

# COVID-19 vaccination in the workplace

## COVID-19 vaccination requirements for employees – guidance for employers

### Purpose

Consideration of vaccination requirements in public sector workplaces may arise because of the operation of a Chief Health Officer (CHO) Public Health Direction under the *Public Health Act 2005*, or because a chief executive determines that, based on consideration of a range of factors, employees in a workplace, or in certain roles should be vaccinated against COVID-19. When considering the requirement for employees to be vaccinated against COVID-19, the purpose of this framework is twofold:

for <b>Chief Health Officer public health directions</b> , it	for <b>lawful and reasonable directions</b> , it
<ul style="list-style-type: none"> <li>• provides guidance to agencies where a Chief Health Officer direction has coverage, or partial coverage, of a workforce or cohort of employees</li> </ul>	<ul style="list-style-type: none"> <li>• supports a consistent approach across the Queensland public sector when considering COVID-19 vaccinations;</li> <li>• requires agencies to take a risk management approach to determine whether COVID-19 vaccination would be an appropriate control measure to be implemented; and</li> <li>• provides guidance about the process, considerations and consultation obligations for agencies to take into account when:               <ul style="list-style-type: none"> <li>○ an agency or workplace/cohort of employees within an agency becomes subject to a vaccination requirement through a public health direction; or</li> <li>○ a chief executive issues a lawful and reasonable direction that requires employees to be vaccinated against COVID-19.</li> </ul> </li> </ul>

## Chief Health Officer directions about vaccination requirements

### 1.1 Authority:

The **Chief Health Officer** has emergency powers arising from the declared public health emergency under the *Public Health Act 2005*, to issue directions to assist in containing, or to respond to, the spread of COVID-19 within the community.

**When directing an employee to be vaccinated an agency should communicate the authority for making the direction and explain the rationale that supports the direction.**

### 1.2 Applying a Chief Health Officer direction:

The Chief Health Officer may issue public health directions requiring certain people to be vaccinated against COVID-19. Public Health Directions may apply to certain groups of employees, or they may apply to certain settings where employees are required to attend as part of their duties.

Public health directions are published on the [Queensland Health website](#) and are subject to change. Agencies should regularly review public health directions for any application to their workforce and to ensure they are compliant with the most up to date directions.

Agencies that manage employees or workplaces that are subject to a public health direction requiring vaccination **must comply** with the public health direction. In this situation, there is no need to undertake a risk assessment process as set out in this framework to decide if a COVID-19 vaccination requirement would be lawful and reasonable in relation to the employees or workplaces subject to the public health direction.

Agencies in these circumstances will need to implement policies and procedures to ensure compliance with the public health direction. Directions, policies and procedures issued by agencies to ensure compliance with the public health direction that require employees to be vaccinated are lawful and reasonable.

## COVID-19 vaccination requirements through lawful and reasonable directions

### 2.1 Authority

In the absence of an applicable Chief Health Officer direction, the authority to require employees to be vaccinated against COVID-19 may be found in two instances:

**2.1.1 Chief executives of public service agencies** have authority under the *Public Service Act 2008* (PS Act) and the common law to give **lawful and reasonable directions** to their employees in relation to their employment. Such directions may be issued in consideration of risks to employees and others or based on agency operational requirements.



2.1.2. **Certain chief executives** may have authority under legislation relating to the agency's function or employing legislation (where not employed under the PS Act) to issue a direction.

**When directing an employee to be vaccinated an agency should communicate the authority for making the direction and explain the rationale that supports the direction.**

## 2.2 What is lawful and reasonable?

Employers can require their employees to be vaccinated against COVID-19 if the direction is lawful and reasonable.

For a direction to be **lawful**, it must comply with any employment contract, award or agreement, and any Commonwealth or state law that applies (for example an anti-discrimination law).

Whether a direction is reasonable will be fact dependent and needs to be assessed on a case-by-case basis. This will require consideration of all relevant factors applicable to the workplace, the employees, and the nature of the work they perform, including, but not limited to:

- **Cohort/workplace risk factors** (for example, whether employees work in public facing roles, whether they have contact or interaction with COVID-19 patients or work closely with people who are vulnerable to COVID-19)
- **Environmental risk factors** (for example, current or future expected levels of community transmission, current health advice for cohort of employees or industry in which the cohort operate)
- **Suitability of control measures** (for example, what controls are already in place to reduce the risk, are the current control measures effective and sufficient, is social distancing possible?)
- **Operational requirements** (for example, whether the business is essential and would need to continue operating from the workplace in the event of a lockdown or high levels of community transmission)

Employers should obtain legal advice if they are considering making COVID-19 vaccination a requirement of ongoing employment in their workplace.

## 2.3 COVID-19 vaccination requirements through a lawful and reasonable direction based on a risk assessment

Chief executives may issue a direction to employees to be vaccinated against COVID-19, based on a risk assessment. The risk assessment should look broadly at risks to employees and others as well as risks to operational requirements (where relevant).

A risk management approach, including consultation with relevant stakeholders (refer to Consultation section for further information), must be used to determine the level of risk and what control measures need to be implemented in response to the risk.

