

Guidance for the Pandemic (Movement and Gathering) Order 2021 (No. 2)

This Order requires individuals to take certain actions to reduce the risk of harm caused by COVID-19 by:

- (1) carrying and wearing face coverings in certain settings; and
- (2) limiting interactions with others by restricting gatherings at certain types of events.

Unless an exception applies, a person will be required to wear a face covering:

- (1) in indoor spaces; and
- (2) in airports or on an aircraft.

Failure to comply with this Order may result in penalties.

This guidance does not form part of the Pandemic (Movement and Gathering) Order 2021 (No. 2) and is for explanatory purposes only.

Pandemic (Movement and Gathering) Order 2021 (No. 2)

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Pandemic (Movement and Gathering) Order 2021 (No. 2)

I, Martin Foley, Minister for Health, make the following Order under the **Public Health and Wellbeing Act 2008** in the belief that this Order is reasonably necessary to protect public health throughout Victoria from the serious risk arising from the coronavirus (COVID-19) pandemic disease.

Part 1 – Preliminary

1 Objective

- (1) The objective of this Order is to address the serious public health risk posed to the State of Victoria by the spread of COVID-19 by requiring everyone in the State of Victoria to carry and wear face coverings in certain settings.
- (2) This Order must be read together with the pandemic orders in force.

2 Citation

This Order may be referred to as the **Pandemic (Movement and Gathering) Order 2021 (No. 2)**.

3 Authorising provisions

This Order is made under section 165AI of the **Public Health and Wellbeing Act 2008**.

4 Commencement and revocation

- (1) This Order commences at 11:59:00pm on 23 December 2021 and ends at 11:59:00pm on 12 January 2022.
- (2) The **Pandemic (Movement and Gathering) Order 2021 (No. 1)** is revoked at 11:59:00pm on 23 December 2021.

5 Definitions

Terms used in this Order have the meanings set out in Schedule 1.

6 Application of Order

This Order applies to everyone present in the whole State of Victoria.

Part 2 – Work and face covering requirements for individuals

7 Work

A person must not perform work outside of the person's ordinary place of residence or enter, or remain on, a work premises to perform work, if the employer of the person or the operator of their work premises, is not permitted to allow the person to do so under:

- (1) the **Open Premises Order**; or
- (2) the **COVID-19 Mandatory Vaccination (Specified Workers) Order**; or
- (3) the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**; or
- (4) the **COVID-19 Mandatory Vaccination (General Workers) Order**.

8 Face covering requirements

- (1) A person must:
 - (a) carry a face covering at all times, except where subclause 8(2)(a), (2)(b), (2)(c), (2)(d) or (2)(e) applies; and
 - (b) wear a face covering:
 - (i) while in an indoor space; and
 - (ii) while visiting a hospital; and
 - (iii) while visiting a care facility; and
 - (iv) while on public transport or in a commercial passenger vehicle or in a vehicle being operated by a licensed tourism operator; and
 - (v) while attending an event with 30,000 or more patrons in attendance, unless the person is seated outdoors at the event; and
 - (vi) if the person is a diagnosed person or close contact and is leaving the premises in accordance with the **Quarantine, Isolation and Testing Order**; and
 - (vii) if the person has been tested for COVID-19 and is awaiting the results of that test, except where that test was taken as part of a surveillance or other asymptomatic testing program; and
- (c) wear a face covering where required to do so in accordance with any other pandemic orders in force.

*Note: the **Additional Industry Obligations Order** sets out the surveillance testing requirements for relevant industries and workers.*

Note 1: face shields on their own do not meet the face covering requirements. For further information, please refer to the Department of Health's guidelines as amended or replaced from time to time by the Victorian Government, available at: www.coronavirus.vic.gov.au/face-masks.

Note 2: it is strongly recommended that face coverings be worn in other situations when physical distancing is not possible.

