

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

Care Facilities Directions (No 49)

Public Health and Wellbeing Act 2008 (Vic)

Section 200

I, Adjunct Clinical Professor Brett Sutton, 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 sections 200(1)(b) and (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 restricted access to care facilities in order to limit the spread of severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**) within a particularly vulnerable population, balancing the need to limit the spread of SARS-CoV-2 against the broader responsibilities of care facilities to the physical, emotional and psychological wellbeing of their clients.
- (2) These directions replace the **Care Facilities Directions (No 48)**.

2 Citation

- (1) These directions may be referred to as the **Care Facilities Directions (No 49)**.
- (2) A reference in any other direction to the **Care Facilities Directions (No 48)** is taken to be a reference to these directions.

3 Revocation

The **Care Facilities Directions (No 48)** are revoked at 6:00:00pm on 5 November 2021.

4 Commencement

The **Care Facilities Directions (No 49)** commence at 6:00:00pm on 5 November 2021 and end at 11:59:00pm on 18 November 2021.

5 Definition of care facility

A **care facility** is a facility in Victoria that is:

- (1) an **alcohol and drug residential service**;
- (2) a **homelessness residential service**;
- (3) a **residential aged care facility**;
- (4) a **disability residential service**;

- (5) an **eligible SDA enrolled dwelling**;
- (6) a **secure welfare service**;
- (7) a **short-term accommodation and assistance dwelling**;
- (8) a **supported residential service**;
- (9) the **Thomas Embling Hospital**.

6 Prohibition on entry

- (1) A person must not enter, or remain on, the premises of a care facility between (and including) 6:00:00pm on 5 November 2021 and 11:59:00pm on 18 November 2021 unless:
 - (a) the person is a **resident** of the facility; or
 - (b) the person is a **worker** in relation to the facility, as defined in clause 7; or
 - (c) the person is a visitor of a resident of the facility; or
 - (d) the person is visiting as a prospective resident of the facility.

Excluded persons

- (2) Despite subclause (1), a person who is a worker in relation to the care facility or a visitor of a resident of the care facility or a prospective resident of the care facility, must not enter, or remain on, the premises of the facility between (and including) 6:00:00pm on 5 November 2021 and 11:59:00pm on 18 November 2021 if:
 - (a) the person is required to self-isolate under the **Diagnosed Persons and Close Contacts Directions**; or
 - (b) the person is required to self-quarantine under the **Diagnosed Persons and Close Contacts Directions**; or
 - (c) the person had known contact with a **confirmed case** (except in the course of their employment while wearing the appropriate level of personal protective equipment in the circumstances) in the:
 - (i) 7 days immediately preceding entry if the person is **fully vaccinated** and is not a **household close contact**; or
 - (ii) 14 days immediately preceding entry if the person is not fully vaccinated or is a household close contact; or

*Note: a person who has had known contact with a person who has been diagnosed with SARS-CoV-2 may also be required to self-quarantine under the **Diagnosed Persons and Close Contacts Directions**.*

- (d) the person has **SARS-CoV-2 Symptoms**; or

Note: for the purposes of these directions, SARS-CoV-2 Symptoms, including but not limited to acute respiratory infection (such as cough, shortness of breath, sore throat), loss of smell, and loss of taste do not include those symptoms where caused by an underlying health condition or medication.

- (e) in the case of a visitor—the person has been tested for SARS-CoV-2, and has not yet received the results of that test.

*Note: subclause (e) does not include a person who is required to be tested for SARS-CoV-2 in accordance with the requirements of the **Surveillance Testing Industry List and Requirements**.*

Certain excluded persons may be permitted to visit a care facility

- (3) Despite subclause (2), a person referred to in subclause (2)(c) may enter, or remain on, the premises of the care facility if:
- (a) the person's presence at the facility is for the purposes of providing **end of life** support to a resident of the care facility; and
 - (b) the person is authorised to enter or remain at the care facility by:
 - (i) an officer of the care facility with the position of Director of the facility or equivalent; and
 - (ii) the Chief Health Officer, or a person authorised by the Chief Health Officer to exercise this power of authorisation.
- (4) A person authorised to enter or remain at the care facility under subclause (3) must comply with any directions or conditions to which that authorisation is subject.
- (5) An officer of a care facility referred to in subclause (3)(b)(i), must keep, in relation to each person to whom they give authorisation under that subclause, a record of:
- (a) the contact details of the person; and
 - (b) the date and time at which that person entered and left the care facility,
- for at least 28 days from the day the authorisation is given.

