

Minister for Health

Statement of Reasons

Pandemic Orders made on 22 April 2022

On 22 April 2022, I Martin Foley, Minister for Health, made the following pandemic orders under section 165A1 of the *Public Health and Wellbeing Act 2008*:

Pandemic (Public Safety) Order 2022
Pandemic (Quarantine, Isolation and Testing) Order 2022 (No.8)
Pandemic (Workplace) Order 2022 (No. 8)

In this document, I provide a statement of my reasons for the making of the above pandemic orders. My statement of reasons for making the pandemic orders consists of the general reasons below and the additional reasons set out in the applicable schedule for the order.

Contents

- Pandemic Orders made on 22 April 2022 1**
- About the pandemic orders 3**
 - Statutory power to make pandemic orders..... 3**
 - Guiding principles 4**
 - Principle of evidence-based decision-making 4
 - Precautionary principle 4
 - Principle of primacy of prevention..... 4
 - Principle of accountability 4
 - Principle of proportionality 5
 - Principle of collaboration..... 5
 - Part 8A objectives..... 6
- Human Rights 6**
- Overview of public health advice..... 7**
- Current context..... 7**
 - Immediate situation: Continued management of the COVID-19 Pandemic 8**
 - The current global situation 9**
- Reasons for decision to make pandemic orders 8**
 - Overview.....10**
 - Risks of no action taken.....17**
 - Schedules17**

About the pandemic orders

- 1 The pandemic orders were made under section 165AI of the Public Health and Wellbeing Act 2008 (PHW Act).

Statutory power to make pandemic orders

- 2 Under section 165AI of the PHW Act, I may, at any time on or after the making of a pandemic declaration by the Premier under s 165AB (or extended under s 165AE(1)), make any order that I believe is reasonably necessary to protect public health. The Premier made the initial pandemic declaration on 9 December 2021, extended the pandemic declaration from 12 January 2022 and again on 6 April 2022, on the basis that he was satisfied on reasonable grounds that there is a serious risk to public health throughout Victoria arising from the coronavirus (COVID-19) pandemic disease.
- 3 Pursuant to section 165AL(1), before making a pandemic order, I must request the advice of the Chief Health Officer in relation to the serious risk to public health posed by the disease specified in the pandemic declaration, and the public health measures that the Chief Health Officer considers are necessary or appropriate to address this risk.
- 4 On 7 April 2022, I received advice from the Acting Chief Health Officer. That advice is supplemented by:
 - 4.1 Verbal advice the Chief Health Officer provided on 19 April 2022.
- 5 I have also reviewed the epidemiological data available to me on 21 April 2022 to affirm my positions on the orders made to commence on 22 April 2022.
- 6 Under s 165AL(2), in making a pandemic order, I must have regard to the advice of the Chief Health Officer and may have regard to any other matter that I consider relevant including, but not limited to, social and economic matters. I may also consult any other person that I consider appropriate before making a pandemic order.
- 7 I note in particular the recommendation of the Australian Health Protection Principal Committee (AHPPC) on 31 March 2022, to maintain some public health measures to reduce the risk of transmission as the appropriate time for any changes should be in the weeks following the anticipated peak of the current BA.2 variant of concern surge. Making changes at this time to Orders is appropriate given the current plateau of cases.¹
- 8 On the basis of the material provided to me by the Department of Health and the advice of the Chief Health Officer and Acting Chief Health Officer, I am satisfied that the proposed pandemic orders are reasonably necessary to protect public health. I consider that the limitations on human rights that will be imposed by the proposed pandemic orders are reasonable and justified in a free and

¹ Department of Health, Australian Government, AHPPC Statement on winter season preparedness, 31 March 2022.

democratic society based on human dignity, equality and freedom. I therefore make these pandemic orders under s 165AI of the PHW Act.

Guiding principles

- 9 I have made this decision informed by the guiding principles in sections 5 to 10 of the PHW Act. I note that the Chief Health Officer and Acting Chief Health Officer also had regard to those principles when providing their advice.

Principle of evidence-based decision-making

- 10 This principle is that decisions as to the most effective and efficient public health and wellbeing interventions should be based on evidence available in the circumstances that is relevant and reliable.²
- 11 My decision to make the pandemic orders has been informed by the expert advice of the Chief Health Officer and Acting Chief Health Officer about the serious risk to public health posed by COVID-19 and the public health measures that the Chief Health Officer and Acting Chief Health Officer considers are necessary or appropriate to address this risk.

Precautionary principle

- 12 This principle is that if a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.
- 13 COVID-19 is a serious risk to public health, and it would not be appropriate to defer action on the basis that complete information is not yet available. In such circumstances, as the PHW Act sets out, a lack of full scientific certainty is not a reason for postponing measures to prevent or control the public health risks associated with COVID-19.

Principle of primacy of prevention

- 14 This principle is that the prevention of disease, illness, injury, disability or premature death is preferable to remedial measures.
- 15 Despite high vaccination coverage across Victoria, many situations involve a higher level of risk. Given the continuing risk of increasing case numbers and outbreaks, particularly with a highly mobile population compared to lockdown periods, it is appropriate that the Victorian Government takes a conservative and cautious approach to manage risk in a targeted and efficient manner. This approach is supported by the principle of primacy of prevention in the PHW Act.

Principle of accountability

- 16 This principle is that persons who are engaged in the administration of this Act should as far as is practicable ensure that decisions are transparent, systematic and appropriate.

² Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 20.

- 17 Consistent with this principle, members of the public should be given access to reliable information in appropriate forms to facilitate a good understanding of public health issues, as well as opportunities to participate in policy and program development.
- 18 To promote accountability in the making of pandemic orders, the PHW Act requires that a copy or written record of the Chief Health Officer's advice, a statement of reasons, and a human rights statement (Human Rights Statement) are published in the case of the making, variation or extension of an order.
- 19 All the reasons I have made these orders and the advice that has informed those decisions, as well as the expert assessments of the potential human rights impacts of my decisions, have been published according to this principle.

Principle of proportionality

- 20 The principle is that decisions made, and actions taken in the administration of the PHW Act should be proportionate to the risk sought to be prevented, minimised or controlled, and should not be made or taken in an arbitrary manner.
- 21 In deciding to make a pandemic order, I am required to be satisfied that the order is 'reasonably necessary' to protect public health, which requires consideration of the proportionality of those measures to the risk to public health.

Principle of collaboration

- 22 The principle of collaboration is that public health and wellbeing, in Victoria and at a national and international level, can be enhanced through collaboration between all levels of Government and industry, business, communities and individuals.
- 23 Throughout the pandemic, there has been ongoing consultation between the Deputy Chief Health Officers and the Chief Health Officers of the States and Territories, including through the Australian Health Protection Principal Committee.
- 24 On my behalf, the Department of Health has engaged broadly across the Victorian Government to verify appropriate public health measures into the future. This is a continuing process to ensure public health measures continue to protect all Victorians.
- 25 It has been important throughout the pandemic for states and territories to cooperate wherever possible in the alignment of public health measures to ensure national consistency where appropriate. In the current absence of any national leadership or opportunity for such, the need to cooperate with states on pandemic orders and health measures has been particularly important in framing consideration of these orders.
- 26 Victoria continues to work with other jurisdictions through National Cabinet to talk through plans for managing COVID-19. Victoria's Roadmap: Delivering the National Plan is aligned with vaccination targets set out in the National Plan to transition Australia's National COVID-19 Response, as agreed by National Cabinet.

Part 8A objectives

- 27 I have also had regard to the objectives of Part 8A in section 165A(1) of the PHW Act, which is to protect public health and wellbeing in Victoria by establishing a regulatory framework that:
- 27.1 prevents and manages the serious risk to life, public health and wellbeing presented by the outbreak and spread of pandemics and diseases with pandemic potential;
 - 27.2 supports proactive and responsive decision-making for the purposes of preventing and managing the outbreak and spread of pandemics and diseases with pandemic potential;
 - 27.3 ensures that decisions made and actions taken under Part 8A are informed by public health advice and other relevant information including, but not limited to, advice given by the Chief Health Officer;
 - 27.4 promotes transparency and accountability in relation to decisions made and actions taken under Part 8A; and
 - 27.5 safeguards contact tracing information that is collected when a pandemic declaration is in force.

Human Rights

- 28 Under s 165A(2) of the PHW Act, the Parliament has recognised the importance of protecting human rights in managing the serious risk to life, public health and wellbeing presented by the outbreak or spread of pandemics and diseases of pandemic potential.
- 29 In addition, in making each pandemic order, I have proceeded on the basis that I should give proper consideration to relevant human rights under the *Charter of Human Rights and Responsibilities 2006* (Vic) (Charter). I therefore proceeded on the basis that, in making each order, I was required to take the following four steps:
- 29.1 first, understand in general terms which human rights are relevant to the making of a pandemic order and whether, and if so, how those rights would be interfered with by a pandemic order;
 - 29.2 second, seriously turn my mind to the possible impact of the decision on human rights and the implications for affected persons;
 - 29.3 third, identify countervailing interests or obligations in a practical and common-sense way; and
 - 29.4 fourth, balance competing private and public interests as part of the exercise of 'justification'.
- 30 This statement of reasons must be read together with the Human Rights Statement.

31 I note also that in providing his advice, the Acting Chief Health Officer had regard to the Charter.³

Overview of public health advice

32 Following the Premier extending the pandemic declaration on 6 April 2022, I requested the Acting Chief Health Officer's advice under section 165AL and received the Acting Chief Health Officer's advice on 7 April 2022. I subsequently received further verbal advice from the Chief Health Officer on 19 April 2022. I have continued to request the Chief Health Officer and Acting Chief Health Officer's advice for all Pandemic Orders I have made, including those at hand.

