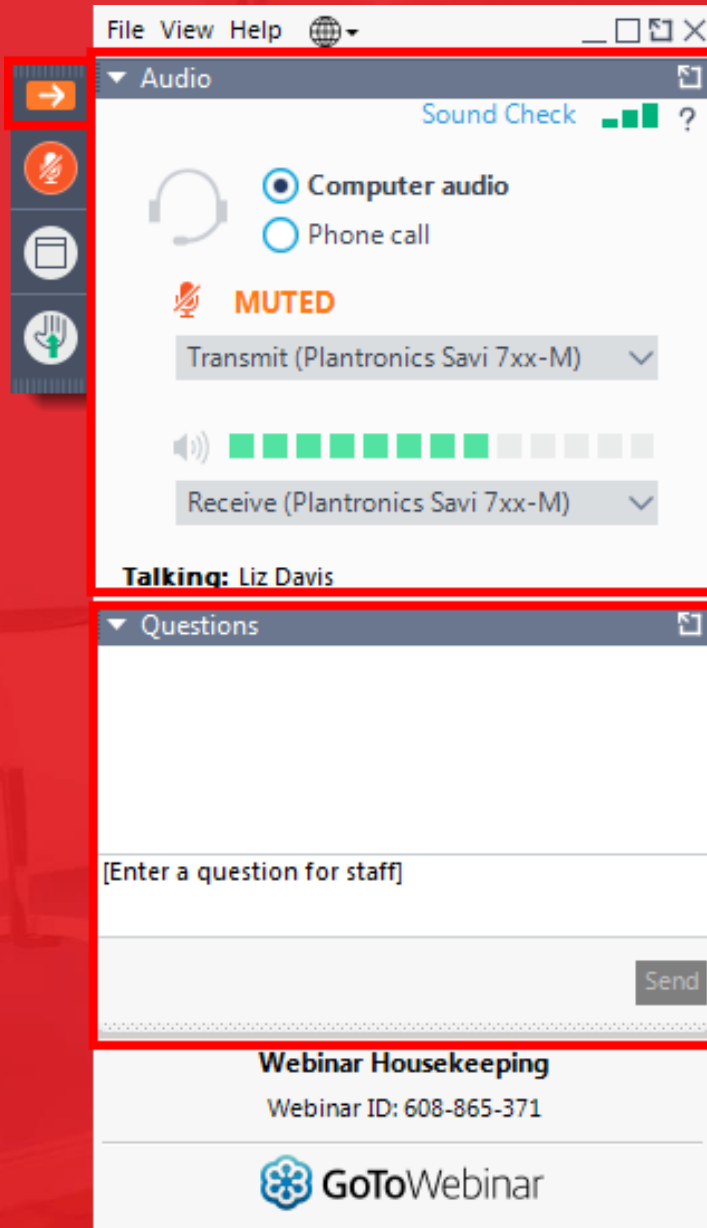




Live Webinar

The new workplace challenge: Ethics, law and the COVID-19 vaccination

Tuesday | 10:30 – 11:30am AEST | 14 September, 2021



Housekeeping

- Today's session is being recorded
- You have joined in “listen-only” mode
- Please ask questions throughout the presentation using the ‘Questions’ window on your control panel
- We will endeavour to answer as many questions as possible in the Q&A session at the end of the webinar