(2) Subclauses 8(1)(b) and (1)(c) do not apply if a person complies with any other requirements under any other pandemic orders in force and:

- (a) the person is an infant or a child under the age of 8 years except if the person is a student in Year 3 or above, up to and including Year 6, and they are in an indoor space at an education premises that is a primary school; or
- (b) the person is a prisoner in a prison (either in their cell or common areas), subject to any policies of that prison; or
- (c) the person is detained in a remand centre, youth residential centre or youth justice centre (either in their room or common areas), subject to any policies of that centre; or
- (d) the person has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable; or

Examples: persons who have obstructed breathing, a serious skin condition on their face, an intellectual disability, a mental health illness, or who have experienced trauma.

- (e) it is not practicable for the person to comply with subclauses 8(1)(b) or (1)(c) because the person is escaping harm or the risk of harm, including harm relating to family violence or violence of another person; or
- (f) the person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication; or
- (g) the nature of a person's work or education means that wearing a face covering creates a risk to their health and safety; or
- (h) the nature of a person's work or education means that clear enunciation or visibility of the mouth is essential; or

Examples: teaching, lecturing, broadcasting.

- (i) the person is attending a private residence, unless that person is attending an inspection of real estate for the purposes of a prospective sale or rental of the property or attending an auction; or
- (j) the person is working by themselves in an enclosed indoor space (unless and until another person enters that indoor space); or

Example: a person working by themselves in a classroom at an education premises after hours.

- (k) the person is one of two persons being married, during their wedding ceremony, or while being photographed at the wedding; or
- (l) the person is a professional sportsperson when training or competing; or
- (m) the person is engaged in any strenuous physical exercise; or
Examples: jogging, running, swimming, cycling.
- (n) the person is riding a bicycle or motorcycle; or
- (o) the person is consuming:
 - (i) medicine; or
 - (ii) food or drink; or
- (p) the person is smoking or vaping (including e-cigarettes) while stationary; or
- (q) the person is undergoing dental or medical care or treatment to the extent that such care or treatment requires that no face covering be worn; or
- (r) the person is receiving a service and it is not reasonably practicable to receive that service wearing a face covering; or
- (s) the person is providing a service and it is not reasonably practicable to provide that service wearing a face covering; or
- (t) the person is an accused person in a criminal case in any court located in the State of Victoria and the person is in the dock either alone or with a co-accused, provided that any co-accused also present in the dock is at least 1.5 metres away from the person; or
- (u) the person is asked to remove the face covering to ascertain identity; or
Example: a person may be asked by police, security, bank or post office staff to remove a face covering to ascertain identity or when purchasing alcohol or cigarettes.
- (v) for emergency purposes; or
- (w) when required or authorised by law; or
- (x) when doing so is not safe in all the circumstances.

9 Face covering requirements in airports and on aircraft

- (1) Without limiting clause 8(1)(b), a person in the State of Victoria at an airport or travelling in an aircraft must:
 - (a) carry a face covering at all times, except where subclause (2)(a) or 9(2)(b) applies; and

- (b) wear a face covering while in an indoor space at an airport (and at all times while inside an aircraft); and
- (c) wear a face covering where required to do so in accordance with any other pandemic orders in force.

Note: face shields on their own do not meet the face covering requirements. For further information, please refer to the Department of Health's guidelines as amended or replaced from time to time by the Victorian Government, available at: www.coronavirus.vic.gov.au/face-masks.

(2) Subclauses (1)(b) and 9(1)(c) do not apply if a person complies with any other requirements under any other pandemic orders in force and:

- (a) the person is an infant or a child under the age of 12 years; or
- (b) the person has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable; or

Examples: persons who have obstructed breathing, a serious skin condition on their face, an intellectual disability, a mental health illness, or who have experienced trauma.

- (c) the person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication; or
- (d) the nature of a person's work or education means that wearing a face covering creates a risk to their health and safety; or
- (e) the nature of a person's work or education means that clear enunciation or visibility of the mouth is essential; or

Examples: teaching, lecturing, broadcasting.

