

# ODPP COVID-19 Vaccination Policy

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# 1. Policy Statement

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The Office of the Director of Public Prosecutions NSW (**ODPP**) is committed to ensuring the health and safety of Staff, Third Party Providers and others at ODPP Workplaces, so far as is reasonably practicable.

This risk-based policy aims to assist in safeguarding the health of our Staff and Third Party Providers from the serious safety risks and potentially significant adverse health impacts associated with COVID-19.

Requiring Vaccination of our Staff and Third Party Providers is a high order control measure to manage the risk of COVID-19 in ODPP Workplaces and support community safety. The ODPP will ensure that additional controls, such as mask wearing, physical distancing and good hygiene continue to be implemented contemporaneously with this policy, so far as is reasonably practicable.

This policy has been developed using a risk management approach, having regard to the nature of the risks associated with COVID-19, community COVID-19 outbreaks, and scientific and government guidance.

## 2. Scope and Application

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In accordance with work health and safety obligations, the ODPP requires Staff and Third Party Providers to be Fully Vaccinated as a condition of entry to all ODPP Workplaces by the Vaccination Deadline, unless they fall within the exemptions as defined in this policy.

New Hires who are starting after the commencement of this policy will be required to be Fully Vaccinated as a condition of entry to ODPP Workplaces by the Vaccination Deadline or have an exemption granted by the ODPP prior to starting unless an alternative timeframe is agreed in advance.

Witnesses are not covered by this policy – however, they are required to comply with the requirements of the External Visitors Guidelines.

This policy relates specifically to the COVID-19 Vaccination and applies in addition to any other vaccination requirements which apply now or in the future. This policy takes effect from [date TBA] 2021 and will be in effect until advised otherwise by the ODPP.

NSW legislative requirements apply to the extent of any inconsistency with this policy – however, where this policy imposes more onerous restrictions on Staff or Third Party Providers, this policy will apply.

The Vaccination requirements set out in this policy may be revised from time to time, as required.

### 3. Definitions

Who	Key Responsibilities
<b>ATAGI</b>	<ul style="list-style-type: none"> <li>Means the Australian Technical Advisory Group on Immunisation.</li> </ul>
<b>ODPP Workplaces</b>	<ul style="list-style-type: none"> <li>Means any workplace where work is carried out for the ODPP and includes any place where Staff or Third Party Providers go, or are likely to go, while at work, including ODPP offices and NSW courts. An ODPP Workplace does not, for the purposes of this policy, include a Staff Member's home.</li> </ul>
<b>Fully Vaccinated</b>	<ul style="list-style-type: none"> <li>Means an individual that has received both doses of a COVID-19 vaccine approved by the Therapeutic Goods Administration for use in Australia, and 14 days has elapsed since their second dose, and they have received any subsequent boosters required by the ATAGI.</li> </ul>
<b>New Hires</b>	<ul style="list-style-type: none"> <li>Means any Staff or Third Party Providers employed or engaged by the ODPP on or after commencement of this policy.</li> </ul>
<b>Staff</b>	<ul style="list-style-type: none"> <li>Means any Staff, including Statutory Officers, Crown Prosecutors, non-salaried Crown Prosecutors, privately briefed Counsel, solicitors, legal support, Witness Assistance Officers, corporate, and administrative and contingent labour/agency temporary workers carrying out work for the ODPP, work experience students, and interns, with exception to Third Party Providers, and <b>Staff Member</b> means any one or more of them.</li> </ul>
<b>Third Party Providers</b>	<ul style="list-style-type: none"> <li>Means any suppliers, visitors, and contractors (including their employees and subcontractors) performing work at ODPP Workplaces.</li> </ul>
<b>Vaccination</b>	<ul style="list-style-type: none"> <li>Means a COVID-19 vaccination as recommended by the ATAGI.</li> </ul>
<b>Vaccination Deadline</b>	<ul style="list-style-type: none"> <li>Means all Staff and Third Party Providers must be Fully Vaccinated to attend ODPP Workplaces by 17 January 2022.</li> </ul>

## 4. Evidence of Current COVID-19 Vaccination Status

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Staff and Third Party Providers will be required to be Fully Vaccinated as a condition of entry to ODPP Workplaces by the **Vaccination Deadline**. Staff must submit evidence of their Vaccination status via the on-line Vaccination Register. Third Party Providers must display evidence of their Vaccination status prior to entry to ODPP Workplaces.

