The mandatory influenza vaccination direction for employees and visitors in residential aged care facilities has been removed in Victoria and Queensland. It has only been removed for visitors, not employees in New South Wales. Effectively, residential aged care facilities are setting their own policies ahead of Government mandates on these issues.

***We suggest using the letter V1 in circumstances where you are a visitor being denied access to a loved one and/or an employee being demanded to show proof of influenza vaccination when there is no mandate that applies to compel you to take the influenza vaccination.***

We note the difficulties here in relation to obtaining a medical exemption, specifically the illogical narrowing of the exemption categories as per the following link:

<https://www.servicesaustralia.gov.au/individuals/topics/immunisation-medical-exemptions/40531>

We are of the strong view that Governments do not have the right to control the relationship between medical practitioner and patient or seek to bias that relationship. Unfortunately, either many medical practitioners are afraid to provide their honest opinion to patients and/or employers are rejecting the medical exemptions provided because they are not in the right form and do not conform with the restrictive requirements set by Federal Government regulators.

# Letter V1

# Mandatory Flu Vaccinations - In states where it is no longer mandatory

“Dear…….,

I refer to your request to me that I am required to have the influenza vaccine. Please clearly provide to me in writing, the legislative direction that compels me to be subjected to the influenza vaccine.

I draw your attention to [Care Facilities Directions (No 8) dated July 22, 2020 in Victoria and the current directions or the current Aged Care Directions in Queensland or the current Public Health COVID-19 Aged Care Facilities Directions in NSW], where **the prior mandate of the influenza vaccine has been removed.**

Workplaces are acting beyond their authorisation if they are setting workplace policies that go beyond the directions. While I recognise it may be recommended, I do have the right to refuse being vaccinated and do not need to provide any reason for same.

I also note here that you as an aged care facility provider are not an “Authorised Entity” under the relevant Public Health Act to either direct me personally to obtain the influenza vaccination, or demand that I get the influenza vaccination in the absence of a medical assessment. Additionally, immediate family medical background checks may need to be done to identify any potentially dangerous pre-existing conditions which are known to cause adverse effects, such as Guillain-Barre Syndrome or auto-immune conditions, or any other unknown allergies/risks, as well as showing the reason why I need to be vaccinated.

However, to assist you in allowing me to have access to my family member/employment, I am happy to provide you a medical certificate confirming my health status that I do not currently display any flu-like symptoms or COVID-19 symptoms.

I note here that the influenza vaccination has not been shown to reduce the risk of hospitalisation and does not protect fully from getting influenza and/or preventing transmission. The only appropriate assessment for that purpose is to ensure that I am not currently sick. This is what will protect your residents and other employees. To that end, I am happy to provide that proof.

I have the basic human right to refuse to be vaccinated and urge that you retrain from using coercive or punitive tactics when there is clearly no law supporting your policy.

I thereby request immediate access to my loved one in your aged care facility/return to my employment and look forward to your prompt response by email.

**End of Letter V1**

# Letter V2

# Mandatory Flu Vaccinations - In states where it continues to be mandatory

***In states and territories where there is a continuing mandate for the influenza vaccination, including WA, SA, NT, ACT, TAS & employees in NSW, it may be more difficult to achieve an outcome with the residential aged care provider, however we suggest the following.***

“Dear…….,

I refer to your demand that I am required to have the influenza vaccine and that you have referred me to the applicable Government mandate that has required you to make that request of me.

I note that I am part of a National Class Action through law firm Advocate Me in Victoria that is currently challenging the compulsory flu vaccination mandates, on the ground that they are contradictory to the *Biosecurity Act 2015* that works on a national level.

A vaccination mandate, including a testing or masking mandate, has to be targeted to an individual that presents signs and symptoms of the listed human disease and it must be as a result of a medical examination that would assess me as being a risk and would compel me personally via a biosecurity control order to be vaccinated. As part of this process, I would automatically be entitled to various rights including review rights and the right to a proper risk assessment.

In order for a Government or business to mandate masks (Section 88), PCR tests (Section 90) or vaccinations (Section 92), they need to impose on you a ‘***human biosecurity control order (HBCO)’*** (Section 60).

***A Human Biosecurity Control Order (HBCO)*** is also required to enforce restrictive behaviours and isolation measures.

For your reference, I reproduce the provisions here: **Biosecurity Act 2015** -<https://www.legislation.gov.au/Details/C2020C00127>

**Biosecurity Act 2015 (Section 60 – Human Biosecurity Control Order) -**

**Subsection (2)** - ***A human biosecurity control order*** may be imposed on an individual only if the officer is satisfied that:

1. The individual has one or more signs or symptoms of a listed human disease; or
2. The individual has been exposed to:
3. a listed human disease; or
4. another individual who has one or more signs or symptoms of a listed human disease; or
5. the individual has failed to comply with an entry requirement in subsection 44(6) in relation to a listed human disease.

**RELEVANT SECTIONS**

**BIOSECURITY ACT 2015 SECTION 88 – MASKS**

An individual may be required by a ***Human Biosecurity Control Order*** to wear either or both specified clothing and equipment that is designed to prevent a disease from emerging, establishing itself or spreading.

