

Guidance for the Pandemic (Workplace)

Order 2022 (No. 4)

The presence of a person with a positive or probable diagnosis for COVID-19 at a work premises is considered to pose an immediate risk of transmission to persons who attend, or may attend the work premises.

This Order restricts the number of Victorians attending work premises and imposes specific obligations on employers to assist in reducing the frequency of outbreaks of COVID-19 in Victorian workplaces.

A worker must self-isolate and not attend a work premises if they have been tested for COVID-19 and they are awaiting the result of that test.

An employer must take reasonable steps to ensure:

- (1) all workers carry and wear a face covering where appropriate; and
- (2) implement a COVIDSafe Plan which addresses health and safety issues arising from COVID-19; and
- (3) keep a record of all persons who attend the work premises, including the person's name, date and time, contact number and areas of the work premises the person attended; and
- (4) comply with the Victorian Government QR code system and display appropriate signage for the type of work premises as specified by this Order.

This Order imposes additional work premises specific obligations on employers determined by the type of Premises and specifies the appropriate response of an employer in the circumstance of a symptomatic person or confirmed case of COVID-19 in the work premises.

Failure to comply with this Order may result in penalties.

This guidance does not form part of the Pandemic (Workplace) Order 2022 (No. 4) and is for explanatory purposes only.

Public Health and Wellbeing Act 2008

Pandemic (Workplace) Order 2022 (No. 4)

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Public Health and Wellbeing Act 2008

Pandemic (Workplace) Order 2022 (No. 4)

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

Part 1 – Preliminary

1. Objective

- (1) The purpose of this Order is to limit the number of Victorians attending work premises to assist in reducing the frequency and scale of outbreaks of COVID-19 in Victorian workplaces and to establish more specific obligations on employers and workers in relation to managing the risk associated with COVID-19 transmission in the work premises.
- (2) This Order must be read together with the pandemic orders in force.
- (3) This Order is intended to supplement any obligation an employer may have under the **Occupational Health and Safety Act 2004** and is not intended to derogate from any such obligations.

2. Citation

This Order may be referred to as the **Pandemic (Workplace) Order 2022 (No. 4)**.

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 4 February 2022 and ends at 11:59:00pm on 12 April 2022.
- (2) The **Pandemic (Workplace) Order 2022 (No. 3)** is revoked at 11:59:00pm on 4 February 2022.

5. Definitions

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

6. Application of this Order

This Order applies to the whole State of Victoria.

Part 2 – Workplace Orders

Division 1 – Precautionary measures

7. Operation of a work premises

- (1) Where an employer permits or requires work to be performed at a work premises, the employer must comply with clauses 8 to 14.
- (2) A worker must not attend a work premises if they have undertaken a COVID-19 PCR test or a COVID-19 rapid antigen test and they are awaiting the result of that test except if more than 7 days has passed since the date of the test.

8. Face coverings requirement

- (1) An employer must take reasonable steps to ensure a worker, when working at a work premises:
 - (a) carries a face covering at all times, except where an exception in the **Movement and Gathering Order** applies; and
 - (b) wears a face covering where required to do so in accordance with any other pandemic orders in force, except where an exception in the **Movement and Gathering Order** applies.

Note: face shields on their own do not meet the face covering requirements. Please refer to the Department's guidelines for further information.

- (1A) An employer of an education premises must take all reasonable steps to ensure that each student who physically attends the education premises complies with any requirement to wear a face covering that may apply to the student under the **Movement and Gathering Order**.

9. COVIDSafe Plan

- (1) Subject to subclause (3), an employer must, for each work premises:
 - (a) have in place a COVIDSafe Plan, which addresses the health and safety issues arising from COVID-19, including but not limited to:

Note: employers can use the template plan accessible from the following website for guidance: www.coronavirus.vic.gov.au/covidsafe-plan, as amended or replaced from time to time by the Victorian Government.

- (i) the employer's process for implementing the record-keeping obligation under clause 10(1);
- (ii) the appropriate level of PPE to be worn at the work premises;
- (iii) actions taken by the employer to mitigate the introduction of COVID-19 at the work premises;

Examples: temperature testing, provision and training for PPE use, physical distancing requirements (e.g. closing or reconfiguring common areas such as lunchrooms to support workers remaining 1.5 metres apart at all times).

