

# THE ACT HUMAN RIGHTS COMMISSION'S POSITION ON VACCINATION PASSPORTS

Posted on Wednesday, 8 September 2021



ACT HUMAN RIGHTS  
COMMISSION

Australian Capital Territory



The use of vaccination passports in Australia is currently under discussion by National Cabinet. A vaccination passport is a document certifying that the bearer has been fully vaccinated. If introduced in the ACT, individuals may be required to present the passport as a condition of access to various goods and services, including entry to certain locations and events, such as sporting venues, concerts, cinemas, restaurants and bars.

As a human rights jurisdiction, the ACT has a unique opportunity to lead the debate on whether and how vaccination passports could play a role in reducing lockdown restrictions while safeguarding public health. Conferring different rights and restrictions on people depending on their vaccination status is a serious step and requires careful consideration of its human rights implications. The ACT Human Rights Commission believes that the use of vaccination passports should not be left to the discretion of private sector entities to implement in arbitrary ways but must be expressly regulated by government to reduce the risks of unfairness and discrimination.

## Human rights implications

The use of vaccination passports is likely to engage a wide range of human rights that are protected by the ACT *Human Rights Act 2004* (HR Act), including the right to life, the right not to be subjected to medical treatment without consent, the right to privacy and personal autonomy, freedom of movement, children's right to protection, and the right to equality and non-discrimination. Their use may also engage the right to work and the right to education, if proof of vaccination is required as a mandatory condition of employment or attendance at educational institutions.

COVID-19 vaccinations have been shown to be effective in reducing the risk of catching and getting seriously ill from the disease. People who are fully vaccinated are also less likely than unvaccinated persons to transmit COVID-19 to others. The use of vaccination passports (and the associated freedoms that it would permit vaccinated individuals) may encourage greater public vaccination uptake and consequently protect the right to life of individuals and others in the general community.

However, as the Australian Human Rights Commission has cautioned, the use of vaccination passports may also have [“significant implications for privacy and autonomy, freedom of movement and association, equity and discrimination, particularly when it comes to accessing everyday goods and services”](#). If used inappropriately, vaccination passports could deepen inequality and discrimination against people who have not yet been vaccinated. It will therefore be important to ensure that vaccination passports are not used in ways that are not necessary or proportionate to the legitimate public health goal of controlling COVID-19.

To ensure that limitations on rights remain reasonable, necessary and proportionate, the ACT Human Rights Commission considers that any roll out of vaccination passports in the ACT should incorporate the following settings.

### 1. EQUITABLE ACCESS TO COVID-19 VACCINES

The Commission considers that people in the ACT should not be required to use vaccination passports before all eligible cohorts from 12 years onwards have been offered a realistic opportunity to voluntarily get a COVID-19 vaccination. In the ACT, the different rates of vaccination between age groups appear to have been

driven primarily by inequities in access, rather than vaccine hesitancy. Opportunities to lower barriers to accessing the vaccine still exist across the ACT and efforts should be made to overcome those barriers before resorting to the use of vaccination passports. To do otherwise would be unfair.

## 2. PRIOR PUBLIC CONSULTATION

The Commission calls on the ACT Government to consult with the public prior to the development of any vaccination passport model. Given the potential impacts on privacy, social cohesion and equity, it will be important to seek the views of the public and to ensure

that a broad range of interests and concerns are taken into account in the design of the model, and to guard against unintended consequences.

## 3. PRIMARY LEGISLATION

The Commission considers that - should the government move forward with proposals to introduce vaccination passports in the ACT - it is imperative that this is only done through primary legislation. Primary legislation is needed to ensure that the proposed model is subject to proper scrutiny and to ensure that robust legislative safeguards underpin the use of vaccination passports in the ACT. It would be inappropriate to use emergency procedures, such as public health directions, to

introduce a system with such a potentially wide adverse impact. Excluding unvaccinated people from certain spheres of society may exacerbate social disadvantage and stigma. As the use of vaccination passports has the possibility of infringing rights and being discriminatory in nature, the Commission does not support their use by private businesses and retailers, absent express government regulation by means of primary legislation.

## 4. CRITERIA FOR CERTIFICATION AND USE

The Commission considers that it will be important to specify the objectives of using vaccination passports in primary legislation, as clarity of purpose will be critical to determining the type of data that is needed, and the choice of safeguards that should be adopted to mitigate against any adverse human rights impacts.

