

Directions from the Secretary, Department of Health

*Health Services Act 1988*

Sections 42(1)(ca) and (h)

I, Euan Wallace, Secretary, Department of Health, give the following directions pursuant to sections 42(1)(ca) and (h) of the *Health Services Act 1988* (Health Services Act):

### **Preamble**

1. Health care workers are at increased risk of vaccine-preventable disease if they are not vaccinated.
2. Health care workers who are not vaccinated can also pose a risk of transmitting a disease to other health care workers and patients, particularly those who are vulnerable because of age, pregnancy, immunosuppression or chronic disease.
3. The purpose of these directions is to require health care services to ensure that health care workers whom they employ or engage are vaccinated against seasonal influenza, other than in certain limited circumstances.
4. The objectives of requiring health services to ensure that health care workers whom they employ or engage are vaccinated against seasonal influenza are to protect the health and safety of employees, mitigate the risk of transmission of seasonal influenza to patients and to maximise compliance with the recommended vaccination requirements.

### **Citation**

5. These Directions may be referred to as the **Mandatory Vaccination of Health Care Workers (Influenza Vaccine) Directions – Health Services**.

### **Authorising provision**

6. Section 42(1) of the Health Services Act provides that I may in writing give directions to a public hospital or denominational hospital in relation to all or any of a number of specified matters for the purposes of carrying out functions and powers under the Health Services Act or for carrying out the objectives of the Health Services Act.
7. The matters in relation to which I may give directions under section 42(1) include:
  - a. paragraph (ca) – the requirements for specified persons, or a specified class of persons, employed or engaged by the hospital to be vaccinated against or prove immunity to specified diseases, including the consequences of non-compliance for those persons as employees or persons engaged by the hospital; and
  - b. paragraph (h) – the accounts and records which should be kept by the hospital and the returns and other information which should be supplied to the Secretary.
8. One of my principal functions under the Health Services Act is to encourage safety and improvement in the quality of health services provided by health care agencies and health service establishments (s11A(d)).
9. One of the objectives of the Health Services Act is to ensure that health care agencies provide safe, patient-centred and appropriate health services (s. 9(a)(i)).

## Commencement

10. These Directions take effect on 8 April 2022.

## Definitions

11. **Australian Immunisation Handbook** means the latest edition of the Australian Immunisation Handbook published by the Australian Government Publishing Service.

12. **Health care worker** means a person:

- a. who is employed or otherwise engaged by a health service; and
- b. whose role requires them to have direct in-person contact with patients, clients, deceased persons or body parts, blood, body substances, infectious material or surfaces or equipment that might contain any of the aforementioned, or who is required to work in a clinical area where they may be exposed to infections spread by droplets, such as influenza.

13. **Health service** means a public hospital, public health service or denominational hospital for the purposes of the Health Services Act.

## Directions

### **Health care workers employed or engaged by a health service on or after the date this Direction takes effect (new health care workers)**

#### **New health care worker must be vaccinated**

14. Subject to clauses 15, 16 and 17, a health service must ensure that any new health care worker whom it employs or engages is vaccinated against seasonal influenza.

15. A health service is not required to ensure that a new health care worker whom it employs or engages (or whom it proposes to employ or engage) is vaccinated against seasonal influenza if:

- a. the new health care worker has provided acceptable evidence to the health service to show that they have a medical contraindication to the administration of seasonal influenza vaccines as defined by the Australian Immunisation Handbook; and
- b. the health service has conducted a risk assessment and is satisfied that it is safe to permit the new health care worker to perform their role as a health care worker at the health service, and has determined the basis on which it is safe for them to perform that role.

#### **Timeframe for vaccination for new health care workers**

16. A health service must ensure that a new health care worker is vaccinated against seasonal influenza:

- a. at the time they are engaged or employed by the health service, if their employment or engagement with the health service commences between May and December in any given year; or
- b. within 4 months of their engagement or employment by the health service, if their employment or engagement with the health service commences between January and April in any given year.

