

The COVID vaccine is here. When and to whom will we need to prove we've had it?

February 17 2021, by Rick Sarre and Sarah Moulds



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Australia's long-awaited COVID vaccine rollout is scheduled to begin [on Monday](#).

[New laws](#) have just been passed mandating the recording of COVID-19 [vaccine information](#) on the Australian Immunisation Register. The changes to the [Australian Immunisation Register Act 2015](#) will mean vaccination providers, such as GP clinics, will need to report to the government who was given the COVID-19 [vaccine](#), both within and outside of Australia.

The act introduces penalties for providers who don't comply with requests for information. Before these changes were made, the Australian Immunisation Register, which records inoculations (such as for seasonal influenza) under school-based programs and those given privately, was maintained on a voluntary basis.

Now vaccine providers will have no choice but to add [personal information](#) to the register about people's vaccination status. This information can be accessed by authorized government officials for [health and other purposes](#).

The [federal government has also announced](#) that Australians will be able to provide proof of vaccination through an app on their phone.

The idea is that this will allow those who have been vaccinated [access](#) to services such as air travel. It may also bestow certain privileges, such as being [eligible to attend](#) sports stadiums and theatres.

These announcements appear to give rise to a very satisfactory result: mandatory reporting of inoculations will give authorities accurate information about who has received the jab, and those people in turn can prove their vaccinated status on a readily accessible app if need be. Lots of Australians will happily download the app; some might even see it as their civic duty.

But there will be many who will balk at these arrangements. So what are

their rights?

In a country like ours, without a constitutional Bill of Rights, can you refuse to be vaccinated and so be denied a service, preference or privilege? Who has the legal power to ask you to prove you have been vaccinated? And can you refuse to answer the vaccination question?

Will you need to prove you've had a vaccine to travel?

Consider an airline that refuses to carry a person who has not been vaccinated. Businesses can generally set out the terms and conditions that apply to the provision of their services. But they cross the legal line if their terms or conditions discriminate against a person on the grounds of a personal attribute such as gender, race or disability.

A [disability](#) can include a range of physical, medical and psychological features that may affect a person's decision to be vaccinated. For example, discriminating against people who [are not vaccinated against COVID-19 because of a serious medical condition](#) could constitute disability discrimination under [federal law](#).

This means that if an airline wanted to make vaccination a condition of flight, it would need to have a strategy to accommodate people with disabilities who were not vaccinated. The airline could also offer options to those who choose for any reason not to be vaccinated by insisting travelers distance themselves from other travelers by buying three seats (or two business class seats). There is no legislative protection, incidentally, for discriminatory practices that target the less well-off.

Keep in mind the federal government could legislate to mandate that a person cannot fly into Australia without having been vaccinated. A new law like this could override existing [anti-discrimination laws](#), giving airlines the green light to refuse service to anyone without proof of

vaccination on inbound international flights.

Whatever Australian laws might be made in this regard, many countries are likely to adopt strict vaccination entry requirements, making it very unwise to leave this country without a vaccination.

In the workplace

State and federal laws allow managers to make reasonable demands that staff comply with certain conditions and [impose obligations](#) to ensure workplaces are safe. For those whose job requires looking after others (such as aged care, childcare, health work or quarantine operations), vaccinations could become mandatory by law. This is because that would be [a reasonable requirement for a safe workplace](#) for both worker and visitor.

In jobs that don't require close contact with other people, employers will not be able to mandate vaccinations unless [new laws](#) are passed. Even without such new laws, workers who are not vaccinated can reasonably expect accommodations will be made for them, such as facilitating working from home or working separately from colleagues.

Do you have a "right to silence" about vaccination?

The changes to the Australian Immunisation Register Act mean your vaccine status will now be recorded on the register. This information can be accessed by you through your myGov app or Medicare account, as well as by authorized officials.

The act also includes a broad power for the health minister (or their delegate) to authorize a person to access and use personal vaccination information, if they are satisfied it is in the public interest to do so. This

could include authorizing a public servant from a state or territory department to access the register when responding to a COVID-19 outbreak, but may be broad enough to authorize access beyond healthcare responses, for example to provide access to schools or childcare centers.

Under section 11(2) of the act, it is possible for a person to formally request their identifying information on the register not be shared with others. This has the potential to provide some privacy protections for those savvy enough to make the required application before their identifying information has been shared.

The changes to the act do not yet give private companies or private service providers direct access to the register. Any alteration to these protocols would require more amendments, or a specific authorisation to be given by the health minister. If that were to happen there would be significant implications for the general right Australians have to information privacy.

The potential for the Australian Immunisation Register to be accessed by a broad range of people for a broad range of purposes was considered by the [Parliamentary Joint Committee on Human Rights](#) when it [looked into the recent changes](#). The committee raised questions about whether the privacy protections currently contained in the act were sufficient, but did not provide a "concluded view" on the human rights compatibility of the amending legislation. Despite the committee's ambivalence, the changes are now law.

In Australia, we rely on our elected officials to make the final decision on whether measures to promote public health are proportionate to their impact on other rights, freedoms and interests.

As we race to roll out the vaccine, we can only hope our elected

representatives pause to heed advice from a range of quarters, including from human rights advocates, on whether they have got the balance right.

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Provided by The Conversation

Citation: The COVID vaccine is here. When and to whom will we need to prove we've had it? (2021, February 17) retrieved 4 May 2024 from <https://medicalxpress.com/news/2021-02-covid-vaccine-weve.html>

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