

# Minister for Health

## Statement of Reasons

### **Pandemic Orders with effect on 12 July 2022**

On 11 July 2022, I Mary-Anne Thomas, Minister for Health, made the following pandemic orders under section 165A1 of the *Public Health and Wellbeing Act 2008*:

Pandemic (Public Safety) Order 2022 (No. 3)
Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 10)
Pandemic (Workplace) Order 2022 (No. 10)

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 each order.

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## 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 section 165AE(1)), make any order that I believe is reasonably necessary to protect public health. The Premier made the initial pandemic declaration on 10 December 2021, and has extended this declaration three times, 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:
  - 2.1 on 9 January 2022, the Premier extended the pandemic declaration for three months from 12 January 2022;
  - 2.2 on 6 April 2022, the Premier extended the declaration again for a further three months from 12 April 2022; and
  - 2.3 on 5 July 2022, the Premier extended the declaration again for a further 3 months from 12 July 2022.
- 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 July 2022, I received written advice from the Acting Chief Health Officer. This advice relates to the public health measures the Acting Chief Health Officer recommends both continuing and introducing in Victoria. The advice reflects the current COVID-19 context in Victoria and is given in addition to any advice provided by the Acting Chief Health Officer to the Premier regarding an extension of the declaration of the pandemic.
- 5 I have also reviewed the epidemiological data available to me on 7 July 2022 to affirm my positions on the orders made on 11 July 2022, to commence on 12 July 2022.
- 6 Under section 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 On the basis of the material provided to me by the Department of Health and the advice of the 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 democratic

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

## Guiding principles

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

### *Principle of evidence-based decision-making*

- 9 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.<sup>1</sup>
- 10 My decision to make the pandemic orders has been informed by the expert advice of the Acting Chief Health Officer about the serious risk to public health posed by COVID-19 and the public health measures that the Acting Chief Health Officer considers are necessary or appropriate to address this risk.

### *Precautionary principle*

- 11 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.
- 12 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*

- 13 This principle is that the prevention of disease, illness, injury, disability or premature death is preferable to remedial measures.
- 14 Despite high vaccination coverage across Victoria, the epidemiological data suggests that Victoria is entering an epidemic wave driven by BA.4 and BA.5 sublineages and Acting Chief Health Officer's advice suggests that there are additional risks posed by the BA.4 and BA.5 sublineages.<sup>2</sup> These factors together with increased transmission during the winter period and the gradual waning of natural and vaccine-induced immunity to COVID-19, add significant additional pressure to an already stretched health system.<sup>3</sup>

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<sup>1</sup> Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 7.

<sup>2</sup> Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) pp. 10 - 11.

<sup>3</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (7 July 2022) p. 29.

- 15 Having regard to these factors 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.
- 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 Chief Health Officers and the Deputy Chief Health Officers of the States and Territories, including through the Australian Health Protection Principal Committee (AHPPC).
- 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. The proactive response by the new Commonwealth Government to these current challenges is welcomed and enables greater levels of cooperation and consistency across jurisdictions.

#### *Part 8A objectives*

- 26 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:
- 26.1 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;
  - 26.2 supports proactive and responsive decision-making for the purposes of preventing and managing the outbreak and spread of pandemics and diseases with pandemic potential;
  - 26.3 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;
  - 26.4 promotes transparency and accountability in relation to decisions made and actions taken under Part 8A; and
  - 26.5 safeguards contact tracing information that is collected when a pandemic declaration is in force.

#### **Human Rights**

- 27 Section 165A(2) of the PHW Act, recognises 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.
- 28 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:
- 28.1 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;
  - 28.2 second, seriously turn my mind to the possible impact of the decision on human rights and the implications for affected persons;
  - 28.3 third, identify countervailing interests or obligations in a practical and common-sense way; and
  - 28.4 fourth, balance competing private and public interests as part of the exercise of 'justification'.



- 29 This statement of reasons must be read together with the Human Rights Statement.
- 30 I also note that in providing his written advice of 7 July 2022, the Acting Chief Health Officer had regard to the Charter.

## Overview of public health advice

- 31 Following the Premier extending the pandemic declaration on 5 July 2022, I requested the Acting Chief Health Officer's advice under section 165AL and received the Acting Chief Health Officer's written advice on 7 July 2022.
- 32 On 7 July 2022, the Acting Chief Health Officer advised that in recent weeks the number of hospital admissions for COVID-19 has been rising,<sup>4</sup> with the number of deaths occurring remaining persistently elevated.<sup>5</sup>
- 33 As advised in the Acting Chief Health Officer's advice to the Premier to extend the Pandemic Declaration, COVID-19 remains a serious risk to public health in Victoria.<sup>6</sup> The Acting Chief Health Officer has advised that the challenges that he considers COVID-19 presents to Victoria at this time are as follows:<sup>7</sup>
- 33.1 **Omicron Variant of Concern (VOC) and sublineages**, with BA.4/BA.5 now dominant: the Omicron VOC continues to pose a risk to Victoria as it is highly transmissible and multiple sublineages have emerged with a growth advantage over the previous. This has led to waves of epidemic growth caused initially by BA.1 in November 2021, which out-competed the Delta VOC, then BA.2. More recently, multiple sublineages, BA.2.12.1, BA.4 and BA.5, which are increasingly prevalent in Victoria, have demonstrated a growth advantage over BA.2 and increased propensity to evade pre-existing immunity to vaccines and previous Omicron infection. BA.4/BA.5 is expanding rapidly and has recently become the dominant variant in Victoria. Whilst there is currently insufficient evidence of increased severity of BA.4/BA.5, ongoing assessment is required. Consequently, the prevalence of BA.4/BA.5 is contributing to greater transmission, with cases and hospitalisations increasing as has been observed interstate (particularly in New South Wales and Queensland) and internationally. Without further interventions, this will result in further pressure on our healthcare system over July and August due to increased numbers of inpatients with COVID-19 and workforce impacts. There is also the ongoing risk that further novel VOCs will emerge with characteristics of higher transmissibility, immune breakthrough or disease severity.
- 33.2 **Plateauing vaccine uptake and waning immunity**: I have also considered the risks posed by the gradual plateau in COVID-19 vaccine uptake across all doses and all age groups, coupled with waning immunity over time among those who have been vaccinated and those who have previously been infected. I am aware of the decreased vaccine effectiveness against infection with Omicron (and in particular the BA.4/BA.5 sublineages) compared with previous COVID-

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<sup>4</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022)p. 8.

<sup>5</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022)p. 8.

<sup>6</sup> Department of Health, Acting Chief Health Officer Advice to The Premier (1 July 2022).

<sup>7</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022)p.3.

19 variants. Although vaccine formulations designed to match circulating variants are in development, they are not currently registered or available in Australia.

**33.3 Increased COVID-19 and respiratory infections over winter:** during periods of cooler weather there is an increased risk of respiratory viral transmission as people tend to gather indoors more often and for longer periods. This may result in an upsurge of cases and has resulted in rising hospitalisations. During the winter period there has also been a concurrent rise in influenza and other respiratory viruses, and cold weather-related increases in respiratory and cardiovascular illness, which are placing additional demand on our health system.<sup>8</sup>

34 On 7 July 2022, the Commonwealth Government announced it is adopting the Australian Technical Advisory Group on Immunisation (ATAGI)'s recommendation on wider eligibility for a fourth COVID-19 vaccination dose from 11 July 2022 which will see greater take-up of this dose in Victoria.<sup>9</sup>

## Current context

35 The priority for the COVID-19 response remains limiting transmission, reducing morbidity and mortality and limiting the impact of COVID-19 on Victorians who are most at risk of serious illness, and reducing the strain on our health system, while maintaining enjoyment of life and the continued operation of business, cultural, sporting and other activities.

36 It is therefore necessary and appropriate to continue some public health and social measures to protect those most at risk and our health system.<sup>10</sup> For example, isolation requirements continue to be an important measure to reduce transmission, protect the community and maintain health system capacity.<sup>11</sup>

37 The pandemic orders are not enabled to introduce public health measures to manage the risks posed by influenza, however, it is necessary to consider the additional demand that influenza infections and associated hospital admissions may place on the health system, while there is concurrent pressure from COVID-19.<sup>12</sup>

38 There are a number of ongoing challenges that are placing the healthcare system under substantial pressure including the sustained high volume of COVID-19 cases, rising hospitalisations and non-COVID-19 related presentations. We are also seeing the resurgence of seasonal cold, flu and other respiratory illnesses which is adding further demand to the system. In addition, the health system is experiencing staff shortages due to the impacts of COVID-19, contributing to significant pressure on Victorian ambulance services, emergency departments and inpatient units.<sup>13</sup>

39 Recent modelling undertaken for the Department of Health on 7 July 2022 addressed the likely future impact of BA.4/BA.5. The modelling indicated that BA.4/BA.5 is likely to lead to a surge in

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<sup>8</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (7 July 2022), p.4.

<sup>9</sup> ATAGI updated recommendations for a winter dose of COVID-19 vaccine. Available at: <https://www.health.gov.au/news/atagi-updated-recommendations-for-a-winter-dose-of-covid-19-vaccine>

<sup>10</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 April 2022), p. 4.

<sup>11</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

<sup>12</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022), p.12.

