

# **Guidance for the Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order 2021 (No. 1)**

This Order requires operators of specified facilities to manage the vaccination status of workers, in order to limit the spread of COVID-19 within the population in the following settings:

- (1) residential aged care facilities;
- (2) construction sites;
- (3) healthcare facilities; and
- (4) education facilities.

This Order requires operators of specified facilities to:

- (1) collect, record and hold vaccination information of workers;
- (2) take reasonable steps to prevent entry of unvaccinated or partially vaccinated workers to the specified facility for the purposes of working; and
- (3) notify current and new workers that the operator is obliged to collect, record and hold vaccination information about the worker and to take reasonable steps to prevent a worker who is unvaccinated or partially vaccinated from entering or remaining on the premises of a specified facility for the purposes of work.

Exceptional circumstances are set out in this Order where an operator is not required to comply with this Order. Otherwise, failure to comply with this Order may result in penalties.

*This guidance does not form part of the Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order 2021 (No. 1) and is for explanatory purposes only.*

# **Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order 2021 (No. 1)**

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## **Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order 2021 (No. 1)**

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 operators of specified facilities in relation to the vaccination of workers, in order to limit the spread of COVID-19 within the population in these settings.
- (2) This Order imposes obligations on operators of:
  - (a) residential aged care facilities;
  - (b) construction sites;
  - (c) healthcare facilities; and
  - (d) education facilities.
- (3) 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 (Specified Facilities) Order 2021 (No. 1)**.

#### **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 15 December 2021 and ends at 11:59:00pm on 12 January 2022.
- (2) The **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 13)** are revoked at 11:59:00pm on 15 December 2021.

## **5. Definitions**

In this Order:

- (a) key definitions are contained in Division 1 of Schedule 2;
- (b) facility-specific definitions are contained in Division 2 of Schedule 2; and
- (c) other definitions are contained in Division 3 of Schedule 2.

## **6. Application of this Order**

This Order applies to the whole State of Victoria.

# **Part 2 – Operator Obligations**

## **Division 1 – Operator must collect, record and hold vaccination information**

### **7. Vaccination information**

If a worker is, or may be, scheduled to work at a specified facility after the commencement of this Order, the operator must collect, record and hold vaccination information about the worker.

### **8. Timing**

An operator must comply with the obligations in clause 7 as soon as reasonably practicable after the commencement of this Order.

### **9. Exception – fully vaccinated and excepted persons**

Clause 7 does not apply in relation to a worker if the operator already holds information that the worker:

- (a) is fully vaccinated; or
- (b) will be an excepted person for the period beginning when this Order commences and ending when this Order ends.

## **Division 2 – Operator must take reasonable steps to prevent entry of unvaccinated workers**

### **10. Prevention of entry to premises**

- (1) An operator of a specified facility must take all reasonable steps to ensure that a worker does not enter, or remain on, the premises of the specified facility for

the purposes of working at the specified facility if the worker is unvaccinated or partially vaccinated.

- (2) For the purposes of clause 10(1), if an operator does not hold vaccination information about a worker, the operator must treat the worker as if the worker is unvaccinated.

### **Division 3 – Operator to notify workers**

#### **11. Authorisation to use vaccination information**

For the purposes of complying with clause 10, an operator is authorised to use any information about a worker that it holds under clause 7.

#### **12. Disclosure to employer or contractor**

If the operator is obliged to comply with clause 10(1) in relation to a worker and the operator is not:

- (a) the employer of the worker; or
- (b) the person who engaged the worker to work at the facility,

the operator is authorised to disclose to the employer or person who engaged the worker that the operator is obliged to comply with clause 10(1) in relation to the worker.

#### **13. Notification to current workers**

- (1) Unless an exception applies under this Order, subject to clause 13(2), an operator of a specified facility must, as soon as reasonably practicable after the commencement of this Order, inform each worker who is, or may be, scheduled to work at the facility that:
  - (a) clause 7 obliges the operator to collect, record and hold vaccination information about the worker; and
  - (b) clause 10(1) obliges the operator to take all reasonable steps to ensure that a worker who is unvaccinated or partially vaccinated, does not enter, or remain on, the premises of a specified facility for the purposes of working at the facility.
- (2) Clause 13(1) does not apply to an operator in respect of a worker if the operator informed the worker of the matters specified in that subclause under a previous version of this Order or the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 13)** and its predecessors.

#### **14. Notification to new workers**

Unless an exception applies under this Order, if an operator of a specified facility engages a worker who is, or may be, scheduled to work at the facility, the operator must inform the worker, as soon as reasonably practicable after engaging the worker, that:

- (a) clause 7 obliges the operator to collect, record and hold vaccination information about the worker; and
- (b) clause 10(1) obliges the operator to take all reasonable steps to ensure that a worker who is unvaccinated or partially vaccinated, does not enter, or remain on, the premises of a specified facility for the purposes of working at the facility.

