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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.  
Time 4:05pm

BRAD HAZZARD, MP  
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*.

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

under the

Public Health Act 2010

### 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.

### 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.
- (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.

**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](http://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.



New South Wales

# Public Health (COVID-19 Care Services) 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.

Time 4:02pm

BRAD HAZZARD, MP  
Minister for Health

## Explanatory note

The object of this Order is to repeal and remake the *Public Health (COVID-19 Care Services) Order (No 2) 2021*, which deals with the vaccination of aged care and disability services workers.

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## Public Health (COVID-19 Care Services) Order (No 3) 2021

under the

Public Health Act 2010

### Part 1 Preliminary

#### 1 Name of Order

This Order is the *Public Health (COVID-19 Care Services) 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) 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,
- (e) ensuring that employees of residential aged care facilities and other workers who come into contact with residents, persons with a disability or persons receiving aged care services, are vaccinated will reduce—
  - (i) the risk of infection, severe disease and death of the worker, and
  - (ii) the risk of transmission of infection from workers to residents, persons with a disability or persons receiving aged care services and other workers,
- (f) aged care and disability services are at risk without proportionate and appropriate mitigation strategies to protect the services.

## Part 2 Vaccination of aged care and disability services workers

### 4 Introduction

This Part sets out the directions of the Minister about the vaccination of aged care and disability services workers.

### 5 Unvaccinated workers not to enter residential aged care facilities

- (1) A relevant worker for a residential aged care facility must not enter or remain on the premises of the facility unless the worker has received at least 2 doses of a COVID-19 vaccine.
- (2) This clause does not apply to a person who enters a residential aged care facility to respond to—
  - (a) a medical emergency, or
  - (b) a non-medical emergency, for example, a fire, flooding or a gas leak.

### 6 Unvaccinated health practitioners and students not to enter residential aged care facilities

- (1) A health practitioner or student must not enter or remain on the premises of a residential aged care facility unless the health practitioner or student has received at least 2 doses of a COVID-19 vaccine.
- (2) This clause does not apply to a health practitioner who enters a residential aged care facility to respond to a medical emergency.
- (3) To avoid doubt, this clause does not affect the requirement for a person to be vaccinated under clause 5.

### 7 Restrictions on visitors to residential aged care facilities

- (1) The operator of a residential aged care facility must not allow, for each resident of the facility, more than 2 persons to enter or remain on the premises of the residential aged care facility for the purpose of visiting the resident (*visitors*) in a 24-hour period.

**Note**— The operator of a residential aged care facility must consider the advice of the Chief Health Officer in relation to certain matters, including the management of visitors to the facility—see the *Public Health (COVID-19 General) Order (No 2) 2021*, clause 15.
- (2) The operator of the residential aged care facility may allow a maximum of 2 additional visitors for a resident under subclause (1) if each of the additional visitors is—
  - (a) under 12 years of age, and
  - (b) accompanied by a fully vaccinated visitor.
- (3) A visitor must not enter or remain on the premises of a residential aged care facility unless the visitor is fully vaccinated.
- (4) A visitor is not required to comply with subclause (3) if the operator of the residential aged care facility authorises the visitor to enter and remain on the premises for the purpose of visiting a resident who is at the end of life.
- (5) This clause does not apply to a person who enters and remains on the premises to provide a health service or professional or other service to the resident, including in the role of a student, and the person is not to be counted as a visitor.
- (6) For the purposes of this clause, a visitor is *fully vaccinated* if the visitor—

- (a) has received at least 2 doses of a COVID-19 vaccine, and
- (b) has received the second dose of the COVID-19 vaccine at least 14 days ago.

**8 In-home and community aged care workers not to work unvaccinated**

An in-home and community aged care worker must not do work as an in-home and community aged care worker unless the worker has received at least 2 doses of a COVID-19 vaccine.

**9 Disability services workers not to work unvaccinated**

A person must not provide disability services unless the person has received at least 2 doses of a COVID-19 vaccine.

