

MANDATORY VACCINATION (INFLUENZA and COVID-19) DECLINATION TEMPLATES

The issue of mandatory vaccination is a diabolical one.

We have seen over the past year, State and Territory Governments mandate the influenza vaccination following the recommendations to do so by the advisory body to the Commonwealth National Cabinet being the AHPPC: see link here <https://www.health.gov.au/committees-and-groups/australian-health-protection-principal-committee-ahppc>.

The reason for the recommendation is that allegedly the influenza vaccination reduces the incidence of hospitalisation and therefore alleviating pressure on hospitals. There is however no support for this conclusion.

The Cochrane Review did three comprehensive and distinct reviews into the effectiveness of influenza vaccinations in the elderly, adults and children. In all three reviews, there were no conclusions regarding the reduction of hospitalisation. Therefore, such a claim to justify the mandating of influenza vaccination is not justified on the science. Furthermore, the studies also do not confirm that receiving the influenza vaccination will either reduce absenteeism from work and/or schools and/or childcare, therefore it is also not justified for employers to force their workers to be inoculated with the vaccines as a pre-condition of work, based on risks that are simply not evaluated and are not conclusive.

The Cochrane Reviews can be found here:

<https://www.cochrane.org/news/featured-review-three-updated-cochrane-reviews-assessing-effectiveness-influenza-vaccines>

In many other settings, irrespective of whether there are mandates or not, many employers are now arbitrarily setting vaccination policies pursuant to contract law and their Occupational Health and Safety obligations.

These employers argue that, under contract law and OHS laws, they are able to set vaccination requirements for their employees, contractors and visitors to their premises.

This area of law remains largely untested and there are a number of issues that Advocate Me do not agree with.

While contract law allows you to amend the initial terms of employment where necessary, we say that clauses which now include requiring vaccinations are in substance, void for illegality. We say

that the illegality is in part due to the fact that mandating vaccination, particularly in a public health emergency, is within the jurisdiction and purview of only the Commonwealth, State and Territory laws. We say that the overarching public policy settings regarding mandatory vaccinations are set under the respective emergency and public health laws.

This issue, however, needs to be properly challenged in the courts. At this stage, we are very critical of the decisions being established by the Fair Work Commission.

There are two decisions that are highly problematic for people:

The first decision by Fair Work Commission involved a former employee in a child care setting who was required to get the influenza vaccination, declined and was then terminated. The case was run by G&B Lawyers (Nathan Buckley). The legal team however failed to establish a good precedent because the legal team did not present the proper scientific arguments to dismiss the effectiveness of the influenza vaccine in reducing the risk of transmission from child care worker to child, in a child care setting. There is no scientific evidence to conclude that a teacher or a child care worker receiving a vaccine will not transmit influenza to a child who is either vaccinated or unvaccinated and/or will have reduced likelihood of reduced infection if they are exposed to a different strain.

There is also clear evidence that influenza vaccination does not reduce absenteeism, pursuant to the Cochrane Reviews. The legal team did not challenge the mandate of vaccination itself on grounds of contractual illegality. We think the decision should be appealed. The Deputy President making the decision however did state that the analysis is on a case-by-case basis and cannot be used as a conclusive precedent in other cases. He also concluded that the evidence of the medical exemption provided by the former employee was inadequate and hence concluded that the direction to vaccinate was lawful and reasonable. We still don't agree with the approach of the Deputy President and we think this is a dangerous precedent that must be challenged, irrespective of his warning that the analysis is on a case by case basis. We are looking for a lead applicant who would be willing to challenge their employer in court on this question; specifically, the effectiveness of the influenza vaccination in reducing the risk of infection and transmission and overall reduction in hospitalisations and absenteeism.

We enclose the case here:

<https://www.fwc.gov.au/documents/decisionssigned/html/pdf/2021fwc2156.pdf>

The second case at the Fair Work Commission is the case of an employee working in an in-home care service provider for the elderly at an employer that provided aged care, disability services and in-home care.

Even though the employer's vaccination policy was more onerous than the public health directions, it was found to be a lawful and reasonable direction to require client-facing employees to be vaccinated, without exception.

