

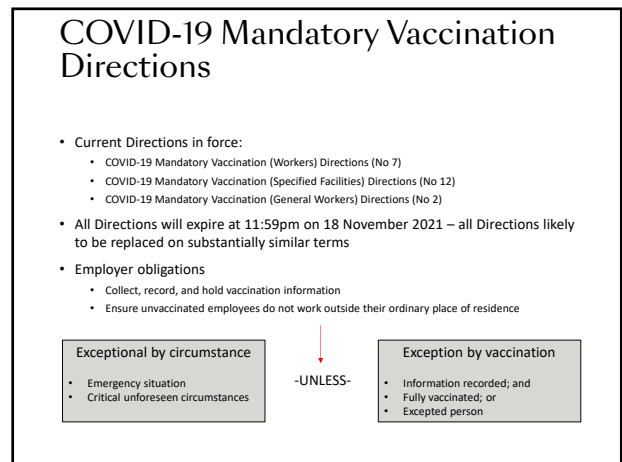
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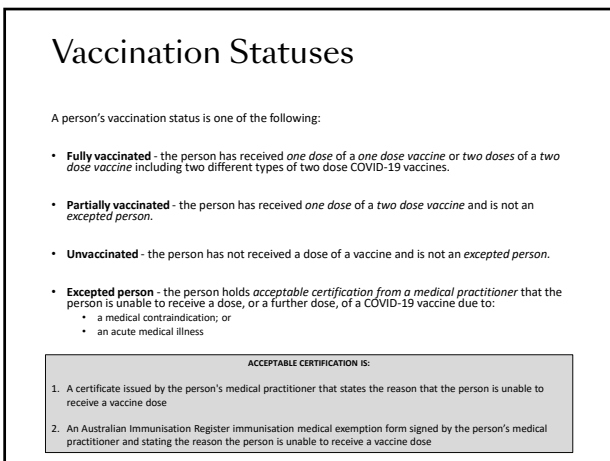
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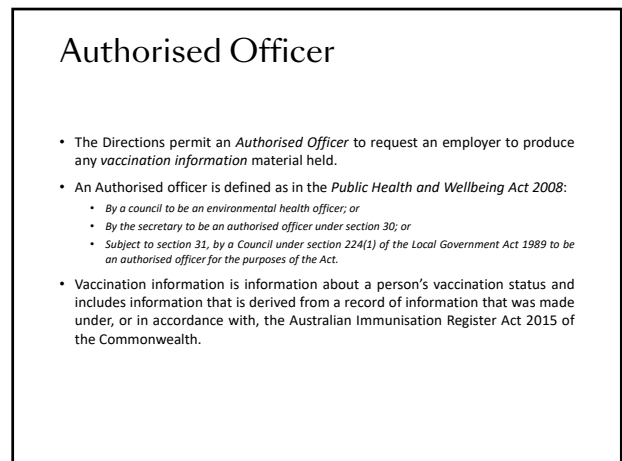
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## Authorised workers and providers – what does this mean?

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## Authorised Workers and Providers

- From **26 November 2021**, *Authorised Workers* must provide evidence of having received their second dose (i.e. full vaccination) to their employer unless a medical exemption applies in order to attend work.
- Authorised Workers include employees, contractors, volunteers and students on placement in the following industries:

Accommodation worker	Meat & Seafood Processing
Agriculture & Forestry	Media & Film Production
Airport	Mining
Ancillary, support & welfare	Physical Recreation
Care facility	Religious Worker
Community	Professional Sports & Racing
Creative Arts	Professional Services
Community workers	Public Sector
Custodial Workers	Real-estate
Emergency services	Repair & Maintenance
Entertainment & Function	Retail & Hospitality
Funeral	Science & Technology
Higher Education	Social & Community
Justice Service	Transport
Manufacturing	Utility & Urban
Marriage Celebrant	Veterinary & Animal Care
Aged Care	Primary, Secondary & Early Learning
Construction	

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## Do I need to be vaccinated to work?

No. Not strictly speaking.

## Do I need to be vaccinated to work outside of my home?

Yes. Certainly if you are an Authorised Worker and likely to become the new norm in a post-COVID Victoria.

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## Can employers direct their employees to get the COVID-19 jab?

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## Overview

Whether or not employers can direct employees to get the Covid-19 jab is an open question depending on a number of factors.

