

ACTPS implementing a mandatory COVID-19 vaccination policy

PURPOSE

1. The *ACTPS Implementing a mandatory COVID-19 vaccination policy* (the policy):
 - a. requires directorates to take a risk-based approach to determine whether a mandatory vaccine policy would be appropriate for their business; and
 - b. provides guidance about how to plan, implement and administer a mandatory vaccine policy in the event that:
 - i. a business operation or workplace under a directorate's control becomes subject to a mandatory vaccination requirement via a public health direction; or
 - ii. a directorate determines the need to implement a mandatory vaccination policy in response to a safety risk assessment, conducted in accordance with the *Work Health and Safety Act 2011* (WHS Act), this policy and in consultation with affected staff and unions.

APPLICATION

2. This policy contains a set of whole-of-government instructions issued by the Head of Service under the *Public Sector Management Act 1994* which binds all employees and officers engaged under that Act.
3. This policy commences from **insert start date** and should be used for the development of any COVID-19 mandatory vaccination policy after that date.

BACKGROUND

WHS obligations

4. The WHS Act requires directorates and agencies to take reasonable action to eliminate the risk of exposure to, or transmission of, COVID-19 in the workplace. If elimination is not possible, the requirement is to minimise those risks as far as is reasonably practicable.
5. To ensure work health and safety is maintained during the COVID-19 outbreak, directorates and agencies must regularly assess COVID-19 risks and take action to prevent harm, promote health and wellbeing and provide support if illness or injury does occur.
6. This includes implementing approaches that support and comply with the public health response in workplaces including physical distancing, hygiene measures, wearing of face masks, cleaning regimes and contact tracing, as well as supporting employees to access COVID-19 vaccines when they are available.

COVID-19 vaccination

7. The COVID-19 vaccination continues to be strongly recommended as part of the public health program.
8. Vaccination against COVID-19:
 - a. provides individual protection against severe effects of COVID-19
 - b. protects the broader community by reducing the spread of the disease and reducing the risk of infection; and
 - c. reduces the health, social and economic impact on communities due to a reduced likelihood of outbreaks, hospitalisation and healthcare needs, and the need for social and business restrictions.

INSTRUCTIONS

Public Health Directions

9. A Public Health Direction declared by the Chief Health Officer or other law may operate to mandate COVID-19 vaccination for high-risk sectors or occupations.
10. Sectors that are subject to mandatory vaccination via a Public Health Direction are described [here](#).
11. Directorates that manage workers and/or roles that are subject to such a Public Health Direction must implement that direction in accordance with the standards for mandatory vaccine policies described at paragraph 26 of this policy.

Mandatory vaccine policy may be indicated by a WHS risk assessment

12. The WHS Act requires that directorates periodically identify and assess health and safety risks, including those from COVID-19, and take all reasonable action to eliminate, or if elimination is not possible, to minimise those risks.
13. There may be circumstances where a work health and safety risk assessment identifies a heightened level of COVID-19 risk which may be reduced by mandatory vaccination.
14. A mandatory vaccine policy is one potential mechanism for reducing COVID-19 risks, however it would not be sufficient in isolation to meet an employer's WHS responsibilities. Consequently, the potential effectiveness of a mandatory vaccine policy must be assessed in the context of all relevant safety controls applicable to the work areas in question including:
 - a. hand washing and sanitisation options
 - b. workers staying home when unwell and getting tested if they have COVID-19 symptoms
 - c. maintaining physical distancing of 1.5m where possible
 - d. reducing the movement of workers, including working from home where possible
 - e. having contact tracing methods in place
 - f. workplace cleaning regimes; and
 - g. keeping up to date with public health directions.

15. WHS laws establish rules about how [risks assessments](#) are to be conducted, including requirements for [consultation](#) with affected workers and their representatives. Those rules must be followed in cases where a directorate is considering whether to implement a mandatory vaccination policy.
16. In addition, because a mandatory vaccination policy may impact human rights, it is a requirement of this policy that the applicable WHS risk assessment is documented, including:
- a. the identified hazards
 - b. assessed risks and chosen control measures (including any hazard checklists, worksheets and assessment tools used in working through the risk management process)
 - c. how and when control measures were implemented, monitored and reviewed
 - d. who was consulted and how
 - e. relevant training records; and
 - f. plans for periodic review.
17. The introduction of a COVID-19 vaccination policy would constitute a significant change in employment conditions. Consequently, consultation would be required by both the WHS Act and applicable enterprise agreements.