Your speakers



Mario Machado

National Practice Leader WHS
Aon



Trent Sebbens

Partner
Ashurst



Robert Tanti

General Manager –
People and Culture
SPC Ardmona



Calum Brennan

Placement Leader –
Workers'
Compensation
Aon



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Placement Director, FSG
Aon

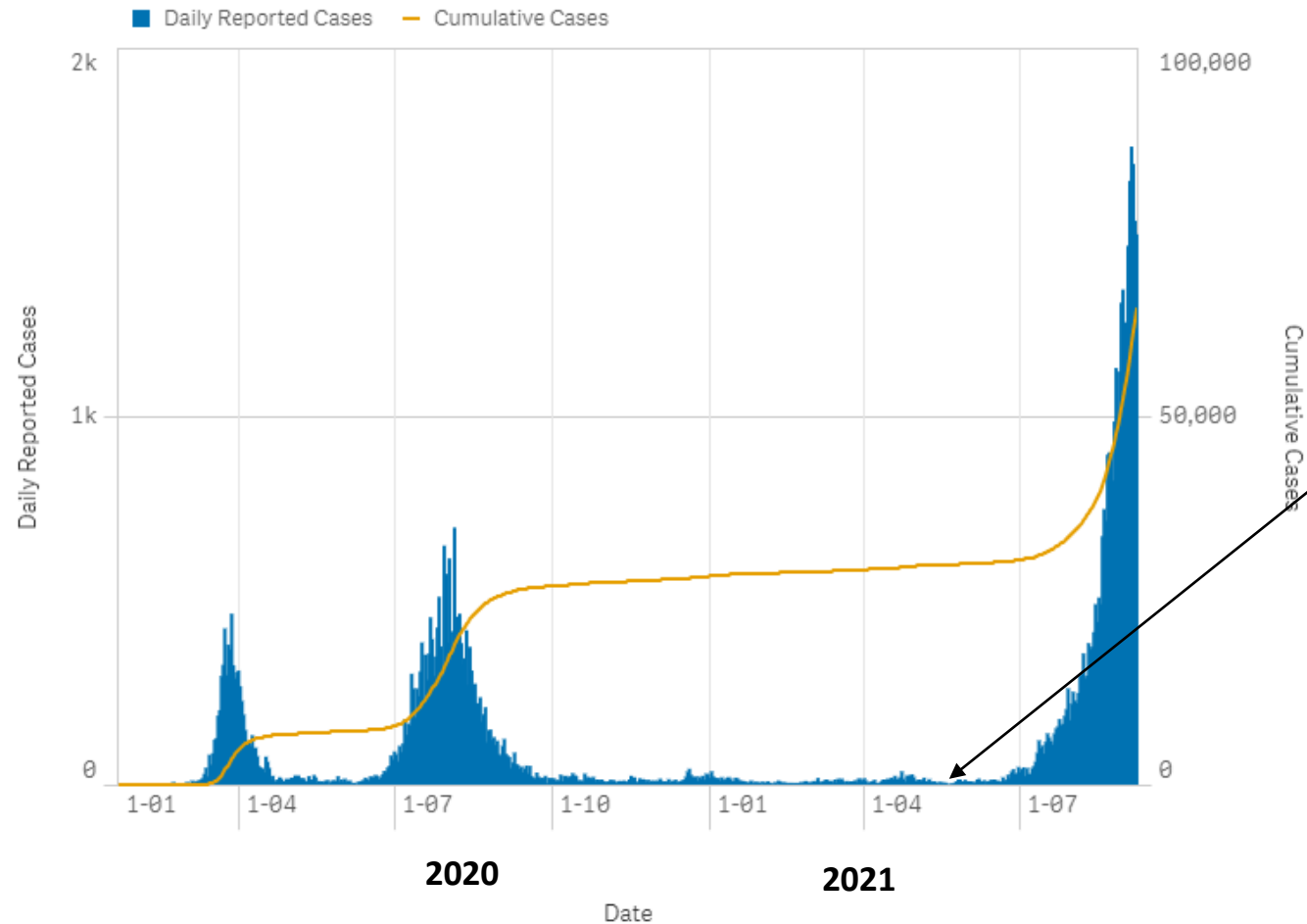
Agenda

- COVID-19 & Vaccinations – state of the nation
- Vaccinations and the Law
- The SPC experience
- Vaccinations and Workers' Compensation
- Insurance Implications



COVID-19 Infection Rates

Source: Department of Health, States & Territories Report 7/9/2021



Delta variant
identified in
Sydney (May
2021)

Lack of national policy



March 2021

Industry takes ownership

Covid: Australia's Qantas says all staff must be vaccinated

18 August



Coronavirus pandemic



Qantas said a poll of its 22,000 workers found that 89% of respondents had already been vaccinated or were planning to be

Vaccine Passports.....



Exclusive Politics Federal Coronavirus pandemic

Australia issuing vaccine passports within weeks to prepare for flights resuming



By [Rachel Clun](#)

September 8, 2021 — 5.00am

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329

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Community transmission.....



Australia news live
Australia news

Australia Covid live news updates: Victoria's records most infectious day this year with 324 new cases; NSW to unveil road out of lockdown

● LIVE Updated 13m ago

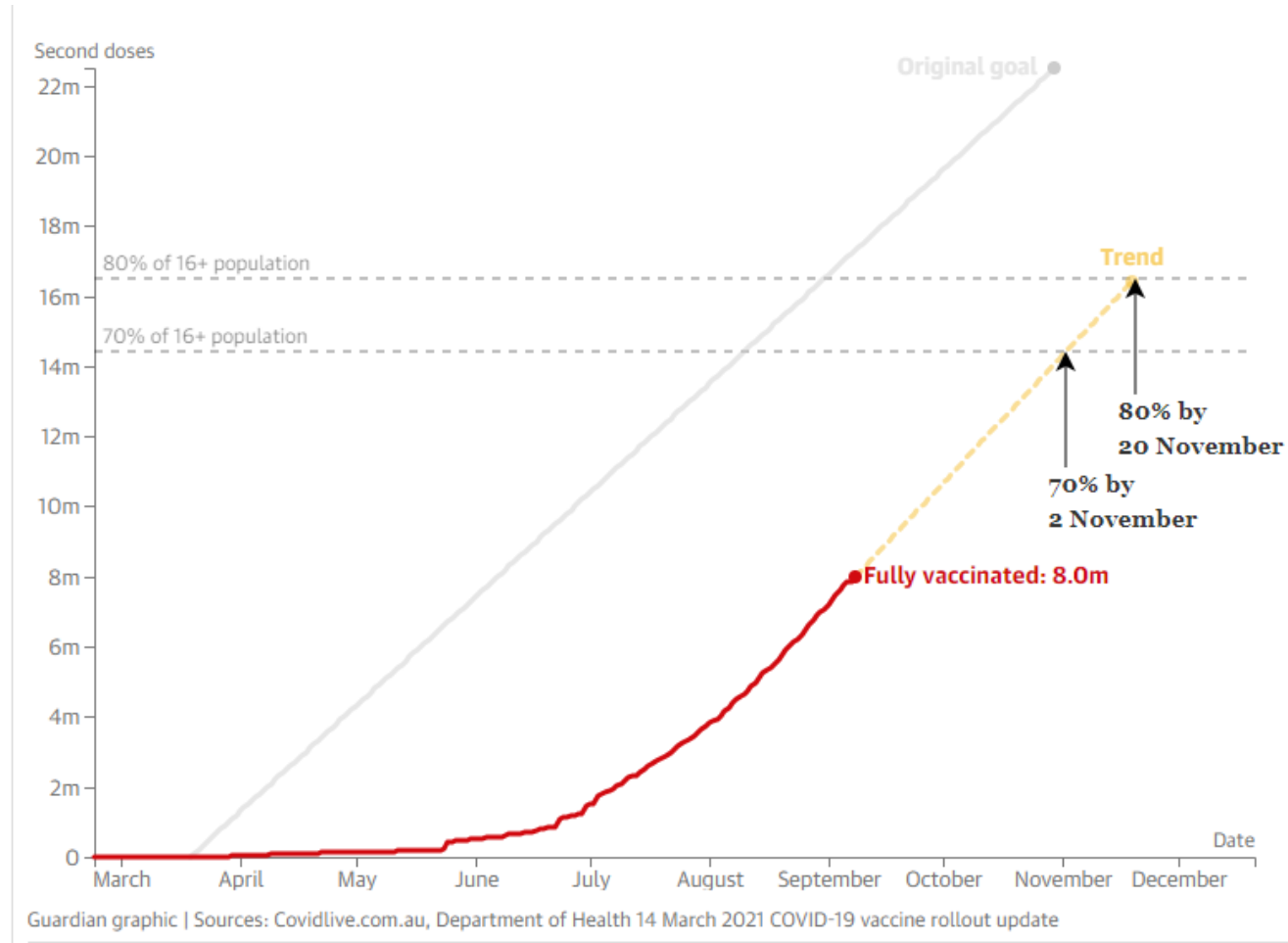
Just 107 of Victoria's new cases linked to known outbreaks; WA border could stay closed until 2022; Gladys Berejiklian expected to unveil plans to end lockdown in NSW; Scott Morrison hints at home quarantine by the end of the year for stranded expats - follow the latest updates live

