



FACT SHEET:

Vaccination and your rights

This information is a general overview of your rights in relation to vaccination requirements which may be imposed in response to the COVID-19 pandemic. It is not legal advice and does not provide information about current restrictions – this can be found on the Queensland's Government's COVID-19 website.

A list of websites referred to in this information, or where additional details can be found, is located at the end of this document.

From 17 December, a public health direction will require people working at or visiting particular places to show proof of double vaccination against COVID-19 in order to enter. This includes cafes, restaurants, pubs, libraries, sporting events, music or art festivals, and other settings. A full list of the venues affected and their specific entry requirements can be found in Schedule 1 of the public health direction on the Queensland Health website. There are also vaccination requirements relating to 'high-risk' places such as residential aged care, shared disability accommodation, places of detention, childcare, schools, and health facilities. There are also specific requirements for those visiting hospitals and entering Queensland from interstate and overseas.

As these are lawful public health directions, you will generally only be able to make a human rights or discrimination complaint to us about these requirements if you are unable to be vaccinated due to a disability, medical condition, or other health issue.

For any human rights complaint to be accepted, you will first have to make a complaint to the Chief Health Officer, who is responsible for these directions.

We are not accepting any complaints about businesses, workplaces, organisations or places complying with their obligations under a public health direction.

Can I make a complaint about vaccine requirements?

In limited circumstances it might be possible for you to make a complaint to us about vaccination requirements, depending on who is imposing the requirements, and the reason you are not able to comply.

I have a disability, medical condition or health issue

If you have a disability or a medical condition that means you can't be vaccinated, you may be able to make a complaint to us.

If you have an underlying health risk such as anaphylaxis, you may be able to have an exemption formally recorded. This means you would be treated as fully vaccinated for the purposes of vaccine requirements, when you show your exemption.

See information available from the Australian Government on recording an exemption.

If you are unable to have an exemption recorded – that is, a doctor or other medical professional has denied your exemption request – you may be able to make a discrimination complaint to us if you:

- Have already tried to seek an exemption and been denied this by a medical practitioner such as a GP or other doctor, and
- Have a diagnosed medical condition or disability, and
- Can provide medical or other evidence that shows you cannot be vaccinated as a result of this condition or disability.

If this fits your circumstances you can lodge an impairment discrimination complaint with us or call our enquiry line to discuss your situation.

I have a religious objection to the vaccine

It is unlikely you will be able to make a complaint of religious discrimination unless you can demonstrate that it is a genuine requirement of your religion that you not receive the vaccine.

I am opposed to the vaccine for another reason

If you are concerned about a requirement to be vaccinated, we encourage you to seek impartial health advice to make an informed decision and consider obtaining independent legal advice.

If you do not want to receive a vaccination because you are opposed to it, this is unlikely to be a sufficient basis to make a discrimination or human rights complaint.

Queensland's anti-discrimination laws are very specific about the grounds for discrimination which are protected, and there are none which cover the personal choice to not receive a vaccine.

While there are several human rights which may be limited or restricted by vaccine requirements, the human rights protected by Queensland law do not apply unconditionally. It is sometimes necessary to limit a person's rights in order to protect others. For example, the right to freedom of movement is protected under the law, but that right is limited when it comes to how your movement affects other people. Many of the government restrictions in response to COVID-19 have limited the human rights of individual people, but have also protected their right to life, which the government is required to do under the Human Rights Act.

I want to complain about my employer requiring me to be vaccinated

Via public health directions, the Queensland Government requires workers in some sectors or industries to be vaccinated for COVID-19. Some employers are also requiring their staff to be vaccinated. Whether or not you are able to make a complaint to us about this depends on whether there is also a public health direction about your area of employment.

See the public health directions and Fair Work Ombudsman's website for a list of who is subject to these requirements.

If your employer is following a public health direction which requires staff to be vaccinated, we cannot accept a complaint unless the reason you are unable to be vaccinated is due to a disability or medical condition. You should consider seeking an exemption – see 'I have a disability, medical condition or health issue' above for more information on complaints.