**Exceptions to the requirement to be vaccinated**

17. A health service is not required to ensure that a new health care worker who is employed or engaged by the health service is vaccinated against seasonal influenza if:
  - a. the health service has conducted a risk assessment and is satisfied that it is safe to permit the new health care worker to perform their role as a health care worker at the health service, and has determined the basis on which it is safe for them to perform that role; and
  - b. the health service is satisfied that not engaging or employing the new health care worker would result in serious risk to service delivery and patient care.

**Health care workers employed or engaged by a health service prior to the date this Direction takes effect (current health care workers)**

**Current health care workers must be vaccinated**

18. A health service must ensure that each current health care worker who is engaged or employed by the health service is vaccinated against seasonal influenza by 15 August 2022, other than as provided for in clauses 19 and 20.
19. A health service is not required to ensure that a current health care worker is vaccinated against seasonal influenza if:
  - a. the person has provided acceptable evidence to the health service to show that they have a medical contraindication to the administration of seasonal influenza vaccines as defined by the Australian Immunisation Handbook; and
  - b. the health service has conducted a risk assessment and is satisfied that it is safe to permit the current health care worker to perform their role as a health care worker at the health service, and has determined the basis on which it is safe for them to perform that role.

**Exceptions to the requirement to be vaccinated**

20. A health service may grant an exemption from the requirement to be vaccinated against seasonal influenza to a current health care worker who is employed or engaged by the health service if:

- a. the health service has conducted a risk assessment and is satisfied that it is safe to permit the current health care worker to perform their role as a health care worker at the health service, and has determined the basis on which it is safe for them to perform that role; and
- b. the health service is satisfied that removing the person from their current role would result in a serious risk to service delivery and patient care.

#### **Requirement for annual vaccination**

21. A health service must ensure that every health care worker who is employed or engaged by the health service receives an annual vaccination against seasonal influenza by 15 August each calendar year.

#### **Evidence of vaccination status**

22. A health service must record the seasonal influenza vaccination status of each health care worker who is engaged or employed by the health service annually.
23. Subject to clause 24, a health service must sight a current Immunisation History Statement from the Australian Immunisation Register for each health care worker employed or engaged by the health service, in order to confirm and record their seasonal influenza vaccination status.
24. Where a health care worker has been vaccinated against seasonal influenza in a setting that does not directly link to the Australian Immunisation Register, such as a staff vaccination program organised by their employer, a health service that employs or engages the health care worker may accept documented evidence provided by the organisation that administered the vaccination as evidence of the health care worker's vaccination status.
25. For the purposes of clauses 15 and 19, **acceptable evidence** that a health care worker has a medical contraindication to the administration of seasonal influenza vaccines means a written statement from a medical practitioner outlining the health care worker's contraindication to the administration of seasonal influenza vaccines (as defined by the Australian Immunisation Handbook).
26. A health service must record and handle the seasonal influenza vaccination status of each new and current health care worker whom it employs or engages who is unable to be vaccinated against seasonal influenza due to a temporary or permanent medical contraindication to the administration of seasonal influenza vaccines in accordance with the requirements of the *Health Records Act 2001* (Vic).

#### **Consequences of non-compliance for health care workers**

27. If, in compliance with this Direction, a health service requires a health care worker to be vaccinated against seasonal influenza, to show evidence of their seasonal influenza vaccination status or to show evidence that they have a medical contraindication to the administration of seasonal influenza vaccines, and the health care worker fails to comply with the requirement, the health service must conduct a risk assessment of the risks associated with the health care worker performing their role as a health care worker for the health service.
28. If, after conducting a risk assessment in accordance with clause 27, the health service is satisfied that the health care worker poses an unacceptable risk to other health care workers and/or patients, the health service may transfer the health care worker to an alternative role with the health service, or adopt other risk mitigation strategies to ensure the health service is satisfied that the level of risk is acceptable.
29. If it is not possible to transfer the health care worker to an alternative role with the health service or to adopt other risk mitigation strategies so that the health service is satisfied that the level of risk is acceptable, the health service may terminate the employment engagement of the health care worker in accordance with law.



**Professor Euan Wallace AM**

Secretary

Department of Health

07 April 2022