

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

## COVID-19 Mandatory Vaccination (General Workers) Directions

*Public Health and Wellbeing Act 2008 (Vic)*

Section 200

I, Adjunct Clinical Professor Brett Sutton, 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)**:

### 1 Preamble

- (1) The purpose of these directions is to impose obligations upon employers in relation to the vaccination of **general workers**, in order to limit the spread of severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**) within the population of those workers.

### 2 Citation

These directions may be referred to as the **COVID-19 Mandatory Vaccination (General Workers) Directions**.

### 3 Commencement and revocation

- (1) These directions commence at 6:00:00pm on 29 October 2021 and end at 11:59:00pm on 18 November 2021.

### 4 Limits on work outside ordinary place of residence

- (1) If:
  - (a) a person is a general worker; and
  - (b) it is reasonably practicable for the person to work at the person's ordinary place of residence,  
  
an employer of the person must not permit the person to work for that employer outside the person's ordinary place of residence, unless:
    - (c) the employer collects, records and holds **vaccination information** about the person; and
    - (d) the person is:
      - (i) **fully vaccinated**; or
      - (ii) an **excepted person**.

*Note: this obligation does not apply in relation to a person who is a general worker, if it is not reasonably practicable for the person to work at the person's ordinary place of residence.*

- (2) For the purposes of complying with this clause, an employer is authorised to use any information about a worker that it holds under subclause (1)(c).

## 5 Density quotient

- (1) If:
  - (a) an employer of a general worker:
    - (i) permits the worker to work at premises other than the worker's ordinary place of residence; and
    - (ii) is the operator of the premises at which the employer permits the worker to work; and
  - (b) the premises at which the employer permits the worker to work is not:
    - (i) an **open premises**; or
    - (ii) a **specified facility**;

the employer must not permit the number of persons in an **indoor space** or an **outdoor space** at the premises to exceed the **density quotient (2 sq metres)**.

## 6 Key definitions

### *Vaccination status*

- (1) A person's **vaccination status** is one of the following:
  - (a) **fully vaccinated**; or
  - (b) **excepted person**.
- (2) A person is **fully vaccinated** if the person has received two doses of a COVID-19 vaccine.
- (3) A person is an **excepted person** if the person holds **acceptable certification** from a **medical practitioner** that the person is unable to receive a dose, or a further dose, of a COVID-19 vaccine due to:
  - (a) a **medical contraindication**; or
  - (b) an acute medical illness (including where the person has been diagnosed with SARS-CoV-2).
- (4) An **acceptable certification**:
  - (a) for the purpose of subclause (3):
    - (i) for the period ending 6:00:00pm on 12 November 2021 is:
      - (A) a certificate issued by the person's medical practitioner that states that the person is unable to receive a dose, or a further dose, of a COVID-19 vaccine for one or more of the reasons in subclause (3); or

- (B) the Australian Immunisation Register immunisation medical exemption form that:
    - 1. is completed and signed by the person's medical practitioner; and
    - 2. states that the person is unable to receive a dose, or a further dose, of a COVID-19 vaccine for one or more of the reasons in subclause (3); or
  - (ii) for the period commencing 6:00:00pm on 12 November 2021 and ending 11:59:00pm on 18 November 2021, an Australian Immunisation Register immunisation medical exemption form that:
    - (A) is completed and signed by the person's medical practitioner; and
    - (B) states that the person is unable to receive a dose, or a further dose, of a COVID-19 vaccine for one or more of the reasons in subclause (3).
- (5) An acceptable certification for the purpose of subclause (3) is effective until the earlier of:
- (a) the date specified by the medical practitioner; or
  - (b) the date 6 months from the date the certification was given by the medical practitioner.

#### *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. For overseas travellers, it may be recorded in an Australian International COVID-19 Vaccination Certificate or vaccination certificates issued by an overseas government authority.*

#### *Employers and workers*

- (7) For the purpose of these directions:
- (a) **employer** in relation to a **general worker** means:
    - (i) the person who employs or engages the worker; or
    - (ii) if the worker is self-employed—the worker;
  - (b) **general worker** means a person who does work, but does not include:
    - (i) a person under 12 years of age;
    - (ii) a person who is a **worker** within the meaning of the **COVID-19 Mandatory Vaccination (Workers) Directions**;

