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New South Wales

Public Health (COVID-19 Aged Care Facilities) Amendment (No 2) Order 2021

under the

Public Health Act 2010

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

Dated 14 October 2021.
Time 3:50pm.

BRAD HAZZARD, MP
Minister for Health and Medical Research

Explanatory note

The object of this Order is to amend the *Public Health (COVID-19 Aged Care Facilities) Order 2021* to—

- (a) update the name of the Order, and
- (b) require certain workers, health practitioners and students entering and remaining on the premises of a residential aged care facility to have received a dose or two doses of a COVID-19 vaccine by specified dates, and
- (c) require certain aged care workers providing in-home and community aged care and persons providing disability support services to have received a dose or two doses of a COVID-19 vaccine by specified dates, and
- (d) require evidence of vaccination and provide for exemptions from requirements relating to vaccination in certain circumstances.

Public Health (COVID-19 Aged Care Facilities) Amendment (No 2) Order 2021

under the

Public Health Act 2010

1 Name of Order

This Order is the *Public Health (COVID-19 Aged Care Facilities) Amendment (No 2) Order 2021*.

Schedule 1 Amendment of Public Health (COVID-19 Aged Care Facilities) Order 2021

[1] Clause 1 Name of Order

Omit “*Public Health (COVID-19 Aged Care Facilities) Order 2021*”.

Insert instead “*Public Health (COVID-19 Care Services) Order 2021*”.

[2] Clause 3 Definitions

Insert in alphabetical order in clause 3(1)—

approved provider has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth.

Commonwealth-funded aged care service has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth.

disability services means services provided in person to a person with a disability including services funded or provided under—

- (a) the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* of the Commonwealth, or
- (b) the Assisted School Travel Program of the Department of Education.

flexible care has the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

home care has the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

in-home and community aged care worker means a person who provides flexible care, home care or a Commonwealth-funded aged care service, outside of a residential care setting, for or on behalf of a responsible person.

responsible person means—

- (a) for an in-home and community aged care worker—
 - (i) an approved provider for whom a flexible care subsidy or home care subsidy is payable under the *Aged Care Act 1997* of the Commonwealth, or
 - (ii) a service provider of a Commonwealth-funded aged care service within the meaning of the *Aged Care Quality and Safety Commission Act 2018*, delivering services outside of a residential aged care setting, or
- (b) for a person providing disability services—
 - (i) if the services are carried out on premises, other than residential premises—the occupier of the premises, or
 - (ii) otherwise—the person who employs or engages the person to provide disability services.

[3] Clause 4 Grounds for concluding that there is a risk to public health

Omit “recently” from clause 4(c).

[4] Clause 4(d)

Omit the paragraph. Insert instead—

- (d) residents of residential aged care facilities, persons with a disability and persons receiving aged care services, if infected with SARS-CoV-2, are more vulnerable to severe illness or death, and ensuring that employees of facilities and other workers who come into contact with residents,

persons with a disability or persons receiving aged care services only provide services if vaccinated will reduce—

- (i) the risk of infection in the employees of facilities and other workers, and
- (ii) the risk of transmission of infection from employees of facilities and other workers to residents, persons with a disability or persons receiving aged care services.

[5] Clause 5 Direction—unvaccinated workers not to enter residential aged care facilities

Omit clause 5(1). Insert instead—

- (1) The Minister directs that a relevant worker of a residential aged care facility must not enter or remain on the premises of the facility unless—
 - (a) on or after 9am on 17 September 2021 but before 9am on 25 October 2021—the worker has received at least 1 dose of a COVID-19 vaccine, or
 - (b) on or after 9am on 25 October 2021—the worker has received at least 2 doses of a COVID-19 vaccine.

[6] Clause 5(3)

Insert after clause 5(2)—

- (3) In this clause—

relevant worker means the following—

 - (a) an employee of the operator of the facility,
 - (b) a person who provides services for the facility or for 1 or more residents of the facility under a contract or arrangement with a person, but not including—
 - (i) a maintenance contractor, or
 - (ii) a person who provides services to a resident of the facility under a contract or arrangement with the resident, or
 - (iii) a student.

[7] Clause 6 Direction—unvaccinated health practitioners and students not to enter residential aged care facilities

Omit clause 6(1). Insert instead—

- (1) The Minister directs that a health practitioner or student must not enter or remain on the premises of a residential aged care facility unless—
 - (a) on or after 9am on 31 October 2021 but before 9am on 4 December 2021—the health practitioner or student has received at least 1 dose of a COVID-19 vaccine, or
 - (b) on or after 9am on 4 December 2021—the health practitioner or student has received at least 2 doses of a COVID-19 vaccine.

Note— A person who is vaccinated to comply with the direction under clause 5 complies with this direction.

[8] Clauses 6B and 6C

Insert after clause 6A—

6B Direction—vaccination of certain aged care workers

The Minister directs that an in-home and community aged care worker must not do work as an in-home and community aged care worker unless—

- (a) if the work is done on or after 9am on 25 October 2021 but before 9am on 29 November 2021—the worker has received at least 1 dose of a COVID-19 vaccine, or
- (b) if the work is done on or after 9am on 29 November 2021—the worker has received at least 2 doses of a COVID-19 vaccine.

6C Direction—vaccination of person providing disability services

The Minister directs that a person who provides disability services must not provide the services unless—

- (a) if the work is done on or after 9am on 25 October 2021 but before 9am on 29 November 2021—the person has received at least 1 dose of a COVID-19 vaccine, or
- (b) if the work is done on or after 9am on 29 November 2021—the person has received at least 2 doses of a COVID-19 vaccine.

[9] Clause 7 Directions—evidence of vaccination

Insert after clause 7(2)—

- (3) The Minister directs that a responsible person for an in-home and community aged care worker or a person who provides disability services must take all reasonable steps to ensure that the worker or provider subject to a direction under clause 6B or 6C complies with the direction.
- (4) The Minister directs that an in-home and community aged care worker or a person who provides disability services must, if required to do so by the responsible person for the worker or provider, provide the responsible person with vaccination evidence.

[10] Clause 8 Exemptions

Insert after clause 8(1)—

- (1A) Clause 6B or 6C does not apply to an in-home and community aged care worker or a person who provides disability services who—
 - (a) is unable, due to a medical contraindication, to be vaccinated against COVID-19, and
 - (b) presents to the responsible person for the worker or provider a certificate, in the form approved by the Chief Health Officer, issued by a medical practitioner, specifying the medical contraindication that makes the worker or provider unable to be vaccinated.

[11] Clause 8(2)

Omit “the residents of a residential aged care facility.” Insert instead “persons”.