

Directions from the Secretary, Department of Health

Health Services Act 1988 (Vic)

Section 105A(1)

I, Euan Wallace, Secretary, Department of Health (**Department**) give the following Directions pursuant to section 105A of the *Health Services Act 1988 (Vic)* (**Health Services Act**):

Preamble

1. Patients receiving care and treatment at health service establishments have a higher risk of morbidity and mortality from COVID-19 due to their acute illness or pre-existing medical conditions and care needs.
2. Health care workers are at increased risk of vaccine-preventable disease, including COVID-19, if they are not fully vaccinated.
3. Health care workers who are not fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19 can also pose a risk of transmitting COVID-19 to other health care workers and patients, particularly those who are vulnerable because of age, pregnancy, immunosuppression, or chronic disease.
4. The purpose of these Directions is to require proprietors of health service establishments to ensure that health care workers whom they employ or engage are fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19, other than in certain limited circumstances.
5. The objectives of requiring proprietors of health service establishments to ensure that health care workers whom they employ or engage are fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19 are to protect the health and safety of those employed or engaged by the proprietor of the health service establishment, to protect the health and safety of patients, and to maximise compliance with COVID-19 vaccination requirements, in order to provide safe, patient- centered and appropriate health services.

Citation

6. These Directions may be referred to as the **Vaccination of Health Care Workers (COVID-19) Directions – Health Service Establishments**.

Authorising provision

7. Section 105A(1) of the Health Services Act provides that, for the purpose of protecting the health and safety of patients, I may in writing direct the proprietor of a health service establishment to require health care workers employed or engaged by the health service establishment to be vaccinated against, or prove immunity to, a disease.
8. One of the objectives of the Health Services Act is to ensure that health service establishments provide safe, patient-centred and appropriate health services (s. 9(a)(i)).

Commencement

9. These Directions commence on 13 October 2022.

Definitions

10. **acceptable certification** means:
 - 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 health care worker is unable to receive a dose, or a further dose, of any COVID-19 vaccine; or
 - b. a printed version of the COVID-19 digital certificate referred to in subclause (a); or
 - c. a current Immunisation History Statement displayed through the Medicare App, that states that the health care worker is unable to receive a dose of a COVID-19 vaccine (whether that health care worker has already received one or two doses of a COVID-19 vaccine); or
 - d. a printed version of the Immunisation History Statement referred to in subclause (c).
11. **approved clinical trial of a vaccine against COVID-19 in Australia** means an approved COVID-19 human clinical trial occurring in Australia and listed on the following website <https://www.ncirs.org.au/covid-19/covid-19-vaccine-development-landscape>, as amended from time to time.
12. a health care worker has received a **booster dose** if they have received a:

- a. second dose of a COVID-19 vaccine after receiving one dose of a one dose COVID-19 vaccine; or
 - b. a third dose of a COVID-19 vaccine after receiving two doses of a two dose COVID-19 vaccine, including different types of two dose COVID-19 vaccines.
13. **COVID-19** means the contagious disease caused by severe acute respiratory syndrome coronavirus 2.
14. **COVID-19 PCR test** means a COVID-19 polymerase chain reaction test.
15. **COVID-19 vaccine** means a one dose COVID-19 vaccine or a two dose COVID-19 vaccine.
16. a health care worker is a **diagnosed person** if they have, at any time before, on or after the commencement of these Directions, received a positive result from a COVID-19 PCR test and are not a recent confirmed case. A health care worker ceases to be a diagnosed person at the end of that health care worker's infectious period.
17. a health care worker is an **excepted person** if they hold acceptable certification that they are unable to receive a dose, or a further dose, of any COVID-19 vaccine due to:
- a. a medical contraindication; or
 - b. an acute medical illness (including where the health care worker has been diagnosed with COVID-19 in the previous 3 months).
18. a health care worker is **fully vaccinated** if they have 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.
19. a health care worker is **fully vaccinated (boosted)** if they have received a booster dose.
20. **health care worker** means a person who is employed or engaged by a health service establishment, but for the avoidance of doubt, excludes any health care worker who is not working onsite.
21. **health service establishment** means a private hospital, day procedure centre, or premises at which, or from which, a prescribed health service is provided, for the purposes of the Health Services Act.
22. **Health Practitioner Regulation National Law** means The Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the Health Practitioner Regulation National Law Act 2009 (Qld) and which applies as a law of Victoria pursuant to the Health Practitioner Regulation National Law (Victoria) Act 2009 (Vic).

23. **infectious period** means the period:

- a. commencing:
 - i. if the health care worker undertook a COVID-19 PCR test or COVID-19 rapid antigen test (from which they were diagnosed with COVID-19) without experiencing symptoms of COVID-19, 48 hours before the health care worker undertook the COVID-19 PCR test or COVID-19 rapid antigen test; or
 - ii. if the health care worker was experiencing symptoms of COVID-19 at the time they undertook a COVID-19 PCR test or COVID-19 rapid antigen test (from which they were diagnosed with COVID-19), 48 hours before the health care worker first experienced symptoms; and
- b. concluding:
 - i. five days from the date on which the health care worker undertook the COVID-19 PCR test or COVID-19 rapid antigen test (from which they were diagnosed with COVID-19); or
 - ii. where a health care worker is a probable case, on the date which the probable case undertook the COVID-19 PCR test from which a negative result was received; or
 - iii. such other time as specified by an officer or nominated representative of the Department.