- (iv) the processes which the employer has put in place to respond to any symptomatic person or any confirmed case of COVID-19 at the work premises, taking into account the employer's obligations under this Order;
 - (v) an acknowledgement that the employer understands its responsibilities and obligations under this Order; and
- (b) document and evidence, and require its managers to document and evidence, implementation of the COVIDSafe Plan.

(2) The employer and the employer's workers must comply with the COVIDSafe Plan.

(3) An employer is not required to comply with subclause (1):

- (a) for any work premises that have no workers working at that work premises; or
- (b) in relation to:
 - (i) each individual vehicle that makes up a fleet of two or more vehicles; and

Note 1: despite subparagraph (i), an employer must have a COVIDSafe Plan in relation to a fleet of two or more vehicles.

Note 2: where an employer owns, operates or controls only one vehicle, then it must have a COVIDSafe Plan for that vehicle.

Example: where an employer owns, operates or controls only one vehicle used to provide commercial passenger vehicle services or a vehicle used to provide passenger services, then it must have a COVIDSafe Plan for that vehicle.

- (ii) vehicles used predominantly by a worker to travel between the work premises and the worker's ordinary place of residence; or

Note: each vehicle used predominantly as a work premises (e.g. food trucks, dental vans) requires a COVIDSafe Plan.

- (c) in relation to a premises governed by an owners corporation where that premises has:

- (i) no shared spaces; or
- (ii) only shared outdoor spaces (such as shared driveways, lawns or gardens).

Note: an owners corporation is required to have a COVIDSafe Plan for all premises where there are shared indoor spaces (for example: hallways, underground carparking facilities, or gyms).

- (4) An employer must:

- (a) ensure the COVIDSafe Plan is held at the work premises at all times; and
- (b) immediately present a copy of the COVIDSafe Plan on request to an Authorised Officer; and
- (c) comply with any direction given by an Authorised Officer or WorkSafe inspector to modify a COVIDSafe Plan, including:
 - (i) following an outbreak of confirmed cases of COVID-19 at a work premises; or
 - (ii) if the Authorised Officer considers that the COVIDSafe Plan is not fit for purpose; and
- (d) implement any modifications required in accordance with paragraph (c).

10. Record-keeping obligations (records requirement)

- (1) Subject to subclause (6), an employer must keep a record of all persons who attend the work premises, which includes:

- (a) the person's first name; and
- (b) the person's surname; and
- (c) a contact phone number; and
- (d) the date and time at which the person attended the work premises; and
- (e) the areas of the work premises which the person attended.

Note 1: where a venue is not staffed, an employer will have complied with the records requirement if they display instructions in a prominent location that clearly explain how patrons and other visitors to the venue should record their details.

Note 2: where a person does not have a phone number, an employer may comply with the record-keeping requirement by registering that person's contact details using a phone number for the contact most likely to be able to locate the person, such as a known relative, carer, or the phone number of the employer itself.

(2) Subject to subclauses (3) to (9), an employer must:

- (a) comply with subclause (1) using the Victorian Government QR code system; and
- (b) make reasonable efforts to ensure that a person required to record an attendance at the work premises in accordance with paragraph (a) can do so using the Victorian Government QR code system for that purpose even where they do not have access to a personal mobile phone or other device that enables them to do so; and

Note: compliance with paragraph (b) could include making a terminal (e.g. a tablet or other device) available for persons to register their contact details via the Victorian Government QR code system and staff available to provide assistance to persons to do so.

- (c) prominently display signage at each entrance to the work premises so that members of the public can record their attendance using the Victorian Government QR code system; and

Note: signage may also be displayed nearby to an entrance as well as at the entrance (for example, inside the work premises, in a hallway or waiting room near the entrance) if required to prevent people lining up outside or congregating at the entrance.

- (d) where a work premises is:

- (i) a retail facility other than a supermarket, where the total of all indoor spaces accessible to members of the public is 2,000 square metres or more; or
- (ii) a market,

then:

- (iii) the work premises must prominently display signage at all points of sale at the work premises so that members of the public can record their attendance using the Victorian Government QR code system; and

Note 1: work premises to which paragraph (d) applies are required to comply with the signage requirements in paragraph (d) in addition to the signage requirements in paragraph (c).

