

Guidance for the Pandemic (Open Premises) Order 2022 (No. 2)

This Order imposes obligations upon operators of certain open premises in Victoria and their patrons in relation to vaccination against COVID-19 and other requirements, in order to address the serious public health risk posed to Victoria by COVID-19.

- (1) Parts 2, 3 and 4 govern open premises, which are specified in Schedule 1;
- (2) Part 2 contains vaccination requirements;
- (3) Part 3 contains additional requirements and exceptions;
- (4) Part 4 contains further requirements and exceptions for specific open premises.

Operators of an open premises must (unless an exception applies):

- (1) maintain a system which requires all patrons above 18 years of age to show an employee acceptable evidence that the person is fully vaccinated or an excepted person on every occasion a person attends the premises. This system must include a worker placed at each accessible entrance of the premises;
- (2) take reasonable steps to exclude patrons who do not comply with the operator's system, or are not fully vaccinated or exempt;
- (3) not permit any person to work at the premises unless that person is fully vaccinated, or exempt. A partially vaccinated worker may work on the premises when no patrons are present at the time. The operator must collect, record and hold vaccination information for all workers;
- (4) not permit the number of patrons to exceed the patron limits as specified in the Order, unless an exception has been permitted under the Order.

Patrons of an open premises must comply with the operator's system.

Exceptional circumstances are listed under which an operator is not required to comply with this Order. Otherwise, failure to comply with this Order may result in penalties.

This guidance does not form part of the Pandemic (Open Premises) Order 2022 (No. 2) and is for explanatory purposes only.

Pandemic (Open Premises) Order 2022 (No. 2)

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Pandemic (Open Premises) Order 2022 (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

The objective of this Order is to impose obligations in relation to vaccination against COVID-19 and other requirements, in order to address the serious public health risk posed to Victoria by COVID-19 upon:

- (1) operators of certain open premises in the State of Victoria; and
- (2) patrons that attend those premises.

2 Citation

This Order may be referred to as the **Pandemic (Open Premises) Order 2022 (No. 2)**.

3 Authorising Provision

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 6 January 2022 and ends at 11:59:00pm on 12 January 2022.
- (2) The **Pandemic (Open Premises) Order 2021 (No. 1)** is revoked at 11:59:00pm on 6 January 2022.

5 Definitions

Schedule 2 contains definitions:

- (1) key definitions are contained in Division 1 of Schedule 2;
- (2) premises-specific definitions are contained in Division 2 of Schedule 2;
- (3) other definitions are contained in Division 3 of Schedule 2.

6 Application of this Order

This Order applies to the whole State of Victoria.

Part 2 – Open Premises — Vaccination Requirements

Division 1 – Operator requirements

7 Open premises

The operator of an open premises must operate the premises in accordance with:

- (1) the obligations in this Part;
- (2) any additional obligations in Part 3; and
- (3) any premises-specific obligations in Part 4.

8 Maintenance of system

- (1) The operator of an open premises must maintain a system that requires a patron (except a patron under 18 years of age) that attends the premises either:
 - (a) on each occasion they attend, to show a person working at the premises acceptable evidence that they are either:
 - (i) fully vaccinated; or
 - (ii) an excepted person; or
 - (b) once prior to their first attendance after 6:00:00pm on 29 October 2021, if the patron is a pre-registration patron and they attend a pre-registration premises, to provide the operator with acceptable evidence that they are either:
 - (i) fully vaccinated; or
 - (ii) an excepted person.

*Note: an operator must require patrons to check-in to their premises under the **Workplace Order**.*

- (2) The system maintained under subclause (1) must include:
 - (a) the placement, at each entrance to the premises that is accessible by patrons, of a worker:
 - (i) who is designated as a COVID Check-in Marshal; and

- (ii) who requests each patron attending the premises to either:
 - (A) do the things specified in subclause (1)(a); or
 - (B) confirm that the patron has completed the things specified in subclause (1)(b).
- (3) If an operator of a pre-registration premises maintains a system under subclause (1)(b), the operator must collect, record and hold vaccination information about the pre-registration patron.

9 Exclusion of persons

- (1) The operator of an open premises must take all reasonable steps to ensure that a patron does not enter, or remain on, the premises if the patron:
 - (a) is not fully vaccinated; and
 - (b) is not an excepted person; or
 - (c) does not comply with the requirements of the system maintained by the operator under clause 8(1).

Note: this obligation does not apply in relation to patrons who are fully vaccinated or excepted persons (which includes children under 18 years of age) and have provided acceptable evidence.

- (2) For the purposes of complying with subclause (1), the operator is authorised to use any information about a patron that it has been provided under the system maintained under clause 8(1).

Division 2 – Patron requirements

10 Patrons must use system

- (1) A patron (except a patron under 18 years of age) who attends an open premises must comply with the requirements of the system maintained under clause 8(1).
- (2) A patron who is a dependant of another patron is deemed to have complied with subclause (1) if the other patron, on behalf of the dependant, complies with the requirements of the system maintained under clause 8(1).

11 No entry unless fully vaccinated or an excepted person

A patron must not enter, or remain on, an open premises if the patron is not:

- (1) fully vaccinated; or
- (2) an excepted person.

Division 3 – Worker requirements

12 Workers must be fully vaccinated

- (1) The operator of an open premises must not permit any person to work at the premises unless the person is:
 - (a) fully vaccinated and 12 years and 2 months of age or above; or
 - (b) an excepted worker.
- (2) The operator must collect, record and hold vaccination information about each fully vaccinated person and each excepted worker who works at the premises.
- (3) For the purposes of complying with subclause (1), an operator is authorised to use any information about a worker that it holds under subclause (2).

