

WEBINAR 2 - Q&A

Please note this information was transcribed from the QTIC webinar held on 9 December 2021 and the information is correct at that time.

To view the webinar recording click here:

<https://attendee.gotowebinar.com/recording/4271865876777679375>

To view the COVID Safe Checklist of Restricted Businesses click here:

<https://www.covid19.qld.gov.au/government-actions/covid-safe-checklist-for-restricted-businesses>

Common FAQ's from the Queensland Government for Industry can be found here:

www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/travelling-to-queensland/queenslands-covid-19-vaccine-plan-industry-qas

Top COVID-19 questions from Fair Work Ombudsman

<https://coronavirus.fairwork.gov.au/coronavirus-and-australian-workplace-laws/tools-and-help-during-coronavirus/top-covid-questions>

Panellists:

Kate Coehn (Executive Director COVID Compliance, QLD Health)

Steve Dabinett (Acting Assistant Commissioner, QPS)

Rachel Volzke (Chief Counsel, Fair Work Ombudsman)

Ceri Hohner (Senior Associate, FCB Workplace Law)

Introductory comments:

- **Queensland Health:** Direction is now live and published, with close to 100+ FAQ already published. Business collateral/signage is now available for download/printing to come into effect 17 December. There will be Checklists referred to in Public Health Directions (likely 2) for businesses with Public Health/Social measures applied, and others not impacted by measures. These aim to be available by Friday/Monday. Can work through and apply when relevant.
- **Queensland Police Service:** QPS is taking a statewide response to ensure compliance, working with external partners.
- **Fair Work:** Information on website available for workplace vax, material relating to accessing InfoLine services, referral pathways for further assistance for navigating through rollout of public health directions.
- **FCB Workplace Law:** Point-of-contact for specialized workplace legal advice, can contact through QTIC.
- **QTIC:** Anxiety in industry regarding compliance, but everyone tries to do the right thing and is willing. Many operators exhausted. Department of Tourism, Innovation and Sport (DTIS) are also present and taking notes of issues presented in this webinar.

Q1: If a business is in breach of new rules, who gets fined? The business or the individual?

QLD Police: It's not so simple and will depend on the facts. QPS will always be looking to work with the visitor or the business. Enforcing compliance is the last resort and working to make sure everyone understands the new system first will be a priority.

If a business has made every reasonable step and an individual is refusing to comply, it is the individual's responsibility; if a business is not complying, it is businesses' responsibility. It depends on the circumstances, penalties will apply for both as appropriate.

What about visitors failing to check in?

Business owners are required to display the information, ensure guests check in, and cite check-ins and vaccination statuses as required. It is the businesses' responsibility to comply with public health directions.

Q2: If a customer is presenting a printed vaccination certificate, should we, and do we have the right, to then ask for photo I.D?

QLD Health: No, we're not asking businesses to check the validity of printed certificates. It falls to the individual to do the right thing. Certificates do need to be in a language the business understands, as per directions. Information on obtaining certificate included in the health directions. Businesses are not expected to know what is fraudulent and what isn't.

Q3: How do I confirm employee's vaccination status? What about expiry dates and booster requirements?

FCB Workplace Law: It's important to be careful with Privacy Act laws, as keeping, managing, and disclosing medical information as it is covered under the Act. Citing may be more appropriate for some businesses than keeping copies of certificates but be aware that even a record of citing medical data is still personal, sensitive information. A careful policy should be in place regarding how information is used and steps to secure this information.

Fair Work: It's easier for employers to insist prospective employees disclose vaccination status conditional to employment, but this is still subject to anti-discrimination and privacy laws. There should be lawful underpinning (i.e. health directives and social measures) regarding requiring existing employees to disclose vaccination status and the potential requirement to provide evidence. For real business scenarios (rather than hypotheticals), FairWork Ombudsman Infoline (13 13 94), in addition to referral pathways through workplace legal advice w/4 hours free legal advice, link to Services Australia, other information and support avenues are also available.