### **Division 4 – Exceptions and other operator obligations**

#### **15. Exception — exceptional circumstances**

(1) An operator of a specified facility is not required to comply with clause 10(1) if one or more of the exceptional circumstances specified in subclause (2) applies.

(2) The exceptional circumstances are:

- (a) a worker is required to perform work or duties at the facility that is or are necessary to provide for urgent specialist clinical or medical care due to an emergency situation or a critical unforeseen circumstance; or
- (b) a worker is required to fill a vacancy to provide urgent care, to maintain quality of care and/or continue essential operations at the facility due to an emergency situation or a critical unforeseen circumstance; or

*Example 1: a work premises has a large number of workers furloughed due to exposure at a Tier 1 site.*

*Example 2: a medical practitioner is required to attend the premises on short notice due to an emergency situation.*

- (c) a worker is required to attend the facility to respond to an emergency at the facility; or
- (d) a worker is required to perform urgent and essential work at the facility to protect the health and safety of workers or members of the public, or to protect assets and infrastructure.

*Example 1: securing a crane due to impending high winds.*

*Example 2: works required at a construction site in order to make the construction site safe for continued operation.*

- (3) If a circumstance specified in subclause (2)(b), (2)(c) or (2)(d) applies, the operator must take all reasonable steps to ensure that the worker remains upon the premises of the facility only for the period of time necessary to respond to the exceptional circumstance.

#### **16. Additional obligation**

If the circumstances specified in clause 15(2) apply in relation to a residential aged care facility or a healthcare facility, the relevant operator must take all reasonable steps to ensure that the worker wears, at all times while on the premises of the facility, PPE that includes, at a minimum, a surgical mask and face shield.

#### **17. Disclosure to authorised officers**

- (1) An authorised officer may request an operator to produce to the authorised officer any vaccination information held by the operator under clause 7.
- (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**

#### **18. 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.

#### **19. Transitional provisions**

- (1) A reference in any pandemic order in force (other than a revoked direction) to the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 13)** is taken on and after the revocation of the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 13)** to be a reference to this Order.
- (2) Any act matter or thing that had effect under the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 13)** immediately before they were 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 the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 13)** were subject immediately before they were revoked.

- (4) This clause is subject to any express provision to the contrary in this Order.
- (5) In this clause:

*revoked direction* means a direction that is:

- (a) made by the Chief Health Officer or the Acting Chief Health Officer under section 200(1) of the **Public Health and Wellbeing Act 2008**; and
- (b) continued by section 165CJ of that Act as if it were a pandemic order in the same terms made under section 165AI(1); and
- (c) revoked by a pandemic order.

## Part 4 – Penalties

### 20. 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;

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

- (2) A person is not guilty of an offence against subsection (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 – Specified Facilities

Specified facility (Column 1)	Operator (Column 2)	Worker (Column 3)	Facility-specific definitions
<b>residential aged care facility</b>	<b>approved provider</b> with responsibility for that residential aged care facility	<b>residential aged care facility worker</b>	Clause 4 of Schedule 2
<b>construction site</b>	<b>principal contractor</b> for that construction site	any person (paid or unpaid) performing work at a construction site, including: <ul style="list-style-type: none"> <li>(a) an employee of the operator; and</li> <li>(b) any contractor engaged by the operator or by a third party.</li> </ul>	Clause 5 of Schedule 2
<b>healthcare facility</b>	<b>healthcare operator</b>	<b>healthcare worker</b>	Clause 6 of Schedule 2

Specified facility (Column 1)	Operator (Column 2)	Worker (Column 3)	Facility-specific definitions
<b>education facility</b>	<b>education operator</b>	<b>education worker</b>	Clause 7 of Schedule 2

## Schedule 2 – Definitions

### Division 1 – Key definitions

#### 1. Vaccination status

- (1) A person's **vaccination status** is one of the following:
  - (a) fully vaccinated; or
  - (b) partially vaccinated; or
  - (c) unvaccinated; or
  - (d) excepted person.
- (2) A person is **fully vaccinated** if the person is a worker who has received one dose of a one dose COVID-19 vaccine or two doses of a two dose COVID-19 vaccine including two different types of two dose COVID-19 vaccines.
- (3) A person is **partially vaccinated** if the person has received one dose of a two dose COVID-19 vaccine and is not an excepted person.
- (4) A person is **unvaccinated** if the person has not received a dose of a COVID-19 vaccine and is not an excepted person.
- (5) 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).
- (6) An **acceptable certification** for the purpose of subclause (6) 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 paragraph (a).

## 2. Vaccination information

For the purposes of this Order, **vaccination information** is information about a person's vaccination status and includes 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.

