

# Mandatory Vaccination

A lawful and reasonable direction?

The great weight of the evidence before us to effect that certain types of medical experiments on human beings, when kept within reasonably well-defined bounds, conform to the ethics of the medical profession generally...

1. The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision...

'The Nuremberg code

*Equating the injection requirements to medical experimentation in concentration camps is reprehensible. Nazi doctors conducted medical experiments on vision victims that cause pain, mutilation, permanent disability, and in many cases, death.*

*Methodist is trying to do their business of saving lives without giving them the Covid 19 virus. It is a choice made to keep staff, patients and their families safer. Bridges can freely choose to accept or refuse a COVID-19 vaccine; however, if she refuses she will simply need to work somewhere else. If a worker refuses in assignment, changed office, earlier start time, or other directive, he may be properly fired. Every employment includes limits on the workers behaviour in exchange for his remuneration. That is all part of the bargain.*

# *Bridges v Houston Medical Hospital*

We are all Sovereign Bodies

***5 General legislative powers***

*The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever--*

*Provided that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.*

*Section 5 of the Constitution Act 1902 (New South Wales)*



## An inherent requirement?

*The phrase "inherent requirements" has been judicially considered to mean something that is essential to the position. To determine what are the inherent requirements of a particular position usually requires an examination of the tasks performed, because it is the capacity to perform those tasks which is an inherent requirement of the particular position..." A practical method of determining whether or not a requirement is an inherent requirement, in the ordinary sense of that expression, is to ask whether the position would be essentially the same if that requirement were dispensed with."*

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*Hail Creek Coal Pty Ltd v CFMEU (2004) 143 IR 354 at [124].*

# An assault?

the common law respects and preserves the autonomy of adult persons of sound mind with respect to their bodies. By doing so, the common law accepts that a person has rights of control and self-determination in respect of his or her body which other persons must respect. Those rights can only be altered with the consent of the person concerned. Thus, the legal requirement of consent to bodily interference protects the autonomy and dignity of the individual and limits the power of others to interfere with that person's body. At common law, therefore, every surgical procedure is an assault unless it is authorized, justified or excused by law.

*Secretary, Department of Health and Community Services v JWB*  
[1992] HCA 15; 175 CLR 218

## An assault?

*Ozcare has not physically required any employees, including Ms Glover to be vaccinated against their will. It has not held an employee down against their will and inflicted a vaccination upon them. Further, I do not consider its stated position requiring employees to be vaccinated or face termination is unlawful. I note it does not breach any ground of discrimination.*

*Maria Corazon Glover v Ozcare [2021] FWC 2989*

- (1) The Minister directs that a health care worker must not do work as a health care worker unless—
- (a) if the work is done on or after 30 September but before 30 November 2021— the worker has received at least 1 dose of a COVID-19 vaccine, or
  - (b) if the work is done on or after 30 November 2021—the worker has received at least 2 doses of a COVID-19 vaccine.

**Public Health (COVID-19 Vaccination of Health Care Workers) Order 2021**



*In considering the reasonableness of the introduction of the revised Employee Immunisation Policy, I have had significant regard to the vulnerability and age of the clients cared for by Ozcare and its employees in community care. Thousands of elderly clients, including more than 8,000 clients aged 75 or older ought to expect that the paid worker attending their home will take every precaution not to share influenza which alone could cause them to become extremely unwell or even die. Combined with the risk of potentially contracting coronavirus, it is, understandably, an alarming concern for the client and for their family (if they have family). In any inquiry into how an Ozcare client contracted influenza if largely isolated at home with few visitors, Ozcare would no doubt be required to answer questions, if put, as to whether the Ozcare worker was vaccinated against influenza. If answering to a client or a client's family that the Ozcare worker knowingly was unvaccinated and permitted to work, this could or might expose Ozcare to legal proceedings for relevant breaches of duty of care to its vulnerable patient.*

*Employer mandated vaccination is a topical question in the current pandemic. As I have said above, this decision relates specifically to the influenza vaccination in a childcare environment, where the risks and concerns are distinct. Goodstart's enterprise revolves around the care of children, who are by nature more vulnerable and in general have poor hygiene standards. This can make viral spread easier and potentially more dangerous than in other settings.*

*Barber v Goodstart Early Learning [2021] FWC 2156*

*I find that the respondent, principally through Mr Sierp, acted in an objectively prudent and reasonable way in not permitting the applicant to work within Imaly House absent an up-to-date flu shot. I accept the submissions for the applicant that Mr Sierp did not have a detailed knowledge of the Australian Immunisation Handbook (indeed, Mr Sierp himself professed only to be “familiar” with it), but I find he acted on his best understanding of it, conditioned particularly in the context of the CMO’s Advice as set out in the Media Release.*

*Jennifer Kimber v Sapphire Coast Community Aged Care Ltd [2021] FWC 1818*



*it is at least equally arguable that the Respondent's policy requiring mandatory vaccination is lawful and reasonable in the context of its operations which principally involve the care of children, including children who are too young to be vaccinated or unable to be vaccinated for a valid health reason. Prima facie the Respondent's policy is necessary to ensure that it meets its duty of care with respect to the children in its care, while balancing the needs of its employees who may have reasonable grounds to refuse to be vaccinated involving the circumstances of their health and/or medical conditions. It is also equally arguable that the Applicant has unreasonably refused to comply with a lawful and reasonable direction which is necessary for her to comply with the inherent requirements of her position, which involves the provision of care to young children and infants.*

*Nicole Maree Arnold v Goodstart Early Learning Limited T/A Goodstart Early Learning [2020] FWC 6083 at*



*I do consider the directives from Cheltenham Manor lawful and reasonable; the directives were considered having regard to available knowledge of the virus and risks to keep the staff and residents safe. The consequences for the residents were severe if insufficient risk mitigation measures were not taken.*

## 19 Primary duty of care

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of--  
(a) workers engaged, or caused to be engaged by the person, and  
(b) workers whose activities in carrying out work are influenced or directed by the person,  
while the workers are at work in the business or undertaking...

# Work Health Safety Act 2011 - section 19

*[In determining whether there was a valid reason for termination,] the Commission must give consideration to the need to enforce safety standards to ensure safe work practices are applied generally at the workplace. This is both for the protection of employees and others, and to comply with legal obligations imposed on employers, which require them to take various actions, including establishing and enforcing safety policies.*

*Parmalat Food Products Pty Ltd v Tran* (2016) 257 IR 21; [2016] FWCFB 1199

*It has been well recognised that an industrial tribunal will not lightly interfere with the right of an employer to manage its business as it sees fit, according to its operational needs, unless the work asked to be performed by the employee(s) is unjust or unreasonable:*

*Health Services Union NSW v Health Secretary in respect of NSW Ambulance (Line Ownership at Wagga Wagga) [2021] NSWIRComm 1053*



A hand is shown reaching out from the right side of the frame, palm facing left, as if to stop or deflect a large, glowing red virus particle. The virus particle is spherical with many sharp, protruding spikes and a bright yellow-orange core. Several smaller, similar virus particles are scattered in the background. The background is a light, hazy grey with some faint, glowing particles. The overall image has a dramatic, high-contrast aesthetic.

**It's time  
to stop  
pussyfooting  
around!**

depa calls for mandatory vaccination





Well you would say that wouldn't you?





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