



COVID-19 management and vaccination policy for DCJ service providers

This policy sets out the approach that all service providers must take to consider and manage COVID-19 risks to keep workers and the people they work with safe.



Document approval

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POLICY

1 Purpose

This policy outlines the requirements for the management of COVID-19 in the workplace. This policy applies to Service Providers who are contracted by the Department of Communities and Justice (DCJ) to provide services to Clients, for DCJ.

Compliance with the principles outlined in this policy is only in relation to the Workers and Clients (as defined below) who are involved in the provision of the DCJ contracted services. In particular, the policy describes the approach that Service Providers must take to consider and manage COVID-19 risks, including vaccination, to keep Workers and the people they work with, safe.

Note that this Policy forms part of the contract that each Service Provider has signed with DCJ for the delivery of services.

2 Definitions

Term	Definition
Clients	Clients is used to describe any individual, group, child or young person to whom services or programs, that are contracted by DCJ, are made available. The term Clients used in this policy includes but is not limited to offenders, people with a disability, children or young persons, their families, tenants and their households, or members of the public.
COVID-19 Vaccination	COVID-19 vaccination means two doses (or as otherwise approved) of a COVID-19 vaccine approved by the Therapeutic Goods Administration for use in Australia.
Service Provider COVID-19 management plan	The documented approach to the management of COVID-19 which includes the COVID-19 Safety Plan, a risk assessment for each service setting, a business or service continuity plan and the other minimum requirements set out in section 6 of this policy.
Service Provider	Organisations that receive funding from DCJ to deliver services on behalf of DCJ to Clients, and registered community housing providers that receive assistance from DCJ via a community housing agreement as per the <i>Community Housing Providers (Adoption of National Law Act 2012 no 59</i> (NSW). It also includes Workers of the Service Provider.

Term	Definition
	For the purposes of this policy, Service Provider does not include organisations that only receive grant(s) from DCJ.
Worker	A person is a Worker if the person carries out work (paid or unpaid) in any capacity for the Service Provider. The term includes employees, contractors, sub-contractors, consultants, volunteers and students (including apprentices, trainees, and those on work experience).

3 Scope

This policy applies to Service Providers in respect of the services they are contracted to provide on behalf of DCJ.

It does not apply to organisations that only receive grant(s) from DCJ.

4 Policy statement

DCJ requires all Service Providers to take appropriate and comprehensive measures to minimise the risks of COVID-19 transmission and infection. These measures are required to protect the health and safety of all Workers and Clients in circumstances where there is a risk to those Workers and Clients contracting COVID-19.

The risks of COVID-19 have presented the need to consider comprehensive measures to:

- protect the Clients, noting that many are vulnerable
- protect Workers, and provide a safe environment for Workers to work together and provide services to the Clients they serve
- ensure business continuity for DCJ funded services.

Under work health and safety (WHS) laws, employers have a duty of care to ensure, as far as reasonably practicable, the health, safety and welfare of Workers at work and those affected by their work. In relation to COVID-19, this means that Service Providers are required to manage the risk of COVID-19 to Workers and others in the work environment.

As services and work environments are all different, the risks and appropriate measures to manage these risks will vary for each Service Provider.

DCJ encourages vaccination in line with NSW Health advice. Vaccination not only reduces risk of infection but also decreases the number of people who will be considered close, secondary or casual contacts in the event of a positive case.

COVID-19 vaccination is an effective risk control measure that should be considered. As an example, DCJ is undertaking risk assessments across our diverse workplaces to determine if vaccination is necessary to control COVID-19. Risk assessments completed for Corrective Services, Youth Justice, Courts, Tribunals and Service Delivery, our housing and child protection teams led to the mandate of vaccination for DCJ staff involved in client facing activities, and staff who work at or from the locations where these staff work. DCJ also continues to consider other relevant control measures as part of a comprehensive risk management approach.

Service Providers must comply and take all reasonable steps to ensure their Workers comply with relevant public health orders which may be in place pertaining to their workforce at any given time. While, as at the date of issue of this policy, there are public health orders mandating vaccination for Workers in specified industries or occupations, there is no public health order that specifically covers all Workers in DCJ funded services.

