

Collection, disclosure and storage of information relating to vaccination of workers

In late 2021, the Information Commissioner published guidance on *Collection, disclosure and storage of information relating to vaccination of workers - NT Vaccination Direction*. While that guidance was given in the context of the specific Direction, it contained general guidance on taking, securing and retaining information regarding vaccination status. While the Direction is no longer in force, much of the guidance will remain relevant both with respect to retention of information collected under the Direction and to cases where individual employers impose a separate requirement for collection and use of personal information relating to vaccination status of employees. The guidance cannot be updated to reflect every possible circumstance in which such information may be retained or continue to be collected. It nevertheless provides useful general guidance on factors to be considered, with necessary adaptation due to the circumstances of the particular case.

In October 2021, the NT Chief Health Officer issued a direction relating to mandatory vaccination of workers (*COVID-19 Directions (No. 55) 2021: Directions for mandatory vaccination of workers to attend the workplace*).

New data security and destruction provisions

COVID-19 Directions 55/21 have subsequently been amended - see consolidated version at: https://coronavirus.nt.gov.au/_data/assets/pdf_file/0010/1068886/consolidated-version-cho-directions55-2021and81-2021.pdf (the Directions).

The amended Directions include the following provisions relating to data security and destruction:

16 A person conducting a business or undertaking must:

- (a) destroy any copy of the evidence given to the person under direction 14 as soon as practicable, but in any case no later than 48 hours after the evidence is given; and*
- (b) ensure that the register kept under direction 15 is secured against access by any person for any purpose other than a person or purpose specified in paragraph (c); and*
- (c) ensure that any information in the register kept under direction 15 is not disclosed, except to an authorised officer when requested for the purpose of compliance or enforcement of these Directions or contact tracing in relation to COVID-19.*

Compliance with these Directions is mandatory.

Privacy protection

Compliance with the Directions involves businesses and undertakings collecting, using and storing personal information, including a requirement to maintain a register of information.

This will include sensitive personal information about the many individuals who fall within the description of 'worker' in the Directions.

Information disclosed to businesses or undertakings for the purposes of the Directions may include vaccination status, the fact and possibly nature of contraindications to receiving COVID-19 vaccines, health conditions and Aboriginal status that may be relevant to the application of the Directions.



Many businesses or undertakings subject to the Directions will be governed by privacy principles set out in the *Privacy Act 1988* (Cth) or the *Information Act 2002* (NT) but many will not.

The Information Commissioner strongly urges all businesses and undertakings (whether or not subject to privacy legislation) to take all reasonable steps to protect the privacy of workers and any other individuals whose information is obtained for the purposes of compliance with the Directions.

The Information Commissioner, together with the Australian Information Commissioner and other state and territory privacy commissioners and ombudsmen, has produced privacy principles to support a nationally consistent approach to solutions and initiatives designed to address the ongoing risks related to the COVID-19 pandemic: <https://infocomm.nt.gov.au/about-us/news/articles/national-covid-19-privacy-principles>

Bearing in mind those principles, the Commissioner raises the following points for consideration by businesses and undertakings bound by the Direction.

Key points

- The Directions are very broad but are restricted to 'workers' as defined. It is important to carefully consider the scope of 'worker' in the context of the particular business or undertaking, as this will fix the extent of the obligations under the Directions, including those relating to collection, use and storage of personal information.
- A worker's personal information should only be collected, used and stored for the purpose of compliance with the Directions.
- It should only be used or disclosed on a 'need-to-know' basis. It should not be used or disclosed for other purposes, even if they are related to the work of the business or undertaking.
- Only the minimum amount of personal information reasonably necessary to maintain the required register should be collected and recorded in the register.
- The Directions require that a person conducting a business or undertaking must ensure any copy of the evidence of vaccination given by a worker is destroyed as soon as practicable but no later than 48 hours after it is given.
- The Directions require that the register must be securely kept and not accessed by anyone except an authorised officer for compliance or contact tracing.
- The information retained in the register should be held for only as long as is necessary. When it is no longer needed, it should be securely disposed of.
- Workers should be notified of how their personal information will be handled.

Data minimisation

Collection of personal information should always be limited to the minimum information reasonably necessary to achieve a legitimate purpose. This includes considering alternative solutions that achieve the same purpose and do not require personal information to be collected into a record.



Privacy principles recognise that certain types of information are more sensitive and deserving of greater protection than others. This includes health information, like details of vaccination status or particular health conditions and information about racial or ethnic origin.

To work out the scope of the Directions and to comply with the verification provisions, a business or undertaking may have to collect and record information of this type but it is important to limit this to the minimum necessary.

For 'workers' that fall within the scope of the Directions this will include vaccination status for recording in the register. Workers are required by the Directions to provide this information. For unvaccinated workers who volunteer proof of a contraindication to all approved COVID-19 vaccines, it will include that information.

In some cases, it may also be necessary to ask for personal information from a person to establish whether they are a vulnerable person (to work out the scope of 'worker' under the Directions) or to assist with consideration of whether reasonable adjustments are made to accommodate a worker who is not vaccinated. The Directions do not include a requirement for a person to provide information of this type.

Purpose limitation

Information that is collected for the purpose of complying with the Directions should only be used or disclosed for complying with the Directions.

That will include maintaining the register and may include the other purposes discussed above.

The information should only be used or disclosed on a 'need-to-know' basis. It should not be used, disclosed or recorded for other purposes, even if they are related to the work of the business or undertaking.

It may be necessary to disclose some information to managers or supervisors who will be called on to ensure compliance with the Directions but even then, only the information necessary for them to ensure compliance with the Directions should be disclosed.

Keep the number of staff who are aware of such information to the minimum necessary to comply with the Directions. Some staff may be interested to know why particular action is being taken but any explanation should not include personal information about another staff member collected for the purposes of compliance with the Directions. There should be no reason to provide personal information to respond to rumours or conjecture.

Data security

Information collected for the purposes of the Directions should be protected from disclosure to other work colleagues and securely stored by the business or undertaking, and by any third party service provider.

Reasonable steps should be taken to protect the information from misuse, interference or loss, and from unauthorised access, modification or disclosure. This includes using reasonable physical and/or ICT controls to limit access to the information, including encryption at rest and in transit, wherever feasible.

Direction 16 (see above) requires that the register must be securely kept and not accessed by anyone except an authorised officer for compliance or contact tracing.

If practicable, it may be prudent to store information collected under the Directions in a separate and secure place or system, to facilitate secure storage and deletion once it is no longer necessary to keep the information.

Retention/deletion

Information in hard copy or electronic form that is collected by a business or undertaking for compliance with the Directions should only be retained for the period that the public health emergency declaration is in force, any further period needed to demonstrate compliance with the Directions or as required by law.

Direction 16 (see above) requires that a person conducting a business or undertaking must ensure any copy of the evidence of vaccination given by a worker is destroyed as soon as practicable but no later than 48 hours after it is given.

When information is no longer needed, it should be securely disposed of in line with any relevant record keeping requirements.

Regulation under privacy law

As noted above, for many workers, their personal information is protected under either the *Information Act 2002* (NT) or the *Privacy Act 1988* (Cth). Guidance for employers bound by the *Privacy Act* can be found on the website of the Office of the Australian Information Commissioner: <https://www.oaic.gov.au/privacy/guidance-and-advice/coronavirus-covid-19-vaccinations-understanding-your-privacy-obligations-to-your-staff>.

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