<sup>13</sup> Department of Health, Acting Chief Health Officer Advice to the Minister for Health (7 July 2022), p.8.

infections with an expected epidemic peak in August 2022. While there remains uncertainty about the magnitude of the peak, it is expected to be between the BA.1 (January 2022) and BA.2 (April/May 2022) peaks.<sup>14</sup>

- 40 In considering these matters I am also taking note of the advice of the Acting Chief Health Officer regarding the move towards a model that empowers individuals and industry to understand their risk, to utilise public health behaviours and measures to protect themselves, their loved ones, and the wider community.<sup>15</sup> With the gradual transition to a more community and industry led pandemic response, it is crucial that there is strengthened community engagement on prevention and response strategies in order to support this enduring change in behaviours and ensure communities are well equipped to mitigate risk, take action when required and reduce the chance of those most at risk being disproportionately affected by COVID-19.
- 41 I have considered the timing for implementing all the measures in the Acting Chief Health Officer's advice. I have also taken into account external information (for example, AHPPC statements, with the most recent statement published on 8 July 2022) regarding current measures contained in the orders as the epidemiology evolves.
- 42 Based on the epidemiological data provided below, it is appropriate to broadly implement the advice provided by the Acting Chief Health Officer on 7 July 2022.
- 43 When making the pandemic orders, I have had regard to the advice provided by the Acting Chief Health Officer dated 7 July 2022.

### Immediate situation: Continued management of the COVID-19 Pandemic

- 44 As at 8 July 2022:
- 44.1 There are 9,676 new locally acquired cases (2,759 from polymerase chain reaction (PCR) Test results).
  - 44.2 The 7-day rolling average of new cases is 8,667, which is 18.5 per cent increase compared to the previous week.
  - 44.3 There are currently 52,786 active cases in Victoria, with 629 people hospitalised, 27 of which are in ICU.
  - 44.4 The 7-day rolling average of hospitalisations is 555, which is a 15.8 per cent increase compared to the previous week.
- 45 As at 8 July 2022, there were 9 COVID-related deaths were reported in the preceding 24-hour period, bringing the total number of COVID-related deaths identified in Victoria to 4,053.

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<sup>14</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022), p.14.

<sup>15</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022) p.19.

- 46 Variant surveillance data (wastewater and clinical genomics) within the past 14 days to 7 July 2022 has shown that:
- 46.1 Omicron BA.4/ BA.5<sup>16</sup> and related sub-sublineages have overtaken BA.2 to become dominant across the state with rapid growth.
  - 46.2 Wastewater surveillance: median 60 (R: 15-90) with 31 of 32 core surveillance sites reporting variant results from samples collected through 30 June.
  - 46.3 Clinic Genomics shows rapid increase of proportion of both BA.5 and BA.4. Consistent with wastewater data the BA.4/BA.5 group now dominant.

### *Vaccinations*

- 47 As at 8 July 2022:
- 47.1 a total of 6,282,856 doses have been administered through the State's vaccination program, contributing to a total of 15,811,548 doses delivered in Victoria.
  - 47.2 94.6 per cent of eligible Victorians over the age of 12 have received two doses of a COVID-19 vaccination.
  - 47.3 68.5 per cent of eligible Victorians over the age of 16 have received three doses (booster) of a COVID-19 vaccination.
- 48 As at 7 July 2022:
- 48.1 A total of 39,198,328 doses have been administered by Commonwealth facilities nationally, contributing to a total of 60,521,096 delivered nationally.
  - 48.2 >95 per cent of Australians aged 16 and over have received two doses of a COVID-19 vaccination.
  - 48.3 70.6 per cent of eligible Australians have received three or more doses of a COVID-19 vaccination.<sup>17</sup>

### *The current global situation*

- 49 The following situation update and data have been taken from the World Health Organisation, published 6 July 2022.

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<sup>16</sup> Wastewater analysis does not differentiate BA.4 from BA.5, so they are reported together as BA.4/ BA.5.

<sup>17</sup> Department of Health, Australian Government, Australian Immunisation Register, COVID-19 vaccine rollout updated 7 July 2022.

Statistic	
Global confirmed cumulative cases of COVID-19	Over 546 million
Global cumulative deaths	Over 6.3 million
Global trend in new weekly cases	Over 5 million (3 per cent higher than the previous week)
Country level: highest number of new weekly cases:	France (603,074 new cases, +33 per cent) Germany (555,331 new cases, -2 per cent) Italy (511,037 new cases; +50 per cent) United State of America (496,049 new cases; -29 per cent <sup>3</sup> ) Brazil (334,852 new case; -4 per cent)

Source: World Health Organisation, *WHO COVID-19 Weekly Epidemiology Update*, published 6 July 2022.

## Reasons for decision to make pandemic orders

### Overview

- 50 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.
- 51 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.
- 52 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.
- 53 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.<sup>18</sup> 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.*'

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<sup>18</sup> See Public Health and Wellbeing Act 2008 (Vic) section 3(1) for the definition of 'serious risk to public health'.

- 54 Having had regard to the advice of the Acting Chief Health Officer, it is my view that making these pandemic orders is reasonably necessary to reduce the risk that COVID-19 poses.
- 55 Omicron remains the dominant variant of COVID-19 globally. Omicron has multiple sublineages, with the major subgroups being BA.1, BA.2, BA.3, BA.4 and BA.5. BA.5 is the dominant circulating strain globally, accounting for 52 per cent of submitted sequences while BA.4 has also increased to 12 per cent for the period between 27 June to 3 July 2022. The proportion of BA.2 and its descendent lineages (together named BA.2.X) have declined to 9 per cent.<sup>19</sup>
- 56 I note that Omicron is more transmissible than the Delta VOC. Drawing on the limited evidence available, it appears that BA.4, BA.5 and BA.2.12.1 have a greater capacity to evade pre-existing immunity, contributing to growth advantage over BA.2.<sup>20</sup>
- 57 Internationally, BA.4 and BA.5 are now consistently outcompeting other sublineages. In some countries where BA.4 and BA.5 have emerged as the dominant circulating sublineage, this has resulted in a rise in cases, hospitalisations and deaths.<sup>21</sup>
- 58 Surveillance data from across Australia indicates that BA.2 has been the dominant variant nationally since March 2022. However, BA.4 and BA.5 are increasing rapidly as a proportion of total sequenced samples. In the most recent Austrakka report, across Australia during the two weeks to 22 June 2022, 26.9 per cent of samples were BA.4/BA.5 sublineages, and 71.2 per cent of samples were the BA.2 sublineage. There have been significant increases in BA.4/BA.5 in several jurisdictions across Australia. In NSW, the increase in BA.4 and BA.5 has been associated with a rapid increase in hospitalisations.<sup>22</sup>
- 59 In the Acting Chief Health Officer's advice, he advised the 7-day rolling average of new cases is increasing in Victoria. On 7 July 2022, the 7-day rolling average was 8,427 cases. This greater than the week prior which was 7,263 cases.<sup>23</sup>
- 60 I note the Victorian healthcare system has faced additional pressure due to the Omicron outbreak.<sup>24</sup> The number of hospital admissions for COVID-19 has been rising since 22 June 2022. On 7 July 2022, the 7-day rolling average of hospitalisations was 526, which was a 15.8 per cent increase compared with the proceeding 7-day period. In addition, hospitals are reporting ongoing high volumes of non-COVID-19 related presentations.<sup>25</sup>
- 61 The changes to the pandemic orders continue to recognise the transition of the pandemic response to empowering industry, workplaces, and individuals to make decisions based on public health guidance.

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<sup>19</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022) p. 14.

<sup>20</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022) p.14.

<sup>21</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022) p.10.

<sup>22</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022) p.10.

<sup>23</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022) p.7.

<sup>24</sup> Department of Health, Acting *Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 8.

<sup>25</sup> Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 July 2022) p.8.

- 62 On 7 July 2022, the Acting Chief Health Officer relevantly advised the following changes to the orders are appropriate:<sup>26</sup>
- 62.1 Amendment to the period of time that someone is recognised as a recent confirmed case from within 12 weeks to within 4 weeks of the end of their isolation period.
    - 62.1.1 This change aligns with then expected, now published guidance from the AHPPC and is reflective of emerging evidence that new variants of COVID-19 can evade prior immunity gained from infection and cause reinfection.
  - 62.2 Adding a reason to leave self-isolation to transport a household member to obtain essential food.
    - 62.2.1 An additional reason has been added to allow a diagnosed person or probable case in self-isolation to leave the premises where they are self-isolating or self-quarantining to obtain essential food.
    - 62.2.2 This change would ensure access to essential food supplies given the escalating number of COVID-19 cases in the community.
    - 62.2.3 Given recent changes to allow diagnosed persons and probable cases to leave self-isolation to transport their household members for other essential reasons, it is proportionate for this to be extended to essential food provision.
    - 62.2.4 Risk mitigation strategies include requiring the infected person to remain in the car and wear a face covering at all times, optimise ventilation (e.g. leaving windows open), and only permitting such transportation in the first instance if it is essential and no other arrangements can be made.
  - 62.3 Amendment to remove the elective surgery cap for private hospitals.
    - 62.3.1 The change allows the cap on private hospitals to restrict elective surgery to 100% of usual capacity prior to restrictions being in place be removed.
    - 62.3.2 This change would allow a private hospital to exceed this threshold where they believe appropriate.
- 63 I accept the advice of the Acting Chief Health Officer outlined above. I support the recommendations reflecting the advice of the Acting Chief Health Officer, my own considered views and the views of my Ministerial colleagues consulted over the course of the framing of these orders. I believe them to be appropriate, considered and proportionate in the circumstances of the pandemic as set out in the advice from the Acting Chief Health Officer.