- **Indigenous community in Wilcannia targeted by ivermectin spruiker**
- **NSW records 1,480 new Covid cases**
- **Restrictions: NSW; Vic; Qld; borders**
- **Vaccine rollout tracker; get our free news app; get our morning email briefing**

Source: The Guardian Thu 9 Sep 2022 09:27

- Flattening the curve.....unlikely
- Zero strategy – no longer possible
- Lockdown roadmap in both Vic and NSW not working
- Vaccine – Now the strategy

Vaccine Rates & the Future



Our Future in a COVID-19 World



How will we live in a COVID-19 world?

How will workplaces function in a
COVID-19 world?

Our Future in a COVID-19 World



Group of Queensland police officers push for legal challenge to COVID-19 vaccine mandate

ABC Gold Coast / By Alexandria Utting

Posted 22h ago



A crowdfunding page has been set up to raise money for a legal challenge to the Queensland Police Service's mandatory vaccine edict. (Gofundme)

Our Future in a COVID-19 World



Ethics and Values

What is the right thing to do? How do we balance employer obligations and individual rights?



The Law

What can be done? What are the laws? WHS legislation, Employment Law, Privacy laws.....



Execution

How could/should employers consider vaccination strategies in the workplace? What issues should be considered?



Managing risk

What about when things go wrong? How do employers manage risk? Workers' Compensation and Insurance implications?