**BIOSECURITY ACT 2015 SECTION 90 - PCR TESTS**

**Undergoing an examination**

An individual may be required by a ***Human Biosecurity Control Order*** to undergo, at a specified medical facility, a specified kind of examination relating to determining the presence in the individual of:

1. the listed human disease specified in the order; and
2. any other listed human disease.

**BIOSECURITY ACT 2015 SECTION 92 - RECEIVING VACCINATIONS**

An individual may be required by a ***Human Biosecurity Control Order*** to receive, at a specified medical facility:

1. a specified vaccination; or
2. a specified form of treatment;
3. in order to manage the listed human disease specified in the order, and any other listed human disease.

It is therefore evident that in the absence of being personally directed, I have the right to refuse the influenza vaccination and you do not have the right to deny me access to my loved one/ employment.

However, to assist you in allowing me to have access to my family member/employment, I am happy to provide you a medical certificate confirming my health status that I do not currently present with either flu-like symptoms or COVID-19 symptoms.

I note here that the influenza vaccination has not been shown to reduce the risk of hospitalisation and does not protect fully from getting influenza and/or preventing transmission. The only appropriate assessment for that purpose is to ensure that I am not currently sick. This is what will protect your residents and other employees. To that end, I am happy to provide proof of that.

I have the basic human right to refuse to be vaccinated and urge that you refrain from using coercive or punitive tactics, when there is clearly no law supporting your policy.

I thereby request immediate access to my loved one in your aged care facility/return to employment and look forward to your prompt response by email.

**End of Letter V2**

# Letter V3

# Mandatory COVID-19 – Where States/Territories/Employers/Businesses make it mandatory despite Federal Government making it voluntary

The federal government has clearly announced that COVID-19 vaccines will be voluntary and there will be no impacts to the family tax benefits and other benefits. Where this has occurred, it is not permissible for either States and/or Territories and Businesses/Employers/Service Providers to enforce the COVID-19 vaccines.

Unfortunately, many businesses and employers are threatening their staff with COVID-19 vaccinations. We have put together the following template to assist in articulating the issues:

“Dear…….,

I refer to your request to me that I am required to have the COVID-19 vaccine. Please clearly provide to me in writing, the legislative direction that compels me to be subjected to the COVID-19 vaccination.

I bring to your attention the federal government announcement that the COVID-19 vaccination will be voluntary.

<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/getting-vaccinated-for-covid-19>

## **“COVID-19 vaccines will be voluntary**

Australians have a great record in being immunised. The COVID-19 vaccine will be voluntary, universal and free. If a safe and effective vaccine becomes available for COVID-19, the Government aims to have as many Australians as possible choose to be vaccinated for COVID-19.

If people choose not to have a COVID-19 vaccine, this will not affect their family's eligibility for Family Tax Benefit Part A or childcare fee assistance which only includes National Immunisation Program vaccines for those aged under 20 years.”

Workplaces are acting beyond their authorisation if they are setting workplace policies that go beyond the law and federal government mandates. While I recognise it may be recommended, I do have the right to refuse being vaccinated and do not need to provide any reason for same.

I also note here that you are not an “Authorised Entity” under the relevant Public Health Act to either direct me personally to obtain the COVID-19 vaccination, or demand that I get the COVID-19 vaccination in the absence of a medical assessment. Additionally, immediate family medical background checks may need to be done to identify any potentially dangerous pre-existing conditions which are known to cause adverse affects, or even death from vaccinations, such as GBS, or any other unknown allergies/risks, as well as showing the reason why I need to be vaccinated.

However, to assist you in allowing me to have access to my family member/employment/service, I am happy to provide you a medical certificate confirming my health status that I do not currently display any flu-like symptoms or COVID-19 symptoms. The only appropriate assessment for that purpose is to ensure that I am not currently sick. This is what will protect your residents and other employees. To that end, I am happy to provide that proof.

I note here that the COVID-19 vaccinations have not been shown to provide any long term protection nor reduce the risk of transmission. Many key government advisory groups have advised against making it mandatory.

In summary I say; employers and businesses need to understand that they do not have authority to require their employees and customers to be inoculated with the COVID-19 vaccine as a pre-condition for employment, or for obtaining services. Why not? Because matters of quarantine, and management of public health risks are a function of governmental powers.

Whilst employers and businesses may report perceived or potential public health risks to government agencies as part of their occupational health and safety obligation, they are neither qualified medical practitioners nor authorised officers, under the law, to make assessments or demands for quarantine, testing, masking, and/or vaccinating, for the purpose of mitigating serious risks to public health, other than those assessments or demands set by government laws and directions.

Finally, the Australian government has indemnified vaccine companies against liability arising from injury or death associated with the rollout of the vaccines. This [indemnity](https://budget.gov.au/2020-21/content/bp1/download/bp1_bs9_w.pdf) stretches to cover advisors to the government, but DOES NOT cover employers or businesses, states and/or territories. It is also very unlikely that any damage to an employee or customer as a result of coercive measures to vaccinate will be covered by the employer's or business's insurer, leaving them open to personal liability.

I have the basic human right to refuse to be vaccinated and urge that you refrain from using coercive or punitive tactics when there is clearly no law supporting your policy.

I thereby request immediate access to my loved one in your aged care facility/return to employment/resumption of service and look forward to your prompt response by email.

**End of Letter V3**