LEGAL REQUIREMENTS

5 Responsibilities under WHS law

As employers, Service Providers must comply with WHS laws and with Public Health Orders and associated directions.

The *Work Health and Safety Act 2011*¹ (*WHS Act*) requires employers to eliminate, or if not reasonably practicable to eliminate, then to minimise risks to health and safety as far as is reasonably practicable.

This means that Service Providers are required to identify, assess and minimise the risk of COVID-19 as much as possible.

The *WHS Act* makes it a general duty of employers to consult with their Workers on all safety measures. Consultation is required when identifying, assessing and controlling risks, and when reviewing control measures.

5.1 Risk assessment and risk control measures

[Safe Work NSW](#) advises that all workplaces must assess (in consultation with their Workers) and look for ways to minimise the risk of COVID-19.

¹ [Work Health and Safety Act 2011\(NSW\)](#), Section 18.

Various control options must be considered and the control that most effectively eliminates the risk of harm or minimises the risk in the circumstances should be chosen.

A [hierarchy of control measures](#) should be identified, having regard to the particular circumstances and conditions at the relevant work place. These control measures should then be worked through when managing risks. In the first instance the focus should be on eliminating risks. If this is not reasonably practicable, the objective is to seek to minimise the risks by identifying and then working through other appropriate alternatives in the hierarchy (refer to Appendix 1)².

5.2 Directions in relation to COVID-19 vaccination

As employers, Service Providers can require their Workers to be vaccinated where:

- a specific law (such as a state or territory public health order) requires a worker to be vaccinated
- the requirement is permitted by an enterprise agreement, other registered agreement or employment contract; and/or
- it would be lawful and reasonable for an employer to give their Workers a direction to be vaccinated. Whether it is lawful or reasonable, should be assessed on a case-by-case basis.³

Service Providers who give directions to Workers to be vaccinated in order to control a workplace COVID-19 risk, must ensure that this direction complies with WHS and other relevant laws.

Under the *WHS Act*, a direction to be vaccinated must be a reasonably practicable step in order to protect the health and safety of Workers from the risk of COVID-19. “Reasonably practicable” means actions that can in the circumstances (by taking into account and weighing up all relevant matters) be reasonably done to ensure their health and safety and the health and safety of others they may come into contact with⁴.

² [NSW Government: Code of Practice - How to manage work health and safety risks](#)

³ <https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/covid-19-vaccinations-and-the-workplace/covid-19-vaccinations-workplace-rights-and-obligations#requiring-employees-to-be-vaccinated>

⁴ [Work Health and Safety Act 2011 \(NSW\)](#), section 18

In other words, the risk assessment must be undertaken to determine if a direction to Workers to be vaccinated is a reasonably practicable step in the particular circumstances.

There is a range of factors that may be relevant when determining whether a direction to a Worker is reasonable. This means that Service Providers need to be vigilant and to remain aware of local conditions and the changing nature of the COVID-19 pandemic. Considerations may include:

- the nature of each workplace (for example, the extent to which Workers need to work in public facing or face to face roles, whether social distancing and alternatives to face to face service delivery are possible, whether services are provided in communal settings, and whether staff work across multiple work sites)
- the extent of community transmission of COVID-19 in the location where the direction is to be given, including the risk of transmission of particular variants among Workers, Clients or other members of the community
- the terms of any public health orders in place where the workplace is located
- each Worker's circumstances, including their duties and the risks associated with their work
- whether Workers have a legitimate reason for not being vaccinated (for example, a medical reason), and
- vaccine availability and eligibility.⁵

DCJ REQUIREMENTS

6 Service Provider COVID-19 management plan

DCJ requires all Service Providers to have a documented COVID-19 management plan.

