

Guidance for the Pandemic (Detention) Order 2021 (No. 1)

This Order specifies circumstances and conditions in which a person is to be detained in Victoria to limit the transmission of COVID-19 and the period of, and requirements for, that detention.

To limit the risk of transmission of COVID-19, by requiring persons of risk to be detained for specified periods of time, this Order:

- (1) imposes obligations on specified classes of international arrivals; and
- (2) imposes an initial period of detention as set out in Schedule 2; and
- (3) if the detained person is awaiting the result of their latest COVID-19 test at the end of the initial period of detention, provides for an extension of the period of detention until the end of a further period of 14 days or until the date on which the result is communicated to the person, whichever is earlier.

An authorised officer is required to review a person's detention regularly under section 165BG of the **Public Health and Wellbeing Act 2008** to determine if the person's continued detention is reasonably necessary to eliminate or reduce a serious risk to public health.

A detained person must not leave the person's place of detention unless:

- (1) the person has been granted permission by an authorised officer for the purpose of obtaining medical care, or getting a COVID-19 test, or to reduce a serious risk to the person's mental health, or to visit a patient in hospital if permitted to do so, or to leave Victoria; or
- (2) there is an emergency situation; or
- (3) the person is required to by law.

A person must not enter a place of detention of another person unless that person is lawfully authorised to enter that place for a specific reason (for example, providing food or medical care) or is detained in the same place of detention for the same, or substantially the same, period of time, or ordinarily resides with the detained person at the place of detention.

The Chief Health Officer, the Deputy Chief Health officer or an authorised officer may grant an exemption to a person of risk from the requirements of this Order, if satisfied that the exemption is appropriate by having regard to the need to protect the public and the principles of the Order.

Failure to comply with this Order may result in penalties.

This guidance does not form part of the Pandemic (Detention) Order 2021 (No. 1) and is for explanatory purposes only.

Pandemic (Detention) Order 2021 (No. 1)

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Pandemic (Detention) Order 2021 (No. 1)

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 and that any period of detention specified in this Order is reasonably necessary to eliminate or reduce a serious risk to public health arising from COVID-19.

Part 1 – Preliminary

1. Objective

The objective of this Order is to limit the transmission of COVID-19 by requiring persons of risk to be detained in accordance with this Order for the periods specified in this Order.

2. Citation

This Order may be referred to as the **Pandemic (Detention) Order 2021 (No. 1)**.

3. Authorising provisions

This Order is made under section 165AI of the **Public Health and Wellbeing Act 2008**.

4. Commencement

This Order commences at 11:59:00pm on 15 December 2021 and ends at 11:59:00pm on 12 January 2022.

5. Definitions

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

6. Application of this Order

This Order applies to the whole State of Victoria.

Part 2 – Requirements of detention

7. Requirement for detention

(1) A person is required to be detained in accordance with this Order if the person is:

(a) a person of risk; and

- (b) in Victoria.
- (2) This Order does not apply to a person who is a diplomat or consular official.
- (3) Subclause 7(1) does not require the detention of a person if that person:
 - (a) has been initially detained under a requirement of this Order; and
 - (b) has been released from detention pursuant to a provision of the **Public Health and Wellbeing Act 2008**; and
 - (c) the person is a person of risk only because of the same circumstances for which the person was initially detained.

8. Who is a person of risk?

For the purposes of this Order, a person of risk is:

- (4) a person who:
 - (a) has entered Victoria; and
 - (b) has been in another country in the 14 days prior to arrival in Victoria; and
 - (c) is not an international transit passenger; and
 - (d) is not an international aircrew services worker; and
 - (e) is not eligible to enter Victoria under the Victorian Border Crossing Order; and
- (5) a person who:
 - (a) is an international aircrew services worker; and
 - (b) has entered Victoria; and
 - (c) has been in another country in the 14 days prior to arrival in Victoria; and
 - (d) is not eligible to enter Victoria under the Victorian Border Crossing Order.

9. Place of detention

- (1) Subject to this Order, a person of risk is required to be detained at a place of detention specified by the authorised officer who detains the person.

- (2) Despite subclause (1), a person of risk may be transported to be detained at another place of detention specified by an authorised officer and notified to the person.

