

ENABLING A
WORLD CLASS
PUBLIC SERVICE

COVID-19 VACCINATION POLICY

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1. POLICY

1.1. Purpose

The Public Service Commission (PSC) is committed to providing a safe and healthy working environment for its employees. Under PSC's current Risk Appetite Statement, PSC has no appetite for exposing our staff to unmanaged safety risks, and no appetite for breaches of legislation and mandatory policies.

This policy outlines the processes to be followed in relation to COVID-19 Vaccination requirements for the PSC workforce in order to provide a COVID safe work environment for employees and customer stakeholders.

This policy is informed by [C2021-16](#) *Guidance for Government Sector Agencies regarding COVID-19 Vaccinations for their Employees* and any superseding circular.

1.2. Definitions

COVID-19 Risk Assessment is an internal process which the PSC used to assist with the identification of work, health & safety risks to the workforce where vaccination is a control measure against the transmission/spread of COVID-19 or serious illness/injury arising from COVID-19.

COVID-19 Vaccination is a vaccination to protect against COVID-19 which has been approved or recognised at the relevant time. As at the date of publication, several vaccines have been approved by the Australian Government as part of the national roll out; including Vaxzevria (AstraZeneca), Comirnaty (Pfizer) and Spikevax (Moderna) and Janssen COVID-19 vaccine (Janssen-Cilag Pty Ltd). Further vaccines are expected to be approved or recognised in the future.

Medical Contraindication is a medical exemption which certifies that an employee is unable to receive the COVID-19 vaccination because they have a recognised medical contraindication.

Commissioner Direction is a COVID-19 vaccination direction made in accordance with C2021-16 *Guidance for Government Sector Agencies regarding COVID-19 Vaccinations for their Employees* and any superseding circular following risk assessment.

COVID-19 Safety Panel is a review panel which will review all employee medical contraindication and exceptional circumstances related to the non-compliance of the COVID-19 policy. The review panel includes PSC Chief Risk Officer, Executive Sponsor of the PSC WHS Committee and Associate Director, People & Engagement. The review panel may consult General Counsel in relation to any application for exemption.

1.3. Scope

This policy applies to all PSC employees, including Senior Executives and future employees.

All contractors, consultants, volunteers and students attending PSC premises or functions (including trainees, interns, graduates and those on work experience as part of an approved work experience program) must also comply with this policy.

1.4. Policy Statement

For the safety of employees and the communities that we serve, the NSW Government expects all government sector employees who can be safely vaccinated to do so at the earliest opportunity.

The risks of COVID-19 have presented the need to have comprehensive vaccination requirements in place to:

- protect the communities we serve, noting that many are vulnerable
- protect employees and their families from potential sources of infection among the community we serve
- provide a safe environment for employees to work together
- ensure business continuity for PSC services

Vaccination not only reduces the risks described above, but it also reduces the chance of infection with COVID-19 by around 60-80% and decreases the number of people who will be considered as close or secondary contacts in the event of a positive case.

The Public Service Commissioner, as agency head exercising employer functions, has the power to give a direction to PSC employees to be vaccinated, including as a pre-employment requirement, and to require employees to provide proof of COVID-19 vaccination if the direction is:

- lawful;
- reasonable;
- within the scope or subject matter of the employee's employment; and
- following a risk-based assessment.

This Policy provides guidance as to the procedures to be followed in the event of a Direction to staff mandating vaccination against COVID-19.

1.5. Reasonable Directions

Where a risk assessment has been undertaken, and the Commissioner decides to issue a Direction to PSC employees to be vaccinated against COVID-19:

- The Direction and applicable processes will be communicated to all PSC staff and made available on the PSC Intranet.
- Vaccination should only be undertaken on the advice of an employee's health professional. Employees are encouraged to seek their own medical advice in relation to their suitability to receive COVID-19 vaccination having regard to their health circumstances.
- Employees will be required to display evidence of their vaccination status for sighting by People and Engagement and submit a COVID-19 Vaccination Declaration Form to People & Engagement (refer to section 1.7 Evidence of vaccination status) or to alternatively submit an application for exemption in accordance with this policy.
- People and Engagement will keep a PSC Vaccination Register and vaccination-related information in a central confidential, restricted access Objective file and monitor compliance. Information kept on this file will include the PSC Vaccination Register, individual COVID-19 Vaccination Declaration Forms, any vaccination certificates, Medical Contraindication Forms, Exceptional Circumstances Forms, and records in relation to determination of applications for exemption from a Direction.
- Where individuals do not comply within the required timeframe, they will be issued with a direction to comply.
- Employees may be required to provide further information concerning COVID-19 booster status.
- Any employees seeking to be exempted from a Direction must apply for an exemption in accordance with this policy within the required timeframe.

