

Journalist article:

<https://spectator.com.au/2021/11/wheres-the-attorney-general-on-vaccine-mandates/>

By : [Rocco Loiacono](#) 24 November 2021 5:07 PM

This week much attention has been on Coalition MPs and Senators hearing the *vox populi* following the ever-increasing demonstrations around Australia and demanding that the government do something to stop state premiers and territory chief ministers threatening people's livelihoods and their ability to participate in everyday life with vaccine mandates and passports.

As Senator Matt Canavan told Paul Murray on Monday night on Sky (and I'm paraphrasing), if we don't stand up now to this overreach, where will it end? Already these power-drunk premiers are talking of excluding kids as young as five from society if they don't get the jab, thus completely sidelining those whose decision it should actually be: their parents – and no one else's. And that is not just me saying that. Dr Nick Coatsworth [has said it](#), too, in the clearest possible way.

In other words, these Coalition MPs have asked the government to stand up and be counted. In a [piece](#) in *The Weekend Australian* way back on November 13, columnist Katrina Grace Kelly asked the same question, using this formula of words: "Of what use is a federal government if it goes missing when its own regulator asks it to stand up and be counted?"

I'll get to that question soon, but Kelly makes other assertions in her piece that this correspondent, in good conscience, cannot ignore. I dare say these are considerations at the forefront of the minds of the so-called "rebel" Coalition MPs and Senators.

Let's take a look at this paragraph from Kelly:

When it comes to Covid-19 vaccination mandates, talk of freedom, liberty, choice and sensible individual decision-making by those responsible for their own health choices is ultimately ideological self-indulgence on the part of those who have all care but no responsibility. Anyone who employs people and therefore holds a work cover policy is held liable for the health and safety of those in the workplace, and is subject to financial penalty – and even criminal prosecution – if they fail in their duty of care.

This can be pulled apart at various levels. First, many people, as Kelly admits at the end of her piece, have only taken the vaccine owing to state government public health orders, in other words, under threat of losing their livelihood. What was that part in the *Australian Immunisation Handbook* about no coercion? 'No jab, no job' sounds like economic coercion to me, and would to most reasonable people.

Second, 'ideological self-indulgence' is just another way of conflating opposition to vaccine mandates with opposition to vaccines. If one were to trawl through every piece written on this subject not only in this publication, but in *The Australian*, and especially comments on Kelly's pieces, one obvious theme that would emerge is that many have no objection to say, taking the 'flu shot every year, but do not believe that they need a Covid vaccine since they are not at serious risk. As has been pointed out numerous times, the vast majority of the population under 70 with no underlying health issues is at minimal risk of serious illness, let alone death, from Covid. On this point, Kelly should

read [Luke Massey](#)'s latest, and, if she is at all interested in the "Science", have a look at [this study](#).

Third, the legal aspect. Yes, it is true that employers face significant penalties for breaching their duty of care in not providing a safe workplace. However, what is now emerging – and [published recently in Lancet](#) – is that vaccinated people are just as likely to transmit the virus as unvaccinated people. So it could conceivably now be argued that, by not mandating the Covid vaccine, an employer is not breaching its duty of care.

Now to the question posed at the beginning of this piece. Kelly does make another point that is worth discussing – that of the abdication of responsibility by the Federal Government in this regard. This has now become more apparent since, this very week, the Fair Work Commission is hearing a challenge to BHPs vaccine mandate by the CFMEU. The Commission's full bench has asked the Minister for Industrial Relations, Michaelia Cash, to intervene, and make submissions. As Kelly writes:

[A] statement has been released (by the Commission) saying: "Given the potential significance of this matter, we propose to draw this application to the attention of peak union and employer bodies and the minister, and to grant them leave to intervene if they wish to do so."

In response, the Federal Government has, according to Kelly, advised it will not make a submission; a government spokesman said its "position is clear", vaccination is "voluntary", but it is up to employers to choose if they want mandates. This echoes Prime Minister Scott Morrison's words last week that the Covid vaccine is not mandatory in Australia. In response, I can do no better than quote the *Spectator Australia* [editorial](#) from two weeks ago:

Although that may be technically correct in the most legalistic sense, the stark reality is that for the time being to all intents and purposes Covid vaccines are mandatory in Australia. Therefore the Prime Minister has broken his own word either through neglect or on purpose.

So, the Federal Government, rather than making a submission to a significant case on the matter, just like it does on every issue, once again shrugs its shoulders and passes the buck saying "not our problem". This is cowardly 'blah, blah, blah'. Oh, and by the way, this correspondent wrote to the then attorney-general, Christian Porter, as well as the Assistant Attorney-General, Senator Amanda Stoker, early this year requesting the Federal Government take a stand and not allow vaccine mandates for the very reasons of proportionality and individual liberty discussed in this, and numerous other pieces, published by this esteemed publication. The response? One was not received.

If the responsible Minister isn't going to respond to the Fair Work Commission, why would he or she not respond to a constituent? This isn't even "all care and no responsibility", it is an abdication of responsibility that voters will remember come election time.

*Dr Rocco Loiacono is a senior lecturer at Curtin Law School.*

*The views expressed in this article are those of the author and do not necessarily reflect the views of Curtin University.*