

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

## Workplace (Additional Industry Obligations) Directions (No 53)

*Public Health and Wellbeing Act 2008 (Vic)*

Section 200

I, Professor Benjamin Cowie, Acting Chief Health Officer, consider it reasonably necessary to eliminate or reduce the risk to public health—and reasonably necessary to protect public health—to give the following directions pursuant to section 200(1)(d) of the **Public Health and Wellbeing Act 2008 (Vic) (PHW Act)**:

### 1 Preamble

- (1) The presence of a person with a positive diagnosis of Novel Coronavirus 2019 (**SARS-CoV-2**) at a **Work Premises** is considered to pose an immediate risk of transmission to persons who attend, or may attend, the Work Premises.
- (2) The purpose of these directions is to establish additional specific obligations on **employers** and **workers** in specific industries in relation to managing the risk associated with SARS-CoV-2.
- (3) These directions must be read together with the **Directions currently in force**.
- (4) These directions are intended to supplement any obligations an employer may have under the **OHS Act** and the **Workplace Directions** and are not intended to derogate from any such obligations.
- (5) These directions replace the **Workplace (Additional Industry Obligations) Directions (No 52)**.

### 2 Citation

These directions may be referred to as the **Workplace (Additional Industry Obligations) Directions (No 53)**.

### 3 Revocation

The **Workplace (Additional Industry Obligations) Directions (No 52)** are revoked at 11:59:00pm on 23 October 2021.

### 4 Commencement

These directions commence at 11:59:00pm on 23 October 2021 and end at 11:59:00pm on 18 November 2021.

## 5 Application of directions to certain employers and roles

- (1) These directions apply to **Additional Obligation Industries**, namely:
  - (a) **poultry processing facilities**;
  - (b) **abattoirs and meat processing facilities**;
  - (c) **seafood processing facilities**;
  - (d) **supermarket Work Premises** and **perishable food Work Premises**;
  - (e) warehousing and distribution centres;
  - (f) **commercial cleaning services**;
  - (g) **commercial passenger vehicle services**;
  - (h) horticulture operations using **seasonal workers** for **seasonal horticultural work**;
  - (i) **care facilities**;
  - (j) **ports of entry** servicing international arrivals;
  - (k) **hotel quarantine**;
  - (l) **hospitals**;
  - (m) **Australian air transport operators**;
  - (n) **construction sites**;
  - (o) **schools**;
  - (p) **childcare or early childhood education services**.
- (2) These directions apply to Additional Obligation Industries Work Premises that are located:
  - (a) in relation to supermarket Work Premises and perishable food Work Premises, and warehousing and distribution centres, in **Metropolitan Melbourne**; and
  - (b) in relation to all other Additional Obligation Industries not referred to in subclause (2)(a), anywhere in Victoria, unless these directions indicate otherwise.
- (3) The **daily peak workforce capacity** is the daily average of the highest number of workers at the Work Premises each day calculated over the period of:
  - (a) August 2021; or
  - (b) any three consecutive months in the last 12 months.
- (4) The **daily total workforce capacity** is the daily average of the total number of workers at the Work Premises each day over the period of:
  - (a) August 2021; or
  - (b) any three consecutive months in the last 12 months.

*Example 1:*

*On one day, a distribution business had workers working over two shifts:*

*(a) 6:00am to 2:00pm: 120 workers*

*(b) 12:00pm to 8:00pm: 150 workers*

*During the crossover of the two shifts, the business had 270 workers working at the Work Premises at any one time – this is the daily peak workforce capacity on this day. Over the two shifts, the Work Premises had 270 workers in total – this is the daily workforce capacity on this day.*

*The same calculation is undertaken for each day of either August 2021 or any continuous three month (13 week) consecutive period in the last 12 months. These figures are then averaged over the period to calculate the daily peak workforce capacity and the daily total workforce capacity over the period.*

*Example 2:*

*On one day, a meat processing business had people on the Work Premises, including **employees**, contractors and labour hire, working over three shifts with no cross-over of workers:*

*(a) 4:00am to 10:00am: 120 workers*

*(b) 10:30am to 4:30pm: 100 workers*

*(c) 5:00pm to 11:00pm: 80 workers*

*The daily peak workforce capacity on this day is 120 workers. Over the three shifts, the business had 300 workers working in total – this is the daily total workforce capacity on this day.*

## **6 General Obligations**

- (1) This clause 6 does not apply to schools, childcare or early childhood education services, care facilities, hospitals (except for **high-risk hospital Work Premises**, to which the clause does apply) and Australian air transport operators.