The employee's refusal to comply with that direction (on the basis of what was alleged as an unsubstantiated claim that she had an anaphylactic reaction to a flu vaccine as a child) was a valid reason for dismissal, notwithstanding a number of other harshness factors in the employee's favour (including length of service, prior exemplary record and the financial impact of the dismissal).

Although setting a higher bar than the public health directions, the mandatory vaccination policy was not unlawful.

In concluding that the policy was reasonable, Commissioner Hunt relied on the following factors:

- the vulnerable and aged clients of the former employer ought to expect that every precaution would be taken against the flu by employees entering their home;
- community-care employees could become super-spreaders of influenza, as they visit many clients' homes each day, and there is no formal infection control in the clients' homes (as compared to residential aged care facilities);
- the wearing of protective equipment alone is an insufficient safeguard to protect vulnerable community members;
- the former employer may face criticism or legal challenge if an unvaccinated worker caused a client to fall ill with the flu; and
- the former employer was entitled to implement its policy and rely on mandatory vaccination in any litigation and as an assurance to clients and their families as part of its commitment to safe and high-quality care.

Commissioner Hunt agreed that the reasonableness of the vaccination policy should be considered against the backdrop of the former employer's managerial prerogative. The former employer was entitled to implement the vaccination policy, as a step it considered necessary to safeguard its employees and clients.

The former employer relied on the expert opinion of a general practitioner who did NOT evince any scientific evidence for any of the conclusions ultimately made by Commissioner Hunt. All the conclusions made by Commissioner Hunt are based on scientific dogma rather than scientific fact.

There is no proof that:

- 1- Influenza vaccine reduces the risk of infection and/or risk of transmission;

- 2- That unvaccinated people with influenza are super-spreaders (it still remains that if you are sick and have symptoms, that is the only indicator of spreading a virus and the right thing to do is to stay home and recover, furthermore, the same risk applies if you are vaccinated and are sick, you would also need to stay home);
- 3- That wearing PPE is insufficient protection;
- 4- Reputational damage to be caused by an unvaccinated person causing someone to be sick with flu (this is a complete dogma and has not been proven scientifically or anecdotally); and
- 5- There is no litigation risk for healthy people looking after the elderly.

This decision is nothing short of appalling in our opinion.

See the link to the case here:

<https://www.fwc.gov.au/documents/decisionsigned/html/pdf/2021fwc2989.pdf>

Again, we heavily criticise the lawyers representing the former employee. They made no submissions in relation to the science and did not present their own appropriate expertise. The decision needs to be challenged and we are aiming to do so through an appropriate lead applicant.

Vaccinations are intended to work to increase an individual's immunity to a disease, which is intended to reduce the rate of infection with the virus. For SARS-CoV-2 and the resultant vaccination, trials did not show that that risk of infection would be conclusively reduced by taking the vaccines. Given the various strains involved as well with highly mutating viruses such as influenza and coronaviruses, it is even more difficult to measure risk reduction rates. Furthermore, if someone can still be infected even after vaccination is there any real benefit to being vaccinated if we can't show that there is less likely chance that as a result of an infection you will be less likely to transmit the virus to someone one. The idea is that through vaccination your viral load in the body (meaning the extent to which you are contaminated with the virus without it being serious enough to cause serious symptoms) is lowered, such that your ability to infect others is reduced. Again, these notions are highly theoretical and are difficult to measure. Some studies have come out singing the praises of these vaccines that they reduce asymptomatic infection. However, we are very dubious about these studies given the fact that most people who are unvaccinated have mostly shown mild symptoms with COVID-19 and others have been shown to be asymptomatic and already have natural immunity. We can't see how you can effectively measure any reductions since many unvaccinated people who have been contaminated have not shown any symptoms and/or mild symptoms. Also, the purported narrative around asymptomatic infections is extremely weak and is not supported by high rates.

For both influenza vaccines and COVID-19 vaccines there is no conclusive evidence that supports significant rates in reducing infection and the consequent reduction in transmissibility to others.

There is no justification for vaccination for mucosal type viruses that continuously mutate and in many instances are likely to be dealt with effectively in the body through natural acquired immunity given that most people resolve symptoms quickly, display symptoms mildly and/or are completely asymptomatic.