Note 2: a point of sale includes where a customer pays for goods or services.

- (iv) other than for work premises that are markets or retail shopping centres, a staff member must request all members of the public who attend the work premises to record their attendance at an entrance to the work premises; and

- (e) where a work premises is:

- (i) a retail facility other than a supermarket, where the total of all indoor spaces accessible to members of the public is less than 2,000 square metres; or
- (ii) a market stall,

then:

- (iii) the work premises must prominently display signage at all points of sale at the work premises so that members of the public can record their attendance using the Victorian Government QR code system; and

Note 1: work premises to which paragraph (e) applies are required to comply with the signage requirements in paragraph (e) in addition to the signage requirements in paragraph (c).

Note 2: a point of sale includes where a customer pays for goods or services.

- (iv) staff members who interact with a member of the public at a point of service must request that the member of the public record their attendance at the work premises; and

Note: a point of service includes where a worker interacts with a customer other than at a point of sale during their attendance, for example, a waiter attending a table to take an order, or when greeting a customer once they have entered the work premises.

- (f) where a work premises is a food and drink facility, then:

- (i) the work premises must prominently display signage at all points of sale and at all points of service, so that members of the public can record their attendance using the Victorian Government QR code system; and

Note: work premises to which paragraph (f) applies are required to comply with the signage requirements in paragraph (f) in addition to the signage requirements in paragraph (c).

- (ii) a staff member must request all members of the public attending the work premises to record their attendance at:

- (A) an entrance to the work premises; or
- (B) a point of sale; or
- (C) a point of service; and

Note: a point of sale includes where a customer pays for goods or services. A point of service includes where a worker interacts with a customer other than at a point of sale during their attendance, for example, a waiter attending a table to take an order, or when greeting a customer once they have entered the work premises. Where a food and drink facility is a food court, a point of service includes the tables provided within the food court.

- (g) where a work premises is a supermarket, then:

- (i) the work premises must prominently display signage at all points of sale at the work premises so that members of the public can record their attendance using the Victorian Government QR code system; and

Note 1: work premises to which paragraph (g) applies are required to comply with the signage requirements in paragraph (g) in addition to the signage requirements in paragraph (c).

Note 2: a point of sale includes where a customer pays for goods or services.

- (ii) staff members who interact with a member of the public at a point of sale must request that the member of the public record their attendance at the work premises.

(3) Where:

- (a) it is not reasonably practicable for a person to record an attendance at a work premises using the Victorian Government QR code system; or
- (b) there is an access issue that prevents the Victorian Government QR code system from operating,

then the employer must use an alternative record-keeping method to comply with the records requirement.

Example 1: worshippers wishing to attend a synagogue on the Sabbath (if permitted by the pandemic orders in force) who are prohibited from using the Victorian Government QR code system during the Sabbath could pre-register details with the synagogue, with the details recorded and stored by the synagogue electronically.

Example 2: where a venue has no internet coverage, such as in a remote location, manual records could be kept and stored electronically by the venue.

- (4) Information collected by an employer using an alternative record-keeping method under subclause (3) must be provided by the employer to Service Victoria if requested to do so by the Department or Service Victoria.
- (5) Where a person who attends a work premises is unable to check in using the Victorian Government QR code system for the purpose of subclauses (1) or (9), that information may be collected by an employer or an owner of a vehicle used as a commercial passenger vehicle service from another person on behalf of the first person using the Victorian Government QR code system for that purpose.
- (6) An employer is not required to comply with the records requirement in subclause (1):
 - (a) subject to subclause (9), in relation to members of the public using a commercial passenger vehicle service; or

- (b) in relation to essential support groups and health services if confidentiality is typically required; or

Example: support groups for alcohol and drugs or family violence typically require confidentiality.

- (c) in relation to common property areas governed by an owners corporation; or

- (d) in relation to persons receiving contactless ‘click and collect’ services where the transaction does not involve entering any indoor space at a work premises; or

Example: attending a retail facility where a worker drops the goods into the boot of a customer’s car whilst the customer remains in the car.

