

# MANDATORY VACCINATION – ADVICE FOR CONSTRUCTION SITE OPERATORS



The Victorian Chief Health Officer has introduced Mandatory Vaccination Directions to limit the spread of COVID-19 in the construction sector. The directions apply to construction sites within the State of Victoria and are made under the Public Health and Wellbeing Act 2008. They are legally enforceable.

## **Mandatory vaccination requirement**

On and from 24 September 2021, an operator of a construction site must inform workers who perform, or intend to perform work at a construction site that the operator will be requesting the workers provide information and evidence that:

- a. They have received a full COVID-19 vaccination (two doses)
- b. They have received one dose of a COVID-19 vaccination
- c. They have not received any doses of a COVID-19 vaccine and have made a booking to receive a dose of a COVID-19 vaccine by 2 October 2021
- d. They have not received any doses of a COVID-19 vaccine and have not made a booking to receive a dose of a COVID-19 vaccine by 2 October 2021
- e. They cannot receive a COVID-19 vaccine for the permitted reason being:
  - i. an exemption applies to them; and
  - ii. they have provided the operator of the work premises with evidence from a medical practitioner certifying that an exemption applies to them.

An operator of a construction site must collect, record and hold information about each of the matters listed above and sight evidence of the matters in clauses (a), (b), (c) and (e) above.

Site operators must implement a process for complying with their obligations.

## **Mandatory vaccination requirement – Operation of a work premises**

On and from 24 September 2021, the operator of a construction site must take all reasonable steps to ensure that workers do not enter or remain on the premises, for the purposes of performing work, if they have not provided evidence that the worker has received any doses of the COVID-19 vaccine, has made a booking to receive a dose of a COVID-19 vaccine by 2 October 2021, or has a medical exemption.

## Mandatory vaccination requirement – Operator records

An operator must keep the necessary records to demonstrate compliance with the Mandatory Vaccination Directions. There are two ways a site operator may confirm the vaccination status of all workers attending a site.

1. Requesting the information individually from each worker and making a record confirming the evidence sighted; or
2. Receiving a declaration from the employer of each worker who will enter the site, and recording that declaration including the same information collected about individual workers.

Even if a site operator elects to use the second method, they are responsible for ensuring all records are correct if they are required to be audited. They must also still confirm the vaccination status of workers from other employers. A site operator can still request information from individuals after receiving a declaration from their employer if they wish to.

If using the first method, a site operator must make a record confirming their compliance with the mandatory vaccination requirement. A record may include a worker's name, vaccination status, details of the individual who checked evidence of compliance, the date the evidence was recorded, and/or the nature of the evidence.

The same record requirements would apply to an employer under the second method. The employer must sight the evidence of vaccination status and make a record. The declaration provided to the site operator must include the names of employees who will attend the site and information of their vaccination status, but does not require a copy of the evidence.

On request from an Authorised Officer, operators and employers who have made a declaration must provide access to records demonstrating their compliance. Severe penalties will apply for employers who make a false declaration to a site operator, including fines and shutdowns.

### Privacy

Site operators and employers who have made a declaration must keep this information private, other than to comply with the Mandatory Vaccination Directions.

A site operator and employers who have made a declaration are not required under the Mandatory Vaccination Directions to keep a copy of the evidence provided by a worker.

Any records made of an individual's vaccination status constitute personal information and must be kept strictly confidential. Both Federal (Privacy Act 1988) and State (Privacy and Data Protection Act 2014, Health Records Act 2001) legislation and penalties apply to unauthorised disclosure of this information.

### Emergency and safety exceptions

Site operators are not required to comply with these directions for workers who are required to:

- a. Attend the site to respond to an emergency; or
- b. Perform urgent and essential work at the site to protect health and safety of workers or the public, or to protect assets and infrastructure.

In these circumstances the operator must ensure the worker is only on site for the minimum period necessary.

### Penalties

Section 210 of the Public Health and Wellbeing Act 2008 (Vic) (PHW Act) provides penalties for a person who has provided false or misleading information.

Section 203 of the PHW Act provides for infringement notices to be served on any person who has refused or failed to comply with a direction.