

Guidance on the introduction of mandatory COVID-19 vaccinations – public sector residential aged care and healthcare operators, employers and facilities

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OFFICIAL

Contents

Disclaimers	2
Background	3
Chief Health Officer Directions	3
Scope of Directions	3
Requirement to be vaccinated	3
Exceptions	4
Exceptional Circumstances	5
Consulting with workers and unions	5
Supporting worker vaccinations	5
Rostering and deployment of Workers	6
Rostering	6
Deployment/redeployment	6
Options and implications for unvaccinated workers	6
Limited preservation of employment entitlements	7
Further information	8
Appendix 1 – Questions and Answers	9
Can an employer ask its workers to provide evidence that they have had, or have a booking to receive, a COVID-19 vaccination?.....	9
What is acceptable proof of vaccination against COVID-19?.....	9
What should an employer do if a worker refuses to provide proof of vaccination against COVID-19?	9

Can an unvaccinated worker work in an emergency/critical unforeseen circumstances?9

Can a worker who is not vaccinated against COVID-19 apply to take paid or unpaid leave? 10

Can an employer stand down without pay a worker who is not vaccinated against COVID-19, or refuses to provide evidence of a vaccination appointment, and is not covered by an exception or by exceptional circumstances? 10

Can an employer take disciplinary action against a worker who refuses to provide proof of vaccination against COVID-19 or of an exception? 10

Can an employer end the employment of a worker who is not vaccinated against COVID-19, or refuses to provide evidence of a vaccination appointment, and is not covered by an exception or by exceptional circumstances? 11

What should an employer do if concerned about interactions between workers, residents/patients and the general public who have and have not been vaccinated? 11

Do workers need to get vaccinated against COVID-19 in order to continue working in a residential aged care or healthcare facility? 12

Can a worker get an exception to vaccination against COVID-19 for a medical condition? 12

How does a worker get an appointment for a COVID-19 vaccine in time? 13

Which COVID-19 vaccines are available to workers? 13

Is the COVID-19 vaccine free? 13

Can workers be fined or suffer other consequences for failing to comply with the requirements to be vaccinated against COVID 19? 13

Disclaimers

The guidance provided in this document is generic and may not apply in all circumstances.

The guidance provided in this document does not constitute legal advice and should not be considered as such. Operators of public sector residential aged care and healthcare services should obtain their own legal advice on employment-/employee-/workplace related matters to ensure their specific circumstances are considered.

Background

On 28 June 2021, National Cabinet agreed to mandate at least the first dose of a COVID-19 vaccine for all residential aged care facility workers by 17 September 2021. It was agreed this would be mandated as a condition of working in a residential aged care facility through shared state, territory and Commonwealth authorities and compliance measures.

On 19 September 2021, the Premier of Victoria announced Victoria's Roadmap to Deliver the National Plan. Within that Roadmap was a commitment to introduce mandatory vaccination requirements for all healthcare workers.

Chief Health Officer Directions

The Victorian Chief Health Officer has issued directions under section 200(1)(d) of the *Public Health and Wellbeing Act 2008* (Vic) requiring that workers must be vaccinated against COVID-19 to continue working in specified settings.

Relevantly, the *COVID-19 Mandatory Vaccination Directions*¹ (**Directions**) apply to residential aged care facilities and healthcare facilities (as defined in the Directions).

While the Directions apply to all operators (public, private, non-profit and local government settings), this guidance is issued only to operators of public sector residential aged care and healthcare facilities.

Scope of Directions

Relevantly, the Directions apply to:

1. All residential aged care facility operators and workers (as defined in the Directions).
2. All healthcare facility operators and workers (as defined in the Directions).