**VICTORIA**

- COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 12)
  - Construction (2 doses by 13 November 2021)
  - Residential Aged Care (2 doses by 15 November 2021)
  - School, Childcare and Early Education (2 doses by 29 November 2021)
  - Health Care (2 doses by 15 December 2021)
- COVID-19 Mandatory Vaccination (General Workers) Directions (No 2)
  - Authorised Worker (26 November 2021)

**NO MANDATORY WORKPLACE DIRECTION?**

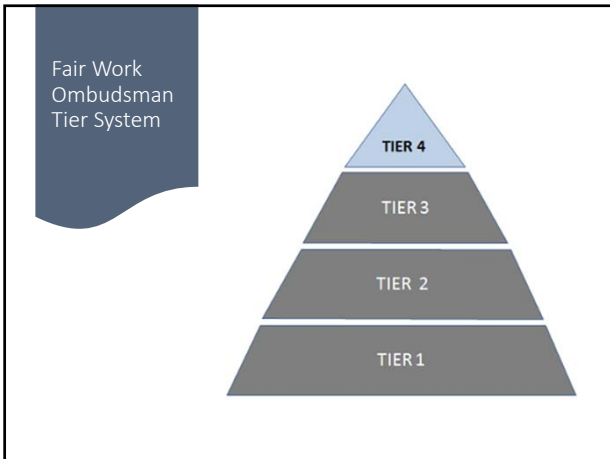
- Specific law
- Industrial instrument or contract of employment
- Lawful and reasonable direction.

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## What is reasonable?

- the nature of the workplace
- the extent of community transmission at the time
- each employee's circumstances, including their duties and the risks associated with their work
- vaccine availability
- whether employees have a legitimate reason for not being vaccinated
- work health and safety obligations

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### Before making a direction

Consultation Obligations

- Industrial Instrument
- OHS requirements

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### Exemptions to direction

Employees/independent contractors can refuse to be vaccinated on the basis that they are exempt

In such circumstances, employers should request medical evidence from the worker's treating practitioner and should consider whether or not these individuals can work from home or in lower risk areas.

Employees can also refuse vaccination on the basis of a protected attribute such as religious grounds

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### Can employee's refuse to work with an unvaccinated colleagues?

**No**

- It would be unlikely that an employee could refuse in circumstances where:
  - a direction to be vaccinated was not mandatory;
  - the colleague has a legitimate reason to not be vaccinated.

**Yes**

- a mandatory direction is in place that requires employees to be vaccinated;
- the colleague does not have an exemption.

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### What if an employee refuses the direction?

- Confirm if they have an exemption or have suffered an acute medical illness
- Stand down or Terminate?
- X Annual Leave X
- This is a highly sensitive and unprecedented area and employers should obtain legal advice prior to making any decision which adversely effects an employee's employment status.

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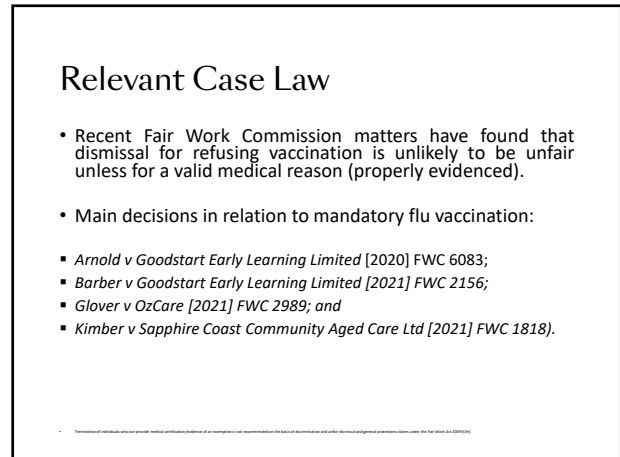
### Risks to Employers

- Penalties and Fines
- Failing to comply with OHS obligations
- Unfair dismissal or General Protections claim
- Discrimination claim at the VEOHRC or the AHRC