- (e) in relation to takeaway food providers in respect of customers attending the premises for the sole purpose of collecting food at a drive-through window; or

- (f) in relation to service stations in respect of members of the public who do not enter a building and pay using contactless payment methods at the petrol bowser; or

- (g) in relation to emergency workers attending a work premises for the purposes of responding to an emergency where complying with the records requirement is not practicable in the circumstances; or

- (h) in relation to attendances at a work premises for the purposes of police matters (including investigations), and the administration of justice where the person who is the subject of the record requests that their attendance is kept confidential; or

- (i) subject to subclause (9), in relation to members of the public using public transport or at a stop or station for passenger services of a public transport service; or

- (j) subject to subclause (9), in relation to a tour and charter bus service, except in relation to workers operating or delivering the tour and charter bus service; or

- (k) in relation to workers of, or visitors to premises owned or operated by, intelligence agencies who attend that premises for reasons of national security; or

- (l) in relation to parents, guardians and carers attending a school, childcare or early childhood service or outside school hours care service for the purposes of picking up or dropping off children or students, provided the parent, guardian or carer does not enter an indoor space at the school, childcare or early childhood service or outside school hours care service.
- (7) An employer is not required to comply with subclause (2) in relation to work premises that are:
- (a) schools, childcare or early childhood services and outside school hours care services in respect of all students, teachers and other school staff (but not visitors, contractors or other workers); or
- Note: educational facilities (other than schools and childcare or early childhood services and outside school hours care services) are required to comply with subclause (2).*
- (b) care facilities in respect of residents; or
- (c) a health service entity; or
- (d) farms in respect of workers and other persons attending for work-related purposes; or
- (e) premises where pre-ordered goods are being delivered via contactless delivery; or
- Example: a meal delivery service driver attending a premises to drop a meal ordered via an app at the door is not required to check-in at that premises.*
- (f) a private residence attended by workers for the purposes of undertaking work; or
- Note: this excludes common property areas governed by an owners corporation.*
- (g) a prison, remand centre, youth residential centre, or youth justice centre; or
- (h) a site operated by COVID-19 Quarantine Victoria; or
- (i) a site where the use of electronic devices is prohibited due to safety concerns; or

Example: petrochemical bulk storage and transport, and other flammable liquids sites.

- (j) a school bus; or
- (k) an early stage land development site, excluding any site office at that site.

Example: workers conducting scoping work on empty land prior to the commencement of construction will not be required to check-in using the Victorian Government QR code system. However, a worker entering a site office on otherwise empty land will need to check-in to that office using the Victorian Government QR code system.

- (8) An employer to whom the accommodation facilities requirements of the **Open Premises Order** applies is only required to comply with subclause (2) in respect of a person who:

- (a) is not registered to stay overnight at the accommodation facility; and
- (b) attends a communal or shared accommodation space.

- (9) Despite subclause (2):

- (a) an owner of a vehicle used as a commercial passenger vehicle service; or
- (b) an employer in respect of:
 - (i) public transport; or
 - (ii) a stop or station for passenger services of a public transport service, other than stops or stations that are not regularly staffed; or
 - (iii) a tour and charter bus service,

must make available and clearly visible and accessible in the vehicle, stop or station at all times, a sign that allows members of the public in the vehicle or at the stop or station to use the Victorian Government QR code system.

- (10) In handling any information collected under subclause (1):

- (a) an employer who uses or an owner who makes available a system other than the Victorian Government QR code system, must:
 - (i) not collect personal information unless:

- (A) the information is necessary to meet the requirements outlined in subclause (1); or
 - (B) the information is provided by a driver or passenger using the system made available under subclause (9); and
- (ii) use reasonable endeavours to protect the personal information from use or disclosure, other than in accordance with a request made by an Authorised Officer (or a person assisting an Authorised Officer); and

Note: information should be collected in a way that protects it from being disclosed to other patrons.

Example: where using a paper-based method, a sheet of paper could be placed over previous visitor details on a sheet that records the names.

