

Guidance for the Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 3)

The objective of this Order is to require employers to not permit general workers to work outside their homes if they are not fully vaccinated or exempt.

General workers refer to a broad category of workers, with exceptions such as Commonwealth employees, members of State Parliament and religious workers who are not covered by this Order.

This Order requires:

- (1) an employer to not permit a general worker to work outside of the general worker's ordinary place of residence unless they are fully vaccinated or exempt; and
- (2) an employer of a general worker to collect the general worker's vaccination status when they work outside their ordinary place of residence; and
- (3) an employer to disclose a general worker's vaccination information to an authorised officer upon request.

These obligations aim to reduce the risk of transmission of COVID-19 in the workplace and keep workers and the broader community safe. Failure to comply with this Order may result in penalties.

This guidance does not form part of the Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 3) and is for explanatory purposes only.

Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 3)

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COVID-19 Mandatory Vaccination (General Workers) 2022 Order (No. 3)

I, Martin Foley, Minister for Health, make the following Order under the **Public Health and Wellbeing Act 2008** in the belief that this Order is reasonably necessary to protect public health throughout Victoria from the serious risk arising from the coronavirus (COVID-19) pandemic disease.

Part 1 – Preliminary

1. Objective

- (1) The objective of this Order is to impose obligations upon employers in relation to the vaccination of general workers, in order to limit the spread of COVID-19 within the population of those workers.
- (2) This Order must be read together with the pandemic orders in force.

2. Citation

This Order may be referred to as the **Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 3)**.

3. Authorising Provision

This Order is made under section 165AI of the **Public Health and Wellbeing Act 2008**.

4. Commencement and revocation

- (1) This Order commences at 11:59:00pm on 4 February 2022 and ends at 11:59:00pm on 12 April 2022.
- (2) The **Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 2)** is revoked at 11:59:00pm on 4 February 2022.

5. Definitions

Terms used in this Order have the meanings set out in Schedule 1.

6. Application of this Order

This Order applies to the whole State of Victoria.

Part 2 – Vaccination requirements for general workers

7. Limits on work outside ordinary place of residence

- (1) If:
 - (a) a person is a general worker; and
 - (b) it is reasonably practicable for the person to work at the person's ordinary place of residence,

an employer of the person must not permit the person to work for that employer outside the person's ordinary place of residence, unless:

 - (c) the employer collects, records and holds vaccination information about the person; and
 - (d) the person is:
 - (i) fully vaccinated; or
 - (ii) an excepted person.

Note: this obligation does not apply in relation to a person who is a general worker, if it is not reasonably practicable for the person to work at the person's ordinary place of residence.

- (2) For the purposes of complying with this clause, an employer is authorised to use any information about a worker that it holds under subclause (1)(c), except a worker's Individual Healthcare Identifier.

Note: a COVID-19 digital certificate issued by Services Australia may include a person's Individual Healthcare Identifier. Individual Healthcare Identifiers are regulated by the Healthcare Identifiers Act 2010 of the Commonwealth.

8. Disclosure to authorised officers

- (1) An authorised officer may request an employer to produce to the authorised officer any vaccination information held by the employer under clause 7(1), except any Individual Healthcare Identifiers that the employer might hold.
- (2) If an authorised officer makes a request to a person under subclause (1), the person must comply with the request.

*Note: authorised officers may also be authorised to exercise the public health risk power in section 190(1)(d) of the **Public Health and Wellbeing Act 2008** to require the provision of any information needed to investigate, eliminate or reduce the risk to public health.*

Part 3 – General provisions

9. Severability

To the extent that any part of this Order is held to be in excess of power or otherwise invalid it is intended that it is to be taken to be valid to the extent to which it is not in excess of that power.

10. Transitional provisions

- (1) A reference in any pandemic order in force to a Revoked COVID-19 Mandatory Vaccination (General Workers) Order is taken on and after the commencement of this Order to be a reference to this Order.
- (2) Any act, matter or thing that had effect under a Revoked COVID-19 Mandatory Vaccination (General Workers) Order immediately before it was revoked continues to have effect under this Order.
- (3) Without limiting subclause (2), this Order is subject to any exemption, benefit, requirement or entitlement (however described) to which a Revoked COVID-19 Mandatory Vaccination (General Workers) Order was subject immediately before it was revoked.
- (4) This clause is subject to any express provision to the contrary in this Order.

