



9 Confidential Items

9.1 COVID Mandatory Vaccination Policy Update

Report Reference	RSC220201F9.1
Originating Officer	Manager People and Culture – Jessica Lynch
Corporate Manager	- N/A
General Manager	Chief Executive Officer - Tony Harrison

CONFIDENTIAL MOTION

That pursuant to Section 90(2) and (3)(a) of the *Local Government Act 1999*, the Committee orders that all persons present, with the exception of the following persons: Chief Executive Officer, Manager People and Culture, be excluded from the meeting as the Committee receives and considers information relating to COVID Mandatory Vaccination Policy Update, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to personal affairs of City of Marion employees.

REPORT OBJECTIVE

To provide the Review and Selection Committee and overview of the COVID mandatory vaccination policy consultation and implementation approach and an overview of the impact on the organisation.

EXECUTIVE SUMMARY

The City of Marion (CoM) is cognisant of its obligations under the Work Health and Safety Act 2012 (SA) to ensure that the workplace is safe, and no worker is put at risk of injury in the workplace. This obligation requires CoM, to the extent it reasonably can, to eliminate all health and safety risks to those in the workplace, and where elimination of risk is not possible, minimise those risks as far as reasonably practicable. This includes minimising, so far as is reasonably practicable, the transmission and severe consequences of COVID-19 in the workplace. As a result of this obligation, the CoM consulted and finalised a COVID Mandatory Vaccination Policy in late 2021. The policy requires all current and future “workers” to be fully vaccinated by 28 January 2022, unless the worker has a medical contraindication to vaccination.

RECOMMENDATION

That the Review and Selection Committee:

1. Notes the report.
2. In accordance with Section 91(7) and (9) of the *Local Government Act 1999* the Committee orders that this report, COVID Mandatory Vaccination Policy Update, any appendices and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(a) of the Act, except when required to effect or comply with the Committee’s resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2022.

DISCUSSION

In expectation of South Australian borders re-opening on 23 November 2021, the City of Marion Work Health and Safety team conducted a risk assessment on the impact of COVID-19 to the City of Marion workers. Further, in early November 2021, a number of City of Marion employees became subject to mandatory vaccination and reporting requirements in alignment to:

1. Requirements for Commonwealth Home Support Programs, impacting the CoM Positive Ageing and Inclusion Team.
2. The *Emergency Management (In-home and Community Aged Care and Disability Support Workers Vaccination) (COVID-19) Direction 2021* mandating vaccinations for a person engaging in work or performing duties of an in-home and community aged care worker or a disability support worker.
3. The *Emergency Management (Residential Aged Care Facilities No 42) (COVID-19) Direction 2021* mandating vaccinations for persons entering an Aged Care Facility.

Upon review of workforce impacts, the WHS risk assessment, and to ensure the City of Marion meets its obligations to ensure that the workplace is safe and no worker is put at risk of injury in the workplace, the Incident Management Team agreed to consult on a draft COVID mandatory vaccination policy in early December 2021.

Covid policy consultation summary

The COVID Mandatory Vaccination Policy opened for consultation on the 6 December 2021 and closed on the 17 December 2021. The consultation process sought feedback from just under 400 CoM employees and approximately 300 volunteers.

Leadership were asked to directly consult with their teams before COB 10 December 2021. Unions, sub-contractors, labour hire suppliers were advised of the consultation process. Health & Safety Representatives were consulted on 23 November 2021 and 8 December 2021. Field based teams (Operations) received a face-to-face information session on the 7 and 9 December 2021. Volunteers were provided face to face session on 9 December 2021.

All employees were also invited to a COVID-19 Vaccination Information Session webinar facilitated by Professor Katina D'Onise, Executive Director from Wellbeing SA to learn more about the vaccine.

The Incident Management Team met twice a week and continually considered feedback provided throughout the consultation period. Council received over 180 feedback submissions, with over 300 employee names or anonymous records reviewed during the consultation period. Every item of feedback was carefully considered. The feedback from our workers overwhelmingly supported this policy. There were 20 feedback submissions provided that indicated they did not support the policy.

A minor terminology change was made in response to feedback received on the draft policy simplifying the language stating the requirement to 'be fully vaccinated with an appropriate COVID-19 Vaccine'. Previously this stated to 'have obtained a primary course of an appropriate COVID-19 Vaccine'. The vast majority of feedback received was in support of the policy.

The two week consultation concluded officially at the close of business on 17 December 2021. The Incident Management Team endorsed the policy on 20 December 2021 (Attachment 1).

