

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

## COVID-19 Mandatory Vaccination Directions (No 5)

*Public Health and Wellbeing Act 2008 (Vic)*

Section 200

I, Professor Benjamin Cowie, Acting Chief Health Officer, consider it 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)**:

### PART 1 — PRELIMINARY

#### 1 Preamble

- (1) The purpose of these directions is to impose obligations upon operators of **specified facilities** in relation to the vaccination of **workers**, in order to limit the spread of severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**) within the population in these settings.
- (2) Previous versions of these directions imposed obligations on operators of:
  - (a) **residential aged care facilities**; and
  - (b) **construction sites**.
- (3) These directions continue to impose those obligations, and extend them to **operators** of:
  - (a) **healthcare facilities**; and
  - (b) **education facilities**.
- (4) Key definitions are contained in clause 0.
- (5) Facility-specific definitions are contained in clause 9.
- (6) Other definitions are contained in clause 10.
- (7) 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 5)**.

#### 3 Commencement and revocation

- (1) These directions commence at 11:59:00pm on 1 October 2021 and end at 11:59:00pm on 21 October 2021.

- (2) The **COVID-19 Mandatory Vaccination Directions (No 4)** are revoked at 11:59:00pm on 1 October 2021.

## **PART 2 — OPERATOR OBLIGATIONS**

### **4 Operator must collect, record and hold vaccination information**

#### *Vaccination information*

- (1) If a worker is, or may be, scheduled to work at a specified facility on or after the **relevant date**, the operator must collect, record and hold **vaccination information** about the worker.

#### *Booking information — partially vaccinated and unvaccinated workers*

- (2) If the operator collects information that a worker is **partially vaccinated**, the operator must also collect, record and hold information about whether that worker has a booking to receive, by the **second dose deadline**, a dose of a **COVID-19 vaccine** that will cause the worker to become **fully vaccinated**.
- (3) If the operator collects information that a worker is **unvaccinated**, the operator must also must collect, record and hold information about whether that worker has a booking to receive, by the **first dose deadline**, a dose of a COVID--19 vaccine that will cause the worker to become **partially vaccinated**.

#### *Timing*

- (4) An operator must comply with the obligations in sub-clauses (1) to (3):
- (a) as soon as reasonably practicable after the commencement of these directions; and
  - (b) in any event, before the relevant date.

#### *Exceptions*

- (5) Subclauses (1) to (4) do not apply if the operator already holds vaccination information about a worker who is, or may be, scheduled to work at the specified facility on or after the relevant date.
- (6) Subclause (2) does not apply if there is no second dose deadline for the specified facility in Schedule 1.

### **5 Operator must take reasonable steps to prevent entry of unvaccinated workers**

#### *Prevention of entry to premises*

- (1) An operator of a specified facility must take all reasonable steps to ensure that, on or after the relevant date, a worker who is unvaccinated does not enter, or remain on, the premises of a specified facility for the purposes of working at the facility.
- (2) For the purposes of subclause (1), if an operator does not hold vaccination information about a worker, the operator must treat the worker as if the worker is unvaccinated.

*Exception — booking by first dose deadline*

- (3) Despite subclause (1), an operator of a specified facility may, between the relevant date and the first dose deadline, permit a worker who:
- (a) is unvaccinated; and
  - (b) has a booking to receive, by the first dose deadline, a dose of COVID-19 vaccine that will cause the worker to become partially vaccinated;
- to enter, and remain on, the premises of the facility for the purposes of working at the facility.
- (4) If an operator of a healthcare facility permits a worker to enter, and remain on, the premises of the facility under sub-clause (3), the operator must take reasonable steps to ensure that the worker wears, at all times while on the premises of the facility, **PPE** that includes at a minimum, a surgical mask and face shield;
- (5) If an operator of an education facility permits a worker who is carrying out assessments of an oral or performance examination as part of the 2021 Victorian Certificate of Education, International Baccalaureate or the Victorian Certificate of Applied Learning, the operator must take reasonable steps to ensure that the worker wears, at all times while on the premises of the education facility, PPE that includes a surgical mask.