13 Information held under COVID-19 Mandatory Vaccination Orders

If an operator is the employer of a fully vaccinated person or an excepted worker who works at the premises:

- (1) the operator is deemed to have complied with clause 12(2) if they hold vaccination information about the person under the **COVID-19 Mandatory Vaccination (Workers) Order** or the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**; and
- (2) the operator is authorised to use that information for the purposes of complying with clause 12(1).

14 Disclosure to employer or contractor

If the operator is obliged to comply with clause 9(1) in relation to a worker and the operator is not:

- (1) the employer of the worker; or
- (2) the person who engaged the worker to work at the premises,

the operator is authorised to disclose to the employer or person who engaged the worker that the operator is obliged to comply with clause 9(1) in relation to the worker.

15 Exceptional circumstances

- (1) An operator of an open premises is not required to comply with this division if one or more of the exceptional circumstances specified in subclause (2) applies.
- (2) The exceptional circumstances are:

- (a) a worker is required to perform work or duties that is or are necessary to provide for urgent specialist clinical or medical care due to an emergency situation or a critical unforeseen circumstance; or
 - (b) a worker is required to fill a vacancy to provide urgent care, to maintain quality of care and/or to continue essential operations due to an emergency situation or a critical unforeseen circumstance; or
- Example: a large number of workers furloughed due to exposure at a Tier 1 site.*
- (c) a worker is required to respond to an emergency; or
 - (d) a worker is required to perform urgent and essential work to protect the health and safety of workers or members of the public, or to protect assets and infrastructure.
- (3) If a circumstance specified in subclause (2) applies, the operator must take all reasonable steps to ensure that the worker does not work outside the worker's ordinary place of residence for any longer than the period of time necessary to respond to the exceptional circumstance.

16 Patron limits

The operator of an open premises must not permit the number of patrons:

- (1) in all indoor spaces combined—to exceed the number specified for the premises in Column 2 in Schedule 1; and
- (2) in all outdoor spaces combined—to exceed the number specified for the premises in Column 3 in Schedule 1.

Note: "patron" is defined in Schedule 2, clause 1(1)(c) and does not include a person under 1 year of age.

Part 3 – Other Requirements and Exceptions for Open Premises

Division 1 – Other requirements

17 COVID Check-in Marshal for check-in

The operator of an open premises must place a person designated as a COVID Check-in Marshal at each entrance to the premises that is accessible by patrons and who requests each patron to record their attendance at the premises in accordance with the **Workplace Order**.

Division 2 — Exceptions

18 Access to bathrooms

The patron limits specified in clause 16 and the requirements in Part 4 do not prevent an operator from permitting a patron to access a bathroom.

19 Severe weather

The patron limits specified in clause 16 and the requirements in Part 4 do not prevent an operator from permitting a patron in an outdoor space at the open premises from entering an indoor space in the event of severe weather.

20 Education and childcare services

The obligations in Part 2 and the patron limits in Part 4 do not apply in relation to patrons who are enrolled in an education and childcare service and attend an open premises for the purpose of an activity including an excursion organised by the operator of that education and childcare service.

Note: the obligations in Part 2 and the patron limits in Part 4 still apply to staff, parents and other persons who are not enrolled with the education and childcare service and attend the open premises for the activity.

21 Public Event Framework

- (1) If an open premises is being operated only for the purpose of conducting an exempt public event, the obligations and patron limits in Part 2 and the patron limits in Part 4 do not apply.
- (2) The Chief Health Officer or Deputy Chief Health Officer may exempt one or more persons who are subject to a requirement under this Order to conduct one or more eligible public events (or class of eligible public events) from any requirement of the pandemic orders in force if satisfied that the exemption is appropriate, having regard to:
 - (a) the need to protect public health; and
 - (b) the principles in sections 5 to 10 of the **Public Health and Wellbeing Act 2008**, as appropriate.
- (3) An exemption:
 - (a) must be given in writing; and
 - (b) must specify each requirement in the pandemic orders in force to which, subject to subclause (c), an exemption is granted; and

- (c) may impose conditions on an exemption.
- (4) An exemption does not prevent:
 - (a) the Chief Health Officer or Deputy Chief Health Officer exercising any power the Chief Health Officer or Deputy Chief Health Officer is authorised to exercise under the **Public Health and Wellbeing Act 2008**; or
 - (b) an authorised officer from exercising any power the Authorised Officer is authorised to exercise under the **Public Health and Wellbeing Act 2008**, including ensuring compliance with:
 - (i) the extent of an exemption (including any conditions on an exemption); or
 - (ii) the requirements of all other pandemic orders in force.

22 Emergency use and operations

Nothing in this Order is intended to prevent or otherwise affect the operation of a premises where such use or operation is for emergency refuge, shelter or relief purposes in accordance with the emergency management arrangements under the **Emergency Management Act 2013**.

Part 4 – Additional Requirements and Exceptions for Specific Premises

23 Adult education or higher education premises

- (1) The obligations in clause 17 do not apply in relation to an adult education or higher education premises.
- (2) The obligations in Division 1 and Division 2 of Part 2 do not apply to the operator of an adult education or higher education premises in relation to patrons attending the premises for the purpose of receiving or providing higher education services, that:
 - (a) cannot be conducted remotely, including attending assessments and classes; or
 - (b) involve secondary school subjects.

24 Community premises

- (1) The obligations in Part 2 and clause 17 do not apply in relation to an indoor space or an outdoor space at a community premises if that indoor space or

outdoor space at the premises is operated only for the purposes of contactless collection or delivery of pre-ordered goods.

Example: a library is permitted to operate for the purpose of a 'click and collect' service to facilitate the loaning of and/or returning of books, toys and other similar goods without complying with the requirements in Part 2.

- (2) If a community premises is being operated for the purpose of providing essential public support group services in an indoor space or an outdoor space, the obligations in Part 2 and clause 17 do not apply in relation to that indoor space or outdoor space if the operator does not permit the number of patrons in the space to exceed the lesser of:

- (a) density quotient (4 sq metres); and
- (b) 50.

