

Minister for Health

Statement of Reasons

Pandemic Orders made on 20 June 2022

On 20 June 2022, I Martin Foley, Minister for Health, made the following pandemic orders under section 165A1 of the *Public Health and Wellbeing Act 2008*:

Pandemic (Public Safety) Order (No. 2) 2022
Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 9)
Pandemic (Workplace) Order 2022 (No. 9)

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

Contents

Pandemic Orders made on 20 June 2022	1
About the pandemic orders	5
Statutory power to make pandemic orders	5
Guiding principles	6
Principle of evidence-based decision-making	6
Precautionary principle	6
Principle of primacy of prevention.....	7
Principle of accountability	7
Principle of proportionality	7
Principle of collaboration.....	7
Part 8A objectives.....	8
Human Rights	8
Overview of public health advice	9
Current context	10
Immediate situation: Continued management of the COVID-19 Pandemic	11
Vaccinations.....	12
The current global situation	12
Reasons for decision to make pandemic orders	13
Overview	13
Risks of no action taken	18
Schedules	19
SCHEDULE 1 – REASONS FOR DECISION – PANDEMIC (PUBLIC SAFETY) ORDER 2022 (No. 2) ..	20
Summary of Order	20
Purpose	20
Obligations	20
Period.....	25
Relevant human rights	25
Human rights that are limited	25
Human rights that are engaged, but not limited	26
How the obligations imposed by the Order will protect public health	26

Countervailing possible impacts that the obligations imposed by the Order may have on individuals and the community	28
Whether there are any less restrictive alternatives that are reasonably available to protect public health.....	29
Conclusion.....	30
SCHEDULE 2 – REASONS FOR DECISION – PANDEMIC (QUARANTINE, ISOLATION AND TESTING) ORDER 2022 (NO. 9).....	31
Summary of Order	31
Purpose	31
Obligations	31
Changes from Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 8)	35
Period.....	36
Relevant human rights	36
Human rights that are limited	36
Human rights that are engaged, but not limited	36
How the obligations imposed by the Order will protect public health	36
Countervailing possible impacts that the obligations imposed by the Order may have on individuals and the community	40
Whether there are any less restrictive alternatives that are reasonably available to protect public health.....	40
Conclusion.....	41
SCHEDULE 3 – REASONS FOR DECISION – PANDEMIC (WORKPLACE) ORDER 2022 (NO. 9)	42
Summary of Order	42
Purpose	42
Obligations	42
Changes from Pandemic (Workplace) Order 2022 (No. 8)	44
Period.....	44
Relevant human rights	44
Human rights that are limited	44
Human rights that are engaged, but not limited	45
How the obligations imposed by the Order will protect public health	45
Countervailing possible impacts that the obligations imposed by the Order may have on individuals and the community	49

Whether there are any less restrictive alternatives that are reasonably available to protect public health.....50

Conclusion.....51

About the pandemic orders

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

Statutory power to make pandemic orders

- 2 Under section 165AI of the PHW Act, I may, at any time on or after the making of a pandemic declaration by the Premier under s 165AB (or extended under s 165AE(1)), make any order that I believe is reasonably necessary to protect public health. The Premier made the initial pandemic declaration on 10 December 2021, and has extended this declaration twice, 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; and
 - 2.2 on 6 April 2022, the Premier extended the declaration again on 6 April 2022 for a further three months from 12 April 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 16 June 2022, I received verbal advice from the Acting Chief Health Officer. That advice is supplemented by:
 - 4.1 verbal advice from the Chief Health Officer, provided on 19 April 2022; and
 - 4.2 written advice from the Acting Chief Health Officer, provided on 7 April 2022.
- 5 I have also reviewed the epidemiological data available to me on 17 June 2022 to affirm my positions on the orders made on 20 June 2022, to commence on 24 June 2022.
- 6 Under s 165AL(2), in making a pandemic order, I must have regard to the advice of the Chief Health Officer and may have regard to any other matter that I consider relevant including, but not limited to, social and economic matters. I may also consult any other person that I consider appropriate before making a pandemic order.
- 7 I note in particular the recommendation of the Australian Health Protection Principal Committee (AHPPC) on 31 March 2022, to maintain some public health measures to reduce the risk of transmission as the appropriate time for any changes should be in the weeks following the anticipated peak of the current BA.2 variant of concern surge.¹ Further advice issued by the AHPPC

¹ Department of Health, Australian Government, AHPPC Statement on winter season preparedness, 31 March 2022. Available at: www.health.gov.au/news/ahppc-statement-on-winter-season-preparedness.

recommends that face covering requirements in airports should be removed.² Making these changes to Orders will ensure that populations at risk of severe illness continue to be supported at this time, while applying the least restrictive public health and social measures.³

- 8 On the basis of the material provided to me by the Department of Health and the advice of the Chief Health Officer and Acting Chief Health Officer, I am satisfied that the proposed pandemic orders are reasonably necessary to protect public health. I consider that the limitations on human rights that will be imposed by the proposed pandemic orders are reasonable and justified in a free and democratic society based on human dignity, equality and freedom. I therefore make these pandemic orders under s 165AI of the PHW Act.

Guiding principles

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

Principle of evidence-based decision-making

- 10 This principle is that decisions as to the most effective and efficient public health and wellbeing interventions should be based on evidence available in the circumstances that is relevant and reliable.⁴
- 11 My decision to make the pandemic orders has been informed by the expert advice of the Chief Health Officer and Acting Chief Health Officer about the serious risk to public health posed by COVID-19 and the public health measures that the Chief Health Officer and Acting Chief Health Officer considers are necessary or appropriate to address this risk.

Precautionary principle

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

² Department of Health, Australian Government, AHPPC Statement on the Removal of Mask Mandates in Airports (14 March 2022). Available at: www.health.gov.au/news/ahppc-statement-on-the-removal-of-mask-mandates-in-airports

³ Department of Health, Australian Government, AHPPC Statement on winter season preparedness (31 March 2022). Available at: www.health.gov.au/news/ahppc-statement-on-winter-season-preparedness.

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

Principle of primacy of prevention

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

Principle of accountability

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

Principle of proportionality

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

Principle of collaboration

- 22 The principle of collaboration is that public health and wellbeing, in Victoria and at a national and international level, can be enhanced through collaboration between all levels of Government and industry, business, communities and individuals.
- 23 Throughout the pandemic, there has been ongoing consultation between the Deputy Chief Health Officers and the Chief Health Officers of the States and Territories, including through the Australian Health Protection Principal Committee.

- 24 On my behalf, the Department of Health has engaged broadly across the Victorian Government to verify appropriate public health measures into the future. This is a continuing process to ensure public health measures continue to protect all Victorians.
- 25 It has been important throughout the pandemic for states and territories to cooperate wherever possible in the alignment of public health measures to ensure national consistency where appropriate. In the current absence of any national leadership or opportunity for such, the need to cooperate with states on pandemic orders and health measures has been particularly important in framing consideration of these orders.
- 26 Victoria continues to work with other jurisdictions through National Cabinet to talk through plans for managing COVID-19. Victoria's Roadmap: Delivering the National Plan is aligned with vaccination targets set out in the National Plan to transition Australia's National COVID-19 Response, as agreed by National Cabinet.

Part 8A objectives

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

Human Rights

- 28 Under s 165A(2) of the PHW Act, the Parliament has recognised the importance of protecting human rights in managing the serious risk to life, public health and wellbeing presented by the outbreak or spread of pandemics and diseases of pandemic potential.
- 29 In addition, in making each pandemic order, I have proceeded on the basis that I should give proper consideration to relevant human rights under the *Charter of Human Rights and Responsibilities 2006* (Vic) (Charter). I therefore proceeded on the basis that, in making each order, I was required to take the following four steps:

- 29.1 first, understand in general terms which human rights are relevant to the making of a pandemic order and whether, and if so, how those rights would be interfered with by a pandemic order;
 - 29.2 second, seriously turn my mind to the possible impact of the decision on human rights and the implications for affected persons;
 - 29.3 third, identify countervailing interests or obligations in a practical and common-sense way; and
 - 29.4 fourth, balance competing private and public interests as part of the exercise of ‘justification’.
- 30 This statement of reasons must be read together with the Human Rights Statement.
- 31 I note also that in providing his written advice on 7 April 2022, the Acting Chief Health Officer had regard to the Charter.⁵

Overview of public health advice

- 32 Following the Premier extending the pandemic declaration on 6 April 2022, I requested the Acting Chief Health Officer’s advice under section 165AL and received the Acting Chief Health Officer’s written advice on 7 April 2022. I subsequently received further verbal advice from the Chief Health Officer on 19 April 2022 and the Acting Chief Health Officer on 16 June 2022. I have continued to request the Chief Health Officer and Acting Chief Health Officer’s advice for all Pandemic Orders I have made, including those at hand.
- 33 On 16 June 2022, the Acting Chief Health Officer advised that case numbers have reduced slightly, and hospitalised patient numbers have plateaued. However, there is still significant attributable mortality relating to COVID-19 in Victoria.⁶
- 34 In considering the current situation and what to expect moving forward, the Acting Chief Health Officer advised that there are three key factors to consider:
- 34.1 Impact of seasonality – COVID-19, like other respiratory infections is associated with a higher attack rate during winter due to higher levels of clustering indoors among other factors. Modelling shows that depending on the impact of seasonality, there could be a substantial effect on transmission and hospitalisation.
 - 34.2 Emergence of variants of concern – There has been a growth in new variants of concern, specifically BA4 and BA5, over this recent period. These variants are associated with higher levels of immune escape and that higher levels of BA4 circulation may be contributing to increasing hospitalisations in New South Wales and possibly Queensland.

