



New South Wales

Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 3) 2021

under the

Public Health Act 2010

I, Brad Hazzard, the Minister for Health, make the following Order under the *Public Health Act 2010*, section 7.

Dated 23 December 2021 (original order).

Time: 4:05pm

As amended on 23 December 2021.

Minister for Health

Explanatory note

The object of this Order is to repeal and remake, with some changes, the *Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 2) 2021*.

Editorial note

This is the order as amended by the *Public Health Amendment (COVID-19 Medical Contraindication Certificates) Order 2021*.

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Part 1 Preliminary

1 Name of Order

This Order is the *Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 3) 2021*.

2 Definitions

- (1) The Dictionary in Schedule 1 defines words used in this Order.
Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.
- (2) Notes included in this Order do not form part of this Order.

3 Grounds for concluding that there is a risk to public health

It is noted that the basis for concluding that a situation has arisen that is, or is likely to be, a risk to public health is as follows—

- (a) public health authorities both internationally and in Australia have been monitoring and responding to outbreaks of COVID-19, which is a condition caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
- (b) COVID-19 is a potentially fatal condition and is highly contagious,
- (c) a number of cases of individuals with COVID-19 have been confirmed in New South Wales and other Australian jurisdictions, and there is an ongoing risk of continuing transmission of the virus in New South Wales,
- (d) those cases include individuals with the Delta and Omicron variants of COVID-19, which are more contagious than previous variants and have increased the risk and speed of community transmission,
- (e) health care workers work with vulnerable and sick members of the community, including those who have COVID-19,
- (f) ensuring that health care workers are vaccinated will reduce—
 - (i) the risk of infection, severe disease and death in the workers, and
 - (ii) the risk of transmission of infection from workers to patients and other workers,
- (g) public health and hospital services are at risk without appropriate and proportionate mitigation strategies, including vaccination to protect health care workers and patients.

Part 2 Vaccination of health care workers—stage 1

4 Introduction

This Part sets out stage 1 of the Minister's directions about the vaccination of health care workers.

5 Stage 1 health care workers not to work unvaccinated

- (1) A stage 1 health care worker must not do work as a health care worker unless the worker has received at least 2 doses of a COVID-19 vaccine.
- (2) Subclause (1) does not apply in relation to work done for a public health organisation, the Health Administration Corporation, the Ambulance Service of NSW or the Ministry of Health under a contract for the provision of services if—
 - (a) the work does not involve the provision of a health service within the meaning of the *Health Services Act 1997*, and
 - (b) the person doing the work is not physically present, while doing the work, at premises operated by the public health organisation, Health Administration Corporation, Ambulance Service of NSW or Ministry of Health.
- (3) To remove any doubt, subclause (2) does not apply to work done under a contract of employment.
- (4) A stage 1 health care worker must, if required to do so by an authorised person, provide vaccination evidence for the worker.
- (5) Subclauses (1) and (4) do not apply to—
 - (a) a health practitioner who does work as a health care worker in response to a medical emergency, or
 - (b) another person who does work as a health care worker in response to a non-medical emergency.

Example— A fire, flooding or a gas leak.

6 Responsible persons for stage 1 health care workers

Each responsible person for a stage 1 health care worker must take all reasonable steps to ensure the worker complies with clause 5.

Part 3 Vaccination of health care workers—stage 2

7 Introduction

This Part sets out stage 2 of the Minister’s directions about the vaccination of health care workers.

8 Stage 2 health care workers not to work unvaccinated

- (1) A stage 2 health care worker must not do work as a health care worker on or after—
 - (a) 31 January 2022 unless the worker has received at least 1 dose of a COVID-19 vaccine, and
 - (b) 28 February 2022 unless the worker has received at least 2 doses of a COVID-19 vaccine.

Note— A person who is a stage 1 health care worker is not a stage 2 health care worker.

- (2) A stage 2 health care worker must, if required to do so by an authorised person on or after 31 January 2022, provide vaccination evidence for the worker.
- (3) Subclauses (1) and (2) do not apply to—
 - (a) a health practitioner who does work as a health care worker in response to a medical emergency, or
 - (b) another person who does work as a health care worker in response to a non-medical emergency.

Example— A fire, flooding or a gas leak.

9 Responsible persons for stage 2 health care workers

Each responsible person for a stage 2 health care worker must take all reasonable steps to ensure the worker complies with clause 8.

