



## BRIEFING NOTE

**FROM:** Alison McRobert, Legal Counsel

**DATE:** 27 October 2021

### **RE: PUBLIC HEALTH ORDERS RELEVANT TO UNIVERSITIES**

Arising out of the CPSU Universities Forum on Wednesday 21 October 2021 we have been asked to review the Public Health Orders that would apply to Universities in certain areas. If there are further areas we have not covered, please advise and we will do so.

We provide a summary below:

- Students undertaking work placement at residential aged care-facilities, certain health care work and in education are required to be vaccinated to attend the workplace;
- University employees providing disability support in person would be required to be vaccinated;
- Employees working in early education and care facilities on University campuses would be required to be vaccinated; and
- Unvaccinated adults are not likely to be restricted from accessing libraries located on a University premises

### **Students**

#### Allied Health, Medical, Nursing and Midwifery Students

If any student has to attend a residential aged care as part of a placement, then the Public Health (COVID-19 Care Services) Order 2021 ("**the Care Services Order**") order would apply.

The Care Services Order directs that a student must not enter or remain on the premises of a residential aged care facility unless they have received:

- at least one dose of a COVID-19 vaccine from 9 am 25 October 2021 until 9 am 29 November 2021; and
- at least two doses of a COVID-19 vaccine after 9 am 29 November 2021; or
- a medical contraindication certificate

The operator of a residential aged care facility must take all reasonable steps to ensure that students comply with the direction to be vaccinated. There is no requirement under the Care Services Order for the educational establishment that the student attends to ensure that they are compliant, however, it is something to be aware of.

#### Nursing, Midwifery, Paramedic, Medical and Allied Health Care Students

If a student has to attend a work placement at a public health organisation, including the Health Administration Corporation, the Ambulance Service of NSW or a private health facility, the Public

Health (COVID-19 Vaccination of Health Care Workers) Order 2021 (“**the Health Care Worker Order**”) would apply.

The Health Care Worker Order directs that health care workers (including students) must not work as a health care worker unless they have received:

- at least one dose of a COVID-19 vaccine on or after 30 September 2021, but before 30 November 2021; and
- at least two doses of a COVID-19 vaccine on or after 30 November 2021; or
- a medical contraindication certificate.

The supervisor of a student on placement is required to take reasonable steps to ensure they are compliant with the Health Care Worker Order.

We note that any employees who may work in a hospital that is located on a University campus would be required to comply with the Health Care Worker Order.

#### Teaching and Early Education Students

Students on work placement at a government or non-government school or early education and care facility would be required to be fully vaccinated by 8 November to undertake placement in accordance with the Public Health (COVID-19 Vaccination of Education and Care Workers) Order 2021 (“**the Education Order**”).

An education and care worker (including students) must not carry out relevant work on or after 8 November 2021 unless they have had two doses of a COVID-19 vaccine or have been issued with a medical contraindication certificate. The supervisor of any student on work placement is required to take reasonable steps to ensure that the student complies with the Education Order.

#### **Disability Support Services**

University employees who provide services in person to a person with a disability such as a disability advisor, would likely be required to be vaccinated in accordance with the Care Services Order.

The Care Services Order directs that a person who provides disability services must not provide the services unless they have received:

- at least one dose of a COVID-19 vaccine from 9 am, 25 October 2021 until 9 am 29 November 2021 in order to work; and
- two doses of a vaccine from 9 am 29 November 2021.

The Care Services Order defines disability services as “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.

The University, as the employer of the staff providing disability services in person must take all reasonable steps to ensure that the staff member complies with the Care Services Order.

### **Employees working in early education and care facilities**

Education and care workers are required to be fully vaccinated by 8 November 2021 in accordance with the Education Order. An education and care worker is defined as someone who undertakes relevant work, this includes work at an early education and care facility, other than providing a service that is specified within certain legislation.

The Education Order defines an early education and care facility means a building or place used for the education and care of children and includes any of the following:

- (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.

Without having detailed information about the early education and care facilities at each of the Universities, it is difficult to say with absolute certainty whether any services provided are outside the scope of relevant work, however, it is likely that any workers at a centre-based child care facility on a University campus would be required to be vaccinated under the Order.

### Libraries

The Public Health (COVID-19 General) Order 2021 (“**the Order**”) identifies a number of premises that are ‘closed’ to unvaccinated adults pursuant to clause 2.18.

The occupier of an ‘information and education facility’ must take reasonable steps to ensure that an unvaccinated adult is not on the premises. Information and education facility is defined under the Order as to a “*building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.*”

A University falls within the definition of an educational establishment which means “*a building or place used for education (including teaching), being—*

- (a) a school, or*
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act”.*

We note that these terms are not mutually exclusive, however, it is our view that it is not likely that a library on the premises of a University is intended to be captured by clause 2.18. If an unvaccinated adult was able to attend the premises to attend a class and this was scheduled to take place in the library, that student would be prevented from entering a building within an educational establishment despite being able to enter any other part of the campus.

It may be necessary for the Universities to conduct a risk assessment to determine whether certain parts of the campus should be restricted to unvaccinated adults.