FCB Workplace Law is part of the abovementioned referral scheme.

Additional question regarding dismissal of an unvaccinated employee:

Seek to understand why they have chosen not to get vaccinated first as they may have a legitimate approved exemption. Also seek legal advice.

Q4: Just to clarify, if we operate within a business where vaccination is mandated, we do not have any capacity restrictions?

Queensland Health: It depends on the business type and whether it is outlined in public health/social measures. Restaurants and gyms, for example, are different. Those outlined in Schedule 1 measures have no capacity requirements, those not outlined do have capacity requirements.

Q5: How do businesses manage unvaccinated staff and/or volunteers? Is there any legislation I can refer to when standing down staff who do not wish to be vaccinated?

Fair Work: As previously mentioned. Understanding the reasons why is critical, underscoring the importance of seeking legal advice. Regarding 'standing down', Fair Work Act has provisions but only in specific circumstances. In this case it is unlikely statutory requirements would be met.

When public health order is in place to extent there are provisions for not letting unvaccinated staff into business, that does provide lawful basis for not letting them into the workplace.

FCB Workplace Law: It is essential to communicate with your staff, contractors, volunteers. Let them know the expectation is on them to get vaccinated and report back with their proof of vaccination status. There should be no ambiguity whatsoever but include scope for medical contraindications. Talk to them about your intentions, and ensure you understand their intentions, around what happens if they choose to remain unvaccinated – try to come to an agreement where possible. The best option is not to terminate employment but arrange for alternative work, annual leave, working from home where reasonable, and discuss their long term intentions. If there is no other option but dismissal, seek legal advice. A middle ground of people who are 'waiting for a different vaccination', or 'will get vaccinated but not yet' is more difficult to navigate than those who have been vaccinated or are vocal about not wanting to.

Q6: What does the Directive mean for an existing or new policy that requires workers to have received COVID-19 vaccinations? How do we implement such a policy?

FCB Workplace Law: If you already have your own in-house policy and the public health direction says differently, the health direction takes immediate priority. If your policy is more onerous, that is on you to decide whether it is still enforced. May be safer to pull back from your own policy to public health orders because it is enforceable – but you still need to be careful. Consider policies as two separate beings where directives take priority. The burden is on you to ensure your own policy is reasonable. Any changes must be communicated clearly with staff.

Q7: How long do we have to retain workers after 17 December before we can make a decision on their employment/engagement? What options are there?

Fair Work: There should be discussions already occurring in the workplace to get a sense of where people might be sitting regarding adjustments to work or alternative duties, etc. There is no one-size-fits-all approach, depends on circumstances.

Q8: What if a pregnant employee has advised that she will be getting vaccinated but not until she gives birth in a few months' time?

FCB Workplace Law: Again, there is no one-size-fits-all solution, and you'll need to consider circumstances. Advising these employees are given benefit of the doubt – think about whether employees can have alternative arrangements made instead of 'no job, no job'. Consider other discrimination risks, individual's personal circumstances, etc. Advisors can help businesses determine what is reasonable.

Q9: What do I do if I've received a letter from a worker which says I am discriminating against them/coercing them/assaulting them by requiring them to be vaccinated?

Fair Work: Treat it the same as any other workplace dispute via settlement functions in most enterprise agreements and awards, or policy. Otherwise seek legal advice.

We need to unpack what basis they claim is discrimination – trying to understand circumstances but if it comes down to philosophical employee view, then it is important for employer to seek legal advice and minimize legal risk as much as possible. For example, unfair dismissal laws don't mean not being able to dismiss employees, but there needs to be reasonable grounds for doing so. Apply the same frameworks for workplace disputes, assistance is also available.

FCB Workplace Law: There is a difference between lawful and unlawful discrimination, and direct and indirect discrimination. Public health orders are directed around exemptions and there are not many genuine medical contraindications out there. The health and safety of workers or customers, under government mandated public health order remains untested in QLD courts – but elsewhere it has been confirmed that Government is able to enforce those mandates.