Part 4 Miscellaneous

10 Exemptions for medical contraindication

- (1) Clause 5 does not apply to a stage 1 health care worker who—
 - (a) is unable, due to a medical contraindication, to be vaccinated against COVID-19, and
 - (b) presents to a responsible person for the worker a medical contraindication certificate issued to the worker.
- (2) Clause 8 does not apply to a stage 2 health care worker who—
 - (a) is unable, due to a medical contraindication, to be vaccinated against COVID-19, and
 - (b) presents to a responsible person for the worker a medical contraindication certificate issued to the worker.

10A Invalidated medical contraindication certificate

- (1) This clause applies to a health care worker (an *affected worker*) if—
 - (a) the person presented a medical contraindication certificate under clause 10(1)(b) or (2)(b) or a corresponding provision of a prior Order, and
 - (b) the medical contraindication certificate was issued by a medical practitioner who subsequently becomes subject to a registration condition relating to the practitioner's ability to issue 1 or more types of medical certificates, including medical contraindication certificates.
- (2) An affected worker must, on being notified by a responsible person that the worker is an affected worker—
 - (a) immediately cease work as a health care worker, and
 - (b) not do work as a health care worker until the worker presents a new medical contraindication certificate to a responsible person.
- (3) In this clause—

prior Order means the following—

 - (a) the *Public Health (COVID-19 Vaccination of Health Care Workers) Order 2021*,
 - (b) the *Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 2) 2021*.

10B Issue of medical contraindication certificates

A medical practitioner must not issue a person a medical contraindication certificate unless the medical practitioner reasonably believes that, because of a specified medical contraindication, the person cannot have any approved COVID-19 vaccine available in New South Wales.

11 Other exemptions

The Minister may, in writing and subject to the conditions the Minister considers appropriate, grant an exemption to this Order or specified provisions of this Order if the Minister is satisfied it is necessary to protect the health and well-being of persons.

12 Repeal

The *Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 2) 2021* is repealed.

13 Savings

- (1) An act, matter or thing that, immediately before the repeal of the repealed Order, had effect under that Order continues to have effect under this Order.
- (2) Without limiting subclause (1)—
 - (a) an exemption granted by the Minister under the repealed Order and in force immediately before the commencement of this Order continues as if it were granted under this Order, and
 - (b) a delegation in force immediately before the commencement of this Order given for a provision of the repealed Order continues to have effect for the corresponding provision of this Order.
- (2A) Clause 10A, as inserted by the *Public Health Amendment (COVID-19 Medical Contraindication Certificates) Order 2021*, applies to a medical contraindication certificate issued before the commencement of the Order.
- (3) In this clause—

repealed Order means the *Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 2) 2021*.

Schedule 1 Dictionary

Clause 2(1)

approved COVID-19 vaccine means a vaccine approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia as a vaccine against COVID-19.

authorised person for a health care worker means—

- (a) a responsible person for the worker, or
- (b) a person authorised by a responsible person.

COVID-19 vaccine means—

- (a) an approved COVID-19 vaccine, or
- (b) a vaccine, other than an approved COVID-19 vaccine, recognised by the Therapeutic Goods Administration of the Commonwealth as an appropriate vaccine against COVID-19 for incoming travellers to Australia.

Note— On the making of this Order, the recognised vaccines were specified in the document titled *COVID-19 vaccines not registered in Australia but in current international use – TGA advice on “recognition”*, published on the website of the Therapeutic Goods Administration of the Commonwealth and dated 27 September 2021.

health care worker means—

- (a) a stage 1 health care worker, or
- (b) a stage 2 health care worker.

health practitioner means a natural person who provides a health service within the meaning of the *Health Care Complaints Act 1993*, whether or not the person is registered under the *Health Practitioner Regulation National Law (NSW)*.

medical contraindication certificate means a certificate issued by a medical practitioner—

- (a) in a form approved by the Chief Health Officer, and
- (b) certifying that, because of a specified medical contraindication, the worker cannot have any approved COVID-19 vaccine available in New South Wales,

but does not include a certificate issued by a medical practitioner—

- (c) whose registration under the *Health Practitioner Regulation National Law (NSW)* is subject to a registration condition relating to the issue of 1 or more types of medical certificate, including medical contraindication certificates, or
- (d) in contravention of clause 10B.

place of residence includes the premises where a person lives and a garden, yard, passage, stairs, garage, outhouse or other area or thing attached to, or used in connection with, the premises.

private health facility has the same meaning as in the *Private Health Facilities Act 2007*.

public health organisation has the same meaning as in the *Health Services Act 1997*.

responsible person for a health care worker means—

- (a) the person who employs or engages the worker to work as a health care worker, and
- (b) a person who exercises employer functions for the person who employs the worker to work as a health care worker, and

Example— The *Government Sector Employment Act 2013* makes provision for particular persons to exercise employer functions for the Government of New South Wales in relation to persons employed by the Government.

