

Human Rights Assessment

DRDMW COVID-19 Controls including Vaccination Requirements Direction – mandatory vaccination of all staff

A chief executive is required to consider the potential impacts on an employee's human rights when deciding and issuing a direction requiring vaccination against COVID-19.

A decision and/or action is *compatible with human rights* if it:

- does not limit a human right, or
- limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

This document sets out the consideration of the impact (limitations) on human rights of a decision to require vaccination and to implement other controls to manage / mitigate the risk of COVID-19.

For the reasons that follow, it is considered the such a decision (as reflected in the department's (*draft*) COVID-19 Vaccination Policy and Procedure and Vaccination requirements for a is *compatible with human rights*.

Human rights that are affected

- | | |
|--|---|
| <input checked="" type="checkbox"/> Right to equality and non-discrimination (section 15) | <input type="checkbox"/> Cultural rights – generally (section 27) |
| <input checked="" type="checkbox"/> Right to life (section 16) | <input type="checkbox"/> Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) |
| <input checked="" type="checkbox"/> Protection from torture and cruel, inhuman or degrading treatment (section 17) | <input type="checkbox"/> Right to liberty and security of person (section 29) |
| <input type="checkbox"/> Freedom from forced work (section 18) | <input type="checkbox"/> Right to humane treatment when deprived of liberty (section 30) |
| <input checked="" type="checkbox"/> Freedom of movement (section 19) | <input type="checkbox"/> Fair hearing (section 31) |
| <input checked="" type="checkbox"/> Freedom of thought, conscience, religion and belief (section 20) | <input type="checkbox"/> Rights in criminal proceedings (Section 32) |
| <input type="checkbox"/> Freedom of expression (section 21) | <input type="checkbox"/> Children in the criminal process (section 33) |

- | | |
|--|--|
| <input type="checkbox"/> Peaceful assembly and freedom of association (section 22) | <input type="checkbox"/> Right not to be tried or punished more than once (section 34) |
| <input checked="" type="checkbox"/> Taking part in public life (section 23) | <input type="checkbox"/> Retrospective criminal laws (section 35) |
| <input checked="" type="checkbox"/> Property rights (section 24) | <input type="checkbox"/> Right to education (section 36) |
| <input checked="" type="checkbox"/> Privacy and reputation (section 25) | <input type="checkbox"/> Right to health services (section 37) |
| <input type="checkbox"/> Protection of families and children (section 26) | |

Section 15

Implementation of COVID-19 controls, including a vaccination mandate and the potential consequences that flow may be considered to impact on the right to equal enjoyment of human rights and the right to equal and effective protection from discrimination (e.g. on the basis of religious belief and/or impairment) as it may result in differential treatment.

Section 16

A vaccination mandate, theoretically, may impact on a person's right to life due to the potential for adverse side effect from vaccination, however the risk of such a severe reaction is extremely low.

Section 17

A vaccination mandate and the potential consequences that flow may be considered to impact on the right to full, free and informed consent for medical treatment if perceived that such a mandate effectively limits choice because of a potential for termination of employment.

Section 19

A direction to work remotely or a direction barring staff from a workplace may be perceived as impacting a person's right to freedom of movement.

Section 20

Implementation of COVID-19 controls and particularly a vaccination mandate may be considered to impact on the right to freedom of thought, conscience, religion and belief if perceived that such a mandate effectively requires an action inconsistent with such beliefs.

Section 23

A vaccination mandate and the potential consequences that flow may be considered to impact on the right to access to the public service as non-compliance with a mandate has a potential for termination of employment and/or may limit the way in which stakeholders engage with the department.

Section 24

A vaccination mandate and the potential consequences that flow may be considered to impact on property rights (i.e. income) as non-compliance with a mandate has a potential for termination of employment.

Section 25

A vaccination mandate and the consequent collection of personal medical information raises privacy issues.

Are the limits imposed under law?

The authority for the proposed direction flows from:

- Sections 11 and 98 of the *Public Service Act 2008*, which set out the responsibilities of chief executives in relation to employees and operations of their department
- Common law – the ability of a chief executive to make lawful and reasonable directions.

What is the nature of the rights that would be limited?

The implementation of COVID-19 controls and particularly a vaccination requirement has the potential to impact a number of human rights (as outlined above) that, in effect, deal with the rights of persons to make decisions about their lives, bodies and movements.

What is the purpose of limiting the human rights?

The purposes of COVID-19 controls are to:

- protect the health and safety of individuals (staff and stakeholders) and the community at large, particularly members of the community who may have heightened vulnerabilities
- best enable the public health system to effectively respond to the evolution of COVID-19 by reducing the likelihood of transmission and by reducing the likelihood of severe illness (particularly illness requiring hospitalisation and/or intensive care)
- support rights and freedoms of the community to participate in life and community by reducing the requirement for more restrictive measures (e.g. lockdowns)
- support economic recovery by supporting business and reducing the requirement for more restrictive measures (e.g. lockdowns) or significant interruption to operations due to illness amongst the workforce
- support the continued provision of government services by reducing the likelihood that staff are unavailable or unable to work due to COVID-19
- reduce exposure to legal and reputational risk by demonstrating all reasonable steps have been taken to prevent the transmission of COVID-19.

Do the limits help achieve the purpose?

Evidence demonstrates that the implementation of controls (overall) reduces the likelihood of transmission of COVID-19.

Medical evidence on vaccinations demonstrates that they both reduce the likelihood of transmission of COVID-19 and significantly reduce the likelihood of severe illness requiring hospitalisation and/or intensive care. Vaccinations help protect the health of staff and visitors/clients.

Controls decrease the likelihood of transmission and severe illness thereby reducing the likelihood of more restrictive measures, adverse impacts on service delivery and significant adverse health impacts.

Is / are there reasonable alternatives that would be less restrictive on human rights, but which would achieve the same purpose?

While a number of controls are available, they are not of equal efficacy. Other than in environments where there are no face-to-face interactions, vaccination (in conjunction with other measures) is the most effective measure to achieve the purpose and is considered proportionate to the level of risk (as reflected in the risk assessment).

Does the decision strike a fair balance between the limitation on human rights and the purpose of the direction / requirements?

It is acknowledged that a decision to limit personal autonomy is significant however, the global evidence of the impact of COVID-19 (including health and wellbeing, economic, social) supports a view that the limitation of the rights of an individual is reasonable to support the rights of the broader community.

The potential consequence of non-compliance with any vaccination mandate is also considered reasonable. There is well established precedent of the rights of employers to make lawful and reasonable directions, and for non-compliance with such directions to be dealt with through disciplinary action including potential termination of employment. This is particularly so, where an employee knows the potential consequences and chooses to not comply.

Further, as a public entity, there is a reasonable public expectation that:

- the department will uphold the laws and policies of government
- public funds are used for appropriate purposes, and continued engagement of persons who elect not to comply with requirements of their role, is unlikely to be seen as an appropriate purpose.

The inclusion of provision for exemption from compliance, and management of persons with genuine exemptions, through other channels, further supports an assessment of an appropriate and reasonable balance.

DRAFT