Example: support groups for people with alcohol or drug addictions.

- (3) If an indoor space or an outdoor space at a community premises is being operated for the purpose of providing essential public support services or essential public health services, the obligations in Part 2 and clause 17 do not apply in relation to that indoor space or outdoor space.
- (4) If a community premises is being operated pursuant to subclause (3), the operator may only permit the minimum number of persons required to conduct and/or facilitate the essential public support service or essential public health service to access the indoor space or outdoor space.

Examples: immunisation services (including for non-COVID-19 vaccines), maternal child health services, a food bank or a service for homeless persons (including the provision of food or drink), providing access to shelter or amenities.

Note: support groups do not fall within this exception and the operator must comply with applicable patron limits.

- (5) If an indoor space or an outdoor space at a community premises is being operated only for the purpose of:

- (a) providing access to essential local government services; or

Examples: to pay council levy rates and charges, to register a pet, to obtain a permit or to view a planning scheme.

- (b) conducting an essential local council meeting where attendance of patrons through remote electronic means is not reasonably practicable,

the obligations in Part 2 and clause 17 do not apply in relation to that indoor space or outdoor space.

- (6) If a community premises is being operated pursuant to subclause (5), the operator may only permit the minimum number of persons required to conduct and/or facilitate the essential local government service or essential local council meeting to access the indoor space or outdoor space.
- (7) The obligations in Part 2 do not apply in relation to mandatory vaccination workers attending a community premises to perform work or participate in essential training in an indoor space or outdoor space if:
 - (a) the community premises is not the mandatory vaccination worker's usual place of work; and
 - (b) the operator only permits the minimum number of persons necessary to access the indoor space or outdoor space for that purpose.
- (8) If the community premises is a premises that has:
 - (a) a playground; or
 - (b) a skatepark in an outdoor space; or
 - (c) outdoor communal exercise equipment,the obligations in Part 2 and clause 17 do not apply to those parts of the premises.
- (9) If an indoor space or an outdoor space at a community premises is being operated for the purpose of providing early childhood education or care services, the obligations in Part 2 and clause 17 do not apply in relation to that indoor space or outdoor space.

25 Drive-in cinemas

- (1) The obligations in Part 2 do not apply to a drive-in cinema.
- (2) An operator of a drive-in cinema may only operate the premises if:
 - (a) the drive-in cinema is in an outdoor space accessed by vehicles; and
 - (b) the operator operates any food and drink premises within the premises in accordance with the requirements of this Order applicable to a food and drink premises.

26 Entertainment and function premises

The operator of an entertainment and function premises which operates primarily in outdoor spaces must publish a COVID Safe event plan where the operator intends to hold an event at the entertainment and function premises where at least 30,000 patrons will attend.

27 Food and drink premises

- (1) The obligations in Part 2 and clause 17 do not apply to a food and drink premises if it is part of a food court.
- (2) If a food and drink premises is being operated only for the purposes of providing take-away goods or delivery of pre-ordered goods, the obligations in Part 2 and clause 17 do not apply.
- (3) If a food and drink premises is being operated for the purposes of both:
 - (a) providing take-away goods or delivery of pre-ordered goods; and
 - (b) indoor dine-in service or outdoor dine-in service,

the obligations in Part 2 do not apply in relation to a patron who attends only to collect take-away goods.

Note: a food and drink premises can operate a take-away and a dine-in service at the same time. The obligations in Part 2 do not apply in relation to patrons that are purchasing take-away goods or delivery of pre-ordered goods but does apply in relation to patrons who attend the premises for a dine-in service and to staff at the premises.

- (4) The obligations in clause 8(2)(a) and clause 17 do not apply in relation to a food and drink premises that has a total area of all indoor spaces and outdoor spaces accessible to patrons of less than 100 square metres if:
 - (a) a person working at the premises requests that each patron (except patrons under 18 years of age) show acceptable evidence that they are either:
 - (i) fully vaccinated; or
 - (ii) an excepted person,

at an entrance to the premises or at the first point of service.

Note: the first point of service is when a worker first interacts with a customer during their attendance at the premises, for example when greeting a customer once they have entered the premises.

28 Physical recreation premises

- (1) The obligations in Part 2 do not apply in relation to any indoor space or outdoor space in a physical recreation premises if that space is being operated only for the purpose of conducting a community sport activity.

- (2) The obligations in Part 2 do not apply to an operator of a physical recreation premises if:
 - (a) the physical recreation premises is used exclusively for training by professional or high-performance sports persons; and
 - (b) the operator does not permit any person to enter or remain at the premises unless the person is necessary for the conduct of the activity being undertaken by the professional or high-performance sports persons.
- (3) Clauses 8(2) and 17 do not apply to unstaffed gymnasiums or fitness centres.
- (4) The obligations in Part 2 and clause 17 do not apply to unstaffed outdoor physical recreation premises.
- (5) The obligations in clause 17 do not apply to a physical recreation premises located within an accommodation premises.
- (6) The obligations in Part 2 do not apply in relation to mandatory vaccination workers attending a physical recreation premises to perform work or participate in essential training in an indoor space or outdoor space if:
 - (a) the physical recreation premises is not the mandatory vaccination worker's usual place of work; and
 - (b) the operator only permits the minimum number of persons necessary to access the indoor space or outdoor space for that purpose.
- (7) The obligations in Part 2 do not apply in relation to patrons that attend a swimming pool or a hydrotherapy pool at a physical recreation premises for the purpose of obtaining hydrotherapy services (hydrotherapy patrons) if the operator complies with the requirements in subclause (8).
- (8) The requirements are that the operator:
 - (a) ensures that each hydrotherapy patron accessing hydrotherapy services is accompanied by:
 - (i) a health worker; or
 - (ii) a carer, parent or guardian (if required); and
 - (b) does not permit the hydrotherapy patrons to participate in group hydrotherapy services; and
 - (c) does not permit the number of hydrotherapy patrons at any one time to exceed 10 in any pool; and

- (d) takes all reasonable steps to implement relevant recommendations by the Victorian Government to manage public health risks arising out of the operation of the premises.
- (9) The obligations in Part 2 do not apply in relation to patrons who attend a physical recreation premises;
- (a) for the purpose of participating in a swimming lesson conducted by a person with a current Swimming and Water Safety Teacher Accreditation; or
 - (b) to accompany a patron referred to in subclause (a) and who is the parent, guardian or carer of that patron.