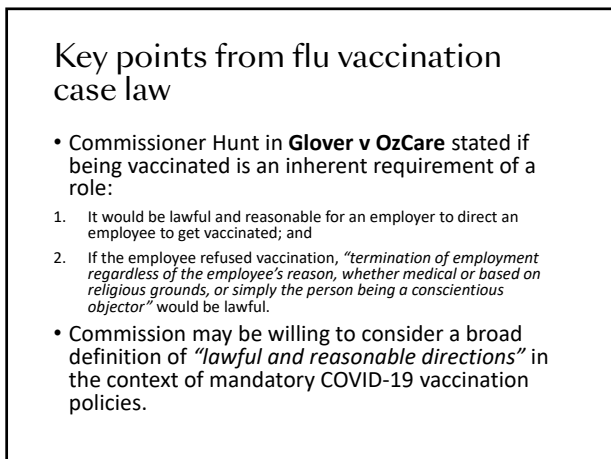
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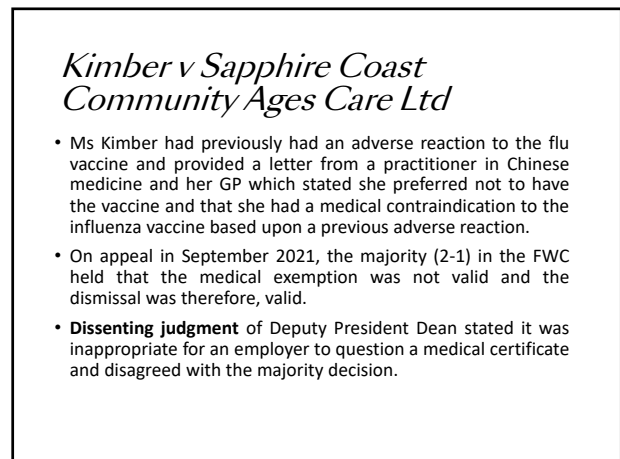
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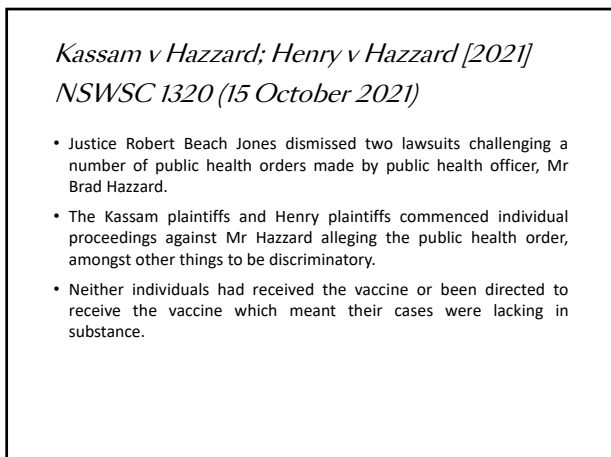
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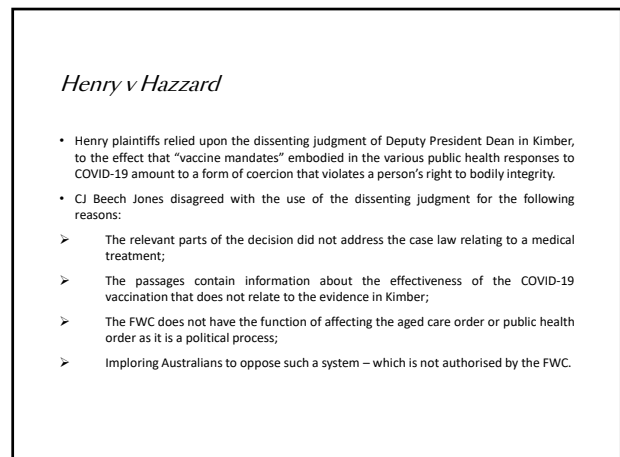
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## Temperature checks, social distancing and WorkCover claims

- *Yordanos Fesshatsyen v Mambourin Enterprises Ltd [2021] FWC 1244*
- *Hedayat Hooshmand v Cater Care Australia Operations Pty Ltd [2020] FWC 4371*
- *Sara v G & S Sara Pty Ltd [2021] NSWPIC 286*

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## Cases to watch over the coming months

- *Shaun Cox v DP World Brisbane Limited QUD365/2021*
- *Georgia Smith v Ned Kelly's Pizza (Australian Human Rights Commission)*

Another one to follow:

- Vaccination likely to be a condition of entry at BHP workplaces. CMFEU tried to reverse the decision.

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## Summary

1. Employers directing employees to get the COVID-19 jab and the associated risks.
2. Stay up to date with government public health orders and directions
3. Case law will evolve significantly in the next 6 to 12 months.

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## Any Questions?

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