24. **leave** means any period of authorised leave.

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

- a. anaphylaxis after a previous dose of a COVID-19 vaccine;
- b. anaphylaxis to any component of a COVID-19 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 Pfizer or Moderna, myocarditis or pericarditis attributed to a previous dose of either Pfizer or Moderna;
- e. where a health care worker is in the process of completing a Federal Department of Health approved clinical trial of a vaccine against COVID-19 in Australia;

- f. the occurrence of any other serious adverse event that has:
 - i. been attributed to a previous dose of a COVID-19 vaccine by a registered medical practitioner (and not attributed to any another identifiable cause); and
 - ii. been reported to State adverse event programs or the TGA.
26. **one dose COVID-19 vaccine** means COVID-19 Vaccine Janssen (Janssen-Cilag).
27. **onsite** means taking place or situated at the premises occupied by the proprietor of a health service establishment, including the whole or any part of a building, outbuilding or other structure (whether of a permanent or temporary nature) or land (whether or not vacant) or in any vehicle owned by or registered to the health service establishment.
28. a health care worker is a **probable case** if they have at any time before, on or after the commencement of these Directions, received a positive result from a COVID-19 rapid antigen test and are not a recent confirmed case. A healthcare worker ceases to be a probable case at the end of that health care worker's infectious period.
29. **proprietor** means:
 - a. in the case of a not-for-profit health service establishment, the authority or body of persons conducting the health service establishment; and
 - b. in any other case, the owner (whether a natural person or a corporation) of the business or undertaking carried on at the health service establishment, for the purposes of the Health Services Act.
30. **recent confirmed case** means a health care worker:
 - a. who is currently within their infectious period, including health care workers whose infectious period commenced while they were not in Victoria; or
 - b. whose infectious period commenced within the previous 5 weeks, including health care workers whose infectious period commenced while they were not in Victoria (but which does not include a health care worker whose infectious period ended the day on which a negative result was received by the health care worker as a probable case, from a COVID-19 PCR test that was undertaken within 48 hours after the COVID-19 rapid antigen test from which the health care worker became a probable case).
31. **registered medical practitioner** means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student), for the purposes of the Health Services Act.

32. **TGA** means the Therapeutic Goods Administration established under the *Therapeutic Goods Act 1989* of the Commonwealth.
33. **two dose COVID-19 vaccine** means any of the following:
- a. Vaxzevria (AstraZeneca);
 - b. Comirnaty (Pfizer);
 - c. Spikevax (Moderna);
 - d. Coronavac (Sinovac);
 - e. Covishield (AstraZeneca/Serum Institute of India);
 - f. Covaxin (Bharat Biotech);
 - g. BBIP-CorV (Sinopharm);
 - h. Sputnik V (Gamaleya Research Institute);
 - i. Nuvaxovid (Biocelect on behalf of Novavax).
34. **vaccination information**, for the purpose of these Directions, is information relating to a health care worker's COVID-19 vaccine vaccination status and includes:
- a. 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
 - b. the name or type of any dose of COVID-19 vaccine received by the health care worker; and
 - c. the date on which the health care worker received any dose of a COVID-19 vaccine.

Directions

Health care workers employed or engaged by a health service establishment on or after the date these Directions take effect (new health care workers)

New health care workers must be vaccinated or fully vaccinated (boosted) against COVID-19

35. Subject to clauses 36 and 40, a proprietor of a health service establishment must ensure that:
- a. any new health care worker whom it employs or engages and who is 18 years or older is fully vaccinated (boosted) against COVID-19; and
 - b. any new health care worker whom it employs or engages and who is under 18 years of age is fully vaccinated against COVID-19.
36. A proprietor of a health service establishment is not required to ensure that a new health care worker whom it employs or engages (or whom it proposes to employ or engage as a health care

worker) is fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19 in accordance with clause 35 if the new health care worker (or person proposed to be employed or engaged as a health care worker) has displayed acceptable certification to the proprietor of the health service establishment to show that they are an excepted person.

Timeframe for COVID-19 vaccination of new health care workers

37. A proprietor of a health service establishment must ensure that a new health care worker is fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19 in accordance with clause 35:
- a. at the time they are employed or engaged by the health service establishment; or
 - b. if the health care worker entered Australia from another country in the previous 4 weeks and is 18 years or older – is fully vaccinated and has a booking to receive a booster dose within 4 weeks of entering Australia; and
 - c. has provided evidence to the health service establishment (as applicable) that the health care worker has a booking as specified in subclause (b).