29 Restricted retail premises

The obligations in clauses 8(2) and 17 do not apply in relation to a restricted retail premises if:

- (1) a person working at the premises requests that each patron (except patrons under 18 years of age) show acceptable evidence that they are either:
 - (a) fully vaccinated; or
 - (b) an excepted person,at an entrance to the premises or at the first point of service; and
- (2) the total area of all indoor spaces and outdoor spaces accessible to patrons at the premises does not exceed 100 square metres.

Note: the first point of service is when a worker first interacts with a customer during their attendance at the premises, for example when greeting a customer once they have entered the premises.

30 Tours and transport

- (1) An operator of a premises used for tourism services must ensure any shared equipment used is cleaned between users.
- (2) Clause 16 does not apply to an operator of a premises used for tourism services if the tourism services are provided in a cruise ship, if the operator does not permit the total number of patrons on the vessel to exceed 99.

Part 5 – Miscellaneous

31 Disclosure to Authorised Officers

- (1) An Authorised Officer may request an operator or its workers to produce to the Authorised Officer any vaccination information held by the operator in accordance with this Order.
- (2) If an Authorised Officer makes a request to a person under subclause (1), the person must comply with the request.

*Note: Authorised Officers may also be authorised to exercise the public health risk power in section 190(1)(d) of the **Public Health and Wellbeing Act 2008** to require the provision of any information needed to investigate, eliminate or reduce the risk to public health.*

32 Severability

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

33 Transitional provisions

- (1) A reference in any pandemic order in force to a Revoked Open Premises Order is taken on and after the commencement of this Order to be a reference to this Order.
- (2) Any act, matter or thing that had effect under a Revoked Open Premises Order immediately before it was 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 a Revoked Open Premises Order was subject immediately before it was revoked.
- (4) This clause is subject to any express provision to the contrary in this Order.

Part 6 - Penalties

34 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;

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

- (2) A person is not guilty of an offence against section (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 – Open Premises

Row	Open premises (Column 1)	Vaccinated patron limit for all indoor spaces (Column 2)	Vaccinated patron limit for all outdoor spaces (Column 3)	Additional reqs and exceptions	Premises- specific definitions
1.	adult education or higher education premises	No limits	No limits	Clause 23	Clause 8 Schedule 2
2.	amusement parks	No limits	No limits	Not applicable	Not applicable
3.	arcades, escape rooms, bingo centres	Density quotient (2 sq metres)	No limits	Not applicable	Not applicable
4.	Casino	Density quotient (2 sq metres)	No limits	Not applicable	Not applicable
5.	community premises	No limits	No limits	Clause 24	Clause 9 Schedule 2
6.	creative arts premises	No limits	No limits	Not applicable	Clause 10 Schedule 2
7.	drive-in cinemas	Not applicable	Not applicable	Clause 25	Not applicable
8.	entertainment and function premises that are not specified elsewhere in this Column 1	30,000	No limits	Clause 26	Clause 11 Schedule 2

Row	Open premises (Column 1)	Vaccinated patron limit for all indoor spaces (Column 2)	Vaccinated patron limit for all outdoor spaces (Column 3)	Additional reqs and exceptions	Premises- specific definitions
9.	food and drink premises	Density quotient (2 sq metres)	No limits	Clause 27	Clause 12 Schedule 2
10.	gaming machine premises	Density quotient (2 sq metres)	No limits	Not applicable	Clause 13 Schedule 2
11.	karaoke and nightclubs	Density quotient (2 sq metres)	No limits	Not applicable	Clause 11 Schedule 2
12.	physical recreation premises	No limits	No limits	Clause 28	Clause 14 Schedule 2
13.	restricted retail premises	No limits	No limits	Clause 29	Clause 15 Schedule 2
14.	sex on premises, brothels and sexually explicit venues	Density quotient (2 sq metres)	No limits	Not applicable	Clause 11 Schedule 2
15.	swimming pools, spas, saunas, steam rooms and springs	No limits	No limits	Not applicable	Clause 14 Schedule 2
16.	tours	No limits	No limits	Clause 30	Clause 16 Schedule 2

Row	Open premises (Column 1)	Vaccinated patron limit for all indoor spaces (Column 2)	Vaccinated patron limit for all outdoor spaces (Column 3)	Additional reqs and exceptions	Premises- specific definitions
17.	premises used for tourism services	No limits	No limits	Clause 30	Clause 16 Schedule 2

Schedule 2 - Definitions

Division 1 - Key Definitions

1 Patrons, operators and workers

(1) For the purpose of this Order:

(a) **excluded worker** means:

- (i) a Commonwealth employee;
- (ii) a judge or judicial registrar;
- (iii) a person who works in connection with proceedings in a court, where that work cannot be done from the person's ordinary place of residence;
- (iv) a person who is a member of the staff of Court Services Victoria within the meaning of the **Court Services Victoria Act 2014**;
- (v) a person employed or engaged by the Chief Executive Officer of the Victorian Civil and Administrative Tribunal;
- (vi) a member of State Parliament;
- (vii) the Clerk of the Legislative Assembly;
- (viii) the Clerk of the Legislative Council;
- (ix) an electorate officer within the meaning of the **Parliamentary Administration Act 2004**;
- (x) a parliamentary officer within the meaning of the **Parliamentary Administration Act 2004**;
- (xi) a person who works at or in connection with a place of worship and:
 - (A) conducts services of public worship and acknowledgments of faith;
 - (B) performs marriages, funerals and special memorial services according to tradition and ecclesiastical and civil law;
 - (C) 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;

- (xii) a person identified in Article 1 of the Vienna Convention on Diplomatic Relations, as set out in the Schedule to the **Diplomatic Privileges and Immunities Act 1967** of the Commonwealth;
- (xiii) a person identified in Article 1 of the Vienna Convention on Consular Relations, as set out in the Schedule to the *Consular Privileges and Immunities Act 1972* of the Commonwealth;
- (xiv) the Governor and the Lieutenant Governor;
- (b) **operator** means the operator of an open premises or where an indoor space or outdoor space at an open premises has been leased or hired for use for a period of time, the person to whom that space has been leased or hired for that period of time;
- (c) **patron** means any person who attends a premises, except:
 - (i) a person under 1 year of age;
 - (ii) a worker;
 - (iii) a person who attends the premises in connection with an emergency;
- (d) **pre-registration patron** means:
 - (i) in relation to an adult education or higher education premises, a patron that is a student undertaking studies in a regular class or lecture room at the premises;
 - (ii) in relation to an unstaffed gymnasium or fitness centre, any patron;
 - (iii) in relation to a physical recreation premises located within an accommodation premises, any patron;
- (e) **worker** means any person engaged or employed by the operator of an open premises to work at the open premises but does not include an excluded worker.

2 Types of premises

- (1) For the purpose of this Order:
 - (a) **open premises** means a premises specified in Column 1 of Schedule 1;
 - (b) **pre-registration premises** means:
 - (i) an adult education or higher education premises;

- (ii) an unstaffed gymnasium or fitness centre;
- (iii) a physical recreation premises located within an accommodation premises;
- (c) **specified facility** has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**;
- (d) **work premises** means a **premises** on which work is undertaken, including any vehicle whilst being used for work purposes, but excludes a person's ordinary place of residence.

3 Indoor and outdoor spaces

(1) For the purpose of this Order:

- (a) **density quotient (2 sq metres)** in relation to an indoor space or an outdoor space that is accessible to patrons is the number calculated by dividing the total area of the space (measured in square metres) by 2, rounded down to the nearest whole number;

Example: if an area is 8.5 metres long and 4.5 metres wide, its total space is 38.25 square metres. Its density quotient is 19.125. The maximum number of patrons that may be present in the space at a single time is 19.

- (b) **density quotient (4 sq metres)** in relation to an indoor space or an outdoor space that is accessible to patrons is the number calculated by dividing the total area of the space (measured in square metres) by 4, rounded down to the nearest whole number;

Example: if an area is 8.5 metres long and 4.5 metres wide, its total space is 38.25 square metres. Its density quotient is 9.56. The maximum number of patrons that may be present in the space at a single time is 9.

- (c) **indoor space** means an area, room or premises that is or are substantially enclosed by a roof and walls that are either floor to ceiling high or are at least 2.1 metres high, regardless of whether the roof or walls or any part of them are:
 - (i) permanent or temporary;
 - (ii) open or closed;
- (d) **outdoor space** means an area, room or premises that is not an indoor space.

4 Vaccination status

(1) A person's **vaccination status** is one of the following:

- (a) fully vaccinated;
 - (b) partially vaccinated;
 - (c) excepted person; or
 - (d) excepted worker.
- (2) A person is **fully vaccinated** if the person has received either one dose of a one dose COVID-19 vaccine or two doses of a two dose COVID-19 vaccine, including a dose of two different types of a two dose COVID-19 vaccine.
- (3) A **person is partially** vaccinated if the person has received one dose of a two dose COVID-19 vaccine and is not an excepted person or an excepted worker.
- (4) A person is an **excepted person** if:
- (a) the person holds acceptable certification that the person is unable to receive a dose, or a further dose, of any COVID-19 vaccine that is available in Australia due to:
 - (i) a medical contraindication; or
 - (ii) an acute medical illness (including where the person has been diagnosed with COVID-19); or
 - (b) the person is under 18 years of age.
- (5) A person is an **excepted worker** if the person works at an open premises and:
- (a) the person holds acceptable certification that the person is unable to receive a dose, or a further dose, of any COVID-19 vaccine that is available in Australia due to:
 - (i) a medical contraindication; or
 - (ii) an acute medical illness (including where the person has been diagnosed with COVID-19); or
 - (b) the person is under 12 years and 2 months of age.
- (6) An **acceptable certification** is:
- (a) a COVID-19 digital certificate issued by Services Australia and displayed through the Medicare App, Service Victoria App or equivalent smartphone wallet that states that the person is unable to receive a dose, or a further dose, of any COVID-19 vaccine that is available in Australia; or
 - (b) a printed version of the COVID-19 digital certificate referred to in paragraph (a).