Can a business dismiss an unvaccinated employee?

FCB Workplace Law: Under public health orders, a business has grounds for dismissal and cannot employ unvaccinated workers, but businesses must consider individual circumstances, medical exemptions, and need to ensure they are well-advised and be sure about how the business and individual fit into the public health directions. Overarching antidiscrimination and workplace law considerations are also in place.

QTIC members have access to legal advice via FCB.

Q10: Can unvaccinated staff return to work once the state reaches 90% double-dose?

Queensland Health: Still under consideration and being worked through, no definitive response.

Q11: Does the mandate for vaccination of staff include those who are not customer facing, e.g maintenance personnel or back-of-house staff?

Queensland Health: People need to look at it through use of each area in the venue and how directives apply to each, e.g. hospitality setting requires all staff to be vaccinated. Mandate covers place of work, rather than task being conducted. Some activities at a venue may be covered under directives, some not.

Q12: What if we run a tour throughout remote Queensland or on the islands, and it is impossible for our interstate guests to get a PCR test on Day 5?

Queensland Health: This falls under border restrictions directives, where the obligation is on the individual to ensure they obtain a PCR test. If no testing services are available for the individual to get tested on Day 5, the individual needs to make every effort to get a test as soon as available. There are lots of testing clinics across QLD.

The public health directives will not give a date range to allow for leeway, but the obligation is on the individual to ensure they get it done as soon as possible. Some circumstances may be seen as reasonable.

Further clarification provided by QLD Health following the webinar:

Visitors arriving into Queensland from hotspots must get a COVID-19 PCR test on day five, or as close to day five as practicable. The obligation to undertake the testing rests on the individual. There are testing locations across the state and all are aware of this requirement. An individual's entry pass to QLD output allows them to take that document to any testing centre without having a GP referral. Anyone who intentionally disregards the testing requirement may receive a \$1,370 fine.

Q13: Given the testing requirements for interstate visitors, how will regional destinations cope with increased testing numbers over Christmas, e.g. Whitsundays?

Queensland Health: Same as previous, accountability rests on the individual who has entered QLD to follow directions on Day 5 or as soon as available. A list of testing clinics is published on the [QLD Health website \(https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/stay-informed/testing-and-fever-clinics\)](https://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/stay-informed/testing-and-fever-clinics). Individuals should be aware of their obligations when entering QLD and need to consider this when planning their stay.

Q14: Visitors are currently not able to apply for a Border Pass with the new border openings, when will the system be ready to process these?

Queensland Health: We are working closely with QPS who are currently building a system, but release will be reliant on the updated border direction being finalised and approved by QLD Government. Premier announced changes to come into effect at 1am, 13 December; the Border Pass system will go live at the time those changes come into effect (it is unlikely to be earlier due to legal reasons). Existing directive remains in place until 12:59am, Monday 13 December. Border passes need to be relative to current restrictions and we do not want to be issuing the wrong obligations (i.e., quarantine) ahead of time. Border passes are electronic and do not need to be printed. The approval for the Border pass is instant.

In the case of airports, people cannot leave airport until they have a border pass, and it has been the case previously that visitors apply once their plane has landed.

Q15: For workers in high-risk settings there is some latitude for unvaccinated workers if there is a workforce shortage. Does this also apply to tourism businesses?

Queensland Health: High-risk settings only cover specific industries and does not cover tourism (e.g. high risk settings include health care, education, airports, and correctional/detention settings). Tourism is covered under public health and social measures.

Q16: Can you provide any further guidance on protocols after 17 December on exposure sites and/or snap lockdowns; and quarantine requirements might be for staff and guests for a positive case onsite?

Queensland Health: When there is a positive case at a venue, the local public health unit is responsible for assessing exposure risk. Risk assessment includes infectivity of case, layout of venue, movements of positive person, time, and nature of contact with others at the venue, and other factors. It will be a case-by-case assessment. Next steps around cleaning requirements or associated quarantine will come from local public health unit. Queensland Health have released general information on what happens after a positive case in existing circumstances.