The preferred evidence of a Staff Member or a Third Party Provider's Vaccination status includes their vaccination certificate or other evidence from a vaccine provider. However, evidence of a Staff Member or Third Party Provider's Vaccination status may also include:

- an immunisation history statement, which can be accessed from Medicare online or the Express Plus Medicare mobile app; or
- a statement of their vaccination history, which they can request from the Australian Immunisation Register.

If a Staff Member is not willing or able to provide evidence of their Vaccination status by the Vaccination Deadline, the Staff Member must instead provide confirmation of an exemption granted by the ODPP or pending exemption application.

When submitting evidence of their Vaccination status, Staff will be required to consent to the collection, use, disclosure and storage of their Vaccination status.

# 5. Exemptions

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Staff may apply to the ODPP for an exemption from the requirements of this policy if they have a medical or religious reason that prevents them from receiving a Vaccination at all or by the **Vaccination Deadline**.

Exemption applications will be considered by the ODPP on a case-by-case basis.

## 5.1. How does a Staff Member seek an exemption?

- a) Staff must complete an Exemption Application Form (see **Schedule 1**) and submit it to their manager on or before the **Vaccination Deadline**.
- b) Staff who are claiming an exemption on medical or religious grounds must provide documentary evidence to support their basis for exemption (i.e. a [COVID- 19 Vaccine Contraindication form](#) if a Staff Member is claiming to be medically exempt). Additional information may be required if the initial supporting documentation is not considered sufficient.
- c) Staff will be notified of the outcome of their exemption application in writing, and a record of that will be kept on the Staff Member's personnel file (or equivalent).
- d) The ODPP understands that reasons and circumstances for requesting an exemption will differ for each respective Staff Member. A Staff Member may appeal a decision in writing to the Director of Public Prosecutions, Solicitor for Public Prosecutions, the Senior Crown Prosecutor or the relevant Director, Corporate Services within 3 business days of being notified of the decision, setting out reasons why the exemption application should be approved.
- e) A Staff Member who is not granted an exemption is required to receive their Vaccination and provide evidence of this in accordance with section 4, or to complete a Non-Participation Declaration (see **Schedule 2**).

If a registered medical practitioner certifies that a Staff Member has a temporary medical contraindication, which makes them unable to receive the COVID-19 vaccination, any exemption based on this applies only for the period specified in the medical contraindication form provided by the medical practitioner.

The ODPP will consider whether suitable alternative controls, as set out below, can be put in place (either temporarily or permanently) for exempted Staff, in order to protect other Staff and Third Party Providers. This will be determined on a case-by-case basis, and discussed with the Staff. Where a workplace adjustment is required and cannot be made, consideration may be given to whether the Staff Member can continue in employment.

## 6. Assistance in Facilitating Vaccination

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The Australian Government has confirmed that the COVID-19 vaccine will be provided free of charge to all Australian citizens, permanent residents and work visa holders. The ODPP will provide support to Staff by allowing them to attend local Vaccination clinics during work time, if required. Staff must discuss this with their manager in advance of the appointment.

## 7. Failure to Comply with Vaccination Request

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### 7.1. Staff

Failure to comply with the requirements in this policy may constitute a refusal to follow a lawful and reasonable direction by the ODPP and may impact a Staff Member's ability to perform the inherent requirements of their position. This may have consequences on the employment of the Staff Member, including potential termination of employment.

If a Staff Member is not Fully Vaccinated on or before the Vaccination Deadline, or as otherwise directed by the ODPP, they must complete a Non-Participation Declaration (see **Schedule 2**). The Non-Participation Declaration provides the Staff Member with an opportunity to explain in writing why they are not Fully Vaccinated.