- (iii) use reasonable endeavours to notify the person from whom the personal information is being collected that the primary purpose of collection is for COVID-19 contact tracing, and that their personal information may be collected and stored by the Victorian Government for this purpose; and
- (iv) destroy the information as soon as reasonably practicable following 28 days after the attendance at the work premises, unless a statutory requirement permits or requires the personal information to be retained; and

Note: paragraph (a) is intended to apply to employers who use or owners who collect information pursuant to subclauses (1) or (9) using a method other than the Victorian Government QR code system, whether or not:

- (a) *the employer also uses or the owner also uses the Victorian Government QR code system to comply with subclauses (1) or (9); or*
 - (b) *the system used by the employer or made available by the owner links to the Victorian Government QR code system.*
- (b) Service Victoria and/or another operator of the Victorian Government QR code system must destroy the information as soon as reasonably practicable following 28 days after the attendance at the work premises unless a statutory requirement permits or requires the personal information to be retained.

11. Additional records requirement (additional records requirement)

- (1) An employer must keep records to demonstrate compliance with this Order, including (but not limited to):
 - (a) all logs created during the time this Order is in place;
 - (b) work premises rosters;
 - (c) time and attendance records;
 - (d) payroll data.
- (2) In collecting the information outlined in subclause (1), an employer must:
 - (a) use reasonable endeavours to protect the personal information from use or disclosure, other than in accordance with a request made by an Authorised Officer; and
 - (b) destroy the information as soon as reasonably practicable, unless another statutory requirement permits or requires the personal information to be retained.

12. Signage requirements (signage requirement)

- (1) Where a work premises is an open premises under the **Open Premises Order** that has a patron limit specified for that premises in Schedule 1 of the **Open Premises Order**, an employer must display a sign at each entry to each publicly accessible space that includes a statement specifying the maximum number of patrons that may be present in the space at a single time in accordance with the **Open Premises Order**.
- (2) Where any other pandemic orders in force require a face covering to be worn in a work premises or part of a work premises:
 - (a) an employer in relation to that work premises; or
 - (b) a person who owns, operates or controls that work premises,must display a sign at each public entry advising that each person entering the work premises must wear a face covering, unless an exception under a pandemic order in force applies.

Division 2 – Responding to a symptomatic person or a confirmed COVID-19 case

13. Responding to a symptomatic person in a work premises

- (1) An employer must not require a worker to perform work at a work premises if the worker is a symptomatic person.
- (2) As soon as practicable after becoming aware of a symptomatic person who has attended a work premises in the period commencing 48 hours prior to the onset of symptoms, an employer must:
 - (a) advise the worker that they are required to comply with the relevant requirements set out in the Testing Requirements for Contacts and Exposed Persons and, where applicable, follow the COVID-19 rapid antigen test procedure; and
 - (b) ensure appropriate records are maintained in accordance with clause 10(1) in order to support contact tracing if the symptomatic person becomes a confirmed case, particularly from the period commencing 48 hours prior to the onset of symptoms in the symptomatic person; and

Note: this will include, for example, rosters and worker details, and details of all visitors to the work premises, to ascertain which persons were present at the work premises and who they may have come into contact with.

- (c) inform all workers (including the health and safety representative) to be vigilant about the onset of COVID-19 symptoms and advise all workers to comply with the relevant requirements set out in the Testing Requirements for Contacts and Exposed Persons and, where applicable, follow the COVID-19 rapid antigen test procedure if they become symptomatic.

14. Responding to a confirmed case of COVID-19 in a work premises

- (1) A worker who has received a positive result from a COVID-19 PCR test or a COVID-19 rapid antigen test must, as soon as practicable, notify the operator of any work premises at which the diagnosed person or the probable case ordinarily works, if the diagnosed person or the probable case attended an indoor space at the work premises during their Infectious Period.
- (2) As soon as practicable after becoming aware of a diagnosed person or a probable case who has attended the work premises in the Infectious Period, the operator must:

- (a) to the extent not already completed, direct the diagnosed person or the probable case not to attend the work premises and advise them to self-isolate immediately in accordance with the relevant requirements in the **Quarantine, Isolation and Testing Order** and support the worker in doing so, by either:
 - (i) directing the worker to travel home immediately (and providing support to the worker to do so); or
 - (ii) where the worker is unable to travel home immediately, directing the worker to isolate themselves at the work premises and, whilst doing so, to wear a face covering and remain at least 1.5 metres from any other person at the work premises, until the worker can return home later that day to self-isolate; and

Note: the worker should isolate in a separate room from other persons, where possible.

