouraged but are not mandatory unless the auction or inspection takes place, relevantly, at an airport, hospital or residential care facility or hostel. Face masks are also required if you are a household member or close contact of someone who has been diagnosed with COVID-19.

*24. Can we refuse entry to a client to go into our office, an inspection or auction if they do not have a face mask and are refusing to wear one?*

- No, because it is not mandatory to wear face masks indoors unless it is a premises, or in circumstances, listed in FAQ 23 above.

*25. What should an agent do if the tenant refuses access to an unvaccinated tradesperson and there is urgent maintenance required?*

- We suggest that agent's compile a list of their usual fully vaccinated tradespeople who they can contact, if required.

26. *COVID-19 clean – who is responsible for the payment of this cleaning service if a short-term holiday letting or residential tenant is diagnosed with COVID-19 immediately prior to or on vacation of the property?*

- For short-term holiday letting, a clause referring to this circumstance and COVID-19 cleaning should be included in the agreement signed by the tenant.

27. *Can a COVID-19 cleaning provision be inserted into the residential tenancy agreement/letting agreement, passing the costs to the tenant? We note that COVID-19 is part of life moving forward and agents need clarification on what is permitted.*

- No clause should be inserted into the Residential Tenancy Agreement at this stage. NSW Fair Trading needs to consider this issue further with input from all stakeholders. However, we see no reason why a host of short-term rental accommodation can't include such a provision in their terms and conditions should they wish.

28. *If a tenant refuses to provide us with access to the property to conduct a final inspection, what next steps should we take if this will delay settlement of the property?*

- Contact the vendor's solicitor/conveyancer to discuss a way forward.
- If a solution cannot be reached, obtain an order for access by applying to NCAT.

29. *What if a tenant is due to be out of a property today and settlement is due tomorrow, but the tenant says they can't leave because they have COVID-19?*

- There are no hard and fast rules, so agents will need to use their management and negotiation skills in each case. The vendor is contractually obligated to give the purchaser “vacant possession”.
- We suggest looking at the provisions of your current contract for sale, or for any future contracts of sale we suggest raising the issue with your solicitors and conveyancers to ensure that you are covered in such circumstances.
- If a solution cannot be reached, you could obtain an order for access by applying to NCAT.

*30. In relation to short-term rental accommodation, will hosts be able to refuse access to unvaccinated guests? Will hosts be able to request a negative COVID-19 test immediately prior to occupation for unvaccinated and vaccinated attendees?*

- There are no vaccination requirements for persons attending short-term rental accommodation in NSW.
- However, a host could choose to include in their terms and conditions the requirement for all guests to be vaccinated and for them to confirm that they have been so vaccinated, provided that prospective occupants are clearly notified of such requirements. However, if this is something that a guest does not wish to confirm then the host has the discretion not to let the property to them. While a host can request evidence of vaccination, the guest is not under any obligation to provide it and so there is no means of enforcing this particular term/condition. A host should not refuse short-term rental accommodation to a person who does not want to produce such evidence, however, if there are other potential guests who apply for the property willing to provide the evidence then the host will most likely pursue those guests.

*31. What happens if a guest cancels their short-term rental accommodation because they don't want to travel due to COVID-19?*

- There are no specific guidelines regarding the cancellation of short-term rental accommodation and the consumer guarantee provisions of the

Australian Consumer Law are unlikely to apply to cancellations as a direct result of government restrictions. The best practice is to ensure this is covered in the Rental Agreement Terms and Conditions so that all parties know where they stand.

- Whether consumers are entitled to a refund for travel bookings cancelled due to government restrictions will depend on the terms and conditions of their booking.
- If the guest wishes to cancel their booking due to health and safety concerns about COVID-19, this may be treated as a 'change of mind' and it is up to the host to decide whether the guest is entitled to a remedy such as full or partial refund, credit note or voucher.
- Given the exceptional circumstances, the ACCC encourages all businesses to treat consumers fairly.

*32. Will landlords be required to give residential COVID-19 impacted tenants relief?*

- The moratorium period and the transitional moratorium period, which provided COVID-19 impacted tenants protections under the [Residential Tenancies \(COVID-19 Pandemic Emergency Response\) Amendment Regulation 2021 \(NSW\)](#) and the [Residential Tenancies Amendment \(COVID-19 Pandemic Emergency Response\) Regulation \(No 2\) 2021 \(NSW\)](#), have now expired.
- Please refer to REINSW's FAQs on these regulations for more information.