Restrictions on visitors of residents (end of life support including life-threatening conditions)

- (6) Where a visitor under subclause (1)(c) is visiting for the purposes of providing end of life support to a resident, the **operator of a care facility** in Victoria must not permit more than five visitors of a resident to enter or remain on the premises at any one time in relation to that resident.

Note: the definition of end of life support includes where a patient is at risk of dying from a sudden acute event (life-threatening condition).

Restrictions on visitors of residents (other)

- (7) Where a visitor under subclause (1)(c) is visiting a resident at a care facility, the operator of the care facility in Victoria must not permit:
- (a) more than five visitors of a resident to enter or remain on the premises at any one time in relation to that resident; and
 - (b) more than five visitors of a resident to enter or remain on the premises per day in relation to that resident.

Restrictions on visitors as prospective residents

- (8) In respect of a visitor under subclause (1)(d) who is visiting the facility as a prospective resident of the facility, the operator of the care facility must not permit:
- (a) more than four other persons to accompany the prospective resident to enter or remain on the premises; and
 - (b) more than one visit at the facility for this purpose at any one time.

Note: the care facility may allow multiple visits from prospective residents of the facility over the course of a day, however only one prospective resident and a maximum of four persons accompanying the prospective resident may occur at any one time.

Transitional provision – excluded persons exemption

- (9) An authorisation granted to an excluded person to enter or remain at a care facility under any **Revoked Care Facilities Directions** continues to have effect, until the validity period expires under the authorisation.
- (10) A request for exemption to authorise an excluded person to enter or remain at a care facility made under any Revoked Care Facilities Directions continues to have effect.

7 Definition of worker

- (1) A person is a worker in relation to a care facility if:
- (a) the person is the operator of a care facility or an **employee or contractor** in relation to the care facility; or
 - (b) the person is a student under the supervision of an employee or contractor in relation to the care facility; or
 - (c) the person's presence at the premises of the care facility is for the purposes of providing goods or services that are necessary for the effective operation of the care facility, whether the goods or services are provided for consideration or on a voluntary basis; or
 - (d) the person's presence at the premises of the care facility is for the purposes of providing any of the following goods or services to a resident of the care facility, whether the goods or services are provided for consideration or on a voluntary basis:
 - (i) health, medical, or pharmaceutical goods or services; or
 - (ii) behavioural support services; or
 - (iii) functional and well-being support services; or
 - (iv) other support services; or
 - (e) in the case of a disability residential service or an eligible SDA enrolled dwelling—the person's presence at the premises of the facility is for the purposes of providing treatment under a **treatment plan** to a resident of the facility, whether the treatment is provided for consideration or on a voluntary basis; or

- (f) in the case of a secure welfare service—the person's presence at the premises of the facility is for the purposes of providing educational services to a resident of the facility, whether the goods or services are provided for consideration or on a voluntary basis; or
- (g) the person's presence at the premises of the care facility is authorised or required for the purposes of emergency management, law enforcement, or the performance of a duty, function or power under a law.

Note: this includes advocates with a legislated role such as the National Aged Care Advocacy Program and the Community Visitors Scheme.

8 Operator obligations

Operator to take all reasonable steps

- (1) The operator of a care facility in Victoria must take all reasonable steps to ensure that:
 - (a) a person does not enter or remain on the premises of the care facility if the person is prohibited from doing so by clause 6; and
 - (b) the care facility facilitates telephone, video or other means of electronic communication with the parents, guardians, partners, carers, support persons and family members of residents to support the physical, emotional and social wellbeing (including mental health) of residents.

