

From: **Emma McArthur** <ejminoz@gmail.com>

Date: Fri, 21 Jan 2022 at 13:41

Subject: Legal liability and professional indemnity insurance for Covid-19 vaccination

To: <Minister.Hunt@health.gov.au>

**For the attention of:
The Hon Greg Hunt MP
Minister for Health and Aged Care**

Dear Minister Hunt

Ref No: [REDACTED]

Following my correspondence, dated 11 November 2021, regarding the Covid-19 vaccine claims scheme, I am seeking further clarification regarding legal liability and professional indemnity insurance (PII) for Covid-19 vaccinations, in the current environment of mandatory Covid-19 vaccination requirements.

On 21 December 2021, I received a response to my initial inquiry from Louise Morgan, Acting Assistant Secretary of the Covid-19 Vaccine Claims Scheme Taskforce - see attached letter.

Ms Morgan advised that:

'The Scheme does not provide an indemnity for practitioners or insurers....'

Ms Morgan also states that:

'I can advise that informed consent should be obtained for every COVID-19 vaccination, as per usual consent procedures for other vaccinations.'

Ms Morgan directs me to the Australian Immunisation Handbook for information on consent:

'For more information, visit the Australian Immunisation Handbook, which has information about 'valid consent', including criteria for consent to be legally valid..'

I note that the Australian Immunisation Handbook states:

'For consent to be legally valid

2. It must be given voluntarily in the absence of undue pressure, coercion or manipulation...'

As you will be aware, a failure to obtain legally valid consent may leave a practitioner open to civil and criminal claims of assault and/or battery, as well as disciplinary action by AHPRA.[1-3]

In addition, PII is a requirement of professional practice, and practitioners have a duty to disclose any situation that may impact their PII. [4,5]

Given the widespread mandatory Covid-19 vaccination requirements across Australia, and given that the government is not indemnifying **medical professionals or insurers**, please could you provide answers to the following:

1. In Australia, what are the current legal definitions of:

- a) undue pressure
- b) coercion
- c) manipulation
- d) voluntarily

2. Are medical professionals administering Covid-19 vaccinations to individuals who are subjected to mandatory Covid-19 vaccination requirements, at risk of civil and/or criminal liability because of a failure to obtain **legally valid consent**? If not, please provide reasons.

3. Are medical professionals administering Covid-19 vaccinations to individuals who are subjected to mandatory Covid-19 vaccination requirements, at risk of being in violation of the terms of their PII, and therefore uninsured, as a result of a failure to obtain **legally valid consent**? If not, please provide reasons.

4. Are medical professionals administering Covid-19 vaccinations to individuals who are subjected to mandatory Covid-19 vaccination requirements, at risk of being in violation of their professional code of conduct, as a result of a failure to obtain **legally valid consent**? If not, please provide reasons.

Given the potentially serious nature of this situation for both patients and medical professionals, I request an urgent response to these questions.

Yours sincerely
Emma McArthur

References

1. <https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-alrc-report-124/10-review-of-state-and-territory-legislation-2/consent-to-medical-treatment/>
2. https://www.safetyandquality.gov.au/sites/default/files/2020-09/sq20-030_-_fact_sheet_-_informed_consent_-_nsqhs-8.9a.pdf
3. <https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx>
4. <https://www.ahpra.gov.au/Registration/Registration-Standards/PII.aspx>
5. <https://www.avant.org.au/products/medical-indemnity/practitioner-indemnity-insurance-policy/>