33 The advice provided by the Chief Health Officer is in consideration of the current plateauing of cases, increasing prevalence of the BA.2 Omicron sub-lineage in the Victorian community, which appears to be even more transmissible than the original Omicron variant of concern (**VOC**) (BA.1), the forthcoming winter season and the greater movement and mixing of individuals locally and internationally. This advice also considers the likelihood of waning immunity to COVID-19 over time, both in those who have become infected and those who are vaccinated.⁴

Current context

34 A key opening remark from the Chief Health Officer provides an overview of advice given Victoria's current position in the pandemic:

"As I have advised in my Advice to the Premier to extend the Pandemic Declaration, I have considered the increased risk of incursion and viral propagation due to community fatigue with public health measures and the pandemic more broadly. I have also considered the possibility of increasing cases of COVID-19 as winter approaches and there is a resultant change in community behaviour such as gathering indoors more frequently and for prolonged periods. As I have advised in my Advice to the Premier to extend the Pandemic Declaration, these factors, alongside poorer indoor ventilation, typically increase transmission and the spread of respiratory diseases, not only from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), but seasonal respiratory viruses, such as influenza, which compound the overall risk to population health. The current situation in Victoria necessitates continuation of and changes to some public health measures as outlined below to address the threat posed by COVID-19. It also warrants removal of some measures currently included in Orders."⁵

35 The priority for the COVID-19 response remains reducing morbidity and mortality and limiting the impact of COVID-19 on Victorians who are most at risk of serious illness, controlling chains of transmission, and reducing the strain on our health system, while maintaining the continued operation of essential services and sectors. It is therefore necessary and appropriate to continue

³ Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 April 2022) p.3

⁴ Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 April 2022) p.3

⁵ Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 April 2022), p. 3

some public health and social measures (**PHSMs**) to protect those most at risk and our health system.⁶ In considering these matters I am also taking note of the advice of the Chief Health Officer regarding community fatigue with public health measures and the pandemic more broadly (paragraph 34 above) and the need to ensure notions of social licence and PHSMs are balanced to the greatest extent practical.

- 36 When making these pandemic orders, I have had regard to previous advice provided by both the Acting and Chief Health Officers. I have also noted the advice provided by the Chief Health Officer on 19 April 2022 and the advice of the Acting Chief Health Officer on 7 April 2022, that full implementation of the advice should be based on epidemiological data.
- 37 As noted above, the AHPPC recommended on 31 March 2022, that measures to reduce transmission remain in place until after the current Omicron BA.2 wave has passed.⁷
- 38 I have considered the timing for implementing all the measures in the Acting Chief Health Officer's and Chief Health Officer's advice. I have chosen to draw on earlier advice or external information (for example, AHPPC statements) regarding current measures contained in the Orders as the epidemiology evolves.
- 39 Based on the epidemiological data provided below, it is now appropriate to broadly implement the advice provided by the Acting Chief Health Officer on 7 April 2022 and Chief Health Officer on 19 April 2022.
- 40 When making this pandemic order, I have had regard to the advice provided by the Acting Chief Health Officer dated 7 April 2022 and additional advice provided by the Chief Health Officer on 19 April 2022.

Immediate situation: Continued management of the COVID-19 Pandemic

As of 21 April 2022, 10,674 new locally acquired cases (3,847 from polymerase chain reaction (PCR) Test results)

Vaccinations

- 41 As at 21 April 2022:
- 41.1 a total of 6,180,180 doses have been administered through the State's vaccination program, contributing to a total of 15,075,587 doses delivered in Victoria.
- 41.2 95.9 per cent of eligible Victorians over the age of 12 have received one dose of a COVID-19 vaccination.

⁶ Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 April 2022), p. 4

⁷ Department of Health, Australian Government, AHPPC Statement on winter season preparedness, 31 March 2022.

41.3 94.5 per cent of eligible Victorians over the age of 12 have received two doses of a COVID-19 vaccination.

41.4 71 per cent of eligible Victorians over the age of 16 have received three doses (booster) of a COVID-19 vaccination.

42 As at 19 April 2022:

42.1 A total of 36,314,914 doses have been administered by Commonwealth facilities nationally, contributing to a total of 57,246,780 delivered nationally.

42.2 Over 95 per cent of Australians aged 16 and over have received two doses of a COVID-19 vaccination.⁸

The current global situation

43 The following situation update and data have been taken from the World Health Organisation, published 20 April 2022.

Statistic	
Global confirmed cumulative cases of COVID-19	Over 502 million
Global cumulative deaths	Over 6.1 million
Global trend in new weekly cases	Over 5.5 million (24 per cent lower than the previous week)
The highest numbers of new cases:	Republic of Korea (972 082 new cases; -33%) France (827 350 new cases; -11%), Germany (769 466 new cases; -25%), Italy (421 707 new cases; -6%) Japan (342 665 new cases; +1%)

Sources: World Health Organisation published 20 April 2022, WHO COVID-19 Weekly Epidemiology Update

⁸ Department of Health, Australian Government, Australian Immunisation Register, COVID-19 vaccine rollout updated 19 April 2022.

Reasons for decision to make pandemic orders

Overview

- 44 Protecting public health and wellbeing in Victoria from the risks posed by the COVID-19 pandemic is of primary importance when I am deciding whether or not to issue pandemic orders. This is a priority supported by the PHW Act.
- 45 Section 165AL(2)(a) of the Act requires me to have regard to the advice of the Chief Health Officer, and I confirm that I have done so. That advice includes public measures that the Chief Health Officer recommends or considers reasonable.
- 46 Section 165AL(2)(b) permits me to have regard to any other matter I consider relevant, including (but not limited to) social and economic factors. Section 165AL(3) permits me to consult with any other person I consider appropriate before making pandemic orders.
- 47 In making the decision to issue the pandemic orders, I have had regard to current, detailed health advice. On the basis of that health advice, I believe that it is reasonably necessary for me to make the pandemic orders to protect public health.⁹ In assessing what is 'reasonably necessary', I have had regard to Gleeson CJ's observation in *Thomas v Mowbray* (2007) 233 CLR 307 at [22] that “*the [decision-maker] has to consider whether the relevant obligation, prohibition or restriction imposes a greater degree of restraint than the reasonable protection of the public requires*”.
- 48 Having had regard to the advice of the Chief Health Officer and the Acting Chief Health Officer, it is my view that making these pandemic orders are reasonably necessary to reduce the risk that COVID-19 poses.
- 49 Currently, Omicron is the dominant variant of COVID-19 circulating across the world. The Omicron variant has multiple sub-lineages, including BA.1.1, BA.1, BA.2 and BA.3. The predominant sub-lineage globally is BA.1., however, the proportion of BA.2 cases is increasing globally, with evidence indicating that in New South Wales and Victoria (BA.2 is now the dominant sub-lineage).¹⁰
- 50 Evidence about the Omicron sub-lineage BA.2 and the potential implications for individuals, the population and the health system is building. Initial evidence demonstrates that BA.2 has a moderate growth advantage over BA.1. The growth advantage of BA.2 over other variants and sub-lineages translates to greater transmission, posing a significant risk due to the potential for a steep rise in infections and hospitalisations over the coming weeks, from a baseline of sustained community transmission.¹¹
- 51 From 9 January 2022, Victoria had been experiencing a downward trend in case numbers from a peak of 51,356 new cases on 8 January 2022. However, since 15 March 2022 case numbers have been steadily rising again. A similar trend is occurring in New South Wales, with 24,115 positive cases recorded on the 23 March 2022, following a previous peak of 91,928 daily infections on 12

⁹ See Public Health and Wellbeing Act 2008 (Vic) section 3(1) for the definition of ‘serious risk to public health’.

¹⁰ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10

¹¹ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10

January 2022. Similarly, all other jurisdictions that experienced an Omicron wave in January are seeing a resurgence in case numbers. While caution should be exercised in interpreting changing case numbers, the increased proportion of cases identified as the more infectious BA.2 sub-lineage coupled with increasing case numbers represent a trend towards a national BA.2 wave.¹²

- 52 Evidence regarding the disease severity of BA.2 is still emerging; however, preliminary data suggests that infection with BA.2 does not result in a higher risk of hospitalisation than BA.1. Even if less severe disease continues to be a feature of BA.2, it may still have a significant impact on our hospital system given the sheer number of cases that could result from a more transmissible variant, and particularly going into winter.¹³
- 53 The Victorian healthcare system faced additional and extraordinary pressure due to the Omicron outbreak. Hospital admissions surged and there were severe workforce shortages across the system including acute care, community care, aged care, and ambulance services. High demand and declining resource availability contributed to the Department of Health issuing a coordinated 'Pandemic Code Brown' triggering public hospitals to activate Code Brown plans on 19 January 2022 (Victorian Department of Health (f), 2022). The Pandemic Code Brown was stood down on 14 February 2022.¹⁴
- 54 The AHPPC made specific recommendations for a nationally consistent, risk-based transition to the removal of requirements for close contacts of COVID-19 to quarantine:
 - 54.1 where quarantine is required, 7 days remains appropriate at this time; and
 - 54.2 following the peak impact of the BA.2 wave, quarantine will be replaced by other measures, which may include:
 - 54.2.1 requirements for frequent rapid antigen testing;
 - 54.2.2 wearing of masks when leaving the house;
 - 54.2.3 work from home, where this is feasible;
 - 54.2.4 limiting access of close contacts to high-risk settings; and
 - 54.2.5 monitoring of symptoms (and isolating if symptomatic).¹⁵
 - 54.3 Epidemiological data has been consistently reviewed over the period of the school holidays. It is now appropriate, to remove the requirement for year 3 to 6 students to wear face masks. The wearing of face masks remains is recommended.

¹² Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10

¹³ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10

¹⁴ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 8

¹⁵ Department of Health, Australian Government, AHPPC Statement on winter season preparedness, 31 March 2022.

- 55 The changes to the pandemic orders recognise the transition of the pandemic response to empowering industry, workplaces and individuals to make decisions based on public health guidance.
- 56 The Chief Health Officer and the Acting Chief Health Officer have relevantly advised the following changes to the Orders are appropriate:
- 56.1 Removal of face covering requirements in schools (years 3-6), and for events of over 30,000 hospitality and retail workers.
- 56.1.1As face covering requirements have eased in other settings, it is proportionate to ease these requirements based on the risk levels and continuing high rates of vaccinations.
- 56.1.2Face covering should be recommended for primary school students in years 3-6, hospitality, event and retail workers.
- 56.2 Additional reasons to leave quarantine and isolation.
- 56.2.1Easing of restrictions on reason to leave isolation or quarantine for lower risk activities such as exercising at a distance from others, transporting household members to and from work or school or attending to the welfare of an animal.
- 56.2.2It is appropriate to allow these permissions to minimise the burden of quarantine and isolation while maintaining strong public health precautions.
- 56.3 Removal of self-quarantine requirements for close contacts.
- 56.3.1Easing of self-quarantine requirements for people with other conditions.
- 56.3.2This achieves the aim of interrupting chains of transmission through rapid testing, contact tracing and isolating people who have acquired infection.
- 56.3.3This will alleviate hardships associated with self-quarantining.
- 56.4 Removal of exposed person framework.
- 56.4.1The exposed person framework will be removed, and workplace contacts will become and have the same requirements as a social contact.
- 56.4.2Employers are only required to provide general notifications to workers in the event of a positive case in the workplace. The onus to notify each social contact sits with the person diagnosed with COVID-19.
- 56.4.3This removes the significant burden of contact tracing from workplaces. It recognises that individuals have the best knowledge of their workplace contacts.
- 56.5 Removal of requirement for workplaces to maintain records of exposed persons and test results.