- (f) the person is consuming food, drink or medicine; or
- (g) the person is undergoing dental or medical care or treatment to the extent that such care or treatment requires that no face covering be worn; or
- (h) the person is receiving a service and it is not reasonably practicable to receive that service wearing a face covering; or
- (i) the person is providing a service and it is not reasonably practicable to provide that service wearing a face covering; or

- (j) the person is asked to remove the face covering to ascertain identity; or

Examples: a person may be asked by police, security, or airport staff to remove a face covering to ascertain identity or when purchasing alcohol or cigarettes.

- (k) for emergency purposes; or

- (l) when required or authorised by law; or
 - (m) when doing so is not safe in all the circumstances.
- (3) An authorised officer may require a person to attest in writing that they have complied with the requirements of subclause (1) to wear a face covering on an aircraft (subject to subclause (2)).

Part 3 – Ceremonies

10 Worker requirements

- (1) The organiser of a ceremony must not permit any person to work at the ceremonial space unless the person is:
- (a) fully vaccinated; or
 - (b) an excepted person; or
 - (c) a person who:
 - (i) conducts services of public worship and acknowledgments of faith; or
 - (ii) performs marriages, funerals and special memorial services according to tradition and ecclesiastical and civil law; or
 - (iii) visits members of the community in their homes, hospitals and other institutions to provide advice and religious comfort for the purpose of end of life faith reasons.
- (2) The organiser must collect, record and hold vaccination information about each fully vaccinated person and each excepted person who works at the ceremonial space.
- (3) For the purposes of complying with subclause (1) an organiser is authorised to use any information about a worker that it holds under subclause (2).
- (4) If an organiser is the employer of a fully vaccinated person or an excepted person who works at the premises:
- (a) the organiser is deemed to have complied with subclause (2) if they hold vaccination information about the person under:
 - (i) the **COVID-19 Mandatory Vaccination (Specified Workers) Order**; or
 - (ii) the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**; or

- (iii) the **COVID-19 Mandatory Vaccination (General Workers) Order**; or
 - (iv) the **Open Premises Order**; and
- (b) the organiser is authorised to use that information for the purposes of complying with subclause (1).

Part 3 – Other Provisions

11 Relationship with other Orders

- (1) If there is any inconsistency between Parts 2 and 3 of this Order and the **Quarantine, Isolation and Testing Order**, Parts 2 and 3 of this Order are inoperative to the extent of any inconsistency.
- (2) If there is any inconsistency between this Order and any other pandemic order in force or other requirement contained in a **Detention Notice**, this Order is inoperative to the extent of the inconsistency.
- (3) If there is any inconsistency between this Order and a requirement contained in the **Visitors to Hospitals and Care Facilities Order**, this Order is inoperative to the extent of the inconsistency.
- (4) Unless the context otherwise requires, a reference in any pandemic order in force, in any **Detention Notice**, or in any approved form under a pandemic order in force or a **Detention Notice** to:
 - (a) a pandemic order in force or this Order, or a defined term in a pandemic order in force or this Order, will be taken to mean that Order (and hence that defined term) as amended or replaced from time to time; or
 - (b) an earlier version of a particular pandemic order in force or this Order will be taken to be a reference to the current version of that particular pandemic order.

12 Severability

To the extent that any part of this order is held to be in excess of power or otherwise invalid it is to be taken to be valid to the extent to which it is not in excess of that power.

13 Transitional provisions

- (1) A reference in any pandemic order in force (other than a revoked direction) to the **Pandemic (Movement and Gathering) Order 2021 (No. 1)** is taken on and after the revocation of the **Pandemic (Movement and Gathering) Order 2021 (No. 1)** to be a reference to this Order.