The Service Provider COVID-19 management plan should at a minimum include:

- the requirements outlined in NSW Government [COVID-19 Safety Plans](#)

⁵ <https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/covid-19-vaccinations-and-the-workplace/covid-19-vaccinations-workplace-rights-and-obligations#requiring-employees-to-be-vaccinated>

- a risk assessment for each service setting, and a plan to respond to each risk in day-to-day business
- a business or service continuity plan that outlines how the Service Provider can continue to deliver services during a COVID-19 incident
- processes and activities to respond to a confirmed or suspected case of COVID-19 in the workplace
- processes and activities for supporting a Client with a confirmed or suspected case of COVID-19
- processes and activities for managing the risks associated with supporting a Client who is unvaccinated
- processes for recording visitors to the workplace, including the use of QR codes
- processes for supporting testing, tracing and isolation of Workers and Clients exposed to COVID-19 in line with public health requirements
- processes for recording, monitoring compliance and managing contraindications if vaccination is a requirement to control COVID-19 risk.

If services already have a COVID-19 safety plan, business continuity plan and a risk assessment, these documents can be considered together as the Service Provider COVID-19 management plan provided they address all the other minimum requirements listed above.

6.1 Risk assessment and control measures

The risk assessment will form a core component of the Service Provider's COVID-19 management plan.

Existing risk assessment and management procedures already in use by Service Providers may be adapted to consider the risk in relation to COVID-19.

Service Providers should consider the hierarchy (or order) of controls when managing hazards and risks in the workplace (refer to Appendix 1).

6.1.1 Risk assessment considerations

Risk assessment considerations include:

- worksite or locations where it is necessary to protect Workers and Clients from further community transmission

- if there is a greater risk that Workers will be exposed to the virus due to the operating environment (for example, Workers who must work with persons where social distancing is not always possible)
- if the Worker works with at risk populations (for example, young persons, children, people with disability, people sleeping rough or homeless, healthcare workers, or other worker groups who work with at risk populations).

Service Providers should also consider risks posed by unvaccinated Clients, visitors and other third parties that are on site or potentially in contact with Workers and Clients, and consider appropriate mitigations. This may include restrictions on access for unvaccinated visitors.

6.1.2 Risk control measures

The following are examples of the risk control measures that should be considered. The actual measures chosen will correspond to the level of risk identified in the risk assessment. Risk control measures include:

- implementing control measures to prevent COVID-19 entering workplaces, such as the use of rapid antigen testing if appropriate and supporting Workers to adhere to public health requirements relating to test, trace, isolate and quarantine (TTIQ)
- where appropriate and lawful, implementing vaccination requirements to reduce the risk of infection, transmission and serious illness
- implementing controls to reduce direct contact with Workers and Clients (where reasonably practicable), including:
 - physical distancing
 - barriers and/or modifying workplace layouts to create adequate space at counters, between workstations, seated areas etc.
 - modifying shifts, hours and rosters to reduce peak periods. For example, stagger start and finish times, days of the week from home or office
 - actively support flexible work arrangements, including working from home or other locations
- implementing controls to reduce environmental exposure, including
 - inspecting and reviewing air conditioning and ventilation systems
 - cleaning and disinfection of high traffic areas and shared surfaces
 - providing cleaning products and instruction for cleaning workspaces

- providing instruction and amenities for personal hygiene and infection control, and providing appropriate personal protective equipment.

Further guidance on COVID-19 risk management for specific DCJ programs can be found in the [COVID-19 Guidelines for Specialist Homelessness Services \(September 2021\)](#) and the [COVID-19 Guidelines for Residential Out-of-home Care Settings](#).

6.2 Vaccination requirements

A requirement for Workers to be vaccinated is determined by either:

- law (by public health order or other instrument), or
- this policy where, following an appropriate risk assessment, a determination is made by the Service Provider that a requirement for Workers to be vaccinated is reasonably practicable in the circumstances in order to control the risk of COVID-19.

If either of the above applies and vaccination is required, the Service Provider must include in the Service Provider COVID-19 management plan, information about the processes to be followed for :

- evidence, monitoring and recording of vaccination status of Workers
- medical contraindications to vaccination, and
- non-compliance with a requirement to be vaccinated.

