

Directions from Acting Chief Health Officer in accordance with emergency powers arising from declared state of emergency

COVID-19 Mandatory Vaccination Directions (No 2)

Public Health and Wellbeing Act 2008 (Vic)

Section 200

I, Associate Professor N. Deborah Friedman, Acting Chief Health Officer, consider it reasonably necessary to eliminate or reduce the risk to public health—and reasonably necessary to protect public health—to give the following directions pursuant to section 200(1)(d) of the **Public Health and Wellbeing Act 2008 (Vic) (PHW Act)**:

1 Preamble

- (1) The purpose of these directions is to make provision for the introduction of mandatory vaccination for specific workplace industries in order to limit the spread of severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**) within the population in these settings.
- (2) These directions must be read together with the **Directions currently in force**.

2 Citation

These directions may be referred to as the **COVID-19 Mandatory Vaccination Directions (No 2)**.

3 Commencement

These directions commence at 11:59:00pm on 17 September 2021 and end at 11:59:00pm on 23 September 2021.

4 Application of these directions

- (1) These directions apply to all of the following **work premises** within the State of Victoria:
 - (a) **residential aged care facilities**; and
 - (b) **construction sites**.
- (2) All **operators** must comply with these directions.

5 Mandatory vaccination requirement – Operator obligations

Residential aged care facilities

- (1) An operator of a residential aged care facility must request, collect and store information about each of the following matters, and sight evidence of the

matters in subclauses (a), (b), (c), (d) and (f), from workers who perform, or are intended to perform work at a residential aged care facility operated by the operator:

- (a) whether the worker has received a **full COVID-19 vaccination**; or
 - (b) whether the worker has received a **partial COVID-19 vaccination** and made or will make a booking to receive a full COVID-19 vaccination by 15 November 2021; or
 - (c) whether the worker has received a partial COVID-19 vaccination and will not make a booking to receive a full COVID-19 vaccination by 15 November 2021; or
 - (d) whether the worker has not received any doses of a **COVID-19 vaccine** and has made a booking to receive a dose of a COVID-19 vaccine by 1 October 2021; or
 - (e) whether the worker has not received any doses of a COVID-19 vaccine and has not made a booking to receive a dose of a COVID-19 vaccine by 1 October 2021; or
 - (f) whether the worker cannot receive a COVID-19 vaccine for the reason permitted under subclause (2).
- (2) The permitted reason why a worker cannot receive a COVID-19 vaccine is if:
- (a) an **exception** applies to them; and
 - (b) they have provided the operator of the work premises at which they perform work with evidence from a **medical practitioner** certifying that an exception applies to them.

Construction sites

- (3) An operator of a construction site must inform workers who perform, or are intended to perform work, at a construction site operated by the operator, that the operator will be requesting the workers to provide information and evidence to the operator by 24 September 2021 that:
- (a) they have received a full COVID-19 vaccination; or
 - (b) they have received a partial COVID-19 vaccination; or
 - (c) they have not received any doses of a COVID-19 vaccine and have made a booking to receive a dose of a COVID-19 vaccine by 2 October 2021; or
 - (d) they have not received any doses of a COVID-19 vaccine and have not made a booking to receive a dose of a COVID-19 vaccine by 2 October 2021; or
 - (e) they cannot receive a COVID-19 vaccine for the reason permitted in subclause (2).

Note: the obligation placed on an operator to inform workers of these requirements extends to new workers who should be notified of these requirements as part of the operator's hiring and on-boarding process.

- (4) An operator of a construction site must request, collect and store information about each of the following matters, and sight evidence of the matters in subclauses (a), (b), (c) and (e), from workers who perform, or are intended to perform work, at a construction site operated by the operator:
- (a) whether the worker has received a full COVID-19 vaccination; or
 - (b) whether the worker has received a partial COVID-19 vaccination; or
 - (c) whether the worker has not received any doses of a COVID-19 vaccine and has made a booking to receive a dose of a COVID-19 vaccine by 2 October 2021; or
 - (d) whether the worker has not received any doses of a COVID-19 vaccine and has not made a booking to receive a dose of a COVID-19 vaccine by 2 October 2021; or
 - (e) whether the worker cannot receive a COVID-19 vaccine for the reason permitted under subclause (2).

