Minister for Health

Statement of Reasons

# Pandemic Orders made 20 December 2021

On 20 December 2021, I Martin Foley, Minister for Health, made the following pandemic order under section 165AI of the *Public Health and Wellbeing Act 2008*:

|  |
| --- |
| Pandemic (Victoria Border Crossing) Order 2021 (No. 2) |

In this document, I provide a statement of my reasons for the making of the above pandemic order.  My statement of reasons for making the pandemic order consists of the general reasons in [1]-[47] and the additional reasons set out in the applicable schedule for the order.

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# About the pandemic orders

1. The pandemic orders were made under section 165AI of the *Public Health and Wellbeing Act 2008* (**PHW Act**).

## Statutory power to make pandemic orders

1. Under section 165AI of the PHW Act, I may, at any time on or after the making of a pandemic declaration by the Premier under s 165AB, make any order that I believe is reasonably necessary to protect public health. The Premier made a pandemic declaration on 10 December 2021, on the basis that he was satisfied on reasonable grounds that there is a serious risk to public health throughout Victoria arising from the coronavirus pandemic disease (COVID –19).
2. Pursuant to section 165AL(1), before making a pandemic order, I must request the advice of the Chief Health Officer in relation to the serious risk to public health posed by the disease specified in the pandemic declaration, and the public health measures that the Chief Health Officer considers are necessary or appropriate to address this risk.
3. On 16 December 2021, I requested the advice of the Acting Chief Health Officer in relation to the Pandemic (Victoria Border Crossing) Order, to amend the obligations on international arrivals and their testing and quarantine requirements. The Acting Chief Health Officer provided his advice on 16 December 2021.
4. Under section 165AL(2), in making a pandemic order, I must have regard to the advice of the Chief Health Officer, and may have regard to any other matter that I consider relevant including, but not limited to, social and economic matters. I may also consult any other person that I consider appropriate before making a pandemic order.

## Guiding principles

1. I have made this decision informed by the guiding principles in sections 5 to 10 of the PHW Act.

### Principle of evidence-based decision-making

1. This principle is that decisions as to the most effective and efficient public health and wellbeing interventions should be based on evidence available in the circumstances that is relevant and reliable.[[1]](#footnote-2)
2. My decision to make the pandemic orders has been informed by the expert advice of the Acting Chief Health Officer about the serious risk to public health posed by COVID-19 and the public health measures that the Acting Chief Health Officer considers are necessary or appropriate to address this risk.

### Precautionary principle

1. This principle is that if a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.[[2]](#footnote-3)
2. COVID-19 is a serious risk to public health, and it would not be appropriate to defer action on the basis that complete information is not yet available. In such circumstances, as the PHW Act sets out, a lack of full scientific certainty is not a reason for postponing measures to prevent or control the public health risks associated with COVID-19.

### Principle of primacy of prevention

1. This principle is that the prevention of disease, illness, injury, disability or premature death is preferable to remedial measures.
2. Despite high vaccination coverage across Victoria, many situations involve a higher level of risk.[[3]](#footnote-4) Given the continuing risk of surging case numbers and outbreaks,[[4]](#footnote-5) particularly with a highly mobile population compared to lockdown periods, it is appropriate that the Victorian Government takes a conservative and cautious approach to manage risk in a targeted and efficient manner. This approach is supported by the principle of primacy of prevention in the Act.

### Principle of accountability

1. This principle is that persons who are engaged in the administration of this Act should as far as is practicable ensure that decisions are transparent, systematic and appropriate.
2. Consistent with this principle, members of the public should be given access to reliable information in appropriate forms to facilitate a good understanding of public health issues, as well as opportunities to participate in policy and program development.
3. To promote accountability in the making of pandemic orders, the Act requires that a copy or written record of the Chief Health Officer's advice, a statement of reasons, and a human rights statement are published in the case of the making, variation or extension of an order.
4. The reasons for making these orders and the advice that has informed those decisions, as well as the expert assessments of the potential human rights impacts of my decisions, have been published according to this principle.

### Principle of proportionality

1. The principle is that decisions made and actions taken in the administration of this Act should be proportionate to the risk sought to be prevented, minimised or controlled, and should not be made or taken in an arbitrary manner.
2. In deciding to make the pandemic orders, I am required to be satisfied that those orders are 'reasonably necessary' to protect public health, which requires consideration of the proportionality of those measures to the risk to public health.