5 Vaccination information and acceptable evidence

(1) For the purposes of this Order:

(a) **acceptable evidence** means:

(i) in relation to a person who is fully vaccinated and ordinarily resides in Australia:

(A) successful completion of a Service Victoria QR check-in that includes confirmation that the person is fully vaccinated displayed through the Service Victoria App; or

(B) a COVID-19 digital certificate displayed through the Medicare App, the Service Victoria App or equivalent smartphone wallet; or

(C) a printed version of the COVID-19 digital certificate or immunisation history statement issued by the vaccination provider, a medical practitioner or the Australian Immunisation Register; or

(D) in relation to an excepted person, an acceptable certification;

(ii) in relation to a person who is fully vaccinated and ordinarily resides outside Australia:

(A) a copy of the evidence that has been sighted by the Commonwealth Government as proof of vaccination for the purposes of entry to Australia consisting of either the Australian Traveller Declaration or the COVID-19 Vaccination and Testing Declaration for travel to Australia; and

(B) a copy of a paper or digital certificate issued by an overseas government authority or an accredited overseas government vaccination provider that shows the person is fully vaccinated with a vaccine approved or recognised by the Therapeutic Goods Administration, is written in English or accompanied by a certified translation, and contains:

(1) the person's name as it appears in their passport;

(2) the person's date of birth or passport number;

(3) the vaccine brand name, and

- (4) the date of each dose or the date on which a full course of immunisation was completed; or
 - (C) an Australian International COVID-19 Vaccination Certificate; and
- (b) **vaccination information** is information about a person's vaccination status and includes information that is derived from a record of information that was made under, or in accordance with, the **Australian Immunisation Register Act 2015** of the Commonwealth.

Note: vaccination information may be recorded in a variety of documents, a certificate of immunisation or an immunisation history statement obtained from the Australian Immunisation Register. For overseas travellers, it may be recorded in an Australian International COVID-19 Vaccination Certificate or vaccination certificates issued by an overseas government authority, accompanied by the Australian Traveller Declaration or COVID-19 Vaccination and Testing Declaration for travel to Australia.

6 Public events

- (1) For the purpose of this Order:
 - (a) **eligible public event** means an organised public gathering for a common purpose on a for profit or not-for-profit basis which is:
 - (i) an event (or a series of events):
 - (A) conducted on a one-off or periodic basis; and
 - (B) open to members of the public; and
 - (C) which may be subject to specific licences, approvals or permits; and
 - Note: the person must continue to apply for and comply with all required licences, approvals and permits.*
 - (D) publicly announced or advertised; and
 - (E) which may be in a premises, venue, indoor space or outdoor space where such an event (or a series of events) forms part of the routine operations, use, activities or services of the premises, venue, indoor space or outdoor space; or
 - (ii) an event (or series of events) deemed by the Victorian Government to be a major event (or a series of events) or venue which wishes to hold 30,000 attendees or more,

Examples: an exhibition, sport event, festival, fair, parade, performance or trade show.

but does not mean:

- (iii) an ad hoc public gathering in a public place; or
- (iv) an ad hoc or routine public gathering in a premises, venue, indoor space or outdoor space which forms part of the ad hoc or routine operations, use, activities or services of the premises, venue, indoor space or outdoor space; or
- (v) a private gathering; or
- (vi) a wedding, funeral or end of life activity; or
- (vii) a routine religious gathering or ceremony,

to which this Order and the **Movement and Gathering Order** otherwise continue to apply; and

- (b) **exempt public event** means an eligible public event which, subject to the process described in the Public Event Framework, the Chief Health Officer or Deputy Chief Health Officer has exempted from a requirement in a pandemic order in force in accordance with clause 21; and
- (c) **Public Event Framework** means the Public Event Framework as amended from time to time by the Victorian Government with the approval of the Chief Health Officer or Deputy Chief Health Officer.

Division 2 - Premises-specific definitions

7 Accommodation premises

- (1) For the purposes of this Order:
 - (a) **accommodation premises** means any of the following:
 - (i) a camping ground;
 - (ii) a caravan park;
 - (iii) a hotel;
 - (iv) a hostel;
 - (v) a bed and breakfast;
 - (vi) a private holiday rental facility, including Airbnbs;

- (vii) a motel;
- (viii) a serviced apartment; or
- (ix) a **licensed premises** to the extent that it is operated as a **premises** specified in paragraphs (i) to (viii).

8 **Adult education or higher education premises**

(1) For the purposes of this Order:

- (a) **adult education or higher education premises** means a premises that operates for the purpose of providing higher education services; and
- (b) **higher education services** means educational services provided at or by a university, vocational education and training providers (including registered training organisations), technical and further education (TAFE) institutes, adult community and further education, and other post-compulsory education or training.

9 **Community premises**

(1) For the purposes of this Order:

- (a) **community premises** means any of the following, whether operated on a for profit or not-for-profit basis:
 - (i) a community centre or community hall;
 - (ii) a public library (including a toy library, but not the State Library);
 - (iii) a youth centre;
 - (iv) a playground;
 - (v) a skatepark in an outdoor space; or
 - (vi) a premises that has outdoor communal exercise equipment,but does not include:
 - (vii) a creative arts premises;
 - (viii) a physical recreation premises; or
 - (ix) a premises that has a swimming pool, hydrotherapy pool, spa, sauna, steam room or spring; and

- (b) **early childhood education or care services** means onsite early childhood education and care services or children's services provided under the:
 - (i) **Children's Services Act 1996** including limited hours services, budget based funded services, occasional care services, early childhood intervention services, mobile services and (if applicable) school holiday care programs; or
 - (ii) **Education and Care Services National Law Act 2010** and the **Education and Care Services National Regulations 2011** including long day care services, kindergarten/preschool and family day care services, but does not include outside school hours care services.

10 Creative arts premises

- (1) For the purposes of this Order:
 - (a) **creative arts premises** means any of the following, whether operated on a for profit or not-for-profit basis:
 - (i) an art studio;
 - (ii) a ceramics studio;
 - (iii) a music room or studio;
 - (iv) a rehearsal room or studio;
 - (v) any other premises that is used for creative art,but does not include:
 - (vi) a physical recreation premises;
 - (vii) a community premises; or
 - (viii) a place of worship; and
 - (b) **place of worship** has the same meaning as in the **Heritage Act 2017**.

