



Vaccine mandates: No ‘one size fits all’ approach to determining human rights compatibility

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As with any issue examined through the lens of Queensland’s Human Rights Act, requirements for people to be vaccinated for COVID-19 and their compatibility with human rights must be weighed on a case-by-case basis.

A key tenet of the Act – what it requires of us as public entities and lawmakers and decision makers – is not only the understanding that rights must be weighed and balanced, but that this balancing will depend on a number of factors unique to each situation.

The result of the balancing exercise will vary in different situations or circumstances. A public entity may demonstrate that an action or decision is compatible with human rights in one instance. It doesn’t necessarily follow that subsequent or related actions or decisions are also justifiable.

Requiring each action and decision to be assessed for human rights compatibility acknowledges that one size doesn’t fit all. That is a key purpose of human rights legislation.

When it comes to vaccine mandates, this may mean that some mandates are justifiable while others are not.

The factors to be taken into account here are numerous and include the purpose of the direction, the level of risk, whether there is a rational connection between the making of the direction and achieving its purpose, and whether there are alternative ways to ensure people’s safety in workplaces or service settings. Seeking to protect the community is consistent with the government’s obligations under the right to life, protected in the Human Rights Act.

It is important to understand that the Commission does not hold any adjudicative powers and is therefore unable to make any binding determination about the lawfulness or validity of any of the COVID response measures. This function resides in Queensland’s courts which have the ability to seek and assess evidence and to make a ruling on the compatibility or otherwise of the mandates.

There are several ongoing legal proceedings challenging vaccine mandates in the courts in which the Commission has intervened. The Commission has been closely

monitoring and assessing the expert evidence tendered by the parties. At times, the Commission has intervened to make submissions based on this evidence.

In deference to the administration of justice, the Commission does not publish or release its court submissions until the conclusion of legal proceedings.

Throughout the pandemic, the Commission has advocated for the government to publicly release how it has considered human rights in making public health directions. We believe this will enhance community support for such directions and assist with accountability and transparency in decision-making.

Further information

- [Information on COVID-19 and human rights](#) (including vaccine requirements)
- Intervening in legal proceedings: [Our intervention guidelines](#) explain when and why the Commission may intervene in a proceeding, while [concluded interventions are listed here](#).
- Assessing for compatibility with human rights: The steps involved in assessing acts or decisions for their compatibility with human rights are listed in [our guidance for public entities](#).

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