Vaccinations and the Law

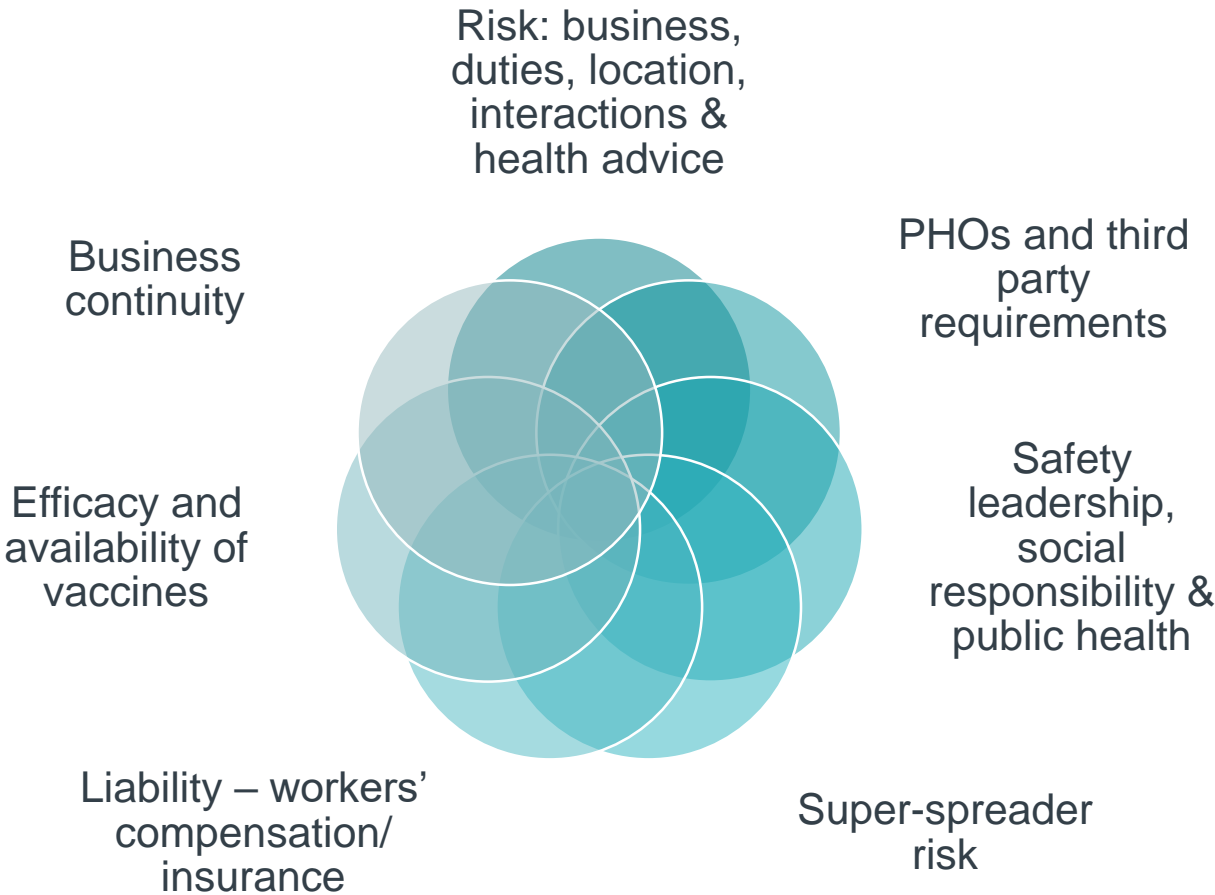
Mandatory Vaccinations

LEGAL CONSIDERATIONS



Assessment of COVID-19 contraction and business risk

RISK ASSESSMENT



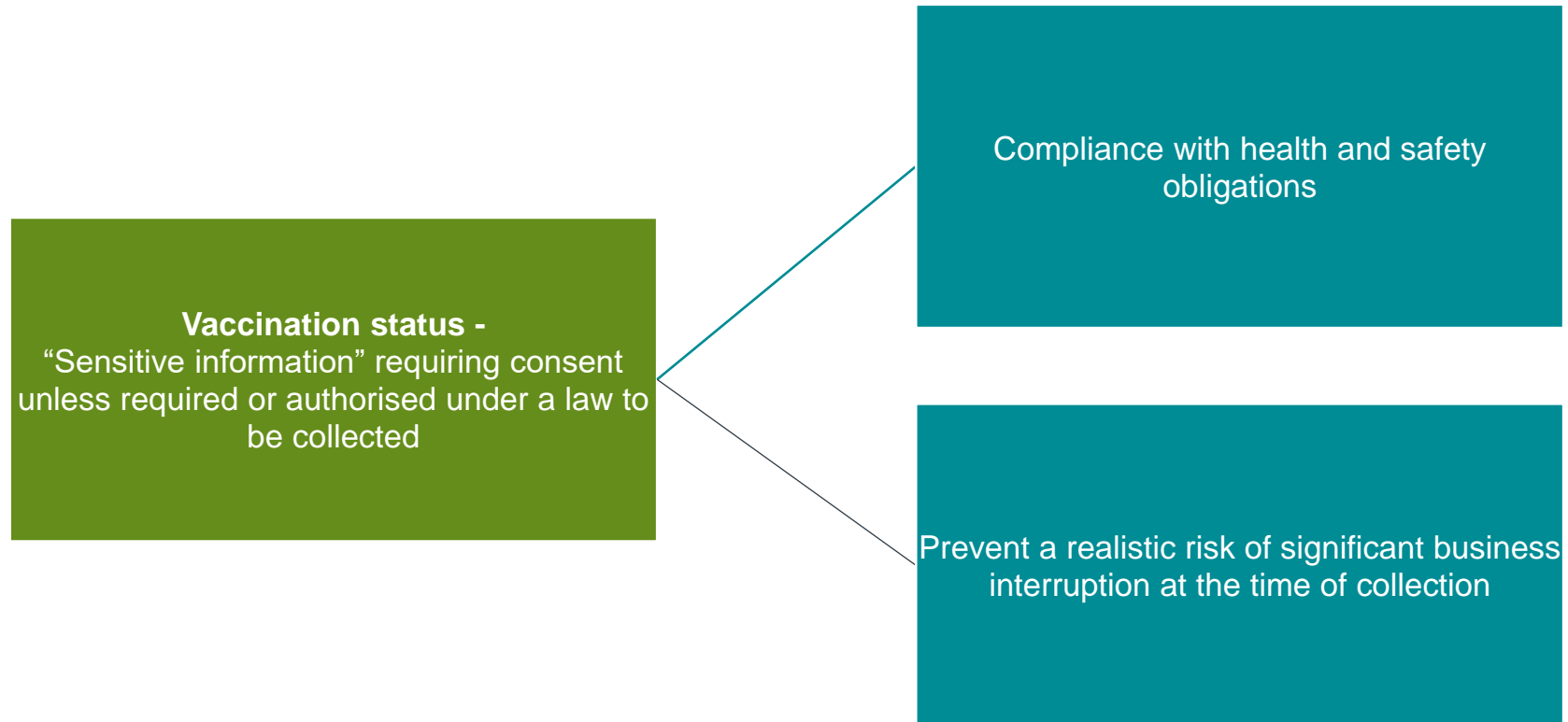
Scope of Vaccination Policy

CONSIDERATIONS



Mandatory reporting of vaccination status

PRIVACY CONSIDERATIONS





The SPC Experience

SARS-CoV-2 (Delta Strain) Response Plan FY2021



Robert Tanti: GM People and Culture

**“Vaccination against COVID-19
is the most effective way to
reduce deaths and severe
illness from infections”**

TGA July 2021

Context

GLOBAL AND AUSTRALIA

- COVID safe protections appeared to fall short against **Delta strain**.
- Frequent, inconsistent, unreliable and unclear vaccination advice and availability ... unhelpful
- Federal and state in-fighting and inertia not helpful.
- "Vaccines continue to be highly effective in preventing hospitalisation and death". **Centres for Disease Control (USA)**
- "80% full vaccination threshold for lock down minimisation". **Doherty Report**
- "Vaccination against COVID-19 is the most effective way to reduce deaths and severe illness from infections". **TGA**
- "**Delta variant** at least twice as contagious as WUHAN strain". **RACGP**
- "COVID-19 vaccination is a key component of SARS-CoV-2 control with the overarching goal of protecting all people in Australia" **ATAGI**
-Localised 'lockdowns' to prevent further outbreaks have impacted the **mental health** of many Australians.
 - *March 21 – April 21: Lifeline calls up 18% on same time 2019, Beyond Blue up 31% and Kids Helpline up 10%*

SPC

- Essential Services Food Processing Manufacturer with operations in Emu Plains and Shepparton
- NDIS provider
- Business continuity essential
- 730 workers at both sites outside of harvest season and more than 1000 in season
- 112 staff in Emu Plains work in close proximity
- Successful Covid Safe Plans in place
- Infection related shut downs
 - Jeopardising supply
 - Jeopardising casual worker pay
 - Risk of community spread
- Shepparton Workforce grows by +245 casual seasonal workers in December

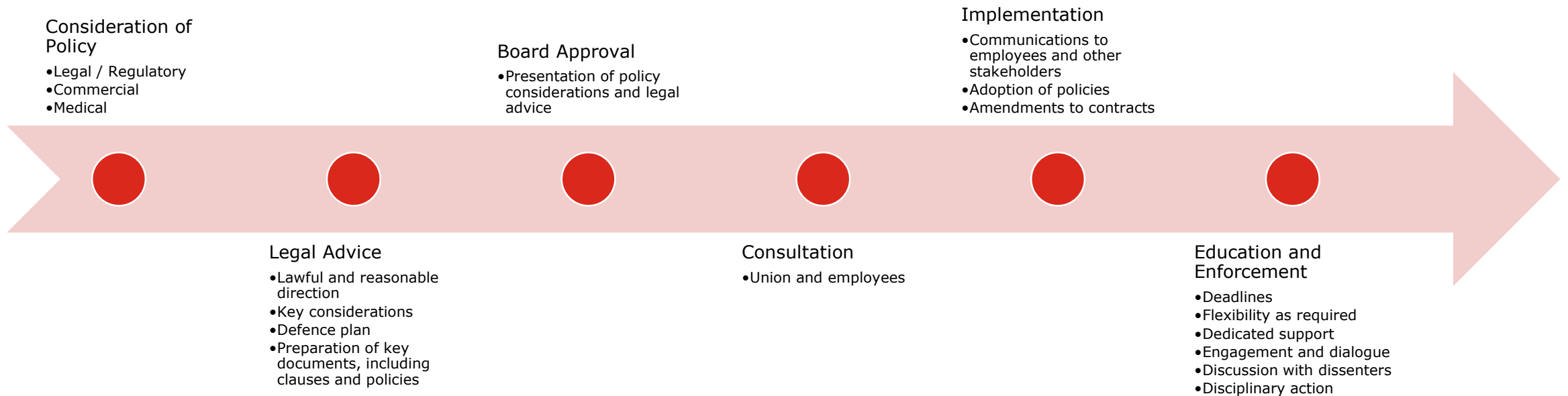
