

Dated 29 October 2021

Mr John Clue
District Governor
Rotary 9780

Dear John

Re: COVID Vaccination Requirements – Rotary Clubs

I refer to my email of 18 October 2021. There appears to be some confusion concerning COVID-19 Mandatory Vaccination (Workers) Directions with the current Directions Number 5. Under the relevant Directions and particularly Part 2 there are a number of obligations imposed on an employer.

You will note the definition of employers and workers under Part 3 headed 'Key Definitions' and clause 8. An employer in relation to a worker means:

- i. The person who employs and engages the worker; or
- ii. If the worker is self-employed – the worker.

Clause 8(b) defines a worker to be under column 1 of schedule 1 whether it is paid or unpaid. You will note the exclusion of:

- i. A Commonwealth employee;
- ii. Where the person has to be in Court; or
- iii. A person under 12 years of age.

Under schedule 1, column 1, row 7, the reference of community worker is identified. This is the mandatory vaccination requirements to be able to be at work premises.

Under clause 9 (c)(a), a community worker means a persons who works at or in connection with community facility or an organisation providing community services whether operated on a profit or not-for-profit basis, including but not limited to:

- i. A facility which services are provided under aboriginal community control;
- ii. A community centre or community hall;
- iii. A public library;
- iv. Youth Centre; or
- v. A skate park in an outdoor space.

There is no definition of a community facility or community services but the inclusiveness of a community centre or a community hall, a public library, youth centre or skate park in an outdoor space identifies venues open to the public. Social and community worker as defined, is also interesting under clause 30 (a) and effectively looking at the list:

- i. Disability services;
- ii. Services provided to an NDIS participant in any setting;
- iii. Child protection services;
- iv. Family violence, sexual assault support services;
- v. Homelessness support services;
- vi. Public house support services;
- vii. Mental health services;
- viii. Aged care services;

- ix. Any social services provider contracted by the Government to support members of the community who have a particular need because of family violence, homelessness, illness or chronic health condition, infirmity , disability, contact with the justice system or other essential service;
- x. Interpreter, cultural or support services.

From these range of services we are talking about Government agency-type services.

It also deals with private sector services in the various categories.

There is no definition of a volunteer.

These directions are not contemplating service clubs.

Given the definition of an employer it can only be in the context of the employer relationship.

An employer relationship can also be for unpaid work.

Therefore, the requirement whether the District or Rotary International can impose the mandatory requirements under these directives do not arise.

However, the various venues which Rotary members utilise to provide volunteer services will require members to demonstrate their vaccination.

In contrast, from an employment perspective, there are mandatory requirements under the Directions.

In the context out of New South Wales before COVID vaccination was available in Aged Care, a flu vaccination was mandated. The relevant aged care facility had to deal with a set of circumstances where the relevant aged care worker refused due to alleged medical grounds. These grounds did not fall within the exemption grounds described as contra-indication which is an exemption.

Putting aside the medical aspects of the debate the relevant employer of the aged care facility was able to terminate the employee. Similarly in Queensland another case an employer in an early childhood learning facility were able mandate a flu vaccination as part of the terms and condition of employment where a public health order did not apply.

This is only an observation for the mandating aspects of the directives.

However, from Rotary Club's perspective and the District, it all boils down to risk management.

In the NSW case the dissenting Judge used occupational health and safety requirements as a basis as to whether or not it was fair to terminate the relevant aged care worker.

In his opinion it wasn't as the flu vaccination cannot be categorically determined to eliminate the risk. Very interesting decision indeed.

The stance for the District should be:

1. All clubs are to ensure members are vaccinated to carry out its activities as risk management.
2. It is appropriate to maintain a register of such members.
3. It is no different to food handling, responsibly serving of alcohol or working with children checks.
4. If a member declines to confirm they are vaccinated then the presumption is they are not vaccinated.
5. Given COVID plans have been devised by the District, this has to be continued by Clubs with the added provision concerning vaccination.

It would be sensible to run parallel to some of the requirements of the Public Health Orders so that all the best measures are being adopted to minimise risks.

I also attach the extract of the power point presentation from Justice Connect.

Under the heading Mandatory Vaccination Requirement if a public health order does not apply, organisation may mandate vaccinations based on risk assessment.

There are privacy laws applicable.

It would be necessary for the members to consent to the collection of their vaccination status by Clubs.

Given the time constraints, this is my view at this point in time.

But if the District was further concerned, then it may be appropriate to engage formally external legal advisers for a further opinion.

We trust the above has been helpful for deliberations by the District.

Regards



Sergio Bacchetti
District Legal Officer
Rotary 9780