**10 Evidence of vaccination**

- (1) The operator of a residential aged care facility must take all reasonable steps to ensure that a person subject to a direction under clause 5, 6 or 7(3) complies with the direction.
- (2) A person subject to a direction under clause 5, 6 or 7(3) must, if required to do so by the operator of a residential aged care facility, provide the operator with vaccination evidence.
- (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 8 or 9 complies with the direction.
- (4) 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.

## Part 3 Miscellaneous

### 11 Exemptions for medical contraindication

- (1) Clauses 5, 6, 7(3) and 10(2) do not apply to a person who—
  - (a) is unable, due to a medical contraindication, to be vaccinated against COVID-19, and
  - (b) presents to the operator of the residential aged care facility a medical contraindication certificate issued to the person.
- (2) Clauses 8 and 9 do not apply to a worker 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 a medical contraindication certificate issued to the worker.
- (3) 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 Care Services) 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 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 Care Services) 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.

**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.

**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.

**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.

**health practitioner** means a natural person who provides a health service, whether or not the person is registered under the *Health Practitioner Regulation National Law (NSW)*.

**health service** has the same meaning as in the *Health Care Complaints Act 1993*.

**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.

**maintenance contractor** means a person undertaking 1 or more of the following—

- (a) building work of a type listed in the *Home Building Regulation 2014*, clause 13,
- (b) specialist work of a type listed in the *Home Building Regulation 2014*, clause 14,
- (c) gardening and other maintenance to the grounds of the facility,
- (d) maintenance services of a type approved by the Chief Health Officer for the purposes of this definition.

**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.

**operator**, of a residential aged care facility, means a person who controls or operates the facility.

**relevant worker** for a residential aged care facility means—

- (a) an employee of the operator of the facility, or

- (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.

**residential aged care facility** means a facility at which the following services are provided to a person in relation to whom a residential care subsidy or flexible care subsidy is payable under the *Aged Care Act 1997* of the Commonwealth—

- (a) accommodation,
- (b) personal care or nursing care.

**responsible person** for an in-home and community aged care worker means—

- (a) 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
- (b) a service provider of a Commonwealth-funded aged care service within the meaning of the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth, delivering services outside of a residential aged care setting.

**responsible person** for a person providing disability services means—

- (a) if the services are carried out on premises, other than residential premises—the occupier of the premises, or
- (b) otherwise—the person who employs or engages the person to provide disability services.

**student** means a person undertaking a clinical placement or work experience, however described, at a residential aged care facility.

**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 2 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.



New South Wales

# Public Health Amendment (COVID-19 Medical Contraindication Certificates) Order 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.  
Time 4:25pm

BRAD HAZZARD, MP  
Minister for Health

## Explanatory note

The object of this Order is to amend the *Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021*, the *Public Health (COVID-19 Care Services) Order (No 3) 2021*, the *Public Health (COVID-19 Vaccination of Education and Care Workers) Order (No 2) 2021* and the *Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 3) 2021* concerning medical contraindication certificates.

## **Public Health Amendment (COVID-19 Medical Contraindication Certificates) Order 2021**

under the

Public Health Act 2010

### **1 Name of Order**

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

## Schedule 1 Amendment of Public Health (COVID-19 Air Transportation Quarantine) Order (No 4) 2021

### [1] Clause 30 COVID-19 vaccinations

Omit the definition of *medical contraindication certificate* from clause 30(7).

Insert instead—

*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 condition relating to the issue of 1 or more types of medical certificate, including medical contraindication certificates, or
- (d) in contravention of clause 30B.