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

⁶ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

34.3 Waning immunity – both as a product of waning immunity from previous vaccination as well as the reduced cross-protection provided by recent variants of concern.⁷

35 I note the Acting Chief Officer has advised that as we gradually move certain measures out of Orders, it is important that workplaces and individuals consider relevant measures they need to take to manage risk. In particular, workplaces and organisations should consider what requirements they may adopt based on their own assessment of risk and using alternative mechanisms.⁸

Current context

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

“As I have advised in my Advice to the Premier to extend the Pandemic Declaration, I have considered the increased risk of incursion and viral propagation due to community fatigue with public health measures and the pandemic more broadly. I have also considered the possibility of increasing cases of COVID-19 as winter approaches and there is a resultant change in community behaviour such as gathering indoors more frequently and for prolonged periods. As I have advised in my Advice to the Premier to extend the Pandemic Declaration, these factors, alongside poorer indoor ventilation, typically increase transmission and the spread of respiratory diseases, not only from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), but seasonal respiratory viruses, such as influenza, which compound the overall risk to population health. The current situation in Victoria necessitates continuation of and changes to some public health measures as outlined below to address the threat posed by COVID-19. It also warrants removal of some measures currently included in Orders.”⁹

37 The priority for the COVID-19 response remains reducing morbidity and mortality and limiting the impact of COVID-19 on Victorians who are most at risk of serious illness, controlling chains of transmission, and reducing the strain on our health system, while maintaining the continued operation of essential services and sectors. It is therefore necessary and appropriate to continue some public health and social measures to protect those most at risk and our health system.¹⁰ For example, isolation requirements continue to be an important measure to reduce transmission, protect the community and maintain health system capacity.¹¹

38 In considering these matters I am also taking note of the advice of the Chief Health Officer regarding community fatigue with public health measures and the pandemic more broadly (paragraph 34

⁷ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁸ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁹ Department of Health, Acting Chief Health Officer Advice to Minister for Health (7 April 2022), p. 3.

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

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

above) and the need to ensure notions of social licence and public health and social measures are balanced to the greatest extent practical.

- 39 When making these pandemic orders, I have had regard to previous advice provided by both the Acting and Chief Health Officers. I have also noted the advice provided by the Chief Health Officer on 19 April 2022 and the advice of the Acting Chief Health Officer on 7 April 2022, that full implementation of the advice should be based on epidemiological data.
- 40 As noted above, the AHPPC recommended on 31 March 2022, that measures to reduce transmission remain in place until after the current Omicron BA.2 wave has passed.¹²
- 41 I have considered the timing for implementing all the measures in the Acting Chief Health Officer's and Chief Health Officer's advice. I have chosen to draw on earlier advice or external information (for example, AHPPC statements) regarding current measures contained in the Orders as the epidemiology evolves.
- 42 Based on the epidemiological data provided below, it is appropriate to broadly implement the advice provided by the Acting Chief Health Officer on 16 June and 17 April 2022 and Chief Health Officer on 19 April 2022.
- 43 When making this pandemic order, I have had regard to the advice provided by the Acting Chief Health Officer dated 16 June 2022, 7 April 2022 and additional advice provided by the Chief Health Officer on 19 April 2022.

Immediate situation: Continued management of the COVID-19 Pandemic

- 44 As at 17 June 2022:
- 44.1 There are 7,608 new locally acquired cases (2,434 from polymerase chain reaction (PCR) Test results).
 - 44.2 The 7-day rolling average of new cases is 6,578, which 11.9 per cent decrease compared to the previous week.
 - 44.3 There are currently 40,700 active cases in Victoria, with 438 people hospitalised, 24 of which are in ICU.
 - 44.4 The 7-day rolling average of hospitalisations is 455, which is a 10.5 per cent decrease compared to the previous week.
- 45 As at 17 June, there were 18 COVID-related deaths were reported in the preceding 24-hour period, bringing the total number of COVID-related deaths identified in Victoria to 3,702.
- 46 Wastewater surveillance data within the past 14 days to 10 June has shown that:

¹² Department of Health, Australian Government, AHPPC Statement on winter season preparedness, 31 March 2022.

- 46.1 BA.4/ BA.5¹³ was detected at 95% of wastewater surveillance sites.
- 46.2 While Omicron BA.2 continues to be the dominant variant detected at all sites, relative abundance of Omicron BA.4/ BA.5 is increasing.
- 46.3 Airport surveillance shows repeat incursions of Omicron subvariants BA.4/ BA.5 and BA.2.12.1.

Vaccinations

- 47 As at 15 June 2022:
 - 47.1 a total of 6,267,930 doses have been administered through the State’s vaccination program, contributing to a total of 15,663,148 doses delivered in Victoria.
 - 47.2 96.0 per cent of eligible Victorians over the age of 12 have received one dose of a COVID-19 vaccination.
 - 47.3 94.6 per cent of eligible Victorians over the age of 12 have received two doses of a COVID-19 vaccination.
 - 47.4 68.0 per cent of eligible Victorians over the age of 16 have received three doses (booster) of a COVID-19 vaccination.
- 48 As at 14 June 2022:
 - 48.1 A total of 38,520,819 doses have been administered by Commonwealth facilities nationally, contributing to a total of 59,773,648 delivered nationally.
 - 48.2 95.8 per cent of Australians aged 16 and over have received two doses of a COVID-19 vaccination.
 - 48.3 70.3 per cent of eligible Australians have received three or more doses of a COVID-19 vaccination.¹⁴

The current global situation

- 49 The following situation update and data have been taken from the World Health Organisation, published 15 June 2022.

Statistic	
Global confirmed cumulative cases of COVID-19	Over 533 million

¹³ Wastewater analysis does not differentiate BA.4 from BA.5, so they are reported together as BA.4/ BA.5.

¹⁴ Department of Health, Australian Government, Australian Immunisation Register, COVID-19 vaccine rollout updated 15 June 2022.

Global cumulative deaths	Over 6.3 million
Global trend in new weekly cases	Over 3.2 million (<1% per cent lower than the previous week)
Country level: highest number of new weekly cases:	United State of America (743,723 new cases; +13%) China (501,146 new cases; -5%) Germany (281,706 new cases; +16%) Brazil (279,862 new cases; +29%) Australia (194,158 new cases; -13%)

Source: World Health Organisation, *WHO COVID-19 Weekly Epidemiology Update*, published 15 June 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.¹⁵ 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.*'
- 54 Having had regard to the advice of the Chief Health Officer and the Acting Chief Health Officer, it is my view that making these pandemic orders are reasonably necessary to reduce the risk that COVID-19 poses.
- 55 Currently, Omicron is the dominant variant of COVID-19 circulating across the world. The Omicron variant has multiple sub-lineages, including BA.1.1, BA.1, BA.2 and BA.3. The predominant sub-

¹⁵ See Public Health and Wellbeing Act 2008 (Vic) section 3(1) for the definition of 'serious risk to public health'.

lineage globally is BA.1., however, the proportion of BA.2 cases is increasing globally, with evidence indicating that in New South Wales and Victoria (BA.2 is now the dominant sub-lineage).¹⁶