Requirement to be vaccinated

The Directions require that all operators of public sector residential aged care and healthcare facilities collect, record and hold information about a worker's vaccination status, if the worker is (or may be) scheduled to work at a residential aged care healthcare facility (which they operate) on or after the **relevant date** (as defined in the Directions). This means that operators must collect, record and hold information about whether the worker:

- is fully vaccinated against COVID-19 (that is, they have received two doses of a COVID-19 vaccination); or
- is partially vaccinated against COVID-19 (that is, they have received one dose) and, if they are partially vaccinated, whether they have made a booking to receive a second dose of a COVID-19 vaccination by the **second dose deadline** (as defined in the Directions); or

¹ At the date of publication of this Guidance, the Direction in operation were the *COVID-19 Mandatory Vaccination Directions* (No. 5) which commenced at 11:59pm on 1 October 2021

- is unvaccinated against COVID-19 (that is, they have not received any doses of a COVID-19 vaccine) and they have made a booking to receive a first dose of a COVID-19 vaccine by the **first dose deadline** (as defined in the Directions); or
- is unable to receive a COVID-19 vaccine because an exception applies to them.

Operators must also inform any workers who are (or may be) scheduled to work at a residential aged care or a healthcare facility (which they operate) on or after the **relevant date** of their obligations to collect, record and hold this information, and inform potential workers (such as applicants applying for a position) of their COVID-19 vaccination requirements.

Workers who are unvaccinated, but who have a confirmed booking to receive their first dose of a COVID-19 vaccine by the **first dose date**, will only be able to continue working after the **relevant date** (unless an exception applies) provided they wear personal protective equipment (PPE) that includes as a minimum, a surgical mask and a face shield, at all times while on the premises of the facility.

From the **first dose deadline**, operators of public sector residential aged care and healthcare facilities must not allow a worker to enter the work premises unless that worker has provided evidence of having received at least one COVID-19 vaccination dose and a booking for a second by the **second dose deadline**, unless an exception applies to them.

Operators must ensure all workers entering the work premises are fully vaccinated against COVID-19 (two doses) from the **second dose deadline** unless an exception applies to the worker (or exceptional circumstances apply).

Exceptions

The Directions allow that workers who have obtained certification from a medical practitioner indicating that they are unable to be vaccinated due to a medical contraindication may continue to work beyond the **first dose deadline**.

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

- anaphylaxis after a previous dose;
- anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
- in relation to AstraZeneca:
 - history of capillary leak syndrome; or
 - thrombosis with thrombocytopenia occurring after a previous dose;
- in relation to Comirnaty or Spikevax:
 - myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax; or
- the occurrence of any other serious adverse event that has:
 - been attributed to a previous dose of a COVID-19 vaccine by an experienced immunisation provider or medical specialist (and not attributed to any other identifiable cause); and
 - been reported to State adverse event programs and/or the Therapeutic Goods Administration.

Workers seeking to rely on an exception relating to a medical contraindication will be required to provide evidence from an authorised medical practitioner. This evidence must be from a:

- general practice registrar on an approved 3GA² training placement; or
- a public health physician; or
- a general physician; or
- an infectious disease physician; or
- a clinical immunologist; or
- a gynaecologist; or
- an obstetrician; or
- a general practitioner who is vocationally registered; or
- a general practitioner who is a fellow of the Royal Australian College of General Practitioners; or
- a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine.

Exceptional Circumstances

Operators of public sector residential aged care and healthcare facilities are not required to obtain information regarding a worker's vaccination status, or take measures to prevent the worker from attending onsite at a facility, if:

- the worker is required to perform work or duties at the work premises that are necessary to provide for urgent specialist clinical or medical care at the work premises due to an emergency situation or a critical unforeseen circumstance; or
- the worker is deployed to fill a vacancy to provide urgent care, to maintain quality of care and/or continue essential operations at the work premises due to an emergency situation or a critical unforeseen circumstance.

Operators must require a worker working in those circumstances referred to above to wear PPE that includes, at a minimum, a surgical mask and face shield, at all times while on the premises of the facility, and must ensure that the worker does not remain on the premises of the facility for longer than is necessary for them to respond to the exceptional circumstance.

Consulting with workers and unions

It is essential that operators of public sector residential aged care and healthcare facilities [continue to] consult with their workers, health and safety representatives, and relevant unions about how mandatory vaccination for workers will be implemented and managed at their site(s).