SPC's Narrative

BELOW IS A SUMMARY OF SPC'S BASIC NARRATIVE JUSTIFYING THE IMPLEMENTATION OF ITS MANDATORY VACCINATION POLICY

- We are an essential service business providing food products to Australian consumers.
- Our existing COVID Safe Plans were "reasonably practicable" and effective in minimising the risk of harm through transmission of the known strains.
- SARS-CoV-2 (Delta) is a "game changer", it's much more contagious and poses an elevated threat to our people, their families, the community and our business.
- We feel a deep obligation to keep our people and the communities in which they live, as safe as we possibly can, therefore;
- A new standard of "reasonably practicable" is necessary and that our current COVID Safe plan must be revised.
- In our opinion and based on the advice of experts, a fully vaccinated workplace is the safest option for our people.
- In our opinion, governments are unlikely to do more than "encourage" vaccination except in very special circumstances.
- Clear direction, information and leadership must come from private enterprise, if the economy is to open up and lockdowns become the exception rather than the default position of government.
- We acknowledge and are mindful of: People's beliefs, their medical history, their right to select a vaccine of choice and the availability of that vaccine.

Timeline

BELOW IS AN EXAMPLE OF A TIMETABLE FOR ADOPTING A MANDATORY VACCINATION POLICY / PLAN (**POLICY**)





4. Program of Work

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Program of Work

SAFETY FIRST

Objectives

1. Staff that can be vaccinated against COVID-19 must be by January 1, 2022 as a condition of employment.
2. All visitors and contractors that can be vaccinated, must as a condition of engagement post January, 1 2022
3. New employees (permanent and casual) to be fully vaccinated by January 1, 2022.
4. Revise COVID Safe plan.

Guiding Principles

Focus on welfare and wellbeing

Support staff and pivot for matters outside their control.

Empower staff with education and communication

Engage in open dialogue and consult with staff frequently.

