

Our Ref: DEM/5652454 (650)  
Direct Tel: 03 9045 6980  
Direct Fax: 03 9258 9613  
Direct Email: BWalkerden@mauriceblackburn.com.au

Maurice Blackburn Pty Limited  
ABN 21 105 657 949  
Level 21  
380 La Trobe Street  
Melbourne VIC 3000  
PO Box 523  
Melbourne VIC 3001  
DX 466 Melbourne  
T (03) 9605 2700  
F (03) 9258 9600

5 October 2021

Robert Graauwmans  
President  
Construction, Forestry, Mining and Energy Union (Construction and General Division)  
540 Elizabeth Street  
**MELBOURNE VIC 3000**

Dear Rob,

**CFMMEU (C&G Div) Vic Branch re: Advice regarding Mandatory Vaccination Directions**

1. You have asked for advice on the following questions: in light of the COVID-19 Mandatory Vaccination Directions (No 5) (**the Directions**) can the operator of a construction site refuse to allow an unvaccinated worker onto the site?
2. The Directions are made under section 200 of the *Public Health and Wellbeing Act 2008 (Vic)* and commenced at 11:59pm on 1 October 2021 and end at 11:59pm on 21 October 2021.

***Public Health Directions***

3. The Directions provide that:
  - (a) Principal contractors of construction sites must take all reasonable steps to ensure that, on or after 30 September 2021, a worker who is unvaccinated does not enter, or remain on, the construction site for the purpose of working.
  - (b) Principal contractors are required to collect and hold information about the vaccination status of workers.
  - (c) If a principal contractor does not hold vaccination information about a worker, the principal contractor must treat the worker as if the worker is unvaccinated.
  - (d) A worker is considered to be unvaccinated under the Directions if the person has not received a dose of the COVID19 vaccine and is not an excepted person.

DEM/5652454/BMW/67208963.1/Default

- (e) A worker is an “excepted person” if the person has obtained certification from a medical practitioner that the person is unable, due to a medical contraindication, to receive a dose, or a further dose, of a COVID-19 vaccine. The Directions provide specific definitions of “medical practitioner” and “medical contraindication.”
- (f) The Directions also provide for exceptions in “exceptional circumstances” which, relevantly for construction sites, are:
  - (i) a worker is required to attend the construction site to respond to an emergency at the site;
  - (ii) a worker is required to perform urgent and essential work at the facility to protect the health and safety of workers or members of the public or to protect assets and infrastructure. Examples given are securing a crane due to impending high winds or works required at a construction site in order to make the construction site safe for continued operation.

#### **Can the principal contractors refuse site access to unvaccinated workers?**

4. The *Public Health and Wellbeing Act 2008* (Vic) and the Directions require principal contractors of construction sites to take all reasonable steps to ensure unvaccinated workers do not enter or remain on the construction site.
5. We consider that any refusal by a principal contractor to allow an unvaccinated worker on site, in order to comply with the Directions, would be lawful.
6. An unvaccinated worker who is refused entry to a construction site, in accordance with the Directions, is unlikely to have any legal claim against the principal contractor for the refusal of entry.
7. If an unvaccinated worker is refused entry to a construction site in circumstances that are not in accordance with the Directions then the legal rights of the worker will depend on all the circumstances including the reason for the refusal.
8. We are currently seeking urgent advice from counsel regarding the validity of the Directions. However, the Directions should be treated as valid and lawful unless a Court rules otherwise.

Yours faithfully



**Daniel Victory**  
**Principal Lawyer**  
**Employment & Industrial Law Section**  
**MAURICE BLACKBURN**