While vaccination status can be used to indicate that a person is at a lower risk of carrying and transmitting the virus to others, it does not provide - and should not be treated - as proof that a person is 'COVID free'. Similarly, a person's vaccination status is only one way of showing the person's COVID risk profile. Therefore, if the justification for vaccination passports is that a person who is vaccinated has lower risks of getting sick or transmitting the disease, then **any certification model must also include people who have recovered from**

**COVID-19 as well as people who have recently received a negative test result.** Clarity should also be provided as to how long a vaccination passport would be valid, including how a booster regime would be factored into the scheme. The legislation should clearly set out:

- (i) the criteria or characteristics that would need be certified in a vaccination passport;
- (ii) the limits of such certification; and
- (iii) when, why and under what conditions individuals would be required to produce a vaccination passport, including what provision would be made for digitally excluded groups or marginalised people who do not usually carry identification on them or have access to mobile devices, eg, people experiencing homelessness.

## 5. EXEMPTIONS

The Commission considers that appropriate exemptions for people who cannot be vaccinated due to a medical condition, disability or other legitimate reasons (eg religion) must be provided in primary legislation, along with specific guidance about how valid exemptions will be certified or assessed. We believe that it would be inappropriate for individuals to have to repeatedly discuss their personal health information with various frontline staff.

**Essential goods and services:** There are some settings in which the Commission does not believe vaccination passports would be appropriate, even for voluntary use. In our view, essential settings and services that have

been able to stay open throughout the lockdown, including supermarkets, transport, hospitals, etc should not be permitted to use vaccination passports. To do otherwise would risk exacerbating social and economic inequalities.

**Children under 12:** As COVID-19 vaccines have not been approved for children below 12, the Commission considers that they must be exempt from having to demonstrate their COVID status, including through other means such as testing. We believe that repeat testing of this cohort would be disproportionate for the purposes of gaining entry to particular settings, including schools.

**Conscientious objectors:** The Commission considers that sufficient flexibility should be built into the scheme so that people who have a conscientious objection to COVID-19 vaccines are not automatically excluded from participating in society. Steps should initially be taken

to ensure improved access and education (including, eg, by requiring a person who objects to vaccination to sign an “[informed declination form](#)”) and exemptions should only be denied if the voluntary vaccination uptake has fallen short of the coverage rates being sought.

## 6. EXTERNAL SCRUTINY AND OVERSIGHT

The Commission considers that provision must be made in primary legislation for independent oversight of the use of vaccination passports in the ACT. It will also be important to ensure that there are quick and accessible ways to challenge unreasonable restrictions.

We recommend that if a provider seeks to impose a requirement to show proof of vaccination to access good or services, the legislation should stipulate that the

provider must publish a policy that addresses the reasonableness of imposing the requirement, including whether it is a short-term measure and why other ways of promoting COVID safety, eg, through use of Personal Protective Equipment (PPEs) or social distancing are not reasonably appropriate in that setting. Such a requirement would aid transparency and public scrutiny of the use vaccine passports by individual providers.

## 7. PRIVACY PROTECTIONS

The Commission considers that it will be essential to include strict privacy and data protection safeguards in primary legislation to ensure that personal health information collected through the use of vaccination passports is not used for different or expanded purposes, and any data stored is not used more broadly than intended. Such protections will be particularly important if, as [media reports suggest](#), vaccination

passports are linked to existing State and Territory contact tracing QR codes. The Commission’s privacy concerns expressed repeatedly over the last year about the Check in CBR app have only recently been addressed in a Government Bill currently before the Legislative Assembly to protect further uses of the data for other unrelated purposes, such as police investigations or prosecutions.

## 8. NO-FAULT COMPENSATION

The Commission considers that the availability of compensation in case of injury caused by vaccination would be a relevant consideration in assessing whether a system requiring the use of vaccination passports is proportionate. It is therefore welcome that the Australian Government has recently introduced a no-fault [COVID-19 Vaccine Claim Scheme](#), which will cover

the cost of injuries above \$5,000 for anyone who suffers an adverse reaction following vaccination, and provide an alternative to litigation for seeking compensation for injuries suffered following vaccination. Details of how the scheme will operate, however, are not yet available, including, eg, decision timeframes and whether people will be able to appeal or seek a review of decisions.

## 9. MARKETING PROMOTIONS

The Commission considers that marketing promotions in the form of “giveaways” or rewards that are offered only to individuals who are vaccinated should be generally discouraged. While such strategies may be seen as incentivising people to be vaccinated, they could inadvertently widen social inequities, and may also give rise to privacy concerns if individuals are invited to

provide personal health information to private businesses, such as airlines. However, practical assistance to support people to be vaccinated, eg, providing free travel to vaccination appointments, or giving staff time off work to attend vaccination appointments should be encouraged.

## 10. SUNSET CLAUSE

The Commission considers that legislation establishing a vaccination passport system must include a sunset clause setting out the date and conditions by which it will come to an end. Procedures should also be specified in the legislation to enable the permanent deletion of any

related data. The use of vaccination passports should be strictly temporary, and their use should not be permitted to continue beyond the time when the majority of people have been vaccinated or the public health emergency is over.