Stakeholder Engagement Activities

Government

- Engage Local (State) and Federal Representatives early and keep them apprised of progress

Union & Industry Associations

- Engage AMWU in consultation as agreed in EA. Establish ongoing consultation mechanism with Health and Safety Representatives and Shop Stewards. Build alliances with AiG, BCA and VECCI

Staff

- Establish communications plan and ecosystem: emails, tool box talks, mass meetings, virtual town halls, help line, EAP, FAQs, letters of support, staff support plans. Support line management communication activities

Media

- Prepare media release and public narrative

Legal (ER)

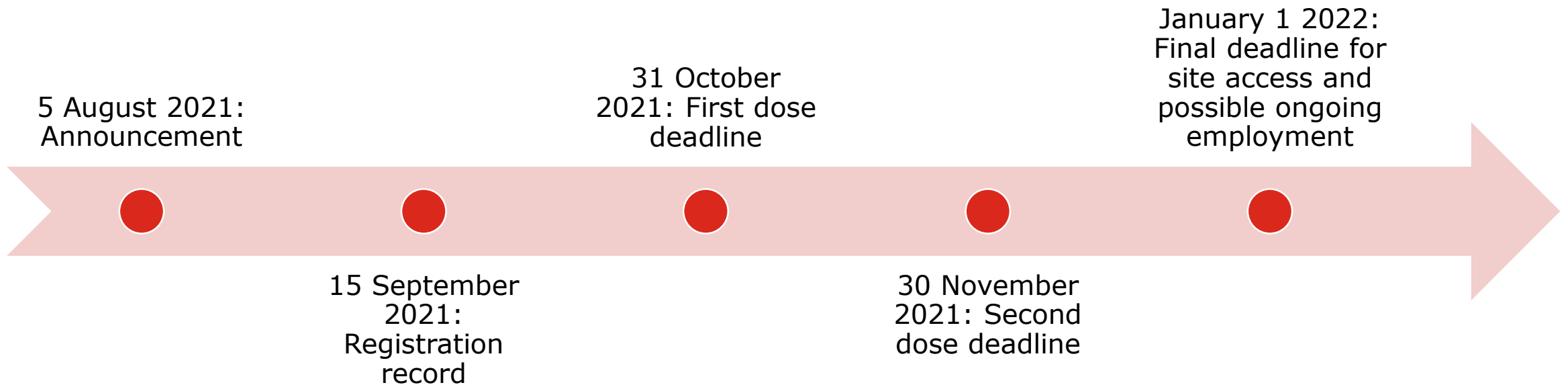
- Revise COVID-19 response policy, revise discipline procedure, prepare for conscientious objectors, develop model clauses for Employment Agreements

Public

- Resource to deal with haters, antivaxxers. Re-port existing customer complaint and recruitment/people lines. Reception and security feel most traffic

Program Milestones

BELOW ARE THE PROGRAM MILESTONES INSTITUTED BY SPC*



- * *Dependent on vaccine availability*
- * *Flex**ibility** considered for individual circumstances*
- * *Efforts to vaccinate acknowledged*
- * *Evidence must be provided*
- * *All records maintained by Safety and Human Resources*
- * *Exemptions on medical/religious ground qualify*

Consultation Features

GETTING CLOSE TO OUR PEOPLE

Weekly meetings
AMWU and
shop stewards

Onsite town
hall meetings
by shift

Weekly virtual
town halls with
all staff

Weekly toolbox
talks (Q&A)
with team
leaders

Frequent
executive &
management
walk arounds

One on one
consultations
on request

FAQs updated
and reissued
as required

Daily email and
SMS updates

Calls to staff

Executive
presence

Staff Support

- Dedicated resources, staff support desk and email
- Dedicated landing page on intranet
- Guest expert speakers and education sessions
- 2 days additional leave if suffer vaccination side effects (perm employees).
- Proforma letters of support for Doctor visits
- 1 day paid leave for casual staff
- 2 hours time off to attend vaccination appointment
- Weekly updates on adjustments to rules
- \$50 gift voucher on full vaccination
- Personal registration support
- Paper based notification program
- Collaboration with vaccine hub on registration



Risk Management

Considerations	Risk	Proposed Mitigation
Medical exemption	An employee refuses on medical and religious grounds to be vaccinated	Dealt with on a case by case basis. Medical records to be provided to Wellbeing and Rehabilitation advisor. Bespoke safety precautions to be developed with employee.
Vaccine availability	Vaccine of choice is not available. Literacy concerns impeding registration.	Allow flexibility on timelines Provide letters of support from SPC to doctor Secure cooperation with local vaccination clinics where possible
Vaccine refusal	An employee refuses to provide confirmation of their vaccination status	Disciplinary action which could include the termination of employment. The Company will comply with its obligations under its enterprise agreement, where applicable, and at general law prior to terminating any employee's employment.
Record privacy	Privacy Act requirements linked to collating and storing of personal medical information	Ensure confirmation of vaccination is kept in central location where Safety and HR staff have access.
On-site vaccination programs	Currently there is no indemnity from workers compensation claims for on-site vaccination programs if an employee has an adverse reaction or becomes ill	Work with health authorities to coordinate off-site locations for vaccination program and assist employees with the process.
Workers Compensation Management	SPC may be deemed liable if an employee contracts COVID-19 from our workplace or fellow worker or suffers extensive negative side effects	Seek legal advice.
Industrial Relations Management	Government health directives and orders	Pursue regular consultation sessions with union and build frequent comms with staff. Leverage line management
Vaccination complacency and fear	Employee will be slow to react and may not meet timelines	Omni channel communications required: Tool Box Talks, Virtual Town Halls and updates, emails and text reminders, paper based forms and closed drop-in boxes and education session provided.



