

Liberty Victoria Statement on Vaccine Mandates and Vaccine Passports

Liberty Victoria's position on COVID-19 vaccines generally

COVID-19 has seen unprecedented restrictions on the human rights of Victorians. Where limitations on human rights are a proportionate response to risks to public health, Liberty Victoria has supported those measures. In circumstances where we consider restrictions are not proportionate, we have opposed them.

Vaccines are the most effective way to protect our whole community from the devastating consequences of COVID-19 – as they have for measles, polio and other infectious diseases – and to ensure that we are no longer required to lock down.

Around the world, there have been more than 5.94 billion doses of different COVID-19 vaccines administered. There is no doubt that vaccines have substantially decreased rates of death, hospitalisation, serious illness and infection. The experience in highly vaccinated countries such as Denmark, Italy, France and Germany provide proof of the benefits of vaccines. We can also see the dangers of opening before vaccine rates are sufficiently high if we look at parts of the United States.

We are very lucky to have several safe and free vaccines available to us. Liberty Victoria encourages all those who are eligible to get vaccinated. For those who are hesitant, we encourage you to speak to your doctor about your concerns.

Some limitations on human rights are justified during COVID-19

Victorians' human rights are protected by the Victorian *Charter of Human Rights and Responsibilities*. These human rights include:

- the right to life (s 9);
- the right to not be subjected to medical treatment without full, free and informed consent (s 10(c));
- the right to move freely within and to enter and leave Victoria (s 12);
- the right to freedom of thought, conscience, religion and belief (s 14); and
- the right to peaceful assembly and freedom of association with others (s 16).

Human rights can be limited. This is best illustrated by paraphrasing a well-known quote: my right to swing my fist ends where your nose begins.

COVID-19 plainly poses a threat to the health and wellbeing of Victorians generally. If no restrictions were imposed, we would see the infection and death rates rise rapidly. Accordingly, there is a strong argument that some limitations on our rights are justified to keep the community safe. This is particularly important when we consider the people who are particularly susceptible to the effects of COVID-19 (including the elderly and those with certain health conditions) and those who are unable to be vaccinated (for example, due to medical reasons or their young age).

The circumstances under which our human rights can be limited are narrow. In general, human rights can only be limited where that limitation is reasonable, necessary and proportionate in a free and democratic society based on human dignity, equality and freedom. That involves balancing different individual rights.

For example, given COVID-19 can cause significant health issues, and even death, the rights to move freely, to go to work, and to gather for religious ceremonies may need to take a backseat so that everyone can enjoy the right to life and the right to health.

With lower vaccination rates, the risk of the virus spreading and having serious consequences is greater. Greater restrictions on rights may be justified to avoid those risks. However, as the vaccination rate rises, and as transmission and illness rates slow, there will be less justification for restrictions such as limitations on when Victorians can leave their homes.

Vaccine mandates and vaccine passports

The Victorian Government has started to mandate vaccinations for workers in some industries. So far, workers in residential aged care facilities and on construction sites are required to get vaccinated to attend work. The Victorian Government has also indicated that the hospitality and events industries will also likely be the subject of vaccine mandates.

There has also been widespread discussion about “vaccine passports” which will allow those who are vaccinated access to particular services (such as hospitality and sport venues). For those who are unvaccinated, there have been indications that there will be some restrictions on their ability to access these services as well as some restrictions on movement (such as interstate or overseas travel).

Are vaccine mandates and vaccine passports a proportionate limitation on our human rights?

As a general rule, Victorians have the right not to be subjected to medical treatment without full, free and informed consent. The starting point must therefore be that people should be free to choose whether to be vaccinated.

However, in order to balance that choice with the right to life and the right to health of other Victorians, the choice not to get vaccinated may come with some consequences such as the limiting of access to particular services (for example restaurants, bars, or sporting venues) and limiting interstate and overseas travel.

It is Liberty Victoria’s view that incentives for vaccination — such as vaccine passports — are a reasonable, necessary and proportionate measure in light of the very significant risk to public health caused by COVID-19 in unvaccinated populations.

It is also our view that vaccine incentives are preferable to the widespread use of vaccine mandates from a human rights perspective. This is because it is a less

restrictive method of promoting public health, because it gives people a degree of choice.

However, that view is subject to the following:

- vaccine passports should not be used to limit access to public services such as health, housing, education or other government services;
- unvaccinated people must not be excluded from accessing fundamental services such as groceries and medical supplies;
- where possible, there should be reasonable accommodations made by private businesses and other organisations for people who choose not to get vaccinated, such as click and collect and take away services.

It is our view that the widespread use of vaccine mandates in the community should be an option of last resort. The widespread use of mandates should only be used where it is clear that sufficient rates of vaccination will not be achieved by people receiving the vaccine voluntarily, where there is a high risk of transmission and illness, and alternatives to encourage voluntary vaccination have been exhausted.

Whether a vaccination mandate in certain settings represents a proportionate limitation on human rights will ultimately depend on the detailed and specific circumstances of each individual case.

Relevant considerations as to whether mandates in a particular setting are proportionate may include:

- The risk of COVID-19 transmission in the relevant group of people;
- The risk of harm if a vaccination mandate was not imposed;
- Evidence that the risk would be reduced by a vaccine mandate as opposed to allowing people to be vaccinated by consent;
- The impact that not imposing a mandate would have on people within the group, such as those who may be particularly vulnerable to injury or death; and
- Any less restrictive means available.

In Liberty Victoria's view, a vaccine mandate is justified in places such as aged care, disability care, health care settings and prisons where there is a high risk of COVID-19 spreading quickly amongst a vulnerable group of people for whom a COVID-19 infection could be devastating.

If vaccine mandates and vaccine passports are introduced, there must be appropriate exemptions for people who are not eligible to be vaccinated (for example, because of young age) or who cannot be vaccinated for medical reasons (such as those undergoing cancer treatment or those recovering from a COVID-19 infection).¹

¹ Presently, ATAGI recommends that those who are recovering from COVID-19 wait around 6 months before they are vaccinated.

When issuing vaccine passports, steps should be taken to ensure private information of individuals remains well protected. Finally, vaccine passports should be time limited once vaccination rates within the community reach a safe level.

Addressing vaccine hesitancy

It is our view that governments must grapple with the misinformation being spread about vaccines on social media and the internet generally. While Australia has generally had very high levels of vaccine uptake, misinformation poses an ongoing risk.

Liberty Victoria urges State, Territory and Federal Governments to invest resources into grassroots organisations that can speak with people about their vaccine concerns and hesitancy. This should be done in a range of languages, and in methods sensitive to the needs of individual communities

We have seen great success in addressing vaccine hesitancy by local doctors, nurses and other grass roots and community organisations. We encourage Governments to work together with and listen to those on the ground to address vaccine hesitancy in our community.

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