



**ALERT* Health advice regarding COVID-19 is continually evolving. This Position Statement will be updated regularly to reflect new advice, guidance and requirements from Chief Health Officers and regulatory authorities, e.g. the Nursing and Midwifery Board of Australia, as they emerge.*

BACKGROUND

This ANMF Position Statement should be read in conjunction with:

- [ANMF Policy on Work Health and Safety](#)
- [ANMF Policy on Vaccination and Immunisation](#)
- [AHPRA Position Statement: Registered health practitioners and students and COVID-19 vaccination](#)

It is the position of the Australian Nursing and Midwifery Federation that:

The Australian Nursing & Midwifery Federation (ANMF) supports vaccination and strongly encourages all healthcare workers to be vaccinated if there is no medical contraindication. Vaccination of nurses, midwives, care-workers,ⁱ and nursing and midwifery students who are employed or undertaking placements assists in preventing the spread of COVID-19 to vulnerable patients/residents in health and aged care settings. Vaccination of healthcare workers also helps protect nurses, midwives, students and care-workers from contracting COVID-19 at work. Crucially, people who are fully vaccinated have a much lower risk of becoming infected and if they do contract COVID-19, they have a much lower risk of infecting others, serious illness, hospitalisation, and death¹⁻⁸.

The ANMF has confidence in the Therapeutic Goods Administration (TGA) and the [Australian Technical Advisory Group on Immunisation](#) (ATAGI). We rely on their guidance about the safety of COVID-19 vaccines. More detailed information is available in the [ANMF COVID-19 resources](#) developed by the ANMF National Policy Research Unit.

The ANMF is aware that due to the recent emergence of COVID-19 and subsequent prioritised development of COVID-19 vaccines, some nurses and midwives have personal and health concerns about the vaccines. In addition to the materials the ANMF has developed as above, [ANMF Branches](#) have also developed specific resources to support members in their jurisdictions.

If you have a medical contraindication, this will need to be verified and documented by a medical practitioner. Nurses and midwives who are unable to be vaccinated due to a medical contraindication may be re-deployed but should be supported to maintain roles that are professionally fulfilling.

The ANMF is also aware that some nurses, midwives, students, and care-workers may decide for their own reasons that they will not receive a COVID-19 vaccination under any circumstances. The following sections of this document cover this issue from the professional, industrial and work health and safety (WHS) perspectives to provide information that is relevant to the rights and obligations that should be considered when making this decision.

PROFESSIONAL RIGHTS AND OBLIGATIONS

Note that care-workers are not regulated by NMBA and this section on professional rights and obligations does not apply to them.

Under the National Law, the Nursing and Midwifery Board of Australia (NMBA) is responsible for the regulation of the nursing and midwifery professions and is supported in this role by the Australian Health Practitioner Regulation Agency (Ahpra). Nurses, midwives, and students who wish to maintain their registration must adhere to the NMBA's expectations in relation to vaccination.

ⁱ The term care-worker incorporates assistants in nursing and personal care-workers (however titled)

The [NMBA's Position statement on nurses, midwives and vaccination](#) makes it clear that *registered nurses, enrolled nurses, and midwives who are promoting anti-vaccination statements to patients and the public via social media which contradict the best available scientific evidence* are in breach of their professional obligations and may be subject to regulatory action.

The National Boards and the Ahpra have published a joint statement, [Registered health practitioners and students: What you need to know about the COVID-19 vaccine rollout](#), to clarify their expectations in relation to giving, receiving, and advising on and sharing information about COVID-19 vaccination.

In this advice it is clear that *all registered health practitioners and students (particularly those undertaking placements in various practice settings) are strongly encouraged to have the full COVID-19 vaccination course as scheduled unless medically contraindicated.*

The National Boards also state that *all regulated practitioners have a responsibility to participate in efforts to promote the health of communities and meet obligations with respect to disease prevention including vaccination, health screening and the reporting of notifiable diseases.*

The National Boards recognise that *while some health practitioners may have a conscientious objection to COVID-19 vaccination, all practitioners, including students on placement, must comply with local employer, health service or health department policies, procedures and guidelines relating to COVID-19 vaccination. Any queries about these should be directed towards the individual employer, health service, state or territory health department, and/or education provider for registered students.*

INDUSTRIAL RIGHTS AND OBLIGATIONS

Mandatory vaccination of workers in certain workplaces is not a new feature of the working and legal landscape. Many health and aged care settings, for example, have had mandatory requirements for workers to demonstrate vaccination against various illnesses or diseases. Some of these are legal requirements. Others are requirements established by the employer themselves on the premise that they are in the best interests and protective of the worker and those in their care.

Although there is no national law requiring vaccination for staff working in the health and aged care sectors, there are many well-established vaccination requirements for staff via state/territory public health orders and health policy directives. Many private hospital providers have developed similar expectations of their staff. Nurses, midwives, and care-workers have had to meet these requirements where possible and accept that if they have been unable to be vaccinated, they may experience restrictions on where they can work.

In residential aged care in some jurisdictions, it is currently a legal requirement for its workers (as well as visitors) to have the influenza vaccination. In the absence of the influenza vaccination, the worker or visitor is not permitted to enter a Residential Aged Care Facility ('RACF') unless exceptional/special circumstances exist. Following a decision of National Cabinet in June 2021, there will be a requirement in RACFs for workers to have a COVID-19 vaccination by 17 September 2021.

