

COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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Order

1 Title

This order is the COVID-19 Public Health Response (Vaccinations) Amendment Order (No 3) 2021.

2 Commencement

This order comes into force at 11.59 pm on 25 October 2021.

3 Principal order

This order amends the COVID-19 Public Health Response (Vaccinations) Order 2021.

4 Clause 4 amended (Interpretation)

In clause 4, insert in their appropriate alphabetical order:

affected education service means—

- (a) an early childhood service (other than a playgroup);
- (b) a registered school;
- (c) a hostel

care and support services means services that are funded by the Ministry of Health, a DHB, or ACC and provided to a person for the purpose of—

- (a) assisting the person to continue to live in the person's home or in the community (such as personal care and household management services); or
- (b) providing mental health and addiction support services, or vocational and disability support services; or
- (c) if the person has a disability, assisting the person to work in the community; or
- (d) if the person has an injury covered by the Accident Compensation Act 2001, supporting the person's rehabilitation from the injury or supporting them to achieve and sustain their maximum level of participation in everyday life

care and support worker means a person employed or engaged to carry out work that includes going to the home or place of residence of another person (not being the home or place of residence of a family member) to provide care and support services

certified provider means a person who is certified under section 26(1) of the Health and Disability Services (Safety) Act 2001 to provide health care services of any kind

early childhood service has the same meaning as in section 10(1) of the Education and Training Act 2020

health care services has the same meaning as in section 4(1) of the Health and Disability Services (Safety) Act 2001

health service has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

home-based education and care service has the same meaning as in section 10(1) of the Education and Training Act 2020

home or place of residence includes a residential care facility, retirement village, and rest home

hostel has the same meaning as in section 10(1) of the Education and Training Act 2020

mental health and addiction support services has the same meaning as in section 5 of the Support Workers (Pay Equity) Settlements Act 2017

Minister means the Minister for COVID-19 Response

playgroup has the same meaning as in section 10(1) of the Education and Training Act 2020

registered school has the same meaning as in section 10(1) of the Education and Training Act 2020

specified visitor has the same meaning as in section 3(1) of the Corrections Act 2004

staff member of a prison has the same meaning as in section 3(1) of the Corrections Act 2004

statutory visitor has the same meaning as in section 3(1) of the Corrections Act 2004

vocational and disability support services has the same meaning as in section 5 of the Support Workers (Pay Equity) Settlements Act 2017

5 Clause 7A replaced (Exemption from duty under clause 7)

Replace clause 7A with:

7A Exemption from duty under clause 7

- (1) This clause applies to an affected person who belongs to a group specified in Part 6, 7, 8, or 9 of the table in Schedule 2.
- (2) An affected person may carry out certain work without being vaccinated if—
 - (a) the affected person has particular physical or other needs that a suitably qualified health practitioner (in the course of examining the person) determines would make it inappropriate for the person to be vaccinated; and
 - (b) in any case where the affected person belongs to the group specified in Part 6 of the table in Schedule 2, the relevant PCBU who employs or

engages the affected person has provided the register with written confirmation that a suitably qualified health practitioner—

- (i) has examined the affected person; and
 - (ii) has determined that vaccinating the affected person would be inappropriate.
- (3) If the affected person is a health practitioner, the examination referred to in subclause (2) must be undertaken by another health practitioner who is suitably qualified to conduct the examination.

6 Clause 8 amended (Duties of relevant PCBUs in relation to vaccinations)

After clause 8(2), insert:

- (3) A relevant PCBU must not allow an affected person who provides a home-based education and care service to carry out certain work unless satisfied that every person over the age of 12 years in the home where the home-based education and care service is provided is vaccinated.

7 Clause 9 amended (Chief executive may authorise affected persons not vaccinated to carry out certain work)

- (1) Replace clause 9(1) with:

- (1) This clause—
- (a) applies despite anything in clause 7 or 8; but
 - (b) does not apply to an affected person who belongs to a group specified in Part 7 or 9 of the table in Schedule 2.

