

27 September 2021

The Hon. Victor Dominello M.P.  
Minister for Customer Services  
By email to: ryde@parliament.nsw.gov.au

Dear Minister Dominello,

### **Vaccination Passport Concerns**

The NSW Council for Civil Liberties (NSWCCL) has concerns with the lack of public consultation and lack of transparency in relation to the development and privacy safeguards of the proposed “vaccine passport”.

At the National Cabinet meeting on 17 September 2021 all states and territories agreed to include people's COVID-19 vaccination status in their check-in apps, meaning the apps will act as vaccine passports. NSWCCL understands that this system of vaccine passport is currently being trialled in regional NSW.

Some of the concerns of NSWCCL are set out below:

1. The residents of NSW were assured, and the Public Health Order (PHO) amended to ensure, that the COVID-19 Safe Check-in and Service NSW web check-in tool (Service NSW app) would be used solely for the stated purpose of contact tracing.

The use of the Service NSW app for vaccination verification is a secondary use linking the Service NSW app with sensitive health information from the Australian Immunisation Register. NSWCCL strongly opposes the use of information gathered explicitly for one purpose being used for any other additional purpose.

2. The public knows little about the way in which the proposed linking of this information and the proposed vaccination passport will work. There has been little or no public consultation, although meetings have been held with stakeholders such as the Australian Hotels Association.

“Making things simple” for the hospitality industry by embedding a person’s federal vaccine certificate in the Service NSW app, does not justify a lack of consultation with other stakeholders. Equally it does not justify insufficient robust privacy safeguards or the provision of alternative options for evidence of vaccination.<sup>1</sup>

The NSW government should be clear and open about how vaccine passports link or expand existing data systems and about the purpose and time limits that will apply.

3. The only relevant information that needs to be provided for the purpose of vaccination verification is the fact that someone (identified by name and date of birth) received their two doses of vaccine and the date of the second vaccination. Verification information does not need to include anything more.

<sup>1</sup>McLeod, C. & Lyons, E. (September 8, 2021) Details of vaccine passport trial revealed amid plan to get Sydneysiders back into pubs *News.com.au*  
<https://www.news.com.au/lifestyle/health/health-problems/plan-to-get-sydneysiders-back-to-pubs-with-vaccine-passport-trial/news-story/cc659bb9892e337a55e342884de92f15>

4. The management of the vaccination passport needs to be enacted in primary legislation, not solely in the PHO, with a website privacy policy. It should not rely on or revert to extrinsic privacy legislation, much of which does not deal adequately with digital technology or, in the case of the *Privacy Act 1988 (Cth)*, is under review. Primary legislation ensures adequate scrutiny and debate by parliament rather than rushed emergency regulations.
5. As vaccination status, linked to full participation in public life, appears as de facto mandatory vaccination to many, alternatives must be available. Especially there must not be unlawful discrimination against individuals based on disability, health or religious grounds.

Therefore, a vaccination passport must have capacity to deal with:

- Instances of erroneous coronavirus vaccine records on the Australian Immunisation Register,
  - Those with certain disabilities or medical conditions who cannot get the vaccine for medical reasons. In this regard, formal medical exemption should be more appropriately accessible. The federal form for medical exemption for COVID-19 vaccines lists a very narrow set of criteria for exemption and can be lodged only by specific medical practitioners.<sup>2</sup>
  - Other types of medical exemption or immunisation passports should be available as are appropriate or necessary, including for people who have recently been infected with COVID and are advised not to vaccinate for up to six months.
  - A non-digital (paper) alternative to a digital passport for those who do not have access to digital technology.
  - Children under the age of 16, who are not eligible for vaccination.
  - Managing people who are unvaccinated for any reason with proof of a negative COVID-19 test. This alternative is used in different forms; for example, in Italy, France and Israel.<sup>3</sup> It should be noted that the UK government has objected to vaccine passports as an unacceptable burden on businesses and an infringement on human rights.
6. To appear legitimate, a mandated vaccination passport needs to serve clearly articulated public health goals and be proportionate. As a measure of proportionality, there should be auditing of the scheme with independent oversight that permits scrutiny.
  7. It is unclear how long vaccination passports will be required. The rationale for vaccine passports is that they allow only those who pose an acceptably lower risk to others to take part in activities that would present a risk of transmission.<sup>4</sup> Once the risk of transmission reduces or new scientific evidence, testing technology or treatments emerge, will passports expire? Will there be sunset dates included of say 6 months when the necessity and legitimacy of the passport is reviewed and if appropriate, the system dismantled? What arrangements will be in place if and when booster vaccinations become advisable?

In regard to these matters, I note today's announcement by the Premier that, at a 90% vaccination of the eligible NSW population, those who are unvaccinated will again be able to participate in public life. At that point, the vaccination passport no longer serves a legitimate purpose and should be dismantled.

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<sup>2</sup> Attwell, K. (September 10, 2021) Vaccine passports are coming to Australia. How will they work and what will you need them for? *The Conversation* <https://theconversation.com/vaccine-passports-are-coming-to-australia-how-will-they-work-and-what-will-you-need-them-for-167531>

<sup>3</sup> *ibid*

<sup>4</sup> Ada Lovelace Institute Report (10 May 2021) Checkpoints for Vaccine Passports <https://www.adalovelaceinstitute.org/report/checkpoints-vaccine-passports-exec-summary/>

8. Sound privacy safeguards and principles should be embedded in any such regime including data minimisation, ethics by design and privacy by design.

NSWCCL asks that the Minister consider the concerns raised in this correspondence and act to ensure that the safety and privacy of NSW residents is prioritised above expediency and that which is “easy”.

Yours sincerely,



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Secretary

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