*Authorisation to use vaccination information*

- (6) For the purposes of complying with this clause, an operator is authorised to use any information about a worker that it holds under clause 4.

*Disclosure to employer or contractor*

- (7) If the operator is obliged to comply with subclause (1) in relation to a worker and the operator is not:
- (a) the employer of the worker; or
  - (b) the person who engaged the worker to work at the facility;
- the operator is authorised to disclose to the employer or person who engaged the worker that the operator is obliged to comply with subclause (1) in relation to the worker.

*Notification to current and potential workers*

- (8) An operator of specified facility must, as soon as reasonably practicable after the commencement of these directions, inform each worker who is, or may be, scheduled to work at the facility on or after the relevant date, including each worker that an operator will or may hire after the relevant date, that:
- (a) clause 4 obliges the operator to collect, record and hold vaccination information about the worker before the relevant date;
  - (b) subclause (1) obliges the operator to take all reasonable steps to ensure that, on or after the relevant date, a worker who is unvaccinated does not enter, or remain on, the premises of a specified facility for the purposes of working at the facility.

## 6 Exception — exceptional circumstances

- (1) An operator of a specified facility is not required to comply with clauses 4 and 5 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 at the facility 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 continue essential operations at the facility 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 is required to attend the facility to respond to an emergency at the facility; or
  - (d) a worker is required to perform urgent and essential work at the facility 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) If a circumstance specified in subclause (2)(b), (c) or (d) applies, the operator must take all reasonable steps to ensure that the worker remains upon the premises of the facility only for the period of time necessary to respond to the exceptional circumstance.

### *Additional obligation*

- (4) If the circumstances specified:
  - (a) in subclause (2) apply in relation to a residential aged care facility or a healthcare facility; or
  - (b) in subclause (2)(b) apply in relation to an education facility; or
  - (c) in subclause (2)(c) and (d) apply in relation to a construction site,the relevant operator must take all reasonable steps to ensure that the worker wears, at all times while on the premises of the facility, PPE that includes, at a minimum, a surgical mask and face shield.

## 7 Disclosure to Authorised Officers

- (1) An Authorised Officer may request an operator to produce to the Authorised Officer any vaccination information held by the operator under clause 4.

- (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 PHW Act to require the provision of any information needed to investigate, eliminate or reduce the risk to public health.*

## PART 3 — DEFINITIONS

### 8 Key definitions

#### *Vaccination status*

- (1) A person's **vaccination status** is one of the following:
- (a) **fully vaccinated**; or
  - (b) **partially vaccinated**; or
  - (c) **unvaccinated**; or
  - (d) **excepted person**.
- (2) A person is **fully vaccinated** if the person has received two doses of a COVID-19 vaccine.
- (3) A person is **partially vaccinated** if the person has received one dose of a COVID-19 vaccine and is not an **excepted person**.
- (4) A person is **unvaccinated** if the person has not received a dose of a COVID-19 vaccine and is not an **excepted person**.
- (5) A person is an **excepted person** if the person has obtained certification from a **medical practitioner** that the person is unable, due to a **medical contraindication** to receive a dose, or a further dose, of a COVID-19 vaccine.

#### *Vaccination information*

- (6) For the purposes of these directions, **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, such as a letter from a medical practitioner, a certificate of immunisation or an immunisation history statement obtained from the Australian Immunisation Register.*

#### *Schedule 1 definitions*

- (7) For the purposes of these directions:
- (a) **first dose deadline** in relation to a **specified facility** means the date identified in Column 4 of Schedule 1 for that facility;
  - (b) **operator** in relation to a **specified facility** means a person identified in Column 2 of Schedule 1 for that facility;

- (c) **relevant date** in relation to a **specified facility** means the date specified in Column 6 of Schedule 1 for that facility;
- (d) **second dose deadline** in relation to a **specified facility** means the date identified in Column 5 of Schedule 1 for that facility
- (e) **specified facility** means a facility identified in Column 1 of Schedule 1;
- (f) **worker** in relation to a **specified facility** means a person identified in Column 3 of Schedule 1 for that facility.