### Principle of collaboration.

1. The principle of collaboration is that public health and wellbeing, in Victoria and at a national and international level, can be enhanced through collaboration between all levels of Government and industry, business, communities and individuals.
2. In preparing the pandemic orders, I consulted with the Premier, my Coordinating Ministers Committee colleagues, the Hon Brad Hazzard (the New South Wales (NSW) Minister for Health) and Professor Deborah Williamson.
3. Throughout the pandemic, there has been ongoing consultation between the Deputy Chief Health Officers and the Chief Health Officers of the States and Territories, including through the Australian Health Protection Principal Committee.
4. Victoria continues to work with other jurisdictions through National Cabinet, to talk through plans for managing COVID-19. Victoria’s Roadmap: Delivering the National Plan aligned with vaccination targets set out in the *National Plan to transition Australia’s National COVID-19 Response*, as agreed by National Cabinet.

### Part 8A objectives

1. I have also had regard to the objectives of Part 8A in section 165A(1) of the PHW Act, which is to protect public health and wellbeing in Victoria by establishing a regulatory framework that:
   1. prevents and manages the serious risk to life, public health and wellbeing presented by the outbreak and spread of pandemics and diseases with pandemic potential;
   2. supports proactive and responsive decision-making for the purposes of preventing and managing the outbreak and spread of pandemics and diseases with pandemic potential; and
   3. ensures that decisions made and actions taken under Part 8A are informed by public health advice and other relevant information including, but not limited to, advice given by the Chief Health Officer; and
   4. promotes transparency and accountability in relation to decisions made and actions taken under Part 8A; and
   5. safeguards contact tracing information that is collected when a pandemic declaration is in force.

## Human Rights

1. Under section165A(2) of the PHW Act, the Parliament has recognised the importance of protecting human rights in managing the serious risk to life, public health and wellbeing presented by the outbreak or spread of pandemics and diseases of pandemic potential.
2. In addition, in making each pandemic order, I have proceeded on the basis that I should give proper consideration to relevant human rights under the *Charter* *of Human Rights and Responsibilities* *2006* (Vic) (**Charter**). I therefore proceeded on the basis that, in making each order, I was required to take the following four steps:
   1. first, understand in general terms which human rights are relevant to the making of a pandemic order and how those rights would be interfered with by a pandemic order;
   2. second, seriously turn my mind to the possible impact of the decision on human rights and the implications for affected persons;
   3. third, identify countervailing interests or obligations in a practical and common-sense way; and
   4. fourth, balance competing private and public interests as part of the exercise of ‘justification’.
3. This statement of reasons must be read together with the Human Rights Statement.
4. I note also that in providing his advice, the Acting Chief Health Officer had regard to the Charter.[[5]](#footnote-6)

# Overview of public health advice

# Current context

1. Victoria is currently experiencing an outbreak of the Delta variant of concern (VOC) of severe acute respiratory syndrome coronavirus 2, the virus which causes COVID-19. Additionally, there is global uncertainty and growing concern about the rapid spread of the Omicron VOC. When making these pandemic orders, I have had regard to the advice of the Acting Chief Health Officer dated 16 December 2021, including current outbreak patterns, growth in case numbers, and vaccination rates.

## Immediate situation: continued management of the COVID-19 Pandemic according to the Victorian Roadmap to deliver the National Plan

1. As of 20 December 2021, 1,302 new cases locally acquired and no new cases from overseas have been reported to the Department of Health within the preceding 24 hours. The state seven-day local case growth rate to 20 December 2021 was 14.8 per cent.
2. As of 20 December 2021, there were 13,175 active cases in Victoria and 31,735 cases being managed as close contacts.
3. No COVID-related deaths were reported in 24 hours preceding 20 December 2021, bringing the total number of COVID-19 related deaths in Victoria to 1,454.
4. From 20 December 2021, the majority of locally acquired cases associated with the current outbreaks have been associated with the Delta (B.1.617.2) VOC, with locally acquired cases associated with the Omicron (B.1.1.529) VOC and genomic sequencing was underway for all newly identified cases.
5. Within the past seven days to 20 December 2021, there has been zero regional areas with unexpected wastewater detected reporting, one industry site with wastewater detections under active management for outbreak/exposure response and six industry sites with unexpected wastewater detections meeting escalation thresholds.