5. Resourcing other Employers – Tool kit

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Model Vaccination Policy ...

Purpose

- The purpose of this policy is to facilitate the protection of the health and safety of all people who attend any of SPC's workplaces by requiring all such persons to be fully vaccinated against COVID-19.

Application

- This policy applies to any visitors as well as all employees (permanent or casual), contractors, labour hire personnel, interns or secondees who may be performing work at any of SPC's workplaces in Australia (Workers).
- This policy applies with immediate effect, noting the interim arrangements as set out below.

Definitions

- In this policy, the following terms have the meaning as set out below:
- **Approved Vaccine** means any COVID-19 vaccination **that has** been provisionally registered for use in Australia by the Therapeutic Goods Administration.
- **Fully Vaccinated** means having obtained the manufacturer's recommended dosage of any Approved Vaccine. For example, where a two-dose schedule is recommended by the manufacturer, a person will be considered fully vaccinated when they have received both doses of the vaccine.
- **Recognised Contraindication** means a contraindication or reaction to an Approved Vaccine that is recognised by the manufacturer of that vaccine.

Requirement to be vaccinated

- As of 1 January 2022, it will be a requirement of attending any SPC worksite that any Worker must be Fully Vaccinated against COVID-19, unless they have been granted an exemption by SPC in accordance with this policy. Vaccination must be undertaken on the advice of an accredited health practitioner (including health practitioners at any authorised COVID-19 vaccination centres).
- All Workers will be required to provide evidence acceptable to SPC of being Fully Vaccinated. SPC will accept for these purposes a copy of your Immunisation History Statement, or alternatively a copy of your COVID-19 Digital Certificate (both of which can be obtained through your MyGov account). These documents should be emailed to xxxx@email.com.au. If you require assistance in obtaining this evidence, please contact xxxx@email.com.au.

Model Answers to FAQs

FULL FAQs AVAILABLE FROM SPC ON REQUEST

WILL I BE ELIGIBLE FOR THE VOUCHER IF I AM ALREADY VACCINATED?

- Yes. Please provide a record of your full vaccination to xxxx@email.com.au

HOW WILL SPC MANAGE STAFF WHO CAN TAKE THE VACCINE AND CHOOSE NOT TO?

- SPC is of the view that it is both reasonable and lawful to mandate vaccination for our staff to keep them safe. If a staff member chooses not to be vaccinated without a medical exemption or other legitimate reason, they have failed to follow a reasonable and lawful direction of their employer. The Company will comply with its obligations under its enterprise agreement, where applicable, and at general law prior to terminating any employee's employment.
- We trust that it does not need to come to this and that staff who fit into this category discuss their concerns with us in the hope that issues can be resolved. Discussion with employees who fall into this category are likely to commence on the 16th of September in accordance our timelines (which are dependent on vaccine availability).

DOES THIS MEAN ALL VACCINES WILL BE MANDATED GOING FORWARD E.G. HEPATITIS, INFLUENZA ETC.

- No.

I HAVE BEEN TRYING TO BOOK IN FOR A VACCINATION BUT THE VACCINE ELIGIBILITY CHECKER INDICATES I AM NOT ELIGIBLE?

- We know these things are beyond your control and understand this may well impact on your ability to register and receive your vaccinations in time. We are grateful that you are trying and do acknowledge the booking difficulty you and others may be experiencing. We will support and recognise your efforts. Please keep trying and let us know how you are going by emailing xxxx@email.com.au or speak to someone in P&C or Safety. SPC is prepared to review its timelines, particularly where vaccine availability is a problem for you.

Model Employment/Agreement Clauses

THE FOLLOWING PROVISIONS ARE PROVIDED AS STARTING POINT TEMPLATES AND SHOULD BE DISCUSSED ON A CASE-BY-CASE BASIS WITH LEGAL ADVISORS BEFORE BEING INCLUDED IN RELEVANT DOCUMENTS

Employees

It is a condition of employment that all employees who are eligible to receive the COVID-19 vaccination must be fully vaccinated in order to perform duties at any of our workplaces.

If you are not medically eligible to be vaccinated against COVID-19, you must provide the Company with evidence acceptable to the Company of having a health condition for which obtaining a COVID-19 vaccination is contraindicated. Examples of such evidence include a medical certificate from a duly qualified registered medical practitioner that sets out the basis of why you are not eligible to obtain a COVID-19 vaccination. Should you provide such a medical certificate, you consent to the Company contacting the medical practitioner in order to verify the authenticity of any documents provided.

The Company will consider other circumstances where there is a genuine reason for which you are unable to receive a COVID-19 vaccination, and this will be determined on a case by case basis. In such cases, you will be required to provide additional documentation or evidence to the satisfaction of the Company. Failure to provide such information limits the Company's ability to assess your ability perform your duties at any of our workplaces and for it to meet its work health and safety and other obligations, which may result in the Company taking action including but not limited to requiring you to leave, or remain away from, work, or ending your employment.

Contractors

The Company requires that any person attending any of its premises who is eligible to receive a COVID-19 vaccination must be fully vaccinated. Any personnel provided by the Service Provider under this agreement (Service Personnel) must comply with this requirement and provide evidence acceptable to the Company in order to be permitted entrance to its premises.