*Note: the exception of schools, childcare or early childhood education services, care facilities, hospitals (except for high-risk hospital Work Premises) and Australian air transport operators from the requirements in clause 6 does not exempt care facilities from satisfying equivalent requirements imposed under other regulatory arrangements.*

### *Compliance*

- (2) An **Authorised Officer** or **inspector** (or their nominated representative) may conduct:
- (a) an inspection of a Work Premises; or
  - (b) an inspection or audit of the records of an employer, to assess an employer's compliance with these directions.

### Consultation

- (3) An employer in relation to an Additional Obligation Industry Work Premises must, to the extent **reasonably practicable**, consult with health and safety representatives, together with workers who are, or are likely to be, directly affected:
- (a) to identify or assess risks to health or safety at a workplace; and
  - (b) to make decisions about the measures to be taken to control risks to health and safety; and
  - (c) to determine if any risk identified under subclause (a) is either under the employer's management and control or arises from the employer's conduct; and
  - (d) to make decisions about the adequacy of facilities for the welfare of workers; and
  - (e) in making decisions about procedures to resolve health and safety issues, including (but not limited to):
    - (i) procedures around health and safety consultation itself;
    - (ii) procedures to monitor the health of workers and the conditions of the workplace;
    - (iii) procedures to provide information and training to workers; and
  - (f) by a change to:
    - (i) a workplace; or
    - (ii) the plant, substances, or other things used at a workplace; or
    - (iii) the conduct of work performed at a workplace.

## 7 Additional Industry Obligations

- (1) An employer in relation to an Additional Obligation Industry Work Premises must:
- (a) increase the regularity of comprehensive cleaning by ensuring all areas where workers are working are **cleaned** at least daily (except for meat, poultry and seafood processing, seasonal horticulture, schools, childcare or early childhood education services, care facilities, hospitals and ports of entry); and
    - Note: the exception of schools, childcare or early childhood education services, care facilities, hospitals and/or ports of entry from the requirements in subclause (1)(a) does not exempt schools, childcare or early childhood education services, care facilities, hospitals and/or ports of entry from satisfying equivalent requirements imposed under other regulatory arrangements.*
  - (b) where the employer's Work Premises is an industry that is listed in the **Surveillance Testing Industry List and Requirements** (as amended from time to time on the advice of the Chief Health Officer):

- (i) carry out surveillance testing for SARS-CoV-2 on its workers in relation to the Work Premises in accordance with the requirements of the Surveillance Testing Industry List and Requirements (as amended from time to time on the advice of the Chief Health Officer), including:
  - (A) those sections of its workforce required to be tested under the Surveillance Testing Industry List and Requirements;
  - (B) a weekly surveillance testing target of the percentage of workers that are to be tested; and
- (ii) keep records of surveillance testing of workers for SARS-CoV-2, which demonstrate that the employer has complied with its obligations under subclause (b)(i) in relation to the Work Premises; and
- (iii) provide the records required to be kept by the employer under subclause (b)(ii) to the **Department** upon request by the Department for those records.

*Note: the industries and requirements included in the Surveillance Testing Industry List and Requirements may be amended on the advice of the Chief Health Officer.*

*Additional measures to prevent SARS-CoV-2 in abattoirs and meat processing facilities, poultry processing facilities, seafood processing facilities, warehousing and distribution centres, supermarket Work Premises, and perishable food Work Premises*

- (2) In relation to a Work Premises that is an abattoir, meat processing facility, poultry processing facility or seafood processing facility, an employer must arrange operations at the Work Premises so as to have workers working consistently with the same group of other workers where reasonably practicable, including (but not limited to):
  - (a) developing separate shifts in a way that minimises physical interactions between groups of workers attending different shifts;
  - (b) separating workers into work areas;
  - (c) dividing work areas up further into separate teams;
  - (d) providing separate break areas for the separate teams;
  - (e) requiring teams to use separate entrances and exits from other teams;
  - (f) where workers are from the same household, ensuring they work in the same shift and work area.
- (2A) In relation to a Work Premises that is an abattoir, meat processing facility, poultry processing facility, seafood processing facility, warehousing and distribution centre, supermarket Work Premises, or a perishable food Work Premises, an employer must:
  - (a) provide regular training to workers (including, but not limited to, an induction for all workers commencing at, or returning to, the Work Premises) that covers:

- (i) good hygiene practices; and
  - (ii) advising workers not to attend the Work Premises when unwell; and
  - (iii) where applicable, compliance with the requirements of subclause (2); and
- (b) for a Work Premises in Metropolitan Melbourne, designate an employee or employees as a **COVID Marshal**:
- (i) whose role is to monitor compliance with these directions, including (but not limited to) physical distancing requirements; and
  - (ii) who has successfully completed training provided by the employer that is in accordance with guidance from the Department; and
  - (iii) who is at the Work Premises whenever workers are on site.

*Note: the requirements in subclause (2A) apply to all supermarket, perishable food, warehousing and distribution facilities in Metropolitan Melbourne, not just chilled facilities.*

*Additional measures to prevent COVID in abattoirs and meat processing facilities, poultry processing facilities and seafood processing facilities*

(3) In relation to a Work Premises that is an abattoir, meat processing facility, poultry processing facility or seafood processing facility, an employer must ensure that all workers at the Work Premises wear the appropriate level of **personal protective equipment**:

- (a) to carry out the functions of the worker's role; and
- (b) to mitigate the introduction of SARS-CoV-2 at the Work Premises including (but not limited to):
  - (i) at a minimum, wearing a surgical face mask; and
  - (ii) suitable protective clothing which should be changed at the end of each shift and washed appropriately,

unless it is not reasonably practicable to wear a surgical face mask and/or protective clothing in the Work Premises or the nature of a worker's work means that it creates a risk to their health and safety.

*Note 1: an employer at a Work Premises that is an abattoir, meat processing facility, poultry processing facility or seafood processing facility is required to comply with subclause (3)(b)(i) unless an exception under the **Stay Safe Directions (Metropolitan Melbourne)** or the **Stay Safe Directions (Regional Victoria)** applies in respect of a worker, in which case the employer is exempted from requiring that worker to wear a **face covering**.*

*Note 2: the exception from the requirement to wear a face covering under the **Stay Safe Directions (Metropolitan Melbourne)** or the **Stay Safe Directions (Regional Victoria)** does not apply to a worker at a Work Premises that is an*

*abattoir, meat processing facility, poultry processing facility or seafood processing facility whilst working at the Work Premises in Victoria.*

#### *Additional measures to prevent SARS-CoV-2 in supermarket Work Premises or perishable food Work Premises*

- (4) In relation to any supermarket Work Premises or perishable food Work Premises that is a chilled distribution facility in Metropolitan Melbourne, an employer must ensure that all workers at the supermarket Work Premises or perishable food Work Premises wear a surgical face mask, unless the nature of a worker's work means that it creates a risk to their health and safety.

*Note 1: surgical face masks may create a risk to health and safety in those parts of a chilled distribution facility where the temperature is below negative five degrees Celsius. If a surgical face mask cannot be worn, the employer is still required to ensure an employee uses a suitable fitted face covering, such as a cloth mask of three plies.*

*Note 2: an employer at a Work Premises that is a supermarket Work Premises or perishable food Work Premises is required to comply with the requirements of subclause (4) unless an exception under the **Stay Safe Directions (Metropolitan Melbourne)** applies in respect of a worker, in which case the employer is exempted from requiring that worker to wear a face covering.*

*Note 3: the exception from the requirement to wear a face covering under the **Stay Safe Directions (Metropolitan Melbourne)** does not apply to a worker at a Work Premises that is a supermarket Work Premises or perishable food Work Premises whilst working at the Work Premises in Victoria.*

#### *Additional measures to prevent SARS-CoV-2 in warehousing and distribution centres*

- (5) In relation to a Work Premises that is a chilled facility in relation to warehousing and distribution centres, an employer must ensure that all workers at the Work Premises wear a surgical face mask, unless the nature of a worker's work means that it creates a risk to their health and safety.