**Test results**

1. Victorians had been tested at a rate of 14,303 per 100,000 people over the 14 days to 20 December 2021.

**Vaccinations**

1. As of 20 December 2021:
   1. a total of 4,959,671 doses have been administered through the State’s vaccination program, contributing to a total 11,022,565 doses administered in Victoria.
   2. 92.4 per cent of Victorians over the age of 12 have been fully vaccinated
   3. 94.3 per cent of Victorian over the age of 12 have been partially vaccinated

**The current global situation**

1. The following situation update and data have been taken from the World Health Organisation, published 14 December 2021.

**Table 1: COVID‑19 The current global situation**

|  |  |
| --- | --- |
| **Statistic** |  |
| Global confirmed cumulative cases of COVID-19 | Over 268.9 million |
| Global cumulative deaths | Over 5.2 million |
| Global trend in new weekly cases | Decreasing: 5% decrease compared to the previous week |
| Global regions reporting the highest weekly case incidence per 100 000 population | * European Region (277.9 per 100 000 population) * Region of the Americas (81.9 per 100 000 population) |
| Global regions reporting the highest weekly incidence in deaths | * European Region (3.0 per 100 000 population) * Region of the Americas (1.0 per 100 000 population) |
| The highest numbers of new cases: | * United States of America (674 019 new cases; 9% decrease), * Germany ( 351 738 new cases; 11% decrease), * the United Kingdom (350 340 new cases; 13% increase), * France (335 972 new cases; 19% increase), and * the Russian Federation (215 283 new cases; 7% decrease). |

Sources: World Health Organisation published 14 December 2021, WHO COVID-19 Weekly Epidemiology Update

# Reasons for decision to make pandemic orders

## Overview

1. Protecting public health and wellbeing in Victoria from the risks posed by the COVID-19 pandemic is of primary importance when I am deciding whether or not to issue pandemic orders. This is a priority supported by the PHW Act.
2. Section 165AL(2)(a) of the Act requires me to have regard to the advice of the Chief Health Officer, and I confirm that I have done so. That advice includes recommendations on the public health measures that the Acting Chief Health Officer recommends be introduced by issuing a new Pandemic (Victorian Border Crossing) Orders. The Acting Chief Health Officer provided written advice on 16 December 2021, and a record of that advice is published with this document.
3. Section 165AL(2)(b) permits me to have regard to any other matter I consider relevant, including (but not limited to) social and economic factors. Section 165AL(3) permits me to consult with any other person I consider appropriate before making pandemic orders.
4. In making the decision to make a new Pandemic (Victoria Border Crossing) Order, I have had regard to current, detailed health advice. On the basis of that health advice, I believe that it is reasonably necessary for me to make a new order to protect public health.[[6]](#footnote-7) In assessing what is 'reasonably necessary', I have had regard to Chief Justice Gleeson’s observation in *Thomas v Mowbray* (2007) 233 CLR 307 at [22] that *“the [decision-maker] has to consider whether the relevant obligation, prohibition or restriction imposes a greater degree of restraint than the reasonable protection of the public requires”*.
5. The new order I have made recognises that, although more than 92 per cent of the Victoria population aged 12 and above are fully vaccinated, other measures are still required to control the spread of COVID-19. It is still necessary to maintain safeguards to control the rate at which COVID‑19 can spread given high levels of community transmission are still evident.[[7]](#footnote-8)
6. The measures that I have decided are necessary and appropriate to manage the risk that COVID-19 presents, and recognises that, “the Omicron (VOC) is already circulating in Victoria and the risk posed by international arrivals is now no different to that of domestic arrivals”[[8]](#footnote-9) as well as recognising that “the evidence on impact of the Omicron VOC on individuals and the population continues to emerge”.[[9]](#footnote-10)
7. Having had regard to the advice of the Acting Chief Health Officer and after having consulted with the Premier and my Coordinating Ministers Committee colleagues, it is my view that making a new Pandemic (Victorian Border Crossing) Order is reasonably necessary to reduce the risk that COVID-19 poses by:
   1. Limiting the risk of incursion from outside Victoria and Australia via proportionate control measures such as international travel permits, testing and quarantine requirements and exclusion from sensitive settings during the period of highest risk.
   2. Requiring people who have been diagnosed with, or exposed to, COVID-19 to avoid settings where people who are vulnerable to infection reside and, where necessary, to quarantine and be tested for COVID-19, or self-isolate, to reduce the risk of further transmission.