11 Entertainment and function premises

- (1) For the purposes of this Order:
 - (a) **animal premises** means any of the following:
 - (i) a zoological park;

- (ii) a wildlife centre;
 - (iii) a petting zoo;
 - (iv) an aquarium;
 - (v) an animal farm that is not being operated for the purpose of producing food; and
- (b) **entertainment and function premises** means any of the following, whether operated on a for profit or not-for-profit basis:
- (i) a theatre;
 - (ii) a cinema;
 - (iii) a music hall, concert hall or auditorium;
 - (iv) a gallery or a museum;
 - (v) the State Library;
 - (vi) an arena or stadium;
 - (vii) an arcade;
 - (viii) an amusement park;
 - (ix) a gaming machine premises;
 - (x) a brothel, sex on premises venue or sexually explicit entertainment venue;
 - (xi) a bingo centre;
 - (xii) a karaoke premises;
 - (xiii) a nightclub;
 - (xiv) an animal premises;
 - (xv) a function premises;
 - (xvi) a convention centre;
 - (xvii) a licensed premises to the extent that it is operated as a premises specified in subparagraphs (i) to (xvi);
 - (xviii) a premises specified in subparagraphs (i) to (xvii) that is located within an accommodation premises; and

- (c) **function premises** means a building, room or space that is used for the purpose of holding events, functions, conferences or receptions; and
- (d) **National Performing Arts Company** means an organisation funded through the National Performing Arts Partnership Framework; and
- (e) **nightclub** means a premises:
 - (i) to which a late night licence applies; and
 - (ii) with a dancefloor; and
- (f) **State Library** means the State Library Victoria; and
- (g) **zoological park** has the same meaning as in the **Zoological Parks and Gardens Act 1995**.

12 Food and drink premises

- (1) For the purposes of this Order:
 - (a) **club licence** has the same meaning as in the **Liquor Control Reform Act 1998**; and
 - (b) **food court** has the same meaning as in the **Liquor Control Reform Act 1998**; and
 - (c) **food and drink premises** means:
 - (i) a cafe;
 - (ii) a restaurant;
 - (iii) a fast-food store;
 - (iv) a cafeteria;
 - (v) a canteen;
 - (vi) a winery;
 - (vii) a food court;
 - (viii) a **licensed premises** to the extent it operates as a premises specified in subparagraphs (i) to (viii);
 - (ix) a premises specified in subparagraphs (i) to (viii) that is located within an accommodation premises; and
 - (d) **general licence** has the same meaning as in the **Liquor Control Reform Act 1998**; and

- (e) **late night licence** has the same meaning as in the **Liquor Control Reform Act 1998**; and
- (f) **licensed premises** means a business characterised as a pub, bar, club, nightclub or hotel that supplies alcohol under a general licence, an on-premises licence, a late night licence, a producer's licence, a club licence or a packaged liquor licence; and
- (g) **on-premises licence** has the same meaning as in the **Liquor Control Reform Act 1998**; and
- (h) **packaged liquor licence** has the same meaning as in the **Liquor Control Reform Act 1998**; and
- (i) **producer's licence** has the same meaning as in the **Liquor Control Reform Act 1998**; and
- (j) **small food and drink premises** means a food and drink premises with a total area of all spaces accessible to members of the public of less than 100 square metres.

13 Gaming machine premises

- (1) For the purposes of this Order:
 - (a) **gaming machine** has the same meaning as in the Gambling Regulation Act 2003; and
 - (b) **gaming machine premises** has the same meaning as "gaming machine area" in the Gambling Regulation Act 2003.

14 Physical recreation premises

- (1) For the purposes of this Order:
 - (a) **hydrotherapy pool** means a pool designed to be used for hydrotherapy or rehabilitation purposes; and
 - (b) **physical recreation premises** means any of the following, whether operated on a for profit or not-for-profit basis:
 - (i) a premises used predominantly for indoor sport or physical recreation;

Examples: gymnasium, health club, fitness centre, yoga studio, pilates studio, barre studio, dance studio, spin premises, indoor basketball court, indoor climbing premises, squash court, table tennis centre.

- (ii) a premises used predominantly for outdoor sport or physical recreation;

Examples: golf club, tennis club, outdoor basketball courts, go kart track, rifle range, equestrian centre, mini golf, paint ball, lawn bowling, water skiing.

- (iii) a cardio or strength training premises;

Examples: a cardio or strength premises featuring cardio equipment (such as exercise bikes, elliptical trainers, steppers and rowing machines), free weights, kettlebells and weight and/or strength training equipment and machines. A cardio or strength training premises may be a stand-alone premises or part of another premises (such as a gymnasium, health club or fitness centre).

- (iv) a skatepark in an indoor space;

- (v) a trampolining centre;

- (vi) a premises that has a swimming pool, hydrotherapy pool, spa, sauna, steam room or spring;

- (vii) a premises specified in subparagraphs (i) to (vi) that is located within an accommodation premises,

but does not include:

- (viii) a premises that has a skatepark in an outdoor space;

- (ix) a premises that has outdoor communal exercise equipment; and

- (c) a creative arts premises; and

Note: a skatepark in an outdoor space and outdoor communal exercise equipment are part of the definition of "community premises".

- (d) **spring** means a hot, sweet, geothermal or mineral pool, spa or bath fed by groundwater from an aquifer.

15 Restricted retail premises

- (1) For the purposes of this Order:

- (a) **beauty therapy premises** means a premises at which beauty therapy and personal care services are provided; and
- (b) **beauty therapy** has the same meaning as in the **Public Health and Wellbeing Act 2008**; and

- (c) **hairdressing premises** means a premises at which hairdressing services are provided; and
- (d) **hairdressing** has the same meaning as in the **Public Health and Wellbeing Act 2008**; and
- (e) **restricted retail premises** means:
 - (i) a beauty therapy premises; or
 - (ii) a hairdressing premises.

