

## PART 2 –VACCINE REQUIREMENTS IN RELATION TO COVID

[101] The Majority Decision raises the issue of COVID vaccinations and their requirement in workplaces. It forms part of the reasoning for refusing to grant permission to appeal and accordingly provides the opportunity in this decision to deal with this important issue.

[102] There can be absolutely no doubt that vaccines are a highly effective tool for protection against a variety of diseases. The focus of this decision, however, is not the pros and cons of vaccination. It is about the extent to which mandatory COVID vaccinations can be justified, as to do so impinges on other laws, liberties and rights that exist in Australia.

### *Vaccinations should be voluntary*

[103] It has been widely accepted that for the overwhelming majority of Australians, vaccination should be voluntary.

[104] The commonly accepted definition of voluntary includes acting of one's own free will, optional or non-compulsory. This is the opposite of the definition of mandatory, which is something that is compulsory, obligatory or required. Something that is mandatory must be done.

[105] The stated position of the Australian Government is that the vaccine is voluntary. On 21 July 2021, the Prime Minister in a media conference stated that "people make their own decisions about their own health and their own bodies. That's why we don't have mandatory vaccination in relation to the general population".

[106] On 13 August 2021, the Australian Council of Trade Unions (ACTU) and the Business Council of Australia (BCA) issued a joint statement on mandatory COVID vaccinations in which it acknowledged the Australian Government's COVID vaccination policy that the vaccine is voluntary, and confirmed the views of the BCA and ACTU that "for the overwhelming majority of Australians, your work or workplace should not fundamentally alter the voluntary nature of vaccination". (emphasis added)

[107] The Fair Work Ombudsman has publicly stated that employers will need to have a "compelling reason" before requiring vaccinations, and that "the overwhelming majority of employers should assume that they can't require their employees to be vaccinated against coronavirus". (emphasis added)

[108] Safe Work Australia has publicly stated that "most employers will not need to make vaccinations mandatory to meet their [health and safety] obligations". (emphasis added)

[109] Despite this, many employers are declaring they will mandate COVID vaccines for their workers, and PHOs are being made by State Governments, in circumstances where there is no justification for doing so.

### *Mandatory vaccination cannot be justified*

[110] COVID vaccinations, in accordance with the Australian Government's policy, must be freely available and voluntary for all Australians.

[111] Mandatory COVID vaccinations, however, cannot be justified in almost every workplace in Australia. While there are numerous reasons for this, this decision will focus on:

- a) the requirement for freely given and informed consent for medical procedures;