In relation to COVID-19 vaccinations, we have also prepared COVID-19 declination letters and a research paper to support the declination letter showing all the issues with the COVID-19 vaccination. We suggest that you provide that to your employer if you are pushed to be vaccinated. These are provided on our website www.advocateme.com.au. It is important to note that there are serious risks with these vaccines which we believe are in fact bioweapons. We have researched this issue extensively and it is evident that the spike protein used in the manufacture of these vaccines may be man-made and originated in a laboratory with gain of function specifications. This is likely to lead to a number of reactions which we are now observing through clotting and other serious adverse reactions including death and in the long-term, lead to auto-immune reactions and other related risks. We have detailed all these risks in the COVID-19 declination letter and accompanying research paper. We recommend that you provide a COVID-19 declination letter and the accompanying research paper to your employer if you are threatened with termination.

We also note the difficulties here in relation to obtaining a medical exemption, specifically the illogical narrowing of the exemption categories as per the following link:

<https://www.servicesaustralia.gov.au/individuals/topics/immunisation-medical-exemptions/40531>

We are of the strong view that Governments do not have the right to control the relationship between medical practitioner and patient or seek to bias that relationship. Unfortunately, either many medical practitioners are afraid to provide their honest opinion to patients and/or employers are rejecting the medical exemptions provided, because they are not in the right form and do not conform with the restrictive requirements set by Federal Government regulators.

The mandatory influenza vaccination direction for employees and visitors in residential aged care facilities has been removed in Victoria and Queensland. It has only been removed for visitors, not employees in New South Wales. Effectively, residential aged care facilities are setting their own policies ahead of Government mandates on these issues based on contractual and OH&S considerations.

However, for the visitors to the residential aged care facilities there are no requirements under the law to compel a vaccination. So, if there are no mandates, then it is very difficult for aged care service providers to compel visitors to get vaccinated to access loved ones.

We suggest using the letter V1 in circumstances where you are a visitor being denied access to a loved one being demanded to show proof of influenza vaccination when there is no mandate that applies to compel you to take the influenza vaccination.

Letter V1

Mandatory Flu Vaccinations - In states where it is no longer mandatory- For Visitors

Dear.....,

I refer to your request to me that I am required to have the influenza vaccine to access my family member. Please clearly provide to me in writing, the legislative direction that compels me to be subjected to the influenza vaccine.

I draw your attention to [Care Facilities Directions (No 8) dated July 22, 2020 in Victoria and the current directions or the current Aged Care Directions in Queensland or the current Public Health COVID-19 Aged Care Facilities Directions in NSW], where **the prior mandate of the influenza vaccine has been removed.**

Workplaces are acting beyond their authorisation if they are setting policies that go beyond the directions. While I recognise it may be recommended, I do have the right to refuse being vaccinated and do not need to provide any reason for same.

I also note here that you as an aged care facility provider are not an "Authorised Entity" under the relevant Public Health Act to either direct me personally to obtain the influenza vaccination, or demand that I get the influenza vaccination in the absence of a medical assessment. Additionally, immediate family medical background checks may need to be done to identify any potentially dangerous pre-existing conditions which are known to cause adverse effects, such as Guillain-Barre Syndrome or auto-immune conditions, or any other unknown allergies/risks, as well as showing the reason why I need to be vaccinated.

However, to assist you in allowing me to have access to my family member, I am happy to provide you a medical certificate confirming my health status that I do not currently display any flu-like symptoms or COVID-19 symptoms.

I note here that the influenza vaccination has not been shown to reduce the risk of hospitalisation and does not protect fully from getting influenza and/or preventing transmission. The only appropriate

assessment for that purpose is to ensure that I am not currently sick. This is what will protect your residents and other employees. To that end, I am happy to provide that proof.

I have the basic human right to refuse to be vaccinated and urge that you refrain from using coercive or punitive tactics when there is clearly no law supporting your policy.

I thereby request immediate access to my loved one in your aged care facility and look forward to your prompt response by email.

End of Letter V1

Letter V2

Mandatory Flu and COVID-19 Vaccinations - In states where it continues to be mandatory by Government

In states and territories where there is a continuing mandate for the influenza vaccination, including WA, SA, NT, ACT, TAS & employees in NSW, it may be more difficult to achieve an outcome with the residential aged care provider. We also note that Queensland has mandated the COVID-19 vaccines in the hospital sector and NSW has mandated the COVID-19 vaccines in the airport transport sector. Under these circumstances we suggest the following:

Dear.....,

I refer to your demand that I am required to have the influenza/COVID-19 vaccine and that you have referred me to the applicable Government mandate that has required you to make that request of me.