56.5.1 As with the point above, workplaces are only required to provide general notifications of a positive case in the workplace and advise to be vigilant of COVID-19 symptoms.

56.6 Amending the workplace outbreak notification requirement.

56.6.1 To allow for greater flexibility to adjust the threshold that constitutes an outbreak, the pandemic orders refer to an external document that can be amended depending on current epidemiology.

56.6.2 This allows for a more agile response and the most proportionate requirements on employers.

56.7 Expansion of the general exemption powers.

56.7.1 Local Public Health Units (LPHUs) can undertake case-by-case assessments and grant temporary exemptions with appropriate risk mitigation measures.

56.7.2 Expansion of some powers to LPHUs supports the de-centralisation of the public health response and allows for the management of close contacts and confirmed cases at a local level.

56.8 Increase in the recent confirmed case amnesty period.

56.8.1 A recent case does not need to be tested or managed as a contact for 12 weeks following self-isolation.

56.8.2 This brings Victoria into alignment with the Communicable Disease Network Australia's national guidelines on the management of persons infected with COVID-19.

56.9 Removal of Hospital visitor requirements for hospitals.

56.9.1 Health services can tailor their visitor policies to meet the needs of their communities with appropriate risk mitigation measures and flexibility to respond to risks of transmission.

56.9.2 Measures such as pre-entry testing and vaccination requirements are recommended but health services can tailor requirements for visitors that are proportionate, compassionate and provide protection for their staff and patients.

56.10 Addition of a Benchmark Essential Visitors list for Care Facilities.

56.10.1 A Benchmark Essential Visitors List will establish minimum requirements for the diverse group of facilities in terms of size, resources and levels of care offered to residents

56.10.2 This will assist in ensuring a balance is struck between residents having the vital personal, social and emotional support while maintaining measures to limit the introduction and spread of COVID-19.

56.11 Reduce the number of days a person who has had contact with a known case of COVID-19 is excluded from visiting a care facility.

56.11.1 A person is not able to enter a care facility if they have been in contact with a known case of COVID-19 for a period of 7 days.

56.11.2 The reduction from 14 days to 7 days now aligns with the 7-day isolation and quarantine period for confirmed cases and close contacts.

56.12 Removal of vaccination requirements for patrons.

56.12.1 Given Victoria's high vaccination rates, it is now appropriate to remove the requirement for patrons to show proof of vaccination to enter a venue.

56.12.2 Vaccine mandates for patrons are now less likely to increase vaccinations and may have potentially negative consequences of social and economic exclusion for unvaccinated people.

56.13 Removal of attendee thresholds for public events.

56.13.1 With the removal of vaccination requirements for patrons, and removal of face coverings for workers at events greater than 30,000, the Public Events Framework and the 30,000 attendee threshold is removed.

56.13.2 COVIDSafe Plans for business premises remain in place.

56.14 Removal of record keeping requirements.

56.14.1 Workplaces are not required to keep records of staff or patrons, including the use of the QR Code system.

56.14.2 Other workplace outbreak measures, such as case notifications to the Department of Health and workplace notifications are proportionate to the public health risk.

56.14.3 As the environment has changed, individuals are more able to manage COVID safely and are required to advise their own known contacts of exposure.

56.15 Removal of COVID Check-in Marshals requirement.

56.15.1 The removal of vaccination requirements and record keeping eliminates the need for Check-in Marshals.

56.16 Removal of additional Industry obligations.

56.16.1 It is now appropriate to remove the requirement of baseline public health measure for a range of higher risk industries.

56.16.2 It is proportionate for industry to incorporate recommendations into guidance and policies as appropriate for the workplace.

56.17 Amending of testing requirements for fully vaccinated international arrivals.

56.17.1 International arrivals are required to be tested only if experiencing COVID-19 symptoms within 7 days of arrival. It is strongly recommended to be tested within 24 hours of arrival.

56.17.2 Australian-based international air crew are not required to undertake a pre-departure COVID-19 test.

56.17.3 With high levels of community transmission, it is proportionate to ease testing requirements at this stage of the pandemic response.

56.18 Removal of quarantine requirement for not fully vaccinated international arrivals.

56.18.1 Unvaccinated international arrivals are strongly recommended to take a RAT or PCR test within 24 hours of arrival.

56.18.2 Unvaccinated international arrivals must get tested if symptomatic with 7 days of arrival.

56.18.3 The overall public health risk posed by international arrivals continues to decrease relative to the wider community.

56.18.4 Given the local community transmission and ability for vaccinated and unvaccinated Victorians to fully participate in the economy, it is reasonable to align requirements for international arrivals in a similar manner.

56.19 Removal of medical certification of recent COVID-19 infection.

56.19.1 A person can provide a verified PCR certificate without the need of an accompanying medical certificate.

56.19.2 This reduces the evidentiary burden on international travellers and is a proportionate change given current epidemiology.

56.20 The Acting Chief Health Officer advised the requirement of a third-dose (booster) be retained for the following groups of workers:

56.20.1 Healthcare, disability and residential aged care workers who provide care to population groups at increased risk of adverse health outcomes from COVID-19 infection;

56.20.2 Education facility workers who are involved in essential learning and development of children;

56.20.3 Emergency services workers who are involved in providing critical operations and essential goods and services to the community; and

56.20.4 Workers in workplaces at increased risk of incursion, propagation, or downstream implications on the Victorian community, such as custodial, food processing and distribution, and – where operational - quarantine accommodation settings. These settings can also be regarded as having relatively greater criticality than many others.

56.21 These groups of workers have been included in the third dose (booster) mandate to date because they are those involved in the care of at-risk populations, are at higher occupational risk of COVID-19, are critical to maintaining emergency services or food supply chains, or are at higher risk of being involved in large workplace outbreaks because of the nature of their work environment.

56.22 On advice from the Chief Health Officer on 19 April 2022, I have concluded that any changes to visitor restrictions to care facilities beyond the Benchmark Essential Visitor List, be explored for the next amendment to pandemic orders.

57 The removal of the many restrictions stated above has allowed for the consolidation of many pandemic orders. This will assist in a clear understanding of the public health measures in place to keep the most vulnerable people in Victoria as safe as possible from COVID-19. This will also reduce the compliance burden. The Schedules elaborate the obligations placed on industry, workplaces and individuals and the advice provide to assist in my decision making.

58 The consolidation has simplified the architecture of the pandemic orders.

59 The obligations principally related to mask wearing, vaccinations and care facility entry restrictions are included in the Pandemic (Public Safety) Order 2022 (No. 1). They were previously contained in the following Pandemic Orders:

59.1 Pandemic (Open Premises) Order 2022 (No. 6)

59.2 Pandemic (Movement and Gathering) Order 2022 (No. 5)

59.3 Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No. 5)

60 The obligations principally related to mandatory vaccination are included in the Pandemic (Workplace) Order (No. 8). They were previously contained in the following Pandemic Orders:

60.1 Pandemic (Workplace) Order 2022 (No. 7)

60.2 Pandemic (Additional Industry Obligations) Order 2022 (No. 10)

60.3 Pandemic COVID-19 Mandatory Vaccination (General Workers) Order 2022 (No. 4)

60.4 Pandemic COVID-19 Mandatory Vaccination (Specified Workers) Order 2022 (No. 6)

60.5 Pandemic COVID-19 Mandatory Vaccination (Specified Facilities) Order 2022 (No. 7)

61 The obligations principally related to international arrival obligations and confirmed cases and close contacts are included in the Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 8). They were previously contained in the following Pandemic Orders:

61.1 Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 7)

61.2 Pandemic (Victorian Border Crossing) Order 2022 (No. 7)

62 I accept the advice of the Chief Health Officer and Acting Chief Health Officer outlined above.

Risks of no action taken

63 Given all the above, if pandemic management measures had not been introduced and maintained in Victoria since early in the pandemic, the likely impact of COVID-19, particularly for older people, people with certain chronic medical conditions and other vulnerable groups would have been far greater. In turn, an even more significant pressure would have been (and still could be) placed on the Victorian health system, to respond at a scale that has little precedent in the modern era. As Taylor and colleagues (2021) note:

If Australia had experienced the same crude case and death rates as three comparable countries - Canada, Sweden and the United Kingdom - there would have been between 680,000 and 2 million cases instead of the 28,500 that did occur [during 2020], and between 15 and 46 times the number of deaths.¹⁶

Schedules

64 The specific Reasons for Decision for the Pandemic Orders is set out in the Schedules.

¹⁶ Taylor EH, Marson EJ, Elhadi M, Macleod KDM, Yu YC, Davids R, et al. Factors associated with mortality in patients with COVID-19 admitted to intensive care: a systematic review and meta-analysis. *Anaesthesia*. 2021;76(9):1224-32.

SCHEDULE 1 – REASONS FOR DECISION – PANDEMIC (PUBLIC SAFETY) ORDER 2022

Summary of Order

- 65 This Order requires individuals to carry and wear face coverings in certain settings; prohibits certain visitors and workers from attending care facilities; and requires the operator of a care facility to restrict visitor access.

Purpose

- 66 The purpose of the Order is to address the serious public health risk posed to the State of Victoria by the spread of COVID-19 by requiring everyone in the State of Victoria to carry and wear face coverings in certain settings and to restrict access to care facilities in order to limit the spread of COVID-19 within a particularly vulnerable population.

Obligations

- 67 The Order requires workers not to perform work outside their ordinary place of residence if their employer is not permitted to allow them to do so under the Workplace Order.
- 68 The Order requires individuals to carry a face covering at all times, and wear a face covering in the following settings (unless an exemption applies):
- 68.1 while in a publicly accessible area of an airport;
 - 68.2 while in an indoor space that is a publicly accessible area of a healthcare premises;
 - 68.3 while working in an indoor space that is a publicly accessible area of a court or justice centre;
 - 68.4 while working in an indoor space at a prison, police gaol, remand centre, youth residential centre, youth justice centre or post-sentence facility;
 - 68.5 while working in an indoor space in a resident-facing role at a care facility, including when not interacting with residents;
 - 68.6 while visiting a hospital or a care facility;
 - 68.7 while on public transport or in a commercial passenger vehicle or in a vehicle being operated by a licensed tourism operator;
 - 68.8 if the person is required to self-isolate, self-quarantine or is a close contact and is leaving the premises in accordance with the Quarantine, Isolation and Testing Order;
 - 68.9 if the person has been tested for COVID-19 and is awaiting the results of that test, except where that test was taken as part of a surveillance or other asymptomatic testing program;
 - 68.10 where required to do so in accordance with any other pandemic orders in force.