6.2.1 Evidence, monitoring and recording of vaccination status

Evidence of COVID-19 vaccination status can include:

- a vaccination certificate or other evidence from a vaccine provider
- an immunisation history statement which can be accessed from Medicare online or the Express Plus Medicare mobile app
- a statement of the individual's vaccination history which a Service Provider can request from the Australian Immunisation Register, or
- a record from a health practitioner, which includes a medical certificate.

Service Providers must carefully consider how evidence of a Worker's vaccination status will be recorded and stored. Vaccination information must be securely stored, kept confidential and only be accessible to people who are required to access it.

Service Providers may have obligations under the relevant privacy legislation, including the [Privacy Act 1988 \(Cth\)](#). As a matter of best practice, all Service

Providers, even if they are not subject to the *Privacy Act*, should aim to comply with all relevant privacy principles.

Refer to the [Office of the Australian Information Commissioner](#) for information about COVID-19 vaccinations and privacy obligations.

6.2.2 Medical Contraindication

A medical contraindication applies where a Worker provides a medical contraindication form, completed by a registered medical practitioner, in the prescribed form. The [form](#) is available from NSW Health and has been approved by the Chief Health Officer.

Where a Worker has a medical contraindication, Service Providers must give consideration to appropriate alternative safety controls and workplace arrangements.

6.2.3 Non-compliance with a requirement to be vaccinated.

Careful consideration should be given to establishing a fair process for dealing with situations where a Worker chooses not to comply with a direction to be vaccinated. Refer to the [Fair Work Ombudsman](#) and seek legal advice where necessary for information on actions employers may take if a Worker refuses a direction to be vaccinated.

6.3 Consultation on workplace changes and review of COVID-19 management plan

Service Providers are to:

- assess and address, in consultation with their Workers, any risks resulting from any changes to work practices, procedures or the work environment, and then effectively communicate with Workers about these changes and risk control measures, and
- review and update, in consultation with their Workers, the Service Provider's COVID-19 management plan, risk assessment and control measures regularly and monitor for any new risks that may emerge or as public health advice changes.

7 Related legislation and documents

- [NSW Public Health Orders](#)
- [Public Health Act 2010](#)
- [Work Health and Safety Act \(NSW\) 2011](#)

- [Work Health and Safety Regulation \(NSW\) 2011](#)
- [Safe Work Australia: COVID-19 vaccination guidance for employers, small business and workers](#)
- [Safe Work NSW: Guide to help you stay safe at work during the COVID-19 pandemic](#)
- [Fair Work Ombudsman: Coronavirus and Australian workplace laws](#)
- [NSW Government: Code of Practice - How to manage work health and safety risks](#)
- [Office of the Australian Information Commissioner: Understanding your privacy obligations to your staff](#)
- [Australian Human Rights Commission: COVID-19 vaccinations and federal discrimination law](#)
- [Community Housing Providers \(Adoption of National Law\) Act 2012 No 59](#)

DCJ Guidelines for specific programs

- [COVID-19 Guidelines for Specialist Homelessness Services \(September 2021\)](#)
- [COVID-19 Guidelines for Residential Out-of-home Care Settings](#)

