

NSW Civil and Administrative Tribunal
Administrative and Equal Opportunity Division
Sydney Registry

BEATA MANIEWSKA-VILKAS
Applicant

BRADLEY RONALD HAZZARD, MINISTER FOR HEALTH, NSW
Respondent

APPLICATION FOR EXPEDITED HEARING & INTERIM ORDERS

Background

1. The Applicant is a 54 year-old woman residing in Erskine Park, NSW, who has worked as registered nurse for the last 22 years. Her affidavit has been provided to the Tribunal in support of this urgent application.
2. On 26 August 2021, the Respondent, Bradley Ronald Hazzard, the Minister for Health in NSW (**the Minister**) gave directions by order entitled *Public Health (Covid-19 Vaccination of Health Care Workers) Order 2021* under section 7 of the *Public Health Act 2010 (NSW)* (**PHA**) (**the Decision**).
3. Relevantly, the Decision states at Part 2 as follows:

Part 2 Directions concerning vaccination of health care workers

4 Directions of Minister for health care workers to be vaccinated

(1) The Minister directs that a health care worker must not do work as a health care worker unless—

(a) if the work is done on or after 30 September but before 30 November 2021— the worker has received at least 1 dose of a COVID-19 vaccine, or

(b) if the work is done on or after 30 November 2021— the worker has received at least 2 doses of a COVID-19 vaccine.

(2) The Minister directs that a health care worker must, if required to do so by an authorised person on or after the commencement of this Order, provide vaccination evidence for the worker.

(3) Subclauses (1) and (2) do not apply to—

(a) a health practitioner who does work as a health care worker in response to a medical emergency, or

(b) another person who does work as a health care worker in response to a non-medical emergency, for example, a fire, flooding or a gas leak.

5 Direction of Minister for responsible persons for health care workers

The Minister directs that each responsible person for a health care worker must take all reasonable steps to ensure that the health care worker to whom clause 4 applies complies with the directions of the clause.

(together, the **Directions**).

4. The Applicant, contrary to the Directions, has not received any Covid-19 vaccine but wishes to continue employment as a registered nurse.
5. The Applicant seeks review of the Directions pursuant to section 7(7) of the PHA on the basis the Directions lack merit on various grounds.
6. The Applicant's grounds for review of the Directions are set out in the Statement of Grounds accompanying her Application for Review.
7. The Applicant seeks an urgent expedited hearing and interim orders to program the filing and exchange of evidence and submissions, and to fix a date for the expedited hearing.
8. Neither a request for internal review nor a stay application is made in this matter in light of the Minister's position as set out in the decision of *Davis v Minister for Health* [2021] NSWCATAD 293 (**Davis**). In *Davis*, a decision of 8 October 2021, the Tribunal refused a stay under s60(2) of the *Administrative Decisions Review Act 1997* (NSW) (**ADRA**) of the Directions under a similar set of circumstances to a nurse employed in the NSW public health system. The Tribunal accepted that significant prejudice would be caused to the Applicant in being stood down without pay, but decided in favour of the public interest considerations of the public health reflected in the making of the Directions.
9. As set out in the Applicant's Affidavit, the Applicant is facing imminent loss of employment and income.
10. The Applicant's legal representative represents thousands of people affected by these directions with an estimate of over 800 of these being other health care workers who are

facing similar consequences, should they not accede to the Directions. The matter could hardly be more urgent and may seriously impact the functioning of the State health system, given the number of workers involved.

11. Further, the Tribunal in Davis listed a hearing on 11 October 2021 on the question as to whether there is jurisdiction under the ADRA to review the Directions to be heard. The Applicant also intends to seek leave to make submissions in that proceeding, noting the outcome will have a bearing on the continuation of this proceeding.
12. We therefore respectfully request that the Tribunal grant an urgent and expedited hearing of the application with the following interim orders:
 - a. If necessary, the Applicant is given leave to file submissions on the jurisdiction question in the Davis proceedings.
 - b. Subject to a favourable outcome in relation to the jurisdiction question, the Applicant file submissions and all expert evidence she wishes to rely upon by 29 October 2021.
 - c. The Respondent to file submissions and all expert evidence he wishes to rely upon by 12 November 2021.
 - d. The Applicant be given a right of response and file further submissions and expert evidence by 19 November 2021.
 - e. The matter be listed for an expedited final hearing before 1 December 2021, with an estimate of 4 days.

19 October 2021

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