- 69 Face coverings are not required to be worn:
- 69.1 by an infant or child under the age of 8 years;
 - 69.2 by a prisoner in a prison (either in their cell or common areas), subject to any policies of that prison;
 - 69.3 by a person detained in a remand centre, youth residential centre or youth justice centre (either in their room or common areas), subject to any policies of that centre;
 - 69.4 by a resident in a post-sentence facility (either in their room or common areas), subject to any policies of that post-sentence facility;
 - 69.5 by a person who has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable;
 - 69.6 by a person where it is not practicable for the person to comply because the person is escaping harm or the risk of harm, including harm relating to family violence or violence of another person;
 - 69.7 when a person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication;
 - 69.8 when the nature of a person's work means that wearing a face covering creates a risk to their health and safety;
 - 69.9 when the nature of a person's work means that clear enunciation or visibility of the mouth is essential;
 - 69.10 when the person is working by themselves in an enclosed indoor space (unless and until another person enters that indoor space);
 - 69.11 by a person who is a professional sportsperson when training or competing;
 - 69.12 by a person engaged in any strenuous physical exercise;
 - 69.13 by a person riding a bicycle or motorcycle;
 - 69.14 by a person who is consuming medicine, food or drink;
 - 69.15 by a person who is smoking or vaping (including e-cigarettes) while stationary;
 - 69.16 by a person who is undergoing dental or medical care or treatment to the extent that such care or treatment requires that no face covering be worn;
 - 69.17 by a person who is receiving a service and it is not reasonably practicable to receive that service wearing a face covering;

- 69.18 by a person who is providing a service and it is not reasonably practicable to provide that service wearing a face covering;
 - 69.19 by a person who is asked to remove the face covering to ascertain identity;
 - 69.20 for emergency purposes;
 - 69.21 when required or authorised by law;
 - 69.22 when doing so is not safe in all the circumstances.
- 70 Face coverings are not required to be carried:
- 70.1 by an infant or child under the age of 8 years;
 - 70.2 by a prisoner in a prison (either in their cell or common areas), subject to any policies of that prison;
 - 70.3 by a person detained in a remand centre, youth residential centre or youth justice centre (either in their room or common areas), subject to any policies of that centre;
 - 70.4 by a resident in a post-sentence facility (either in their room or common areas), subject to any policies of that post-sentence facility;
 - 70.5 by a person who has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable;
 - 70.6 where it is not practicable for the person to comply because the person is escaping harm or the risk of harm, including harm relating to family violence or violence of another person.
- 71 Face coverings are required to be worn at an airport or when travelling in an aircraft (exemptions apply), and an authorised officer may require a person to attest in writing that they have complied with the requirement to wear a face covering on an aircraft.
- 72 This order requires the operators of care facilities to:
- 72.1 restrict the number of visitors per patient or resident per day;
 - 72.2 require testing of visitors on entry in certain circumstances;
 - 72.3 restrict the number of visitors allowed to enter or remain at the premises;
 - 72.4 restrict the number of visitors with prospective residents of care facilities;
 - 72.5 take all reasonable steps to ensure that a person who is an essential visitor (as listed in the Benchmark Essential Visitors List) is permitted to enter, or remain on, the premises of the facility, including during an outbreak;

- 72.6 facilitate telephone, video or other electronic communication with patients and family and support persons to ensure the physical, emotional and social wellbeing of patients and residents; and
- 72.7 ensure that an excluded person does not enter the premises.
- 73 Care facility excluded persons may be permitted to visit a care facility for the purposes of undertaking an end of life visit. In this case, a record of visitor contact details and times of entry and exit must be kept for at least 28 days from the day this visit is authorised.
- 74 Failure to comply with this Order may result in penalties.

Period

- 75 The Order will commence at 11:59:00pm on 22 April 2022 and end at 11:59:00pm on 12 July 2022.

Relevant human rights

Human rights that are limited

- 76 For the purposes of section 165AP(2)(c), in my opinion, the obligations imposed by the order will limit the human rights identified as limited under the heading *Nature and extent of limitations* in the schedule to the Human Rights Statement that relates to this order.
- 77 My explanation for why those rights are limited by the order is set out in the Human Rights Statement.
- 78 The Human Rights Statement also sets out:
- 78.1 my explanation of the nature of the human rights limited (as required by section 165AP(2)(i)); and
- 78.2 my explanation of the nature and extent of the limitations (as required by section 165AP(2)(iii)).

Human rights that are engaged, but not limited

- 79 Further, in my opinion, the obligations imposed by the order will engage, but not limit, the human rights identified as engaged, but not limited, under the heading *Nature and extent of limitations* in the schedule to the Human Rights Statement that relates to this order.
- 80 My explanation for why those rights are engaged, but not limited, by the Order is set out in the Human Rights Statement.

How the obligations imposed by the Order will protect public health

- 81 I have carefully read and considered the Chief Health Officer's advice.

- 82 In relation to the restrictions that will be imposed by this Order, the Chief Health Officer and Acting Chief Health Officer have relevantly advised:
- 82.1 Open to consideration, is the continuation of the current requirement for all workers that leave their home for work to have at least received their primary course of vaccination (two doses), or a valid medical exemption to attend work onsite. As is currently the case, this obligation would not apply to general workers if it is not reasonably practicable for the individual to work at their ordinary place of residence.¹⁷
 - 82.2 Face masks remain an important public health measure even in the context of high population vaccination rates in Victoria. Face masks have a protective effect and can both protect healthy individuals and reduce the risk of disease transmission from infected individuals. Masks are a cost-effective and cost-saving measure, especially considering increasing transmissibility of Omicron variants, decreased vaccine effectiveness due to waning immunity or escape variants and indoor social interactions which will likely increase in the cooler months.¹⁸
 - 82.3 Masks should continue to be required for those aged eight years and over in higher-risk indoor settings. These settings include - but are not limited to – healthcare settings, care facilities, airports (excluding office spaces), and public transport.¹⁹
 - 82.4 Existing mask requirements for diagnosed persons, close contacts, or symptomatic persons awaiting the result of a COVID-19 test, should remain in place where those individuals are leaving their premises. This is particularly important given the increased transmissibility of Omicron and BA.2.²⁰
 - 82.5 Previous mask exemptions should continue to apply, particularly for those who have medical reasons not to wear a face mask.²¹
 - 82.6 Face covering requirements in primary schools and early childhood and care settings are recommended only, in line with other education settings. This is in consideration of the evidence that suggests despite high community transmission children experience fewer and milder symptoms of SARS-CoV-2 infection than adults and are at a lower risk of experiencing poor health outcomes. Additionally, masks for workers in retail and hospitality (including at events with over 30,000 patrons) are recommended only. There is increasing vaccination coverage and natural immunity afforded by recent exposure to SARS-CoV-2 infection, in addition to ever-increasing existing public health safety measures (including the rollout of ventilation and filtrations upgrades in schools, and programs such as the Victorian Government’s ventilation rebate for small business). Individual education facilities and retail

¹⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22.

¹⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

¹⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

²⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

²¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

and hospitality industries and employers should be supported if they choose to enforce the use of face coverings through internal policies.²²

- 82.7 Care facilities, including but not limited to, residential aged care facilities (RACF), disability residential services, alcohol and drug residential services and homelessness residential services, commonly house and care for members of the community who may be frail, immunocompromised or have significant comorbidities and complex care needs, making them particularly susceptible to the negative impacts of COVID-19 infection, including severe disease and death. As such, these facilities are sensitive settings requiring specific consideration.²³
- 82.8 Care facilities are a diverse group of facilities of differing sizes, resources, governance structures, and level of care provided to residents, and with significant diversity in their ability to implement infection control measures. For these reasons visitor requirements for care facilities should continue to be a requirement in Pandemic Orders, to ensure the upmost level of protection continues to be provided to residents, particularly as we approach winter, and noting significant COVID-19 mortality in care facilities in Victoria.²⁴
- 82.9 Visitor restrictions should remain in place for care facilities to reduce opportunities for viral incursion, given the higher risk of transmission, amplification and consequence should incursion occur. Visitor restrictions should include entry requirements, face mask requirements and pre-entry RA testing.²⁵
- 82.10 Visitors to care facilities should not be permitted to enter until they have a negative RA test at the facility on the day of attendance, while it is appropriate to retain current provisions that permit visitors to enter even when a RA test is unavailable and retaining the current exceptions to RA testing requirements. As there continues to be a high level of community transmission, RA tests are an appropriate asymptomatic screening tool to limit incursion of COVID-19 into care facilities. RA tests are a low impost measure that are quick to administer and return a result that has a high level of accuracy in excluding active infection.²⁶
- 82.11 Currently those who have had contact with a confirmed case are excluded from entering care facilities, with timeframes for exclusion dependent on vaccination status. This should be amended to seven days immediately preceding entry if the person has been exposed to someone with COVID-19 (workplace, educational or social contact) and has not returned a negative PCR test, irrespective of vaccination status. This would align with the current seven-day isolation and quarantine period for confirmed cases and close contacts.²⁷

²² Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

²³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 24.

²⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 24.

²⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

²⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

²⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

- 82.12 The impact of the COVID-19 pandemic on the residential care sector has been significant and has necessitated at times the restriction on visitation to care facilities to keep residents safe. However, as the pandemic response continues to shift from Orders to guidance-driven obligations, care facilities should be empowered to begin to look at what self-regulated, compassionate visitation will comprise at their facility.²⁸
- 82.13 Care facilities have faced some of the most challenging outbreak control scenarios throughout the pandemic. Ongoing concern has been expressed across the community that some care facilities have implemented overly restrictive visitation rules. An important balance must be achieved to ensure residents have vital personal, social, emotional and community support and connection when living in care facilities, whilst continuing to mitigate the risk of COVID-19 introduction and spread.²⁹
- 82.14 It is advised that a visitors list is introduced to permit at a minimum, entry of those essential to the wellbeing of residents, particularly in outbreak situations.³⁰ These visitors should be required to complete the same pre-entry requirements as visitors currently in scope.³¹
- 82.15 Essential visitors should include:
- 82.15.1 Parents or guardians of the resident if they are aged under 18 years;
 - 82.15.2 Parent, guardian (including guardians appointed by the Victorian Civil and Administrative Tribunal), partner, carer, support or other named person of a resident who is aged 18 or over to provide emotional and social support;
 - 82.15.3 Persons providing care and/or support for a resident's immediate physical, cognitive, social or emotional wellbeing (including mental health support and support for people living with dementia);
 - 82.15.4 Persons providing end of life support and visits;
 - 82.15.5 Nominated person in the case of a resident's mental illness or incapacity;
 - 82.15.6 Persons providing learning and/or training to support a resident's care and/or discharge;
 - 82.15.7 Interpreters or informal language support;
 - 82.15.8 On-site attendance of contractors;
 - 82.15.9 Aged and disability care advocates;

²⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

²⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 26.