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<sup>26</sup>Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (7 July 2022).

- 64 I considered the Acting Chief Health Officer’s advice related to broadening the mandate for mask wearing,<sup>27</sup> and in the current context have opted to ‘strongly recommend’ to all Victorians in all other indoor settings and outdoor settings when unable to maintain physical distance from others such as at entry and exit points at large events. I have chosen to recommend rather than mandate the inclusion of additional settings for face coverings because:
- 64.1 It is important to continue to transition towards a model that encourages a shared community responsibility through education, communication and engagement. This devolution of responsibility allows the community to manage their own and shared risk profiles accordingly.
  - 64.2 Victorians have been living with COVID-19 for nearly two and a half years and know the benefits of adopting simple behavior changes, like mask wearing. A bolstered campaign to communicate public health information and advice will build on the knowledge the community already shares.
  - 64.3 In January, during the first the Omicron wave, many retail and hospitality businesses had to close or normal operations were severely affected due to staff shortages caused by COVID-19. Businesses understand the consequences of not taking action through sensible measures to limit transmission. It is in the interest of businesses to protect the health and wellbeing of their staff to keep their workers and customers safe and their doors open. Industry groups have confirmed that they will encourage staff to wear masks to limit transmission and I have seen evidence from industry groups of their new proactive efforts on encouraging mask wearing. Similarly, schools know the importance of mask wearing to limit transmission and are best placed to communicate this message to staff, teachers, educators and students. Schools are now equipped with high-efficiency particulate air (HEPA) filters and consultation has confirmed that the Department of Education and Training has adequate supply of face masks and that RA tests will continue to be provided for terms three and four.
  - 64.4 Compliance with restrictions – as with all public health measures – is largely dependent upon ongoing community goodwill and understanding of the importance of public health measures. The effectiveness of these measures depends on this goodwill. The Government will deliver community engagement and public health communications which support recommended practices such as with respect to face coverings. Strengthened communications will contribute to enduring behavioural change.
  - 64.5 Individual circumstances in workplaces vary from setting to setting. A decision for staff and others to wear a face covering should be for an employer and their employees to make and manage according to their circumstances. Following consultation, I am confident that hospitality and retail businesses will make their own decisions and manage their own risks to keep their doors open.
  - 64.6 Social acceptance of public health measures is a considerable factor in community compliance and self- regulation. According to Victorian population surveys on COVID-19

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<sup>27</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (7 July 2022) p.20.



related behaviours and attitudes some voluntary COVIDSafe behaviours may continue (especially for high-risk cohorts) in the absence of requirements to do so.

- 64.7 Public health measures and restrictions should align with other Australian jurisdictions where possible, providing the Victorian community and travellers with consistency and certainty, as recommended by the AHPPC on 8 July 2022.
- 64.8 The challenge of living with COVID-19 will continue to persist. It is therefore important to encourage enduring behavioural change and the focus of the public health response should continue to prioritise communities and workforces of highest risk.
- 65 The Acting Chief Health Officer has also advised that at this time of heightened transmission and risk, he strongly recommends that people work from home where practical to do so and urges workplaces and higher education providers to use their discretion to facilitate working and studying from home if practicable.<sup>28</sup> I also request that employers consider working from home arrangements that are most appropriate for their workplace and employees based on individual requirements.

### Risks of no action taken

- 66 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.<sup>29</sup>*

### Schedules

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

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<sup>28</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (7 July 2022) pp.4 and 20.

<sup>29</sup> 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 (No. 3)**

### **Summary of Order**

- 68 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 for individuals who have not returned a negative COVID-19 test result and do not fall under a relevant exception.

#### *Purpose*

- 69 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. The order aims to limit the transmission of COVID-19 and protect particularly vulnerable populations by requiring people in the State of Victoria to carry and wear face coverings in certain settings and restricting access to care facilities.

#### *Obligations*

- 70 This 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.
- 71 This Order requires individuals to carry a face covering at all times and wear a face covering in the following settings (unless an exception applies):
- 71.1 while in an indoor space that is a publicly accessible area of a healthcare premises;
  - 71.2 while working in an indoor space that is a publicly accessible area of a court or justice centre;
  - 71.3 while working in an indoor space at a prison, police gaol, remand centre, youth residential centre, youth justice centre or post-sentence facility;
  - 71.4 while working in an indoor space in a resident-facing role at a care facility, including when not interacting with residents;
  - 71.5 while visiting a hospital or a care facility;
  - 71.6 while on public transport or in a commercial passenger vehicle or in a vehicle being operated by a licensed tourism operator;
  - 71.7 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;
  - 71.8 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;  
or

- 71.9 where required to do so in accordance with any other pandemic orders in force.
- 72 Face coverings are not required to be worn in the State of Victoria:
- 72.1 by an infant or child under the age of 8 years;
  - 72.2 by a prisoner in a prison (either in their cell or common areas), subject to any policies of that prison;
  - 72.3 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;
  - 72.4 by a resident in a post-sentence facility (either in their room or common areas), while they are at the facility subject to any policies of that post-sentence facility;
  - 72.5 by a person who has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable;
  - 72.6 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;
  - 72.7 when a person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication;
  - 72.8 when the nature of a person's work means that wearing a face covering creates a risk to their health and safety;
  - 72.9 when the nature of a person's work means that clear enunciation or visibility of the mouth is essential;
  - 72.10 when the person is working by themselves in an enclosed indoor space (unless and until another person enters that indoor space);
  - 72.11 by a person who is a professional sports person when training or competing;
  - 72.12 by a person engaged in any strenuous physical exercise;
  - 72.13 by a person riding a bicycle or motorcycle;
  - 72.14 by a person who is consuming medicine, food or drink;
  - 72.15 by a person who is smoking or vaping (including e-cigarettes) while stationary;
  - 72.16 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;

- 72.17 by a person who is receiving a service and it is not reasonably practicable to receive that service wearing a face covering;
  - 72.18 by a person who is providing a service and it is not reasonably practicable to provide that service wearing a face covering;
  - 72.19 by a person who is asked to remove the face covering to ascertain identity;
  - 72.20 for emergency purposes;
  - 72.21 when required or authorised by law; or
  - 72.22 when doing so is not safe in all the circumstances.
- 73 Face coverings are not required to be carried in the State of Victoria:
- 73.1 by an infant or child under the age of 8 years;
  - 73.2 by a prisoner in a prison (either in their cell or common areas), subject to any policies of that prison;
  - 73.3 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;
  - 73.4 by a resident in a post-sentence facility (either in their room or common areas), while they are at the facility and subject to any policies of that post-sentence facility;
  - 73.5 by a person who has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable;
  - 73.6 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.
- 74 This Order requires individuals at an airport or travelling in an aircraft, to carry a face covering at all times and wear a face covering at all times whilst inside an aircraft (unless an exception applies). 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.
- 75 Face coverings are not required to be carried at an airport or travelling in an aircraft:
- 75.1 by an infant or child under the age of 12 years;
  - 75.2 by a person who has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable.
- 76 Face coverings are not required to be worn inside an aircraft:
- 76.1 by an infant or child under the age of 12 years;

- 76.2 by a person who has a physical or mental health illness or condition, or disability, which makes wearing a face covering unsuitable.
  - 76.3 when a person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication;
  - 76.4 when the nature of a person's work means that wearing a face covering creates a risk to their health and safety;
  - 76.5 when the nature of a person's work means that clear enunciation or visibility of the mouth is essential;
  - 76.6 by a person who is consuming medicine, food or drink;
  - 76.7 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;
  - 76.8 by a person who is receiving a service and it is not reasonably practicable to receive that service wearing a face covering;
  - 76.9 by a person who is providing a service and it is not reasonably practicable to provide that service wearing a face covering;
  - 76.10 by a person who is asked to remove the face covering to ascertain identity;
  - 76.11 for emergency purposes;
  - 76.12 when required or authorised by law;
  - 76.13 when doing so is not safe in all the circumstances.
- 77 This Order prohibits a person from entering, or remaining on, the premises of a care facility unless:
- 77.1 the person is a resident of the facility; or
  - 77.2 the person is a care facility worker in relation to the facility and the entry is not otherwise prohibited under the Order; or
  - 77.3 the person is a visitor of a resident of the facility and the visit is not otherwise prohibited under the Order; or
  - 77.4 the person is visiting as a prospective resident of the facility, or a visitor that is a support person to a prospective resident of the facility and the visit is not otherwise prohibited under the Order; or
  - 77.5 the person is an essential visitor listed in the Benchmark Essential Visitors List; and their visit or entry is not otherwise prohibited under the Order.