Reasonableness, lawfulness and proportionality requirements

18. A mandatory COVID-19 vaccination policy must:
- a. be a lawful and reasonable direction under the Fair Work Act
 - b. be justified as reasonable and proportionate under human rights legislation; and
 - c. ensure it is not unlawful under anti-discrimination laws.
19. Factors to consider when determining whether a mandatory COVID-10 vaccination policy would be reasonable and proportionate should include:
- a. whether the scope of the policy requirement disadvantages an employee who has a protected attribute
 - b. the timing to meet the policy requirements and whether any employees will be disadvantaged, or discriminated against, by the policy; and
 - c. the nature and extent of the disadvantage, the feasibility of overcoming or mitigating the disadvantage, and if the disadvantage is proportionate to the result sought.
20. To assist employers to determine whether their risk profile rises to the level where a mandatory vaccine is appropriate, the Fair Work ombudsman has issued guidance for the requirement of mandatory vaccination using a 4-tier system:
- | | |
|--------|--|
| Tier 1 | Work where employees are required as part of their duties to interact with people with an increased risk of being infected with COVID-19 |
| Tier 2 | Work where employees are required to have close contact with people who are particularly vulnerable to the health impacts of COVID-19 |

- Tier 3 Work where there is interaction or likely interaction between employees and other people such as customers, other employees or the public in the normal course of employment
- Tier 4 Work where employees have minimal face to face interaction as part of their normal employment duties.

Pre-requisites for recommending mandatory vaccination via a WHS risk assessment

- 21. For many ACTPS workers and workplaces mandatory vaccination requirements would not be reasonable, lawful or proportionate and should not be implemented.
- 22. A directorate/agency may only mandate vaccination if:
 - a. a fully documented work health and safety risk assessment has been conducted in consultation with workers
 - b. all reasonable health and safety management actions, excluding mandatory vaccination, indicated by that risk assessment have been implemented
 - c. there remains a residual risk that would be materially reduced by mandating vaccination; and
 - d. a documented cost benefit analysis indicates that that mandatory vaccination would be beneficial, effective, reasonable and proportionate (must include consideration of workplace relations, human-rights and anti-disability discrimination laws).
- 23. ACTPS workplaces must consider the 4-tier guidance system developed by the Fair Work Ombudsman when considering the options for mandatory vaccination for their workforce.
- 24. Workplaces must take a risk-based approach when considering what is reasonable in their circumstances, this includes, but is not limited to the following factors:
 - e. the nature of the workplace
 - f. the duties of workers
 - g. the ability to implement, and the effectiveness of alternate controls
 - h. the service users
 - i. business continuity planning
 - j. vaccine availability; and
 - k. reasons for employees not being vaccinated i.e. medical reasons.
- 25. Attachment A of this policy describes the process that must be followed when assessing suitability for mandatory vaccination.

Minimum standards for administration of mandatory vaccination policy

- 26. If directorates/agencies determine that a mandatory vaccinated policy is warranted, the policy must be designed, documented and administered to include the following as a minimum.

Scope

- The policy must detail the workers and/or roles to which the policy applies.
- The scope should be determined by the risk assessment and may not include the whole workforce in a directorate/agency or business unit.
- The policy must define the period of application or the period of the public health direction if applicable.

Information, education and access to vaccination

- The policy must include how employees will be informed and educated about the risks and benefits of vaccination in relation to their work duties.
- The policy must include how access to vaccination will be supported/provided.

Evidence of vaccination

- The policy must include the process to seek, confirm and record vaccination status to monitor compliance with the policy:
 - from new employees as part of the employment contract if mandatory vaccination is a requirement of the position;
 - from existing employees; and
 - from existing employees if the policy extends into a period where revaccination / booster vaccination is required.
- The policy must also include the process to manage evidence obtained when an employee is unable to be vaccinated for medical or other reasons.
- The policy must include reference to the management of information received from employees in accordance with privacy and health record requirements.

Non-compliance and exemptions

- The policy must describe the situations for exemption from the policy, the level of decision making for exemptions and the actions required or consequences for an employee due to an exemption.
- The policy must follow existing ACTPS employment policies and redeployment hierarchy to manage employees who are unable, or choose not, to be vaccinated including, in escalating order:
 - modifying the usual role to reduce the risk
 - modifying the employee's duties to reduce the risk
 - implementing reasonable adjustments ([ACTPS Reasonable adjustment policy](#))
 - redeployment within the Directorate; and
 - redeployment within the ACTPS.

Redeployment within the ACTPS

- The *Public Sector Management Act 1994* (PSM Act) provides that an employee needs to meet the eligibility requirements to perform their role. Where an employee is unable to perform their role

because of medical reasons or where they have lost eligibility for the role, the PSM Act sets out a redeployment process for them.

- It is expected that the directorate would have exhausted all other options for modification or reasonable adjustments in the role before proceeding with the redeployment process. The redeployment process should also only commence once the directorate is satisfied that the employee has had a reasonable opportunity to access vaccination appointments.