If any Service Personnel are not medically eligible to be vaccinated against COVID-19, the Company must be provided with evidence acceptable to the Company of the relevant Service Personnel having a health condition for which obtaining a COVID-19 vaccination is contraindicated. Examples of such evidence include a medical certificate from a duly qualified registered medical practitioner that sets out the basis of why the individual is not eligible to obtain a COVID-19 vaccination. Any such medical certificate will only be accepted by the Company if the relevant individual consents to the Company contacting the issuing medical practitioner in order to verify the authenticity of any documents provided.

Contact Details

PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR WOULD LIKE TO ARRANGE A TIME TO DISCUSS



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Workers' Compensation

Vaccines & Workers' Compensation



- Each Australian States & Territory has a statutory “no fault” workers’ compensation scheme
- The legislation underpinning these schemes typically differentiates between:

Injuries	Diseases
compensable if they occur <u>during the course of employment</u>	compensable if the worker’s employment was the <u>main, significant or substantial contributing factor</u> * to its manifestation

** The terminology / test that must be satisfied varies between jurisdictions*

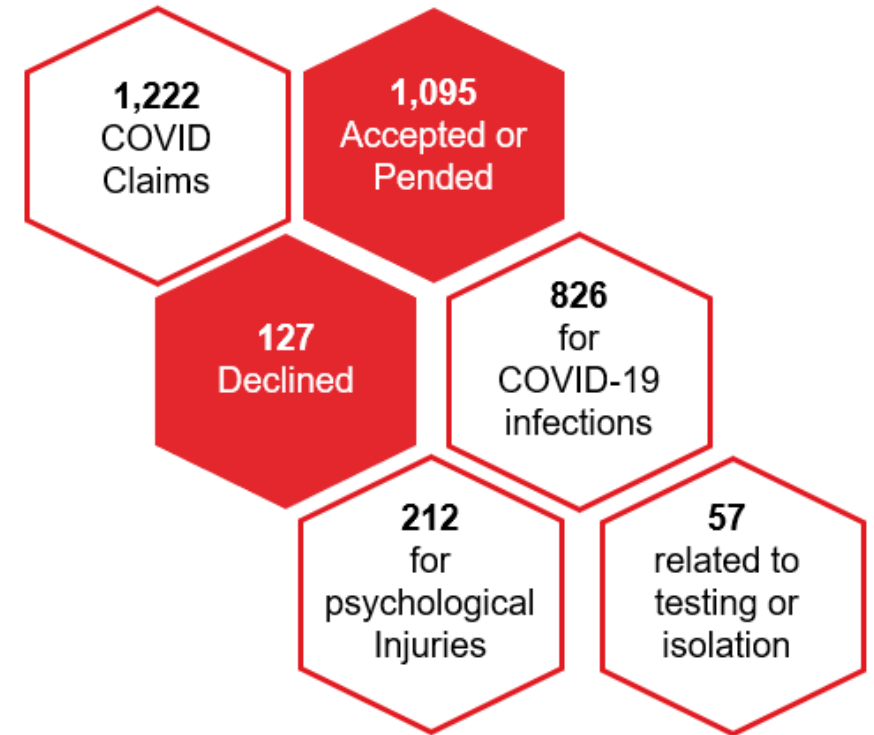
Vaccines & Workers' Compensation

Types of COVID-19 related claims an employer could experience:

- COVID-19 infections^
- Adverse reactions to a COVID-19 vaccination
- Psychological injuries, as examples, this could be anxiety/stress associated with being required to:
 - get vaccinated as a condition of employment; or
 - work alongside an unvaccinated workforce

^For WA & NSW, there are classes of occupation that benefit from presumptive legislation where it is assumed the infection is work related unless the employer can prove otherwise. For WA this is restricted to Health Industry workers but in NSW this is more expansive and includes workers in health, retail, hospitality, transport, construction etc)

In 2020 there were:



Source: Safe Work Australia

Would an Adverse Reaction be Compensable?



It all depends...

- Was the reaction an injury or a disease?
- Was the vaccination program mandatory or voluntary?
- Was it delivered at the workplace?
- What inducement was provided by the employer (eg. Vaccination leave)

Could the employer be sued?



- Many workers' compensation jurisdictions also allow a worker to sue their employer for damages under Common Law, but:
 - typically there is a threshold test (eg > 15% whole person impairment)
 - unlike the entitlement to statutory benefits the worker must demonstrate their employer was negligent
- Workers' compensation policies also respond to Common Law claims, provided the employer has adhered to the terms and conditions of the policy (eg. reasonable precautions).
- The Federal Government has announced a COVID-19 vaccine claims scheme however its interoperability with state based workers' compensation schemes has not been detailed.



Insurance Implications

Directors & Officers Liability Insurance (D&O)



- “Claims made and reported” ...
 - what about “circumstances that might give rise to a claims” (under D&O)?
- Look for specific exclusions
- D&O provides cover to individuals (directors/officers) ... what about the company?
- Do you need to educate your D&O insurer on your company's strategy for employee vaccination?

Summary

- Living with COVID-19 is becoming a reality
- Lockdowns – becoming redundant. Vaccine is considered the only option. This will become a workplace risk.
- Undertake a COVID-19 risk assessment
- Seek technical and legal guidance
- Develop COVID-19 policies/procedures
- Understand workers' comp/insurance risks



Contact

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