- 78 This Order requires the operators of care facilities to not permit the following persons to enter, or remain at, the facility unless they have received a negative result from a COVID-19 rapid antigen test undertaken on the same day they attend the facility:
- 78.1 a visitor of a resident of the care facility; or
  - 78.2 a visitor who is visiting as a prospective resident of the care facility; or
  - 78.3 a visitor that is a support person to a prospective resident of the care facility; or
  - 78.4 a visitor who is an essential visitor listed in the Benchmark Essential Visitors List (unless the person is a care facility worker).
- 79 The above obligations do not apply to an operator in relation to the following persons:
- 79.1 a person who is visiting for the purpose of undertaking an end of life visit to a resident of the care facility; or
  - 79.2 a person that is seeking to enter the care facility for the purpose of providing urgent support for a resident's immediate physical, cognitive or emotional wellbeing, where it is not practicable for the person to take a COVID-19 rapid antigen test prior to entering the residential aged care facility; or
  - 79.3 a person who has undertaken a COVID-19 PCR test within 24 hours prior to visiting the care facility and provided acceptable evidence of a negative result from that test to the operator of the care facility; or
  - 79.4 a person providing professional patient care, including but not limited to:
    - 79.4.1 emergency workers in the event of an emergency; and
    - 79.4.2 ambulance workers; and
    - 79.4.3 visiting healthcare professionals.
- 80 This Order defines care facility excluded person to mean a person who:
- 80.1 is required to self-isolate under the *Pandemic (Quarantine, Isolation and Testing) Order*; or
  - 80.2 is required to self-quarantine under the *Pandemic (Quarantine, Isolation and Testing) Order*; or
  - 80.3 has COVID-19 symptoms unless those symptoms are caused by an underlying health condition or medication; or
  - 80.4 in the case of a visitor—has been tested for COVID-19 and has not yet received the results of that test.

- 81 This Order requires that the following persons must not enter, or remain on, the premises of a care facility if they are a care facility excluded person:
- 81.1 a care facility worker; or
  - 81.2 a visitor of a resident of the facility; or
  - 81.3 a prospective resident of the facility; or
  - 81.4 a visitor that is a support person to a prospective resident of the facility; or
  - 81.5 a visitor who is an essential visitor listed in the Benchmark Essential Visitors List.
- 82 A care facility excluded person who has COVID-19 symptoms (unless those symptoms are caused by an underlying health condition or medication) may be permitted to visit a care facility for the purposes of undertaking an end of life visit to a resident if authorised by an officer of the facility with the position of Director (or equivalent) and either the Chief Health Officer or Deputy Chief Health Officer, or a Director or Medical Lead of a designated Local Public Health Unit (LPHU). 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.
- 83 The operator of a care facility must take all reasonable steps to ensure that:
- 83.1 a person does not enter or remain on the premises of the facility if they are prohibited from doing so under the Order; and
  - 83.2 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; and
  - 83.3 the facility facilitates telephone, video or other means of electronic communication with the parents, guardians, partners, carers, support persons and family members of residents to support the physical, emotional and social wellbeing (including mental health) of residents.
- 84 The operator of a care facility must require visitors (or a parent, carer or guardian for visitors aged under 18 years) in relation to the facility to declare in writing at the start of each visit, but before entering any area of the care facility that is freely accessible to residents, whether the visitor:
- 84.1 is free of COVID-19 symptoms other than symptoms caused by an underlying health condition or medication; and
  - 84.2 has received a negative result from a COVID-19 rapid antigen test on the same day that they attend the facility; and
  - 84.3 is not currently required to self-isolate, self-quarantine or is a close contact but is not required to self-quarantine in accordance with the *Pandemic (Quarantine, Isolation and Testing) Order*.
- 85 Failure to comply with this Order may result in penalties.

## *Changes from Pandemic (Public Safety) Order 2022 (No. 2)*

86 Nil policy changes.

### *Period*

87 The Order will commence at 11:59:00pm on 12 July 2022 and end at 11:59:00pm on 12 October 2022.

## Relevant human rights

### *Human rights that are limited*

88 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.

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

90 The Human Rights Statement also sets out:

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

90.2 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*

91 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.

92 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

93 I have carefully read and considered the Acting Chief Health Officer's advice.

94 In relation to the restrictions that will be imposed by this Order, the Acting Chief Health Officer has relevantly advised:

94.1 Face masks should continue in high-risk settings and be re-introduced for individuals aged eight years and older in certain indoor settings to reduce the risk of onward transmission.



Masks protect healthy individuals from inhaling infectious particles and protects others by containing particles exhaled from infectious individuals.<sup>30</sup>

- 94.2 Pre-Omicron studies have demonstrated the effectiveness of masks in reducing transmission of COVID-19. In addition to limiting the spread of the virus, mask wearing has been shown to also be a cost-effective and cost-saving intervention. However, a recent study suggests that although mask wearing provides protection from infection, their effectiveness appears to be lower for the Omicron variant compared with earlier periods during the pandemic.<sup>31</sup>
- 94.3 Face masks are a low impost public health measure and have been generally well accepted and adopted by the Victorian community. A recent Victorian population surveys on COVID-19 related behaviours and attitudes indicates that a high proportion of respondents wore a mask while using public transport and a modest proportion wore a mask in an indoor setting.<sup>32</sup>
- 94.4 Face masks should continue to be required in high-risk settings, including - but not limited to - hospitals, care facilities, healthcare settings, public transport (including inside aircrafts for those aged 12 years and over), and custodial settings.<sup>33</sup>
- 94.5 Current mask requirements should be retained for cases, close contacts and those who are symptomatic and awaiting a COVID-19 test result when leaving their home or accommodation.<sup>34</sup>
- 94.6 All current exceptions from wearing a mask should remain in place.<sup>35</sup>
- 94.7 With a greater risk of transmission due to Omicron sublineages and their increasing growth advantage on the background of sustained high community transmission, and more people gathering indoors during the cooler months, in addition to requiring masks in certain settings, continued community engagement, education and health promotion messaging to advise the community of the role of masks in limiting the spread of the virus is supported by the Acting Chief Health Officer, and should emphasise the recommendation that masks should continue to be worn in outdoor settings where physical distancing is not possible.<sup>36</sup>
- 94.8 It is acknowledged that face mask requirements are not universally supported in the community, and it is open to the Minister to consider other means to achieve higher levels of mask use.<sup>37</sup>

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<sup>30</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 20.

<sup>31</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 20.

<sup>32</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 20.

<sup>33</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 21.

<sup>34</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 21.

<sup>35</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 21.

<sup>36</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 21.

<sup>37</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 21.

- 94.9 Care facilities provide care and support for members of the community who may be elderly, frail immunocompromised, have complex care needs or multiple comorbidities. These health factors confer greater risk of severe adverse health outcomes due to COVID-19.<sup>38</sup>
- 94.10 For this reason visitor entry requirements for care facilities should be retained to provide the strongest protection to individuals who are most at risk of severe morbidity and mortality. In the context of sustained community transmission, people gathering indoors due to the cooler weather, waning vaccine-induced and natural immunity among the general population and low fourth dose vaccination, these measures are appropriate and proportionate. Visitor entry requirements include attestation, pre-entry RA testing and face mask requirements.<sup>39</sup>
- 94.11 With these measures in place to limit viral incursion, it remains proportionate that visitor caps (numbers of visitors per resident) continue to be at the discretion of individual facilities. As the Acting Chief Health Officer has expressed previously, it is vital that care facilities apply a compassionate approach to visitor arrangements. This will ensure residents' health and wellbeing, while the ongoing risks posed by COVID-19 are mitigated.<sup>40</sup> As Victoria continues to experience a high rate of community transmission, RA tests remain an important measure to limit viral incursion into care facilities. RA tests are a useful screening tool as they are quick, convenient and exclude COVID-19 infection with a high level of accuracy. All visitors to care facilities should continue to have a negative RA test result on the day of visitation. Pre-entry testing can be undertaken prior to arriving at the facility to avoid additional staffing pressures. As part of the entry written attestation, the visitor should be required to attest that a test has been completed and returned a negative result.<sup>41</sup>
- 94.12 Current exceptions to pre-entry RA testing should also be retained. This includes end of life visitation, individuals providing professional patient care or persons providing urgent support for a resident's immediate physical, cognitive, or emotional wellbeing and it is not practicable to undertake a RA test prior to entering the facility. Individuals who are excepted from testing requirements should be strongly recommended to complete a RA test after their visit as soon as is practicable. Individuals who have undertaken a PCR test within 24 hours prior to visiting a RACF should also be excepted from RA testing requirements.<sup>42</sup>
- 94.13 In the event of an outbreak at a care facility, essential visitors should continue to be permitted to enter care facilities under the Benchmark Essential Visitors List, which outlines the minimum visitation requirements for care facility residents – in the context of COVID-19 risk – including when there are active outbreaks occurring within a facility. Visitors included as part of this essential visitors list who are attending a care facility should continue to be required to complete the care facility visitor pre-entry requirements.<sup>43</sup>

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<sup>38</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 27.

<sup>39</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 27.

<sup>40</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 28.

<sup>41</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 28.

<sup>42</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 28.

<sup>43</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), pp. 28-29.

95 I accept the Acting Chief Health Officer’s advice above in relation to face coverings in high-risk settings, face coverings for cases and close contacts and proposed care facility requirements.

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

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

97 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.

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

98.1 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).”<sup>44</sup>

98.2 “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 practice their culture, religion, or language to the extent that this can be done by face-to-face visits.”<sup>45</sup>

98.3 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.”<sup>46</sup>

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

99 I have considered the Acting Chief Health Officer’s advice that the Victorian public health response to COVID-19 continues to transition towards a model that empowers individuals and industry to understand their risk, utilise public health behaviours and measures to protect themselves, their loved ones, and the wider community.<sup>47</sup>

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<sup>44</sup> Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (24 June 2022).