³⁰ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

³¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

82.15.10 Legal representatives of residents and persons with power of attorney for residents;

82.15.11 Volunteers in the Community Visitors Scheme.³²

83 I accept this advice.

Countervailing possible impacts that the obligations imposed by the Order may have on individuals and the community

84 In making this decision, I have seriously considered the possible negative impacts of the Order on the individuals and the community.

85 In particular, as noted above, in the Human Rights Statement, I have considered how people's human rights will be engaged and limited by the Order.

86 In addition, I have also considered the following additional potential negative impacts:

86.1 Restrictions on who can visit care facilities "can amount to unfavourable treatment on the basis of disability, or association with a person with a disability (otherwise characterisable as a person imputed to have a disability), by prohibiting visits from diagnosed persons, people with certain COVID-19 Symptoms, and close contacts (except in circumstances which remain limited despite having been eased from previous settings)."³³

86.2 "Freedom of movement of persons wishing to visit care facilities in Victoria is therefore limited because the Order does not allow a person to travel without impediment into places where people live, where other laws do not prohibit it." There is also "an incursion into the protection of families and children when they cannot meet face-to-face in a time when a relative who is a resident would appreciate the comfort and connection", and there may be an "incursion on the right of persons with a particular cultural, religious, racial or linguistic background to practise their culture, religion, or language to the extent that this can be done by face-to-face visits."³⁴

86.3 Information collected under this Order would "would constitute personal and health information and its provision to gain access to the care facility would therefore be an interference with privacy."³⁵

³² Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 26.

³³ Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (22 April 2022).

³⁴ Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (22 April 2022).

³⁵ Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (22 April 2022).

Whether there are any less restrictive alternatives that are reasonably available to protect public health

- 87 I have considered the Acting Chief Health Officer's advice that the Victorian public health response to COVID-19 continue to transition from Orders towards empowering individuals, communities, and industry to drive protective measures and behaviours.³⁶
- 88 I have considered the importance of community education, engagement and COVIDSafe behaviours such as vaccination, mask wearing, physical distancing, respiratory and hand hygiene, staying home and getting tested when unwell as remaining the key to an effective pandemic response in Victoria. Some of these measures no longer appear in Orders going forward.³⁷
- 89 Masks are a cost-effective and cost-saving measure, especially considering increasing transmissibility of Omicron variants, decreased vaccine effectiveness due to waning immunity or escape variants and indoor social interactions which will likely increase in the cooler months.³⁸
- 90 As the Acting Chief Health Officer advised, care facilities commonly house and care for members of the community who may be frail, immunocompromised or have significant comorbidities and complex care needs, making them particularly susceptible to the negative impacts of COVID-19 infection, including severe disease and death. Care facilities are a diverse group of facilities of differing sizes, resources, governance structures, and level of care provided to residents, and with significant diversity in their ability to implement infection control measures.³⁹ To ensure consistent safeguards across these settings, it is appropriate to place visitor requirements in this Order.
- 91 In addition, care facilities are settings that are akin to residential homes. Private homes do not currently have restrictions to visitors. As such, in continuing to limit visitors to care facilities I consider it reasonably necessary to strike a balance between allowing visitors to places people called home and protecting these sensitive settings. Ensuring essential visitors have access to care facilities further safeguards balance, particularly given concerns that some care facilities have been overly restrictive in their approaches to allowing visitors.

Conclusion

- 92 I accept the Chief Health Officer and Acting Chief Health Officer's advice that the measures related to the following continue to be reflected in, or introduced to, Pandemic Orders:
- 92.1 vaccination requirements on workers performing work outside their ordinary place of residence (as per the Workplace Order);
- 92.2 face covering requirements;

³⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 7.

³⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 7.

³⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

³⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 24.

92.3 restrictions on visitors to care facilities and access for essential visitors to care facilities.

93 I accept the Acting Chief Health Officer's advice that these measures remain crucial public health measures to address the evolving threat of BA.2 and will continue to reduce the potential impact of the virus on individuals and the health system.⁴⁰

⁴⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

SCHEDULE 2 – REASONS FOR DECISION – PANDEMIC (QUARANTINE, ISOLATION AND TESTING) ORDER 2022 (NO. 8)

Summary of Order

- 94 This Order requires persons to limit the spread of COVID-19 including by requiring persons who are:
- 94.1 diagnosed with COVID-19 or probable cases to self-isolate; or
 - 94.2 close contacts to self-quarantine and/or undertake testing, as applicable; or
 - 94.3 risk individuals to observe relevant testing requirements issued by the Department.

Purpose

- 95 The purpose of the Order is to address the serious public health risk posed to the State of Victoria by the spread of COVID-19 by limiting the movement of people who are diagnosed with COVID-19 or are probable cases of COVID-19, those who live with them and their close contacts, and for risk individuals in the community to observe testing requirements issued by the Department, in order to limit the spread of COVID-19.

Obligations

- 96 The Order defines diagnosed persons as persons who have received a positive result from a COVID-19 PCR test and are not a recent confirmed case. The Order requires diagnosed persons to:
- 96.1 self-isolate at a suitable premises until the commencement of the seventh day from the date on which they took a COVID-19 PCR test from which they were diagnosed with COVID-19;
 - 96.2 notify any other person residing at the premises that the diagnosed person has been diagnosed with COVID-19 and has chosen to self-isolate at the premises;
 - 96.3 notify the Department of the premises chosen to self-isolate and the contact details of any other residents at the premises;
 - 96.4 notify the operator of any education facility at which they are enrolled, if they attended an indoor space at the facility during their infectious period;
 - 96.5 notify the operator of any work premises at which they ordinarily work, if they attended an indoor space at that work premises during their infectious period; and
 - 96.6 notify any close or social contacts, to the extent that they are reasonably able to ascertain and notify those contacts.
- 97 The Order defines probable cases as persons who have received a positive result from a COVID-19 RA test and are not a recent confirmed case. The Order requires probable cases to:

- 97.1 self-isolate at a suitable premises until the commencement of the seventh day from the date on which they took a COVID-19 RA test from which they were diagnosed with COVID-19;
 - 97.2 notify any other person residing at the premises that the probable case has been diagnosed with COVID-19 and has chosen to self-isolate at the premises;
 - 97.3 notify the Department of the premises chosen to self-isolate and the contact details of any other residents at the premises;
 - 97.4 notify the operator of any education facility at which they are enrolled, if they attended an indoor space at the facility during their infectious period;
 - 97.5 notify the operator of a work premises at which they ordinarily work, if they attended an indoor space at that work premises during their infectious period; and
 - 97.6 notify any close or social contacts, to the extent that they are reasonably able to ascertain and notify those contacts.
- 98 The Order defines close contacts as persons who are not recent confirmed cases and have:
- 98.1 been given a notice of determination by an officer or nominated representative of the Department after they have made a determination that they are a close contact of a diagnosed person or probable case; or
 - 98.2 spent more than four hours in an indoor space at a private residence, accommodation premises or care facility with a diagnosed person or a probable case during their infectious period.
- 99 The Order requires close contacts who self-quarantine with a diagnosed person or probable case to self-quarantine until the commencement of the seventh day from the date on which:
- 99.1 the diagnosed person undertook their PCR test that confirmed they were a diagnosed person; or
 - 99.2 the probable case undertook their RA test and received a positive COVID-19 result.
- 100 The Order requires close contacts who do not self-quarantine with a diagnosed person or probable case to self-quarantine until the commencement of the seventh day from the date on which they last had contact with the diagnosed person or probable case.
- 101 Close contacts do not have to self-quarantine, provided that they:
- 101.1 undertake five rapid antigen tests within the seven-day period, spaced at least 24 hours apart, and the results are negative;
 - 101.2 wear a face covering when indoors other than at their self-quarantine premises (if aged 8 and above);

- 101.3 do not visit hospitals and care facilities unless:
- 101.3.1 in relation to a care facility, they are permitted to do so under the *Pandemic (Public Safety) Order*; or
 - 101.3.2 in relation to a hospital, they are permitted to do so by an officer of a hospital with the position of Executive Director of Nursing and Midwifery or equivalent; and
- 101.4 notify the operator of a work premises that they are likely to attend for the purposes of working at the premises/the operator of an educational facility at which they are enrolled that they attend during the seven-day period and that the above conditions apply.
- 102 The Order requires close contacts to comply with the relevant requirements set out in the Testing Requirements Policy and, where applicable, follow the COVID-19 RA test procedure.
- 103 The Order defines risk individuals as:
- 103.1 a social contact;
 - 103.2 a symptomatic person in the community; or
 - 103.3 an international arrival.
- 104 The Order requires risk individuals to comply with the relevant requirements set out in the Testing Requirements Policy and, where applicable, follow the COVID-19 RA test procedure.
- 105 Persons who are self-isolating or self-quarantining under the Order must:
- 105.1 reside at a suitable premises for the entirety of the period of self-isolation or self-quarantine, except for any period that the person is admitted to a hospital or other facility for the purposes of receiving medical care; and
 - 105.2 not leave the premises, except:
 - 105.2.1 for the purposes of obtaining medical care or medical supplies; or
 - 105.2.2 if asymptomatic for COVID-19, for the purposes of transporting another person with whom they reside to or from a hospital; or
 - 105.2.3 for the purposes of getting tested for COVID-19; or
 - 105.2.4 in any emergency situation; or
 - 105.2.5 if required to do so by law; or
 - 105.2.6 for the purposes of visiting a patient in hospital if authorised to do so by an officer of that hospital with the position of Executive Director of Nursing and Midwifery or equivalent; or

- 105.2.7 for the purposes of working in a care facility if permitted to do so under the Public Safety Order; or
 - 105.2.8 for the purpose of sitting a Senior Secondary examination provided that the person is not a diagnosed person or a probable case; or
 - 105.2.9 if self-quarantining and provided they wear a face covering at all times, to exercise outdoors (including walking a pet):
 - (1) alone and physically distanced from others; or
 - (2) only with persons in self-quarantine at the same premises; or
 - 105.2.10 if self-quarantining and provided they wear a face covering at all times, to attend to animal welfare (including to attend to livestock, however not including non-emergency attendance at a veterinarian) if essential or other arrangements cannot be made:
 - (1) alone and physically distanced from others; or
 - (2) only with persons in self-quarantine at the same premises; or
 - 105.2.11 if self-quarantining and provided they wear a face covering at all times, to transport a person with whom they reside (who does not need to self-isolate or self-quarantine) to work, education or a healthcare appointment if essential or other arrangements cannot be made; or
 - 105.2.12 if self-quarantining and provided they wear a face covering at all times, to vote in the Australian Federal Election provided that they undertake a COVID-19 rapid antigen test on the day of leaving self-quarantine, and this test returns a negative result.
- 105.3 except for persons who are residents of a care facility, not permit any other person to enter the premises unless:
- 105.3.1 that other person:
 - (1) ordinarily resides at the premises; or
 - (2) is required to self-isolate or self-quarantine at the premises under this Order; or
 - 105.3.2 it is necessary for the other person to enter for medical or emergency purposes; or
 - 105.3.3 the other person is a disability worker, and it is necessary for the disability worker to enter for the purpose of providing a disability service to a person with a disability; or

- 105.3.4 it is necessary for the other person to enter for the purpose of providing personal care or household assistance to the person as a result of that person's age, disability or chronic health condition; or
- 105.3.5 the entry is otherwise required or authorised by law.