6 Mandatory vaccination requirement – Operation of a work premises

Residential Aged Care Facilities

- (1) An operator of a residential aged care facility must require a worker referred to in clause 5(1)(d) to comply with the following requirements:
- (a) wear **PPE** that includes at a minimum, a surgical mask and face shield, at all times while at the work premises; and
 - (b) only work at a single work premises.

Note: this is a temporary measure to allow unvaccinated workers who have made a booking to receive a first dose of a COVID-19 vaccine to attend a residential aged care facility during the transition period of 17 September 2021 to 30 September 2021. From 1 October 2021, it is intended that all workers at residential aged care facilities will be required to have received at least a partial COVID-19 vaccination, and from that date will not be permitted to enter a work premises if they have not received at least a partial COVID-19 vaccination, subject to limited exceptions. It is intended that this requirement will change to a full COVID-19 vaccination from 15 November 2021.

- (2) An operator of a residential aged care facility must take all reasonable steps to ensure that the following workers do not enter, or remain on premises that is a residential aged care facility, for the purposes of performing work as a worker:
- (a) a worker referred to in subclause (1) who does not comply with a requirement in that subclause; and
 - (b) a worker referred to in clause 5(1)(e); and
 - (c) a worker who has not provided information or evidence of the matters in clause 5(1)(a), (b), (c), (d), (e) or (f).

Note: this is a temporary measure that is intended to apply until 30 September 2021. From 1 October 2021, it is intended that workers who have not received at least a partial COVID-19 vaccination and who do not provide COVID-19

vaccination information and evidence to the operator will not be permitted to enter a work premises, subject to limited exceptions.

Construction sites

- (3) On and from 24 September 2021, the operator of a construction site must take all reasonable steps to ensure that the following workers do not enter or remain on premises that is a construction site, for the purposes of performing work as a worker:
 - (a) a worker referred to in clause 5(4)(d); and
 - (b) a worker who has not provided information or evidence of the matters in clauses 5(4)(a), (b), (c), (d) or (e).

Note: this is a temporary measure to allow unvaccinated workers who have made a booking to receive a first dose of a COVID-19 vaccine to attend a construction site during the transition period of 24 September 2021 to 1 October 2021. From 2 October 2021, it is intended that all workers at construction sites will be required to have received at least a partial COVID-19 vaccination, and from that date will not be permitted to enter a work premises if they have not received at least a partial COVID-19 vaccination, subject to limited exceptions.

7 Mandatory vaccination requirement – Operator records

- (1) An operator must keep the necessary records to demonstrate compliance with these directions, including, but not limited to, records of sighting evidence referred to in clauses 5(1) or 5(4), as relevant to that operator.
- (2) On request from an **Authorised Officer**, an operator must provide access to records demonstrating compliance with these directions.

8 Exceptional circumstances

- (1) An operator of:
 - (a) a residential aged care facility is not required to comply with any of the requirements in these directions (except the requirement in subclause (3)) in relation to workers in the exceptional circumstances in subclause (2)(a), (b) or (c); and
 - (b) a construction site is not required to comply with any of the requirements in these directions in relation to workers in the exceptional circumstances in subclause (2)(c) and (d).
- (2) The following are exceptional circumstances for the purpose of these directions:
 - (a) a worker that is required to perform work or duties at the work premises that are necessary to provide for urgent specialist clinical or medical care at the work premises due to an **emergency situation** or a **critical unforeseen circumstance**; or
 - (b) a worker that is deployed to fill a vacancy to provide urgent care, to maintain quality of care and/or continue essential operations at the

work premises due to an emergency situation or a critical unforeseen circumstance; or

Example 1: a work premises has a large number of workers furloughed due to exposure at a Tier 1 site.