- 56 Evidence about the Omicron sub-lineage BA.2 and the potential implications for individuals, the population and the health system is building. Initial evidence demonstrates that BA.2 has a moderate growth advantage over BA.1. The growth advantage of BA.2 over other variants and sub-lineages translates to greater transmission, posing a significant risk due to the potential for a steep rise in infections and hospitalisations over the coming weeks, from a baseline of sustained community transmission.¹⁷
- 57 Evidence regarding the disease severity of BA.2 is still emerging; however, preliminary data suggests that infection with BA.2 does not result in a higher risk of hospitalisation than BA.1. Even if less severe disease continues to be a feature of BA.2, it may still have a significant impact on our hospital system given the sheer number of cases that could result from a more transmissible variant, and particularly in winter.¹⁸
- 58 I note that new variants of concern, sub-lineages BA.4 and BA.5, have emerged recently, may be associated with higher levels of immune escape and, in the case of BA.4, may be contributing to increasing hospitalisations in New South Wales and possibly Queensland.¹⁹
- 59 From 9 January 2022, Victoria experienced a downward trend in case numbers from a peak of 51,356 new cases on 8 January 2022.²⁰ However, from 15 March 2022 case numbers rose steadily, but have now reduced slightly as of 16 June 2022.²¹
- 60 A similar trend has occurred in New South Wales, with 24,115 positive cases recorded on the 23 March 2022, following a previous peak of 91,928 daily infections on 12 January 2022. All other jurisdictions that experienced an Omicron wave in January have also seen a resurgence in case numbers. While caution should be exercised in interpreting changing case numbers, the increased proportion of cases identified as the more infectious BA.2 sub-lineage coupled with increasing case numbers represented a trend towards a national BA.2 wave.²²
- 61 On 19 April 2022, the Chief Health Officer advised me there were no changes to modelling projections in relation to cases and hospitalisations (at a peak of 450 – 500 hospitalisations per day).²³
- 62 I note the Victorian healthcare system faced additional and extraordinary pressure due to the Omicron outbreak. Hospital admissions surged and there were severe workforce shortages across the system including acute care, community care, aged care, and ambulance services. High demand

¹⁶ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10.

¹⁷ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10.

¹⁸ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10.

¹⁹ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

²⁰ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10.

²¹ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

²² Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022), p. 10.

²³ Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022).

and declining resource availability contributed to the Department of Health issuing a coordinated 'Pandemic Code Brown' triggering public hospitals to activate Code Brown plans on 19 January 2022 (Victorian Department of Health (f), 2022). The Pandemic Code Brown was stood down on 14 February 2022.²⁴

63 The changes to the pandemic orders recognise the transition of the pandemic response to empowering industry, workplaces and individuals to make decisions based on public health guidance.

64 On 16 June 2022, the Acting Chief Health Officer relevantly advised the following changes to the Orders are appropriate:²⁵

64.1 Removal of face covering requirements at airports

64.1.1 As face covering requirements have eased in other settings, it is proportionate to ease these requirements based on the risk levels and continuing high rates of vaccinations.

64.1.2 This also reflects the AHPCC recommendation from 14 June 2022 that face covering requirements in airports should be removed.²⁶

64.1.3 Airport staff supporting passenger transfer and passage should be strongly encouraged to continue wearing face coverings to minimise their occupational risk of acquiring and transmitting COVID-19.

64.1.4 However, aircraft continue to be considered high-risk settings where face covering requirements remain proportionate to the overall public health risk and should be continued.

64.2 Removal of visitor caps at care facilities

64.2.1 As restrictions have eased, care facility residents themselves can come and go extensively on a day-to-day basis. Therefore, the incursion risk that visitors pose to care facilities has changed. In this context, limiting the number of visitors attending per day is no longer a proportionate measure.

64.2.2 In the context of sustained high levels of community transmission, it is proportionate to retain rapid antigen (RA) testing to mitigate the incursion risk to protect residents. RA tests are a useful screening tool as they are quick, convenient and exclude COVID-19 infection with a high level of accuracy.

64.2.3 Visitors who are unable to obtain a RA test on the day of their visit can only visit in limited circumstances. That is, to provide urgent support, professional care, an

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

²⁵ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

²⁶ Department of Health, Australian Government, AHPCC Statement on the Removal of Mask Mandates in Airports (14 June 2022). Available at: www.health.gov.au/news/ahppc-statement-on-the-removal-of-mask-mandates-in-airports.

end-of-life visit or because a PCR test has been taken in the previous 24 hours and suitable evidence of a negative result has been provided.

64.3 Amendment to RA testing requirements at care facilities

64.3.1 The public health intention is that a RA test needs to be taken on the day of visitation, however, it does not need to be taken on-site at the care facility.

64.3.2 The change will allow visitors to provide evidence of a negative RA test by way of a written attestation declaration. This addresses workforce issues any staffing pressures caused by having to oversee RA tests, is more practical for visitors, and eliminates unnecessary wait times at the entrance to the facility and maintains the intended risk mitigation measure of surveillance testing prior to entering a higher risk setting.

64.4 Amendment to reasons for close contacts to leave self-quarantine or diagnosed persons/probable cases to leave self-isolation to escape the risk of harm

64.4.1 This change ensures a person can leave the premises where they are self-isolating or self-quarantining if they are at risk of harm.

64.5 Amendment to reasons for diagnosed persons/probable cases to leave self-isolation

64.5.1 An additional reason has been added to allow a diagnosed person or probable case in self-isolation to transport another person they live with to, or from, a work premises, an education facility, or a healthcare appointment, subject to certain conditions.

64.5.2 This change would likely have minimal impact on wider transmission rates and provide a practical reprieve that will support the wellbeing of individuals and households.

64.6 Amendment to clarify reasons to leave self-quarantine for close contacts

64.6.1 This amendment will provide clarity on requirements for close contacts and will align reasons to leave self-quarantine with the reasons for diagnosed persons/probable cases to leave self-isolation.

64.6.2 It considers the wide availability of RA tests within the community and other mitigation strategies in place to reduce transmission opportunities and protect those most at risk of severe health outcomes from COVID-19 (for example, avoidance of sensitive settings, mask requirements and workplace/education notifications).

64.6.3 It also allows for simplification so that all close contacts can be managed by way of surveillance testing. This will reduce any confusion that may arise from the list of additional reasons to leave self-quarantine which was previously provided for a minority who may choose to self-quarantine.

64.7 Amendment to clarify requirements around relocation during self-isolation

64.7.1 This change allows people who have voluntarily entered the Victorian Quarantine Hub or a Coronavirus Isolation and Recovery Facility to have the ability to return to an alternative place of residence should they need.

64.7.2 This also ensures that those who have volunteered to self-isolate are not detained beyond their period of consent.

64.8 Changes to workers in scope for mandatory vaccination requirements

64.8.1 Third-dose requirements are maintained for the following workers in sensitive and high-risk settings:

- (1) custodial workers;
- (2) disability workers;
- (3) emergency services workers;
- (4) healthcare workers;
- (5) residential aged care workers; and
- (6) specialist school workers.

64.8.2 Third dose (booster) mandates should be retained for these workforces because they are involved in the care of at-risk populations, are at higher occupational risk of COVID-19 or are critical to maintaining emergency services.

64.8.3 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.

64.8.4 A new exception has been added to ensure that these workers can leave their residence for the purpose of escaping the risk of harm by being able to attend the workplace even if they do not meet vaccination requirements.

64.8.5 Vaccination requirements for all other workers are removed, including education facility workers, food processing and distribution workers and quarantine accommodation workers.

64.8.6 For these workers, vaccination requirements should transition to being at the discretion of industry and individual workplaces.

64.8.7 In particular, the education sector has achieved high rates of third dose (booster) vaccination and continuing this requirement is unlikely to achieve substantial further increases in coverage.

64.8.8 It is also worth noting that schools and early childhood education centres continue to have several other measures in place to mitigate the risk of COVID-19 to enrolled children, students and workers including enhanced ventilation, rapid antigen testing and embedded COVIDSafe practices such as physical distancing and hand and respiratory hygiene. As such, it is proportionate for this requirement to transition away from Orders, other than for workers at specialist schools.

64.9 Employers may continue to hold employee vaccination information following removal of vaccination requirements for the period the pandemic declaration remains in force

64.9.1 Vaccinations not only reduce transmission but protect individuals from serious illness. Based on this, workplaces may choose to implement their own policies, following removal of the vaccination mandates to reduce the risk of serious illness on their staff and manage the risk of productivity and workforce illness.

64.9.2 This change enables workplaces to maintain existing records regarding vaccination status of employees as a tool to support businesses and workplaces managing COVID-19.