If a worker is dismissed for refusing or being unable to be vaccinated, contrary to a legal requirement or direction of their employer, then as is the case with any termination, an assessment would need to be made as to whether there is a sound basis to proceed with, for example, an unfair dismissal application.

Any application for unfair dismissal would need to be assessed against the legislative criteria established in the Fair Work Act 2009 to determine if a dismissal was harsh, unjust, or unreasonable. This will turn on the facts of the individual case, actions by the employer and worker during the process, as well as what precedents may exist from previous decisions of the Fair Work Commission (FWC).

When assessing an individual's workplace rights, along with what remedies may exist if trouble is encountered, it will inevitably turn on the specific circumstances, facts, and laws that apply to the dispute or workplace situation.

There have been two recent decisions by the FWC regarding dismissals related to refusal of mandatory vaccinations, one in the childcare sector and one in aged care. In both cases the FWC considered that it was a valid reason for the employers to dismiss the workers for refusing to have an influenza vaccination.

WORK HEALTH AND SAFETY (WHS) RIGHTS AND OBLIGATIONS

In terms of WHS, the following principles are relevant:

- Employers must ensure, so far as is reasonably practicable, the health and safety of workers and others. In this context, “others” includes patients, residents, visitors, (WHS Act, s19).
- Ensuring health and safety requires the employer to eliminate risks to health and safety, so far as is reasonably practicable, and if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable, (WHS Act, s17).
- When making decisions about how to minimise risks to health and safety, employers must use the hierarchy of controls (WHS Reg, Part 3.1)
- Workers must ensure that they take reasonable care for their own health and safety, ensure that their acts and omissions do not adversely affect the health and safety of others, comply with reasonable instruction of their employer and cooperate with reasonable policies and procedures (WHS Act, s28)

Thus, employers are required to do what they can to eliminate or minimise the risks associated with exposure to COVID-19 for both their workers and patients/residents. The best way to eliminate exposure is to ensure people are not bringing the virus into the workplace and vaccination is the most practicable way to do this. While personal protective equipment (PPE) has a place in infection prevention, as a lower order control, PPE works to minimise the risk of the virus spreading rather than stopping it getting into the facility in the first place.

Workers must follow reasonable instructions and cooperate with policy and procedure. There is existing case law to say that vaccination is a reasonable requirement when working with vulnerable persons.

REFERENCES

1. Voysey M, Clemens SAC, Madhi SA, et al. Safety and efficacy of the ChAdOx1 nCoV-19 vaccine (AZD1222) against SARS-CoV-2: an interim analysis of four randomised controlled trials in Brazil, South Africa, and the UK. *Lancet*. 2021; 397(10269): 99-111.
2. Bernal JL, Andrews N, Gower C, et al. 2021. Effectiveness of COVID-19 vaccines against the B.1.617.2 variant [Pre-Print Online]. *MedRxiv*. 2021.05.22.21257658. Available: <https://doi.org/10.1101/2021.05.22.21257658> (Accessed 7 September 2021).
3. Public Health England. 2021. Public Health England monitoring of the effectiveness of COVID-19 vaccination – 25 August 2021 [Online]. London: United Kingdom Government. 2021. Available: <https://www.gov.uk/government/publications/phe-monitoring-of-the-effectiveness-of-covid-19-vaccination>. (Accessed 7 September 2021).
4. Stowe J, Andrews N, Gower C, et al. Effectiveness of COVID-19 vaccines against hospital admission with the Delta (B.1.617.2) variant [Online]. London: Public Health England. 2021. Available: https://khub.net/web/phe-national/public-library/-/document_library/v2WsRK3ZIEig/view_file/479607329?_com_liferay_document_library_web_portlet_DLPortlet_INSTANCE_v2WsRK3ZIEig_redirect=https://khub.net:443/web/phe-national/public-library/-/document_library/v2WsRK3ZIEig/view/479607266 (Accessed 7 September 2021).
5. Harris RJ, Hall JA, Zaidi A, Andrews NJ, Dunbar JK, Dabrera G. Effect of Vaccination on Household Transmission of SARS-CoV-2 in England. *New England Journal of Medicine* 2021; 385:759-60.
6. Prunas O, Warren JL, Crawford FW, et al. Vaccination with BNT162b2 reduces transmission of SARS-CoV-2 to household contacts in Israel [Online]. *MedRxiv*. 2021: 2021.07.13.21260393. Available: <https://www.medrxiv.org/content/10.1101/2021.07.13.21260393v1.full.pdf> (Accessed 7 September 2021).
7. Polack FP, Thomas SJ, Kitchin N, et al. 2020. Safety and Efficacy of the BNT162b2 mRNA Covid-19 Vaccine. *New England Journal of Medicine* 2020; 383(27): 2603-15.
8. Tenforde M, Olson S, Self W, al. 2021. Effectiveness of Pfizer-BioNTech and Moderna Vaccines Against COVID-19 Among Hospitalized Adults Aged ≥65 Years — United States, January–March 2021. *MMWR Morb Mortal Wkly Rep* 2021;70(18);674–9.