16 Tours and tourism

- (1) For the purposes of this Order:
 - (a) **licensed tourism operator** means a person:
 - (i) granted a tour operator licence under:
 - (A) section 21B of the Crown Land (Reserves) Act 1978; or
 - (B) section 57F of the Forests Act 1958; or
 - (C) section 140I of the Land Act 1958; or
 - (D) section 27D of the National Parks Act 1975; or
 - (E) section 21B of the Wildlife Act 1975; or
 - (ii) providing a tour of an entertainment and function premises; and
 - (b) **tourism services** means an activity, guided tour or recreation programme conducted or coordinated by an employee or officer of a licensed tourism operator that is undertaken for profit for tourism purposes including, but not limited to, ballooning, a walking tour or bushwalking tour, a bicycle tour, abseiling, rock climbing, canoeing, kayaking, white water rafting, diving, snorkelling, horse trail riding, marine based tours and surfing, or a guided tour of a museum or gallery.

Division 3 - Other definitions

17 Other definitions

For the purposes of this Order:

ATAGI means the Australian Technical Advisory Group on Immunisation;

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

Commonwealth employee has the same meaning as in the **Sex Discrimination Act 1984** of the Commonwealth;

court means:

- (1) the Supreme Court;
- (2) the County Court;
- (3) the Magistrates' Court;
- (4) the Children's Court;
- (5) any Federal Court;

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

COVID-19 Mandatory Vaccination (Specified Facilities) Order means the **Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order (No. 1)** as amended or replaced from time to time;

COVID-19 Mandatory Vaccination (Specified Workers) Order means the **Pandemic COVID-19 Mandatory Vaccination (Specified Workers) Order (No. 1)** as amended or replaced from time to time;

COVID-19 vaccine means either a one dose COVID-19 vaccine or a two dose COVID-19 vaccine;

COVID Check-in Marshal means a person designated to perform the duty specified in clause 8(2)(a)(ii) and in clause 17;

critical unforeseen circumstance means a circumstance that the operator could not reasonably have foreseen nor planned for which results in a critical need for staff;

education and childcare service means:

- (1) school education at a registered school as defined in the **Education and Training Reform Act 2006**;
- (2) early childhood education or care services;

emergency situation means a situation where it is reasonably apparent to an employer that medical treatment is necessary, as a matter of urgency to:

- (1) save a person's life; or
- (2) prevent serious damage to a person's health; or
- (3) prevent a person from suffering or continuing to suffer significant pain or distress;

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);

judge has the same meaning as judicial officer in the **Judicial Entitlements Act 2015**, but does not include the Deputy State Coroner or a reserve coroner;

judicial registrar has the same meaning as judicial registrar in **Judicial Entitlements Act 2015**, but does not include a judicial registrar within the meaning of the **Coroners Act 2008**;

mandatory vaccination worker means:

- (1) a person who is a worker within the meaning of the COVID-19 Mandatory Vaccination (Specified Workers) Order;
- (2) a person who is a worker in relation to a specified facility within the meaning of the **COVID-19 Mandatory Vaccination (Specified Facilities) Order**; and
- (3) an excluded worker;

medical contraindication means one of the following contraindications to the administration of a COVID-19 vaccine:

- (1) anaphylaxis after a previous dose;
- (2) anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
- (3) in relation to AstraZeneca:
 - (a) history of capillary leak syndrome; or
 - (b) thrombosis with thrombocytopenia occurring after a previous dose;
- (4) in relation to Comirnaty or Spikevax:
 - (a) myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax; or
- (5) the occurrence of any other serious adverse event that has:
 - (a) been attributed to a previous dose of a COVID-19 vaccine by an experienced immunisation provider or medical specialist (and not attributed to any another identifiable cause); and
 - (b) been reported to State adverse event programs and/or the Therapeutic Goods Administration;

medical practitioner means:

- (1) a general practice registrar on an approved 3GA training placement; or

- (2) a public health physician; or
- (3) an infectious disease physician; or
- (4) a clinical immunologist; or
- (5) a general practitioner who is vocationally registered; or
- (6) a general practitioner who is a fellow of the Royal Australian College of General Practitioners (RACGP); or
- (7) a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine (ACRRM); or
- (8) a paediatrician; or
- (9) a medical practitioner who is a fellow of the Royal Australasian College of Physicians;

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

one dose COVID-19 vaccine means 'COVID-19 Vaccine Janssen' (Janssen-Cilag);

pandemic orders in force has the same meaning as in the **Movement and Gathering Order**;

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

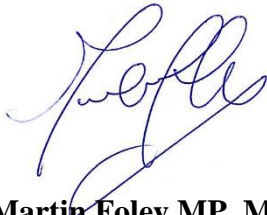
Revoked Open Premises Order means the **Open Premises Directions (No 7)** or the **Pandemic (Open Premises) Order 2021 (No. 1)**, or their predecessors;

Swimming and Water Safety Teacher Accreditation means an accreditation earned following the successful completion of an SISS001122 course, or accreditation earned following the completion of an equivalent course;

two dose COVID-19 vaccine means any of the following:

- (1) Vaxzevria (AstraZeneca);
- (2) Comirnaty (Pfizer);
- (3) Spikevax (Moderna);
- (4) Coronvac (Sinovac);
- (5) Covishield (AstraZeneca/Serum Institute of India);
- (6) Covaxin (Bharat Biotech);
- (7) BBIP-CorV (Sinopharm);

Workplace Order means the **Pandemic (Workplace) Order 2022 (No. 2)** as amended or replaced from time to time.

A handwritten signature in blue ink, appearing to read 'M. Foley', with a long horizontal stroke extending to the right.

Martin Foley MP, Minister for Health

6 January 2022 at 9.50 PM