### [2] Clauses 30A–30C

Insert after clause 30—

#### 30A Invalidated medical contraindication certificates

- (1) This clause applies to a nominated person within the meaning of clause 30 (an *affected person*) if—
  - (a) the person presented a medical contraindication certificate to the person's employer under clause 30(5) 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 person must, on being notified by the person's employer that the person is an affected person—
  - (a) immediately cease work, and
  - (b) not resume work until the person—
    - (i) presents a new medical contraindication certificate to the person's employer, or
    - (ii) is vaccinated against COVID-19.
- (3) In this clause—

*prior Order* means the following—

  - (a) the *Public Health (COVID-19 Air Transportation Quarantine) Order (No 2) 2021*,
  - (b) the *Public Health (COVID-19 Air Transportation Quarantine) Order (No 3) 2021*.

**30B 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.

**30C Savings**

Clause 30A, 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.

## Schedule 2 Amendment of Public Health (COVID-19 Care Services) Order (No 3) 2021

### [1] Clauses 11A–11C

Insert after clause 11—

#### 11A Invalidated medical contraindication certificates

- (1) This section applies to a person (an *affected person*) if—
  - (a) the person presented a medical contraindication certificate under clause 11(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 person who presented a medical contraindication certificate under clause 11(1)(b) or a corresponding provision of a prior Order must—
  - (a) on being notified by a the operator of a residential care facility that the person is an affected person, immediately leave the facility, and
  - (b) not enter a residential care facility, whether it is the facility referred to in paragraph (a) or a different facility, until the person presents a new medical contraindication certificate to the operator of the facility.
- (3) An affected person who presented a medical contraindication certificate under clause 11(2)(b) or 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 in aged care or disability services, and
  - (b) not do work in aged care or disability services until the person presents a new medical contraindication certificate to a responsible person.
- (4) In this clause—

*prior Order* means the following—

  - (a) the *Public Health (COVID-19 Aged Care Facilities) Order 2021*,
  - (b) the *Public Health (COVID-19 Care Services) Order 2021*,
  - (c) the *Public Health (COVID-19 Care Services) Order (No 2) 2021*.

#### 11B 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.

#### 11C Savings

Clause 11A, 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.

### [2] Schedule 1 Dictionary

Omit the definition of *medical contraindication certificate*.

Insert instead—

***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 condition relating to the issue of 1 or more types of medical certificate, including medical contraindication certificates, or
- (d) in contravention of clause 11B.



## Schedule 3 Amendment of Public Health (COVID-19 Vaccination of Education and Care Workers) Order (No 2) 2021

### [1] Clause 3 Definitions

Omit the definition of *medical contraindication certificate* in clause 3(1).

Insert instead—

*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.

### [2] Clauses 6A and 6B

Insert after clause 6—

#### 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.

**[3] Clause 9 Savings**

Insert after clause 9(2)—

- (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.

## Schedule 4 Amendment of Public Health (COVID-19 Vaccination of Health Care Workers) Order (No 3) 2021

### [1] Clauses 10A and 10B

Insert after clause 10—

#### 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.

### [2] Clause 13 Savings

Insert after clause 13(2)—

- (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] Schedule 1 Dictionary

Omit the definition of *medical contraindication certificate*.

Insert instead—

*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.



New South Wales

# Public Health (COVID-19 General) Order (No 2) Amendment (No 3) Order 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.

BRAD HAZZARD, MP  
Minister for Health

## Explanatory note

The object of this Order is to amend the *Public Health (COVID-19 General) Order (No 2) 2021* to—

- (a) generally require fitted face coverings to be worn in indoor areas, with certain exceptions, and
- (b) require QR code check-in in retail premises and hospitality venues, and
- (c) provide for no more than 1 person per 2 square metres of space in indoor areas of hospitality venues and nightclubs.

## **Public Health (COVID-19 General) Order (No 2) Amendment (No 3) Order 2021**

under the

Public Health Act 2010

### **1 Name of Order**

This Order is the *Public Health (COVID-19 General) Order (No 2) Amendment (No 3) Order 2021*.

### **2 Commencement**

This Order commences—

- (a) for Schedule 1[2], [3] and [6]—at the beginning of 24 December 2021, and
- (b) otherwise—at the beginning of 27 December 2021.