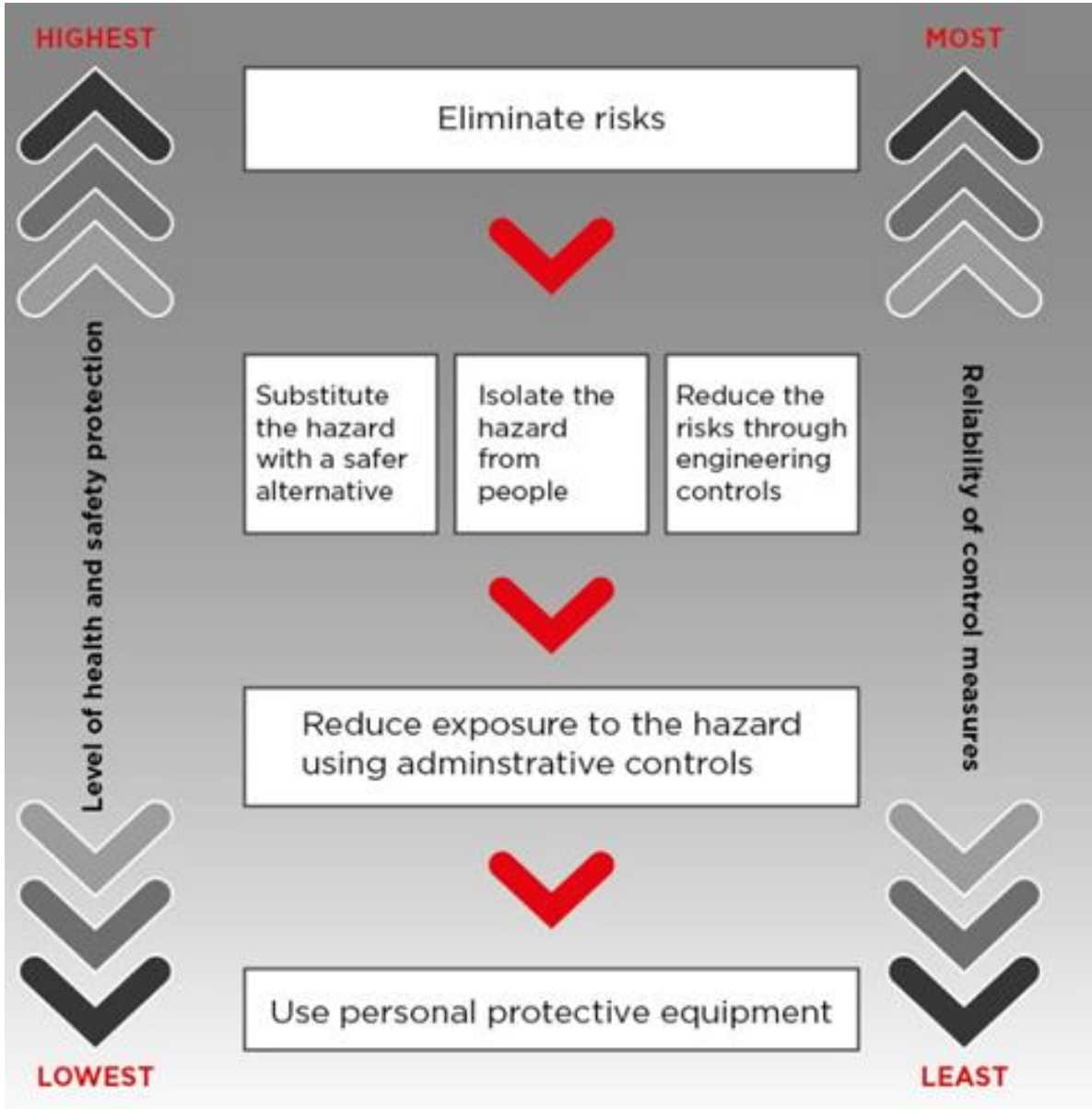
8 Support and advice

For more information about this policy, contact [Partnerships Policy and Practice](#).

Further information about risk assessment and obtaining information and support is in [Appendix 1](#).

Appendix 1. Risk assessment helpful information

The hierarchy of control measures



For more information about risk assessment and the hierarchy of control measures, refer to the [NSW Government: Code of Practice - How to manage work health and safety risks](#).

Further information and support

DCJ is developing an approach to further support Service Providers with development and implementation of requirements of this Policy. Updates will be advised via website and communication channels.

Justice Connect

[Justice Connect](#) is a specialist legal service for community organisations and not-for-profits that provide free legal help, resources and information.

Justice Connect has produced a [webinar on managing mandatory vaccine policy for NSW based community organisations](#)

Fair Work Ombudsman

[Fair Work Ombudsman guidance on COVID-19 vaccinations](#)

Safe Work Australia

[Safe Work Australia guidance on COVID-19 Information for workplaces](#)