64.9.3 This is part of a stepdown approach to Victoria's COVID-19 response, as industry and individuals take on a larger role in protecting themselves and their workforce.

65 I accept the advice of the Chief Health Officer and 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.

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.²⁷

²⁷ 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.

Schedules

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

SCHEDULE 1 – REASONS FOR DECISION – PANDEMIC (PUBLIC SAFETY) ORDER 2022 (No. 2)

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.

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 by requiring everyone in the State of Victoria to carry and wear face coverings in certain settings and to restrict access to care facilities in order to limit the spread of COVID-19 within a particularly vulnerable population.

Obligations

- 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 exemption 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;
 - 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:

- 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 sportsperson 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;
 - 72.22 when doing so is not safe in all the circumstances.
- 73 Face coverings are not required to be carried:
- 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 Face coverings are required to be worn when travelling in an aircraft (exemptions apply), and an authorised officer may require a person to attest in writing that they have complied with the requirement to wear a face covering on an aircraft.
- 75 This Order prohibits a person from entering, or remaining on, the premises of a care facility unless:
- 75.1 the person is a resident of the facility; or
 - 75.2 the person is a care facility worker in relation to the facility and the entry is not otherwise prohibited under the Order; or
 - 75.3 the person is a visitor of a resident of the facility and the visit is not otherwise prohibited under this Order; or
 - 75.4 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; or
 - 75.5 the person is an essential visitor listed in the Benchmark Essential Visitors List; and their visit or entry is not otherwise prohibited under this Order.

- 76 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 – a visitor:
- 76.1 of a resident of the care facility; or
 - 76.2 who is visiting as a prospective resident of the care facility; or
 - 76.3 that is a support person to a prospective resident of the care facility; or
 - 76.4 who is an essential visitor listed in the Benchmark Essential Visitors List (unless the person is a care facility worker).
- 77 The above obligations do not apply to an operator in relation to the following persons:
- 77.1 a person who is visiting for the purpose of undertaking an end of life visit to a resident of the care facility; or
 - 77.2 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
 - 77.3 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
 - 77.4 a person providing professional patient care, including but not limited to:
 - 77.4.1 emergency workers in the event of an emergency; and
 - 77.4.2 ambulance workers; and
 - 77.4.3 visiting healthcare professionals.
- 78 This Order defines care facility excluded person to mean a person who:
- 78.1 is required to self-isolate under the *Pandemic (Quarantine, Isolation and Testing) Order*; or
 - 78.2 is required to self-quarantine under the *Pandemic (Quarantine, Isolation and Testing) Order*; or
 - 78.3 has COVID-19 symptoms unless those symptoms are caused by an underlying health condition or medication; or
 - 78.4 in the case of a visitor—has been tested for COVID-19 and has not yet received the results of that test.

- 79 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 – a person who is:
- 79.1 a care facility worker; or
 - 79.2 a visitor of a resident of the facility; or
 - 79.3 a prospective resident of the facility; or
 - 79.4 a visitor that is a support person to a prospective resident of the facility; or
 - 79.5 a visitor who is an essential visitor listed in the Benchmark Essential Visitors List.
- 80 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 residential aged 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. 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.
- 81 The operator of a care facility must take all reasonable steps to ensure that:
- 81.1 a person does not enter or remain on the premises of the facility if they are prohibited from doing so under this Order; and
 - 81.2 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
 - 81.3 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.
- 82 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:
- 82.1 is free of COVID-19 symptoms other than symptoms caused by an underlying health condition or medication; and
 - 82.2 has received a negative result from a COVID-19 rapid antigen test on the same day that they attend the facility; and
 - 82.3 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*.
- 83 Failure to comply with this Order may result in penalties.

Changes from Pandemic (Public Safety) Order 2022

- 84 Removal of mask wearing requirements indoors in publicly accessible areas at an airport. Mask wearing on aircrafts remains.
- 85 Removal of visitor capacity limits at all care facilities.
- 86 Amendment to visitor testing requirements at care facilities so that:
 - 86.1 a visitor is no longer required to take a rapid antigen test on-site prior to entry;
 - 86.2 evidence of a negative rapid antigen test result is not required in order to enter, other than an attestation that a test has been taken that day and returned a negative result; and
 - 86.3 visitors who are unable to obtain a rapid antigen test on the day of the visit can only visit for limited reasons, such as:
 - 86.3.1 providing urgent support;
 - 86.3.2 providing professional care;
 - 86.3.3 if they have undertaken a PCR test in the previous 24 hours; or
 - 86.3.4 an end-of-life visit.

Period

- 87 The Order will commence at 11:59:00pm on 24 June 2022 and end at 11:59:00pm on 12 July 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 Chief Health Officer's advice.
- 94 In relation to the restrictions that will be imposed by this Order, the Chief Health Officer and Acting Chief Health Officer have relevantly advised:
- 94.1 Face masks remain an important public health measure even in the context of high population vaccination rates in Victoria. Face masks have a protective effect and can both protect healthy individuals and reduce the risk of disease transmission from infected individuals. Masks are a cost-effective and cost-saving measure, especially considering increasing transmissibility of Omicron variants, decreased vaccine effectiveness due to waning immunity or escape variants and indoor social interactions which will likely increase in the cooler months.²⁸
- 94.2 Masks should continue to be required for those aged eight years and over in higher-risk indoor settings. These settings include – but are not limited to – healthcare settings, care facilities and public transport.²⁹
- 94.3 Existing mask requirements for diagnosed persons, close contacts, or symptomatic persons awaiting the result of a COVID-19 test, should remain in place where those individuals are leaving their premises. This is particularly important given the increased transmissibility of Omicron and BA.2.³⁰
- 94.4 Previous mask exemptions should continue to apply, particularly for those who have medical reasons not to wear a face mask.³¹
- 94.5 Indoor public facing spaces in airports continue to bring an elevated risk of SARS-CoV-2 transmission, with large volumes of international and domestic passengers (some of whom are unvaccinated) interacting with local airport staff. However, given Victoria's world-leading vaccination rates and high levels of compliance with recommended measures, it is open to me to consider transitioning face covering requirements in publicly accessible areas at airports to recommended only.³² Given high vaccination rates and the nature of airports and

²⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

²⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

³⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

³¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

³² Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

types of interactions which are not dissimilar to other settings, it is recommended that I follow the advice of Australian Health Protection Principals Committee on the removal of mask mandates in airports (14 June 2022).³³³⁴

- 94.6 Airport staff supporting passenger transfer and passage should be strongly encouraged to continue wearing face coverings to minimise their occupational risk of acquiring and transmitting COVID-19.³⁵
- 94.7 Aircrafts continue to be considered high-risk settings where face covering requirements remain proportionate to the overall public health risk and should be continued.³⁶
- 94.8 Residential aged care facilities (RACF), commonly house and care for members of the community who may be frail, immunocompromised or have significant comorbidities and complex care needs, making them particularly susceptible to the negative impacts of COVID-19 infection, including severe disease and death. As such, these facilities are sensitive settings requiring specific consideration.³⁷
- 94.9 Care facilities are a diverse group of facilities of differing sizes, resources, governance structures, and level of care provided to residents, and with significant diversity in their ability to implement infection control measures. For these reasons visitor requirements for care facilities should continue to be a requirement in Pandemic Orders, to ensure the upmost level of protection continues to be provided to residents, particularly as we approach winter, and noting significant COVID-19 mortality in care facilities in Victoria.³⁸
- 94.10 On the 17 April 2022 the Acting Chief Health Officer advised that visitor restrictions should remain in place for care facilities to reduce opportunities for viral incursion, given the higher risk of transmission, amplification and consequence should incursion occur. At that time the Acting Chief Health Officer advised that visitor restrictions should include entry requirements, face mask requirements and pre-entry RA testing.³⁹
- 94.11 As restrictions have eased, care facility residents themselves can come and go extensively on a day-to-day basis. Therefore, the incursion risk that visitors pose to care facilities has changed. In this context, limiting the number of visitors attending per day is no longer a proportionate measure.⁴⁰

³³ Australian Health Protection Principal Committee Statement on the Removal of Mask Mandates in Airports, available at: www.health.gov.au/news/ahppc-statement-on-the-removal-of-mask-mandates-in-airports

³⁴ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

³⁵ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

³⁶ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

³⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 24.

³⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 24.

³⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

⁴⁰ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

94.12 With the removal of visitor caps for care facilities, it is proportionate to retain RA testing to mitigate the incursion risk to protect residents from severe health outcomes from COVID-19. RA test kits are widely available, with Commonwealth supply until at least September 2022.⁴¹

94.13 Visitors to care facilities should not be permitted to enter until they have a negative RA test on the day of attendance. As there continues to be a high level of community transmission, RA tests are an appropriate asymptomatic screening tool to limit incursion of COVID-19 into care facilities. RA tests are a low impost measure that are quick to administer and return a result that has a high level of accuracy in excluding active infection.⁴²

94.14 However, an RA test does not need to be taken on-site, provided that it has been taken on the day of visitation and a negative test result is received.⁴³ Although this relies on good faith of visitors, on balance it addresses workforce issues, is more practical for visitors and eliminates unnecessary wait times at the entrance to the facility and maintains the intended risk mitigation measure of surveillance testing prior to entering a higher risk setting.⁴⁴

94.15 Visitors who visit a care facility for urgent reasons, and who are excepted from a pre-entry RA test, are still encouraged to complete an RA test after their visit as an additional risk mitigation measure.⁴⁵

95 I accept this advice.

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)."⁴⁶

⁴¹ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁴² Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

⁴³ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁴⁴ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁴⁵ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁴⁶ Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (22 April 2022).

- 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 practise their culture, religion, or language to the extent that this can be done by face-to-face visits.”⁴⁷
- 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.”⁴⁸

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 continue to transition from Orders towards empowering individuals, communities, and industry to drive protective measures and behaviours.⁴⁹
- 100 I have considered the importance of community education, engagement and COVIDSafe behaviours such as vaccination, mask wearing, physical distancing, respiratory and hand hygiene, staying home and getting tested when unwell as remaining the key to an effective pandemic response in Victoria. Some of these measures no longer appear in Orders going forward.⁵⁰
- 101 Masks are a cost-effective and cost-saving measure, especially considering increasing transmissibility of Omicron variants, decreased vaccine effectiveness due to waning immunity or escape variants and indoor social interactions which will likely increase in the cooler months.⁵¹
- 102 As the Acting Chief Health Officer advised, care facilities commonly house and care for members of the community who may be frail, immunocompromised or have significant comorbidities and complex care needs, making them particularly susceptible to the negative impacts of COVID-19 infection, including severe disease and death. Care facilities are a diverse group of facilities of differing sizes, resources, governance structures, and level of care provided to residents, and with significant diversity in their ability to implement infection control measures.⁵² 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. As the pandemic response continues to shift from Orders to guidance-driven obligations, care facilities

⁴⁷ Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (22 April 2022).

⁴⁸ Department of Health, *Human Rights Statement: Pandemic (Public Safety) Order* (22 April 2022).

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

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

⁵¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

⁵² Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 24.

should be empowered to begin to look at what self-regulated, compassionate visitation will comprise at their facility.⁵³

- 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.⁵⁴ 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 Chief Health Officer and Acting Chief Health Officer's advice that the measures related to the following continue to be reflected in, or introduced to, Pandemic Orders:
- 104.1 vaccination requirements on workers performing work outside their ordinary place of residence (as per the Workplace Order);
 - 104.2 face covering requirements;
 - 104.3 restrictions on visitors to care facilities and access for essential visitors to care facilities.
- 105 I accept the Acting Chief Health Officer's advice that these measures remain crucial public health measures to address the evolving threat of BA.2 and will continue to reduce the potential impact of the virus on individuals and the health system.⁵⁵

⁵³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 25.

⁵⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 26.

⁵⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14.

SCHEDULE 2 – REASONS FOR DECISION – PANDEMIC (QUARANTINE, ISOLATION AND TESTING) ORDER 2022 (NO. 9)

Summary of Order

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

Purpose

- 107 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

- 108 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:
- 108.1 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;
 - 108.2 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;
 - 108.3 notify the Department of the premises chosen to self-isolate and the contact details of any other residents at the premises;
 - 108.4 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;
 - 108.5 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
 - 108.6 notify any close or social contacts, to the extent that they are reasonably able to ascertain and notify those contacts.
- 109 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:

- 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 RA test from which they received a positive result;
 - 109.2 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;
 - 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 a 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 close contacts as persons who are not recent confirmed cases and have:
- 110.1 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
 - 110.2 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.
- 111 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:
- 111.1 the diagnosed person undertook their PCR test that confirmed they were a diagnosed person; or
 - 111.2 the probable case undertook their RA test and received a positive COVID-19 result.
- 112 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.
- 113 Close contacts do not have to self-quarantine, provided that they:
- 113.1 undertake five RA tests within the seven-day period, spaced at least 24 hours apart, and the results are negative;
 - 113.2 wear a face covering when attending any indoor space outside their home (if aged 8 and above);

- 113.3 do not visit hospitals and care facilities unless:
- 113.3.1 in relation to a care facility, they are permitted to do so under the *Pandemic (Public Safety) Order*; or
 - 113.3.2 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
- 113.4 notify the operator of a work premises that they are likely to attend for the purposes of working at the premises/the operator of an educational facility at which they are enrolled that they attend during the seven-day period and that the above conditions apply.
- 114 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.
- 115 The Order defines risk individuals as:
- 115.1 a social contact;
 - 115.2 a symptomatic person in the community; or
 - 115.3 an international arrival.
- 116 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.
- 117 Persons who are self-isolating or self-quarantining under the Order must:
- 117.1 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
 - 117.2 not leave the premises, except:
 - 117.2.1 for the purposes of obtaining medical care or medical supplies; or
 - 117.2.2 if asymptomatic for COVID-19, for the purposes of transporting another person with whom they reside to or from a hospital; or
 - 117.2.3 for the purposes of getting tested for COVID-19; or
 - 117.2.4 in any emergency situation; or
 - 117.2.5 if required to do so by law; or
 - 117.2.6 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

- 117.2.7 for the purposes of working in a care facility if permitted to do so under the Public Safety Order; or
 - 117.2.8 for the purpose of sitting a Senior Secondary examination provided that the person is not a diagnosed person or a probable case; or
 - 117.2.9 to escape the risk of harm (including harm relating to family violence or violence of another person at the premises); or
 - 117.2.10 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, education facility or a healthcare appointment if essential or other arrangements cannot be made, provided that:
 - (a) the person leaving self-isolation travels directly to and from the location and does not make any stops unless due to an emergency or as required by law; and
 - (b) 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
 - (c) wears a face covering whilst outside the place of self-isolation; or
 - 117.2.11 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:
 - (a) 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
 - (b) notify the Department of the address of the premises they have chosen; or
 - 117.2.12 to relocate to the VQH or a CIRF (unless they have already spent time at VQH or a CIRF during their isolation/quarantine period).
- 117.3 except for persons who are residents of a care facility, not permit any other person to enter the premises unless:
- 117.3.1 that other person:
 - (a) ordinarily resides at the premises; or

- (b) is required to self-isolate or self-quarantine at the premises under this Order; or
- 117.3.2 it is necessary for the other person to enter for medical or emergency purposes; or
- 117.3.3 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
- 117.3.4 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
- 117.3.5 the entry is otherwise required or authorised by law.

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

Changes from Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 8)

119 The following reasons for a close contact to leave self-quarantine have been removed:

119.1 exercise outdoors (including to walk a pet);

119.2 attend to livestock or animal welfare;

119.3 transport another person they reside with to work, education or healthcare appointment who does not need to self-quarantine; and

119.4 to vote in the Australian Federal Election if they obtain a negative COVID-19 RA test result.

120 Escaping the risk of harm (including harm relating to family violence or violence of another person at the premises) has been incorporated as an additional reason for a person to leave self-isolation or self-quarantine.

121 Surveillance testing requirements have been clarified to indicate that a person is to wear a face covering when attending any indoor space outside of their home.

122 An additional reason for persons to leave self-isolation, if essential or other arrangements cannot be made, in order to transport another person with whom they reside (provided that person is not required to self-quarantine or self-isolate) directly to, or from:

122.1 a work premises;

122.2 an education facility; or

122.3 a healthcare appointment.

123 An additional reason to leave self-isolation or self-quarantine that permits a person to:

123.1 leave their premises and enter the Victorian Quarantine Hub (VQH) or a Coronavirus Isolation and Recovery Facility (CIRF); or

123.2 leave the VQH or a CIRF and relocate to another appropriate premises, provided that if they self-isolating they notify any persons residing at the premises of their diagnosis, and the Department of their new address.