- (2) After clause 9(5)(c), insert:

- (ca) in relation to a staff member of a prison, means the chief executive of the Department of Corrections:

8 Clause 10 amended (Duties of relevant PCBUs regarding vaccination records)

- (1) Replace the heading to clause 10 with “**Duties of relevant PCBUs of affected persons belonging to groups specified in Parts 1 to 6 of Schedule 2: vaccination records**”.

- (2) Before clause 10(1), insert:

- (1AAA) This clause applies to a relevant PCBU who employs or engages an affected person who belongs to a group specified in any of Parts 1 to 6 of the table in Schedule 2.

9 New clause 11A inserted (Duties of relevant PCBUs of affected persons belonging to groups specified in Part 7, 8, or 9 of Schedule 2: vaccination records)

After clause 11, insert:

11A Duties of relevant PCBUs of affected persons belonging to groups specified in Part 7, 8, or 9 of Schedule 2: vaccination records

- (1) This clause applies to a relevant PCBU who employs or engages an affected person who belongs to a group specified in Part 7, 8, or 9 of the table in Schedule 2.
- (2) The relevant PCBU must, for each affected person employed or engaged by the PCBU, keep and maintain a record of the following information:
 - (a) the affected person's full name;
 - (b) the affected person's date of birth;
 - (c) a telephone number and email address by which the affected person may be contacted;
 - (d) whether the affected person is vaccinated;
 - (e) if the affected person is vaccinated,—
 - (i) the name of the COVID-19 vaccine or vaccines they have received; and
 - (ii) the date or dates on which they received a dose of the vaccine or vaccines;
 - (f) if the affected person is not vaccinated because they have received a first, but not a second, dose of a COVID-19 vaccine, the latest date by which they must have the second dose of a COVID-19 vaccine to be vaccinated;
 - (g) if the affected person is not vaccinated because they have not received a dose of a COVID-19 vaccine, the latest dates by which they must have their first and second doses of a COVID-19 vaccine to be vaccinated;
 - (h) if the affected person is not vaccinated in reliance on an exemption under clause 7A or 12A, or an authorisation under clause 9 or 9A,—
 - (i) confirmation of that fact; and
 - (ii) a copy of the exemption or authorisation.
- (3) The record must be in writing or kept in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
- (4) For the purposes of this clause, the affected person must—
 - (a) provide the relevant PCBU with (or give the relevant PCBU access to) the information specified in subclause (2)(a) to (h) as soon as practicable; and
 - (b) ensure that the information is updated as soon as practicable after it changes.

10 Clause 12 amended (Duties regarding vaccination register)

- (1) In clause 12(1), after “persons”, insert “belonging to a group specified in any of Parts 1 to 6 of the table in Schedule 2”.
- (2) In clause 12(2), replace “provided written confirmation” with “, under clause 10, updated the register to confirm”.

11 Clause 12A amended (Power of Minister to grant exemptions)

- (1) Replace clause 12A(4)(a)(ii) with:
 - (ii) to prevent significant disruption to—
 - (A) essential supply chains, in the case of an application to exempt from any provision of this order a person belonging to a group specified in any of Parts 1 to 6 of the table in Schedule 2; or
 - (B) health services, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 7 of the table in Schedule 2; or
 - (C) the essential operations of a prison, in the case of an application to exempt from any provision of this order a person belonging to a group specified in Part 8 of the table in Schedule 2; and
- (2) In clause 12A(5)(a), before “the potential”, insert “if applicable,”.

12 Clause 13 amended (Infringement offence)

In clause 13, after “11,”, insert “11A,”.

13 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the Schedule of this order as the last Part; and
- (b) make all necessary consequential amendments.