## Schedules

1. The specific Reasons for Decision for making a new Pandemic (Victorian Border Crossing) Order are set out in Schedule 1.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The Hon. Martin Foley**

Minister for Health

20 December 2021

# Schedule 1 – Reasons for Decision – Pandemic (Victoria Border Crossing) Order

## Summary of Order

1. I have made a pandemic order containing obligations for persons entering Australia as international passengers or international aircrew services workers because I believe doing so is reasonably necessary to protect public health.

### Purpose

1. The objective of this Order is to:
   1. provide a scheme for persons arriving in Australia as an international passenger arrival or international aircrew services worker, to limit the spread of COVID-19; and
   2. amend the obligations on international arrivals and their testing and quarantine requirements.

*Obligations*

1. This Order provides for persons entering Australia as international passengers or as international aircrew services workers to limit the spread of COVID-19.
2. All international arrivals:
   1. must comply with the general post-entry conditions, which are:
      1. to comply with all of the pandemic orders in force;
      2. monitor for COVID-19 symptoms; and
      3. obtain a test for COVID-19 as soon as possible after experiencing any COVID-19 symptoms; and
   2. if required to self-quarantine, must travel immediately to the residence in Victoria where they will remain in self-quarantine for a prescribed period of time, unless undertaking essential activities:
      1. for international arrivals and aircrew services workers who are fully vaccinated or medically exempt, self-quarantine until receiving a negative result from the COVID‑19 test within 24 hours of arrival in Australia;
      2. for an international aircrew services worker who is not fully vaccinated nor medically exempt, the prescribed period of time is 14 days;
      3. for an international passenger arrival who is at least 12 years and 2 months of age and less than 18 years of age and is not fully vaccinated nor medically exempt, the prescribed period of time is 7 days; and
   3. are restricted from entering specific facilities (an educational facility, childcare or early childhood services, residential aged care facility, disability residential service or hospital) for a period of time after entering Victoria.
   4. must carry and present specific documents on the request of an authorised officer:
      1. For international passenger arrivals, the documents required are:
         1. their valid international passenger arrival permit (unless they are a child under 12 years and 2 months of age and travelling with a person who holds a valid permit);
         2. an acceptable form of identification;
         3. if applicable, evidence of their COVID-19 PCR test results; and
         4. international acceptable evidence or international acceptable certification of their vaccination status, or the vaccination status of their parent or guardian.
      2. For international aircrew services workers, the documents required are:
         1. an acceptable form of identification; and
         2. international acceptable evidence to show that they are fully vaccinated or international acceptable certification to show they are a medically exempt person.
3. International passenger arrivals must, amongst other things:
   1. obtain a valid international passenger arrival permit;
   2. complete prescribed COVID-19 PCR tests; and
   3. self-quarantine for the prescribed period of time.
4. International aircrew arrivals must, amongst other things:
   1. complete prescribed COVID-19 PCR tests or COVID-19 rapid antigen tests; and
   2. self-quarantine for the prescribed period of time.
5. This Order also sets out the process for permit applications and the conditions under which a person may be granted an exemption from this Order.
6. Failure to comply with this Order may result in penalties.

*Changes from Pandemic (Victoria Border Crossing) Order 2021 (No. 1)*

1. Removing the 72-hour self-quarantine requirements for vaccinated or medically exempt international arrivals and aircrew and replacing it with a requirement to self-quarantine until receiving a negative result from the COVID 19 test within 24 hours of arrival in Australia;
2. Clarification that this order does not apply to international arrivals who will enter Victoria via a Victorian maritime port permit.