Supporting worker vaccinations

Operators of public sector residential aged care and healthcare facilities should [continue to] encourage their unvaccinated workers to be vaccinated against COVID-19 and must provide all reasonable support to assist their workers to be vaccinated.

The Department of Health's *Coronavirus Disease (COVID-19) – Guidance Note on Employment-Related Matters* (Employment Guidance Note) describes the following leave arrangements available to workers:

² Section 3GA of the *Health Insurance Act 1973* (Cth)

- To allow them time off without loss of pay to attend for a vaccination; and
- To allow for recovery time where they experience certain adverse events and are unable to work following immunisation (up to four days in total for receiving both vaccinations).

Details of, and qualifying criteria for, the above leave arrangements can be found in the Employment Guidance Note.

While the Employment Guidance Note does not apply to the four stand-alone Public Sector Residential Aged Care Services (PSRACS) in Victoria or their workers, the abovementioned support may be applied by those PSRACS as if the Employment Guidance Note did apply to their workers.

Rostering and deployment of Workers

Rostering

From the **first dose deadline**, operators of public sector residential aged care and healthcare facilities must ensure that only workers who have received at least one dose of a COVID-19 vaccine attend work on site.

Exceptions apply where:

- the worker has provided the operator with evidence that an exception applies
- there are exceptional circumstances, as described in Exceptional Circumstances above.

Where exceptional circumstances exist, an operator must comply with the conditions described in Exceptional Circumstances above.

Operators may choose to seek legal advice regarding how they can manage their rosters, including as required by any relevant enterprise agreement, whilst also complying with the obligations contained in the Directions.

Deployment/redeployment

Operators of public sector residential aged care and healthcare facilities must determine whether a worker can work in the work premises based on their vaccination or exception status.

Where an operator is obliged by the Directions to prevent a worker from working onsite, the operator should consider whether to seek legal advice regarding any available options for deploying/redeploying the worker, or whether any other options may be available in the circumstances.

Where an employer who operates a residential aged care or healthcare facility is obliged by the Directions to prevent a worker from working onsite, the employer [must/should] look for alternative work for the worker to perform which does not require them to work in or attend the work premises.

Redeployment opportunities can be short- or long-term, however where the opportunity is only short-term, consideration of other options will need to be revisited toward the end of that short-term redeployment if the worker remains unvaccinated against COVID-19 and neither an exception, or exceptional circumstances, apply.

Options and implications for unvaccinated workers

Where an employer who operates a residential aged care or healthcare facility determines that a worker cannot enter or remain at a site based on the Directions, and redeployment is not available, the employer must:

- Confirm vaccination status with the worker.
- Where the worker confirms they have not received at least one dose of a COVID-19 vaccination, enquire whether the worker plans to receive the COVID-19 vaccination by the **first dose deadline**.
- Where the worker adverts to a difficulty in acquiring a COVID-19 vaccination, ensure that the worker is aware of where they can acquire a COVID-19 vaccination, including through General Practices, State and Commonwealth vaccination clinics (including local, community based 'pop-up' clinics), pharmacies and the outreach and/or in reach vaccinations services delivered through the Commonwealth Government's Vaccine Administration Service (VAS) providers. Also advise the worker of the paid additional entitlements that are available to them (for example, the half day pay as well as the four days' additional leave (in total), in the event they are unwell and unable to attend work after having received the COVID-19 vaccination).
- Where the worker expresses concern over receiving a COVID-19 vaccination, discuss those concerns with the worker in order to understand whether there is information or support the employer can provide that would assist the worker to meet the COVID-19 vaccination requirement so they can be rostered to work in the relevant area(s).
- Where the worker intends to be vaccinated against COVID-19 but does not have a COVID-19 vaccination appointment within the relevant timeframe, discuss whether the worker agrees to access their accrued paid annual leave or long service leave entitlements (if available), or to voluntarily take unpaid leave from the relevant date until vaccinated or other options (such as redeployment opportunities) become available. Alternatively, the employer who operates a residential aged care or healthcare facility may assist them to access an earlier appointment so that they can meet the timeframe.
- If a worker does not have paid leave entitlements, it is open to the employer to offer to provide the worker with paid Special Leave for some or all of the relevant period of time that they will be unable to work, where it is reasonable and appropriate to do so.
- Only if there are no other options, consider standing down the worker with or without pay (where authorisation to do so is available – it is prudent to obtain specific legal advice before doing so if there is any uncertainty over the worker's vaccination or exception status).