*Note 1: surgical face masks may create a risk to health and safety in those parts of a chilled distribution facility where the temperature is below negative five degrees Celsius. If a surgical face mask cannot be worn, the employer is still required to ensure an employee uses a suitable fitted face covering, such as a cloth mask of three plies.*

*Note 2: an employer at a Work Premises that is a chilled distribution facility in relation to warehousing and distribution centres is required to comply with the requirements of subclause (5) unless an exception under the **Stay Safe Directions (Metropolitan Melbourne)** applies in respect of a worker, in which case the employer is exempted from requiring that worker to wear a face covering.*

*Note 3: the exception from the requirement to wear a face covering under the **Stay Safe Directions (Metropolitan Melbourne)** does not apply to a worker at a Work Premises that is a chilled distribution facility in relation to warehousing and distribution centres whilst working at the Work Premises in Victoria.*

*Horticulture Work Premises using seasonal workers for seasonal horticultural work*

- (6) An employer may only operate a **seasonal Work Premises** using seasonal workers for seasonal horticultural work if it complies with subclauses (7) to (10) (inclusive).
- (7) The employer must arrange operations at the Work Premises so as to have seasonal workers working consistently with the same group of other seasonal workers where reasonably practicable, including (but not limited to):
- (a) developing separate shifts in a way that minimises physical interactions between groups of seasonal workers attending different shifts;
  - (b) separating seasonal workers into work areas;
  - (c) dividing work areas up further into separate teams;
  - (d) providing suitable separate break areas for the separate teams including, to the extent possible, outdoor break areas with shade;
  - (e) where seasonal workers are from the same household, ensuring they work in the same shift and work area.

*Note: to the extent it is reasonably practicable, there should be no mixing of the worker “bubbles” on site. Seasonal workers within a bubble should work and take breaks together. In addition, worker bubbles should, to the extent that is reasonably practicable, be maintained with respect to accommodation and transport.*

- (8) The employer must record on a daily basis the roster of seasonal workers, including the work areas, work teams and breaks taken for each worker bubble.
- (9) The employer must provide training to seasonal workers (including, but not limited to, an induction for all workers commencing at, or returning to, the Work Premises) that covers:
- (a) good hygiene practices; and
  - (b) advising seasonal workers not to attend the Work Premises when unwell; and
  - (c) compliance with the requirements of subclause (7).
- (10) The employer must provide:
- (a) clean water and soap for washing hands; and
  - (b) well-maintained toilet facilities,

for seasonal workers, in a location or locations that are reasonably adjacent to work areas and, as far as is practicable, separate from the employer’s **premises** or farm homestead.



### Care facilities

- (11) An employer in relation to a Work Premises that is a care facility in Victoria must require care facility workers in relation to a care facility to wear a face covering while working in:

- (a) any indoor space at the care facility; or
- (b) any outdoor space at the care facility,

unless an exception under the **Stay Safe Directions (Metropolitan Melbourne)** or **Stay Safe Directions (Regional Victoria)** applies in respect of a care facility worker in relation to a care facility, then the employer is exempted from requiring that care facility worker to wear a face covering.

*Example: where a care facility worker is communicating with a resident who is hard of hearing or deaf and visibility of the mouth is essential for communication, that care facility worker may remove their face covering whilst communicating with the resident.*

*Note: the exception from the requirement to wear a face covering pursuant to the **Stay Safe Directions (Metropolitan Melbourne)** or the **Stay Safe Directions (Regional Victoria)** does not apply to care facility workers whilst working in a care facility in Victoria.*

- (12) If a care facility worker is working at more than one Work Premises for two or more different employers:

- (a) the care facility worker must provide a written declaration to each employer to advise them that the worker is working at more than one Work Premises and must provide details of the other Work Premises to each employer; and
- (b) each employer must maintain a record of all care facility workers who have disclosed to the employer under subclause (12)(a) that they are working across more than one Work Premises.

- (13) An employer in relation to a Work Premises that is a care facility in Victoria must require care facility workers in relation to the care facility to declare in writing at the start of each shift that the worker:

- (a) is free of **SARS-CoV-2 Symptoms**; and

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

- (b) has, in the preceding 14 days, not been in contact with a **confirmed case** (except in the course of their duties while wearing appropriate personal protective equipment); and
- (c) is not currently required to **self-isolate** or **self-quarantine** under the **Diagnosed Persons and Close Contacts Directions**.