### Period

1. This Order will commence at 11:59:00pm on 20 December 2021 and end at 11:59:00pm on 12 January 2022.

## Relevant human rights

### Human rights that are limited

1. For the purposes of section 165AP(2)(c), in my opinion, the obligations imposed by the order will limit the human rights identified in paragraph 238 of the Human Rights Statement.
2. My explanation for why those rights are limited by the order is set out in the Human Rights Statement.
3. The Human Rights Statement also sets out:
   1. my explanation of the nature of the human rights limited (as required by section 165AP(2)(d)(i)); and
   2. my explanation of the nature and extent of the limitations (as required by section 165AP(2)(d)(iii)).

### Human rights that are affected, but not limited

1. Further, in my opinion, the obligations imposed by the order will affect, but not limit, the human rights set out in paragraph 239 of the Human Rights Statement.
2. My explanation for why those rights are affected, but not limited, by the Order is set out in the Human Rights Statement.

## How the obligations imposed by the Order will protect public health

1. I carefully read and considered the Acting Chief Health Officer's advice from 16 December 2021. In relation to the updated measures that will be imposed by this Order, the Acting Chief Health Officer relevantly advised:
   1. As the global distribution of the Omicron VOC expands, including domestically in Australian jurisdictions, and the local transmission of COVID-19 increases, international border measures become relatively less important in managing incursion risk.[[10]](#footnote-11) Given identification of the Omicron VOC within Australia and ongoing high community transmission within Victoria, additional quarantine obligations on fully vaccinated international arrivals to Victoria presents diminishing utility as a protective measure.[[11]](#footnote-12)
   2. In the context of these epidemiological changes, it is reasonable to adjust the requirements for international arrivals into Victoria by air to mirror those domestic arrivals from other Australian states and territories, as the risk of incursion from within Australia is no greater than international arrivals.[[12]](#footnote-13)
   3. Retaining testing requirements for international passengers remains critical so that testing within 24 hours of arrival and again between days 5 and 7 is undertaken. This ensures that any detection of COVID-19 continues to be a core part of risk mitigation for international arrivals. Furthermore, persons arriving from overseas are required to have completed a Polymerase Chain Reaction (PCR) test prior to their scheduled flight departure whereas for interstate arrivals this is not required for entry into Victoria.[[13]](#footnote-14)
   4. However, a recommendation to allow provisions for the Rapid Antigen (RA) test as an alternative testing option to the PCR test will be appropriate given the likelihood there will be increase in demand for testing in the state as the numbers of Victorians exposed to the Omicron VOC are expected to rapidly grow. RA tests have been found to have moderate sensitivity and high specificity for the detection of SARS-CoV-2 and are an appropriate screening tool for asymptomatic testing, which will be relevant for a large number of international arrivals. RA testing has merit in minimising risk of incursions in sensitive settings when a condition of entry and therefore can be appropriate in this context as we mitigate incursion risk into Victoria. Additionally, it can offset pressure on testing pathology system capacity and free up resources for symptomatic testing to ensure system readiness in Victoria. [[14]](#footnote-15)
   5. The period of 72-hours quarantine for all international arrivals into Victoria was previously necessary to enable an understanding of the nature of the Omicron VOC and to prepare the Victorian systems to respond to the rapid rise in case numbers that is expected.[[15]](#footnote-16)
   6. Restrictions on entry to sensitive settings that involve vulnerable populations continue to be important in protecting Victorians who are at increased risk of harm from COVID-19 outbreaks and reduce the incursion of emerging threats such as novel VOC that may potentially be more transmissible, virulent or treatment resistive.[[16]](#footnote-17)
   7. For medically exempt individuals arriving to Australia, they should continue to be treated as fully vaccinated for the purposes of determining their post-entry quarantine requirements. These individuals represent a small cohort that have a valid contraindication or acute illness that precludes them from receiving COVID-19 vaccines due to an unacceptable and heightened risk of harm to the individual. This group should not be disadvantaged for circumstances outside of their volitional control through the imposition of quarantine requirements.[[17]](#footnote-18)
   8. Similarly, international arrivals under the age of 12 years should continue to be permitted to quarantine in accordance with the vaccination status of accompanying travel members or as a fully vaccinated individual if unaccompanied minors to prevent separation of travel groups or solitary and unsupervised quarantine of minors. Such an approach would result in unintended harms to the health and wellbeing of young travellers. Further, vaccination is not widely accessible to this age cohort in all countries which raises additional concerns of inequity.[[18]](#footnote-19)
