



New South Wales

Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 2) 2021

under the

Public Health Act 2010

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

Dated 22 October 2021.

Time 5:49pm.

BRAD HAZZARD, MP
Minister for Health and Medical Research

Explanatory note

The object of this Order is to repeal and remake the *Public Health (COVID-19 Vaccination of Health Care Workers) Order 2021*, which deals with the vaccination of health care workers.

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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 2) 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 variant of COVID-19, which is more contagious than previous variants and has 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

4 Introduction

This Part sets out the directions of the Minister about the vaccination of health care workers.

5 Health care workers not to work unvaccinated

- (1) A health care worker must not do work as a health care worker on or after the commencement of this Order but before 30 November 2021 unless the worker has received at least 1 dose of a COVID-19 vaccine.
- (2) A health care worker must not do work as a health care worker on or after 30 November 2021 unless the worker has received at least 2 doses of a COVID-19 vaccine.
- (3) Subclauses (1) and (2) do 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 of service or a contract for 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.
- (4) A health care worker must, if required to do so by an authorised person on or after the commencement of this Order, provide vaccination evidence for the worker.
- (5) Subclauses (1), (2) 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, for example, a fire, flooding or a gas leak.

6 Responsible persons for health care workers

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

Part 3 Miscellaneous

7 Exemptions for medical contraindication

- (1) Clause 5 does not apply to a health 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) 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.

8 Repeal

The *Public Health (COVID-19 Vaccination of Health Care Workers) Order 2021* is repealed.

9 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.
- (3) In this clause—
repealed Order means the *Public Health (COVID-19 Vaccination of Health Care Workers) Order 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 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 health care worker for this Order in a notice published on the website of NSW Health.

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 person to whom the certificate has been issued cannot have any approved COVID-19 vaccine available in New South Wales.

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.

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 a contract of service 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.