Part 4 – Penalties

11. Penalties

Section 165BN of the **Public Health and Wellbeing Act 2008** provides:

Failure to comply with pandemic order, direction or other requirement

- (1) A person commits an offence if the person refuses or fails to comply with a pandemic order, or with a direction given to the person, or a requirement made of the person, in the exercise of a pandemic management power.

Penalty: In the case of a natural person, 60 penalty units;

Penalty: In the case of a body corporate, 300 penalty units.

- (2) A person is not guilty of an offence against section (1) if the person had a reasonable excuse for refusing or failing to comply.

*Note: the **Public Health and Wellbeing Regulations 2019** provide for infringement notices to be served on any person who has refused or failed to comply (without a reasonable excuse) with a pandemic order, or a direction given or a requirement made in the exercise of a pandemic*

management power. The amount payable pursuant to the infringement notice varies depending on the nature of the failure or refusal and the age of the person.

Schedule 1 – Definitions

Division 1 – Key definitions

1. Vaccination status

- (1) A person's **vaccination status** is one of the following:
 - (a) fully vaccinated; or
 - (b) excepted person.
- (2) A person is **fully vaccinated** if the person has received:
 - (a) one dose of a one dose COVID-19 vaccine; or
 - (b) two doses of a two dose COVID-19 vaccine including two different types of two dose COVID-19 vaccines.
- (3) A person is an **excepted person** if the person holds acceptable certification that the person is unable to receive a dose, or a further dose, of any COVID-19 vaccine that is available in Australia due to:
 - (a) a medical contraindication; or
 - (b) an acute medical illness (including where the person has been diagnosed with COVID-19).
- (4) An **acceptable certification** for the purpose of subclause (3) is:
 - (a) a current COVID-19 digital certificate issued by Services Australia and displayed through the Medicare App, Service Victoria App or equivalent smartphone wallet, that states that the person is unable to receive a dose, or a further dose, of any COVID-19 vaccine that is available in Australia; or
 - (b) a printed version of the COVID-19 digital certificate referred to in subparagraph (a).

2. Vaccination information

For the purposes of this Order, **vaccination information** is information relating to a person's vaccination status and includes:

- (1) any information that is derived from a record of information that was made under, or in accordance with, the Australian Immunisation Register Act 2015 of the Commonwealth; and

- (2) the name or type of any dose of COVID-19 vaccine received by the person; and
- (3) the date on which the person received any dose of a COVID-19 vaccine.

Note: vaccination information may be recorded in a variety of documents, such as a letter from a medical practitioner, a certificate of immunisation or an immunisation history statement obtained from the Australian Immunisation Register. For overseas travellers, it may be recorded in an Australian International COVID-19 Vaccination Certificate or vaccination certificates issued by an overseas government authority, accompanied by the Australian Traveller Declaration or COVID-19 Vaccination and Testing Declaration for travel to Australia.

3. Employers and workers

For the purpose of this Order:

employer in relation to a general worker means:

- (1) the person who employs or engages the worker; or
- (2) if the worker is self-employed—the worker;

general worker means a person who does work, but does not include:

- (1) a person under 12 years and two months of age;
- (2) a person who is a worker within the meaning of the **COVID-19 Mandatory Vaccination (Specified Workers) Order**;
- (3) a person who is a worker in relation to a specified facility within the meaning of the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**;
- (4) a person who is a worker within the meaning of the **Open Premises Order**;
- (5) a Commonwealth employee;
- (6) a judge or judicial registrar;
- (7) a person who works in connection with proceedings in a court, where that work cannot be done from the person's ordinary place of residence;
- (8) a person who is a member of the staff of Court Services Victoria within the meaning of the **Court Services Victoria Act 2014**;
- (9) a person employed or engaged by the Chief Executive Officer of the Victorian Civil and Administrative Tribunal;
- (10) a member of State Parliament;
- (11) the Clerk of the Legislative Assembly;

- (12) the Clerk of the Legislative Council;
- (13) an electorate officer within the meaning of the **Parliamentary Administration Act 2004**;
- (14) a parliamentary officer within the meaning of the **Parliamentary Administration Act 2004**;
- (15) a person who works at or in connection with a place of worship and:
 - (a) conducts services of public worship and acknowledgments of faith;
 - (b) performs marriages, funerals and special memorial services according to tradition and ecclesiastical and civil law;
 - (c) visits members of the community in their homes, hospitals and other institutions to provide advice and religious comfort for the purpose of end of life faith reasons;
- (16) a person identified in Article 1 of the Vienna Convention on Diplomatic Relations, as set out in the Schedule to the Diplomatic Privileges and Immunities Act 1967 of the Commonwealth;
- (17) a person identified in Article 1 of the Vienna Convention on Consular Relations, as set out in the Schedule to the Consular Privileges and Immunities Act 1972 of the Commonwealth;
- (18) the Governor and the Lieutenant Governor.