   9. However, for medically exempt and international arrivals under the age of 12 years counterbalancing risk mitigation measures of testing requirements and restrictions on entry to high-risk settings should remain to monitor for cases and prevent unintended transmission to vulnerable groups.[[19]](#footnote-20)
   10. This change will mean that a proportionate approach is applied for persons arriving in Victoria from overseas so that comparable testing and quarantine requirements are applied to people in Victoria who have been potentially exposed to a positive case in a workplace or education environment.[[20]](#footnote-21)
   11. No change to the quarantine, testing or additional public health requirements are proposed for international arrivals who are unvaccinated. This cohort do not have a valid medical exemption and have volitionally not received their COVID-19 vaccines despite being eligible. They do not have the protective effects of COVID-19 vaccination and thus represent the highest risk cohort of international arrivals.[[21]](#footnote-22)
   12. The policy for fully vaccinated aircrew services workers should match the requirements for international passengers as they represent a comparable public health risk.[[22]](#footnote-23)
   13. Similarly, all public health requirements for unvaccinated aircrew services workers should remain as they represent the highest risk cohort of international arrivals.[[23]](#footnote-24)
2. I substantially accepted that advice.
3. However, with regard to the recommendation “to allow provisions for the Rapid Antigen (RA) test as an alternative testing option to the PCR test”[[24]](#footnote-25) for international arrivals and aircrew, and proposed removal of quarantine restrictions on fully vaccinated international air arrivals (previously 72 hours), I have consulted further with the Hon Brad Hazzard, NSW Minister for Health and Professor Deborah Williamson, Director of the Victorian Infectious Diseases Reference Laboratory (VIDRL).
4. I have taken into account the advice of the Acting Chief Health Officer as well as my consultations with the Hon Brad Hazzard and Prof Deborah Williamson in reaching decision about whether to provide for the RA test to be a broad alternative testing option to the PCR test, and in relation to the self-quarantine period for international arrivals and crew. In particular, I consider:
   1. VIDRL is undertaking an evaluation of the performance of RA tests for Omicron, and while results to date are reassuring (the sensitivity of the RA tests for Omicron look similar to that for Delta variants), this work is not yet complete;[[25]](#footnote-26)
   2. That while RA testing could identify cases, it would not provide the ability to identify and track potential new variants of concern;[[26]](#footnote-27) and
   3. That it is important that major settings for testing requirements and self quarantine are aligned in Victorian and NSW (as Australia’s two largest states) to avoid any confusion or other negative consequences for international travellers. The position of the NSW government is that it is appropriate to maintain the requirement of a PCR test for international arrivals at this time.[[27]](#footnote-28)
5. The Chief Health Officer’s Advice to me also:
   1. notes that the “the evidence on impact of the Omicron VOC on individuals and the population continues to emerge. While the variant has a large number of genetic mutations the impact of these mutations on key epidemiological characteristics remains uncertain.”[[28]](#footnote-29)
   2. notes that “at this stage it remains uncertain to what degree vaccine effectiveness is affected, if at all.”[[29]](#footnote-30)
6. Based on these factors, I have decided to take a precautionary approach and maintain the relevant PCR testing requirements at this point in time, rather than providing for RA tests as an alternative testing option to the PCR test. I also consider it necessary and proportionate to maintain PCR testing.
7. As a consequence, I have decided that it is reasonably necessary to reduce the self-quarantine period for fully vaccinated or medically exempt international arrivals and aircrew from 72 hours to be instead until the individual receives a negative result from the required COVID‑19 test (undertaken within 24 hours of arrival in Australia).
8. Noting that the above factors may change, and the knowledge this order will be maintained until 12 January 2021 at the latest, I have made the decision to provide for in the Order to facilitate a change to allow RA tests as an alternative to PCR tests for international arrivals and aircrew change in the future as those conditions change. I have delegated this power to the Secretary of the Department of Health, enabling the Department to provide for RA tests as an alternative to PCR.
9. In addition, the change to explicitly exclude maritime arrivals from the Pandemic (Victoria Border Crossing) Order and thereby the international passenger permit is to ensure that the Order reflects the policy intent that individuals entering Victoria via Victorian maritime ports are managed in a different way to air arrivals (via Detention Notices) because of the unique nature of the industry and different risk profile. This does not represent a change to policy, but a clarification of who this Order and international passenger arrivals permit was intended to apply to. The Chief Health Officer has previously advised me on 10 December 2021 regarding the high risk associated with international maritime arrivals.[[30]](#footnote-31)