Visitor declarations

- (2) The operator of a care facility in Victoria must require visitors in relation to the care facility to declare in writing at the start of each visit, but before entering any area of the care facility that is freely accessible to residents, whether the visitor:
 - (a) is free of SARS-CoV-2 Symptoms; and
 - Note: for the purposes of these directions, SARS-CoV-2 Symptoms, including but not limited to acute respiratory infection (such as cough, shortness of breath, sore throat), loss of smell, and loss of taste do not include those symptoms where caused by an underlying health condition or medication.*
 - (b) has been in contact with a confirmed case (except in the course of their employment while wearing the appropriate level of personal protective equipment in the circumstances) in the:
 - (i) preceding 7 days if the person is fully vaccinated and is not a household close contact; or
 - (ii) preceding 14 days if the person is not fully vaccinated or is a household close contact; and
 - (c) is currently required to self-isolate or self-quarantine in accordance with the **Diagnosed Persons and Close Contacts Directions**.

*Note: operators of care facilities are subject to additional obligations under the **Workplace (Additional Industry Obligations) Directions**.*

- (3) Where a visitor of a resident of a care facility is aged under 18 years, a parent or guardian of the visitor may make the declaration required of the visitor by the operator of a care facility under subclause (2) on the visitor's behalf.

9 Relationship with other Directions

- (1) Where the premises of a care facility are located within the premises of a hospital subject to the **Hospital Visitor Directions**, these directions apply, to the exclusion of the **Hospital Visitor Directions**, in relation to the premises of the care facility and to matters that relate to the care facility.
- (2) These directions operate alongside, and are not intended to derogate from, obligations imposed on operators of care facilities under the **Workplace Directions** and **Workplace (Additional Industry Obligations) Directions**.

10 Definitions

For the purposes of these directions:

- (1) **alcohol and drug residential service** means any of the following:
 - (a) a treatment centre within the meaning of the **Severe Substance Dependence Treatment Act 2010**;
 - (b) a residential treatment service (however described) that provides drug or alcohol withdrawal or rehabilitation services in a residential setting to people dependent on alcohol or other drugs;
 - (c) a service that provides supported accommodation to a person after the person has received residential treatment services of the kind referred to in subclause (b);
- (2) **care facility** has the meaning in clause 5;
- (3) **confirmed case** means a person who has been diagnosed with **SARS-CoV-2** and includes the period of time prior to the diagnosis during which the confirmed case is considered infectious;

*Note: the period during which a person is considered infectious is generally considered to be 48 hours prior to the onset of **SARS-CoV-2 Symptoms**, however, alternative infectious periods may be determined at the discretion of an officer or nominated representative of the Department (for instance, in high-risk settings or if the confirmed case is asymptomatic).*
- (4) **Diagnosed Persons and Close Contacts Directions** means the **Diagnosed Persons and Close Contacts Directions (No 32)** as amended or replaced from time to time;
- (5) **disability residential service** means a residential service within the meaning of the **Disability Act 2006** and to avoid doubt, includes the facility called the Intensive Residential Treatment Program of the Statewide Forensic Service;

Note: the Intensive Residential Treatment Program of the Statewide Forensic Service is often referred to as "DFATS".