10. Period of detention

Subject to this Order and the **Public Health and Wellbeing Act 2008**, the detention of a person under this Order must be for the relevant period set out in Schedule 2 (the initial period of detention).

*Note 1: Section 165BD(a) and (b) of the **Public Health and Wellbeing Act 2008** provide that detention of a person commences on the first of the following to occur:*

- (a) *the time when the person is first at a place where the person is to be detained after the exercise of the pandemic management power, whether or not the person is to remain at that place throughout the period of detention, or is to be transported to another place;*
- (b) *the time when the person is first taken into the physical custody of an authorised officer in the exercise of the pandemic management power or into the physical custody of a person assisting an authorised officer.*

*Note 2: A person's period of detention will only continue for the whole of the initial period of detention, or the whole of any extension of the initial period of detention (provided for by clause 12) if an authorised officer, after conducting a review of the person's detention under section 165BG(2) of the **Public Health and Wellbeing Act 2008**, determines that the continued detention of the person is reasonably necessary to eliminate or reduce a serious risk to public health.*

11. Request for testing

A detained person may be requested to be tested for COVID-19 on the days specified by an authorised officer and notified to the person.

12. Extension of period of detention

- (1) If a detained person has been tested for COVID-19 during the initial period of detention and is awaiting the result of the latest test at the end of the initial period of detention, the person is required to continue to be detained until the end of a further period of 14 days or the date on which the result is communicated to the person, whichever is earlier.
- (2) An authorised officer must give a detained person notice in writing of their continued detention and the extended period of detention under subclause 12(1).

Note 1: If a person refuses to take a test for COVID-19 during the initial period of detention when requested to do so and it is considered necessary to require a further period of detention, this will be done by the exercise of a pandemic management general power under section 165BA(1)(b) of the Act.

Note 2: If a detained person becomes a diagnosed person or close contact during the initial period of detention, or the extension of that period under clause 12, and it is considered necessary to require a

further period of detention, this will be done by the exercise of a pandemic management general power under section 165BA(1)(b) of the Act.

13. Transport to detention

- (1) If a person of risk is not at the person's specified place of detention when they are detained, or that person must be moved to another specified place of detention or that person is moved to another specified place of detention, the person must proceed immediately and directly to the vehicle specified by the authorised officer and travel immediately and directly to the specified place of detention.
- (2) If a person of risk is not at the person's specified place of detention when they are detained, the person must comply with this Order and any other directions or requirements given to them by the authorised officer while proceeding to the vehicle and travelling to the specified place of detention.

14. Leaving detention

- (1) A detained person must not leave the person's place of detention in any circumstances, unless:
 - (a) the person has been granted permission to do so by an authorised officer:
 - (i) for the purpose of obtaining medical care; or
 - (ii) for the purpose of getting tested for COVID-19; or
 - (iii) if it is reasonably necessary to reduce a serious risk to the person's mental health; or
 - (iv) for the purpose of visiting a patient in hospital if permitted to do so under the Visitors to Hospitals and Care Facilities Order; or
 - (v) for the purpose of leaving Victoria; or
 - (b) there is an emergency situation; or
 - (c) the person is required to do so by law.
- (2) If a detained person leaves the person's place of detention in accordance with subclause (1), the person must comply with:
 - (a) any Orders currently in force applying to the person; and
 - (b) any other instructions given to the person by an authorised officer, including instructions to:
 - (i) wear personal protective equipment; and

- (ii) as much as possible, refrain from touching communal surfaces such as handrails, elevator buttons, door handles, furniture and fittings.

15. Permitting a person to enter the specified place of detention

- (1) A detained person must not permit any other person to enter their specified place of detention, unless:
 - (a) the other person is lawfully authorised to enter that place for a specific purpose (for example, providing food or for medical reasons); or
 - (b) the other person is detained at the same place of detention and for the same, or substantially the same, period of detention; or
 - (c) the other person ordinarily resides with the person at the place of detention.
- (2) A detained person is permitted to move around, meet or gather at their specified place of detention with any person referred to in subclause 15(1)(b) or (1)(c).
- (3) A detained person is not permitted to move around, meet or gather at their specified place of detention with any person other than a person referred to in subclause 15(2) unless:
 - (a) the detained person has been granted written permission to do so by an authorised officer:
 - (i) for the purpose of obtaining medical care; or
 - (ii) for the purpose of getting tested for COVID-19; or
 - (iii) if it is reasonably necessary to reduce a serious risk to the detained person's mental health; or
 - (b) there is an emergency situation; or
 - (c) the detained person is required to do so by law.
- (4) A detained person is permitted to communicate with people who are not staying at the specified place of detention, either by phone or other electronic means.