*33. Is there any financial support for residential landlords?*

- Applications have closed for land tax relief and for financial assistance for landlords who agreed to reduce the rent of COVID-19 impacted tenants.
- For more information, visit these site: [Apply for COVID-19 land tax relief | Service NSW](#) and [Apply for the residential tenancy support payment | Service NSW](#)

*34. Will landlords be required to give commercial COVID-19 impacted tenants relief and what type of other relief is there?*

- Yes. The [\*Retail and Other Commercial Leases \(COVID-19\) Regulation 2022 \(NSW\)\*](#) commenced on 13 January 2022 and provides protections to COVID-19 impacted lessees during the prescribed period, which now ends on 30 June 2022.
- However, the *Retail and Other Commercial Leases (COVID-19) Regulations 2022* may contain saving and transitional provisions and will continue to apply, even after their repeal date, to things in relation to a retail lease which occurred while the lease met the definition of an “impacted lease”: section 88(1A) and 89 of the *Retail Leases Act 1994 (NSW)*
- Please refer to REINSW’s FAQs on these regulations for more information.
- If a business that is experiencing financial hardship does not qualify for one of 2021 COVID-19 Business Grant, 2021 Micro-Business Grant and 2021 JobSaver Payment, they may be able to apply to a Hardship Review Panel which will consider a business’s eligibility for support.

35. *Is there any financial support for commercial landlords?*

- Yes. Commercial landlords may be eligible for the Commercial Landlord Hardship Fund comprising a monthly grant of up to \$3,000 per month per property if they have provided rent relief to tenants under the [\*Retail and Other Commercial Leases \(COVID-19\) Regulation 2022 \(NSW\)\*](#) and doing so has caused them financial hardship. This fund provides support until 13 March 2022 if the eligibility criteria is met and applications close on 31 May 2022. For more information, visit this site: [Commercial Landlord Hardship Fund Guidelines – Service NSW](#).
- Commercial landlords may be eligible for the 2022 Small Business Support Program if:
  - their annual turnover is between \$75,000 and \$50 million;
  - the impact of COVID-19 caused their revenue to decrease by at least 40% in January 2022 and the first fortnight of February 2022; and
  - they apply before 29 April 2022.

- Even if you don't meet the above criteria you may still be eligible under "alternative circumstances". You can find out more information here: [Apply for the 2022 Small Business Support Program](#).
- Commercial landlords may also be eligible for a Rapid Antigen Test rebate which is available until 30 June 2022. For more information see: [The Small Business Fees and Charges Rebate](#).
- Land tax relief applications for commercial landlords who agreed to reduce rent because a tenant is COVID-19 impacted from 1 July 2021 to 31 December 2021 have closed. For more information, visit this site: [Apply for COVID-19 land tax relief | Service NSW](#)

36. *Are payments received under the 2021 COVID-19 Micro Business Grant, 2021 COVID-19 Business Grant and 2021 JobSaver Payment to be included as part of the tenant's trade in 2021?*

- Yes. The [Retail and Other Commercial Leases \(COVID-19\) Regulation 2022 \(NSW\)](#) provides that the parties should include, as part of the lessee's turnover, payments made to the lessee under the 2021 COVID-19 Micro-business Grant, 2021 COVID-19 Business Grant, 2021 JobSaver Payment or a Commonwealth COVID-19 Disaster Payment.
- However, please note that the 2021 COVID-19 Micro-Business Grant closed on 30 November 2021. Applications for the 2021 COVID-19 Business Grant has also closed.
- For more information please refer to the OSBC's FAQs online [here](#).

37. *What comparison period should be used to determine the rent reduction in tenant's trade during the COVID-19 pandemic period and subsequent reasonable recovery period?*

- While the [Retail and Other Commercial Leases \(COVID-19\) Regulation 2022 \(NSW\)](#) does not prescribe a particular period, the OSBC recommends initially basing these calculations on the period used by the tenant to show their

eligibility for the 2021 COVID-19 Micro Business Grant, 2021 COVID-19 Business Grant and 2021 JobSaver Payment.

- However, parties can also reach an agreement about the comparison period they wish to use. We suggest seeking legal advice about this matter.
- Importantly, and irrespective of the comparison timeframe ultimately decided upon by the parties, the tenant should provide the landlord with evidence of their turnover decline (eg. BAS, accountant's letter) to allow the parties to appropriately calculate a reduction of the rent.
- For more information, please refer to these [online FAQs](#).