14 Schedule 2 amended

In Schedule 2, table, after item 6.4, insert:

<i>Part 7: Groups in relation to health and disability sector</i>	
7.1	Health practitioners
7.2	Workers who carry out work where health services are provided to members of the public by 1 or more health practitioners and whose role involves being within 2 metres or less of a health practitioner or a member of the public for a period of 15 minutes or more
7.3	Workers who are employed or engaged by certified providers and carry out work at the premises at which health care services are provided
7.4	Care and support workers

Part 8: Groups in relation to prisons

- 8.1 Staff members of a prison (other than specified visitors or statutory visitors), and persons employed or engaged by a contractor or sub-contractor to provide services in respect of a prison, who may be required to undergo a security screening process before being allowed entry into the prison

Part 9: Groups in relation to affected education services

- 9.1 Workers over the age of 12 years who carry out work at or for an affected education service (including as a volunteer or an unpaid worker) and who—
- (a) may have contact with children or students in the course of carrying out that work; or
 - (b) will be present at the affected education service at a time when children or students are also present
- 9.2 Providers of a home-based education and care service

Schedule
New Part 3 inserted into Schedule 1

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Part 3
Provisions relating to COVID-19 Public Health Response
(Vaccinations) Amendment Order (No 3) 2021

Health and disability sector

5 Transitional provision for affected persons working in health and disability sector before commencement

- (1) If an affected person who belongs to a group specified in Part 7 of the table in Schedule 2 is not vaccinated before the commencement of this clause, the affected person must—
- (a) be treated as vaccinated until 15 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
 - (b) be treated as vaccinated until 1 January 2022 (and after that date) if they—
 - (i) have their first dose of a COVID-19 vaccine before the close of 15 November 2021; and
 - (ii) have their second dose of a COVID-19 vaccine before the close of 1 January 2022.
- (2) If an affected person who belongs to a group specified in Part 7 of the table in Schedule 2 is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 15 November 2021, the affected person must be treated as vaccinated—
- (a) on the date on which they have their first dose of a COVID-19 vaccine; and
 - (b) from that date until 1 January 2022 (and after 1 January 2022) if they have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

Prisons

6 Transitional provision for affected persons working in prisons before commencement

- (1) If an affected person who belongs to a group specified in Part 8 of the table in Schedule 2 is not vaccinated before the commencement of this clause, the affected person must—

- (a) be treated as vaccinated until 6 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
 - (b) be treated as vaccinated until 8 December 2021 (and after that date) if they—
 - (i) have their first dose of a COVID-19 vaccine before the close of 6 November 2021; and
 - (ii) have their second dose of a COVID-19 vaccine before the close of 8 December 2021.
- (2) If an affected person who belongs to a group specified in Part 8 of the table in Schedule 2 is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 6 November 2021, the affected person must be treated as vaccinated—
- (a) on the date on which they have their first dose of a COVID-19 vaccine; and
 - (b) from that date until 8 December 2021 (and after 8 December 2021) if they have their second dose of a COVID-19 vaccine before the close of 8 December 2021.

Affected education services

7 Transitional provision for affected persons working in affected education services before commencement

- (1) If an affected person who belongs to a group specified in Part 9 of the table in Schedule 2 is not vaccinated before the commencement of this clause, the affected person must—
- (a) be treated as being vaccinated until 15 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date;
 - (b) be treated as vaccinated until 1 January 2022 (and after that date) if they—
 - (i) have their first dose of a COVID-19 vaccine before the close of 15 November 2021; and
 - (ii) have their second dose of a COVID-19 vaccine before the close of 1 January 2022.
- (2) If an affected person who belongs to a group specified in Part 9 of the table in Schedule 2 is not vaccinated before the commencement of this clause and does not have their first dose of a COVID-19 vaccine before the close of 15 November 2021, the affected person must be treated as vaccinated—
- (a) on the date on which they have their first dose of a COVID-19 vaccine; and

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(b) from that date until 1 January 2022 (and after 1 January 2022) if they have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

8 Transitional provision for relevant PCBUs of affected education services

Clause 8(1) and (3) does not apply to a relevant PCBU of an affected education service until 2 January 2022.

Dated at Wellington this 26th day of Oct 2021.



Minister for COVID-19 Response.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force at 11.59 pm on 25 October 2021, amends the COVID-19 Public Health Response (Vaccinations) Order 2021 (the **principal order**), which requires persons belonging to specified groups (**affected persons**) who carry out certain work to be vaccinated.