Employers should note that vaccination is only one control measure for COVID-19 and it should be considered as part of a broader range of controls to reduce the risk of exposure to COVID-19 in workplaces.



Information on control measures to slow the spread of COVID-19 can be found [here](#).

Risks to operational requirements may include (but are not limited to):

- where the workforce (or cohort) is highly specialised and limited - if several employees in this cohort were affected by COVID-19 there would be significant impacts to service delivery
- where the workforce (or cohort) are delivering critical services and ongoing delivery is vital
- where the workforce (or cohort) are entering third party premises that have vaccination against COVID-19 as a condition of entry (as required by the third party) and it is not reasonably practicable to make alternative arrangements, on a case-by-case basis for each employee.

In determining whether alternative arrangements are reasonably practicable (in relation to the third dot point above), the chief executive may take into account:

- the proportion of employees who are vaccinated against COVID-19 (noting that it may be considered reasonable and lawful to request information from employees about vaccination status for the purposes of undertaking this assessment)
- the proportion of premises that require vaccination as a condition of entry
- the need for equitable working arrangements (e.g. to ensure a limited number of employees do not bear the burden of the agency's workload)
- the need to prioritise alternative working arrangements for people with a recognised medical contraindication (if a vaccination direction were to be issued).

Chief executives should undertake a scan of their workforce to understand the type of work being performed across the agency, and then undertake a risk assessment against their operational requirements to determine if there is a risk to business continuity that needs to be mitigated. Assessments will need to be made on a case-by-case basis taking into account the specific circumstances and all relevant factors applicable to the workplace, the employees, and the nature of the work they perform.

Where a risk is identified, chief executives should determine whether COVID-19 vaccination is appropriate to manage the risk and whether a direction to employees is required. Where a chief executive is considering issuing a COVID-19 vaccination direction, they must consult with relevant parties (refer to Consultation section for further information).

Decisions must be supported by thorough and justifiable reasoning which clearly identifies the need to issue a COVID-19 vaccination direction.

## 2.4 Consultation

The reasonableness of a direction may be informed by consultation with employees and unions and consultation is an essential step in the process.

Consultation is an opportunity to engage affected employees and their relevant industrial organisations. Consultation ensures staff are informed of changes that will affect them and have a genuine opportunity to influence the decision and implementation before a decision is made.



Agencies should consider any consultation obligations set out in legislation and/or relevant industrial instruments.

Consultation involves:

- sharing information with all relevant parties about the matter – this would include registered industrial organisations (who have a right to represent industrial interests of affected employees) and the staff who may be affected
- providing a reasonable opportunity to express their views
- for any views to be considered

In situations where an agency shares a work environment or where employees regularly interact with employees from other agencies, consultation should also occur with the other agency/agencies.

## 2.5 Additional considerations

In addition to a risk assessment (either a risk to employees and/or others or an operational risk), agencies must also consider:

- the [human rights](#) of employees, in accordance with the *Human Rights Act 2019* (the HR Act), in any decisions made or actions taken in making COVID-19 vaccinations a requirement of ongoing employment – a human rights compatibility assessment should be prepared when considering whether to make a vaccination direction; and
- [information privacy](#) in accordance with the *Information Privacy Act 2009*.

Employers should obtain legal advice if they are considering making COVID-19 vaccination a requirement of ongoing employment in their workplace.

## General considerations


### 3.1 Requesting information and documentation about vaccination status

A Chief Executive may request employees to voluntarily disclose their vaccination status to assist in pre-planning and risk management in the event that COVID-19 becomes more prevalent in the community.

A Chief Executive may direct employees to disclose their vaccination status for the purposes of assessing the requirement to issue a lawful and reasonable vaccination direction under this framework, and also for the purposes of ensuring compliance with any such direction, or for compliance with a CHO direction. A direction to disclose vaccination status may be considered lawful and reasonable, and consistent with the information privacy principles in the *Information Privacy Act 2009*, particularly where the consultation and assessment processes clearly identify the purpose and justifications for requiring information about employee vaccination status.

A Chief Executive may also request information about vaccination status of other persons entering the workplace (including employees of other agencies) where the information is required to ensure the health and safety of their employees or others.





Vaccination status information should only be collected and used where the information directly relates to a function or activity of an agency, and any collection of such information should be accompanied by an information privacy notice which sets out the purpose for which the information is collected.

## 3.2 Documentation

Vaccination requirements and directions have been subject of challenges across Australian jurisdictions. Accordingly, agencies who decide to require employees to be vaccinated against COVID-19 must follow sound record keeping and decision making practices and document each step in this framework including:

- the authority for the direction
- risk assessment and chosen control measures
- consultation processes and feedback
- considerations of human rights, anti-discrimination and information privacy
- decision making and justification.

## 3.3 Policy

Where a CHO direction or an appropriate risk assessment supports a decision to make COVID-19 vaccination a requirement of ongoing employment, policy settings must be adopted in accordance with the template policy.

## 3.4 Addressing non-compliance

Where an employee does not comply with a lawful and reasonable direction to be vaccinated against COVID-19, and does not have a recognised medical contraindication, the Chief Executive may consider whether to commence a disciplinary process (refer to [Directive 14/20: Discipline](#)).

