

# **Mandatory COVID -19 Vaccination**

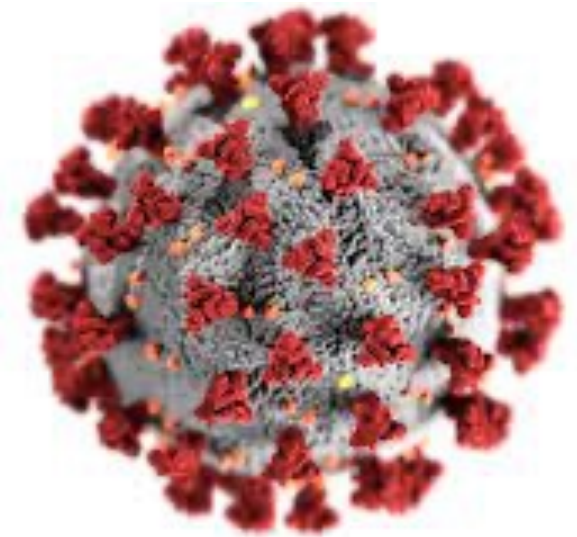
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# What we will cover today

- Mandating COVID-19 vaccinations for hospitality workers – *Current Status*
- Mandated Vaccinations
  - Subject to public health orders
  - Is there a process?
  - What information can an employer ask for?
  - What happens if staff refuse?
- Can I mandate vaccinations for staff without a public health order?



# Hospitality Roadmap – Key Dates

- **Victorian Roadmap from Lockdown**
  - 26 September: 80 per cent of Victorians expected to have had at least one vaccination dose. This is Phase A of the National Plan.
  - **26 October:** 70 per cent of Victorians expected to have had both vaccination doses. This is Phase B of the National Plan and lockdown will end in Melbourne.
  - 5 November: 80 per cent of Victorians aged 16 and over expected to have had both vaccination doses. This is Phase C of the National Plan, and regional Victoria and metropolitan Melbourne will come together under the same rules.
  - 19 November: once 80 per cent of Victorians aged 12 and over are fully vaccinated, restrictions will align with Phase D of the National Plan.

# Hospitality Roadmap –Restriction Levels

## Victorian Roadmap from Lockdown (Hospitality) – *including vaccination status of patrons*

| Category               | PHASE B: 70% of 16+ fully vaccinated Indicative date: 26 October 2021 Subject to Public Health consideration of epidemiology at the time  | PHASE C: 80% of 16+ fully vaccinated Indicative date: 5 November 2021 Subject to Public Health consideration of epidemiology at the time  | PHASE D: 80% of 12+ fully vaccinated Indicative date: Two weeks later Subject to Public Health consideration of epidemiology at the time |
|------------------------|---|---|--|
| <b>Metro Melbourne</b> | <b>Food and drink facility:</b> <ul style="list-style-type: none"> <li>Seated service only</li> <li>Fully vaccinated: Outdoor only, DQ4, 50 cap</li> </ul> <b>Electronic gaming:</b> CLOSED (no change)   | <b>Food and drink facility:</b> <ul style="list-style-type: none"> <li>Open for seated service only</li> <li>Small venues: up to 25 people if fully vaccinated before DQ applies</li> <li>Fully vaccinated: Indoors DQ4 and 150 cap, outdoors DQ2 500 cap</li> </ul> <b>Electronic gaming:</b> <ul style="list-style-type: none"> <li>Remain seated</li> <li>Fully vaccinated: Indoors DQ4 and 150 cap, outdoors DQ2 500 cap</li> <li>Caps are not in addition to hospitality limits</li> </ul> | <i>For all settings, align with National Plan to transition Australia’s National COVID-19 Response</i>                                   |
| <b>Regional</b>        | <b>Food and drink facility:</b> <ul style="list-style-type: none"> <li>Seated service only</li> <li>Fully vaccinated: Indoors DQ4 and 30 cap, outdoors DQ2 and 100 cap</li> <li>Unknown vaccination: no change from previous</li> </ul> <b>Electronic gaming:</b> <ul style="list-style-type: none"> <li>Remain seated</li> <li>Fully vaccinated: Indoors DQ4 and 30 cap</li> <li>Unknown vaccination: no change from previous</li> </ul> | <b>Food and drink facility:</b> <ul style="list-style-type: none"> <li>Seated service only</li> <li>Small venues: up to 25 people if fully vaccinated before DQ applies</li> <li>Fully vaccinated: Indoors DQ4 and 150 cap, outdoors DQ2 and 500 cap</li> </ul> <b>Electronic gaming:</b> <ul style="list-style-type: none"> <li>Remain seated</li> <li>Fully vaccinated: Indoors DQ4 and 150 cap, outdoors DQ2 and 500 cap</li> <li>Caps are not in addition to hospitality limits</li> </ul>  |  |

# Hospitality – Regional Trials

- The Victorian Government will conduct trials in businesses, including in hospitality, across highly vaccinated parts of regional Victoria – to test systems and supports for the ‘vaccinated economy’ (*ie: confirm the best processes for establishing vaccination status*).
- Trials start **11 October 2021**.