- (b) take reasonable steps to notify all workers that are exposed persons at the work premises that they:
 - (i) may have been exposed to COVID-19; and
 - (ii) must comply with the relevant requirements set out in the Testing Requirements for Contacts and Exposed Persons and, where applicable, follow the COVID-19 rapid antigen test procedure; and
 - (iii) must produce to the operator of the work premises acceptable evidence of a negative result from any COVID-19 test they are required to complete in accordance with the Testing Requirements for Contacts and Exposed Persons before being permitted to return to the work premises; and
- (c) inform all workers (including health and safety representatives) to be vigilant about the onset of COVID-19 symptoms and advise all workers to comply with the relevant requirements set out in the Testing Requirements for Contacts and Exposed Persons and, where applicable, follow the COVID-19 rapid antigen test procedure, if they become symptomatic; and
- (d) put in place appropriate control and/or risk management measures to reduce the risk of spreading COVID-19 at the work premises; and

Note: employers are encouraged to ensure that any risks identified from the confirmed case are addressed in these control measures.

Examples: increasing the implementation and enforcement of control measures with respect to PPE (such as face coverings) and physical distancing.

- (e) where the work premises (or part of the work premises) is closed, not re-open that work premises (or that part of the work premises which was closed) until all of the following have occurred:
 - (i) the employer has complied with all of its obligations under paragraphs **Error! Reference source not found.** to (d); and
 - (ii) the Department has completed all relevant contact tracing.

Note: employers must comply with their obligations under occupational health and safety laws.

- (3) As soon as practicable after becoming aware that at least 5 confirmed cases attended the work premises within a 7 day period, the operator must notify the Department (or other entity nominated by the Department on its website) and:
 - (a) notify it of the actions taken in accordance with subclause **Error! Reference source not found.** to (d); and
 - (b) provide it with a copy of the risk assessment conducted in accordance with subclause (2)(d); and
 - (c) provide it with contact details of any exposed persons (whether or not workers) identified pursuant to subclause (2)(b); and
 - (d) comply with any further directions given by the Department or WorkSafe in relation to closure of the work premises (or part of the work premises) and/or cleaning.

15. Testing requirements for exposed persons

A person who has been notified under clause 14(2)(b) that they are an exposed person at a work premises must:

- (1) comply with the relevant requirements set out in the Testing Requirements for Contacts and Exposed Persons and, where applicable, follow the COVID-19 rapid antigen test procedure; and

- (2) produce to the operator of the work premises acceptable evidence of a negative result from any COVID-19 test they are required to complete in accordance with the Testing Requirements for Contacts and Exposed Persons within 24 hours of receiving the negative result and before returning to the work premises.

Note: the exposed person's parent, guardian or carer may notify the operator of the work premises on behalf of the exposed person, for the purpose of subclause (2).

16. Collection of information by operators of a work premises

- (1) The operator of a work premises must collect, record and store the following information:
 - (a) a list of workers who have been notified under clause 14(2)(b) that they are exposed persons; and
 - (b) any results of tests for COVID-19 of workers who have been notified under clause 14(2)(b) that they are exposed persons, including the acceptable evidence of a negative test result for COVID-19 provided to the operator of the work premises under clause 15(2).
- (2) For the purposes of complying with this clause, an operator of a work premises is authorised to use any information that it holds under subclause (1).

Part 3 – General provisions

17. Relationship with other Orders

If there is any inconsistency between this Order and an Order or other requirement contained in a **Detention Notice**, these Orders are inoperative to the extent of the inconsistency.

18. 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.

19. Transitional provisions

- (1) A reference in any pandemic order in force to a Revoked Workplace 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 Workplace 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 Workplace Order was subject immediately before it was revoked.
- (4) This clause is subject to any express provision to the contrary in this Order.

Part 4 – Penalties

20. 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 subsection (1) if the person had a reasonable excuse for refusing or failing to comply.

