



New South Wales

Public Health (COVID-19 Vaccination of Education and 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 15 December 2021 (original order).
As amended on 23 December 2021.

Minister for Health and Medical Research

Explanatory note

The object of this Order is to repeal and remake, with minor changes, the *Public Health (COVID-19 Vaccination of Education and Care Workers) Order 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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1 Name of Order

This Order is the *Public Health (COVID-19 Vaccination of Education and Care Workers) Order (No 2) 2021*.

2 Commencement

This Order commences at the beginning of 17 December 2021.

3 Definitions

(1) In this Order—

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.

Australian Immunisation Register means the Australian Immunisation Register kept under the *Australian Immunisation Register Act 2015* of the Commonwealth.

child means a person who is less than 18 years of age.

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.

early education and care facility has the same meaning as in the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

Note— An early education and care facility includes—

- (a) a centre-based child care facility, and
- (b) home-based child care, also known as family day care, and
- (c) school-based child care, also known as after-school or vacation care.

education and care worker means a person who carries out relevant work.

government school has the same meaning as in the *Education Act 1990*.

medical contraindication certificate, for an education and care worker 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 6B.

non-government school has the same meaning as in the *Education Act 1990*.

relevant work means the following work—

- (a) work at a government school or non-government school,
- (b) work at an early education and care facility, other than providing a service listed in—
 - (i) the Education and Care Services National Regulations, clause 5, other than clause 5(2)(c) or (h), or
 - (ii) the *Children (Education and Care Services) Supplementary Provisions Act 2011*, section 4(3), other than section 4(3)(a),
- (c) providing a disability support service in person to a child with a disability at a government school, non-government school or early education and care facility, if the work requires a working with children check clearance under the *Child Protection (Working with Children) Act 2012*, including a service funded or provided under—
 - (i) the National Disability Insurance Scheme of the Commonwealth, or
 - (ii) the Assisted School Travel Program of the Department of Education,
- (d) work as an authorised person under the *Education Act 1990*, Part 7, Division 2, Subdivision 5 in relation to the registration of children for home schooling,
- (e) work at a public examination for the Higher School Certificate referred to in the *Education Act 1990*, section 95(2),
- (f) work specified by the Chief Health Officer, by notice published on the website of NSW Health, as relevant work for the purposes of this Order.

responsible person for an education and care worker means the following—

- (a) the person who employs or engages the worker to carry out relevant work,
- (b) a person who exercises employer functions for the person who employs the worker to carry out relevant work,
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 education and care worker is carrying out relevant work as a student on a student placement—the supervisor of the student,
- (d) if the education and care worker carries out relevant work on premises, other than a place of residence—the occupier of the premises,
- (e) if the education and care worker carries out relevant work for an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*—the approved provider for the service under that Law,
- (f) if the education and care worker carries out relevant work for a State regulated education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*—the approved provider for the service under that Act.

the Act means the *Public Health Act 2010*.

vaccination evidence for a person means—

- (a) evidence from the Australian Immunisation Register that the person—
 - (i) has had 2 doses of a COVID-19 vaccine, or
 - (ii) has a medical contraindication that prevents the person from receiving any approved COVID-19 vaccine available in New South Wales, or

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

- (b) a medical contraindication certificate issued to the person.

work includes—

- (a) work done under a contract of service or a contract for services, and
- (b) work done as a volunteer 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.

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.

4 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 introduction or transmission of the virus in New South Wales, including by means of community transmission,
- (d) the risk of transmission, including by means of community transmission, of COVID-19 in New South Wales will be reduced if all people eligible for vaccination who work at a government school, non-government school or an early education and care facility are fully vaccinated,
- (e) there is a risk of transmission of COVID-19 among children at government schools, non-government schools and early education and care facilities because the COVID-19 vaccine is currently not available for children of certain ages and other children have not yet had an opportunity to be vaccinated.

5 Education and care workers must be vaccinated

- (1) The Minister directs that an education and care worker must not carry out relevant work unless the worker has—
 - (a) had 2 doses of a COVID-19 vaccine, or
 - (b) been issued with a medical contraindication certificate, or
 - (c) a medical contraindication recorded on the Australian Immunisation Register that prevents the person from receiving any approved COVID-19 vaccine available in New South Wales.

- (2) The Minister directs that an education and care worker must provide the worker's vaccination evidence if requested by—
 - (a) a responsible person, or
 - (b) a person authorised by a responsible person.
- (3) The Minister directs that each responsible person for an education and care worker must take all reasonable steps to ensure that the education and care worker complies with the directions of this clause.
- (4) This clause does not apply to an education and care worker who carries out relevant work in an emergency.

6 Family day care residences must not open unless adult residents vaccinated

- (1) The Minister directs that the relevant approved provider for a family day care residence must ensure the residence is not open to provide education or care to any child unless each person who is at least 18 years of age residing at the residence (an **adult resident**) has—
 - (a) had 2 doses of a COVID-19 vaccine, or
 - (b) been issued with a medical contraindication certificate, or
 - (c) a medical contraindication recorded on the Australian Immunisation Register that prevents the person from receiving any approved COVID-19 vaccine available in New South Wales.
- (2) The Minister directs that an adult resident must provide the adult resident's vaccination evidence if requested by—
 - (a) the family day care educator working at the family day care residence, or
 - (b) the occupier of the family day care residence, or
 - (c) the relevant approved provider for the family day care residence, or
 - (d) a person authorised by a person mentioned in paragraph (a), (b) or (c).
- (3) In this clause—

family day care educator and **family day care residence** have the same meanings as in the *Children (Education and Care Services) National Law (NSW)*.

relevant approved provider for a family day care residence means—
 - (a) for a residence provided as an approved education and care service within the meaning of the *Children (Education and Care Services) National Law (NSW)*—the approved provider for the service under that Law, or
 - (b) for a residence provided as an approved education and care service within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*—the approved provider for the service under that Act.

6A Invalidated medical contraindication certificates

- (1) This clause applies to a person (an **affected person**) if—
 - (a) the person presented, under clause 5(2) or 6(2) or a corresponding provision of a prior Order, vaccination evidence in the form of a medical contraindication certificate, and
 - (b) the medical contraindication certificate was issued by a medical practitioner who subsequently becomes subject to a condition relating to the practitioner's ability to issue 1 or more types of medical certificates, including medical contraindication certificates.

- (2) An affected person who presented a medical contraindication certificate under clause 5(2), or under a corresponding provision of a prior Order, must on being notified by a responsible person that the person is an affected person—
 - (a) immediately cease work as an education and care worker, and
 - (b) not do work as an education and care worker until the person presents a new medical contraindication certificate to a responsible person.
- (3) The approved provider for a family day care residence must, on becoming aware that an adult resident is an affected person—
 - (a) immediately cease delivery of education and care services to children from the family day care residence, and
 - (b) not deliver education and care services to children from the family day care residence until the resident presents a new medical contraindication certificate to the provider.
- (4) In this clause—

prior Order means the *Public Health (COVID-19 Vaccination of Education and Care Workers) Order 2021*.

6B 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.

7 Exemptions

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

8 Repeal

The *Public Health (COVID-19 Vaccination of Education and 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), 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.
- (2A) Clause 6A, 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 Education and Care Workers) Order 2021*.