- Any employee who has requested an exemption which is no longer required, should notify People and Engagement as soon as possible, and update their COVID-19 Vaccination Declaration Form.

1.6. Risk Assessment

.As at the time of preparation of this Policy, PSC has undertaken a PSC Covid Safe risk assessment process to assess risk considerations for each functional area across the PSC to identify reasonably practical risk mitigation strategies including, but not limited to, COVID-19 vaccination. Consideration has also been given to those hazards that are similar across branches (e.g., where roles are required to engage and interact with members of the public) to ensure a consistent approach to risk mitigation.

Risk assessments are a standard safety tool to inform the extent to which a particular risk must be controlled and mitigated.

The risk assessment broadly considers the following:

- employees who work directly with at risk populations (e.g. work with vulnerable community groups).
- employees who interact directly with members of the public or with other persons where vaccination status is unknown (e.g. roles may support public events, the workplace may be a public premise).
- PPE or other control measures, in the given circumstances, are inadequate or there is a high risk of failure to protect employees and their families. (e.g. PSC employees face risks due to contact with members of the public, visitors and contractors during the course of the working day whilst at the 255 George St and surrounding premises, whilst attending off site PSC functions or representing PSC on other premises, or when travelling to and from the office via public transport.)
- Impact on employees, including health and wellbeing.

PSC's risk assessments will continually be reviewed to ensure measures meet current health advice and that risk profiles reflect the current environment.

1.7. COVID-19 Vaccination Requirements

Evidence of Vaccination status

A central COVID-19 Vaccination Register will be maintained by People and Engagement to record evidence of an employee's vaccination status.

Where a Commissioner Direction has been made, affected employees will be required to display evidence of their COVID-19 vaccination status for sighting by People & Engagement, and to complete and submit a COVID-19 Vaccination Declaration Form to People and Engagement via PSC_HR@psc.nsw.gov.au.

People & Engagement will record relevant information on a central COVID-19 Vaccination Register and save submitted documents on an employee's personnel file.

Where an employee fails to comply with a Commissioner's Direction, PSC may consider implementing misconduct procedures in relation to breach of the Commissioner's Direction, as set out below.

All contractors, consultants, volunteers and students attending PSC premises or functions are required to meet PSC vaccination requirements. The organisation for which they are engaged through must confirm compliance before attending PSC premises or functions. Managers/supervisors are required to ensure that vaccination certificates are sighted by People and Engagement before any contractors, consultants, volunteers and students are permitted to attend PSC premises or functions. People & Engagement will maintain a record of compliance on the secure Objective file managed by People and Engagement.

Medical Contraindication

Employees may seek an exemption if they have a medical contraindication. A medical contraindication applies where an employee provides a Medical Contraindication Form completed by a registered medical practitioner using the medical contraindication template provided by NSW Health which:

- certifies that the employee is unable to receive the COVID-19 vaccination because they have a recognised medical contraindication.

- indicates whether the medical contraindication will permanently or temporarily prevent COVID-19 vaccination; and
- if the medical contraindication only temporarily prevents a COVID-19 vaccination, specifies when the person may be able to receive the COVID-19 vaccination.

Employees are to provide their Medical Contraindication Form to People & Engagement with their completed COVID-19 Vaccination Declaration Form.

The PSC COVID-19 Safety Panel will review and make a determination in relation to working arrangements in response to a Medical Contraindication Form, in consultation with the employee's line manager and People & Engagement Business Partner.

Where there is contention about the medical evidence, the PSC may seek advice from the employees' medical practitioner and if required, the NSW Government's medical assessment provider.

The PSC will follow the advice of the Australian Technical Advisory Group on Immunisation with respect to known COVID-19 Contraindications to COVID-19 vaccines.

Each case will be individually considered noting the medical condition, the working arrangements, and the type of work, the risk to others in the workplace, the availability of alternative work or anything else that is relevant.

Where an employee has a medical contraindication, consideration will be given to either:

- accepting the medical contraindication as fulfilling the vaccination requirement and introducing additional controls to manage risk (for example, requiring evidence of negative COVID-19 test prior to entry to PSC premises or other attendance in person for the purposes of their employment, or requiring continued working from home), or
- where the hazard in the workplace can't otherwise be mitigated, providing a reasonable workplace adjustment to enable alternative work.

If a registered medical practitioner certifies that an employee has a temporary medical contraindication, which makes them unable to receive the COVID-19 vaccination, any exemption based on this only applies for the period specified in the Medical Contraindication Form

provided by the medical practitioner.