Covid policy implementation approach

The Senior Leadership Team (SLT) was asked to engage employees to evidence their vaccination status and support them in obtaining vaccinations. Employees were able to use work time to receive a vaccination. SLT was provided with a direct link to a list of their employees where they could record sighting their employees vaccination status and the date of their 2nd vaccination. The record also provided the ability to document any requests for a policy exemption and further information for consideration. Those employees who requested an exemption for additional time to seek a protein-based vaccination or to obtain a medical exemption were provided a letter in mid-January

requesting further information and a completed policy exemption form for CEO consideration. Volunteer managers were asked to sight and record sighting of volunteers vaccination status.

Covid policy implementation outcome

As at close of business on 28 January 2022:

- 93% of City of Marion employees were fully vaccinated and proof of evidence has been sighted.
- A further 1% of employees have had their 1st vaccination and will be receiving their 2nd vaccination in the next week.
- 1 employee has received an official medical contraindication from the Chief Public Health Officer.
- A further 15 employees have submitted a policy exemption request, and are working on a temporary work from home arrangement, or accessing leave entitlements to allow them to obtain the recently approved Novovax COVID vaccination and/or manage other health issues.
- 3 employees have refused to receive any vaccination. These employees have been issued a letter requesting they do not attend the workplace from the 29 January 2022 and provide evidence as to why they are not complying with the policy. These employees have been suspended from duty on full pay and requested to provide a response by the 4 February 2022.

All employees have been encouraged to utilise the Employee Assistance Program if required or contact People and Culture for any questions.

ATTACHMENTS

1. Attachment 1 CoM Mandatory vaccination policy December 2021 [9.1.1 - 5 pages]

COVID Mandatory Vaccination Policy



1. PURPOSE

The purpose of this policy is to implement Council-wide COVID-19 mandatory vaccination. It applies to all current and future Workers¹ engaged by the City of Marion (CoM).² This policy constitutes a lawful and reasonable safety direction.

The *Work Health and Safety Act 2012* (SA) (WHS Act) requires the CoM to ensure, as far as reasonably practicable, the safety of all that attend at its Workplaces. This obligation requires CoM, to the extent it reasonably can, to *eliminate* all health and safety risks to those in the workplace, and where elimination of risk is not possible, *minimise* those risks as far as reasonably practicable. This includes minimising, so far as is reasonably practicable, the transmission and severe consequences of COVID-19 in the workplace.

Where COVID-19 is in the community, there is a risk of transmission of COVID-19 in our Workplace(s). Vaccination against COVID-19 is recognised as a powerful means by which the risks of COVID-19 can be reduced. Consistent advice from Government Health Authorities, in Australia and around the world, is that vaccination significantly reduces the risk of a person contracting COVID-19. Vaccination also significantly reduces the severity of symptoms of COVID-19.

Mandating vaccination is one of the most effective controls that CoM can implement to safeguard our Workers. The fact that serious illness or even death (even if highly improbable for most) remains a potential consequence of contracting COVID-19, means that CoM's obligation to eliminate or reduce that risk is significant, particularly when the risk mitigator (a COVID Vaccine) is quick, free, effective and safe in the overwhelming majority of cases.

2. RATIONALE AND TIMING

This implementation of this policy has become necessary because of the increasing likelihood of COVID-19 community transmission in South Australia from December 2021 onwards, and because:

- there will no longer be Government enforced lockdowns in the case of community transmission(s) (at least to the extent seen previously);
- our community is dealing with a virus that is continually mutating with new variants arising and may cause more infections and spread faster than earlier forms of the virus;
- many who contract COVID-19 are contagious in the 48-hour period prior to developing any observable symptoms, meaning that our existing safety protocols may not be sufficient to address the hidden transmission risk (during that 48-hour period).

3. SCOPE

This policy applies to all CoM Workers engaged to perform work for or on behalf of CoM. For the avoidance of doubt, Elected Members and non-Worker visitors to our Workplaces are excluded from this policy.

¹ As defined in the WHS Act. This includes employees and contractors, each of which are addressed separately in this policy (where relevant).

² Subject to limited, narrow exceptions as set out later in this Policy.

COVID Mandatory Vaccination Policy



4. GOVERNMENT MANDATES

This policy must be read subject to all relevant mandatory vaccination laws, as introduced and varied from time to time by the South Australian and/or Commonwealth Government, including but not limited to the Directions issued pursuant to the *Emergency Management Act 2004* (SA) (**Government Mandate**). If there is an inconsistency between this policy and a Government Mandate, the latter will prevail to the extent of that inconsistency.