- (c) if the worker is a student on a student placement to do work as a health care worker—the supervisor of the student, and
- (d) if the worker is or has entered premises, other than a place of residence, to do work as a health care worker—the occupier of the premises.

stage 1 health care worker means each of the following—

- (a) a person who does work, including as a member of staff of the NSW Health Service, for any of the following—
 - (i) a public health organisation,
 - (ii) the Health Administration Corporation,
 - (iii) the Ambulance Service of NSW,
- (b) a registered paramedic who does work involving transporting, or assessing whether to transport, persons to or from a hospital or public health facility, including any treatment incidental to the work,
- (c) a member of staff of the Ministry of Health,
- (d) a person who does work at a private health facility,
- (e) a person who does work for an organisation pursuant to either of the following in accordance with *NSW Health Policy Directive PD2019_013 Administration of NSW Health Grant Funding for Non-Government Organisations*—
 - (i) a Ministerially approved grant under the Non-Government Organisations Program,
 - (ii) a Program Grant, if the work involves the provision of a health service within the meaning of the *Health Services Act 1997*,
- Note—** See www1.health.nsw.gov.au/pds/Pages/doc.aspx?dn=PD2019_013.
- (f) another person, or a person belonging to a class of persons, who does work specified by the Chief Health Officer as the work of a stage 1 health care worker for this Order in a notice published on the website of NSW Health.

stage 2 health care worker means each of the following, but does not include a person who is a stage 1 health care worker—

- (a) a person employed in a Public Service executive agency related to the Ministry of Health,
Note— See the *Government Sector Employment Act 2013*, Schedule 1, Part 2.
- (b) a person employed in the Health Care Complaints Commission Staff Agency,
- (c) a person appointed by the Governor or the Minister to an office under the following—
 - (i) the *Cancer Institute Act 2003*,
 - (ii) the *Health Administration Act 1982*,
 - (iii) the *Health Care Complaints Act 1993*,
 - (iv) the *Health Practitioner Regulation National Law (NSW)*,
 - (v) the *Health Services Act 1987*,
 - (vi) the *Mental Health Act 2007*,
 - (vii) the *Mental Health Commission Act 2012*,
- (d) a health practitioner within the meaning of the *Health Practitioner Regulation National Law (NSW)*,
- (e) a person providing a health service subject to the code of conduct made under the Act, section 100,
Note 1— The code of conduct is in the *Public Health Regulation 2012*, Schedule 3.
Note 2— The code of conduct applies to health practitioners who are not registered under the *Health Practitioner Regulation National Law (NSW)*, including de-registered health practitioners, and registered health practitioners who provide health services that are unrelated to their registration.
- (f) a person who does work in connection with the provision of a health service by a person referred to in paragraph (d) or (e) on the premises at which the person referred to in paragraph (d) or (e) provides the health service,
Example— A receptionist at a doctor's surgery.
- (g) another person, or a person belonging to a class of persons, who does work specified by the Chief Health Officer as the work of a stage 2 health care worker for this Order in a notice published on the website of NSW Health.

the Act means the *Public Health Act 2010*.

vaccination evidence means evidence from the Australian Immunisation Register kept under the *Australian Immunisation Register Act 2015* of the Commonwealth that the worker has had 1 or more doses of a COVID-19 vaccine.

Example— An online immunisation history statement, COVID-19 digital certificate from the Australian Immunisation Register or information displayed on the Service NSW mobile phone application.

work includes—

- (a) work done under an employment contract or a contract for services, including work done by a visiting practitioner within the meaning of the *Health Services Act 1997*, and
- (b) work done as a volunteer or by or for a charitable organisation, and
- (c) work done by a student on a student placement, and
- (d) work done on a temporary basis, including while acting in or filling an office or other role because of a vacancy or absence.