Q17: The directives confirms that ferry services are categorised as transport, how do operators effectively operate the ferry with café/food service on board?

Queensland Health: Vaccinated and unvaccinated people are entitled to consumption of food/drinks – unvaccinated people can be served takeaway from the establishment.

Further clarification provided by QLD Health following the webinar:

Under the Public Health and Social Measures linked to vaccination status Direction an unvaccinated individual is permitted to purchase take-away food and beverages. An unvaccinated individual can access food and beverage on a ferry service provided that the service is equivalent to a take-away

whereby the unvaccinated individual removes themselves from the food and beverage area. In this instance, the unvaccinated individual can return to their seat to consume the food and beverage. A café type setting on a ferry service, whereby there is dining and table service, is not permitted to operate for unvaccinated patrons. A ferry vessel liquor licence is not attached to the PHSM direction.

**Q18: What about other water vehicles, boats or catamarans, and tour buses?
What is their classification?**

Queensland Health: If it's a point A to point B service, it's a transport service. If a tour bus is picking people up and taking them around to look at things, it's a tourism service. For catamarans, if it's a private overnight hire, that would be considered accommodation and there would be no public health and social measures. But if it is manned by a skipper and is taking a group on an experience, then it's tourism.

**Q19: What about agri-tourism business, farm stays, farm tours/experiences?
What is their classification?**

Queensland Health: Applies as previously outlined and depends on if any element of the business is covered under public health and social measures. If it involves accommodation services only, there would be no public health and social measures, but if there are other activities or hospitality services, directives may apply.

Q20: Can you provide some clarity for definition of 'residential facilities' - what constitutes 'short-term' accommodation? What if there is shared dining/kitchen facilities?

Queensland Health: Short-term accommodation is covered under Schedule 1. Shared dining and kitchen facilities is not a restricted business and can operate for vaccinated/unvaccinated people as they are BYO. However, there would be density limits on these facilities (1 per 2sqm).

Q21: What is the classification for Visitor Information Centres? Many of which are owned by Council and run by volunteers.

Queensland Health: Community facilities category falls under Schedule 1, unvaccinated people are permitted but there are density requirements (1 per 2sqm).

Q22: There is no mention of private Museums and Galleries within the Directive, are they within the vaccination mandate?

Queensland Health: These are also captured in Schedule 1 with public health and social measures attached. State-run museums and galleries only permit vaccinated staff and visitors.

Q23: If a business operates multiple different zones, do staff have to remain within those service areas, e.g., can hotel staff also work in the kitchen?

Queensland Health: Answered previously.

FOLLOW-UP QUESTION: what if maintenance workers perform duties after-hours? Does this change venue category?

Queensland Health: This question has come up previously across different industries. There is a need to incentivize unvaccinated people to get vaccinated while also protecting them from potential transmission. Direction in Schedule 1 highlights that measures are attached to a venue, and rules apply to each area of a venue based on the use of each area. If a venue has public health and social measures attached to an area, then rules will apply to the staff working in that area.

Wrapping up:

QTIC: Everyone is eagerly anticipating final details of directives, there is still high industry anxiety to do the right thing. With the 13th and 17th of December so close, we need to know the directions sooner rather than later. QTIC will make all details available as they become available. All government agencies will apply a reasonable approach to enforcement and interaction, as it is challenging for businesses to navigate. QTIC implores agencies to continue working with industry.

Queensland Police: QPS are not assuming there will be significant non-compliance, especially given Queensland's high vaccination rates. Directives will be implemented into normal police operations. People can be assured there is support. Departments are talking every day and quickly working together to ensure the information is available to those who need it. You can have confidence in these agencies to implement these measures, we will address problems in real time.

Fair Work: Fair Work Ombudsman does not take a regulatory role in enforcement, but will provide advice and assistance to businesses navigating these changes.