Note: An authorised officer must facilitate any reasonable request for communication made by a detained person.
- (5) A support person who agrees to submit to the same conditions of detention as a detained person may stay with a detained person who:
 - (a) is under 18 years of age - if the support person is the detained person's parent or guardian; or

- (b) has a disability or medical condition that requires support or treatment - if the support person is the detained person's parent, guardian or carer.

Note: If the support person agrees to submit to the same conditions of detention as a detained person, an authorised officer may serve a separate detention notice under section 165BA(1)(b) of the Act on the other person that sets out the conditions and period of detention for that person.

Part 3 – General provisions

16. Exemption from detention

- (1) A person is not required to comply with a requirement of this Order if the person is granted an exemption from that requirement under subclause (2).
- (2) The Chief Health Officer, a Deputy Chief Health Officer or any authorised officer, may exempt a person of risk from any or all requirements in this Order, if satisfied that an exemption is appropriate, having regard to:
 - (a) the need to protect public health; and
 - (b) the principles in sections 5 to 10 of the Act, as appropriate.
- (3) An exemption under subclause (2) must:
 - (a) be given, in writing, to the person to whom the exemption applies; and
 - (b) specify the requirement or requirements that the person need not comply with.
- (4) An exemption granted to a person under this clause does not prevent an authorised officer from exercising a pandemic management power to give the person a different direction or impose a different requirement on the person.

17. Designation of places of detention

The Minister of Police may by notice published in the Government Gazette designate a hotel or other facility or class of facility or any part of a hotel or other facility as a place of detention for the purposes of this Order.

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.

Part 4 – Penalties

19. 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:

authorised officer has the same meaning as in the **Public Health and Wellbeing Act 2008**;

close contact has the same meaning as in the Quarantine, Isolation and Testing Order;

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

detained person means a person of risk detained in accordance with this Order;

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

diplomat or consular official means:

- (a) 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; and
- (b) 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;

disability has the same meaning as in the **Disability Service Safeguards Act 2018**;

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

initial period of detention has the meaning given in clause 10;

international aircrew services worker has the same meaning as in the Victorian Border Crossing Order;

international transit passenger means a person who has entered Victoria from overseas and who is scheduled to depart Victoria on an outbound international flight (excluding any onwards domestic travel via a connecting flight) within eight hours of their time of entering Victoria, and who is required to remain at the airport for the duration of that transit period;

Movement and Gathering Order means the Pandemic (Movement and Gathering) Order 2021 (No. 1) as amended or replaced from time to time;

Orders currently in force has the same meaning as in the Movement and Gathering Order;

person of risk has the meaning given in clause 8;

place of detention means:

- (a) a hotel or other facility or part of a hotel or other facility designated under clause 17; or

- (b) a place determined by an authorised officer to be a place of detention, in a particular case;

Quarantine, Isolation and Testing Order means the Pandemic (Quarantine, Isolation and Testing) Order 2021 (No.1) as amended or replaced from time to time;

support includes disability and medical support, and support for emotional and psychological wellbeing;

support person means a person supporting another person and includes

- (a) the parent or guardian of a person under 18 years of age; and
- (b) the parent, guardian or carer of a person with a disability or medical condition that requires support or medical treatment;

this Order means the Pandemic (Detention) Order 2021 (No.1);

Victorian Border Crossing Order means the Pandemic (Victorian Border Crossing) Order 2021 (No.1) as amended or replaced from time to time;

Visitors to Hospitals and Care Facilities Order means the Pandemic (Visitors to Hospitals and Care Facilities) Order 2021 (No. 1) as amended or replaced from time to time.

Schedule 2 – Initial period of detention

Person of risk	Initial period of detention
Person of risk specified in clause 8(4)	14 days from the date detention commences
Person of risk specified in clause 8(5)	14 days from the date detention commences



Martin Foley MP, Minister for Health

15 December 2021