<sup>45</sup> Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (24 June 2022).

<sup>46</sup> Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (24 June 2022).

<sup>47</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 18.

- 100 I have considered what is necessary, appropriate and proportionate to the current context and forecasted impact of COVID-19 over the winter period such as strengthened public communications and community engagement, targeted engagement, promoting and facilitating up to date vaccination, optimising safer indoor air through ventilation and/or filtration, facilitating access to COVID-19 therapies, face masks, COVIDSafe plans, test, trace, isolate and quarantine (TTIQ) and entry requirements to high risk settings as key to an effective pandemic response in Victoria.<sup>48</sup>
- 101 In particular, I have considered the Acting Chief Health Officer's advice on 7 July 2022 that the Victorian response should continue to utilise, prioritise and exhaust less restrictive measures prior to implementing more stringent measures, wherever possible.<sup>49</sup>
- 102 As the Acting Chief Health Officer advised previously, 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. To ensure consistent safeguards across these settings, it is appropriate to place visitor requirements in this Order. However, the impact of the COVID-19 pandemic on the residential care sector has been significant because of the necessity, at times, for restrictions on visitation to keep residents safe.<sup>50</sup>
- 103 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, considering that care facilities are akin to residential homes and private homes do not have restrictions on visitation. 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.<sup>51</sup> 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.

## Conclusion

- 104 I accept the Acting Chief Health Officer's advice that the measures related to the following continue to be reflected in, or introduced to, pandemic orders:
- 104.1 face covering requirements in certain high risk settings;
- 104.2 restrictions on visitors to care facilities and access for essential visitors to care facilities.

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<sup>48</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 5.

<sup>49</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 18.

<sup>50</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 28.

<sup>51</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 26.

- 105 I accept the Acting Chief Health Officer’s advice that these public health measures should continue to be mandated to mitigate the serious risk to public health posed by COVID-19.<sup>52</sup>
- 106 At this time, I considered some of the range of measures in the Acting Chief Health Officer’s advice should be ‘strongly recommended’ instead of mandated through the pandemic orders including:
- 106.1 The Acting Chief Health Officer’s advice related to mandating face coverings in a broader range of settings because:
- 106.1.1 it is imperative that increased community engagement and bolstered public messaging are implemented to empower individuals to utilise public health behaviours and measures to protect themselves, their loved ones, and the wider community.<sup>53</sup>
- 106.1.2 Compliance with these restrictions – as with all public health measures – is largely dependent upon ongoing community goodwill.
- 106.1.3 Each individual circumstances in a workplace can often vary from setting to setting.
- 106.1.4 Social acceptance of public health measures is a considerable factor in community compliance and self- regulation.
- 106.1.5 With consistent high vaccination rates across the country, public health measures and restrictions should align with other Australian jurisdictions where possible, providing the Victorian community and travellers with consistency and certainty.
- 106.2 The AHPPC statement on 8 July 2022, which said the Committee, “reiterates the shared responsibility of individuals, employers and governments in minimising the impact of COVID-19. There are a range of health behaviours all Australians can undertake to reduce the transmission of COVID-19, protect the community, in particular those most at risk, and protect our health system and essential services”.<sup>54</sup>
- 106.3 The Commonwealth Government adopting the Australian Technical Advisory Group in Immunisation (ATAGI)’s advice on wider eligibility for a fourth COVID-19 vaccination dose from 11 July 2022.<sup>55</sup>

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<sup>52</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p.p. 18, 20, 22–23.

<sup>53</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (7 July 2022) p.21.

<sup>54</sup> Commonwealth of Australia. (7 July 2022). *Expand eligibility for fourth dose COVID-19 vaccine dose*. Available at: <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/expanded-eligibility-for-fourth-covid-19-vaccine-dose>

<sup>55</sup> Commonwealth of Australia. (7 July 2022). *Expand eligibility for fourth dose COVID-19 vaccine dose*. Available at: <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/expanded-eligibility-for-fourth-covid-19-vaccine-dose>

106.4 The Commonwealth Government widening the eligibility to COVID antiviral treatments and the listing of certain antiviral medication on the Pharmaceutical Benefits Scheme from 11 July 2022.<sup>56</sup>

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<sup>56</sup> Commonwealth of Australia. (10 July 2022). *Millions of Australians to gain access to COVID treatments*. Available at: <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/millions-of-australians-to-gain-access-to-covid-treatments>

## **SCHEDULE 2 – REASONS FOR DECISION – PANDEMIC (QUARANTINE, ISOLATION AND TESTING) ORDER 2022 (NO. 10)**

### *Summary of Order*

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

### *Purpose*

- 108 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*

- 109 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:
- 109.1 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;
  - 109.2 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;
  - 109.3 notify the Department of the premises chosen to self-isolate and the contact details of any other residents at the premises;
  - 109.4 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;
  - 109.5 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
  - 109.6 notify any close or social contacts, to the extent that they are reasonably able to ascertain and notify those contacts.

- 110 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:
- 110.1 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 received a positive result (or until receiving a negative result from a COVID-19 PCR test undertaken within 48 hours after the COVID-19 RA test from which the person became a probable case);
  - 110.2 notify any other person residing at the premises that the probable case has received a positive result from a COVID-19 RA test and has chosen to self-isolate at the premises;
  - 110.3 notify the Department that they have received a positive COVID-19 RA test and advise the Department of the premises chosen to self-isolate;
  - 110.4 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;
  - 110.5 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
  - 110.6 notify any close or social contacts, to the extent that they are reasonably able to ascertain and notify those contacts.
- 111 The Order defines a recent confirmed case as a person:
- 111.1 who is currently within their infectious period and has begun, but not yet completed a period of self-isolation, including persons whose infectious period or period of self-isolation commenced while they were not in Victoria; or
  - 111.2 whose period of self-isolation ended within the previous 4 weeks, including persons whose period of self-isolation ended while they were not in Victoria (but not including probable cases released from isolation early when they received a negative result from a COVID-19 PCR test undertaken within 48 hours after their COVID-19 RA test).
- 112 The Order defines close contacts as persons who are not recent confirmed cases and have:
- 112.1 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
  - 112.2 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.
- 113 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:



- 113.1 the diagnosed person undertook their PCR test that confirmed they were a diagnosed person;  
or
- 113.2 the probable case undertook their RA test and received a positive COVID-19 result.
- 114 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.
- 115 The Order notes that a close contact of a probable case may end their period of self-quarantine early, where the probable case receives a negative test result from a COVID-19 PCR test undertaken within 48 hours after their COVID-19 RA test.
- 116 The Order excepts close contacts from the requirement to self-quarantine, provided that they:
- 116.1 undertake five RA tests within the seven-day period, spaced at least 24 hours apart, and the results are negative;
- 116.2 wear a face covering when attending any indoor space outside their home (unless an exception from the requirement to wear a face covering applies);
- 116.3 do not visit hospitals and care facilities unless:
- 116.3.1 in relation to a care facility, they are permitted to do so under the *Pandemic (Public Safety) Order*; or
- 116.3.2 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
- 116.4 notify the operator of a work premises that they are likely to attend for the purposes of work and the operator of an educational facility at which they are enrolled, which they are likely to attend during the seven-day period, that they are a close contact subject to the above conditions.
- 117 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.
- 118 The Order defines risk individuals as:
- 118.1 a social contact;
- 118.2 a symptomatic person in the community; or
- 118.3 an international arrival.
- 119 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.

- 120 Persons who are self-isolating or self-quarantining under the Order must:
- 120.1 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
  - 120.2 not leave the premises, except:
    - 120.2.1 for the purposes of obtaining medical care or medical supplies; or
    - 120.2.2 if asymptomatic for COVID-19, for the purposes of transporting another person with whom they reside to or from a hospital; or
    - 120.2.3 for the purposes of getting tested for COVID-19; or
    - 120.2.4 in any emergency situation; or
    - 120.2.5 if required to do so by law; or
    - 120.2.6 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
    - 120.2.7 for the purposes of working in a care facility if permitted to do so under the *Pandemic (Public Safety) Order*; or
    - 120.2.8 for the purpose of sitting a Senior Secondary examination provided that the person is not a diagnosed person or a probable case; or
    - 120.2.9 to escape the risk of harm (including harm relating to family violence or violence of another person at the premises); or if self-isolating, to transport a person with whom they reside (who does not need to self-isolate or self-quarantine) to, or from, a work premises, an education facility, a healthcare appointment or a location where that other person is obtaining essential food, if: the need for transportation is essential or other arrangements cannot be made; and
    - 120.2.10 the person leaving self-isolation:
      - (1) travels directly to and from the location and does not make any stops unless due to an emergency or as required by law; and
      - (2) remains in the vehicle at all times, unless reasonably required to escort the person to the location, or due to an emergency, or as required by law; and
      - (3) wears a face covering whilst outside the place of self-isolation; or
    - 120.2.11 if isolating or quarantining in the Victorian Quarantine Hub (VQH) or a Coronavirus Isolation and Recovery Facility (CIRF), to relocate to one other appropriate premises

for the remainder of their self-isolation or self-quarantine period. If they are self-isolating, immediately after choosing this premises they must:

(1) notify any other person residing at the chosen premises that they have been diagnosed with COVID-19 or received a positive result from a COVID-19 rapid antigen test, and have chosen to self-isolate at the premises for the remainder of their self-isolation period; and

(2) notify the Department of the address of the premises they have chosen; or

120.2.12 to relocate to the VQH or a CIRF (unless they have already spent time at the VQH or a CIRF during their isolation/quarantine period).