*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. Schedule 1 definitions

For the purposes of this Order:

- (1) **operator** in relation to a specified facility means a person identified in Column 2 of Schedule 1 for that facility;
- (2) **specified facility** means a facility identified in Column 1 of Schedule 1;
- (3) **worker** in relation to a specified facility means a person identified in Column 3 of Schedule 1 for that facility except for a person under 12 years and two months of age.

## Division 2 – Facility-specific definitions

### 4. Residential aged care facilities

For the purposes of this Order:

- (1) **approved provider** has the same meaning as in the **Aged Care Quality and Safety Commission Act 2018** of the Commonwealth;
- (2) **residential aged care facility** means the premises at which accommodation and personal care or nursing care or both are provided to a person in respect of whom a residential care subsidy or a flexible care subsidy is payable under the **Aged Care Act 1997** of the Commonwealth;
- (3) **residential aged care facility worker** means a person (including a volunteer) that is:
  - (a) employed, or engaged as a contractor, by an operator that operates a residential aged care facility to perform work at the residential aged care facility including:

- (i) direct care workforce including nurses, personal care workers, allied health professionals, and allied health assistants;
  - (ii) administration staff including reception and management staff;
  - (iii) ancillary staff including food preparation, cleaning, laundry, gardening and general maintenance staff;
  - (iv) dental practitioners;
  - (v) phlebotomists (pathology nurses);
  - (vi) lifestyle and social staff, such as those delivering music or art therapy;
  - (vii) transport drivers who are responsible for collecting and transporting residents to and from the residential aged care facility for outings;
  - (viii) volunteers engaged by the residential aged care facility to undertake duties at the facility;
  - (ix) students on placement;
  - (x) medical practitioners and allied health professionals who attend the residential aged care facility to provide care to residents of the facility; and
- (b) a medical practitioner, dental practitioner or allied health professional who is employed or engaged by a resident of a residential aged care facility to provide care to the resident;
- (4) **residential care subsidy** has the same meaning as in the **Aged Care Act 1997** of the Commonwealth.

## 5. Construction sites

For the purposes of this Order:

- (1) **construction site** means a premises at which civil works, building or construction activities are taking place (the primary premises) and includes:
- (a) premises that are nearby to the primary premises at which work relating to the operation of the primary premises is undertaken (secondary premises);
  - (b) any vehicle used to carry out work at the primary premises or secondary premises;

*Example: a site office for a construction site that is located in an office building close to the construction site.*

- (2) **principal contractor** means the owner of a construction site unless the owner:
  - (a) appoints a principal contractor for the construction work performed for or on behalf of the owner; and
  - (b) authorises the principal contractor to manage or control the construction site to the extent necessary to discharge the duties imposed on a principal contractor under the **Occupational Health and Safety Regulations 2017**;
- (3) **vehicle** has the same meaning as in the **Public Health and Wellbeing Act 2008**.

## 6. Healthcare facilities

For the purposes of this Order:

- (1) **healthcare facility** means each of the following premises:
  - (a) hospitals, including outpatient settings and in reach services;
  - (b) ambulance and patient transport services vehicles;
  - (c) community health centres including mental health, child and maternity, and drug and alcohol counselling services centres;
  - (d) general practices;
  - (e) COVID-19 related healthcare sites, including testing sites, vaccination centres and hotel quarantine premises;
  - (f) dental surgeries and practices;
  - (g) day procedure centres;
  - (h) health clinics, including medical specialist and allied health professional operated clinics;
  - (i) pharmacies;
  - (j) diagnostic and medical imaging centres;
  - (k) premises at which mobile health services are provided;
  - (l) premises at which blood donation services are provided;
  - (m) premises at which healthcare students undertake placement, registration or internships;

- (n) premises at which health services within government agencies are provided, including the Victorian Department of Justice and Community Services – Victorian Institute of Forensic Medicine;
  - (o) Coroner’s Court;
  - (p) any retail or other premises operating within a healthcare facility, including cafes, newsagents and florists;
- (2) **healthcare operator** means a person who operates a healthcare facility whether public, private or denominational;
- (3) **healthcare worker** means a person who is employed or engaged as a contractor by a healthcare operator to perform at a healthcare facility any of the following:
- (a) healthcare services including:
    - (i) medical practitioners, dental professionals, nurses and midwives;
    - (ii) allied health professionals (including those that work within a discipline classified by the Victorian Department of Health as allied health, or are registered with the *Australian Health Practitioner Regulation Agency*);
    - (iii) palliative care workers;
    - (iv) personal care attendants;
    - (v) phlebotomists and pathology workers;
    - (vi) coroners;
    - (vii) lifestyle and social therapists;
    - (viii) formal language and interpretation services;
    - (ix) students;
    - (x) volunteers;
  - (b) administrative or ancillary roles, including:
    - (i) an administrative, clerical and managerial worker, and each of their assistants’ delegates;
    - (ii) food preparation, cleaning and laundry services;
    - (iii) patient service assistants and porters;
    - (iv) operating theatre technicians;

- (v) security, maintenance and repair and information technology, gardening and landscaping;
- (c) ambulance and patient transport services;
- (d) work at a retail business operating within a healthcare facility, including cafes, restaurants, newsagents and florists.