Example 2: a medical practitioner is required to attend the premises on short notice due to an emergency situation.

- (c) a worker who is required to attend the premises to respond to an emergency at the work premises; or
- (d) a worker who is required to perform urgent and essential work at the work premises to protect the health and safety of workers or members of the public, or to protect assets and infrastructure.

Example 1: securing a crane due to impending high winds.

Example 2: works required at a construction site in order to make the construction site safe for continued operation.

- (3) An operator of a residential aged care facility must require a worker referred to in subclause (2)(b) to wear PPE that includes, at a minimum, a surgical mask and face shield, at all times that they are present at the work premises.
- (4) An operator must ensure that a worker permitted to attend work premises due to an exceptional circumstance in subclauses (1) and (2) is only permitted to enter and remain upon the work premises for the period of time necessary to respond to the exceptional circumstance.

9 Other definitions

For the purposes of these directions:

- (1) **approved provider** has the same meaning as in the **Aged Care Quality and Safety Commission Act 2018** of the Commonwealth;
- (2) **Authorised Officer** has the same meaning as in the **PHW Act**;
- (3) **construction site** means a **work premises** at which civil works, building or construction activities take place and nearby work premises in which work relating to the operation of the construction site is undertaken;

Example: a site office for a construction site that is located in an office building close to the construction site.

- (4) **construction site worker** means a person (including a volunteer) performing work at a **construction site**, whether or not employed or engaged as a contractor by the **operator** of the **construction site** or a third party;
- (5) **COVID-19 vaccine** means a vaccine to protect a person against SARS-CoV-2 that:
 - (a) has been registered or provisionally registered by the Therapeutic Goods Administration; or
 - (b) has been approved by a comparable overseas regulator, as determined by the Therapeutic Goods Administration under regulation

16DA(3) of the **Therapeutic Goods Regulation 1990** of the Commonwealth;

- (6) **critical unforeseen circumstance** means a circumstance that the operator of a work premises could not reasonably have foreseen nor planned for which results in a critical need for staff;
- (7) **Department** means the Department of Health;
- (8) **Directions currently in force** has the same meaning as in the **Workplace Directions**;
- (9) **emergency situation** means a situation where it is reasonably apparent to the **operator** of a **work premises** that medical treatment is necessary, as a matter of urgency to:
 - (a) save a person's life; or
 - (b) prevent serious damage to a person's health; or
 - (c) prevent a person from suffering or continuing to suffer significant pain or distress;
- (10) **full COVID-19 vaccination** means the provision of the prescribed number of doses of a **COVID-19 vaccine** as recommended by the Australian Technical Advisory Group on Immunisation (ATAGI) for full COVID-19 vaccination;
- (11) **medical contraindication** means a contraindication to the administration of a **COVID-19 vaccine** as determined by the Australian Technical Advisory Group on Immunisation's (ATAGI) clinical guidance on the administration of **COVID-19 vaccines** in Australia;
- (12) **medical practitioner** means:
 - (a) a general practice registrar on an approved 3GA training placement; or
 - (b) a public health physician; or
 - (c) a general physician; or
 - (d) an infectious disease physician; or
 - (e) a clinical immunologist; or
 - (f) a gynaecologist; or
 - (g) an obstetrician; or
 - (h) a general practitioner who is vocationally registered; or
 - (i) a general practitioner who is a fellow of the Royal Australian College of General Practitioners (RACGP); or
 - (j) a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine (ACRRM);
- (13) **exception** means a person that has a **medical contraindication**;
- (14) **operator** means:

- (a) in relation to a **residential aged care facility**, an **approved provider** with responsibility for that **residential aged care facility**;
 - (b) in relation to a **construction site**, the **principal contractor** for that **construction site**;
- (15) **overseas medical practitioner** means a person who is registered as a medical practitioner in a jurisdiction other than Australia;
- (16) **partial COVID-19 vaccination** means the provision of a dose that is less than the number of doses of a **COVID-19 vaccine** as recommended by the Australian Technical Advisory Group on Immunisation (ATAGI) for **full COVID-19 vaccination**;
- (17) **PHW Act** means the **Public Health and Wellbeing Act 2008**;
- (18) **PPE** means personal protective equipment;
- (19) **premises** has the same meaning as in the **PHW Act**;
- (20) **principal contractor** has the same meaning as in the **Occupational Health and Safety Regulations 2017**;
- (21) **residential aged care facility** means the **premises** at which accommodation and personal care or nursing care or both are provided to a person in respect of whom a **residential care subsidy** or a **flexible care subsidy** is payable under the **Aged Care Act 1997** of the Commonwealth;
- (22) **residential aged care facility worker** means a person (including a volunteer) that is:
 - (a) employed or engaged as a contractor, by an **operator** that operates a **residential aged care facility** to perform work at the residential aged care facility including:
 - (i) direct care workforce including nurses, personal care workers, allied health professionals, and allied health assistants;
 - (ii) administration staff including reception and management staff;
 - (iii) ancillary staff including food preparation, cleaning, laundry, gardening and general maintenance staff;
 - (iv) dental practitioners;
 - (v) phlebotomists (pathology nurses);
 - (vi) lifestyle and social staff, such as those delivering music or art therapy;
 - (vii) transport drivers who are responsible for collecting and transporting residents to and from the residential aged care facility for outings;
 - (viii) volunteers engaged by the residential aged care facility to undertake duties at the facility;
 - (ix) students on placement;

- (x) **medical practitioners** and allied health professions who attend the residential aged care facility to provide care to residents of the facility; and
 - (b) a medical practitioner, dental practitioner or allied health professional who is employed or engaged by a resident of a residential aged care facility to provide care to the resident;
- (23) **residential care subsidy** has the same meaning as in the **Aged Care Act 1997** of the Commonwealth;
- (24) **vehicle** has the same meaning as in the **PHW Act**;
- (25) **worker** means:
- (a) in relation to a **residential aged care facility**, a **residential aged care facility worker**;
 - (b) in relation to a **construction site**, a **construction site worker**;
- (26) **Workplace Directions** means the **Workplace Directions (No 49)** as amended or replaced from time to time;
- (27) **work premises** means the **premises** in which work is undertaken, including any **vehicle** whilst being used for work purposes but excluding a worker's ordinary place of residence, and that is:
- (a) a **residential aged care facility**; or
 - (b) a **construction site**.

10 Penalties

- (1) Section 210 of the PHW Act provides:

False or misleading information

- (1) A person must not—
- (a) give information that is false or misleading in a material particular; or
 - (b) make a statement that is false or misleading in a material particular; or
 - (c) produce a document that is false or misleading in a material particular—
- to the Secretary, a Council, the Chief Health Officer or an authorised officer under this Act or the regulations without indicating the respect in which it is false or misleading and, if practicable, providing correct information.
- Penalty: In the case of a natural person, 60 penalty units;
 In the case of a body corporate, 300 penalty units.
- (2) A person must not make an entry in a document required to be kept by this Act or the regulations that is false or misleading.
- Penalty: In the case of a natural person, 60 penalty units;
 In the case of a body corporate, 300 penalty units.
- (3) In a proceeding for an offence against subsection (1) or (2) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, statement or document was true or was not misleading.

(2) Section 203 of the PHW Act provides:

Compliance with direction or other requirement

(1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.

Penalty: In the case of a natural person, 120 penalty units;
 In the case of a body corporate, 600 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 with the direction or requirement.

Note: section 209 of the PHW Act provides for infringement notices to be served on any person who has refused or failed to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199. The amount payable pursuant to the infringement notice varies depending on the nature of the failure or refusal.



Associate Professor N. Deborah Friedman

Acting Chief Health Officer, as authorised to exercise emergency powers under section 199(2)(a) of the PHW Act.

17 September 2021