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

Schedule 1 – Definitions

For the purposes of this Order:

accommodation facility has the same meaning as in the **Open Premises Order**;

Additional Industry Obligations Order means the **Pandemic (Additional Industry Obligations) Order 2022 (No. 5)** as amended or replaced from time to time;

additional records requirement has the meaning in clause 11;

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

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

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

childcare or early childhood service means onsite early childhood education and care services or children’s services provided under the:

- (1) **Education and Care Services National Law** and the **Education and Care Services National Regulations**, including long day care services, kindergartens and/or preschool and family daycare services, but not including outside school hours care services; and
- (2) **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;

commercial passenger vehicle service has the meaning given in section 4 of the **Commercial Passenger Vehicle Industry Act 2017**;

common areas of a retail shopping centre has the same meaning as in the **Retail Leases Act 2003**;

confirmed case means a diagnosis of COVID-19 in a worker at the work premises from a COVID-19 PCR test or a COVID-19 rapid antigen test and includes a worker who is a diagnosed person or a probable case;

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

COVID-19 Mandatory Vaccination (General Workers) Order means the **Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 3)** as amended or replaced from time to time;

COVID-19 Mandatory Vaccination (Specified Facilities) Order means the **Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order 2022 (No. 4)** 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 2022 (No. 3)** as amended or replaced from time to time;

COVID-19 PCR test has the same meaning as in the **Quarantine, Isolation and Testing Order**;

COVID-19 rapid antigen test has the same meaning as in the **Quarantine, Isolation and Testing Order**;

COVID-19 symptoms means symptoms consistent with COVID-19, including but not limited to the following:

- (1) a fever ($\geq 37.5^{\circ}\text{C}$) or consistent fever of less than 37.5°C (such as night sweats, chills);
- (2) acute respiratory infection (such as cough, shortness of breath, sore throat);
- (3) loss of smell;
- (4) loss of taste;

COVIDSafe Plan has the meaning in clause 9(1);

Department means the Department of Health;

Detention Notice means a notice given to a person requiring the person to be detained for a specified period;

diagnosed person has the same meaning as in the **Quarantine, Isolation and Testing Order**;

early stage land development site means an open air, greenfields site where civil works are being undertaken that are associated with, and preparatory to, the construction of multiple individual residential dwellings or an industrial or commercial development on that site, including but not limited to:

- (1) site remediation works;
- (2) site preparation works;

- (3) construction of utilities, roads, bridges and trunk infrastructure;
- (4) stormwater or flood management works;

but such a site ceases to be an early stage land development site:

- (5) for a residential development where the development is, or will be, subdivided to facilitate the construction of individuals dwellings, on the day that the construction of a dwelling on that part of the subdivision (or planned subdivision) of the early stage land development site commences; and
- (6) for a residential development where the development has not been subdivided and it is not intended that the development will be subdivided in the future, on the day that construction commences; and

Examples: this type of residential development includes a high-rise apartment complex or a retirement village.

- (7) for an industrial or commercial development, on the day that construction of a building, warehouse or other physical structure commences;

education premises has the same meaning as in the **Movement and Gathering Order**;

emergency has the same meaning as in the **Emergency Management Act 2013**;

emergency worker has the same meaning as in the **Sentencing Act 1991**;

employee includes a person who is self-employed;

employer means a person who owns, operates or controls work premises (or a work premises) and includes a person who is self-employed;

exposed person has the same meaning as in the **Quarantine, Isolation and Testing Order**;

face covering means a fitted face mask that covers the nose and mouth to provide the wearer protection against infection;

food and drink facility has the same meaning as in the **Open Premises Order**;

general worker has the same meaning as in the **COVID-19 Mandatory Vaccination (General Workers) Order**;

health and safety representative has the same meaning as in the **Occupational Health and Safety Act 2004**;

health service entity has the same meaning as in the **Health Services Act 1988**;

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

indoor space has the same meaning as in the **Open Premises Order**;

indoor zone means a section of an indoor space that:

- (1) is designated by the person who owns, controls or operates the indoor space as being for the exclusive use of specified members of the public; and
- (2) is delineated by temporary barriers, tape or other clearly visible markings or means;