If the medical reason continues beyond that period, the employee must provide a new medical contraindication form from their doctor.

Where a workplace adjustment is required and cannot be made, once all other relevant options have been ruled out, consideration may be given to whether the person can continue in employment with the PSC.

Exceptional Circumstances

All employees are required to comply with a reasonable direction to be vaccinated under this Policy and in accordance with the PSC Code of Ethics and Conduct.

In rare situations an employee may contend that there are exceptional circumstances, other than a medical contraindication, that justify non-compliance.

Once the compliance date for the requirement to be vaccinated has been reached, any employees who are not vaccinated will be instructed to work remotely from home or to take leave immediately where they cannot reasonably work from home, until they are contacted by People & Engagement with further information.

Any employee wishing to claim exceptional circumstances must complete an Exceptional Circumstances Form and submit it to the Associate Director, People and Engagement for review and consideration by the PSC COVID-19 Safety Panel.

Acceptance of non-compliance based on exceptional circumstances will only occur in rare individual cases after consideration of the offered justification and evidence, and in the context of public health and risk assessment requirements, including impact on the particular employee and their health and wellbeing. If the exceptional circumstance is accepted, an individual risk assessment must be performed, in consultation with the employee's line manager and People & Engagement, to determine if the employee can continue in employment with additional control measures in place, or whether a reasonable workplace adjustment can be made.

If an exceptional circumstance is not accepted, the employee will need to demonstrate compliance with the Commissioner's Direction within a reasonable timeframe agreed between the employee and the PSC COVID-19 Safety Panel, in consultation with the employee's line or branch manager.

Review of Covid-19 Safety Panel determinations

An employee who has sought to be exempted may request that the Commissioner review a decision by the Covid-19 Safety Panel in relation to that application for exemption.

Reporting

The Covid-19 Safety Panel will provide a high level, anonymised report to the PSC Management Board and Senior Leadership Team in relation to any exemption requests received, number of exemptions approved, additional controls or alternative arrangements put in place. This information may be shared with PSC's Audit and Risk Committee and WHS Committee.

Employees who do not comply

Where an employee chooses not to comply with a Commissioner's Direction to be vaccinated and has not provided evidence of medical contraindication or exceptional circumstance, or such evidence has been reviewed and not accepted, the PSC may instruct the employee to take leave immediately until further notice.

Such employees may access accrued recreation leave, extended leave, flex leave (if eligible) and leave without pay, or a combination of these types of leave. However, subject to applicable award entitlements, such employees will not be able to access sick leave or COVID Special Leave for any absence greater than 2 days without a supporting medical certificate.

Employees failing to comply with a Commissioner's Direction will be required to remain on leave until they are contacted by the PSC with further instruction.

Where an employee's application for exemption is not accepted and they do not provide evidence of vaccination within the required time, the PSC may consider whether any opportunities for mobility are available to the employee to enable transfer or assignment to a role within the sector which does not require vaccination. If such an opportunity is identified, the PSC will notify the employee of that opportunity, for their consideration and response.

However, if the employee refuses any mobility opportunity that maybe identified by the PSC and chooses not to comply with the Commissioner's Direction, PSC may determine that the employee has refused to comply with a reasonable direction of the PSC. Failure to comply with this reasonable

direction may be viewed as a breach of the PSC Code of Ethics and Conduct and may result in misconduct action being taken in accordance with section 69 of the *Government Sector Employment Act 2013* (GSE Act) and Part 8 of the *Government Sector Employment (General) Rules 2014* (GSE Rules). Such action may ultimately lead to termination of employment.

Consistently with procedural fairness requirements under the PSC Code of Ethics and Conduct, GSE Act and GSE Rules, the employee will be advised of the details of the alleged failure to comply with a Commissioner's Direction and the action that may be taken against the employee under section 69 and given a reasonable opportunity to make a statement in response, before any decision is made as to whether to proceed with the matter as a misconduct matter.

If a decision is made to proceed with the matter as a misconduct matter, the employee will be notified of the proposed action to be taken and given a reasonable opportunity to make submissions in relation to the proposed action, and any such submission considered, before a finding is made.

1.8. Record Keeping

Records concerning an employee's vaccination status, including any vaccination certificate, Vaccination Declaration Form, Medical Contraindication Forms and Exceptional Circumstances Forms, will be securely stored on an employee's personnel file, and kept confidential within People & Engagement.

Employees can request to access their information at any time and can also request that any relevant updates are made to it. Employees should also keep a record of their vaccination evidence and/or medical contraindication or exceptional circumstances.