Medical Redeployment

- If an employee is unable to be vaccinated due to medical reasons and their role requires them to be vaccinated, they should be managed in accordance with the redeployment process set out in the policy for redeployment of employees on medical grounds.
- The directorate should take reasonable steps to find the employee an alternative suitable role in the directorate, taking into consideration the employee's transferrable skills, work experience and medical capacity to perform the role. A suitable vacant role will include any role that the employee is able to perform at the same or equivalent classification, or any role at a lower classification. If the role is at a lower classification the employee should continue to be paid at their substantive level.
- At any time, an employee may be temporarily or permanently transferred to a suitable vacant position at the same classification level under sections 92, 100, 108 or 109 of the PSM Act. The employee must accept an offer of an alternative suitable position unless there are extenuating circumstances.
- If the directorate is unsuccessful in finding a suitable vacant role for the employee, they should refer the redeployment to the Head of Service for a whole of service search. An expedited Head of [Service referral](#) will be appropriate if the employee has limited transferrable skills relevant to the available work in the directorate or there is significantly limited work available in the directorate suitable for the employee.
- The employee will not be retired under section 123 of the PSM Act if redeployment is unsuccessful.
- The employee should be actively engaged in the redeployment process and may access their personal leave (if applicable) or if not, COVID-19 leave is available.

Loss of Eligibility Redeployment

- If an employee is unwilling to be vaccinated or does not provide proof of vaccination and their role requires them to be vaccinated, they should be managed in accordance with the redeployment process set out in the [policy for redeployment of employees who are no longer eligible persons](#).
- The directorate should take reasonable steps to find the employee an alternative role in the directorate, taking into consideration the employee's transferrable skills and work experience. A suitable vacant role will include any role that the employee is able to perform at the same or equivalent classification, or any role at a lower classification. If the role is at a lower classification the employee should continue to be paid at their substantive level.
- At any time, an employee may be temporarily or permanently transferred to a suitable vacant position at the same classification level under sections 92, 100, 108 or 109 of the PSM Act. The employee must accept an offer of an alternative suitable position.

- If the directorate is unsuccessful in finding a suitable vacant role for the employee, they should refer the redeployment to the [Head of Service](#) for a whole of service search. An expedited [Head of Service](#) referral will be appropriate if the employee has limited transferrable skills relevant to the available work in the directorate or there is significantly limited work available in the directorate suitable for the employee.
- The employee should be actively engaged in the redeployment process. During the directorate search for a suitable vacant role they will continue to be paid at their substantive level. However, when the employee has been referred to the head of service for a service-wide redeployment search, they will be required to access their leave entitlements, including annual or long service leave entitlements.
- The employee will not be retired under section 123 of the PSM Act if redeployment is unsuccessful.
- The employee can provide informed consent to transfer to a lower classification under the provisions of section 80 of the Public Sector Management Standards 2016 (PSM Standards).

Review of the policy

- The policy must consider the evolving COVID-19 situation and risk and include a review date to reassess the need for the policy. The review needs to consider:
 - the vaccination levels in the ACT population
 - community transmission levels
 - public health restrictions impacting community movement
 - changes to the available evidence on the transmissibility of COVID-19 when vaccinated
 - any unintended consequences of the policy e.g. resourcing, employee feedback, WHS incidents, service impacts.

Reporting and notification

- Prior to the commencement of a mandatory vaccination policy, the responsible directorate must brief Cabinet about their intention to implement a mandatory COVID-19.
- Prior to commencement of a mandatory vaccination policy, the responsible directorate must provide a copy of the policy and the supporting risk assessment to wsir@act.gov.au.
- The reporting and notification requirements in this section do not apply where the mandatory vaccination requirement is from a [Health Order](#) Public Health Direction.

RESPONSIBILITIES

27. Directors-General/agency heads must

- ensure that a risk-based approach is taken to determine the need for and implementation of mandatory COVID -19 vaccination policies in their workplaces; and
- ensure that workers and their representatives are consulted on the risks associated with their work and any actions to address the risks identified.

28. Managers must ensure, in consultation with workers and their representatives, that risk assessments are undertaken in accordance with this policy and documented and communicate the approach for implementation and monitoring of a policy.
29. Employees must engage with their workplace to identify and address the risks associated with their work and the intent to mandate a COVID-19 vaccination policy and, if developed, adhere to the directions provided as part of ensuring a safe workplace.

RELATED LEGISLATION

30. This policy is to be delivered consistent with the ACT Government's obligations under the:

- *Public Sector Management Act 1994 (ACT);*
- *Public Sector Management Standards 2016 (ACT);*
- *Fair Work Act 2009 (Cwlth);*
- *Safety, Rehabilitation and Compensation Act 1988 (Cwlth);*
- *Anti-discrimination laws;*
- *Human Rights Act 2004 (ACT);*
- *Work Health and Safety Act 2011 (ACT);*
- *Privacy Act 1988 (Cwlth);*
- *Information Privacy Act 2014 (ACT);* and
- *ACT Public Health Directions*

RELATED RESOURCES

31. This policy should be read together with other ACT Public Sector policies, procedures and guidance:

- COVID-19 Work health, safety and wellbeing information for the ACTPS
- COVID advice for ACTPS employees
- ACTPS WHS response to COVID guide
- COVID WHOG WHS Risk assessment

REVIEW

32. The Policy Statement will be reviewed after one (1) year unless earlier review is required.

APPROVAL AUTHORITY

33. This policy is approved by **XXX**

DATE.

Issue Date:

Review Date:

Identifying operations that may be suitable for mandatory COVID-19 vaccination