- (2) Any act matter or thing that had effect under the **Pandemic (Movement and Gathering) Order 2021 (No. 1)** or the **Stay Safe Directions (Victoria) (No. 30)** immediately before they were revoked continues to have effect under this Order.
- (3) Without limiting subclause (2), this Order is subject to any exemption, benefit, requirement or entitlement (however described) to which the **Pandemic (Movement and Gathering) Order 2021 (No. 1)** or the **Stay Safe Directions (Victoria) (No. 30)** were subject immediately before they were revoked.
- (4) This clause is subject to any express provision to the contrary in this Order.
- (5) In this clause:

revoked direction means a direction that is:

- (a) made by the Chief Health Officer or Acting Chief Health Officer under section 200(1) of the **Public Health and Wellbeing Act 2008**; and
- (b) continued by section 165CJ of that Act as if it were a pandemic order in the same terms made under section 165AI(1); and
- (c) revoked by a pandemic order.

Part 4 – Penalties

14 Penalties

Section 165BN of the **Public Health and Wellbeing Act 2008** provides:

Failure to comply with pandemic order, direction or other requirement

- (1) A person commits an offence if the person refuses or fails to comply with a pandemic order, or with a direction given to the person, or a requirement made of the person, in the exercise of a pandemic management power.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

- (2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply.

*Note: the **Public Health and Wellbeing Regulations 2019** provide for infringement notices to be served on any person who has refused or failed to comply (without a reasonable excuse) with a pandemic order, or a direction given or a requirement made in the exercise of a pandemic management power. The amount payable pursuant to the infringement notice varies depending on the nature of the failure or refusal and the age of the person.*

Schedule 1 - Definitions

For the purposes of this Order:

Additional Industry Obligations Order means the **Pandemic (Additional Industry Obligations) Order 2021 (No. 1)** as amended or replaced from time to time;

aircraft means an aircraft that is mainly used for the purpose of, or is engaged, or is intended or likely to be engaged, in a flight wholly within Australia;

airport means an aerodrome at which facilities are available for the arrival or departure of aircraft into or from the State of Victoria;

authorised officer has the same meaning as in the **Public Health and Wellbeing Act 2008**;

bus company has the same meaning as in **Transport (Compliance and Miscellaneous) Act 1983**;

care facility has the same meaning as in the **Visitors to Hospitals and Care Facilities Order**;

ceremonial space means the premises or land on which a ceremony is held;

ceremony means a religious gathering, a wedding or a funeral that is held at any premises or land that is not a private residence or an 'open premises' within the meaning of the **Open Premises Order**;

commercial passenger vehicle has the same meaning as in the **Workplace Order**;

court means any premises in the State of Victoria that is:

- (a) the Supreme Court; or
- (b) the County Court; or
- (c) the Magistrates' Court; or
- (d) the Children's Court; or
- (e) any Federal Court; or
- (f) the Coroner's Court; or
- (g) the Victorian Civil and Administrative Tribunal; or
- (h) any other court or tribunal of Victoria conducting in-person hearings;

COVID-19 means the contagious disease caused by severe acute respiratory syndrome coronavirus 2;

Detention Notice means a notice given to a person requiring the person to be detained for a specified period under the **Public Health and Wellbeing Act 2008**;

education premises means:

- (a) a school; or
- (b) a school boarding premises; or
- (c) a premises that provides outside school hours care services;

employer has the same meaning as in the **Workplace Order**;

excepted person has the same meaning as in the **Open Premises Order**;

face covering means a fitted face mask that covers the nose and mouth to provide the wearer protection against infection (but does not include a face shield);

fully vaccinated has the same meaning as in the **Open Premises Order**;

healthcare premises means:

- (a) a community health centre, including mental health, child and maternity, and drug and alcohol counselling services centres; or
- (b) a general practice; or
- (c) a COVID-19 related healthcare site, including testing sites, vaccination centres and hotel quarantine premises; or
- (d) a dental surgery and dental practice; or
- (e) a health clinic, including medical specialist and/or allied health professional operated clinics; or
- (f) a diagnostic and medical imaging centre; or
- (g) a premises at which mobile health services are provided; or
- (h) a premises at which blood donation services are provided;

hospital has the same meaning as in the **Visitors to Hospitals and Care Facilities Order**;

indoor space means an area, room or premises that is or are substantially enclosed by a roof and walls that are permanent structures rising either from floor to ceiling or are at least 2.1 metres high, regardless of whether the roof or walls or any part of them are open or closed;

licensed tourism operator has the same meaning as in the **Open Premises Order**;