The PSC will collect the following information to record on the central Vaccination Register:

- name and surname
- work information (including group, branch, role title and employee ID number)
- vaccination certificate date
- whether any Medical Contraindication Form or Exceptional

Circumstances Form has been submitted and the decision made in relation to that Form.

The PSC is collecting this information to support the protection of employees and others from risks to their health and safety under the *Work Health and Safety Act 2011*.

Consistently with the Health Privacy Principles (HPPs) under the *Health Records and Information Privacy Act 2002 (HRIP Act)*, information about an employee's vaccination status will be:

- Stored securely, not kept any longer than necessary, and disposed of appropriately
- Protected from unauthorised access, use or disclosure, and
- Only be used or disclosed for the purpose for which it is collected or for a directly related purpose, which a person would expect, unless an exception applies or the individual consents.

People & Engagement will:

- Delete all Outlook records containing vaccination information once recorded in the Register or registered on Objective.
- Redact the employee's name from their Medical Contraindication Form or Exceptional Circumstances Form and any supporting documentation provided to the Covid-19 Safety Panel for the Panel's review and determination. However, the employee's identity may nevertheless be readily apparent from the information provided to the Panel.
- Delete or redact any superseded versions of the Register to remove health information once no longer required.

Employees who refuse to provide their vaccination information to the PSC may be determined to have refused to comply with a reasonable direction of the PSC and disciplinary action may be taken against employees in accordance with the GSE Act and GSE Rules.

For further information about privacy rights and personal information employees should refer to the PSC's Privacy Management Plan.

1.9. Further Advice

Further advice on this policy may be obtained from the People & Engagement Branch. Contact your relevant People & Engagement Business Partner or email PSC_HR@psc.nsw.gov.au.

In addition, employees may also discuss this policy and its application with their Manager, Branch Head or a representative of the Public Service Association union.

Contractors, consultants and students should discuss this policy with their respective organisations / agency. Volunteers should also discuss this policy with their supervisor / contact officer.

1.10. Other Information

- Government Sector Employment Act 2013 – [click here](#)
- Government Sector Employment (General) Rules 2014 - [click here](#)
- Government Sector Employment Regulation 2014 - [click here](#)
- Public Service Commission Code of Ethics and Conduct - [click here](#)
- C2021-16 Guidance for Government Sector Agencies regarding COVID-19 vaccinations for their Employees - [click here](#)
- Work Health and Safety Act (NSW) 2011 - [click here](#)
- Health Records and Information Privacy Act 2002 - [click here](#)
- SafeWork NSW – COVID-19 - [click here](#)

1.11. Appendix

Meeting the requirements of a vaccination determination

The below outlines the recommended high level three step process for the NSW Public Service Commission to comply with a mandatory vaccination direction by the Commissioner in accordance with C2021-16 *Guidance for Government Sector Agencies regarding COVID-19 Vaccinations for their Employees*.

Step 1	Step 2	Step 3
<i>Employee steps for confirming COVID-19 vaccination status</i>	<i>Employee steps for short-term vaccination exemption.</i>	<i>Employee steps for complete vaccination exemption</i>
<ol style="list-style-type: none"> 1. Employee confirms their vaccination status by completing the <i>COVID-19 Vaccination Declaration Form</i> and emailing it to People & Engagement and displaying their COVID-19 Vaccination Certificate for sighting by People & Engagement. 	<ol style="list-style-type: none"> 2. Apply for short term exemption arrangement for employee where required, for consideration and determination by Covid-19 Safety Panel. 3. Line manager or People & Engagement to meet with employee to understand workplace adjustment measures. 4. Line manager to engage with HR Business Partner to explore options around short-term work from home or alternate workplace adjustments. 5. HR Business Partners to provide case management support. 	<ol style="list-style-type: none"> 1. Explore short-term work from home or leave options. 2. Apply for exemption arrangement for employee where required, for consideration and determination by Covid-19 Safety Panel. 3. Identify any available opportunities for mobility within the sector to a role which does not require vaccination, and notify the employee of that opportunity, for their consideration and response. 4. Where option 1, 2 and 3 are not available or not accepted, in the event of an identified breach of the Commissioner's Direction, matters will be addressed in accordance with the

		Code of Conduct and the <i>Government Sector Employment Act 2013</i> and <i>Government Sector Employment Rules</i> .
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1.12. Policy authorisation

Policy owner	Associate Director People and Engagement
This version endorsed by	PSC Management Board
Date endorsed	24 November 2021
Date effective	24 November 2021
Due for review	24 November 2023

Version no.	Endorsed date	Description of change
1.0	24 November 2021	New Policy