120.3 except for persons who are residents of a care facility, not permit any other person to enter the premises unless:

120.3.1 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

120.3.2 it is necessary for the other person to enter for medical or emergency purposes; or

120.3.3 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

120.3.4 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

120.3.5 the entry is otherwise required or authorised by law.

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

*Changes from Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 9)*

122 Amending the definition of a recent confirmed case to be a person whose infectious period ended within the previous 4 weeks.

123 Amending the reasons a person who is self-isolating can leave home to include transporting a person with whom they reside (who does not need to self-isolate or self-quarantine) to or from a location where that other person is obtaining essential food.

## *Period*

124 The Order will commence at 11:59:00pm on 12 July 2022 and end at 11:59:00pm on 12 October 2022.

## Relevant human rights

### *Human rights that are limited*

125 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.

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

127 The Human Rights Statement also sets out:

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

127.2 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*

128 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.

129 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

130 I have considered the Acting Chief Health Officer's advice dated 7 July 2022 and regard the following measures as appropriate and proportionate to the current epidemiology and continued impact of the BA.2 sub-lineage and emerging sublineages, BA.2.12.1, BA.4 and BA.5:<sup>57</sup>

130.1 Public health and social measures should continue to be implemented to help limit the impacts of Omicron sublineages to individuals and the health system, in the current context of waning population immunity and increased mixing indoors.<sup>58</sup> The Victorian response

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<sup>57</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 3.

<sup>58</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 20.

should continue to utilise, prioritise and exhaust less restrictive measures prior to implementing more stringent measures, wherever possible.<sup>59</sup>

- 130.2 Victoria's TTIQ strategy remains a core element of the COVID-19 public health response. Continued jurisdictional alignment and consistency on these core measures will support community adherence with public health advice and guidelines. Modelling undertaken on behalf of the Department of Health reported on 13 May 2022 reported the impact of removing isolation and close contact management requirements on a number of variables including case numbers, hospitalisations, and deaths. The complete removal of these requirements resulted in a significant upsurge in the number of cases per day. This is projected to correlate with a subsequent and substantial increase in COVID-19 related hospitalisations and deaths.<sup>60</sup>
- 130.3 Quarantine, isolation and testing requirements remain an important means of reducing transmission, protecting the community and maintaining health system capacity. Despite Victoria moving increasingly towards individual and community-led management of COVID-19, community transmission remains high. Isolation remains an effective intervention for reducing COVID-19 transmission, particularly as omicron and emerging sublineages continue to pose a risk. In the context of sustained community transmission, people gathering indoors due to cooler weather, waning vaccine-induced and natural immunity among the general population and low fourth dose vaccination, these measures are appropriate and proportionate.<sup>61</sup>
- 130.4 Testing enables identification of cases of COVID-19 and ensures appropriate public health measures can be implemented rapidly to limit onward transmission and reduce overall adverse outcomes from COVID-19. In addition, timely testing is an important step in the identification of individuals who could benefit from COVID-19 treatments.<sup>62</sup>
- 130.5 Testing should continue to be required for close contacts who due to the nature and duration of their contact with a COVID-19 case are at elevated risk of contracting COVID-19. Additionally, testing should be recommended for all other contacts and should become a requirement if they become symptomatic.<sup>63</sup>
- 130.6 To interrupt chains of transmission and limit further exposure to the community, infected individuals should continue to be required to isolate during the timeframe that they are most infectious. In alignment with current Communicable Diseases Network Australia guidelines, this should be for a period of seven days from their positive test result.<sup>64</sup>

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<sup>59</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 18.

<sup>60</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 22.

<sup>61</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p.27.

<sup>62</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 22.

<sup>63</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 22.

<sup>64</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 23.

- 130.7 Isolation of cases remains an effective and essential measure to minimise onward transmission, and the negative impacts on the health service and on death rates as we move through winter.<sup>65</sup>
- 130.8 The current reasons an individual can leave self-isolation or self-quarantine should be retained. These include escaping risk of harm and being able to transport another person they live with to, or from, a work premises, an education facility, or a healthcare appointment (in a private vehicle).<sup>66</sup>
- 130.9 Additionally, given recent changes to allow diagnosed persons and probable cases to leave self-isolation to transport their household members for other essential reasons, it is proportionate for this to be extended to essential food provision. Some COVID-19 food relief programs will scale back or cease from 30 June 2022, which raises an additional welfare risk to vulnerable Victorian communities. Providing additional ways for households to continue to access food will ensure those that may be disproportionately impacted by current restrictions will still be able to obtain essential food supplies.<sup>67</sup>
- 130.10 Close contacts are at high risk of acquiring and transmitting the virus to other individuals in the community. In order to minimise this risk, they should continue to be required to either quarantine for seven days or be permitted to leave quarantine if specific additional precautions are taken to reduce the risk of onward transmission.<sup>68</sup>
- 130.11 For those close contacts who quarantine for seven days (instead of taking the additional precautions as detailed above), there are limited reasons an individual can leave self-quarantine and these should be retained.<sup>69</sup>
- 130.12 These measures for close contacts mitigate against societal disruption and workforce burdens associated with quarantine requirements while taking necessary steps to reduce onward transmission particularly in sensitive settings.<sup>70</sup>
- 130.13 Social contacts should continue to be recommended to undergo daily RA testing for five days following notification. If they develop symptoms of COVID-19 they should be required to undergo testing and self-quarantine until they receive a negative result. These remain proportionate measures that assist with early identification of potential cases and interrupt ongoing chains of transmission.<sup>71</sup>
- 130.14 The requirement for individuals who receive a positive result from an RA test should continue to be required to their positive test to the Victorian Department of Health. Reporting positive test results enables COVID positive individuals to be linked to the COVID-19 Positive

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<sup>65</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 23.

<sup>66</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 23.

<sup>67</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 23.

<sup>68</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 23.

<sup>69</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 24.

<sup>70</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 23.

<sup>71</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 24.

Pathways program, which provides community-based support, appropriate care and access to financial support.<sup>72</sup>

- 130.15 The requirement also informs the Victorian Department of Health about emerging epidemiological trends and priorities, which will assist planning and the provision of additional supports or resources, such as health messaging, testing and access to treatment pathways.<sup>73</sup>
- 130.16 The location details of a diagnosed person or a probable case 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.<sup>74</sup>
- 130.17 Personal and health information should continue to be managed in accordance with the privacy protection afforded by the *Privacy and Data Protection Act 2014* (Vic) and the *Health Records Act 2001* (Vic).<sup>75</sup>
- 130.18 The requirements for COVID-19 cases to notify all contacts should also be retained. Individuals who are confirmed or probable cases should advise their workplace or education facility that they have tested positive to COVID-19 if they attended onsite during their infectious period. Cases should also be required to inform all persons who may be a close contact or a social contact about their diagnosis. These obligations help identify new potential cases and enable appropriate public health measures to be rapidly implemented to curb onward transmission.<sup>76</sup>
- 130.19 International arrivals should continue to have limited testing obligations to enable rapid identification of cases and limit onward transmission. While there is widespread community transmission in Victoria, the risk posed from international travel is much less than earlier stages in the pandemic, however, exposure to COVID-19 may still occur during transit and at passenger terminals.<sup>77</sup>
- 130.20 Recovered confirmed or probable cases should not need to be tested or managed as a close contact within 4 weeks after being released from isolation. This change would align with expected Australian Health Protection Principals Committee (AHPPC) advice and is reflective of emerging evidence that new variants of COVID-19 can evade prior immunity gained from infection and cause reinfection.

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<sup>72</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 24.

<sup>73</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 24.

<sup>74</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

<sup>75</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 24.

<sup>76</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 24.

<sup>77</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 25.

130.21 The power to grant class exemptions to close contacts in quarantine 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.<sup>78</sup>

130.22 In certain circumstances, a person may choose to isolate or quarantine at the Victorian Quarantine Hub (VQH) or need to do so in a Coronavirus Isolation and Recovery Facility (CIRF) – but then need to relocate during the self-isolation period to return home. Providing an exception for persons isolating in the VQH or a CIRF to relocate to another appropriate premises allows people who have voluntarily entered either facility to have the ability to return to an alternative place of residence should they need. This also ensures that those who have volunteered to self-isolate are not detained beyond their period of consent.<sup>79</sup>

131 I have accepted the advice of the 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

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

133 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.

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

134.1 Persons who are required to self-isolate or self-quarantine are only permitted to leave the premises at which they are isolating/quarantining for limited purposes. They are therefore not able to move freely.

134.2 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.

134.3 A person who is diagnosed with COVID-19 is required to self-isolate which 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.

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<sup>78</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

<sup>79</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).