Period

124 The Order will commence at 11:59:00pm on 24 June 2022 and end at 11:59:00pm on 12 July 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 April 2022, the Chief Health Officer's advice provided on 19 April 2022 and the Acting Chief Health Officer's advice provided on 16 June 2022 that the following measures are appropriate and proportionate to the current epidemiology and forecasted impact of the BA.2 sub-lineage:⁵⁶

⁵⁶ Department of Health, *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 4.

- 130.1 Continued and additional public health and social measures are required in the context of Omicron. Interventions that are the least restrictive and achieve the same public health objective should continue to be utilised, prioritised and exhausted, prior to applying more restrictive measures, wherever possible.⁵⁷
- 130.2 The Test, Trace, Isolate and Quarantine (TTIQ) strategy aims to limit spread of COVID-19 by interrupting chains of transmission through rapid testing, contact tracing, quarantining exposed individuals and isolating people who have acquired infection.⁵⁸
- 130.3 To limit transmission of COVID-19 within the community, it is proportionate to continue to require isolation for persons who have COVID-19 for seven days to minimise onward transmission.⁵⁹
- 130.4 Individuals who have been exposed to a person with COVID-19 are at increased risk of acquiring infection and it is important to identify if they become infected early, to limit the spread of infection and limit exposure to others.⁶⁰
- 130.5 However, modelling suggests that no self-quarantine for close contacts and regular testing does not have a significant impact on the number of hospitalisations compared to 7 days self-quarantine. Given the epidemiological situation in Victoria, with high population immunity from vaccines and recent infection from Omicron BA.1 and BA.2 sub-lineages, this setting is proportionate to the overall public health risk.⁶¹
- 130.6 Additionally, third dose vaccination in the community reduces the risk of Omicron infection and onward transmission and thereby further reduces the risk posed by easing current quarantine requirements.⁶²
- 130.7 It is appropriate and proportionate to permit diagnosed persons, probable cases and close contacts to leave their place of self-isolation or self-quarantine in order to escape harm, or the risk of harm. This ensures that individuals are able to undertake self-isolation or self-quarantine safely, and leave if required to do so in order to continue to remain safe.⁶³
- 130.8 The additional reasons for close contacts to leave self-quarantine, above and beyond the baseline reasons, should be removed, given that they were introduced prior to the introduction of the surveillance testing option. This includes exercising with others who are quarantining, attending to animal welfare, transporting household members to work/school/healthcare appointments, and voting in the Australian Federal Election. This amendment considers the wide availability of RA tests within the community and other

⁵⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁵⁸ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁵⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁶⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁶¹ Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022).

⁶² Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022).

⁶³ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

mitigation strategies in place to reduce transmission opportunities and protect those most at risk of severe health outcomes from COVID-19. This amendment allows for simplification so that all close contacts can be managed by way of surveillance testing, as opposed to creating potential confusion by providing a list of additional reasons to leave self-quarantine for the minority which may choose to self-quarantine as opposed to participate in surveillance testing.⁶⁴

130.9 However, diagnosed persons or probable cases in self-isolation should still be permitted to transport another person they live with directly to, or from, a work premises, an education facility, or a healthcare appointment, under certain conditions including only travelling directly to the location with no stops unless required, remaining in the vehicle at all times except in an emergency or assisting the person that they are transporting, and wearing a face covering whilst outside the place of self-isolation. Providing this additional reason to leave self-isolation would likely have minimal impact on wider transmission rates and provide a practical reprieve that will support the wellbeing of individuals and households, alongside supporting transfer of operational responsibilities to LPHUs by reducing their administrative burden.⁶⁵

130.10 Recovered confirmed or probable cases should not need to be tested or managed as a close contact within 12 weeks after being released from isolation. This reflects the substantial cross-immunity between BA.1 and BA.2 and the data on the very substantially reduced risk of re-infection in the weeks following infection.⁶⁶

130.11 The power to grant class exemptions to close contacts in quarantine should be retained, given the elevated case numbers and resulting pressure placed on the ability of workforces to provide essential goods and services to the Victorian community. This helps to preserve the capacity of certain essential workforces and continues to be proportionate in the context of additional safeguards in place to mitigate transmission risk.⁶⁷

130.12 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.⁶⁸

⁶⁴ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁶⁵ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁶⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁶⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁶⁸ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

- 130.13 Social contacts are still at risk of acquiring COVID-19 infection.⁶⁹ Testing ensures prompt identification of COVID-19 to prevent further spread.⁷⁰
- 130.14 The requirement for a COVID-19 positive case to notify the Department of Health of a positive diagnosis, infectious period and isolation is reasonable as it empowers the Health Department to protect the health and safety of the community.⁷¹
- 130.15 Location details inform the Department’s understanding of the spread of the virus across the community, transmission pathways, risk areas, and the potential impact or incursion into sensitive settings, and further contributes towards data on secondary attack rates. It provides linkages into the Department’s and community support programs such as the Household Engagement Program, COVID-19 Positive Pathway Program, and our Compliance and Enforcement Program.⁷²
- 130.16 Individuals who are a confirmed or probable case should also continue to be required to inform their workplace or education facility that they have been diagnosed with COVID-19 if they attended the setting during their infectious period. This responsibility enables prompt, de-identified information to be shared to alert individuals that they have been exposed to a positive case and should test for COVID-19 if they develop symptoms, to be initiated by the workplace or education facility.
- 130.17 Individuals who have COVID-19 should also be required to inform any other persons who may be a close contact or a social contact, to the extent the diagnosed person is able to reasonably identify and notify these persons. I accept the Chief Health Officer’s advice dated 7 April 2022 that this will allow identification of potential new cases and prevent onward transmission.⁷³
- 130.18 Given that workers are best placed to notify contacts in the workplace of potential exposure, it is sensible to shift this onus, whilst still retaining the protections offered by requirements placed on social contacts and symptomatic persons to get tested if experiencing symptoms. I accept the Chief Health Officer’s advice dated 19 April 2022 that it is appropriate to shift this onus.⁷⁴
- 131 I have accepted the advice of the Chief Health Officer and Acting Chief Health Officer. I believe that self-isolation, self-quarantine and testing obligations remain an important safeguard for early detection of diagnosed persons to prevent large scale outbreaks.

⁶⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁷⁰ Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022).

⁷¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁷² Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

⁷³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 18.

⁷⁴ Text reflects advice provided by the Chief Health Officer to the Minister for Health 19 April 2022.

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.
- 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 their advice, the Chief Health Officer and Acting Chief Health Officer set out measures that do not have a restrictive element, such as health promotion and community education, that remain key to an effective pandemic response in Victoria.⁷⁵
- 136 The Acting Chief Health Officer has stated that early and consistent implementation of measures, such as quarantine, is the best strategy to limit further impacts from Omicron, including BA.2 and any new variants that emerge, and that these measures help to limit the impacts to Victorian

⁷⁵ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 13.

residents who are most at risk of serious illness, reduce effects on the health system and support the continuity of critical services.⁷⁶

- 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.⁷⁷ 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.⁷⁸ In addition, the power to grant exemptions to individuals and classes of persons supports the management of close contacts and confirmed cases at a local level.⁷⁹
- 138 Privacy protections apply to information disclosed and held under the pandemic orders. This allows the Department to better understand the spread of the virus across the community, transmission pathways, risk areas, and the potential impact or incursion into sensitive settings, while ensuring personal and health information is protected.⁸⁰
- 139 On the basis of the Chief Health Officer and Acting Chief Health Officer's advice, I consider there to be no other reasonably available means by which to limit the spread of COVID-19 that would be less restrictive of this particular freedom. However, even if there were less restrictive means, I considered that the limitation imposed by this Order is in the range of reasonably available options to reduce the spread of COVID-19.

Conclusion

- 140 Taking into account all of the above factors (including those contained in the Human Rights Statement) and weighing the public health benefits of the Order against the countervailing potential impacts on individuals and the community, I believed it was reasonably necessary to make the Order to protect public health.
- 141 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.

⁷⁶ Department of Health, *Acting Chief Health Officer Advice to Minister for Health* (7 April 2022) p. 4.

⁷⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 16.

⁷⁸ Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022).

⁷⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁸⁰ 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. 9)

Summary of Order

142 This Order imposes obligations on employers in relation to workers in order to limit the spread of COVID-19 within those populations.