## Countervailing possible impacts that the obligations imposed by the Order may have on individuals and the community

1. In making this decision, I have seriously considered the possible negative impacts of the Order on the individuals and the community.
2. In particular, as noted above, in the Human Rights Statement, I have considered how people’s human rights will be affected and limited by the Order.
3. In addition, I have also considered the following additional potential negative impacts:
   1. Under the order, international aircrew services workers “must be tested frequently, must self-quarantine and be excluded from vulnerable settings if not in possession of negative test results”.[[31]](#footnote-32)
   2. The order requires “people imputed to have higher risk of infection with COVID-19 to self-quarantine and to be excluded from certain vulnerable settings for a period of 7 or 14 days”.[[32]](#footnote-33) “Exclusion from vulnerable settings where international passenger arrivals or international aircrew services workers may have family events (such as school concerns or hospital admissions) prevents families from being together, and children from being supported by their families on important occasions.”[[33]](#footnote-34)
   3. If an exemption is granted under the order, “the recipient must carry evidence of the exemption, any applicable documentary evidence, and a form of identification.”[[34]](#footnote-35)
   4. Under the order, international passenger arrivals “must carry and present on request the permit, identification, evidence of vaccination or medical exemption”, and negative COVID-19 test results if relevant.[[35]](#footnote-36)
   5. The orders requires that “an international passenger arrival may not attend an educational facility in Victoria until ... the 8th day after (if not fully vaccinated and not medically exempt) arrival in Australia and until after receiving a negative day 5 to 7 … test result.”[[36]](#footnote-37)
   6. As children under 12 years of age “remain ineligible for vaccination, many people required to self-quarantine choose to do so away from their family and children. The Order requires that a person self-quarantining cannot even use shared facilities in the premise. This can cause disruptions in relationships, economic difficulties, isolation from culture and traditions, and uncertainty and anxiety.”[[37]](#footnote-38)
4. Further, as noted above, in the Human Rights Statement, I have considered how people’s human rights will be affected and limited by the Order.
5. In making this pandemic order, I have excluded medically exempt individuals from post-entry quarantine requirements, to ensure those with valid reasons for a medical exemption are not disadvantaged as a consequence of their ineligibility.[[38]](#footnote-39)
6. I have included a provision for a broad exemption power, which provides an avenue for individual requests for an exemption to be considered by senior officials in the Department. This allows for an exemption to be granted to any of the requirements in this order if required, ensuring exceptional circumstances can be considered on a case-by-case basis and that the application of the order is not overly rigid in such circumstances.
7. In this order I have ensured that a person in self-quarantine is permitted to leave self-quarantine for essential reasons. These essential reasons include to obtain medical care, respond to an emergency or to leave the State of Victoria.

## Whether there are any less restrictive alternatives that are reasonably available to protect public health

1. In his advice, the CHO sets out a range of measures, including measures which do not have a restrictive element (such as health promotion, education, epidemiology and monitoring).[[39]](#footnote-40)
2. The CHO states that such measures alone will not be sufficient to manage the serious risk to public health posed by COVID-19.[[40]](#footnote-41)
3. I therefore consider that there are no less restrictive means reasonably available to achieve the purpose that the limitations on rights sought to be achieve.

## Conclusion

1. Taking into account all of the above factors (including those contained in the Human Rights Statement) and weighing the public health benefits of the Order against the countervailing potential impacts on individuals and the community, I believed it was reasonably necessary to make the Order to protect public health.
2. For the same reasons, I formed the opinion that the limits placed on human rights by the Order are demonstrably justified for the purposes of the Charter.

1. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021), pp. 3-4 at [11]- [15]. [↑](#footnote-ref-2)
2. Department of Health, *Chief Health Officer Advice to Minister for Health* (10 December 2021),p. 5 at [14]. [↑](#footnote-ref-3)
3. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [34]. [↑](#footnote-ref-4)
4. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021), p. 4 at [15] – [19];p. 5 at [24] – [26]. [↑](#footnote-ref-5)
5. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021) p. 2 [5]. [↑](#footnote-ref-6)
6. See *Public Health and Wellbeing Act 2008* (Vic) section 3(1) for the definition of ‘serious risk to public health’. [↑](#footnote-ref-7)
7. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021), p. 4 at [15] – [19];p. 5 at [24] – [28]. [↑](#footnote-ref-8)
8. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 2 at [4]. [↑](#footnote-ref-9)
9. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021), p. 3 at [12]-[14]. [↑](#footnote-ref-10)
10. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 5 at [27]. [↑](#footnote-ref-11)
11. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 5 at [29]. [↑](#footnote-ref-12)
12. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 5 at [30]. [↑](#footnote-ref-13)
13. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021).P. 5 at [31]. [↑](#footnote-ref-14)
14. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021).Pp. 5-6 at [32]. [↑](#footnote-ref-15)
15. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [33]. [↑](#footnote-ref-16)
16. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [34]. [↑](#footnote-ref-17)
17. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [35]. [↑](#footnote-ref-18)
18. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [36]. [↑](#footnote-ref-19)
19. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [37]. [↑](#footnote-ref-20)
20. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [38]. [↑](#footnote-ref-21)
21. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [39]. [↑](#footnote-ref-22)
22. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [40]. [↑](#footnote-ref-23)
23. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 6 at [41]. [↑](#footnote-ref-24)
24. Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (16 December 2021),p. 5 at [32]. [↑](#footnote-ref-25)
25. Text reflects verbal advice provided by Professor Deborah Williamson to the Minister for Health, 17 December 2021. [↑](#footnote-ref-26)
26. Text reflects verbal advice provided by Professor Deborah Williamson to the Minister for Health, 17 December 2021. [↑](#footnote-ref-27)
27. Text reflects verbal advice provided by the Hon Brad Hazzard to the Minister for Health, 17 December 2021. [↑](#footnote-ref-28)
28. Department of Health, *Chief Health Officer Advice to Minister for Health* (10 December 2021),p. 3 at [12]. [↑](#footnote-ref-29)
29. Department of Health, *Chief Health Officer Advice to Minister for Health* (10 December 2021),p. 3 at [14]. [↑](#footnote-ref-30)
30. Department of Health, *Chief Health Officer Advice to Minister for Health* (10 December 2021),p. 20 at [88]-[89]; p. 26 at [119] and [121]. [↑](#footnote-ref-31)
31. Department of Health, *Human Rights Statement: Pandemic (Victorian Border Crossing) Order* (11 December 2021), at [241.2]. [↑](#footnote-ref-32)
32. Department of Health, *Human Rights Statement: Pandemic (Victorian Border Crossing) Order* (11 December 2021), at [241.2]. [↑](#footnote-ref-33)
33. Department of Health, *Human Rights Statement: Pandemic (Victorian Border Crossing) Order* (11 December 2021), at [244.5]. [↑](#footnote-ref-34)
34. Department of Health, *Human Rights Statement: Pandemic (Victorian Border Crossing) Order* (11 December 2021), at [243.5]. [↑](#footnote-ref-35)
35. Department of Health, *Human Rights Statement: Pandemic (Victorian Border Crossing) Order* (11 December 2021), at [243.4], [246.2]. [↑](#footnote-ref-36)
36. Department of Health, *Human Rights Statement: Pandemic (Victorian Border Crossing) Order* (11 December 2021), at [243.4]. [↑](#footnote-ref-37)
37. Department of Health, *Human Rights Statement: Pandemic (Victorian Border Crossing) Order* (11 December 2021), at [244.5]. [↑](#footnote-ref-38)
38. Department of Health, Acting Chief Health Officer Advice to Minister for Health (16 December 2021), p. 6 at [35]. [↑](#footnote-ref-39)
39. Department of Health, *Chief Health Officer Advice to Minister for Health* (10 December 2021) pp. 14-15, at [52] – [63]. [↑](#footnote-ref-40)
40. Department of Health, *Chief Health Officer Advice to Minister for Health* (10 December 2021), p. 4, at [5]. [↑](#footnote-ref-41)