134.4 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

- 135 In his advice, the Acting Chief Health Officer has noted that the Victorian response should continue to utilise, prioritise and exhaust less restrictive measures prior to implementing more stringent measures, wherever possible.<sup>80</sup> The Acting Chief Health Officer's advice also sets 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.<sup>81</sup>
- 136 The Acting Chief Health Officer has stated that continuing TTIQ requirements to limit transmission is considered necessary, appropriate and proportionate to the current context and forecasted impact of COVID-19 over the winter period.<sup>82</sup>
- 137 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 ensure the safety of the Victorian population.<sup>83</sup> It is important that PCR testing is accessible and encouraged early in the course of illness to enable timely engagement with treatment pathways and assessment for antiviral treatment.<sup>84</sup>
- 138 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.<sup>85</sup> In addition, the LPHU Directors and Medical Leads retain powers to grant temporary exemptions to close contacts and confirmed cases.<sup>86</sup> This continues to support the management of close contacts and confirmed cases at a localised level.
- 139 The *Privacy and Data Protection Act 2014* (Vic) and the *Health Records Act 2001* (Vic) provide privacy protections. The Department manages information in accordance with the Information Privacy

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<sup>80</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 18.

<sup>81</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), pages 4-5, and 17-19.

<sup>82</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 5.

<sup>83</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

<sup>84</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 22.

<sup>85</sup> Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022).

<sup>86</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 24.

Principles and Health Privacy Principles that provide standards for information collection, storage, access, transmission, disclosure, use and disposal as prescribed within these Acts.<sup>87</sup>

- 140 On the basis of the advice of the Chief Health Officer and Acting Chief Health Officer, 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 right. However, even if there were less restrictive means, I consider that the limitation imposed by this Order is in the range of reasonably available options to reduce the spread of COVID-19.

## Conclusion

- 141 Considering 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.
- 142 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.

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<sup>87</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

## SCHEDULE 3 – REASONS FOR DECISION – PANDEMIC (WORKPLACE) ORDER 2022 (NO. 10)

### Summary of Order

- 143 This Order imposes obligations on employers in relation to workers in order to limit the spread of COVID-19 within those populations.
- 144 This Order specifies additional obligations on certain categories of hospitals.

### *Purpose*

- 145 The purpose of the Order is to assist in reducing the frequency and scale of outbreaks of COVID-19 in Victorian workplaces and impose specific obligations on employers and workers in relation to managing the risk associated with COVID-19 transmission within worker populations. This Order supplements any obligation an employer may already have under the *Occupational Health and Safety Act 2004* and is not intended to derogate from any such obligations.

### *Obligations*

- 146 The Order imposes obligations on employers to assist in reducing the frequency of outbreaks of COVID-19 in Victorian workplaces
- 147 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 of that test.
- 148 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 at each public entry, advising persons that they must wear a face covering under the Public Safety Order when entering the work premises, unless an exception applies.
- 149 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 at the work premises. An employer must document and evidence implementation of the COVIDSafe Plan and ensure that they and their workers comply with it. The COVIDSafe Plan must be held at the work premises at all times, made available to authorised officers on request, and modified in line with any direction given by an authorised officer or WorkSafe inspector.
- 150 An employer must not require a worker to perform work at a work premises if the worker is a symptomatic person. If an employer becomes aware that a symptomatic person has attended the work premises in the period commencing 48 hours prior to the onset of their COVID-19 symptoms, they must:

- 150.1 advise the worker to comply with the Testing Requirements Policy and, where applicable, follow the COVID-19 rapid antigen test procedure; and
  - 150.2 ensure appropriate records are maintained to support contact tracing if the symptomatic person becomes a confirmed case; and
  - 150.3 inform all workers to be vigilant about the onset of COVID-19 symptoms and advise workers to comply with the Testing Requirements Policy and, where applicable, the COVID-19 rapid antigen test procedure, should COVID-19 symptoms develop.
- 151 After becoming aware of a diagnosed person or a probable case who has attended the work premises in the infectious period, the operator must:
- 151.1 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;
  - 151.2 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
  - 151.3 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 and, where applicable, the COVID-19 rapid antigen test procedure, should COVID-19 symptoms develop.
- 152 After becoming aware that the number of confirmed cases that attended the work premises within a 7 day period has reached the workplace outbreak threshold (as defined in the Case Contact and Outbreak Management policy), the operator of a workplace must notify the Department of Health (or another entity nominated on the Department's website) 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.
- 153 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 students enrolled at the education facility during the relevant infectious period and advise them to monitor for COVID-19 symptoms and comply with the Testing Requirements Policy should COVID-19 symptoms develop. To meet these obligations, education facility operators are authorised to collect, record and store information about the dates of notification and the dates of any exposures at the facility. The Order also imposes specific vaccination obligations on regulated employers of specified workers (i.e. custodial workers, disability workers and emergency service workers) and facility workers (i.e. workers at a healthcare facility, residential aged care facility or specialist school facility).
- 154 Regulated employers must:
- 154.1 not permit a specified worker or facility worker to work outside their ordinary place of residence or work at a facility if:

- 154.1.1 the worker is under 18 years of age and is not an excepted person or fully vaccinated; or
  - 154.1.2 the worker is aged 18 years and over and is not an excepted person or a fully vaccinated person who has received a booster dose of a COVID-19 vaccine; unless
  - 154.1.3 it is not reasonable for the worker to work from their ordinary place of residence because of a risk of harm (including harm relating to family violence or violence of another person at the premises);
- 154.2 collect, record and hold certain vaccination information of specified workers and facility workers (including their vaccination status and if fully vaccinated and/or boosted, the date on which the worker became fully vaccinated and/or boosted);
- 154.3 notify current and new specified workers and facility workers that the employer is obliged to:
- 154.3.1 collect, record and hold vaccination information about the worker; and
  - 154.3.2 not permit workers under 18 years of age to work for them outside that worker's ordinary place of residence or at a facility, unless they are an excepted person or they are fully vaccinated; and
  - 154.3.3 not permit workers aged 18 years or over to work for them outside that worker's ordinary place of residence or at a facility, unless they are an excepted person or they are fully vaccinated and have received a booster dose of a COVID-19 vaccine;
- 154.4 disclose a worker's vaccination information to an authorised officer upon request.
- 155 The Order provides exceptions to the above vaccination obligations, noting that:
- 155.1 specified workers and facility workers aged 18 years or over are permitted to work outside of their ordinary place of residence without receiving a booster dose of a COVID-19 vaccine, if:
- 155.1.1 they became fully vaccinated in the past 3 months and 14 days; or
  - 155.1.2 they are fully vaccinated, entered Australia from overseas in the past 4 weeks, have a booking to receive a booster dose within 4 weeks of entering Australia and have provided evidence of this booking to their employer; or
  - 155.1.3 they are fully vaccinated and ceased to be an excepted person in the previous 14 days; or
  - 155.1.4 they are fully vaccinated and were a diagnosed person whose infectious period ended in the previous 4 months; or
  - 155.1.5 they are fully vaccinated and were a probable case whose infectious period ended in the previous 4 months (provided they also received a positive result from a COVID-19 PCR test during their infectious period); and

- 155.2 specified workers and facility workers are permitted to work outside of their ordinary place of residence without being vaccinated in exceptional circumstances (including where they are required to respond to an emergency or perform urgent and essential work to protect the health and safety of workers or members of the public); and
- 155.3 vaccination obligations do not apply in relation to indoor or outdoor spaces at a premises when used as a polling place for voting in an election conducted by the Australian Electoral Commission or Victorian Electoral Commission.
- 156 Services Victoria, via the Services Victoria App, may notify a person that they are eligible, or will soon be eligible, to receive a booster dose of a COVID-19 vaccine. In addition, the Services Victoria App may still be used to demonstrate a person's vaccination status.
- 157 The Order authorises the Secretary of the Department of Health, Chief Health Officer or Deputy Chief Health Officer to make a protocol that specifies requirements in relation to cruise ships. The current *Cruise Ship Protocol (No 2)* commenced at 11:59PM on 10 June 2022 and imposes obligations on cruise ship operators and passengers.
- 158 Failure to comply with the Order may result in penalties.

#### *Changes from Pandemic (Workplace) Order 2022 (No. 9)*

- 159 Restrictions and requirements under the Elective Surgery Schedule have also been amended. Private hospitals and certain day procedure centres may permit elective surgery to be performed that is not subject to volume caps.
- 160 In addition to existing obligations, public health services in Victoria that are not operating a COVID-19 streaming service must actively participate in COVID-19 streaming if directed to do so by the Department of Health. If directed to participate in COVID-19 streaming, these services must abide by requirements in place for public health services operating a COVID-19 streaming service.

#### *Period*

- 161 The Order will commence at 11:59:00pm on 12 July 2022 and end at 11:59:00pm on 12 October 2022.

## Relevant human rights

### *Human rights that are limited*

- 162 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.
- 163 My explanation for why those rights are limited by the Order is set out in the Human Rights Statement.
- 164 The Human Rights Statement also sets out:

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

164.2 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*

165 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.