Purpose

143 The purpose of the Order is to assist in reducing the frequency and scale of outbreaks of COVID-19 in Victorian workplaces and to establish more specific obligations on employers and workers in relation to managing the risk associated with COVID-19 transmission 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

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

145 Regulated employers must:

145.1 not permit a specified worker or facility worker to work outside their ordinary place of residence or work at a facility if the worker is under 18 years of age and is not fully vaccinated, or the worker is 18 years and over and is not fully vaccinated (boosted), in order to limit the spread of COVID-19 within the population of those workers. This applies to regulated employers of healthcare, custodial, emergency services, residential aged care and disability workers. This does not apply if 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.

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

145.3 notify current and new workers that the employer is obliged to collect, record and hold vaccination information about the worker and to not permit the worker who is not fully vaccinated (for workers under 18 years of age) or not fully vaccinated (boosted) (for workers aged 18 years or over) from working outside the worker's ordinary place of residence, or at a facility, as applicable; and

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

146 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.

147 An employer must take reasonable steps to ensure that all workers comply with requirements to wear a face covering under the Public Safety Order. Where the Public Safety Order requires a face covering to be worn in a work premises, an employer, owner, operator or controller of that work

premises must display a sign advising persons that they must wear a face covering under the Public Safety Order when entering the work premises, unless an exception applies.

- 148 An employer must implement a COVIDSafe Plan which addresses the health and safety issues arising from COVID-19 including mitigating the introduction of COVID-19 and the process of responding to a symptomatic person or confirmed case of COVID-19 in the work premises.
- 149 An employer must not require a worker to perform work at a work premises if the worker is a symptomatic person. An employer must advise workers who are symptomatic persons that they are required to comply with requirements that may be relevant in the document “Testing Requirements Policy” and support a worker to do so.
- 150 After becoming aware of a diagnosed person or a probable case who has attended the work premises in the infectious period, the operator must:
 - 150.1 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;
 - 150.2 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
 - 150.3 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”
- 151 After becoming aware of an outbreak in the workplace (as defined in the Case Contact and Outbreak Management policy), the operator of a workplace must notify the Department of Health (the Department) and comply with any further directions given by the Department or WorkSafe in relation to closure of the work premises (or part of the work premises) and/or cleaning.
- 152 Similarly, if the operator of an education facility becomes aware of a diagnosed person or a probable case attending that education facility during their infectious period, they must take reasonable steps to notify the parents, guardians and carers of the students enrolled at the education facility during the relevant infectious period and advise them to monitor for COVID-19 symptoms and comply with the document, “Testing Requirements Policy”. To meet these obligations, education facility operators are authorised to collect, record and store basic information about the dates of any exposures at the facility.
- 153 Hospitals conducting elective surgery are required to comply with the restrictions and requirements contained within the Elective Surgery Schedule. Restrictions on elective surgery do not apply to:
 - 153.1 in vitro fertilisation procedures performed at registered facilities, or
 - 153.2 a procedure for the surgical termination of pregnancy.
- 154 Services Victoria, via the Services Victoria App, may notify a person that they are eligible to receive a booster. In addition, the Services Victoria App may still be used to demonstrate a person’s vaccination status.

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

Changes from Pandemic (Workplace) Order 2022 (No. 8)

- 156 Second dose vaccination obligations on general and ceremony workers are removed and therefore these workers are no longer required to be fully vaccinated to work outside the worker's primary place of residence or ceremony (as applicable).
- 157 Workers in food distribution, meat and seafood processing quarantine accommodation and education workers (other than at specialist schools) no longer need to be vaccinated to work outside their primary place of residence.
- 158 Third dose vaccination obligations remain for a select group of workers including healthcare, custodial, emergency services, residential aged care, specialist school and disability workers. A regulated employer may not permit these workers who are not fully vaccinated (boosted) from working outside their ordinary place of residence or at a facility, as applicable.
- 159 An exception has been added to allow a specified worker or facility worker to work outside the worker's ordinary place of residence or at a facility (as applicable) where it is not reasonable for the specified 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.
- 160 A transitional provision has been added so that an employer may continue to hold employee vaccination information following removal of mandatory vaccination requirements for the period the pandemic declaration remains in force.
- 161 Services Victoria have removed the QR code check-in functionality of the Services Victoria App. Services Victoria may no longer collect, use, disclose and store information about a person's attendance at a work premises.
- 162 When an employer is aware of a symptomatic worker attending a workplace, an employer must notify workers. This does not apply to symptomatic patrons or visitors.

Period

- 163 The Order will commence at 11:59:00pm on 24 June 2022 and end at 11:59:00pm on 12 July 2022.

Relevant human rights

Human rights that are limited

- 164 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.
- 165 My explanation for why those rights are limited by the order is set out in the Human Rights Statement.

166 The Human Rights Statement also sets out:

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

166.2 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

167 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.

168 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

169 I have considered the Acting Chief Health Officer's advice of 16 June 2022, and, the Acting Chief Health Officer's written advice dated 7 April 2022 that the following measures were appropriate and proportionate to the epidemiology and forecasted impact of the BA.2 sub-lineage:⁸¹

169.1 requiring face masks in higher risk and sensitive indoor settings (with limited exceptions) with strong communications regarding the benefits of wearing masks;⁸²

169.2 requiring COVIDSafe Plans to support practising of COVIDSafe behaviours in workplaces with workers onsite, including facilitating working or studying from home in periods of high community transmission as an additional measure to reduce the risk of transmission at work where appropriate;⁸³

169.3 reviewing and revising the management of international arrivals, including air passengers and crew, and maritime passengers and crew including cruise ship passengers.⁸⁴

170 I have considered the Acting Chief Health Officer's advice that early and consistent implementation of the above measures together with other measures in the other Pandemic Orders is the best strategy to limit further impacts from Omicron, including BA.2 and any new variants that emerge. These measures, if implemented as a suite, will help to limit the impacts to Victorian residents who are most at risk of serious illness, reduce effects on the health system and support the continuity of critical services.⁸⁵

⁸¹ Department of Health, *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 4.

⁸² Department of Health, *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 4.

⁸³ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 5.

⁸⁴ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 5.

⁸⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 5.

- 171 I have considered the evidence that vaccination has been shown to reduce the risk of severe COVID-19 related outcomes such as hospitalisation and death.⁸⁶ 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.⁸⁷
- 172 In reviewing the continuation of worker vaccination requirements, I have considered the Chief Health Officer and Acting Chief Health Officer’s advice on the current epidemiology of COVID-19 in Victoria, vaccination coverage and uptake of third dose (booster) vaccination, and population susceptibility of COVID-19 in the context of natural immunity and community transmission. I have also considered the shift in Victoria’s pandemic response to individual and industry-led action, and the ongoing focus on protecting those most at risk of serious outcomes from COVID-19 and our healthcare system. In addition, I have considered the settings and environments, including workplaces, where an outbreak may be particularly detrimental, and the ongoing role of mandatory vaccination of workers in Victoria’s response to COVID-19.⁸⁸
- 173 I have considered the Acting Chief Health Officer’s advice for the gradual change to removing two-dose worker vaccination mandates to being at the discretion of industry and individual workplaces and allowing for a lead time prior to the introduction of individualised workplace vaccination policies.⁸⁹
- 174 I have considered the evidence that a third dose limits onward transmission of Omicron and provides greater protection to workers from symptomatic illness, hospitalisation and death.⁹⁰
- 175 I acknowledge the Acting Chief Health Officer’s advice of 7 April 2022 that a third dose (booster) requirement be retained in the workforces where they applied including the following because they are involved in the care of at-risk populations, are at higher occupational risk of COVID-19, are critical to maintaining emergency services or food supply chains, or are at higher risk of being involved in large workplace outbreaks because of the nature of their work environment:
- 175.1 healthcare, disability and care workers who provide care to population groups at increased risk of adverse health outcomes from COVID-19 infection;
 - 175.2 education facility workers who are involved in essential learning and development of children;
 - 175.3 emergency services workers who are involved in providing critical operations and essential goods and services to the community; and

⁸⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 10-11, 21.

⁸⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

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

⁸⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21, 22.

⁹⁰ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22-23.

