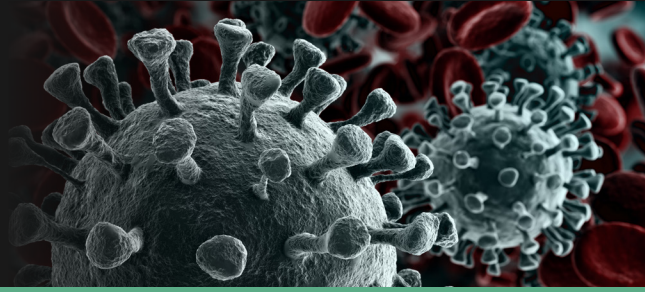




STAFF VACCINATION SUPPORT SERVICE



Information on basis of establishing mandatory COVID-19 vaccination and public health orders

Background - National Cabinet agreement

Aged care residents are the most vulnerable population to COVID-19 infection.

Following a recommendation from the Australian Health Protection Principal Committee (AHPPC) taking into account the transmissibility of the delta variant, on 28 June 2021 the National Cabinet agreed to mandate that all workers in residential aged care must have received at least the first dose of a COVID-19 vaccine by 17 September 2021. On 2 August 2021, AHPPC provided further advice in relation to the scope of the workforce to be covered, including a limited range of exemptions.

State and Territory legal requirements for vaccination of residential aged care workers

All states and territories have now implemented the National Cabinet agreement by making public health orders or similar legal instruments under existing state or territory public health and emergency management legislation (the state and territory instruments are listed here). These are the same state and territory laws under which many other aspects of the COVID-19 pandemic have been managed at a state and territory level, relying on the powers of states and territories in relation to public health and emergency management.

The state and territory instruments are each drafted somewhat differently, but in each case they prohibit a relevant worker from entering or being present at, or working at, a residential aged care facility if the worker has not met the prescribed requirement for COVID-19 vaccination by the specified date (in most cases 17 September 2021, or in some cases earlier). Under the relevant state or territory Acts, penalties (fine or imprisonment or both) may apply for individuals or organisations who fail to comply with these requirements.

It is important to note that the state and territory instruments do not mandate the administration of a COVID-19 vaccine to any person, including any aged care worker. They set out the requirements for relevant aged care workers to work in residential aged care facilities after 17 September 2021. Each instrument includes exemptions or exceptions for a limited range of circumstances such as genuine medical contraindications, in accordance with AHPPC recommendations.

Commonwealth requirements for record keeping and reporting

To support national implementation of the agreed National Cabinet position, the Commonwealth Minister for Health has made amendments to the Records Principles 2014, Accountability Principles 2014 and Information Principles 2014 under the *Aged Care Act 1997* (the amending instrument and explanatory statement, including a Statement of Compatibility with Human Rights, is [here](#)).

These amendments expand existing reporting requirements for approved aged care providers under the *Aged Care Act 1997* to keep records and provide reports to the Department of Health, of the number of aged care workers who have received COVID-19 vaccinations, and the number of aged care workers who have informed the approved provider that they are not subject to the requirement to be vaccinated because of a properly applicable exemption or exception under the relevant state or territory instruments referred to above. The amendments also enable the Department of Health to circulate this reported statistical information to relevant Commonwealth, state and territory agencies to assist in the performance of their functions, and to provide public reporting.

The record keeping and reporting obligations of aged care providers are subject to oversight and, where necessary, enforcement by the Aged Care Quality and Safety Commission (ACQSC) relying on its established powers and functions under the *Aged Care Act 1997* and the *Aged Care Quality and Safety Commission Act 2018*. The ACQSC also has a role in ensuring that approved aged care providers comply with the Aged Care Quality Standards, which includes requirements to minimise infection-related risks and to ensure each consumer gets safe and effective personal and clinical care. Determining whether an approved provider delivering residential care has complied with these standards would include consideration of the provider's management of the vaccination status of their workforce.

Implications for unvaccinated residential aged care workers

The Fair Work Ombudsman has provided information for residential aged care providers and workers about how the state and territory requirements for COVID-19 vaccinations may relate to workplace rights and obligations, including national anti-discrimination laws, on its website [here](#).