## 9 Facility-specific definitions

### *Residential aged care facilities*

- (1) For the purposes of these directions:
  - (a) **approved provider** has the same meaning as in the **Aged Care Quality and Safety Commission Act 2018** of the Commonwealth;
  - (b) **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;
  - (c) **residential aged care facility worker** means a person (including a volunteer) that is:
    - (i) 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:
      - (A) direct care workforce including nurses, personal care workers, allied health professionals, and allied health assistants;
      - (B) administration staff including reception and management staff;
      - (C) ancillary staff including food preparation, cleaning, laundry, gardening and general maintenance staff;
      - (D) dental practitioners;
      - (E) phlebotomists (pathology nurses);
      - (F) lifestyle and social staff, such as those delivering music or art therapy;
      - (G) transport drivers who are responsible for collecting and transporting residents to and from the residential aged care facility for outings;
      - (H) volunteers engaged by the residential aged care facility to undertake duties at the facility;
      - (I) students on placement;

- (J) **medical practitioners** and allied health professions who attend the residential aged care facility to provide care to residents of the facility; and
- (ii) 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
- (d) **residential care subsidy** has the same meaning as in the **Aged Care Act 1997** of the Commonwealth; **vehicle** has the same meaning as in the **PHW Act**.

#### *Construction sites*

(2) For the purposes of these directions:

- (a) **construction site** means a premises at which civil works, building or construction activities are taking place (the primary premises) and includes:
  - (i) premises that are nearby to the primary premises at which work relating to the operation of the primary premises is undertaken (secondary premises);
  - (ii) any vehicle used to carry out work at the primary premises or secondary premises.

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

- (b) **principal contractor** means the owner of a **construction site** unless the owner:
  - (i) appoints a principal contractor for the construction work performed for or on behalf of the owner; and
  - (ii) authorises the principal contractor to manage or control the **construction site** to the extent necessary to discharge the duties imposed on a principal contractor under the **Occupational Health and Safety Regulations 2017**.

#### *Healthcare facilities*

(3) For the purposes of these directions:

- (a) **healthcare facility** means each of the following facilities:
  - (i) hospitals, including outpatient settings and in reach services;
  - (ii) ambulance and patient transport services,
  - (iii) community health centres and services including mental health, child and maternity, and drug and alcohol counselling services;
  - (iv) general practices;
  - (v) COVID-19 related healthcare sites, including testing sites, vaccination centres and hotel quarantine premises;
  - (vi) dental surgeries and practices;

- (vii) day procedure centres;
  - (viii) health clinics, including medical specialist and allied health professional operated clinics;
  - (ix) pharmacies;
  - (x) diagnostic and medical imaging centres;
  - (xi) mobile health services;
  - (xii) blood donation services;
  - (xiii) educational settings where healthcare students undertake placement, registration or internships;
  - (xiv) health services within government agencies, including the Victorian Department of Justice and Community Services – Victorian Institute of Forensic Medicine; and
  - (xv) any retail and other business operating within a healthcare setting, including cafes, newsagents and florists.
- (b) **healthcare operator** means a person who owns, controls or operates a **healthcare facility** whether public, private or denominational; and
- (c) **healthcare worker** means a person who is employed or engaged as a contractor by a **healthcare operator** to perform at a **healthcare facility** any of the following:
- (i) healthcare services including:
    - (A) **medical practitioners**, dental professionals, nurses and midwives;
    - (B) allied health professionals (including those that work within a discipline classified by the Victorian Department of Health as allied health, or are registered with the *Australian Health Practitioner Regulation Agency*,
    - (C) personal care attendants;
    - (D) phlebotomists and pathology workers;
    - (E) coroners;
    - (F) lifestyle and social therapists;
    - (G) formal language and interpretation services;
    - (H) students; and
    - (I) volunteers; and
  - (ii) administrative or ancillary roles, including
    - (A) an administrative, clerical and managerial worker, and each of their assistants delegates;
    - (B) food preparation, cleaning and laundry services;
    - (C) patient service assistants and porters;
    - (D) operating theatre technicians;



- (E) security, maintenance and repair and information technology, gardening and landscaping;
- (iii) ambulance and patient transport services; and
- (iv) work at a retail business operating within a healthcare facility, including cafes, restaurants, newsagents and florists.

