

Avoiding Temporary Aged-Care Flu Vaccine Mandates (Australian Vaccination-Risks Network (AVN) 25 April 2020)

As the 01 May 2020 flu vaccination deadline approaches, we considered it timely to emphasise the following:

1. The flu vaccination mandates for aged care facilities are being authorised under state or territory emergency/public health pandemic laws, are temporary, and can only be extended for the duration of the pandemic.
2. If you are a financial member of a trade union, you are entitled to ask your union for assistance in protecting your right as an employee to decline flu vaccination. Arguably, mandating influenza vaccination for aged care workers represents an unnecessary and disproportionate exercise of power by unelected health officials, under the cover of an alleged pandemic for a different disease. This should be of keen interest to any union official worth their salt, because it represents a significant erosion of employee rights, and is not supported by evidence.
3. If you are affected, either as employees or visitors to aged care facilities, you should also consider obtaining a doctor's letter certifying that you have a medical contraindication to influenza vaccination, which we believe is within the scope of the directions/orders in all states and territories. There are obviously no guarantees that medical contraindication exemption certificates will be accepted by all services, but we consider it is still worth trying.
4. As the Aged Care Directions/Orders are authorised under state/territory legislation, the Chief Medical Officer of Australia and Australian Government have no authority to stipulate criteria for medical contraindication exemptions. This is important, because many aged care facilities have been relying on information distributed by the Australian Government.

Medical contraindication exemptions

The Aged Care Directions for three jurisdictions, Queensland, South Australia and Tasmania, expressly provide for medical contraindication exemptions.

In New South Wales, Victoria, Western Australia, A.C.T., and the Northern Territory, the influenza vaccination mandate only applies ***if vaccination is available to a person***. The word 'available' has not been defined in the directions/orders, however, arguably, influenza vaccination is not available to a person if that person has a medical contraindication to vaccination.

For this reason, it is our view, that if a doctor certifies in writing that you have a medical contraindication to influenza vaccination, based on his/her clinical judgement, then this should be sufficient to meet the requirements of the directions/orders in all states and territories.

As an example, on Friday, one of our members was advised by the manager of her mother's aged care facility in Queensland, that if she provides a doctor's letter prior to 01 May 2020, this will be sufficient for her to continue visiting her mother after 30 April 2020. We will [publish the redacted doctor's letter](#) here if she is successful in obtaining an exemption, which she intends to seek on the basis that there is a family history of [Bell's Palsy following influenza vaccination](#).

You may be surprised to discover the large variety of vaccine adverse events that have been identified in post-marketing surveillance, and which may be relevant to your or your family's medical

history. See [Vaccine Product Information Sheets for the 2020 Influenza vaccines](#), which list all contraindications and adverse events identified in post-marketing surveillance.

There is no requirement in the directions for the doctor to specify in the certificate the reason for the contraindication to influenza vaccination, or for the medical contraindication exemption to be recorded in the Australian Immunisation Register, which on prior form, is unlikely to accept the exemption in any case.

We have prepared an [example of a medical contraindication letter](#).

Details of the directions/orders for all state and territory jurisdictions have been provided in the following sections.

Queensland

- Current direction expires on 19 May 2020, but may be extended until the end of the pandemic.
- Permits medical contraindication exemptions under section 6.e.
- 'Medical contraindication' is not defined in the direction, so it should be open to a doctor to certify a medical contraindication according to his/her clinical judgement.
- A doctor's letter certifying that you have a medical contraindication to influenza vaccination, submitted to the aged care facility, should be sufficient to meet the requirements of the direction.
- [Aged Care Direction No. 3](#)

South Australia

- In force for the duration of the emergency declaration.
- Permits medical contraindication exemptions under section (5) (a).
- 'Medical contraindication' is not defined in the direction, even though three examples have been provided; these are only examples because the words 'such as' precedes the examples. As such, it should be open to a doctor to certify a medical contraindication for reasons other than those provided as examples in the direction, according to his/her clinical judgement..
- A doctor's letter certifying that you have a medical contraindication to influenza vaccination, submitted to the aged care facility, should be sufficient to meet the requirements of the direction.
- [Residential Aged Care Facilities No 3 \(COVID-19\) Direction](#)

Tasmania

- In force for the duration of the emergency declaration.
- Permits medical contraindication exemptions (medical recommendation against the administration of the vaccine to the person) under section (b) (iv).
- 'Medical recommendation' is not defined in the direction, so it should be open to a doctor to certify a medical contraindication according to his/her clinical judgement.
- A doctor's letter certifying that you have a medical contraindication to influenza vaccination, submitted to the aged care facility, should be sufficient to meet the requirements of the direction.
- [DIRECTION UNDER SECTION 16 \(Residential Aged Care Facilities – No. 5\)](#)

New South Wales

- Current order expires 22 June 2020, but may be extended until the end of the pandemic.
- Section 5 (d) provides: *The Minister directs that a person mentioned in clause 4(a)–(c) must not enter or remain on the premises of a residential aged care facility during the relevant period if: the person does not have an up-to-date vaccination against influenza, **if the vaccination is available to the person.***
- [Public Health \(Covid-19 Residential Aged Care Facilities\) Order 2020](#)

Victoria

- Current direction expires 31 May 2020, but may be extended until the end of the pandemic.
- Section 4 (2) (d) provides: *Despite subclause (1), a person who is a worker or a visitor in relation to a care facility must not enter or remain on the premises of the facility between midnight on 11 May 2020 and midnight on 31 May 2020 if: if the facility is a residential aged care facility – the person does not have an up to date vaccination against influenza, **if such a vaccination is available to the person.***
- [Care Facilities Directions No. 3](#)

Western Australia

- In force for the duration of the emergency declaration.
- Section 6 (d) provides: *Despite paragraph 5, a person referred to in paragraph 5 must not enter or remain on the premises of a residential aged care facility in the State of Western Australia if: the person is not a person referred to in paragraph 5(f) and does not have an up to date vaccination against influenza, **if such a vaccination is available to the person; Note: a person whose presence at the premises is required for the purposes of emergency management, law enforcement or otherwise responding to an emergency does not have to have an up to date vaccination against influenza, irrespective of whether such a vaccination is available***
- [VISITORS TO RESIDENTIAL AGED CARE FACILITIES DIRECTIONS NO 2](#)

A.C.T.

- In force for the duration of the emergency declaration.
- Section 3. b. provides: *Despite paragraph 1, while this Public Health Emergency Direction is in effect a person referred to in paragraph 1(a), (b), (c), must not enter or remain on the premises of a residential aged care facility in the Australian Capital Territory if the person does not have an up to date vaccination against influenza, unless: **such a vaccination is not available to the person due to a documented medical contraindication to the influenza vaccine.***
- [Public Health \(Residential Aged Care Facilities\) Emergency Direction 2020 \(No 2\)](#)

Northern Territory

- In force for the duration of the declared public health emergency.
- Section 6 (c) provides: *A person must not enter or remain on the premises of an aged care facility: if the person has not been vaccinated this year against influenza, **if the vaccination was available to the person.***
- [COVID-19 Directions \(No. 24\) 2020 Directions for Aged Care Facilities](#)

Disclaimer

All information contained herein was, to the author's knowledge (AVN) correct at the time of writing, but please note, this information is not intended to constitute legal advice.