5. COMMENCEMENT DATE AND REVIEW

This policy will commence on 20 December 2021. The requirements of this policy will be effective on 28 January 2022. Due to the ever-changing nature of COVID-19, this policy may be varied from time-to-time by CoM. However, this discretion will be exercised reasonably, and significant variations will only occur after a reasonable period of consultation.

6. POLICY STATEMENT

By 28 January 2022 all Workers must:

- be fully vaccinated with an appropriate COVID-19 Vaccine; and
- provided Council with reasonable proof of their vaccination status, unless the Worker has a medical contraindication to vaccination.

Proof of vaccination status and medical contraindications are dealt with later in this Policy. Workers should seek independent medical advice in respect of which COVID-19 Vaccine is appropriate for them.

In addition to this policy constituting a lawful and reasonable safety direction, the CoM considers that maintaining vaccination against COVID-19 is an inherent requirement of all Employees' positions and a condition of employment with the Council.

The decision to require CoM Workers to maintain vaccination has been made in consideration of a number of factor(s) relevant to our many and varied Workplace(s) including the high level of interaction between Workers, interactions between Workers and members of the public in the performance of Workers' duties, our duty to maintain the ongoing provision of essential and non-essential services to the community, and the overarching need to for the CoM, in its capacity as a PCBU, to ensure it is complying with its work health and safety obligations.

All Workers are required to comply with any other or additional control measures as determined by the CoM, to support compliance with the WHS Act and the CoM's policies and procedures. This includes, but is not limited to, the use of Personal Protective Equipment, in particular the use of face masks when performing duties.

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 Category: COVID
 Owner: Chief Executive Officer
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COVID Mandatory Vaccination Policy



7. IMPLEMENTATION

7.1 Disclosure of vaccination status

7.1.1 The CoM requires Workers to provide their vaccination status for the purposes of managing the risk of COVID-19 transmission in the workplace. The CoM must comply with its obligations under the WHS Act or any other lawful direction and subsequently this requirement is a lawful and reasonable direction.

7.1.2 All Workers will be required to present the CoM with evidence of their COVID-19 Vaccination status.

7.1.3 Sufficient evidence of a Vaccination status includes presenting a copy or image for sighting to your People Leader or filing of:

- a. A COVID-19 Vaccination digital certificate; or
- b. An Australian Immunisation Register immunisation history statement; or
- c. A copy of the completed card/form received following Vaccination(s); or
- d. A letter from a General Practitioner confirming Vaccination(s).

7.1.4 Although the *Privacy Act 2009 (Cth)* does not apply to this information, all information received and stored by the CoM in relation to Vaccination status will be managed as confidentially as circumstances reasonably permit and will only be made available to relevant People Leaders and the People & Culture team where reasonable and appropriate to do so. Further, to assist the CoM with not having to collect health information that is not necessary for it to comply with this policy or the WHS Act, Workers providing evidence of their vaccination status will ideally redact all identifying information in that record, except for their name and the date of their vaccination(s).

7.2 Consequences of Non-Compliance with Direction

7.2.1 Should a Worker refuse to comply with the direction to obtain Vaccination(s) and/or disclose their Vaccination status before 28 January 2022 (and they do not have a documented medical contraindication to vaccination, or an agreed Temporary Remote Working Arrangement) such non-compliance:

- Will very likely constitute a failure to carry out a reasonable safety direction and would cause serious and imminent risk to the health and safety of other workers and may warrant summary dismissal (in the case of an employee) or the termination of contractual arrangements with the Worker (in the case of a contractor) at or soon after 28 January 2022; and/or
- May result in the employee no longer being able to perform a fundamental and inherent requirement of their role in a safe manner and may warrant termination of employment on provision of notice or payment in lieu of notice at or soon after 28 January 2022.

Prior to any decision being made about a Worker's ongoing employment, the CoM will take all reasonable steps to consult with the Worker (who is not complying) prior to 28 January 2022, to determine whether a medical contraindication may be applicable, or whether a Temporary Remote Working Arrangement may possibly be implemented.

In the event a medical contraindication is not applicable and/or a Temporary Remote Working Arrangement is not possible and/or cannot be agreed by 28 January 2022, then the CoM will consider its options and will proceed in accordance with the CoM Employee Performance Policy and Procedure.

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7.3 Workers with medical contraindication to COVID-19 vaccination

7.3.1 Workers who have medical contraindication to vaccination, as determined by an independent medical practitioner, are not considered to have refused the COVID-19 Vaccine.

7.3.2 Workers who cannot have the COVID-19 Vaccine due to medical contraindication to vaccination are required to provide the CoM People & Culture team with documented evidence of their contraindication by way of a medical certificate.