(14) Despite the **Care Facilities Directions**, an employer in relation to a Work Premises that is a care facility in Victoria must not permit an employee or contractor to enter the care facility where:

- (a) the employee or contractor has, on or after 4 October 2020, worked at another care facility; and
- (b) at the time the employee or contractor worked at that other care facility, a confirmed case was present at that other facility,

unless:

- (c) at least 14 days have elapsed since the last time the employee or contractor worked at that other facility while a confirmed case was present; and
- (d) the employee or contractor:
  - (i) has undertaken a test for SARS-CoV-2 on or after 13 days from the day that the employee or contractor last worked at that other facility while a confirmed case was present; and
  - (ii) received confirmation that the results of the test undertaken pursuant to (i) were negative; and
- (e) the employee or contractor has provided evidence of the negative test result pursuant to subclause (d) to the employer prior to commencing work at that care facility.

*Note 1: providing the employer with hardcopy or electronic notification confirming the negative test result from a testing provider is sufficient evidence.*

*Note 2: the effect of subclause (14) is that, in the event of an **outbreak** of SARS-CoV-2 at a care facility, an employee or contractor present during the outbreak must only work at that facility, and cannot be permitted to work at other care facilities. Such employees or contractors must wait a minimum period of 14 days from when they last worked a shift while a confirmed case was present at the facility and test negative for SARS-CoV-2, before moving from that care facility to commence work at another care facility. No test is required if it has been 28 days or more since the employee or contractor last worked a shift while a confirmed case was present at the facility.*

(15) An employer in relation to a Work Premises that is a care facility in Victoria must comply with personal protective equipment requirements in accordance with the requirements of the Department.

(16) The Chief Health Officer may grant an exemption in writing to the requirements of subclause (14).

*Note: an exemption may only be granted where it is necessary to ensure that residents are provided with a reasonable standard of care.*

*Ports of entry*

(17) Subject to subclause (18), a **port of entry worker** means:

- (a) any **airport** or maritime **port** worker who has direct contact (including occasional contact or interactions) with international passengers or crew (excluding international passengers and crew entering Victoria from a **Green Zone Country**), at the international **port of entry**; or
- (b) a worker or person who interacts with the environment within the international port of entry (including any worker or person who boards a vessel, ship or **aircraft**) where international passengers and crew (excluding international passengers and crew entering Victoria from a Green Zone Country) are or have been.

*Note: interacting with the "environment" within the international port of entry refers to handling items and/or using or being in communal facilities (such as toilets, waiting areas and seating) that have been used by or are being used by international passengers and crew (excluding international passengers and crew entering Victoria from a Green Zone Country). It also refers to boarding or entering a vessel, ship or aircraft where international passengers and crew (excluding international passengers and crew entering Victoria from a Green Zone Country) are or have been.*

- (18) Despite subclause (17), a port of entry worker does not include any worker who works in an international departures area of an airport.
- (19) In relation to a Work Premises that is a port of entry Work Premises servicing international arrivals, an employer must:

*Note: a Work Premises which is a port of entry servicing international arrivals is a port or airport at which port of entry workers provide services in relation to, or encounter, passengers, crew members, shipping vessels or aircraft arriving in Victoria from outside of Australia, subject to the definition of "port of entry workers" above.*

- (a) require port of entry workers to declare in writing at the start of each shift that the port of entry worker:
  - (i) is free of SARS-CoV-2 Symptoms; and
  - (ii) has, in the preceding 14 days, not been in contact with a confirmed case (except in the course of their duties while wearing appropriate personal protective equipment, where relevant); and
  - (iii) is not currently required to self-isolate or self-quarantine under the **Diagnosed Persons and Close Contacts Directions**; and
- (b) designate a port of entry worker(s) as a COVID Marshal:
  - (i) whose role is to monitor compliance with these directions, including (but not limited to) physical distancing requirements; and
  - (ii) who has successfully completed training provided by the employer that is in accordance with guidance from the Department; and
  - (iii) who is at the Work Premises whenever port of entry workers are on site; and

