



Vaccine Passports - Don't ask, don't tell

BUSINESSES & CUSTOMERS

(Australia wide)

LEGAL ADVICE FROM RDA'S INHOUSE LEGAL TEAM

There has been a lot of misinformation in the media over the last several months about "Vaccine Passports" and the requirement for businesses to enforce rules that would result in medical apartheid.

These "rules" are not as yet Australia wide but the principles that operate to prevent such division amongst Australians already apply across Australia. The discussion here specifically addresses NSW "orders" that are already in place but the same principles will apply if and when the remaining States and Territories introduce similar orders.

Public Health (COVID-19 General) Order 2021 commenced at 8am on 21 October 2021 in NSW and attempts to place the following obligation on an "occupier" of certain premises¹:

"The occupier of the following premises in the general area must take reasonable steps to ensure that an unvaccinated adult is not on the premises"

No guidance is provided with respect to "reasonable steps". However, section 5.3(2) of the "orders" attempts to place the following obligation on a person who enters premises that are listed in Schedule 5:

*"The person must ensure the person's contact details are registered electronically when the person enters the premises—
(a) by using the person's phone to register the details with Service NSW, or
..."*

¹ Refer to section 2.18(1) for list of premises, page 13.



Section 5.3(3) also attempts to place the following obligation on the occupier of the premises:

“(3) The occupier of the premises must take reasonable steps to ensure a person complies with this clause when entering the premises.”

The requirement to provide contact details upon entering does not extend to voluntarily providing medical information to Service NSW via phone app or the providing it to the “occupier” and there is no requirement on “occupiers” to request someone’s medical information.

An “occupier” satisfies their obligations under these “orders” by simply placing a sign on the entry door requesting people provide their contact details and politely asking that “unvaccinated” adults refrain from entering.

There is no obligation to expend resources on collecting data on behalf of Service NSW and there is no requirement to ask people entering the premises for information that they DO NOT have to provide you.

Many people are unaware of their legally protected right to keep all personal medical information - private. **No one is required to disclose their personal medical information to anyone unless they provide consent** (*Privacy Act (Cth) 1988*).²

It is important to remember that Federal Legislation **ALWAYS** applies to the extent that there is any inconsistency between State and Federal laws and regulations.

Even if the “orders” did require people to provide their private medical information as a condition of entry, the Privacy Act (Cth) 1988, would make such a requirement unlawful. **This same principle applies to ALL States and Territories.**

In short – an “occupier” DOES NOT have to ask, and you DO NOT have to tell.

² <https://www.legislation.gov.au/Details/C2014C00076>