I note that I am part of a National Class Action organised through Advocate Me in Victoria, an advocacy service that is currently challenging the compulsory flu vaccination/COVID-19 mandates, on a number of grounds that they are contradictory to the *Biosecurity Act 2015*, not authorised by the Public Health and Emergency legislation and goes against the requirements of informed consent.

A vaccination mandate, including a testing or masking mandate, has to be targeted to an individual that presents signs and symptoms of the listed human disease and it must be as a result of a medical examination that would assess me as being a risk and would compel me personally via a biosecurity control order to be vaccinated. As part of this process, I would automatically be entitled to various rights including review rights and the right to a proper risk assessment.

In order for a Government or business to mandate masks (Section 88), PCR tests (Section 90) or vaccinations (Section 92), they need to impose on you a '**human biosecurity control order (HBCO)**' (Section 60).

A Human Biosecurity Control Order (HBCO) is also required to enforce restrictive behaviours and isolation measures.

For your reference, I reproduce the provisions here: **Biosecurity Act 2015 -**

<https://www.legislation.gov.au/Details/C2020C00127>

Biosecurity Act 2015 (Section 60 – Human Biosecurity Control Order) -

Subsection (2) - A *human biosecurity control order* may be imposed on an individual only if the officer is satisfied that:

- a. The individual has one or more signs or symptoms of a listed human disease; or
- b. The individual has been exposed to:
 - i. a listed human disease; or
 - ii. another individual who has one or more signs or symptoms of a listed human disease; or
- c. the individual has failed to comply with an entry requirement in subsection 44(6) in relation to a listed human disease.

RELEVANT SECTIONS

BIOSECURITY ACT 2015 SECTION 88 – MASKS

An individual may be required by a ***Human Biosecurity Control Order*** to wear either or both specified clothing and equipment that is designed to prevent a disease from emerging, establishing itself or spreading.

BIOSECURITY ACT 2015 SECTION 90 - PCR TESTS

Undergoing an examination

An individual may be required by a ***Human Biosecurity Control Order*** to undergo, at a specified medical facility, a specified kind of examination relating to determining the presence in the individual of:

- a. the listed human disease specified in the order; and
- b. any other listed human disease.

BIOSECURITY ACT 2015 SECTION 92 - RECEIVING VACCINATIONS

An individual may be required by a ***Human Biosecurity Control Order*** to receive, at a specified medical facility:

- a. a specified vaccination; or
- b. a specified form of treatment;
- c. in order to manage the listed human disease specified in the order, and any other listed human disease.

It is therefore evident that in the absence of being personally directed, I have the right to refuse the influenza/COVID-19 vaccination and you do not have the right to deny me access to my loved one/employment.

However, to assist you in allowing me to have access to my family member/employment, I am happy to provide you a medical certificate confirming my health status that I do not currently present with either flu-like symptoms or COVID-19 symptoms.

I note here that the influenza vaccination has not been shown to reduce the risk of hospitalisation and does not protect fully from getting influenza and/or preventing transmission and/or I note here that I have enclosed a COVID-19 declination letter that details all the safety and efficacy risks involved with taking the vaccination as well as a further research paper that details all the risks with COVID-19 vaccinations. The only appropriate assessment for that purpose is to ensure that I am not currently sick. This is what will protect your residents and other employees. To that end, I am happy to provide proof of that.

I have the basic human right to refuse to be vaccinated and urge that you refrain from using coercive or punitive tactics, when there is clearly no law supporting your policy.

I thereby request immediate access to my loved one in your aged care facility/return to employment and look forward to your prompt response by email.

End of Letter V2

Letter V3

Mandatory COVID-19 – Where States/Territories/Employers/Businesses make it mandatory despite Federal Government making it voluntary

The Federal Government have clearly announced that COVID-19 vaccines will be voluntary and there will be no impacts to the family tax benefit and other benefits. Where this has occurred, it is not permissible for either States and/or Territories and Businesses/Employers/Service Providers to enforce the COVID-19 vaccines.