- (iii) a person who is a **worker** in relation to a **specified facility** within the meaning of the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions**;
- (iv) a person who is a **worker** within the meaning of the **Open Premises Directions**;
- (v) a **Commonwealth employee**;
- (vi) a **judge** or **judicial registrar**;
- (vii) a person who works in connection with proceedings in a **court**, where that work cannot be done from the person's ordinary place of residence;
- (viii) a person who is a member of the staff of Court Services Victoria within the meaning of the **Court Services Victoria Act 2014**;
- (ix) a person employed or engaged by the Chief Executive Officer of the Victorian Civil and Administrative Tribunal;
- (x) a member of State Parliament;
- (xi) the Clerk of the Legislative Assembly;
- (xii) the Clerk of the Legislative Council;
- (xiii) an electorate officer within the meaning of the **Parliamentary Administration Act 2004**;
- (xiv) a parliamentary officer within the meaning of the **Parliamentary Administration Act 2004**;
- (xv) a person who works at or in connection with a **place of worship** and:
  - (A) conducts services of public worship and acknowledgments of faith;
  - (B) performs marriages, funerals and special memorial services according to tradition and ecclesiastical and civil law;
  - (C) visits members of the community in their homes, hospitals and other institutions to provide advice and religious comfort for the purpose of end of life faith reasons;
- (xvi) a person identified in Article 1 of the Vienna Convention on Diplomatic Relations, as set out in the Schedule to the **Diplomatic Privileges and Immunities Act 1967** of the Commonwealth;
- (xvii) a person identified in Article 1 of the Vienna Convention on Consular Relations, as set out in the Schedule to the **Consular Privileges and Immunities Act 1972** of the Commonwealth;
- (xviii) the Governor and the Lieutenant Governor.

## 7 Other definitions

For the purposes of these directions:

- (1) **Authorised Officer** has the same meaning as in the **PHW Act**;

- (2) **Commonwealth employee** has the same meaning as in the **Sex Discrimination Act 1984** of the Commonwealth;
- (3) **court** means:
  - (a) the Supreme Court;
  - (b) the County Court;
  - (c) the Magistrates' Court;
  - (d) the Children's Court;
  - (e) any Federal Court;
- (4) **COVID-19 Mandatory Vaccination (Specified Facilities) Directions** means the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 11)** as amended or replaced from time to time;
- (5) **COVID-19 Mandatory Vaccination (Workers) Directions** means the **COVID-19 Mandatory Vaccination (Workers) Directions (No 6)** as amended or replaced from time to time;
- (6) **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;
- (7) **density quotient (2 sq metres)** in relation to an **indoor space** or an **outdoor space** is the number calculated by dividing the total area of the space (measured in square metres) by 2, rounded down to the nearest whole number;
- (8) **indoor space** means an area, room or premises that is or are substantially enclosed by a roof and walls that are permanent structures rising either from floor to ceiling or are at least 2.1 metres high, regardless of whether the roof or walls or any part of them are open or closed;
- (9) **judge** has the same meaning as **judicial officer** in the **Judicial Entitlements Act 2015**, but does not include the Deputy State Coroner or a reserve coroner;
- (10) **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;
  - (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;
- (11) **medical practitioner** means:
- (a) a general practice registrar on an approved 3GA training placement; or
  - (b) a public health physician; or
  - (c) an infectious disease physician; or
  - (d) a clinical immunologist; or
  - (e) a general practitioner who is vocationally registered; or
  - (f) a general practitioner who is a fellow of the Royal Australian College of General Practitioners (RACGP); or
  - (g) a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine (ACRRM); or
  - (h) a paediatrician; or
  - (i) a medical practitioner who is a fellow of the Royal Australasian College of Physicians;
- (12) **open premises** has the same meaning as in the **Open Premises Directions**;
- (13) **Open Premises Directions** means the **Open Premises Directions (No 3)** as amended or replaced from time to time;
- (14) **outdoor space** means a space that is not an **indoor space**;
- (15) **PHW Act** means the **Public Health and Wellbeing Act 2008**;
- (16) **premises** has the same meaning as in the **PHW Act** but does not include a worker's ordinary place of residence;
- (17) **specified facility** has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions**.

## 8 Disclosure to Authorised Officers

- (1) An **Authorised Officer** may request an employer to produce to the Authorised Officer any vaccination information held by the employer 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.*

## 9 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.



**Adjunct Clinical Professor Brett Sutton**

Chief Health Officer, as authorised to exercise emergency powers under sections 20A and 199(2)(a) of the PHW Act.

29 October 2021