



**Public Service Association of NSW**

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In reply please quote: GC:v

8 October 2021

Mr Stephen Doran  
Director Employee Relations  
People |Corporate Services  
Department of Communities and Justice

Email [stephen.doran@facns.gov.au](mailto:stephen.doran@facns.gov.au)

*Stephen*

Dear ~~Mr Doran,~~

The PSA writes in regards to the Draft DCJ Vaccination policy distributed for feedback on Friday 24<sup>th</sup> September, which we met to discuss on Wednesday 6<sup>th</sup> October.

As discussed we have a number of concerns and suggestions in relation to the policy as outlined below. Our reply is given in the context of not yet having seen the draft guidelines and of course we reserve the right to make further submissions about that.

### **Section 5.2 – Medical Contraindication**

The PSA has a number of concerns surrounding this draft section

*Where a workplace adjustment is required and cannot be made, consideration may be given to whether the person can continue in employment. Any decision will be made in line with applicable DCJ policies and legislation.*

The last paragraph of 5.2 (above) is of concern. PSA members who have a medical contraindication to receiving a vaccine have no ability to comply with any mandatory vaccination policy. There should be no circumstance in which ending the employment relationship due to this medical inability approved by a registered medical practitioner is an appropriate outcome, and that all other options should be explored such as working from home, modification of duties, flexible work practices, change of roles at grade, transfer to another role at grade. The PSA believes these options should be articulated in the policy.

*Employees are to submit the medical contraindication form to their manager who will review and seek advice from People Business Partners.*

As is referenced further below (in Section 5.4 Record Keeping), Medical Contraindication forms contain health data, and as such there are requirements needed to ensure it is protected from unauthorized access use or disclosure. In line with existing evidence of illness conditions, there needs to be an option provided in the policy for employees to provide the Medical Contraindication Form to the Departments nominated officer rather than the line manager where employees wish to maintain privacy regarding their condition.

*Where there is contention about the medical evidence, advice may be sought from the government medical assessment provider.*

If a PSA member has received a medical contra-indication certificate from a registered medical practitioner, using a form approved by the Chief Health Officer, there should be little to no contention around the evidence provided. In the rare circumstances that there may be contention, the policy should articulate the steps to be taken before any potential assessment from the government medical assessment provider, such as the employer writing to the medical practitioner to seek further information. This should be specifically contained within the policy.

### **Section 5.3 Employees who do not comply**

The PSA understands that as per C2021-16 Guidance for Government Sector Agencies regarding COVID-19 Vaccinations for their Employees, any mandating of vaccination can only occur following a risk assessment to determine whether mandatory vaccination of employees is lawful and reasonable in the circumstances. This clearly identifies that the decision to implement such a policy is based on minimizing risk, and this should be at the forefront when decisions surrounding what happens to employees that don't comply are made. The PSA contends that if an employee does not comply with the direction to be vaccinated, however indicates that they are agreeable to going on a period of leave, therefore removing themselves from the active workforce and removing the risk, the Department has no basis for the termination of employment whilst that individual is still on their period of leave.

Whilst every individual situation will need to be judged on its individual merits, there are a number of reasons why an employee may not be able to comply with the current direction in place for high risk areas of DCJ to be vaccinated by October 25<sup>th</sup>, but are not opposed to complying with any direction in place before their return to the workplace. One major reason already raised by PSA members is the pending arrival of the Novavax vaccine. The Federal Government has indicated on information published on their website, that over 51 million doses of the Novavax vaccine will be available in late 2021. As recently as Monday 4<sup>th</sup> October, the Federal Health Minister Greg Hunt stated

*"So Novavax around the world, it's finishing off its clinical trials. Our guidance is that our first supplies are likely to be November but they haven't been confirmed and they haven't registered in any country or commenced distribution...But the latest guidance from my discussions on the weekend with the company were still November"*

Considering the pending arrival of a vaccine that a number of members have indicated they are agreeable to taking is due from November, the PSA believes that any effort to terminate employment for someone who is prepared to use their accumulated leave until such time as the Novavax is available would be premature and unfair.

Additionally, as the Department has invested in their employees in regards to training and skills, any premature severing of the employment relationship should be avoided. The PSA strongly recommends, to maintain the employment relationship with anyone in this position, and to aid industrial harmony, that there is consideration given to allow these employees to remain on leave until their leave exhausts if the employee so chooses.