Where an employer is contemplating standing down a worker **without pay**, the employer must be sure it has the authority to do so. Most Victorian public health sector enterprise agreements **do not** provide for the standing down without pay of an employee, or applies a limitation on the circumstances in which this can occur, such as where there is a 'work stoppage'. The *Fair Work Act 2009* (Cth) provisions relating to standing an employee down without pay are similarly limited. So, while the Directions make it clear that an unvaccinated worker (unless the worker is subject to an exception) cannot enter the workplace it does not change the industrial authorities. On a practical level, this presents a tension that will need to be addressed with reference to the individual worker's circumstances

The Department of Health recommends that even where there is authority to do so, standing a worker down without pay only be used as a last resort. Before enacting any stand down, employers must consult with the Department of Health's Workplace Relations and Engagement Branch and must seek specific legal advice about the relevant circumstances of the individual worker, including to ensure that there **is authority** to stand the worker down without pay.

Limited preservation of employment entitlements

In circumstances where an unvaccinated worker's employment ceases and who, within three calendar months of their last day of service with an employer who operates a residential aged care or healthcare facility:

- a. becomes fully vaccinated against COVID-19 in accordance with the requirements of the Directions; or
- b. becomes covered by an exception under the Directions; and
- c. is able to be and is re-employed by an employer who operates a residential aged care or healthcare facility,

may apply in writing to that entity to have their:

- d. personal (sick) leave balance as at the last day of their previous employment reinstated; and
- e. their prior period of employment with such an entity recognised as service for the purposes of long service leave, incremental progression and any qualifying period for accessing paid parental leave;

even where they may have been employed by an entity other than an employer who operates a residential aged care or healthcare facility in that intervening period.

The benefits above may be qualified or void where the worker returns to employment with an employer who operates a residential aged care or healthcare facility on a different time fraction or a different mode of employment (for example, returning to employment on a casual basis when they had previously been engaged on an ongoing basis).

The above arrangement must not diminish or replace any right or entitlement the worker might have to recognition of prior service under the relevant industrial instrument.

Further information

Appendix 1 – Questions and Answers provides a set of anticipated Questions and Answers relating to the implementation of the Directions on mandatory COVID-19 vaccination for the residential aged care and healthcare workforce.

Further information can be found on the Department of Health's website.

Appendix 1 – Questions and Answers

Employers

Can an employer ask its workers to provide evidence that they have had, or have a booking to receive, a COVID-19 vaccination?

Yes. The Directions place an onus on employers who operate a residential aged care or healthcare facility to ensure that workers identify whether they have been vaccinated against COVID-19, or at least have a booking to receive a COVID-19 vaccination (during the Transition Period), provided the worker is (or may be) scheduled to work at the RACF residential aged care or healthcare facility on or after the **relevant date** provided for in the Directions.

What is acceptable proof of vaccination against COVID-19?

Workers who are Australian citizens can access proof of their vaccination against COVID-19 through the Commonwealth Government's *myGov* website, the relevant vaccination provider or from the Australian Immunisation Register.

What should an employer do if a worker refuses to provide proof of vaccination against COVID-19?

If a worker refuses to provide the requested information, employers must take reasonable steps to prevent the worker from attending a work premises operated by the employer. Employers should consult with the Department of Health's Workplace Relations and Engagement Branch and seek specific legal advice about the relevant circumstances of the individual worker.

In considering any employment consequences, employers must have regard to their obligations under anti-discrimination laws and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Further information on the Charter and COVID-19 is available on the Victorian Equal Opportunity Human Rights Commission's website at [Explainer: Mandatory COVID-19 vaccinations and your rights | Victorian Equal Opportunity and Human Rights Commission](#).