166 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

167 I have considered the Acting Chief Health Officer's advice dated 7 July 2022 and regard the following measures as appropriate and proportionate to the current epidemiology and continued impact of the Omicron VOC and sublineages BA.2.12.1, BA.4 and BA.5.<sup>88</sup>

167.1 Face masks should be required in certain higher risk indoor settings and strongly recommended in all other indoor settings outside the household, supported by strengthened communication regarding the benefits of wearing masks for individual and community protection.<sup>89</sup>

167.2 Face masks should continue to be required in high-risk settings, including - but not limited to - hospitals, care facilities, healthcare settings, public transport (including inside aircrafts for those aged 12 years and over), and custodial settings.<sup>90</sup>

167.3 COVIDSafe Plans should be required to minimise the risks posed by COVID-19 and support safe workplace environments.<sup>91</sup> As COVID-19 continues to circulate in the community there will be an ongoing risk of incursion, transmission, and outbreaks in workplace settings. To mitigate these workplace risks, I advise that the requirement for employers to maintain an up-to-date COVIDSafe Plan for each work premise where workers attend onsite should be retained. I encourage industry and employers to continue to take additional measures to support safe and healthy workplaces including engagement with workforces, guidance resources and workplace requirements.<sup>92</sup>

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<sup>88</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 3.

<sup>89</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 5.

<sup>90</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 20.

<sup>91</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 5.

<sup>92</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 22.

- 167.4 There is a heightened risk of incursion, transmission and outbreaks on board cruise ships compared with other forms of transport due to the population density and the close quarters shared by people on board. Thus, it is essential that strong risk mitigation measures are in place to decrease the chance of widespread transmission onboard and potential subsequent impact to onshore communities. A protocol may have measures including – but not limited to – pre-embarkation traveller communication, vaccinations requirements for crew and passengers, mask requirements for crew and passengers, testing protocols and isolation and quarantine requirements. These measures are appropriate and proportionate to reduce the risk of outbreaks on board cruise vessels.<sup>93</sup>
- 168 COVID-19 vaccines have played a critical role in protecting individuals, workers, and the wider community against the harms of COVID-19.<sup>94</sup> 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.<sup>95</sup>
- 169 I have considered the evidence that booster vaccines increase vaccine effectiveness against Omicron for all measured outcomes – infection, symptomatic infection, and severe disease, regardless of the primary vaccine schedule. However, booster effectiveness wanes with time, with vaccine effectiveness against infection and symptomatic disease waning faster than the reduction in severe infection. In addition, a third dose may prevent some onward transmission of BA.1 and BA. 2.<sup>96</sup>
- 170 In reviewing the continuation of worker vaccination requirements, I have considered 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 that the priorities for the COVID-19 public health response in Victoria continue to be limiting transmission, reducing morbidity and mortality, avoiding further strain on the healthcare system, and preventing disruptions to the operations of essential services and sectors.<sup>97</sup>
- 171 I accept the Acting Chief Health Officer’s advice that third dose (booster) mandates should be retained for workforces involved in the care of at-risk populations, are at higher occupational risk of COVID-19 or are critical to providing or maintaining emergency services,<sup>98</sup> and the potential benefits to workers and at-risk cohorts outweighs the potential harms.<sup>99</sup>
- 171.1 Residential aged care, healthcare and disability workers** provide care to population groups at increased risk of adverse health outcomes from COVID-19 infection. The nature of the work also confers an occupational exposure risk for these workforces and this requirement will

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<sup>93</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 25.

<sup>94</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (1 July 2022), p. 25.

<sup>95</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

<sup>96</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 16.

<sup>97</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 3.

<sup>98</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 26.

<sup>99</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 27.



provide greater protection to staff from severe adverse health outcomes. Protecting the health and wellbeing of these workers may also limit workforce shortages and ensure the ongoing delivery of safe and high-quality care to residents and patients.<sup>100</sup>

171.2 **Emergency services workers** provide critical operations and essential goods and services to the community. Due to the nature of their role, there may be circumstances where it is challenging for the above workforces to maintain physical distance, increasing their transmission and acquisition risk. Further, employees providing ambulance, police and other emergency services may also interact with individuals at risk of serious consequence from COVID-19. This measure will confer direct protection to staff and help maintain workforce capacity to support the ongoing provision of essential services.<sup>101</sup>

171.3 **Custodial employees** may work alongside individuals who are at higher risk of severe health outcomes. The physical environment of these settings also confers a risk of virus incursion, amplification and transmission to at-risk individuals.<sup>102</sup>

171.4 **Education staff working in specialist schools** work alongside children who may be at higher risk of severe COVID-19 related outcomes. There is a risk of transmission as staff work in close proximity with children who may have various ability to physically distance and often in indoor settings.<sup>103</sup>

172 Third dose vaccination requirements for workers in residential aged care, healthcare, disability, emergency services, custodial workers and education staff working in specialist schools continue to be a proportionate measure as the potential benefits to workers and at-risk cohorts outweigh the potential harms.<sup>104</sup> The exception to allow workers to leave their residence to escape the risk of harm, including family violence, by being able to attend the workplace even if they do not meet vaccination requirements should continue.<sup>105</sup>

173 I note the recent removal of vaccination requirements for most workforces and I am aware that Victoria's COVID-19 response is transitioning towards empowering industry and individuals to play a larger role in protecting themselves and their workforce.<sup>106</sup> As such, I agree with the Acting Chief Health Officer's advice that industries and employers should continue to engage, educate, facilitate, and incentivise staff to maintain 'up-to-date' vaccination status where eligible as per Australian Technical Advisory Group on Immunisation (ATAGI) guidelines, regardless of mandates.

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<sup>100</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 26.

<sup>101</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 26.

<sup>102</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 26.

<sup>103</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 26.

<sup>104</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 27.

<sup>105</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 27.

<sup>106</sup> Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

This will support safe and healthy workplaces for employees and members of the public who may visit.<sup>107</sup>

174 While 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 Quarantine Isolation and Testing Order, to inform their workplace that they have been diagnosed with COVID-19 if they attended the setting during their infectious period. The Workplace Order then requires that workplace to take a number of steps in response to the confirmed case, including informing all workers (including health and safety representatives) to be vigilant about the onset of COVID-19 symptoms.

175 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.

176 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. Both these pandemic orders enable the notification of potential new cases and prevent onward transmission.

177 In addition, it is necessary to require employers and education facilities to provide a general notification to individuals (or parents, guardians and carers) that they may have been exposed to a positive case. This measure 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.<sup>108</sup>

178 I have considered the Acting Chief Health Officer's advice that implementation of the above measures together with other measures should continue to be reflected in Orders to mitigate the risks posed by Omicron sublineages to individuals and the health system, in the current context of waning population immunity and increased mixing indoors.<sup>109</sup>

179 I also request that employers consider working from home arrangements that are most appropriate for their workplace and employees based on individual requirements.

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

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

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<sup>107</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 27.

<sup>108</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

<sup>109</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 20

181 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.

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

182.1 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.<sup>110</sup>

182.2 "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 prevents the person from going to work."<sup>111</sup> 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."<sup>112</sup>

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

182.4 "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."<sup>113</sup>

182.5 "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."<sup>114</sup>

183 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:

183.1 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

184 I have considered the Acting Chief Health Officer's advice that the Victorian pandemic response continues to transition towards a model that empowers individuals and industry to understand their

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<sup>110</sup> Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (12 July 2022).

<sup>111</sup> Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (12 July 2022).

<sup>112</sup> Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (12 July 2022).

<sup>113</sup> Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (12 July 2022).

<sup>114</sup> Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (12 July 2022).

risk, utilise public health behaviours and measures to protect themselves, their loved ones, and the wider community.<sup>115</sup>

- 185 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 remain key to an effective pandemic response in Victoria.<sup>116</sup>
- 186 In particular, I have considered the Acting Chief Health Officer's advice on 7 July 2022 that the Victorian response should continue to utilise, prioritise and exhaust less restrictive measures prior to implementing more stringent measures, wherever possible.<sup>117</sup>
- 187 I note this advice also reports a decline in the use of some voluntary protective behaviours.<sup>118</sup> There is a need for continued community engagement, education and health promotion messaging to advise the community of the role of masks in limiting the spread of the virus<sup>119</sup> and, especially, a need to strengthen engagement and communication strategies to increase awareness of COVID-19 therapies within the community.<sup>120</sup>
- 188 I accept the Acting Chief Health Officer's advice that industries and employers should continue to engage, educate, facilitate, and incentivise staff to maintain 'up-to-date' vaccination status where eligible as per ATAGI guidelines, regardless of mandates.<sup>121</sup>
- 189 I accept the Acting Chief Health Officer's advice that mandatory third dose vaccination requirements should be retained for specific workers involved in the care of at-risk populations, are at higher occupational risk of COVID-19 or are critical to providing or maintaining emergency services.<sup>122</sup>

## Conclusion

- 190 I accept the Acting Chief Health Officer's advice that the measures related to the following continue to be reflected in pandemic orders:
- 190.1 face masks;
  - 190.2 COVID-Safe plans;
  - 190.3 obligations for workplaces and education facilities to notify individuals that they may have been exposed;
  - 190.4 cruise passenger vaccination and testing requirements;

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<sup>115</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 17.

<sup>116</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 4.

<sup>117</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 18.

<sup>118</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 13.

<sup>119</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 21.

<sup>120</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 13.

<sup>121</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 27.

<sup>122</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p. 26.

190.5 vaccination requirements for regulated workers; and

190.6 quarantine, testing and isolation.

191 Non-mandatory measures alone will not be sufficient to manage the serious risk to public health posed by COVID-19, and I accept the Acting Chief Health Officer's advice that that these public health measures should continue to be mandated to mitigate the serious risk to public health posed by COVID-19.<sup>123</sup>

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<sup>123</sup> Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 July 2022), p.p. 19–25.