The policy as it currently stands states:

*These employees will be required to remain on leave until they are contacted by DCJ with further instruction.*

There needs to be a clearer specification of the timeframes rather than staff waiting until they are contacted by the Department with further instructions. The timeframes must also allow for a proper consideration of the individual circumstances, as well as proper consideration of other options available to the Department such as possible redeployment or alternate duties.

Additionally, once the Department has notified an employee that Misconduct action may be taken, as with any other matter of alleged misconduct the Department should make an assessment of each individual case and its circumstances and then make a decision about an employee either continuing to work, work from another location, work from home or in the most serious of cases be suspended with pay pending the outcome of the allegations of misconduct.

This section of the policy must include advice that where an employee has subsequently been vaccinated or provides a Medical Contraindication Form, that they are able to return to work immediately.

In order to ensure that full transparency, consultation and consideration occurs for members who may find them directly affected by this section, the PSA seeks a commitment that we will be provided with accurate numbers on the amount of staff who do not comply with any direction to be vaccinated by a certain date broken down by their functional area.

#### **Section 5.4 - Record Keeping**

The PSA has major concerns with the storage of and access to health data such as vaccination status or medical contraindication forms. The following is from the Information and Privacy Commission of NSW regarding the collection of COVID-19 vaccination information for NSW Public Sector agencies. It states:

*Vaccine information must be managed in the same manner as any other health information collected by your agency. You should ensure that your agency's handling of this information is in compliance with the HPPs. You should ensure that health information is:*

- *stored securely, not kept any longer than necessary, and disposed of appropriately*
- *protected from unauthorised access, use or disclosure*
- *only used for the purpose for which it was collected or for a directly related purpose, which a person would expect, unless an exception applies or the individual consents, and*
- *only disclosed for the purpose for which it was collected, or for a directly related purpose that a person would expect, unless an exception applies or the individual consents.*

In particular the proposal to store medical contraindication information on the employees P file raises concerns that the Department would be unable to ensure that this information is protected from unauthorized access, use or disclosure, or that it is only used for the

purpose for which it was collected. The storage of this information on employees P files also raises concerns that such information *may* be used for improper reasons, such as determining a subsequent assignment or temporary assignment either across the Department or with another Government agency. The PSA requests that further consideration is given to the manner in which this information is stored. This includes stating in the policy how the privacy and security of the data collected will be maintained

and the policy should also identify who will have access to the information kept by the Department and how it will be used. This section should also include the evidence of vaccinations information, not just the Medical Contraindication Forms.

Additionally, the PSA seeks further information included in the policy clarifying that an employee is only required to submit their vaccination status once, and not upon every single entry to a workplace, as our members are reporting is occurring at the moment. This will avoid any unnecessary tension and frustration between staff, particularly at the entry to Youth Justice Centres and Correctional Centres.

Additionally the Department should include information about their updated privacy policy in relation to the collection of this data, including what the employers obligations are if a data breach occurs.

### **Other issues**

**Risk Assessments** - The PSA notes that whilst we have been provided draft copies of Risk Assessments that have been conducted in a number of different areas as required by C2021-16 Guidance for Government Sector Agencies regarding COVID-19 Vaccinations for their Employees, we have not been provided finalized copies of the full risk assessments. The PSA requests copies of all risk assessments conducted by DCJ to date.

**Employees already on leave** - In addition to the above and as discussed, the policy should also include the requirements for employees who are currently on parental, recreation or other forms of leave.

**Booster shots** - We also ask that consideration be given to including information about any further booster shots into the policy, as a number of employees may soon be approaching 6 months since their second shot.

**Review Period** – The PSA seeks further information as to when this policy will be reviewed, and seeks a commitment to continued consultation on this policy and the associated risk assessments. As medical advancements are occurring rapidly in relation to vaccinations and/or potential treatments, these advancements may have a result on the risk assessments conducted.

The PSA is happy to meet further to discuss any of the issues raised above and we look forward to receiving the draft guidelines for consultation. Please contact Industrial Managers Nathan Bradshaw and Dylan Smith for clarification on any matters raised.

Yours sincerely



Greg Corrigan  
for **STEWART LITTLE**  
**GENERAL SECRETARY**