# Hospitality Worker Vaccine Mandate – Current Status

- In unveiling the Roadmap, the Premier *hinted* that hospitality workers would be subject to mandatory vaccinations:  
*“If you’re going to deny people entry on the basis of their vaccination status, well, the person pouring the beer has to be vaccinated too. Logic tells you that.”*
- *On 1 October 2021 – The Premier announced:*
  - On the advice of our public health team, all workers – in Melbourne and regional Victoria – on the **Authorised Worker** list will require their first COVID-19 vaccine dose by Friday, **15 October** in order to continue working onsite. They will need to be fully vaccinated by **26 November**.

# Hospitality Worker Vaccine Mandate – Current Status

- Victorian Government officials have also told industry stakeholders of the government's intention to mandate vaccinations for hospitality venue workers
- Currently, there are ***no public health orders*** for mandating vaccinations for Authorised Workers or more specifically hospitality workers
- ***Key date:*** 26 October (venues open to vaccinated patrons)

# Hospitality Worker Vaccine Mandate – Current Status

- The Authorised Provider and Authorised Worker definitions may impact on the mandated vaccination arrangements for hospitality ie: in Metro Melb authorised provider is:
  - *a restaurant, café, food truck pub, bar or hotel, whether licensed or unlicensed, but only to the extent that:*
    - *it provides takeaway meals or drinks or a meal delivery service; or*
    - *it provides food, drink, accommodation or other essential services to those seeking shelter (for example, for reasons of homelessness or family violence); or*
  - *a bottle shop;*
- *However, based on the Premier's announcements to date it appears that the intention is that the mandatory vaccination directive will apply to workers in Melbourne or regional Victoria who are required to leave their homes in order to perform work.*



# Duty of Care: Providing a Safe Workplace

- Employers have a duty of care – to eliminate, or if that is not reasonably practicable, minimise risk of exposure to COVID-19 in the workplace (control measure);
- *Is mandating vaccination a reasonably practicable control exposure in managing risks of COVID-19 in the workplace?*
- Reasonably practicable control measures may include:
  - Physical distancing;
  - Good hygiene;
  - Regular cleaning;
  - Ensuring workers do not attend the workplace when unwell;
  - Any necessary/ recommended PPE (ie: face masks)
  - Vaccination (even if not mandatory)
- Conduct a risk assessment – employers must conduct a risk assessment to determine whether work arrangements should be put in place for workers who can not be vaccinated (take into account - nature of work, work environment and workers specific circumstances)
- **Workers Compensation:** May be compensable if COVID 19 contracted at work.

# Can I mandate vaccinations for staff without a public health order?

- Unlikely to be capable of lawfully mandating (all workers) by way of proportionate control measure;
- Important to gain consent from employees to be vaccinated;
- Collecting vaccine status will require employee consent & collection is reasonably necessary for workplace's functions and activities – which may include preventing or managing COVID 19 (sensitive health information – therefore privacy protections apply)



# Mandating worker vaccination

- Covid 19 Mandatory Vaccination Directions are made under the *Public Health and Wellbeing Act 2008* (Vic), s.200
- Common features of the Directions:
  - first dose obligations or a booking for such (by a specified date – note foreshadowed 15.10.21);
  - full vaccination status or a booking date for a second dose (by a specified date – note foreshadowed 26.11.21 );
  - Permitted exemptions (medical contraindication – verified by a medical practitioner)
  - Evidence of doses (or bookings) or permitted exemption to be provided to the employer (by a specified date)
  - Preclusion from entering worksite – not satisfied vaccination or permitted exemption requirements
  - Operator/ Employer – must keep necessary records to demonstrate compliance with the Directions
  - Any exceptional circumstances
  - ‘Worker’ commonly encompasses volunteers and contractors



# Mandating worker vaccination

**Key Steps** for complying with vaccine mandate directions  
(subject to Health Orders)

## 1. Write to Employees – advice regarding Directions

- set out Directions;
- compliance with Directions constitutes a “reasonable and lawful direction”;
- failure to comply – may give rise to summary termination of employment

## 2. Failure to comply – SHOW CAUSE

- Immediately suspend employee’s employment (subject to the Directions - may be unpaid)
- Provide a final opportunity to comply with Directions, or
- Show cause why the employment should not be terminated (summary termination with no notice payable)



# Questions?