Despite the Federal Government doing this, they have now made a decision to ask for the residential aged care sector to mandate the COVID-19 vaccinations, in contravention of the promise and undertaking they made to keep it voluntary.

Unfortunately, many businesses and employers are threatening their staff with COVID-19 vaccinations, irrespective of Government mandates.

We have put together the following template to assist in articulating the issues:

Vaccine Declination Letter V3

Dear.....,

I refer to your request to me that I am required to have the COVID-19 vaccine. Please clearly provide to me in writing, the legislative direction that compels me to be subjected to the COVID-19 vaccination.

I bring to your attention the Federal Government announcement that the COVID-19 vaccination will be voluntary.

<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/getting-vaccinated-for-covid-19>

We note here that the Federal Government has contradicted itself and has now recommended the mandating of COVID-19 vaccinations in residential aged care facilities.

However, we note the Federal Government's promise below:

“COVID-19 vaccines will be voluntary

Australians have a great record in being immunised. The COVID-19 vaccine will be voluntary, universal and free. If a safe and effective vaccine becomes available for COVID-19, the Government aims to have as many Australians as possible choose to be vaccinated for COVID-19. If people choose not to have a COVID-19 vaccine, this will not affect their family's eligibility for Family Tax Benefit Part A or childcare fee assistance which only includes National Immunisation Program vaccines for those aged under 20 years.”

Workplaces are acting beyond their authorisation if they are setting workplace policies that go beyond the law and Federal Government mandates. While I recognise it may be recommended, I do have the right to refuse being vaccinated.

We also note that the case law in this area relates to influenza vaccination and I don't agree that there is justification to compel the COVID-19 vaccination. Those cases determined that the rationale for compelling vaccines must turn on a case by case analysis. Those cases cannot be used as precedents to compel me to get vaccinated.

I note here that I have enclosed a COVID-19 declination letter that details all the safety and efficacy risks involved with taking the vaccination as well as a further research paper that details all the risks with COVID-19 vaccinations.

I also note here that you are not an “Authorised Entity” under the relevant Public Health Act to either direct me personally to obtain the COVID-19 vaccination, or demand that I get the COVID-19 vaccination in the absence of a medical assessment. Additionally, immediate family medical background checks may need to be done to identify any potentially dangerous pre-existing conditions which are known to cause adverse effects, or even death from vaccinations, such as GBS, or any other unknown allergies/risks, as well as showing the reason why I need to be vaccinated.

However, to assist you in allowing me to have access to my family member/employment/service, I am happy to provide you a medical certificate confirming my health status that I do not currently display any flu-like symptoms or COVID-19 symptoms. The only appropriate assessment for that purpose is to ensure that I am not currently sick. This is what will protect your residents and other employees. To that end, I am happy to provide that proof.

I note here that the COVID-19 vaccinations have not been shown to provide any long-term protection nor reduce the risk of transmission. Many key government advisory groups have advised against making it mandatory.

In summary I say; employers and businesses need to understand that they do not have authority to require their employees and customers to be inoculated with the COVID-19 vaccine as a pre-condition for employment, or for obtaining services. Why not? Because matters of quarantine, and management of public health risks are a function of governmental powers.

Whilst employers and businesses may report perceived or potential public health risks to government agencies as part of their occupational health and safety obligation, they are neither qualified medical practitioners nor authorised officers, under the law, to make assessments or demands for quarantine, testing, masking, and/or vaccinating, for the purpose of mitigating serious risks to public health, other than those assessments or demands set by government laws and directions.

Finally, the Australian Government has indemnified vaccine companies against liability arising from injury or death associated with the rollout of the vaccines. This [indemnity](#) (see *Heath: Advanced Purchasing Agreements (APAs) for COVID-19 vaccine candidates*) stretches to cover advisors to the government, but DOES NOT cover employers or businesses, states and/or territories. It is also very unlikely that any damage to an employee or customer as a result of coercive measures to vaccinate, will be covered by the employer's or business's insurer, leaving them open to personal liability.

I have the basic human right to refuse to be vaccinated and urge that you refrain from using coercive or punitive tactics when there is clearly no law supporting your policy.

I thereby request immediate access to my loved one in your aged care facility/return to employment/resumption of service and look forward to your prompt response by email.

End of Letter V3