7.3.3 The CoM may direct a Worker with a medical contraindication to vaccination to undergo a further specialist independent medical assessment.

7.3.4 A risk assessment will be completed by the CoM People & Culture team and People Leader in respect of a Worker with medical contraindication to vaccination to establish any other potential ways of maintaining safety for the employee, colleagues and close contacts to best enable the Worker to continue performing their ordinary duties in a safe manner.

7.3.5 The CoM will endeavour to make reasonable adjustments, where possible, to a Worker with medical contraindications to vaccination to enable the Worker to continue performing their ordinary duties.

7.3.6 If it is determined that a Worker with medical contraindications to vaccination cannot continue performing their ordinary duties in a safe manner, the CoM People & Culture team and People Leader will consult with the Worker to consider alternate duties.

7.4 Attendance at COVID-19 Vaccination appointments

7.4.1 All Employees will be entitled to attend vaccination appointments during their ordinary hours of work with no reduction in pay by accessing COVID Leave, subject to each Employee providing reasonable notice and evidence to their immediate People Leader in advance of the appointment(s).

7.4.2 If an Employee suffers adverse reactions to the COVID-19 Vaccine and is unable to work, the Employee will be required to use their personal leave entitlements (if applicable). If an Employee has exhausted his or her personal leave entitlements (or does not accrue leave), they may either access their other leave types or take leave without pay. A medical certificate will be required for two or more days absence from work.

7.5 Temporary Remote Working Arrangement

The CoM may, in its sole discretion which will be exercised reasonably, consult with individual employees to seek agreement on temporarily undertaking alternate duties, initially on a temporary trial basis, their contracted duties and/or role to enable them to work remotely and away from Council Workplace(s).

Whether an arrangement will be reasonable must be assessed on a case-by-case basis and will largely depend on the duties and the requirements of their role, the Worker's competencies and capability to undertake alternate duties and the extent to which that Worker could realistically perform their duties without needing to attend at CoM workplace(s).

A temporary remote working arrangement (or **TRWA**) will not be effective until it is confirmed in writing and agreed between the Worker and the CoM. At a minimum, the TRWA will record:

- The duties being modified for the life of the TRWA;

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- The location at which duties will be performed during the TRWA; and
- A review date by which the TRWA will be assessed to determine whether the temporary arrangement may be extended or agreed to be permanent.

However, in the event a TRWA expires without a further TRWA being implemented, the status quo will return, and the Council may proceed to exercise its rights of termination as per paragraph 7.2 of this Policy.

8 DEFINITIONS

Key Term Acronym	Definition
COVID-19 Vaccine	COVID-19 vaccine approved by the Therapeutic Goods Administration for use in Australia and delivered in accordance with the Australian Technical Advisory Group on Immunisation (ATAGI) recommendations.
Employee	Any employee engaged by the CoM, including casual, part-time, and full-time employees, and those engaged on a fixed-term and permanent basis, as well as trainees, apprentices and students conducting work experience.
Medical contraindication to vaccination	A condition that precludes a person from receiving a COVID-19 vaccine as certified by a medical practitioner on the basis that it may increase the chance of a serious adverse event. A medical contraindication may be permanent or time-limited in accordance with the guidelines published from time to time by the ATAGI.
PCBU	Person Conducting a Business or Undertaking – an entity that engages or causes the engagement of workers to carry out work or directs or influences workers carrying out work.
Vaccination	The process of administering a COVID-19 vaccine.
WHS Act	<i>Work Health and Safety Act 2012</i> (SA) or its successor, as amended from time to time.
Worker	Any employee engaged by the CoM, including casual, part-time, and full-time employees, and those engaged on a fixed-term and permanent basis, as well as contractors, volunteers, apprentices, and students conducting work experience.
Workplace	A place where work is carried out for the CoM and includes anyplace where a Worker goes, or is likely to be, while working for or on behalf of CoM.

9 ROLES AND RESPONSIBILITIES

Workers are responsible for understanding and following all reasonable instructions contained within this policy and associated policies and procedures. The Senior Leadership Team are responsible for ensuring this policy is communicated and complied with by Workers within their departments.

10 REFERENCES

Work Health & Safety Act 2012 (SA)
 Fair Work Act 1994 (SA)
 City of Marion Enterprise Agreements
 City of Marion Expected Behaviours and Corporate Values
 CoM Guidelines for Recruitment, Selection and Appointment
 CoM Risk Management Policy
 HSE & RTW Policy
 CoM Employee Performance Policy
 Leave Policy – COVID-19 – Leave Supplementary Provisions for COVID-19

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