Health care workers employed or engaged by a health service establishment prior to the date these Directions take effect (current health care workers)

Current health care workers must be vaccinated or fully vaccinated (boosted) against COVID-19

38. Subject to clauses 39 and 40, a proprietor of a health service establishment must ensure that:
- a. any current health care worker whom it employs or engages and who is 18 years or older is fully vaccinated (boosted) against COVID-19; and
 - b. any current health care worker whom it employs or engages and who is under 18 years of age is fully vaccinated against COVID-19.
39. A proprietor of a health service establishment is not required to ensure that a current health care worker whom it employs or engages is fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19 in accordance with clause 38 if the current health care worker has displayed acceptable evidence to the proprietor of the health service establishment to show that they are an excepted person.

Exemptions to the requirement to be fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19 where the health care worker has not displayed acceptable certification to show that they are an excepted person

40. A proprietor of a health service establishment is not required to comply with clauses 35 and 38 in respect of a new health care worker or current health care worker who is employed or engaged by the proprietor of the health service establishment, and who has not displayed acceptable certification that they are an excepted person, if the proprietor of the health service establishment has conducted an assessment of the workplace health and safety risks associated with a health care worker attending work onsite and has determined that permitting the health care worker to attend work whilst not fully vaccinated (boosted) against COVID-19 will not pose an unacceptable risk having regard to the proprietor's work health and safety obligations and if:

- a. the health care worker is on leave, but only for the duration of that period of leave; or

Note: once the health care worker's period of leave concludes, the proprietor of the health service establishment must ensure that the health care worker whom it employs or engages is fully vaccinated or fully vaccinated (boosted) (as applicable), where required under these Directions.

- b. the health care worker has become fully vaccinated in the previous 3 months and 14 days; or

Note: once 3 months and 14 days have passed since a health care worker aged 18 years or older has become fully vaccinated, the proprietor of a health service establishment must ensure that the health care worker whom it employs or engages is fully vaccinated (boosted), where required under these Directions.

- c. the health care worker satisfies the requirements in clauses 37(b); or

Note: once 4 weeks have passed since a new health care worker aged 18 years or older has entered Australia from another country, the proprietor of a health service establishment must ensure that the new health care worker whom it employs or engages is fully vaccinated (boosted), where required under these Directions.

- d. the health care worker was, but has ceased to be in the previous 14 days, an excepted person; or

Note 1: once 14 days have passed since a health care worker aged 18 years or older has ceased to be an excepted person, the proprietor of a health service establishment must ensure that the health care worker whom it employs or engages is fully vaccinated (boosted), where required under these Directions.

Note 2: once 14 days have passed since a health care worker aged under 18 years or older has ceased to be an excepted person, the proprietor of a health service establishment must ensure that the health care worker whom it employs or engages is fully vaccinated, where required under these Directions.

- e. the health care worker is 18 years or older, and is fully vaccinated but not fully vaccinated (boosted) and:

- i. was a diagnosed person whose infectious period ended within the previous 3 months; or

- ii. was a probable case whose infectious period ended within the previous 3 months, and the health care worker received a positive result from a COVID-19 rapid antigen or COVID-19 PCR test undertaken during their infectious period; or

Note 1: to demonstrate to a proprietor of a health service establishment that a health care worker is covered by this exemption, the health care worker may provide the proprietor of a health service establishment with a written positive result from a COVID-19 PCR test, or an SMS message from the Department confirming the reporting by the health care worker of a positive COVID-19 rapid antigen test to the Department (from which the health care worker was diagnosed with COVID-19), including the date of the test, for the purpose of subclause (e).

Note 2: once 3 months have passed since the end of the infectious period for a health care worker aged 18 years or older, the proprietor of a health service establishment must ensure that the health care worker whom it employs or engages is fully vaccinated (boosted), where required under these Directions.

- f. any one or more of the following exceptional circumstances applies:
 - i. the health care worker is required to perform duties onsite, which are necessary to provide for urgent specialist clinical or medical care due to an emergency situation or a critical unforeseen circumstance; or
 - ii. the health care worker is required to fill a vacancy to provide urgent care, to maintain quality of care, or to continue essential operations onsite for the health service establishment, due to an emergency situation or a critical unforeseen circumstance; or
 - iii. the health care worker is required to respond to an emergency onsite; or
 - iv. the health care worker is required to perform urgent and essential work onsite for the health service establishment, including critical training, to protect the health and safety of workers, patients or members of the public, or to protect assets and infrastructure.

Evidence of COVID-19 vaccination

41. Subject to clause 40, the proprietor of a health service establishment must, for each health care worker employed or engaged by the health service establishment, request and sight any of the following to confirm that the health care worker is fully vaccinated or fully vaccinated (boosted) (as applicable) against COVID-19, and record compliance with application COVID-19 vaccination requirements:

- a. current Immunisation History Statement from the Australian Immunisation Register;
- b. current COVID-19 digital certificate;

- c. printed version of COVID-19 digital certificate; or
 - d. Australian International COVID-19 Vaccination certificate (ICVC).
42. The proprietor of a health service establishment must request, sight, record and handle vaccination information (including any acceptable certification to show that the health care worker is an excepted person), of each new health care worker and current health care worker whom it employs or engages, in accordance with the requirements of the *Health Records Act 2001* (Vic).

A handwritten signature in blue ink, appearing to read 'Euan M Wallace', is written over a light blue grid background.

Professor Euan M Wallace AM

Secretary
Department of Health
12 October 2022