- 175.4 workers in workplaces at increased risk of incursion, propagation, or downstream implications on the Victorian community, such as custodial, food processing and distribution, and – where operational - quarantine accommodation settings.⁹¹
- 176 I acknowledge that given the high vaccination rates of both second and third doses in Victoria, it is appropriate to review whether they continue to remain necessary in all workforces. I accept the Chief Health Officer's most recent advice of 16 June 2022 that:
- 176.1 population level two dose vaccine coverage is high (> 94%) and there have only been minor increases in the two-dose rate over recent months;
 - 176.2 mandatory third dose vaccination requirements for a select group of workers remain proportionate given their close contact with at-risk populations;
 - 176.3 third dose (booster) mandates should be retained for these workforces because they are involved in the care of at-risk populations, are at higher occupational risk of COVID-19 or are critical to maintaining emergency services;
 - 176.4 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;
 - 176.5 vaccination requirements for other workforces including education facility workers (except specialist education workers), food processing and distribution workers and quarantine accommodation workers should transition to being at the discretion of industry and individual workplaces;
 - 176.6 vaccination requirements for other workers (two or three doses) are no longer proportionate given waning immunity post two doses and likely minimal effect on transmission from the very small number of workers now returning to work who have not had two or three doses;
 - 176.7 regarding education workers specifically, the education sector has achieved high rates of third dose (booster) vaccination and continuing this requirement in Orders is unlikely to achieve substantial further increases in coverage;
 - 176.8 schools and early childhood education centres continue to have several other measures in place to mitigate the risk of COVID-19 to enrolled children, students and workers including enhanced ventilation, rapid antigen testing and embedded COVIDSafe practices such as physical distancing and hand and respiratory hygiene;
 - 176.9 as such, it is proportionate for this requirement to transition away from Orders.⁹²
- 177 I accept the Acting Chief Health Officer's recommendation to add a transitional provision that employers previously subject to a mandate may continue to hold vaccination information until the end of the pandemic declaration period. This is part of a stepdown approach of COVID-19 response

⁹¹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22-24.

⁹² Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

transitioning towards empowering industry and individuals to play a larger role in protecting themselves and their workforce.⁹³

178 I accept the Acting Chief Health Officer's advice that workers of regulated employers may leave their residence for the purpose of escaping the risk of harm by being able to attend the workplace even if they do not meet vaccination requirements.⁹⁴

179 The Acting Chief Health Officer commented as follows with respect to COVIDSafe Plans:

179.1 Throughout the pandemic, transmission of the virus has occurred in workplace settings due to the close contact between people, inadequate ventilation, and the use of shared facilities such as meeting rooms and lunchrooms. I advise that employers should continue to be required to maintain an up-to-date COVIDSafe Plan for each work premise where workers are onsite, to mitigate COVID-19 risk. As the COVID-19 response continues to transition from Orders towards empowering individuals and industry to utilise protective behaviours and measures, however, I advise that COVIDSafe Plan requirements should transition at the earliest reasonable juncture from Orders and is implemented via alternative such as workplace requirements, guidance materials and strong engagement, to achieve the same intent.⁹⁵

180 Consistent with the Acting Chief Health Officer's advice, dated 7 April 2022, I accept that employers should continue to maintain COVIDSafe Plans and will consider the timing of transitioning COVIDSafe Plan requirements from Orders. I will draw on industry advice as well as the evolving epidemiology as part of considering that transition.

181 Whilst testing, tracing, isolation and quarantine (TTIQ) measures are not the primary focus of the obligations contained in the Workplace Order, they are supported by the Workplace Order. For example, individuals who are a confirmed case will continue to be required, by the Workplace Order, to inform their workplace or education facility that they have been diagnosed with COVID-19 if they attended the setting during their infectious period. This responsibility enables prompt de-identified information to be shared to alert individuals that they have been exposed to a positive case and should test for COVID-19 if they develop symptoms, to be initiated by the workplace or education facility.⁹⁶

182 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.

183 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.

⁹³ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁹⁴ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

⁹⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 15.

⁹⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

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

- 184 In addition, continuing to require employers and education facilities to provide notification to individuals (or parents, guardians and carers) that they may have been exposed to a positive case supports the shift in the pandemic response towards empowering and educating the general public and businesses to manage outbreaks and protect staff, students and the community.⁹⁷
- 185 Furthermore, amending the threshold for a workplace outbreak from a predetermined number of confirmed cases to a number revised from time to time in line with Case, Contact and Outbreak Management policy remains consistent with this shift in the pandemic response. Allowing the Department to flexibly adjust both the threshold that constitutes an outbreak, and the obligations that follow, will ensure that a balance is struck between having oversight of large workplace outbreaks, and not placing unnecessary burdens on employers. This will also allow for a more agile response based on the current epidemiological situation in Victoria and what constitutes a proportionate requirement to place on employers.⁹⁸
- 186 Finally, the protocol to be imposed on cruise ships is proportionate to the elevated risk of COVID-19 transmission and amplification among passengers and crew on cruise ships, given the close quarters shared by individuals, the number of large outbreaks that have occurred locally and internationally on cruise ships, and the difficulty in providing health services while at sea.⁹⁹

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

- 187 In making this decision, I have seriously considered the possible negative impacts of the Order on the individuals and the community.
- 188 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.
- 189 In addition, I have also considered the following additional potential negative impacts:
- 189.1 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.¹⁰⁰
- 189.2 "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

⁹⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 17.

⁹⁸ Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022).

⁹⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

¹⁰⁰ Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (22 April 2022).

prevents the person from going to work.”¹⁰¹ 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.”¹⁰²

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

189.4 “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.”¹⁰³

189.5 “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.”¹⁰⁴

190 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:

190.1 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

191 I have considered the Acting Chief Health Officer’s advice that the Victorian public health response to COVID-19 continue to transition from Orders towards empowering individuals, communities, and industry to drive protective measures and behaviours.¹⁰⁵

192 I have considered the importance of community education, engagement and COVIDSafe behaviours such as vaccination, mask wearing, physical distancing, respiratory and hand hygiene, staying home and getting tested when unwell as remaining the key to an effective pandemic response in Victoria. Some of these measures no longer appear in Orders going forward.¹⁰⁶

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

¹⁰¹ Department of Health, Human Rights Statement: *Pandemic (Workplace) Order* (22 April 2022).

¹⁰² Department of Health, Human Rights Statement: *Pandemic (Workplace) Order* (22 April 2022).

¹⁰³ Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (22 April 2022).

¹⁰⁴ Department of Health, *Human Rights Statement: Pandemic (Workplace) Order* (22 April 2022).

¹⁰⁵ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 7.

¹⁰⁶ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 7.

continue to be utilised to increase vaccination coverage. I accept both the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that tailored communication and engagement strategies continue to educate, incentivise, and encourage voluntary vaccine uptake among workers, and address any potential barriers to vaccination.¹⁰⁷

- 194 I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that these non-mandatory measures alone will not be sufficient to manage the serious risk to public health posed by COVID-19.
- 195 I accept the Acting Chief Health Officer's advice date 16 June 2022 that mandatory third dose vaccination requirements for a select group of workers remain proportionate given their close contact with at-risk populations, and that vaccination requirements for other workers (two or three doses) are no longer proportionate given waning immunity post two doses and likely minimal effect on transmission from the very small number of workers now returning to work who have not had two or three doses.¹⁰⁸
- 196 In addition, given Victoria's high two dose vaccination coverage, continuation of vaccine mandates for patrons to open premises is unlikely to materially increase uptake of vaccination in those who remain unvaccinated, and the negative consequences of social and community exclusion of unvaccinated patrons from these premises may now outweigh the previously recognised benefits. I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's recommendation for ongoing investment and targeted engagement in promoting vaccination of patrons, particularly 'up-to-date' vaccination, using the least restrictive means available.¹⁰⁹

Conclusion

- 197 I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that the measures related to the following continue to be reflected in, or introduced to, Pandemic Orders:
- 197.1 face masks;
 - 197.2 COVID-Safe plans;
 - 197.3 obligations for workplaces and education facilities to notify individuals that they may have been exposed;
 - 197.4 cruise passenger vaccination and testing requirements;
 - 197.5 vaccination requirements for regulated workers;
 - 197.6 quarantine, testing and isolation.

¹⁰⁷ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 21.

¹⁰⁸ Text reflects advice provided by the Acting Chief Health Officer to the Minister for Health (16 June 2022).

¹⁰⁹ Department of Health, *Acting Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 22.

198 I accept the Acting Chief Health Officer's and the subsequent Chief Health Officer's advice that these measures remain crucial public health measures to address the evolving threat of BA.2 and will continue to reduce the potential impact of the virus on individuals and the health system.¹¹⁰

¹¹⁰ Department of Health, Acting *Chief Health Officer Advice to the Minister for Health* (7 April 2022), p. 14. Text reflects advice provided by the Chief Health Officer to the Minister for Health (19 April 2022) and by the Acting Chief Health Officer to the Minister for Health (16 June 2022).