- (c) arrange operations at the Work Premises so as to have port of entry workers working consistently with the same group of other port of entry workers where reasonably practicable, including (but not limited to):
    - (i) developing separate shifts in a way that minimises physical interactions between groups of port of entry workers attending different shifts;
    - (ii) separates port of entry workers into work areas;
    - (iii) dividing work areas up further into separate teams;
    - (iv) providing separate break areas for the separate teams;
    - (v) requiring teams to use separate entrances and exits from other teams;
    - (vi) where port of entry workers are from the same household, ensuring they work in the same shift and work area; and
  - (d) provide regular training to port of entry workers (including, but not limited to, an induction for all port of entry workers commencing at, or returning to, the Work Premises) that covers:
    - (i) good hygiene practices; and
    - (ii) advising port of entry workers not to attend the Work Premises when unwell; and
    - (iii) compliance with the requirements of subclause (19)(c); and
  - (e) make available an adequate supply of personal protective equipment free of charge to port of entry workers; and
  - (f) ensure that all port of entry workers wear appropriate personal protective equipment in accordance with the requirements of the Department; and
  - (g) test the temperature of each port of entry worker each day before they enter the Work Premises and, if the port of entry worker's temperature is 37.5°C or more, direct the port of entry worker to:
    - (i) leave the Work Premises immediately; and
    - (ii) be tested for SARS-CoV-2; and
    - (iii) self-isolate until a negative test result is received.
- (20) Subclauses (19)(b) and (19)(c) do not apply to the following port of entry workers:
- (a) administrative support service workers;
  - (b) truck drivers;
  - (c) tugboat crew;
  - (d) stevedores;
  - (e) office workers at freight terminals;
  - (f) airport baggage handlers and airport cargo handlers;

- (g) aircraft engineers.

*Note: airport baggage handlers, airport cargo handlers and aircraft engineers should minimise interactions with other port of entry workers.*

#### *Hotel quarantine*

- (21) Any worker in relation to a hotel quarantine Work Premises should provide the Department with the following details:

- (a) of the worker:
  - (i) the worker's name, contact number and address; and
- (b) of any person with whom they ordinarily reside:
  - (i) the person's first name;
  - (ii) a contact phone number;
  - (iii) the person's workplace(s), including address;
  - (iv) if the person attends school, the name and address of the school.

- (22) In relation to a Work Premises that is a hotel quarantine Work Premises, an employer must:

- (a) require workers to declare in writing at the start of each shift that the worker:
  - (i) is free of SARS-CoV-2 Symptoms; and
  - (ii) has, in the preceding 14 days, not been in contact with a confirmed case (except in the course of their duties while wearing appropriate personal protective equipment, where relevant); and
  - (iii) is not currently required to self-isolate or self-quarantine under the **Diagnosed Persons and Close Contacts Directions**; and
- (b) designate an employee or employees as a COVID Marshal:
  - (i) whose role is to monitor compliance with these directions, including (but not limited to) physical distancing requirements; and
  - (ii) who has successfully completed training provided by the employer that is in accordance with guidance from the Department; and
  - (iii) who is at the Work Premises whenever workers are on site; and
- (c) arrange operations at the Work Premises so as to have workers working consistently with the same group of other workers where reasonably practicable, including (but not limited to):
  - (i) developing separate shifts in a way that minimises physical interactions between groups of workers attending different shifts;
  - (ii) separating workers into work areas;
  - (iii) dividing work areas up further into separate teams;

- (iv) providing separate break areas for the separate teams;
  - (v) requiring teams to use separate entrances and exits from other teams;
  - (vi) where workers are from the same household, ensuring they work in the same shift and work area; and
- (d) make available an adequate supply of personal protective equipment free of charge to workers; and
- (e) ensure that all workers wear appropriate personal protective equipment in accordance with the requirements of the Department; and
- (f) test the temperature of each worker each day before they enter the Work Premises and, if the worker's temperature is 37.5°C or more, direct the worker to:
- (i) leave the Work Premises immediately; and
  - (ii) be tested for SARS-CoV-2; and
  - (iii) self-isolate until a negative test result is received; and
- (g) provide regular training to workers (including, but not limited to, an induction for all workers commencing at, or returning to, the Work Premises) that covers:
- (i) good hygiene practices; and
  - (ii) advising workers not to attend the Work Premises when unwell; and
  - (iii) compliance with the requirements of subclause (22)(c).
- (23) Subject to subclause (24), an employer in relation to a hotel quarantine Work Premises must not require or permit a worker to perform work at more than one hotel quarantine Work Premises of the employer.
- (24) Subclause (23) does not apply where it is not practicable to limit a worker to only one hotel quarantine Work Premises.
- (25) Where subclause (24) applies, the employer must be able to demonstrate the systems of work which it has put in place to minimise the number of workers working across multiple Work Premises.
- Example: rosters.*
- (26) If a worker is working at more than one Work Premises for two or more different employers:
- (a) the worker must provide a written declaration to each employer to advise them that the worker is working at more than one Work Premises and must provide details of the other Work Premises to each employer; and
  - (b) each employer must maintain a record of all workers who have disclosed to the employer under subclause (26)(a) that they are working across more than one Work Premises.

