
COVID-19 vaccine claims scheme, medical indemnity and informed consent

Emma McArthur <ejminoz@gmail.com>
To: attorney@ag.gov.au

16 November 2022 at 16:05

For the attention of:
The Hon Mark Dreyfus KC MP
Attorney-General of the Commonwealth of Australia
PO Box 6022
Parliament House
Canberra ACT 2600

Dear Minister

I am seeking clarification regarding the legal liability of Australian health professionals administering COVID-19 vaccines in the context of mandatory COVID-19 vaccination requirements.

In November 2021, I sent correspondence to former Minister for Health and Aged Care, Greg Hunt, enquiring about medical indemnity and a failure to obtain valid informed consent for COVID-19 vaccination - please see email below.

I received a reply from Louise Morgan, acting Assistant Secretary for the COVID-19 Vaccine Claims Scheme Taskforce, stating that *'informed consent should be obtained for every COVID-19 vaccination, as per usual consent procedures for other vaccinations.'* (See attached)

Ms Morgan advised that the Covid-19 vaccine claims scheme *'does not provide an indemnity for practitioners or insurers.'*

Ms Morgan referred me to the [Australian Immunisation Handbook](#) for further information on 'valid consent', which states:

"For consent to be legally valid, the following elements must be present:

- 1. It must be given by a person with legal capacity, and of sufficient intellectual capacity to understand the implications of receiving a vaccine.*
- 2. It must be given voluntarily in the absence of undue pressure, coercion or manipulation.*
- 3. It must cover the specific procedure that is to be performed.*
- 4. It can only be given after the potential risks and benefits of the relevant vaccine, the risks of not having it, and any alternative options have been explained to the person.*

The person must have the opportunity to seek more details or explanations about the vaccine or its administration.

The information must be provided in a language or by other means that the person can understand. Where appropriate, involve an interpreter or cultural support person.

Obtain consent before each vaccination, after establishing that there are no medical

condition(s) that contraindicate vaccination. Consent can be verbal or written."

In January 2022, I sought further information from the Department of Health regarding the legal liability of health professionals administering COVID-19 vaccines in the context of mandatory COVID-19 vaccination requirements. The Department of Health advised that it cannot provide legal advice regarding this matter. (See attached) Therefore, I am seeking clarification from your department as to whether health professionals administering COVID-19 vaccines are at risk of civil and/or criminal liability, due to a failure to obtain legally valid consent when administering a vaccine to an individual who is subject to a mandatory vaccination requirement? In addition, are health professionals administering COVID-19 vaccines at risk of being in violation of the terms of their professional indemnity insurance, and therefore uninsured, due to a failure to obtain legally valid consent when administering a vaccine to an individual who is subject to a mandatory vaccination requirement?

Yours faithfully
Emma McArthur

----- Forwarded message -----

From: **Emma McArthur** <ejminoz@gmail.com>
Date: Thu, 11 Nov 2021 at 10:22
Subject: COVID-19 vaccine claims scheme
To: <Minister.Hunt@health.gov.au>

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

Dear Minister Hunt

Please could you advise to what extent the Commonwealth Covid-19 vaccine claims scheme provides insurance and indemnity for the civil and criminal liability that would arise where battery and clinical negligence occur due to a failure to obtain valid informed consent?

Please could you also provide the terms and conditions for this scheme.

Yours sincerely
Emma McArthur

2 attachments

 **MC21-037953 Signed.pdf**
120K

 **MC22-001962.Signed.pdf**
98K