*Note: where the healthcare worker is self-employed, the person is considered to be their own employer and a healthcare operator for the purpose of complying with these Directions. For example, if care is being provided by a healthcare worker in someone's home, the operator is the healthcare worker who attends the home.*

### *Education facilities*

- (4) For the purposes of these directions:
  - (a) **childcare or early childhood service** means onsite early childhood education and care services or children's services provided under the:
    - (i) **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
    - (ii) **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;
  - (b) **education facility** means:
    - (i) a **childcare or early childhood service**, and includes outside school hours care services;
    - (ii) a **school** means a registered school as defined in the **Education and Training Reform Act 2006**; and
    - (iii) **school boarding premises**;
  - (c) **education operator** means a person who owns, controls or operates an **education facility**, whether public, private or denominational;
  - (d) **education worker** means:
    - (i) any person who is employed by an **education operator** to work in an **education facility** (including teachers, early childhood educators and educational support staff);
    - (ii) a person contracted to work at an **education facility** and who will or may be in close proximity to children, students or staff, whether or not engaged by the **education operator** including casual relief teachers, Breakfast Club suppliers, IT personnel, NDIS providers and auditors, but does not include delivery personnel or contractors);

- (iii) staff of the Department of Education and Training who attend an **education facility** (such as allied health personnel or Authorised Officers);
- (iv) staff of any other entity who attends an **education facility**;
- (v) volunteers that attend an **education facility** and that work in close proximity to children, students or staff (including parent helpers); and
- (vi) students on placements at an **education facility**;
- (e) **school** means a registered school as defined in the **Education and Training Reform Act 2006**; and
- (f) **school boarding premises** means a registered school boarding premises, as defined in the **Education and Training Reform Act 2006**.

## 10 Other definitions

For the purposes of these directions:

- (1) **Authorised Officer** has the same meaning as in the **PHW Act**;
- (2) **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;
- (3) **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;
- (4) **Directions currently in force** has the same meaning as in the **Workplace Directions** as amended or replaced from time to time;
- (5) **emergency situation** means a situation where it is reasonably apparent to the operator of a specified facility 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;
- (6) **medical contraindication** means one of the following contraindications to the administration of a **COVID-19 vaccine**:
  - (a) anaphylaxis after a previous dose;

- (b) anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
  - (c) in relation to AstraZeneca:
    - (i) history of capillary leak syndrome; or
    - (ii) thrombosis with thrombocytopenia occurring after a previous dose;
  - (d) in relation to Comirnaty or Spikevax:
    - (i) myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax; or
  - (e) the occurrence of any other serious adverse event that has
    - (i) 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
    - (ii) been reported to State adverse event programs and/or the Therapeutic Goods Administration;
- (7) **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);
- (8) **PHW Act** means the **Public Health and Wellbeing Act 2008**;
- (9) **PPE** means personal protective equipment;
- (10) **premises** has the same meaning as in the **PHW Act** but does not include a worker's ordinary place of residence;

## 11 Penalties

- (1) 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.*

- (2) 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.



**Professor Benjamin Cowie**

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

1 October 2021

## SCHEDULE 1 — SPECIFIED FACILITIES

Specified facility (Column 1)	Operator (Column 2)	Worker (Column 3)	First dose deadline (Column 4)	Second dose deadline (Column 5)	Relevant date (Column 6)	Facility- specific definitions
<b>residential aged care facility</b>	an <b>approved provider</b> with responsibility for that residential aged care facility	a <b>residential aged care facility worker</b>	1 October 2021	15 November 2021	30 September 2021	Clause 9(1)
<b>construction site</b>	the <b>principal contractor</b> for that construction site	any person (including a volunteer) performing work at a construction site, including: (a) an employee of the operator; and (b) any contractor engaged by the operator or by a third-party.	2 October 2021	13 November 2021	30 September 2021	Clause 9(2)
<b>healthcare facility</b>	a <b>healthcare operator</b>	a <b>healthcare worker</b>	29 October 2021	15 December 2021	15 October 2021	Clause 9(3)
<b>education facility</b>	<b>education operator</b>	<b>education worker</b>	25 October 2021	29 November 2021	18 October 2021	Clause 9(4)