

Update on Mandatory COVID-19 Vaccination

On 15 October 2021, the Chief Health Officer (CHO) issued the COVID-19 Mandatory Vaccination (**Workers**) Directions (No 3) (**Directions**) under the *Public Health and Wellbeing Act 2008* (Vic). The Directions expand the workers-specific definitions under Schedule 1. This paper provides a high-level summary of the Directions and the obligations of employers and workers.

Schedule 1 of the Directions sets out who are workers under the relevant industry sectors. **Relevant date** means 15 October 2021, **First dose deadline** means 22 October 2021 and **Second dose deadline** means 26 November 2021.

Directions	Employers	Workers
<p>Who have obligations under the Directions?</p>	<p>Vaccination information</p> <ul style="list-style-type: none"> Employers must collect, record and hold vaccination information of its workers who are required to work outside their ordinary place of residence on or after 15 October 2021. <p>Booking information – partially vaccinated and unvaccinated workers</p> <ul style="list-style-type: none"> For partially vaccinated workers, employers must collect, record, and hold information whether the worker has a booking to receive, by the second dose deadline, a dose of COVID-19 vaccine. For unvaccinated workers, employers must collect, record and hold information whether the worker has a booking to receive, by the first dose deadline, a dose of COVID-19 vaccine. <p>Must not permit unvaccinated workers at the workplace</p> <ul style="list-style-type: none"> Employers must not permit workers who are unvaccinated to enter or to remain at its workplace without proof of being partially vaccinated or that a booking has been made to meet the deadline to receive the first dose of COVID-19 vaccine. 	<p>Requirement to produce vaccination evidence</p> <ul style="list-style-type: none"> Workers must provide their vaccination information to their employers on request, as well as any supporting documentation, such as a certificate of immunisation. Workers are only permitted to work outside of their ordinary place of residence if they comply with the requirements under the Directions, that is: <ul style="list-style-type: none"> they have received their COVID-19 vaccination on or before 15 October 2021; they have made a booking to meet the deadline for the first dose on 22 October 2021 they have received their COVID-19 vaccine on or before the deadline for the first dose on 22 October 2021; they are fully vaccinated prior to the deadline for the second dose 26 November 2021; or they are medically exempt to receive a COVID-19 vaccine or that they are unable to receive a further COVID-19 vaccine due to medical contraindication.

Note: If a worker refuses or fails to provide evidence that they have received their first dose of COVID-19 vaccine or that they have been fully vaccinated; the worker will be treated as unvaccinated, unless they fall under the exemptions under the Directions including, being medically exempt.

Directions	Employers	Workers
<p>In what circumstances can employers and workers not comply with the Directions?</p>	<p>Permit unvaccinated workers to continue to work</p> <ul style="list-style-type: none"> • Employers <i>may</i> permit unvaccinated workers to continue to work only if they can produce evidence that: <ul style="list-style-type: none"> ○ they have made a booking to receive the first dose of a COVID-19 vaccine that will cause the worker to become partially vaccinated; ○ they were unable to be partially vaccinated before 22 October 2021 because they were in self-quarantine and has made a booking to receive within 7 days of the end of the self-quarantine; or ○ they are medically exempt to receive the COVID-19 vaccine or that they are unable to receive a further COVID-19 vaccine due to medical contraindication. • Employers must notify its workers of the above requirements as soon as reasonably practicable. 	<p>Must show evidence of booking</p> <ul style="list-style-type: none"> • If a worker remains unvaccinated on or after 15 October 2021, the worker must produce evidence that: <ul style="list-style-type: none"> ○ they have made a booking to receive the first dose of a COVID-19 vaccine that will cause the worker to become partially vaccinated; ○ they were unable to be partially vaccinated before 22 October 2021 because they were in self-quarantine and has a booking to receive within 7 days of the end of the self-quarantine; or ○ they are medically exempt to receive the COVID-19 vaccine or that they are unable to receive a further COVID-19 vaccine due to medical contraindication. • A failure of a worker to produce evidence will mean that their employer will treat them as being unvaccinated and is therefore not allowed entry at the workplace.
<p>What other exemptions are contained in the Directions?</p>	<p>Exceptional circumstances</p> <ul style="list-style-type: none"> • There are limited exceptional circumstances where an employer may permit unvaccinated employees to enter their workplace, such as (but not an exhaustive list): <ul style="list-style-type: none"> ○ emergency situation or a critical unforeseen circumstance; ○ a worker is required to fill in vacancy to provide urgent care, to maintain quality of care or continue essential operations due to emergency situation; ○ a worker is required to respond to an emergency; or 	<p>Unvaccinated workers <i>may</i> be allowed at the workplace</p> <ul style="list-style-type: none"> • Workers who are unvaccinated may be allowed to work outside their ordinary place of residence only in exceptional circumstances (refer to Exceptional circumstances under the Employer’s section of this document) • Workers are not permitted to continue to work at the workplace longer than the period of time necessary to carry out or respond to the exceptional circumstances.

	<ul style="list-style-type: none"> ○ a worker is required to perform urgent and essential work to protect the health and safety of workers or members of the public or infrastructure. 	
Vaccination information must be produced to an Authorised Officer¹	<p>Employers are required to produce vaccination information</p> <ul style="list-style-type: none"> • Employers must when requested by an Authorised Officer produce any vaccination information it holds regarding its workers. • Employers must also notify new workers (including contractors) who is, may be engaged, to perform work outside their place of residence about the requirement to collect, record and hold information about their vaccination status. The information also includes, notifying new workers that their vaccination information may be produced to an Authorised Officer. 	<p>Required or authorised by law</p> <ul style="list-style-type: none"> • Workers cannot refuse for their employers not to produce their vaccination information to an Authorised Officer.

Note: It is recommended that employers explain to their workers the reasons for collecting, recording and holding their vaccination information, take steps to notify its workers as to the consequences if they refuse to provide their vaccination information, and that their information may be disclosed to an Authorise Officer.² One way of achieving this is for employers to release an internal communication setting out the key application of the Directions.

In circumstances where an employer has developed (or is developing) a policy in response to managing risks associated with COVID-19, they must consult, so far as is reasonably practicable, with their elected health and safety representatives (**HSRs**) to ensure compliance with the employer's duty to consult under the Work Health and Safety Laws.

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¹ As defined under the *Public Health and Wellbeing Act 2008*

² [COVID-19: Vaccinations and my privacy rights as an employee - Home \(oaic.gov.au\)](https://www.oaic.gov.au/COVID-19/Vaccinations-and-my-privacy-rights-as-an-employee-Home)