Each case of refusal will be assessed based on the Staff Member's individual circumstances. The process for doing so will generally be as follows:

- a) The ODPP will consider the Staff Member's explanation and consider whether suitable alternative controls can be put in place to protect other Staff and Third Party Providers. Alternative controls could include, for example, a requirement that the refusing Staff Member wear additional personal protective equipment, undertake their duties from another location, be subject to additional testing or be redeployed into a different role, where reasonably practicable.
- b) Should there be no suitable alternative controls that can be put in place, the ODPP will consider whether the Staff Member's refusal to be Fully Vaccinated indicates that the Staff Member is unable to perform the inherent requirements of their position or otherwise constitutes a refusal to follow a lawful and reasonable direction. If that is the case, then refusal may result in termination or suspension of the Staff Member's employment or engagement.

Where a Staff Member chooses not to comply with a requirement to be vaccinated under this policy, alternative arrangements will be implemented and that Staff Member will be instructed to take leave immediately. Staff may access accrued recreation leave, extended leave, flex leave (if eligible), and leave

without pay, or a combination of these types of leave. Staff may not access sick leave or COVID Special Leave.

A Staff Member who is not immunised may also be subject to restrictions imposed by third parties, and such restrictions could impact the Staff Member's ability to participate in work activities. For example, the District Court of NSW and the Supreme Court of NSW encourage all practitioners to be fully vaccinated prior to attending a courtroom.

## **7.2. Third Party Providers**

Failure to comply with the requirements in this policy may constitute a refusal to follow a lawful and reasonable direction

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## 8. Objection to Work with Unvaccinated Staff

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The ODPP is committed to ensuring that ODPP Workplaces are safe for its Staff and Third Party Providers. We require the use of approved vaccines by our Staff and Third Party Providers. However, a safe and effective vaccine is only one part of keeping Staff and Third Party Providers safe and healthy.

The ODPP is continuing to implement other COVID-19 control measures which are known to reduce the spread of the virus in workplaces, so far as is reasonably practicable, including physical distancing, check in requirements, good hygiene and increased cleaning. These measures are designed to help protect workplaces from any immediate or imminent exposure to COVID-19, as far as reasonably practicable.

Staff are required to work with others as directed, including with those who may not be vaccinated. Staff are not permitted to cease or refuse to carry out work on the basis that another person at the workplace is not Fully Vaccinated. Nevertheless, we understand that some Staff may be concerned about working with others who are not Fully Vaccinated. Accordingly, we encourage Staff to discuss any concerns in this regard with their manager and those concerns will be considered on a case-by-case basis.

Whilst each case will depend on the Staff Member's individual circumstances, the process will generally be as follows:

- a) The ODPP will consider the Staff Member's explanation for objecting to work with another Staff Member who is not Fully Vaccinated, and consider whether suitable alternative controls can be put in place, taking into account the Staff Member's specific characteristics, the nature of the work areas, and the type of work performed. Alternative controls could include, for example, additional personal protective equipment, opportunities to undertake duties from another location, being subject to additional testing or redeployment into a different role, where reasonably practicable.
- b) Should there be no suitable alternative controls that can be put in place, the ODPP will consider whether the Staff Member's objection to work with those who are not Fully Vaccinated indicates that the Staff Member is unable to perform the inherent requirements of their position or otherwise constitutes a refusal to follow a lawful and reasonable direction.

## 9. Boosters

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It is anticipated that booster Vaccinations will be required from time to time, on at least an annual basis. If this is the case, Staff will be directed as to the timeframe in which they are required to obtain the booster Vaccination in order to remain Fully Vaccinated.

The same arrangements that apply to initial Vaccinations as set out in this policy will apply in respect of boosters, including in respect of failure to comply with the requirement to obtain the booster Vaccination.

## 10. Confidentiality and Employee Privacy

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Information regarding a Staff Members' health, including their Vaccination status will be treated confidentially and handled in accordance with applicable laws.

Vaccination status information will be collected, used and disclosed by the ODPP for the purpose of implementing this policy and for workplace safety and public health purposes, including to protect Staff and Third Party Providers from infection and other COVID-19 health issues. Without this information, the ODPP will assume that a Staff Member or Third Party Provider is not Fully Vaccinated until shown otherwise.