106 Failure to comply with this Order may result in penalties.

Changes from Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 7)

- 107 Obligations from the Pandemic (Victorian Border Crossing) Order 2022 (No. 7) have been incorporated into this Order. Relevantly, this defines 'international arrivals' as 'risk individuals' and requires them to observe relevant testing requirements issued by the Department.
- 108 Clarification of self-isolation and self-quarantine period to confirm that this ends on the seventh day following COVID-19 diagnosis or exposure to a diagnosed person.
- 109 Diagnosed persons and probable cases are required to notify the operator of any work premises at which they ordinarily work, if they attended an indoor space at that work premises during their infectious period.
- 110 Close contacts are not required to self-quarantine provided that they comply with rapid antigen testing, face covering and notification requirements.
- 111 Removal of the 'exposed persons' designation and introduction of the 'risk individual' designation as applicable to: social contacts; symptomatic persons in the community; and international arrivals; requiring them to observe the relevant testing requirements as issued by the Department.
- 112 The operator of an education facility is no longer required to notify exposed workers and students of potential exposure by a diagnosed person or probable case under this Order (this requirement is now part of the Workplace Order).
- 113 The CEO of Service Victoria can no longer collect and display the necessary information to operate an app for use by persons to report and demonstrate a positive, negative or invalid rapid antigen test result under this Order (this requirement exists in the Workplace Order).
- 114 Reasons to leave self-isolation or self-quarantine have been expanded to include:
 - 114.1 for the purposes of visiting a patient in hospital if authorised to do so by an officer of that hospital with the position of Executive Director of Nursing and Midwifery or equivalent;
- 115 Close contacts may also leave self-quarantine (provided they wear a face covering at all times):
 - 115.1 to exercise outdoors (including to walk a pet);
 - 115.2 to attend to animal welfare if essential or other arrangements cannot be made;

115.3 to transport a person with whom they reside (who does not need to self-isolate or self-quarantine) to work, education or a healthcare appointment if essential or other arrangements cannot be made; and

115.4 to vote in the Australian Federal Election provided that a COVID-19 rapid antigen test is undertaken on the day of leaving self-quarantine, and this test returns a negative result.

116 Directors and Medical Leads of Local Public Health Units are empowered to exercise the power to grant individual exemptions, however not the power to provide class exemptions.

Period

117 The Order will commence at 11:59:00pm on 22 April 2022 and end at 11:59:00pm on 12 July 2022.

Relevant human rights

Human rights that are limited

118 For the purposes of section 165AP(2)(c), in my opinion, the obligations imposed by the order will limit the human rights identified as limited under the heading *Nature and extent of limitations* in the schedule to the Human Rights Statement that relates to this order.

119 My explanation for why those rights are limited by the order is set out in the Human Rights Statement.

120 The Human Rights Statement also sets out:

120.1 my explanation of the nature of the human rights limited (as required by section 165AP(2)(i));
and

120.2 my explanation of the nature and extent of the limitations (as required by section 165AP(2)(iii)).

Human rights that are engaged, but not limited

121 Further, in my opinion, the obligations imposed by the order will engage, but not limit, the human rights identified as engaged, but not limited, under the heading *Nature and extent of limitations* in the schedule to the Human Rights Statement that relates to this order.

122 My explanation for why those rights are engaged, but not limited, by the Order is set out in the Human Rights Statement.

How the obligations imposed by the Order will protect public health

- 123 I have considered the Acting Chief Health Officer's advice dated 7 April 2022 and the Chief Health Officer's advice provided on 19 April 2022 that the following measures are appropriate and proportionate to the current epidemiology and forecasted impact of the BA.2 sub-lineage:⁴¹
- 123.1 Continued and additional public health and social measures are required in the context of Omicron. Interventions that are the least restrictive and achieve the same public health objective should continue to be utilised, prioritised and exhausted, prior to applying more restrictive measures, wherever possible.⁴²
- 123.2 The Test, Trace, Isolate and Quarantine (TTIQ) strategy aims to limit spread of COVID-19 by interrupting chains of transmission through rapid testing, contact tracing, quarantining exposed individuals and isolating people who have acquired infection.⁴³
- 123.3 To limit transmission of COVID-19 within the community, it is proportionate to continue to require isolation for persons who have COVID-19 for seven days to minimise onward transmission.⁴⁴
- 123.4 Individuals who have been exposed to a person with COVID-19 are at increased risk of acquiring infection and it is important to identify if they become infected early, to limit the spread of infection and limit exposure to others.⁴⁵
- 123.5 However, modelling suggests that no self-quarantine for close contacts and regular testing does not have a significant impact on the number of hospitalisations compared to 7 days self-quarantine. Given the epidemiological situation in Victoria, with high population immunity from vaccines and recent infection from Omicron BA.1 and BA.2 sub-lineages, this setting is proportionate to the overall public health risk.⁴⁶
- 123.6 Additionally, third dose vaccination in the community reduces the risk of Omicron infection and onward transmission and thereby further reduces the risk posed by easing current quarantine requirements.⁴⁷

⁴¹ Department of Health, *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 4.

⁴² Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁴³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁴⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁴⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁴⁶ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

⁴⁷ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

- 123.7 With the upcoming federal election, it is appropriate and proportionate to permit close contacts to leave home in order to vote, with additional risk mitigation measures in place, particularly to support the safe and effective operation of our democratic process.⁴⁸
- 123.8 Recovered confirmed or probable cases should not need to be tested or managed as a close contact within 12 weeks after being released from isolation. This reflects the substantial cross-immunity between BA.1 and BA.2 and the data on the very substantially reduced risk of re-infection in the weeks following infection.⁴⁹
- 123.9 The power to grant class exemptions to close contact quarantine should be retained, given the elevated case numbers and resulting pressure placed on the ability of workforces to provide essential goods and services to the Victorian community... This helps to preserve the capacity of certain essential workforces and continues to be proportionate in the context of additional safeguards in place to mitigate transmission risk.⁵⁰
- 123.10 The power of local public health unit (LHPU) Directors and Medical Leads should be extended to grant temporary exemptions to close contacts and confirmed cases to vary the conditions of their self-isolation or quarantine period. This would further support the management of close contacts and confirmed cases at a localised level.⁵¹
- 123.11 Social contacts are still at risk of acquiring COVID-19 infection.⁵² Testing ensures prompt identification of COVID-19 to prevent further spread.⁵³
- 123.12 The requirement for a COVID-19 positive case to notify the Department of Health of a positive diagnosis, infectious period and isolation address is reasonable as it empowers the Health Department to protect the health and safety of the community.⁵⁴
- 123.13 Location details inform the Department's understanding of the spread of the virus across the community, transmission pathways, risk areas, and the potential impact or incursion into sensitive settings, and further contributes towards data on secondary attack rates. It provides linkages into the Department's and community support programs such as the Household Engagement Program, COVID-19 Positive Pathway Program, and our Compliance and Enforcement Program.⁵⁵
- 123.14 Individuals who are a confirmed or probable case should also continue to be required to inform their workplace or education facility that they have been diagnosed with COVID-19 if

⁴⁸ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

⁴⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁵⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁵¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p.17.

⁵² Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁵³ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

⁵⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁵⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

they attended the setting during their infectious period. This responsibility enables prompt, de-identified information to be shared to alert individuals that they have been exposed to a positive case and should test for COVID-19 if they develop symptoms, to be initiated by the workplace or education facility.

- 123.15 In addition, individuals who have COVID-19 should also be required to inform any other persons who may be a close contact or a social contact, to the extent the diagnosed person is able to reasonably identify and notify these persons. This will allow identification of potential new cases and prevent onward transmission.⁵⁶
- 123.16 Given that workers are best placed to notify contacts in the workplace of potential exposure, it is sensible to shift this onus, whilst still retaining the protections offered by requirements placed on social contacts and symptomatic persons to get tested if experiencing symptoms.⁵⁷
- 123.17 With high levels of community transmission, at this phase of the pandemic response, reducing incursion of new variants from overseas is no longer proportionate or realistic. Although there remains a risk of new variants of concern, the relative risk posed by international arrivals is much less compared to earlier stages of the pandemic.⁵⁸
- 123.18 Such a risk would exist regardless and will be more effectively mitigated through other surveillance methods in the community.⁵⁹
- 123.19 As such, a mandatory test on arrival is no longer a proportionate measure, however it should be strongly recommended. The risk posed is mitigated by the requirement to get tested if symptomatic within seven days of arrival, and recommendation for testing if symptomatic thereafter.⁶⁰
- 124 I have accepted the advice of the Chief Health Officer and Acting Chief Health Officer. I believe that self-isolation, self-quarantine and testing obligations remain an important safeguard for early detection of diagnosed persons to prevent large scale outbreaks.

Countervailing possible impacts that the obligations imposed by the Order may have on individuals and the community

- 125 In making this decision, I considered the possible negative impacts of the Order on the individuals and the community.

⁵⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

⁵⁷ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

⁵⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

⁵⁹ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

⁶⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 19.

- 126 In particular, as noted above, in the Human Rights Statement, I have considered how people's human rights will be engaged and limited by the Order.
- 127 In addition, I also considered the following additional potential negative impacts:
- 127.1 Persons who are required to self-isolate or self-quarantine are permitted to leave the premises at which they are isolating/quarantining for limited purposes. They are therefore not able to move freely.
- 127.2 Self-isolation or self-quarantine measures can also constitute an incursion into the rights of people of different cultural, religious, racial or linguistic backgrounds to practice their culture, religion, or language to the extent that the short period prevents them from doing so. While there are many ways of enjoying one's culture, religion, or language at home or online, there may be activities which can only be done face-to-face or in a certain location outside the home.
- 127.3 A person who is diagnosed with COVID-19 required to self-isolate may impact on their social relationships and everyday life, such as going to work or going shopping. Furthermore, some persons may not reside with other diagnosed persons or close contacts who are quarantining, resulting in limited support if they experience mild symptoms.
- 127.4 A person may choose to self-isolate or self-quarantine at a premise of their choice, which may not be their ordinary place of residence, to protect other household members. However, this option may not be viable for some people experiencing financial hardship or persons with limited social connections.