## Schedule 1 Amendment of Public Health (COVID-19 General) Order (No 2) 2021

### [1] Clause 4A

Insert after clause 4—

#### 4A Calculation of spaces available for persons

- (1) An excluded person is not to be counted for the purposes of calculating—
  - (a) the space available for persons on the premises, or
  - (b) the number of persons on the premises.
- (2) An area that is not open to the public is not to be counted for the purposes of calculating the space available for persons on premises.
- (3) In this clause—

***excluded person*** means—

  - (a) a person engaged in work on the premises for the occupier of the premises, or
  - (b) a person on the premises because of an emergency, or
  - (c) for food and drink premises—a person ordering or collecting food or drink to consume off the premises.

### [2] Clause 6

Omit the clause. Insert instead—

#### 6 Fitted face coverings

- (1) A person who is over 12 years of age must wear a fitted face covering while the person is—
  - (a) in an indoor area of premises other than a place of residence, or
  - (b) in an indoor area on common property for residential premises, or
  - (c) at a public transport waiting area or in a vehicle or vessel being used to provide a public transport service, or

**Note—** A public transport service includes a taxi and rideshare service.

  - (d) working at a hospitality venue and dealing directly with members of the public, or
  - (e) on a domestic commercial aircraft, including when the aircraft is flying above New South Wales.
- (2) The operator of a hospitality venue must ensure all persons working at the venue comply with subclause (1)(d).
- (3) The following persons must ensure a worker who carries out work at an airport complies with this Part when working at the airport—
  - (a) a person who employs the worker to carry out the work,
  - (b) a person who engages the worker to carry out the work as a contractor or a subcontractor.
- (4) The fitted face covering must be worn so that it covers the person's nose and mouth.

**[3] Clause 7 Exceptions for certain persons**

Omit clause 7(3). Insert instead—

- (3) A person may remove a fitted face covering the person is otherwise required to wear if the person is—
- (a) eating or drinking, or
  - (b) engaging in physical exercise, or
  - (c) communicating with a person who is deaf or hard of hearing, or
  - (d) engaging in work if—
    - (i) wearing the covering is a risk to the person's, or another person's, health and safety, or
    - (ii) enunciation or visibility of the person's mouth is essential, or
    - (iii) the work is in an indoor area and no other person is in the area, or
  - (e) requested to remove the covering as part of an identity check, or
  - (f) required to remove the covering—
    - (i) because of an emergency, or
    - (ii) for the proper provision of goods or a service, or
  - (g) in a vehicle and no other person is in the vehicle other than a member of the person's household, or
  - (h) in a hotel, motel or other accommodation facility as a guest and is in the person's own room, or
  - (i) in a school as a student, or
  - (j) in a public hospital or private health facility as a patient, or
  - (k) in a residential aged care facility as a resident, or
  - (l) in a correctional centre or other place of custody, or
  - (m) in the process of getting married.

**[4] Clause 10 Registration of contact details for entry to certain premises**

Omit clause 10(1)(a). Insert instead—

- (a) hospitality venues,
- (a1) nightclubs,
- (a2) retail premises,

**[5] Clause 13A**

Insert after clause 13—

**13A Hospitality venues and nightclubs**

An occupier of premises that are a hospitality venue or nightclub must not allow more persons in an indoor area on the premises than the number of persons equal to 1 person per 2 square metres of space in the area.

**[6] Schedule 1 Dictionary**

Insert the following definitions in alphabetical order—

*common property* means—

- (a) common property within the meaning of the *Strata Schemes Development Act 2015*, or



- (b) association property within the meaning of the *Community Land Development Act 2021*, or
- (c) in relation to premises under company title, a part of the premises—
  - (i) used as common property by the residents of the premises, or
  - (ii) that no person has an exclusive right to occupy

**correctional centre** has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*, and includes a detention centre within the meaning of the *Children (Detention Centres) Act 1987*.

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

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

**[7] Schedule 1, note**

Insert in alphabetical order—

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

**school** means a government school or non-government school within the meaning of the *Education Act 1990*.