Movement and Gathering Order means the **Pandemic (Movement and Gathering) Order 2021 (No. 2)** as amended or replaced from time to time;

Open Premises Order means the **Pandemic (Open Premises) Order 2021 (No. 1)** as amended or replaced from time to time;

organiser means a person who is primarily responsible for organising a ceremony;

pandemic orders in force means any of the following as amended or replaced from time to time:

- (a) the **Workplace Order**;
- (b) the **Additional Industry Obligations Order**;
- (c) the **Open Premises Order**;
- (d) the **Movement and Gathering Order**;
- (e) the **Victorian Border Crossing Order**;
- (f) the **Visitors to Hospitals and Care Facilities Order**;
- (g) the **Quarantine, Isolation and Testing Order**;
- (h) the **COVID-19 Mandatory Vaccination (General Workers) Order**;
- (i) the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**;
- (j) the **COVID-19 Mandatory Vaccination (Workers) Order**;
- (k) the **Detention Order**;

passenger transport company has the same meaning as in the **Transport (Compliance and Miscellaneous) Act 1983**;

premises means:

- (a) a building, or part of a building; and
- (b) any land on which the building is located, other than land that is available for communal use;

prison has the same meaning as in the **Corrections Act 1986**;

prisoner has the same meaning as in the **Corrections Act 1986**;

public transport means a vehicle operated by a passenger transport company or by a bus company in the provision of public transport service;

public transport service has the same meaning as in the **Transport (Compliance and Miscellaneous) Act 1983**;

Quarantine, Isolation and Testing Order means the **Pandemic (Quarantine, Isolation and Testing) Order 2021 (No. 1)** as amended or replaced from time to time;

real estate has the same meaning as in the **Estate Agents Act 1980**;

remand centre has the same meaning as in the **Children, Youth and Families Act 2005**;

retail premises means a premises that is used wholly or predominantly for the sale or hire of goods by retail, or the retail provision of services;

school means a registered school as defined in the **Education and Training Reform Act 2006**;

vehicle has the same meaning as in the **Public Health and Wellbeing Act 2008**;

Victorian Border Crossing Order means the **Pandemic (Victorian Border Crossing) Order 2021 (No. 2)** as amended or replaced from time to time;

Visitors to Hospitals and Care Facilities Order means the **Pandemic (Visitors to Hospitals and Care Facilities) Order 2021 (No. 1)** as amended or replaced from time to time;

work premises has the same meaning as in the **Workplace Order**;

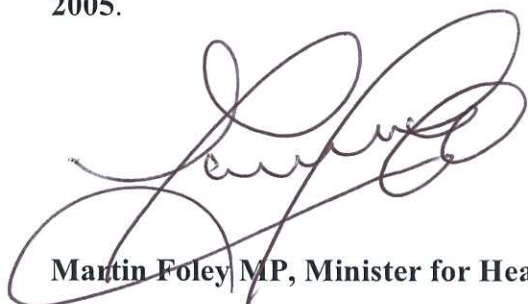
worker means any person engaged or employed by either:

- (a) an operator of a premises to work at the premises; or
- (b) an organiser to work at the ceremonial space;

Workplace Order means the **Pandemic (Workplace) Order 2021 (No. 1)** as amended or replaced from time to time;

youth justice centre has the same meaning as in the **Children, Youth and Families Act 2005**;

youth residential centre has the same meaning as in the **Children, Youth and Families Act 2005**.

A handwritten signature in black ink, appearing to read 'Martin Foley', written in a cursive style with large loops and flourishes.

Martin Foley MP, Minister for Health

23 December 2021