Whether there are any less restrictive alternatives that are reasonably available to protect public health

- 128 In their advice, the Chief Health Officer and Acting Chief Health Officer set out measures that do not have a restrictive element, such as health promotion and community education, that remain key to an effective pandemic response in Victoria.⁶¹
- 129 The Acting Chief Health Officer has stated that early and consistent implementation of measures, such as quarantine, is the best strategy to limit further impacts from Omicron, including BA.2 and any new variants that emerge, and that these measures help to limit the impacts to Victorian residents who are most at risk of serious illness, reduce effects on the health system and support the continuity of critical services.⁶²
- 130 Early detection of infection is important to limit the spread of infection and exposure to others. Flexibility and adaptability are critical in ensuring a TTIQ strategy is robust and can appropriately interrupt chains of transmission via rapid testing, contact tracing, quarantining and isolation, to

⁶¹ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 13.

⁶² Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 4.

ensure the safety of the Victorian population.⁶³ However, the risk of transmission in close contacts and risk individuals may be managed through regular testing rather than self-quarantine alone, and this has been reflected in the Order.⁶⁴ In addition, the power to grant exemptions to individuals and classes of persons supports the management of close contacts and confirmed cases at a local level.⁶⁵

- 131 Privacy protections apply to information disclosed and held under the pandemic orders. This allows the Department to better understand the spread of the virus across the community, transmission pathways, risk areas, and the potential impact or incursion into sensitive settings, while ensuring personal and health information is protected.⁶⁶
- 132 Employer notification obligations aid the endemic management of outbreaks in the workplace and reflects the shift in the pandemic response toward empowerment and education.⁶⁷ It also allows notification of potential exposure to identify potential new cases and prevent onward transmission.⁶⁸
- 133 Obligations on international arrivals have been reduced to balance the ongoing risk of COVID-19 incursion from international arrivals with the higher levels of community transmission in Victoria.⁶⁹
- 134 On the basis of the Chief Health Officer and Acting Chief Health Officer's advice, I consider there to be no other reasonably available means by which to limit the spread of COVID-19 that would be less restrictive of this particular freedom. However, even if there were less restrictive means, I considered that the limitation imposed by this Order is in the range of reasonably available options to reduce the spread of COVID-19.

Conclusion

- 135 Taking into account all of the above factors (including those contained in the Human Rights Statement) and weighing the public health benefits of the Order against the countervailing potential impacts on individuals and the community, I believed it was reasonably necessary to make the Order to protect public health.
- 136 For the same reasons, in my opinion, I formed the opinion that the limits placed on human rights by the Order are demonstrably justified for the purposes of the Charter.

⁶³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁶⁴ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

⁶⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁶⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

⁶⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

⁶⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

⁶⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 19.

SCHEDULE 3 – REASONS FOR DECISION – PANDEMIC (WORKPLACE) ORDER 2022 (NO. 8)

Summary of Order

137 This Order imposes obligations on employers in relation to workers in managing the risk of COVID-19 in the workplace.

Purpose

138 The purpose of the Order is to assist in reducing the frequency and scale of outbreaks of COVID-19 in Victorian workplaces and to establish more specific obligations on employers and workers in relation to managing the risk associated with COVID-19 transmission in work premises. This Order is intended to supplement any obligation an employer may have under the Occupational Health and Safety Act 2004 and is not intended to derogate from any such obligations.

Obligations

139 The Order imposes obligations on employers to assist in reducing the frequency of outbreaks of COVID-19 in Victorian workplaces.

140 An employer must take reasonable steps to ensure that all workers comply with face covering requirements that may apply under the *Pandemic (Public Safety) Order 2022 (Public Safety Order)* and that they respond appropriately if there is a symptomatic person or a confirmed case in the work premises.

141 The Order specifies additional obligations on certain categories of hospitals.

142 A regulated employer must not permit a worker to work outside their ordinary place of residence, or to work at a facility or ceremony (as applicable) if the worker is unvaccinated or partially vaccinated or for certain workers, not fully vaccinated (boosted) in order to limit the spread of COVID-19 within the population of those workers. This does not apply in relation to a general worker if it is not reasonably practicable for the general worker to work at their ordinary place of residence.

143 Certain regulated employers must:

143.1 collect, record and hold certain vaccination information of workers;

143.2 not permit specific unvaccinated or partially vaccinated workers to work outside the worker's ordinary place of residence, or at a facility or ceremony (as applicable);

143.3 if a booster deadline is specified in relation to a worker and the worker is aged 18 years or over, the employer must not, after that date, permit the worker to work outside their ordinary place of residence unless the worker is fully vaccinated (boosted) or an excepted person or unless an exception applies to the worker; and

143.4 notify current and new workers that the employer is obliged to collect, record and hold vaccination information about the worker and to not permit the worker who is unvaccinated

or partially vaccinated or not fully vaccinated (boosted) from working outside the worker's ordinary place of residence, or at a facility or ceremony, as applicable.

- 144 Exceptions are set out in the Order where an employer is not required to comply with the Order. Otherwise, failure to comply with the Order may result in penalties.

Changes from Pandemic (Workplace) Order 2022 (No. 7)

- 145 A worker must not attend a work premises if they have undertaken a COVID-19 PCR or rapid antigen test within the past seven days and they are awaiting the result.
- 146 An employer must take reasonable steps to ensure that all workers comply with requirements to wear a face covering under the Public Safety Order. Where the Public Safety Order requires a face covering to be worn in a work premises, an employer, owner, operator or controller of that work premises must display a sign advising persons that they must wear a face covering under the Public Safety Order when entering the work premises, unless an exception applies.
- 147 An employer must implement a COVIDSafe Plan which addresses the health and safety issues arising from COVID-19 including mitigating the introduction of COVID-19 and the process of responding to a symptomatic person or confirmed case of COVID-19 in the work premises.
- 148 An employer must not require a worker to perform work at a work premises if the worker is a symptomatic person. An employer must advise workers who are symptomatic persons that they are required to comply with requirements that may be relevant in the document "Testing Requirements Policy" and support a worker to do so.
- 149 After becoming aware of a diagnosed person or a probable case who has attended the work premises in the infectious period, the operator must:
- 149.1 direct the diagnosed person or the probable case not to attend the work premises and advise them to self-isolate in accordance with the Quarantine, Isolation and Testing Order and support a worker to do so;
 - 149.2 take reasonable steps to notify workers who attended the work premises during the relevant infectious period that a diagnosed person or probable case has attended the work premises; and
 - 149.3 inform all workers to be vigilant about the onset of COVID-19 symptoms and advise all workers to comply with the relevant requirements under the "Testing Requirements Policy"
- 150 After becoming aware of an outbreak in the workplace (as defined in the Case Contact and Outbreak Management policy), the operator of a workplace must notify the Department of Health (the Department) and comply with any further directions given by the Department or WorkSafe in relation to closure of the work premises (or part of the work premises) and/or cleaning.
- 151 Similarly, if the operator of an education facility becomes aware of a diagnosed person or a probable case attending that education facility during their infectious period, they must take reasonable steps to notify the parents, guardians and carers of the students enrolled at the education facility during the relevant infectious period and advise them to monitor for COVID-19 symptoms and comply with

the document, "Testing Requirements Policy". To meet these obligations, education facility operators are authorised to collect, record and store basic information about the dates of any exposures at the facility.

152 Hospitals conducting elective surgery are required to comply with the restrictions and requirements contained within the Elective Surgery Schedule. Restrictions on elective surgery do not apply to:

152.1 in vitro fertilisation procedures performed at registered facilities, or

152.2 a procedure for the surgical termination of pregnancy.

153 Employers or operators (as applicable) are authorised to:

153.1 collect, record and hold certain vaccination information of workers;

153.2 notify current and new workers about the employer's or operator's obligations;

153.3 disclose a general worker's vaccination information to an authorised officer upon request.

154 Organisers of ceremonies must not permit individuals who are unvaccinated to work at the ceremony space, subject to exceptions.

155 Services Victoria, via the Services Victoria App, may notify a person that they are eligible to receive a booster and is authorised to collect, use, disclose and store information about a person's attendance at a work premises despite QR code system check-ins no longer being required. In addition, the Services Victoria App may still be used to demonstrate a person's vaccination status.

Period

156 The Order will commence at 11:59:00pm on 22 April 2022 and end at 11:59:00pm on 12 July 2022.

Relevant human rights

Human rights that are limited

157 For the purposes of section 165AP(2)(c), in my opinion, the obligations imposed by the order will limit the human rights identified as limited under the heading *Nature and extent of limitations* in the schedule to the Human Rights Statement that relates to this order.

158 My explanation for why those rights are limited by the order is set out in the Human Rights Statement.

159 The Human Rights Statement also sets out:

159.1 my explanation of the nature of the human rights limited (as required by section 165AP(2)(i));
and

159.2 my explanation of the nature and extent of the limitations (as required by section 165AP(2)(iii)).

Human rights that are engaged, but not limited

- 160 Further, in my opinion, the obligations imposed by the order will engage, but not limit, the human rights identified as engaged, but not limited, under the heading *Nature and extent of limitations* in the schedule to the Human Rights Statement that relates to this order.
- 161 My explanation for why those rights are engaged, but not limited, by the Order is set out in the Human Rights Statement.

How the obligations imposed by the Order will protect public health

- 162 I have considered the Acting Chief Health Officer's advice dated 7 April 2022 that the following measures are appropriate and proportionate to the current epidemiology and forecasted impact of the BA.2 sub-lineage:⁷⁰
- 162.1 requiring face masks in higher risk and sensitive indoor settings (with limited exceptions) with strong communications regarding the benefits of wearing masks;⁷¹
 - 162.2 requiring COVID-19 vaccination for workers, including third doses (booster) for high-risk workforces;⁷²
 - 162.3 requiring COVIDSafe Plans to support practising of COVIDSafe behaviours in workplaces with workers onsite, including facilitating working or studying from home in periods of high community transmission as an additional measure to reduce the risk of transmission at work where appropriate;⁷³
 - 162.4 reviewing and revising the management of international arrivals, including air passengers and crew, and maritime passengers and crew including cruise ship passengers.⁷⁴
- 163 I have considered the Acting Chief Health Officer's advice that early and consistent implementation of the above measures together with other measures in the other Pandemic Orders is the best strategy to limit further impacts from Omicron, including BA.2 and any new variants that emerge. These measures, if implemented as a suite, will help to limit the impacts to Victorian residents who are most at risk of serious illness, reduce effects on the health system and support the continuity of critical services.⁷⁵

⁷⁰ Department of Health, *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 4.