Staff may request access to this information at any time and may request that any relevant updates are made to it. Staff should also keep a record of their Vaccination evidence and/or medical contraindication.

Any information received by the ODPP about a Staff Member's Vaccination status will otherwise be collected, used, disclosed and stored in line with the [ODPP Privacy Code of Practice](#), the Australian Privacy Principles, and any applicable Health Privacy Principles. The Privacy Code of Practice also contains further details regarding how the ODPP collects and handles personal information, and how to make complaints and exercise rights to access and correct personal information (where applicable).

The ODPP will de-identify a Staff Member's personal information for the purposes of aggregated reporting.

## 11. Respect in the Workplace

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The ODPP expects that Staff and Third Party Providers will deal with the topic of Vaccination in a respectful manner, including in their interactions with other Staff and Third Party Providers.

The terms of the ODPP's [Code of Conduct](#) and [Signature Behaviours](#) will apply in respect of any such conduct.

## 12. Related Legislation and Documents

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- [Director of Public Prosecutions Act 1986](#)
- Internal ODPP COVID-19 Policies
- [External Visitor Guidelines](#)
- [Government Sector Employment Act NSW 2013](#)
- [Government Sector Employment Regulation \(NSW\) 2014](#)
- [Government Sector Employment Rules \(NSW\) 2014](#)
- [Health Records and Information Privacy Act 2002](#)
- [Privacy Act 1988 \(Cth\)](#)
- NSW Public Health Orders
- [Work Health and Safety Act \(NSW\) 2011](#)
- [Work Health and Safety Regulation \(NSW\) 2017](#)

## 13. Changes to this Policy

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The ODPP will continue to monitor the latest developments in respect of COVID-19 and the Vaccination efforts and follow guidance from the Commonwealth Government and NSW Government. This policy may be updated to reflect any changes in that guidance.

## 14. Points of Contact

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Staff should direct any questions regarding this policy to their manager.

Document ownership, control and history

Version	Owned by	Approved by	Date
1.0	Director of Public Prosecutions	Director of Public Prosecutions	TBC

# Exemption Application Form

Schedule 1

Staff or New Hires who are required to be Fully Vaccinated in accordance with this policy, but who have a medical or religious reason that prevents them from receiving the COVID-19 Vaccination or from providing evidence of having had the COVID-19 Vaccination must complete this form to seek an exemption from that requirement.

NAME: \_\_\_\_\_

ROLE: \_\_\_\_\_

WORK LOCATION: \_\_\_\_\_

## DECLARATION

1. I have read and understood the *COVID-19 Vaccination Policy*.
2. I understand that I have been directed by the ODPP to have a COVID-19 vaccination and to be Fully Vaccinated to enter ODPP Workplaces.
3. I seek an exemption from that direction for the following reason:  
 Medical grounds, being \_\_\_\_\_  
 Religious grounds, being \_\_\_\_\_
4. I have attached documentary evidence confirming the medical or religious grounds upon which I seek an exemption.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

# Non-Participation Declaration

## Schedule 2

Staff who are required to be Fully Vaccinated in accordance with this policy, but who object to receiving the COVID-19 vaccination or to providing evidence of their COVID-19 vaccination status must complete this form so that alternative control measures can be considered.

NAME: \_\_\_\_\_

ROLE: \_\_\_\_\_

WORK LOCATION: \_\_\_\_\_

### DECLARATION

1. I have read and understood the *COVID-19 Vaccination Policy*.
2. I understand that I have been directed by my employer to have a COVID-19 vaccination and to provide evidence of having had the COVID-19 vaccination, and that my employer considers this to be a lawful and reasonable direction.
3. I object to receiving the COVID-19 vaccination or providing evidence of having had the COVID-19 vaccination for the following reason(s) (attach additional pages if required):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. I understand that by refusing to be vaccinated or to provide evidence of having had the COVID-19 vaccination, my Non-Participation Declaration may be considered and rejected by the ODPP, or I may be subject to alternative control measures, and if my Non-Participation Declaration is rejected or there are no suitable alternative control measures that can be put in place, my employment or engagement may be terminated.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_