Can an unvaccinated worker work in an emergency/critical unforeseen circumstances?

Yes. In limited circumstances, the operator of a residential aged care or healthcare facility can permit an unvaccinated worker to attend the facility onsite. This may occur where:

- the worker is required to perform work or duties at the residential aged care or healthcare facility that are necessary to provide urgent specialist clinical or medical care for a resident due to an emergency; or
- critical unforeseen circumstances require that the worker be deployed to fill vacancies to provide urgent resident care and the continued essential operations of the residential aged care facility and maintain the quality of care for residents.

Where a worker attends a residential aged care or healthcare facility in these circumstances, the operator must ensure that the worker wears, at a minimum, a surgical mask and face shield at all times that they are present at the work premises, and that the worker does not remain onsite longer than is necessary to respond to the exceptional circumstances.

These exceptions are intended for temporary use only to assist in managing urgent or unforeseen circumstances. This means a circumstance that the operator of a work premises could not reasonably have foreseen or planned for which results in a critical need for workers.

Can a worker who is not vaccinated against COVID-19 apply to take paid or unpaid leave?

Many workers have rights under relevant enterprise agreements, as well as under the *Fair Work Act 2009* (Cth). Whether or not a particular worker can apply to take paid or unpaid leave at a particular time will depend on the circumstances and the terms and conditions of the worker's employment. Employers should seek specific legal advice about the relevant circumstances of the individual worker.

Can an employer stand down without pay a worker who is not vaccinated against COVID-19, or refuses to provide evidence of a vaccination appointment, and is not covered by an exception or by exceptional circumstances?

Whether or not a particular worker can be stood down without pay will depend on the circumstances and the terms and conditions of the worker's employment. Employers seek specific legal advice about the relevant circumstances of the individual worker.

In considering any employment consequences, employers must have regard to their obligations under anti-discrimination laws and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Further information on the Charter and COVID-19 is available on the Victorian Equal Opportunity Human Rights Commission's website at [Explainer: Mandatory COVID-19 vaccinations and your rights | Victorian Equal Opportunity and Human Rights Commission](#).

Can an employer take disciplinary action against a worker who refuses to provide proof of vaccination against COVID-19 or of an exception?

Whether or not employers who operates a residential aged care or healthcare facility can take disciplinary action against a worker will depend on the circumstances and the terms and conditions of the worker's employment. Employers should seek specific legal advice about the relevant circumstances of the individual worker.

In considering any employment consequences, employers must have regard to their obligations under anti-discrimination laws and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Further information on the Charter and COVID-19 is available on the Victorian Equal Opportunity Human Rights Commission's website at [Explainer: Mandatory COVID-19 vaccinations and your rights | Victorian Equal Opportunity and Human Rights Commission](#).

Can an employer end the employment of a worker who is not vaccinated against COVID-19, or refuses to provide evidence of a vaccination appointment, and is not covered by an exception or by exceptional circumstances?

Whether or not an employer can dismiss a worker for refusing to be vaccinated against COVID-19 or refusing to provide evidence of a vaccination appointment will depend on the circumstances and the terms and conditions of the worker's employment. Employers should consult with the Department of Health's Workplace Relations and Engagement Branch and seek specific legal advice about the relevant circumstances of the individual worker before ending a worker's employment in these circumstances.

Employers should consider seeking legal advice before ending a worker's employment in these circumstances. The employer must advise the Department of Health's Workplace Relations and Engagement Branch where an employee's employment will be ended.

In considering any employment consequences, employers must have regard to their obligations under anti-discrimination laws and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Further information on the Charter and COVID-19 is available on the Victorian Equal Opportunity Human Rights Commission's website at [Explainer: Mandatory COVID-19 vaccinations and your rights | Victorian Equal Opportunity and Human Rights Commission](#).

What should an employer do if concerned about interactions between workers, residents/patients and the general public who have and have not been vaccinated?

Employers should seek specific legal advice where they have concerns about any interactions between workers, residents/patients and the general public who have and have not been vaccinated.