- (6) **eligible SDA enrolled dwelling** means a Specialist Disability Accommodation (SDA) enrolled dwelling that is provided under an SDA residency agreement within the meaning of section 498B of the **Residential Tenancies Act 1997**;
- (7) **employee or contractor** in relation to a **care facility**, means a person employed or engaged as a contractor by the operator of a care facility, and includes a person who **provides labour hire services** to the operator of a care facility;
- (8) **end of life**, in relation to a **resident**:
- (a) means a situation where the resident's death is expected within days (including periods of 28 days or less), or where the resident, with or without existing conditions, is at risk of dying from a sudden acute event; and
 - (b) does not mean a situation where a resident has an advanced, progressive, incurable condition, or general frailty and co-existing conditions, that mean that the resident is expected to die within 12 months (except where the situation also falls within subclause (a));
- (9) **flexible care subsidy** has the same meaning as in the **Aged Care Act 1997** of the Commonwealth;
- (10) **fully vaccinated** has the same meaning as in the **Open Premises Directions**;
- (11) **homelessness residential service** means a service that is funded by government to provide a staffed residential service to people who are homeless or at risk of being homeless;
- (12) **Hospital Visitor Directions** means the **Hospital Visitor Directions (No 39)** as amended or replaced from time to time;
- (13) **household close contact** has the same meaning as in the **Diagnosed Persons and Close Contacts Directions**;
- (14) **nominated person** in relation to a **resident** has the same meaning as in the **Mental Health Act 2014**;
- (15) **Open Premises Directions** means the **Open Premises Directions (No 4)** as amended or replaced from time to time;
- (16) **operator of a care facility** means:
- (a) for an **alcohol and drug treatment facility**—the operator of the facility;
 - (b) for a **homelessness residential service**—the entity that receives government funding to provide the service;
 - (c) for a **residential aged care facility**—the operator of the facility;
 - (d) for a **disability residential service**—the **disability service provider** that operates the service;
 - (e) for an **eligible SDA enrolled dwelling**—the disability service provider or the **registered NDIS provider** that operates the service;
 - (f) for a **short-term accommodation and assistance dwelling**—the **registered NDIS provider** or the disability service provider that operates the service;

- (g) for a **secure welfare service**—the Secretary to the Department of Families, Fairness and Housing;
 - (h) for a **supported residential service**—the **proprietor** of the supported residential service;
 - (i) for the **Thomas Embling Hospital**—the **Victorian Institute of Forensic Mental Health**;
- (17) **proprietor** of a **supported residential service** has the same meaning as in the **Supported Residential Services (Private Proprietors) Act 2010**;
 - (18) **provides labour hire services** has the same meaning as in the **Labour Hire Licensing Act 2018**;
 - (19) **registered NDIS provider** has the same meaning as in the **National Disability Insurance Scheme Act 2013** of the Commonwealth;
 - (20) **resident** of a **care facility** includes a patient of the care facility;
 - (21) **residential aged care facility** means 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 care subsidy** has the same meaning as in the **Aged Care Act 1997** of the Commonwealth;
 - (23) **Revoked Care Facilities Directions** means any of the previous Care Facilities Directions, as amended or replaced from time to time, which are no longer in force;
 - (24) **SARS-CoV-2 Symptoms** means symptoms consistent with **SARS-CoV-2**, including but not limited to the following:
 - (a) a fever ($\geq 37.5^{\circ}\text{C}$) or consistent fever of less than 37.5°C (such as night sweats or chills);
 - (b) acute respiratory infection (such as cough, shortness of breath, sore throat);
 - (c) loss of smell;
 - (d) loss of taste;
 - (25) **secure welfare service** has the same meaning as in the **Children, Youth and Families Act 2005**;
 - (26) **supported residential service** has the same meaning as in the **Supported Residential Services (Private Proprietors) Act 2010**;
 - (27) **Surveillance Testing Industry List and Requirements** has the same meaning as in the **Workplace (Additional Industry Obligations) Directions**;
 - (28) the following expressions have the same meaning as they have in the **Disability Act 2006**:
 - (a) **disability service provider**;
 - (b) **SDA enrolled dwelling**;

- (c) **SDA provider;**
- (d) **short-term accommodation and assistance dwelling;**
- (e) **treatment plan;**
- (29) **Thomas Embling Hospital** means the hospital of that name operated by the **Victorian Institute of Forensic Mental Health;**
- (30) **Victorian Border Crossing Permit Directions** means the **Victorian Border Crossing Permit Directions (No 37)** as amended or replaced from time to time;
- (31) **Victorian Institute of Forensic Mental Health** has the same meaning as in the **Mental Health Act 2014;**
- (32) **worker** has the meaning in clause 7(1);
- (33) **Workplace (Additional Industry Obligations) Directions** means the **Workplace (Additional Industry Obligations) Directions (No 55)** as amended or replaced from time to time;
- (34) **Workplace Directions** means the **Workplace Directions (No 54)** as amended or replaced from time to time.

11 Penalties

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 and the age of the person.



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.

5 November 2021