Division 2 – Other definitions

For the purposes of this Order:

authorised officer has the same meaning as in the **Public Health and Wellbeing Act 2008**;

Commonwealth employee has the same meaning as in the Sex Discrimination Act 1984 of the Commonwealth;

court means:

- (1) the Supreme Court;
- (2) the County Court;
- (3) the Magistrates' Court;
- (4) the Children's Court;
- (5) any Federal Court;

COVID-19 means the contagious disease caused by severe acute respiratory syndrome coronavirus 2;

COVID-19 Mandatory Vaccination (Specified Facilities) Order means the **Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order 2022 (No. 4)** as amended or replaced from time to time;

COVID-19 Mandatory Vaccination (Specified Workers) Order means the **Pandemic COVID-19 Mandatory Vaccination (Specified Workers) Order 2022 (No. 3)** as amended or replaced from time to time;

COVID-19 vaccine means either a one dose COVID-19 vaccine or a two dose COVID-19 vaccine;

Individual Healthcare Identifier has the same meaning as the healthcare identifier of a healthcare recipient in section 9 of the Healthcare Identifiers Act 2010 of the Commonwealth;

judge has the same meaning as judicial officer in the **Judicial Entitlements Act 2015**, but does not include the Deputy State Coroner or a reserve coroner;

medical contraindication means one of the following contraindications to the administration of a COVID-19 vaccine:

- (1) anaphylaxis after a previous dose;
- (2) anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
- (3) in relation to AstraZeneca:
 - (a) history of capillary leak syndrome; or
 - (b) thrombosis with thrombocytopenia occurring after a previous dose;
- (4) in relation to Comirnaty or Spikevax, myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax;
- (5) where a person is in the process of completing a Federal Department of Health approved COVID-19 vaccine clinical trial;
- (6) the occurrence of any other serious adverse event that has:
 - (a) been attributed to a previous dose of a COVID-19 vaccine by an experienced immunisation provider or medical specialist (and not attributed to any other identifiable cause); and
 - (b) been reported to State adverse event programs and/or the Therapeutic Goods Administration;

medical practitioner means:

- (1) a general practice registrar on an approved 3GA training placement; or
- (2) a public health physician; or
- (3) an infectious disease physician; or
- (4) a clinical immunologist; or
- (5) a general practitioner who is vocationally registered; or
- (6) a general practitioner who is a fellow of the Royal Australian College of General Practitioners (RACGP); or
- (7) a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine (ACRRM); or
- (8) a paediatrician; or
- (9) a medical practitioner who is a fellow of the Royal Australasian College of Physicians;

one dose COVID-19 vaccine means 'COVID-19 Vaccine Janssen' (Janssen-Cilag);

Open Premises Order means the **Pandemic (Open Premises) Order 2022 (No. 4)** as amended or replaced from time to time;

pandemic orders in force has the same meaning as in the **Pandemic (Movement and Gathering) Order 2022 (No. 3)** as amended or replaced from time to time;

Revoked COVID-19 Mandatory Vaccination (General Workers) Order means the **COVID-19 Mandatory Vaccination (General Workers) Directions (No 3)** or the **Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 2)**, or their predecessors;

specified facility has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**;

two dose COVID-19 vaccine means any of the following:

- (1) Vaxzevria (AstraZeneca);
- (2) Comirnaty (Pfizer);
- (3) Spikevax (Moderna);
- (4) Coronavac (Sinovac);
- (5) Covishield (AstraZeneca/Serum Institute of India);

- (6) Covaxin (Bharat Biotech);
- (7) BBIP-CorV (Sinopharm);
- (8) Sputnik V (Gamaleya Research Institute);
- (9) Nuvaxovid (Bioelect on behalf of Novavax).

A handwritten signature in blue ink, appearing to read 'M. Foley', with a stylized flourish at the end.

Martin Foley MP, Minister for Health

4 February 2022