If a worker has concerns about the safety of the workplace, they should raise them with their employer as soon as possible. Employers are required to comply with their obligations under the *Occupational Health and Safety Act 2004* (Vic).

Workers

Do workers need to get vaccinated against COVID-19 in order to continue working in a residential aged care or healthcare facility?

Yes. Residential aged care and healthcare facility workers will need to become fully vaccinated against COVID-19 to continue working in residential aged care or healthcare facilities (unless they can provide evidence of an exception or exceptional (emergency, unforeseen critical) circumstances exist).

From the **relevant date** set out in the Directions, residential aged care and healthcare workers must be able to, as a minimum, provide evidence showing they have:

- received at least their first dose of a COVID-19 vaccine by the **first dose deadline**; or
- an appointment to receive at least their first dose by the **first dose date**; or
- an exception evidenced by an authorised medical practitioner.

From the **second dose deadline**, all workers entering a residential aged care facility, or a healthcare facility, must be fully vaccinated against COVID-19 or be covered by an exception or exceptional circumstances.

The COVID-19 vaccine is safe, effective and free. Workers can get a priority vaccination appointment. To book a reserved appointment, workers should call the Coronavirus Hotline on 1800 675 398.

Can a worker get an exception to vaccination against COVID-19 for a medical condition?

An exception to the above requirements is available to workers with a 'medical contraindication' (and therefore unable to get vaccinated).

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

- anaphylaxis after a previous dose;
- anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
- in relation to AstraZeneca:
 - history of capillary leak syndrome; or
 - thrombosis with thrombocytopenia occurring after a previous dose;
- in relation to Comirnaty or Spikevax:
 - myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax; or
- the occurrence of any other serious adverse event that has:
 - been attributed to a previous dose of a COVID-19 vaccine by an experienced immunisation provider or medical specialist (and not attributed to any other identifiable cause); and
 - been reported to State adverse event programs and/or the Therapeutic Goods Administration.

Workers seeking to rely on an exception relating to a medical contraindication will be required to provide evidence from an authorised medical practitioner. This evidence must be from a:

- general practice registrar on an approved 3GA³ training placement; or

³ Section 3GA of the *Health Insurance Act 1973* (Cth)

- a public health physician; or
- a general physician; or
- an infectious disease physician; or
- a clinical immunologist; or
- a gynaecologist; or
- an obstetrician; or
- a general practitioner who is vocationally registered; or
- a general practitioner who is a fellow of the Royal Australian College of General Practitioners; or
- a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine.

Workers who have obtained certification from a medical practitioner indicating that they are unable to be vaccinated due to a medical contraindication may continue to work beyond the **first dose deadline**. Workers who have provided evidence of an exemption do not need follow the additional safety obligations, but other Directions may apply.

How does a worker get an appointment for a COVID-19 vaccine in time?

Residential aged care and healthcare workers can get a priority vaccination appointment. To book a reserved appointment, workers should call the Coronavirus Hotline on 1800 675 398.

Which COVID-19 vaccines are available to workers?

The COVID-19 vaccines are safe and effective. Residential aged care and healthcare workers can get a priority vaccination appointment. To book a reserved appointment, workers should call the Coronavirus Hotline on 1800 675 398.

Workers can choose which vaccine they would like to receive. At Victoria's state-run vaccination centres, priority groups (including residential aged care facility workers and healthcare facility workers) can access the Pfizer vaccine, regardless of their age.

Is the COVID-19 vaccine free?

Yes. The COVID-19 vaccine is free.

For more information, workers should visit the [About the COVID-19 vaccine](#) page.

Can workers be fined or suffer other consequences for failing to comply with the requirements to be vaccinated against COVID 19?

There are fines and other consequences for failing to comply with the Directions, including for providing false or misleading information without reasonable excuse.

If a worker fails or refuses to provide the operator of a residential aged care or healthcare facility with evidence of vaccination or a valid exemption, the operator must not allow the worker to enter the residential aged care facility or healthcare setting, unless exceptional circumstances apply. Depending on the worker's role, this may mean that the worker cannot work. However, a worker is not subject to a fine.