If there is no public health direction requiring vaccination for your industry, and your employer imposes mandatory vaccination and you are unable to be vaccinated due to a disability, medical condition or health issue, you may be able to make a complaint.

Service providers and employers should be cautious about imposing mandatory COVID-19 vaccination policies or conditions on staff without a public health direction that requires it.

The Anti-Discrimination Act does allow employers to impose 'genuine occupational requirements' for a position, and to do things which may appear to be discrimination if it's reasonably necessary to protect public health, or to protect the health and safety of people at a work place. Depending on your workplace, it may or may not be possible for your employer to find alternative options or duties for you if you are medically unable to be vaccinated. Organisations like the Fair Work Ombudsman have released general guidance about the types of factors that will be relevant in determining when it will be reasonable for an employer to take these measures.

Your employer will also have obligations under industrial law and to provide a safe working environment. See Safe Work Australia, the Fair Work Ombudsman and the Fair Work Commission for more information.

If you can't be vaccinated because of a disability, a medical condition, or other health issue and you think you have been treated unfairly at work because of it, contact our enquiry line to discuss your situation.

I want to complain about business or place denying me entry because I am unvaccinated

We are not accepting complaints about businesses and places who are complying with their obligations under the public health direction about vaccines and access to venues.

These directions are lawful and businesses are legally responsible for following them.

I want to complain about the Chief Health Officer and/ or the public health directions mandating vaccines

We are not accepting complaints about the government's or the Chief Health Officer's approach to COVID-19 generally.

If you have a complaint about a specific public health direction – for example, requiring proof of vaccination to access certain venues – you need to lodge this with the Chief Health Officer as a first step.

In some limited circumstance we may be able to accept a complaint about a direction – if, for example, you cannot comply with a particular direction because of a disability.

However, as with all human rights complaints, you will generally need to wait 45 days from the date you complain to the Chief Health Officer before you complain to us. This is a requirement under the Human Rights Act. More information about human rights complaints is available on our website.

I want to complain about not being able to get an exemption

Exemptions are a matter for clinical practice and we will not be accepting complaints about health practitioners on the basis that they refused to provide an exemption in following clinical guidelines.

If you consider you have a legitimate reason to be exempt from vaccine requirements, you need to seek a formal exemption from your GP or another health practitioner.

If you have been denied a formal exemption by your GP or another health practitioner, consider contacting the Australian Health Practitioner Regulation Agency (AHPRA).

Other employment issues

What about other restrictions put in place by an employer about non-vaccinated employees, such as requiring a person to take leave or not letting them work from home?

If these restrictions directly or indirectly discriminate against a person because of an attribute protected by Queensland discrimination law, such as disability, medical condition, or health issue, you may be able to make a complaint to us.

There are exemptions under discrimination law for doing things reasonably necessary to protect public health, or to protect the health and safety of people at a work place. An employer may also impose genuine occupational requirements for a position. The onus is on the employer or service provider to show that these exemptions apply.

If the restrictions are not linked to a protected attribute under the Anti-Discrimination Act, then this would not be unlawful discrimination.

General information about restrictions placed on employees is available from Safe Work Australia, the Fair Work Ombudsman and the Fair Work Commission.

Can I be asked by an employer for proof of vaccination or why I cannot be vaccinated?

In the context of the pandemic, with public health directions requiring vaccination for workers in a range of industries and sectors, and the overriding requirement to keep people safe, it is unlikely to be unlawful to ask this question.

Employers may also be subject to specific privacy obligations in collecting such information. Further information about obligations for certain employers under Queensland and Commonwealth law is available from the Office of the Information Commissioner Queensland and the Office of the Australian Information Commissioner.

Other vaccine issues

I want a different vaccine to the one on offer for me.

Decisions about vaccine availability and eligibility are made at a federal level by the Australian Technical Advisory Group on Immunisation (ATAGI), the Minister for Health, and other bodies.