## *Hospitals*

- (27) In relation to a Work Premises that is a hospital, an employer must require workers to declare in writing at the start of each shift that the worker:
- (a) is free of SARS-CoV-2 Symptoms; and
  - (b) has, in the preceding 14 days, not been in contact with a confirmed case (except in the course of their duties while wearing appropriate personal protective equipment, where relevant); and
  - (c) is not currently required to self-isolate or self-quarantine under the **Diagnosed Persons and Close Contacts Directions**.
- (28) In relation to those parts of a hospital that are a high-risk hospital Work Premises, an employer must:
- (a) designate a **high-risk hospital Work Premises worker** as a COVID Marshal:
    - (i) whose role is to monitor compliance with these directions, including (but not limited to) physical distancing requirements; and
    - (ii) who has successfully completed training provided by the employer that is in accordance with guidance from the Department; and
    - (iii) who is at the Work Premises whenever workers are on site; and
  - (b) arrange operations at the Work Premises so as to have high-risk hospital Work Premises workers working consistently with the same group of other high-risk hospital Work Premises workers where reasonably practicable, including (but not limited to):
    - (i) developing separate shifts in a way that minimises physical interactions between groups of high-risk hospital Work Premises workers attending different shifts;
    - (ii) separating high-risk hospital Work Premises workers into work areas;
    - (iii) dividing work areas up further into separate teams;
    - (iv) providing separate break areas for the separate teams;
    - (v) requiring teams to use separate entrances and exits from other teams;
    - (vi) where high-risk hospital Work Premises workers are from the same household, ensuring they work in the same shift and work area.
- (29) Subject to subclause (30), an employer in relation to a high-risk hospital Work Premises must not require or permit a high-risk hospital Work Premises worker to perform work at more than one Work Premises of the employer.
- (30) Subclause (29) does not apply where it is not practicable to limit a high-risk hospital Work Premises worker to only one Work Premises.

- (31) Where subclause (30) applies, the employer must be able to demonstrate the systems of work which it has put in place to minimise the number of high-risk hospital Work Premises workers working across multiple Work Premises.

*Example: rosters.*

- (32) If a high-risk hospital Work Premises worker working in a high-risk hospital Work Premises is working at more than one Work Premises for two or more different employers:
- (a) the high-risk hospital Work Premises worker must provide a written declaration to each employer to advise them that the high-risk hospital Work Premises worker is working at more than one Work Premises and must provide details of the other Work Premises to each employer; and
  - (b) each employer must maintain a record of all high-risk hospital Work Premises workers who have disclosed to the employer under subclause (32)(a) that they are working across more than one Work Premises.
- (33) In relation to a Work Premises that is a hospital, an employer must require workers to declare in writing at the start of each shift:
- (a) whether the worker has completed a shift or shifts at another hospital in a high-risk hospital Work Premises in the 14 days prior to making the declaration; and
  - (b) if the worker declares that they have completed a shift or shifts at another hospital in a high-risk hospital Work Premises in the 14 days prior to making the declaration:
    - (i) the name of the relevant hospital; and
    - (ii) whether a shift, or any shifts, declared under subclause (a) were on the roster of a **COVID streaming area**.