Infectious Period has the same meaning as in the **Quarantine, Isolation and Testing Order**;

inspector has the same meaning as in the **Occupational Health and Safety Act 2004**;

market means a public market, whether indoor or outdoor, including a food market;

member of the public is a person but does not include:

- (1) a person who is an employee of an operator of the facility or venue; or
- (2) any other person who attends the facility or venue that is reasonably necessary for providing a service at the facility or venue;

Movement and Gathering Order means the **Pandemic (Movement and Gathering) Order 2022 (No. 3)** as amended or replaced from time to time;

Open Premises Order means the **Pandemic (Open Premises) Order 2022 (No. 4)** as replaced or amended from time to time;

outbreak has the same meaning as in the **Quarantine, Isolation and Testing Order**;

outdoor space has the same meaning as in the **Open Premises Order**;

owner has the same meaning as in the **Commercial Passenger Vehicle Industry Act 2017**;

owners corporation has the same meaning as in the **Owners Corporations Act 2006**;

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

passenger services has the same meaning as in the **Transport Integration Act 2010**;

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

place of worship has the same meaning as in the **Heritage Act 2017**;

PPE means personal protective equipment;

premises has the same meaning as in the **Open Premises Order**;

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

probable case has the same meaning as in the **Quarantine, Isolation and Testing Order**;

public transport means a vehicle operated by a passenger transport company or by a bus company in the provision of public transport service but does not include a school bus;

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

Quarantine, Isolation and Testing Order means the **Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 5)** as amended or replaced from time to time;

reasonably practicable is to have its ordinary and common sense meaning;

records requirement has the meaning in clause 10;

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

retail facility means a premises, or part of a premises, that are used wholly or predominantly for the sale or hire of goods by retail, the retail provision of services and includes a market, retail shopping centre and supermarkets;

retail shopping centre has the same meaning as in the **Retail Leases Act 2003**;

Revoked Workplace Order means the **Workplace Directions (No. 57)** or the **Pandemic (Workplace) Order 2022 (No. 3)**, or their predecessors;

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

school bus means any bus while being used as part of:

- (1) the School Bus Program; or
- (2) the Students with Disabilities Transport Program; or
- (3) a private arrangement between a school and a bus company;

School Bus Program means the program of that name administered by the Department of Education and Training;

self-isolate has the same meaning as in the **Quarantine, Isolation and Testing Order**;

self-quarantine has the same meaning as in **Quarantine, Isolation and Testing Order**;

Service Victoria has the same meaning as in the **Service Victoria Act 2018**;

Service Victoria CEO has the same meaning as in the **Service Victoria Act 2018**;

signage requirement has the meaning in clause 12;

Students with Disabilities Transport Program means the program of that name administered by the Department of Education and Training;

supermarket has the same meaning as 'supermarket business' in the **Food Act 1984**;

symptomatic person means a person that is experiencing one or more COVID-19 symptoms, unless those symptoms are caused by an underlying health condition or medication;

Testing Requirements for Contacts and Exposed Persons means the document titled 'Testing Requirements for Contacts and Exposed Persons' as amended or reissued from time to time by the Secretary of the Department of Health;

tour and charter bus service has the same meaning as in the **Bus Safety Act 2009**;

vehicle has the same meaning as in the **Open Premises Order**;

Victorian Government QR code system means the digital system provided by the Service Victoria CEO and other parts of the Victorian Government that enables a person to record their attendance;

Visitors to Hospitals and Care Facilities Order means the **Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No. 2)** as amended or replaced from time to time;

work premises means a **premises** in which work is undertaken, including any **vehicle** whilst being used for work purposes, but excluding a person's ordinary place of residence;

Note: this includes a community facility such as a community centre or community hall, or a public library, or a place of worship, or a home or residential property when a business is operated from that home or residential property.

worker includes employees, subcontractors (and their employees), volunteers and any other person engaged or permitted by an employer to perform work;

WorkSafe means WorkSafe Victoria;

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

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

A handwritten signature in blue ink, appearing to read 'M. Foley', written in a cursive style.

Martin Foley MP, Minister for Health

4 February 2022