



New South Wales

# Public Health (COVID-19 Care Services) Order 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 26 August 2021 (original order).

As amended on 9 October 2021 and 14 October 2021.

Minister for Health and Medical Research

## Explanatory note

The object of this Order is to provide that from 9am on 17 September 2021 persons employed at residential aged care facilities and contractors providing health and personal care services in those facilities may only enter the facility if they have received at least 1 dose of a COVID-19 vaccine.

## Editorial note

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

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## Public Health (COVID-19 Care Services) Order 2021

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Public Health Act 2010

### 1 Name of Order

This Order is the *Public Health (COVID-19 Care Services) Order 2021*.

### 2 Commencement

This Order commences at 9am on 17 September 2021.

### 3 Definitions

(1) In this Order—

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

**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.

**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*.

**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 of 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.

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

**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** 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.

**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 1 or more doses of a COVID-19 vaccine.

**Example**— An online immunisation history statement or COVID-19 digital certificate from the Australian Immunisation Register

**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) 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 Direction—unvaccinated workers not to enter residential aged care facilities**

- (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.
- (2) Subclause (1) 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.
- (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.

**6 Direction—unvaccinated health practitioners and students not to enter residential aged care facilities**

- (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.
- (2) Subclause (1) 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 effect the requirement for a person to be vaccinated under clause 5.

**6A Directions—restrictions on visitors to aged care facilities**

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

**Note**—The operator of a residential care facility must consider the advice of the Chief Health Officer in relation to certain matters, including in relation to the management of visitors to the facility—see the *Public Health (COVID-19 General) Order 2021*, clause 6.7.

- (2) The Minister directs that a visitor must not enter or remain on the premises of an aged care facility unless the visitor—
  - is at least 12 years of age, and
  - has had 2 doses of a COVID-19 vaccine, and
  - had the second dose of the COVID-19 vaccine at least 14 days ago.
- (3) A visitor is not required to comply with subclause (2) if the operator of the aged care facility authorises the visitor to enter and remain on the premises for the purposes of visiting a resident who is at the end of life.
- (4) 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.

**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.

**7 Directions—evidence of vaccination**

- (1) The Minister directs that 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 6A(2) complies with the direction.
- (2) The Minister directs that a person subject to a direction under clause 5, 6 or 6A(2) 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 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.

## **8 Exemptions**

- (1) Clauses 5, 6, 6A(2)(b) and 7(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 certificate, in the form approved by the Chief Health Officer, issued by a medical practitioner, specifying the medical contraindication that makes the person unable to be vaccinated.
- (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.
- (2) The Minister may, in writing and subject to conditions the Minister considers appropriate, exempt a person from the operation of this Order if the Minister is satisfied it is necessary to protect the health and well-being of persons.