Complaints and enquiries about vaccine eligibility or options should therefore be directed to the Australian Human Rights Commission.

Why isn't mandatory vaccination a breach of my human rights?

It is clear that governments requiring people to be vaccinated limits human rights. Human rights relevant to a person's choice whether to be vaccinated or not include the right to freedom of thought, conscience, religion or belief, the right not to be subjected to medical treatment without consent, the right to privacy and the right to equality.

However, it is legal to limit rights under Queensland's Human Rights Act, as long as the government demonstrates that those limitations are reasonable. This often means different rights must be weighed against each other.

The government may only limit rights as far as necessary to achieve an important purpose. This is likely to include the right to life of others in the community, which the government is required to do under the Human Rights Act. Some other things that might be considered include:

- the risks associated with COVID-19
- why other options like face masks and social distancing aren't sufficient
- the availability of vaccines, and
- if there are exceptions for those that are unable to be vaccinated.

What is the Commission doing about vaccine mandates?

We are concerned about human rights issues connected to the vaccine mandates.

We continue to advocate for improvements to the current way the Queensland government responds to the pandemic, including to hotel quarantine, communication about restrictions, and transparency and accountability in how they make these decisions.

We have been calling on the government for many months to justify its decisions by releasing detailed consideration of the limits on human rights and the evidence it has relied on to make these decisions. We've also sought more information on how long these restrictions will remain in place.

Under the Human Rights Act we are able to receive complaints and seek to resolve an individual person's concerns about how a government decision or action applies to them. In some circumstances we are able to publish reports about unresolved complaints, for example hotel quarantine, which recommend actions public entities should take to be compatible with human rights.

However, we do not have the power to direct the government to change its decisions or actions.

For more information

Queensland Government COVID website:

- <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19>

Queensland Health - public health directions:

- All current directions: <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions>
- Access to places based on vaccination status: <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/public-health-and-social-measures-linked-to-vaccination-status-direction> and <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/queensland-restrictions-update/public-health-and-social-measures-linked-to-vaccination-status>
- In aged care: <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/aged-care>
- In disability accommodation services: <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/disability-accommodation-services>
- For workers in high-risk settings: <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/vaccination-requirements-for-workers-in-high-risk-settings>
- For workers in healthcare: <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/requirements-for-workers-in-healthcare-settings>
- For hospital visitors: <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/hospital-visitors>
- For people coming to Queensland from interstate or overseas: <https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/queensland-restrictions-update/changes-to-queenslands-border-restrictions>

Queensland human rights and anti-discrimination law

- Our website information on the Human Rights Act and the Anti-Discrimination Act: <https://www.qhrc.qld.gov.au/your-rights/>

Other information

- Services Australia - getting an exemption: <https://www.servicesaustralia.gov.au/getting-proof-your-covid-19-vaccinations-if-you-cant-have-them-for-medical-reasons?context=60091>
- Fair Work Ombudsman - information on legislation and public health orders on vaccination for employees: <https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/covid-19-vaccinations-and-the-workplace/covid-19-vaccinations-legislation-and-public-health-orders#qld>
- Fair Work Ombudsman's general guidance for employee vaccination requirements: <https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/covid-19-vaccinations-and-the-workplace/covid-19-vaccinations-workplace-rights-and-obligations#can-an-employer-require-an-employee-to-be-vaccinated>
- Safe Work Australia - COVID and the workplace: <https://covid19.swa.gov.au/covid-19-information-workplaces>
- Fair Work Commission - COVID and the workplace: <https://www.fwc.gov.au/about-us/coronavirus-covid-19-information>
- Office of the Information Commissioner Queensland - collection of COVID vaccination status: <https://www.oic.qld.gov.au/about/news/collection-of-covid-19-vaccination-status>
- Office of the Australian Information Commissioner - COVID vaccinations and privacy obligations to staff: <https://www.oaic.gov.au/privacy/guidance-and-advice/coronavirus-covid-19-vaccinations-understanding-your-privacy-obligations-to-your-staff>