The effect of the amendments is to extend that requirement to apply to 3 additional groups of affected persons.

Affected persons working in health and disability sector

The first additional group of affected persons are the following workers in the health and disability sector:

- health practitioners;
- workers who work in close proximity to health practitioners providing health services to members of the public;
- workers employed or engaged by certified providers (which includes workers at a facility providing hospital care, rest home care, residential disability care, or fertility services);
- care and support workers.

An affected person who belongs to this group is treated as vaccinated under the principal order—

- until 15 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date; and

- until 1 January 2022 (and after that date) if they have their first dose of a COVID-19 vaccine before the close of 15 November 2021 and have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

However, an affected person who belongs to this group and who is not vaccinated before the commencement of this order (**commencement**) and does not receive their first dose of a COVID-19 vaccine before the close of 15 November 2021 is treated as vaccinated on the date on which they have their first dose of a COVID-19 vaccine and then from that date until 1 January 2022 (and after 1 January 2022) if they have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

Affected persons working in prisons

The second additional group of affected persons are workers who are staff members of a prison and who may be required to undergo a security screening process before being allowed entry into the prison.

An affected person who belongs to this group is treated as vaccinated under the principal order—

- until 6 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date:
- until 8 December 2021 (and after that date) if they have their first dose of a COVID-19 vaccine before the close of 6 November 2021 and have their second dose of a COVID-19 vaccine before the close of 8 December 2021.

However, an affected person who is not vaccinated before commencement and does not receive their first dose of a COVID-19 vaccine before the close of 6 November 2021 is treated as vaccinated on the date on which they have their first dose of a COVID-19 vaccine and then from that date until 8 December 2021 (and after 8 December 2021) if they have their second dose of a COVID-19 vaccine before the close of 8 December 2021.

Affected persons in affected education services

The third additional group of affected persons are the following persons in affected education services:

- workers over the age of 12 years who carry out work at or for an affected education service (including as a volunteer worker or an unpaid worker) and who may have contact with children or students in the course of carrying out that work or who will be present at the affected education service at a time when children or students are also present:
- providers of a home-based education and care service.

The affected education services to which the vaccination requirement applies are early childhood services (other than playgroups), registered schools, and hostels.

An affected person who belongs to this group is treated as vaccinated under the principal order—

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- until 15 November 2021 if they have their first dose of a COVID-19 vaccine before the close of that date:
- until 1 January 2022 (and after that date) if they have their first dose of a COVID-19 vaccine before the close of 15 November 2021 and have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

However, an affected person who is not vaccinated before commencement and does not receive their first dose of a COVID-19 vaccine before the close of 15 November 2021 is treated as vaccinated on the date on which they have their first dose of a COVID-19 vaccine and then from that date until 1 January 2022 (and after 1 January 2022) if they have their second dose of a COVID-19 vaccine before the close of 1 January 2022.

In addition, a relevant PCBU must not, on and after 1 January 2022, allow an affected person who provides a home-based education and care service to carry out certain work unless satisfied that every person over the age of 12 years in the home where the home-based education and care service is provided is vaccinated.

Duty on relevant PCBUs to keep vaccination records

A relevant PCBU who employs or engages an affected person who belongs to any of the 3 new groups must keep a vaccination record in respect of the affected person. This record must contain specified information, including information about whether the person is vaccinated, any doses of a COVID-19 vaccine the person has received or the dates by which the person must have any dose to be vaccinated, and, if the person is not vaccinated, whether the person relies on an exemption or authorisation.

Enforcement

A breach of the requirements in the principal order is an infringement offence under section 26(3) of the COVID-19 Public Health Response Act 2020 (the **Act**) for which a person or relevant PCBU is liable to an infringement fee of \$300 or a fine not exceeding \$1,000.

Approval by resolution required

This order must be approved by a resolution of the House of Representatives before the expiry of the period described in section 16(2) of the Act. If that does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*:
This order is administered by the Ministry of Health.