⁷¹ Department of Health, *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 4.

⁷² Department of Health, *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 5.

⁷³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 5.

⁷⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 5.

⁷⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 5.

- 164 I have considered the evidence that vaccination has been shown to reduce the risk of severe COVID-19 related outcomes such as hospitalisation and death.⁷⁶ I acknowledge the important role that worker vaccination mandates have served in reducing transmission within workplaces, protecting people at risk of adverse outcomes and ensuring the ongoing provision of critical goods and services.⁷⁷
- 165 In reviewing the continuation of worker vaccination requirements, I have considered the Chief Health Officer and Acting Chief Health Officer’s advice on the current epidemiology of COVID-19 in Victoria, vaccination coverage and uptake of third dose (booster) vaccination, and population susceptibility of COVID-19 in the context of natural immunity and community transmission. I have also considered the shift in Victoria’s pandemic response to individual and industry-led action, and the ongoing focus on protecting those most at risk of serious outcomes from COVID-19 and our healthcare system. In addition, I have considered the settings and environments, including workplaces, where an outbreak may be particularly detrimental, and the ongoing role of mandatory vaccination of workers.⁷⁸
- 166 I have considered the Acting Chief Health Officer’s advice for the gradual change to removing two-dose worker vaccination mandates to being at the discretion of industry and individual workplaces and allowing for a lead time prior to the introduction of individualised workplace vaccination policies.⁷⁹ Pending this shift, I consider it appropriate to continue the current requirement for workers that leave home for work to have received their primary course of vaccination. As is currently the case, this obligation would not apply to general workers if it is not reasonably practicable for the individual to work at their ordinary place of residence.⁸⁰
- 167 I have considered the evidence that a third dose limits onward transmission of Omicron and provides greater protection to workers from symptomatic illness, hospitalisation and death.⁸¹
- 168 I accept the Acting Chief Health Officer’s advice that a third dose (booster) requirement be retained in the workforces where they currently apply including the following because they are involved in the care of at-risk populations, are at higher occupational risk of COVID-19, are critical to maintaining emergency services or food supply chains, or are at higher risk of being involved in large workplace outbreaks because of the nature of their work environment:
- 168.1 healthcare, disability and residential aged care workers who provide care to population groups at increased risk of adverse health outcomes from COVID-19 infection;
- 168.2 education facility workers who are involved in essential learning and development of children;

⁷⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 10-11, 21.

⁷⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

⁷⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

⁷⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21, 22.

⁸⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22 [115].

⁸¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22-23.

- 168.3 emergency services workers who are involved in providing critical operations and essential goods and services to the community; and
- 168.4 workers in workplaces at increased risk of incursion, propagation, or downstream implications on the Victorian community, such as custodial, food processing and distribution, and – where operational - quarantine accommodation settings.⁸²
- 169 These settings can also be regarded as having relatively greater criticality than many others.⁸³
- 170 The Acting Chief Health Officer commented as follows with respect to COVIDSafe Plans:
- 170.1 Throughout the pandemic, transmission of the virus has occurred in workplace settings due to the close contact between people, inadequate ventilation, and the use of shared facilities such as meeting rooms and lunchrooms. I advise that employers should continue to be required to maintain an up-to-date COVIDSafe Plan for each work premise where workers are onsite, to mitigate COVID-19 risk. As the COVID-19 response continues to transition from Orders towards empowering individuals and industry to utilise protective behaviours and measures, however, I advise that COVIDSafe Plan requirements should transition at the earliest reasonable juncture from Orders and is implemented via alternative such as workplace requirements, guidance materials and strong engagement, to achieve the same intent.⁸⁴
- 171 Consistent with the Acting Chief Health Officer’s advice, dated 7 April 2022, I accept that employers should continue to maintain COVIDSafe Plans and will consider the timing of transitioning COVIDSafe Plan requirements from Orders. I will draw on industry advice as well as the evolving epidemiology as part of considering that transition.
- 172 Whilst testing, tracing, isolation and quarantine (TTIQ) measures are not the primary focus of the obligations contained in the Workplace Order, they are supported by the Workplace Order. For example, individuals who are a confirmed case will continue to be required, by the Workplace Order, to inform their workplace or education facility that they have been diagnosed with COVID-19 if they attended the setting during their infectious period. This responsibility enables prompt de-identified information to be shared to alert individuals that they have been exposed to a positive case and should test for COVID-19 if they develop symptoms, to be initiated by the workplace or education facility.⁸⁵
- 173 In addition to the above, when a workplace learns that a worker is symptomatic, it is required to put in place a number of measures, including record keeping and notification.
- 174 Furthermore, the Pandemic (Quarantine, Isolation and Testing) Order will continue to require individuals who have COVID-19 to inform any other persons who may be a close contact or a social contact, to the extent the diagnosed person is able to reasonably identify and notify these persons.

⁸² Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22-24.

⁸³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22-24.

⁸⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 15.

⁸⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

Both these Pandemic Orders will enable the notification of potential new cases and prevent onward transmission.

- 175 In addition, continuing to require employers and education facilities to provide notification to individuals (or parents, guardians and carers) that they may have been exposed to a positive case supports the shift in the pandemic response towards empowering and educating the general public and businesses to manage outbreaks and protect staff, students and the community.⁸⁶
- 176 Furthermore, amending the threshold for a workplace outbreak from a predetermined number of confirmed cases to a number revised from time to time in line with Case, Contact and Outbreak Management policy is consistent with this shift in the pandemic response. Allowing the Department to flexibly adjust both the threshold that constitutes an outbreak, and the obligations that follow, will ensure that a balance is struck between having oversight of large workplace outbreaks, and not placing unnecessary burdens on employers. This will also allow for a more agile response based on the current epidemiological situation in Victoria and what constitutes a proportionate requirement to place on employers.⁸⁷
- 177 Finally, the mandatory protocol to be imposed on cruise ships is proportionate to the elevated risk of COVID-19 transmission and amplification among passengers and crew on cruise ships, given the close quarters shared by individuals, the number of large outbreaks that have occurred locally and internationally on cruise ships, and the difficulty in providing health services while at sea.⁸⁸

Countervailing possible impacts that the obligations imposed by the Order may have on individuals and the community

- 178 In making this decision, I have seriously considered the possible negative impacts of the Order on the individuals and the community.
- 179 In particular, as noted above, in the Human Rights Statement, I have considered how people's human rights will be engaged and limited by the Order.
- 180 In addition, I have also considered the following additional potential negative impacts:
- 180.1 "Requirements of self-isolation and self-quarantine place significant restrictions on the ability of people to move freely." "Restrictions [on who can attend the workplace] can amount to unfavourable treatment on the basis of disability by requiring workers symptomatic with COVID-19 to return home or to self-isolate and socially distance at the work premises, and to take a COVID-19 test if the worker has not already done so."⁸⁹
- 180.2 "Freedom of movement of persons in Victoria who are going to work is... limited if the worker is symptomatic for COVID-19 or otherwise is a suspected case or probable case and the Order

⁸⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁸⁷ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

⁸⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

⁸⁹ Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (22 April 2022).

prevents the person from going to work.”⁹⁰ They are “also deterred from their right to peaceful assembly and freedom of association in the workplace, where they would otherwise gather for their shift and mingle with their colleagues.”⁹¹

180.3 Any information collected or disclosed under the Order would constitute personal and health information and its provision would therefore be an interference with privacy.

180.4 “Those who are firmly opposed to restrictions on their daily activities may argue that the requirements of the Order limits their rights to hold an opinion about the pandemic or its management without interference.”⁹²

180.5 “This Order may have the effect of interfering with the rights of property owners and other persons with property rights, whose use or enjoyment of the property (real or personal) will be affected by the operation of the Order. The Order might in the short term reduce or affect the capacity of certain businesses to generate income from their real and personal property.”⁹³

181 In making this pandemic order, I have included limited exceptions to the additional obligations for specified industries to ensure they are less onerous in specific circumstances, including:

181. 1 permitting general workers to attend the workplace where it is not reasonably practicable to work from home or permitting recent international arrivals who are specified workers to attend the workplace if fully vaccinated with a booking for a booster vaccination.

Whether there are any less restrictive alternatives that are reasonably available to protect public health

182 I have considered the Acting Chief Health Officer’s advice that the Victorian public health response to COVID-19 continue to transition from Orders towards empowering individuals, communities, and industry to drive protective measures and behaviours.⁹⁴

183 I have considered the importance of community education, engagement and COVIDSafe behaviours such as vaccination, mask wearing, physical distancing, respiratory and hand hygiene, staying home and getting tested when unwell as remaining the key to an effective pandemic response in Victoria. Some of these measures no longer appear in Orders going forward.⁹⁵

184 In particular, I have considered the Acting Chief Health Officer’s advice date 7 April 2022 and the Chief Health Officer’s advice on 19 April 2022 that it is important that less restrictive measures

⁹⁰ Department of Health, Human Rights Statement: *Pandemic (Workplace) Order* (22 April 2022).

⁹¹ Department of Health, Human Rights Statement: *Pandemic (Workplace) Order* (22 April 2022).

⁹² Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (22 April 2022).

⁹³ Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (22 April 2022).

⁹⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 7.

⁹⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 7.

continue to be utilised to increase vaccination coverage. I accept both the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that tailored communication and engagement strategies continue to educate, incentivise, and encourage voluntary vaccine uptake among workers, and address any potential barriers to vaccination.⁹⁶

185 I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that these non-mandatory measures alone will not be sufficient to manage the serious risk to public health posed by COVID-19.

186 In addition, given Victoria's high two dose vaccination coverage, continuation of vaccine mandates for patrons to open premises is unlikely to materially increase uptake of vaccination in those who remain unvaccinated, and the negative consequences of social and community exclusion of unvaccinated patrons from these premises may now outweigh the previously recognised benefits. I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's recommendation for ongoing investment and targeted engagement in promoting vaccination of patrons, particularly 'up-to-date' vaccination, using the least restrictive means available.⁹⁷

Conclusion

187 I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that the measures related to the following continue to be reflected in, or introduced to, Pandemic Orders:

187.1 face masks;

187.2 COVID-Safe plans;

187.3 obligations for workplaces and education facilities to notify individuals that they may have been exposed;

187.4 cruise passenger vaccination and testing requirements;

187.5 worker vaccination requirements;

187.6 quarantine, testing and isolation.

188 I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that these measures remain crucial public health measures to address the evolving threat of BA.2 and will continue to reduce the potential impact of the virus on individuals and the health system.⁹⁸

⁹⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

⁹⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22.

⁹⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.