



LEGAL ADVICE

LEGAL ADVICE FROM RDA'S INHOUSE LEGAL TEAM

For All NSW and VIC employees and employers regarding private personal medical information

Both NSW and Victoria currently have purported (alleged) health orders in place issued by the Victorian Chief Health Officer (acting under the authority of the Minister of Health and Human Services) and the NSW Minister for Health and Medical Research.

These purported health orders:

- a) mandate medical procedures as a term of employment without Valid Consent (as defined by the Australian Immunisation Handbook Section 2.1.3) being capable of being given; and
- b) require employers, many of which being State Government employers, to collect private medical information contrary to the *Privacy Act (Cth)1988*, as a condition of employment.

Many employers are unaware of the risks of coercing people to undergo medical procedures without Valid Consent and the implications of breaching the Privacy Act (Cth) 1988 being Federal Legislation.

Please familiarise yourself with the following points:

1. Ministers (and arguably those acting with delegated authority such as the Chief Health Officer) are required to comply with the Ministerial Code of Conduct (both NSW and Victoria).
2. Section 5 of the NSW Ministerial Code of Conduct unambiguously states "*A Minister must not knowingly issue any direction or make any request that would require a public service agency or any other person to act contrary to the law.*"
3. Section 2.6 of the Victorian Code of conduct for ministers and parliamentary secretaries unambiguously states "They must not encourage or induce other public officials, including public servants, bid their decisions, directions or conduct in office to breach the law or to act improperly."
4. **No one is required to disclose their personal medical information to anyone** unless they provide consent. Ref:



Privacy Act (Cth) 1988

<https://www.legislation.gov.au/Details/C2014C00076>

5. The purported health orders ostensibly require employers to unlawfully require employees to provide personal medical information as a condition of employment well AFTER a contract of employment has been entered into.
6. The purported health orders require employers to coerce employees to submit to a medical procedure in the absence of Valid Consent. If this is not encouraging other public servants to act improperly, it is difficult to imagine what egregious behaviour would be required from a Minister to be in contravention of the Ministerial Code of Conduct.

Ref: Fully updated purported health orders can be found at

<https://www.health.nsw.gov.au/Infectious/covid-19/Pages/public-health-orders.aspx#vaccination>

<https://www.dhhs.vic.gov.au/sites/default/files/documents/202110/COVID-19-Mandatory-Vaccination-%28Workers%29-Directions-%28No-3%29.pdf>

Ref: Ministerial Code of Conduct for NSW and Victoria can be found at

<https://www.vic.gov.au/code-conduct-ministers-and-parliamentary-secretaries#2-principles>

http://classic.austlii.edu.au/au/legis/nsw/consol_reg/icacr2017533/sch98.html