## 7. Education facilities

For the purposes of this Order:

- (1) **childcare or early childhood service** means onsite early childhood education and care services or children's services provided under the:
  - (a) **Education and Care Services National Law** and the **Education and Care Services National Regulations**, including long day care services, kindergartens and/or preschool and family daycare services, but not including outside school hours care services; and
  - (b) **Children's Services Act 1996**, including limited hours services, budget based funded services, occasional care services, early childhood intervention services, mobile services and (if applicable) school holiday care programs;
- (2) **education facility** means:
  - (a) premises at which a childcare or early childhood service is provided;
  - (b) premises at which an outside school hours care service is provided;
  - (c) a school;
  - (d) school boarding premises;
- (3) **education operator** means a person who operates an education facility, whether public, private or denominational;
- (4) **education worker** means:
  - (a) any person who is employed by an education operator to work in an education facility (including teachers, early childhood educators and educational support staff);
  - (b) a person contracted to work at an education facility and who will or may be in close proximity to children, students or staff, whether or not engaged by the education operator including casual relief teachers, Breakfast Club suppliers, IT personnel, NDIS providers and auditors, (but does not include delivery personnel);

- (c) staff of the Department of Education and Training who attend an education facility (such as allied health personnel or Authorised Officers);
  - (d) staff of any other entity who attends an education facility;
  - (e) volunteers that attend an education facility and that work in close proximity to children, students or staff (including parent helpers);
  - (f) students on placements at an education facility;
- (5) **school** means a registered school as defined in the **Education and Training Reform Act 2006**;
- (6) **school boarding premises** means a registered school boarding premises, as defined in the **Education and Training Reform Act 2006**.

### Division 3 – Other definitions

#### 8. Other definitions

For the purposes of this Order:

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

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

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

**critical unforeseen circumstance** means a circumstance that the operator of a work premises could not reasonably have foreseen nor planned for which results in a critical need for staff;

**emergency situation** means a situation where it is reasonably apparent to the operator of a specified facility that medical treatment is necessary, as a matter of urgency to:

- (a) save a person's life; or
- (b) prevent serious damage to a person's health; or
- (c) prevent a person from suffering or continuing to suffer significant pain or distress;

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

- (a) anaphylaxis after a previous dose;

- (b) anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
- (c) in relation to AstraZeneca:
  - (i) history of capillary leak syndrome; or
  - (ii) thrombosis with thrombocytopenia occurring after a previous dose;
- (d) in relation to Comirnaty or Spikevax:
  - (i) myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax; or
- (e) the occurrence of any other serious adverse event that has:
  - (i) been attributed to a previous dose of a COVID-19 vaccine by an experienced immunisation provider or medical specialist (and not attributed to any another identifiable cause); and
  - (ii) been reported to State adverse event programs and/or the Therapeutic Goods Administration;

**medical practitioner** means:

- (a) a general practice registrar on an approved 3GA training placement; or
- (b) a public health physician; or
- (c) an infectious disease physician; or
- (d) a clinical immunologist; or
- (e) a general practitioner who is vocationally registered; or
- (f) a general practitioner who is a fellow of the Royal Australian College of General Practitioners (RACGP); or
- (g) a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine (ACRRM); or
- (h) a paediatrician; or
- (i) 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);

**pandemic orders in force** has the same meaning as in the **Pandemic (Movement and Gathering) Order 2021 (No. 1)** as amended or replaced from time to time;

**PPE** means personal protective equipment;

**premises** has the same meaning as in the **Public Health and Wellbeing Act 2008** but does not include a worker's ordinary place of residence;

**Quarantine, Isolation and Testing Order** means **the Pandemic (Quarantine, Isolation and Testing) Order 2021 (No. 1)** as amended or replaced from time to time;

**two dose COVID-19 vaccine** means:

- (a) Vaxzevria (AstraZeneca);
- (b) Comirnaty (Pfizer);
- (c) Spikevax (Moderna);
- (d) Coronvac (Sinovac);
- (e) Covishield (Astrazeneca/Serum Institute of India);
- (f) Covaxin (Bharat Biotech);
- (g) BBIP-CorV (Sinopharm).



**Martin Foley MP, Minister for Health**

15 December 2021