*Note: a shift on the roster of a COVID streaming area includes a shift where the worker is primarily assigned to caring for COVID positive patients in a negative pressure room (for example, a nurse allocated to care for COVID positive patients in a negative pressure room). A shift on the roster of a COVID streaming area also includes staff who were rostered on to work and worked in the COVID streaming area and staff who were not originally rostered but worked in the area to cover a gap in the roster.*

- (34) In relation to a Work Premises identified in Column 1 of Schedule 1, an employer must comply with the restrictions and requirements outlined in Column 3 of Schedule 1 from the date specified in Column 2 of Schedule 1 except in relation to:
- (a) an in vitro fertilisation (**IVF**) procedure performed at a Work Premises that is required to complete a cycle of IVF treatment that a patient commenced before 14 October 2021; or



- (b) a procedure for the preservation of eggs for a future IVF procedure that is required due to health treatment that a patient will be receiving which will render their eggs non-viable; or
- (c) a procedure for the surgical termination of pregnancy.

*Australian Air Transport Services (Passenger)*

- (35) In relation to a Work Premises that is an Australian air transport operator's Work Premises, an employer must:
- (a) include in its **COVIDSafe Plan** the processes it will put in place to ensure compliance with requirements to wear a face covering, where any other Directions currently in force require a face covering to be worn in its Work Premises or part of its Work Premises; and
  - (b) provide appropriate facilities for the disposal of face coverings at its Work Premises covered under subclause (35)(a).

*Construction sites*

- (36) In relation to a Work Premises that is a construction site, including a **critical and essential infrastructure** site, an employer must:
- (a) comply with the requirements in the **Workplace Directions** including:
    - (i) the density quotient; and
    - (ii) the face coverings and cleaning requirements; and
  - (b) limit movement of all workers (including supervisors and on-site specialists) between multiple Work Premises that are construction sites, except in relation to:
    - (i) supervisors on **small-scale construction sites**, who can move between multiple small-scale construction sites; or
    - (ii) **specialist contractors** who can move between up to three construction sites per week; or
    - (iii) specialists who provide safety services; or
    - (iv) those required to meet minimum statutory obligations or requirements (for example, auditors, building inspectors or surveyors); and
  - (c) designate an employee or employees as a **COVID Marshal**:
    - (i) whose role is to monitor compliance with these directions, including (but not limited to) physical distancing requirements; and
    - (ii) who has successfully completed training provided by the employer that is in accordance with guidance from the Department; and
    - (iii) who is at the Work Premises whenever workers are on site, except in relation to a small-scale construction site, where an employer may designate a supervisor or site manager to perform

the role of COVID Marshal for multiple sites under their management or supervision at the same time; and

- (d) arrange operations at Work Premises that are construction sites, so as to have construction workers working consistently with the same group of other construction workers where reasonably practicable, including (but not limited to):
  - (i) developing separate shifts in a way that minimises physical interactions between groups of construction workers attending different shifts;
  - (ii) separates construction workers into work areas;
  - (iii) dividing work areas up further into separate teams;
  - (iv) providing separate break areas and separate break times for the separate teams;
  - (v) requiring teams to use separate entrances and exits from other teams; and
  - (vi) where construction workers are from the same household, ensuring they work in the same shift and work area.

## 8 Relationship with other directions

- (1) If there is any inconsistency between these directions and a direction or other requirement contained in a **Detention Notice**, these directions are inoperative to the extent of the inconsistency.
- (2) If there is any inconsistency between these directions and a direction or other requirement contained in the **Workplace Directions**, the **Workplace Directions** are inoperative to the extent of the inconsistency.

## 9 Other definitions

For the purposes of these directions:

- (1) **abattoir** has the meaning under the PrimeSafe licence categories “abattoirs (domestic)” and “abattoirs (exports)”;
- (2) **Additional Obligation Industries** has the meaning in clause 5(1);
- (3) **aircraft** means an aircraft that is mainly used for the purpose of, or is engaged, or is intended or likely to be engaged, in a flight wholly within Australia;
- (4) **airport** means a facility that receives scheduled international passenger air transport services and / or passenger charter air services from international markets;
- (5) **Area Directions** means the **Area Directions (No 27)** as amended or replaced from time to time;
- (6) **Australian air transport operator** has the same meaning as in the **Civil Aviation Safety Amendment (Part 119) Regulations 2018** of the Commonwealth;

- (7) **Authorised Officer** has the same meaning as in the **PHW Act**;
- (8) **Border Directions** means the **Victorian Border Crossing Permit Directions (No 35)** as amended or replaced from time to time;
- (9) **Care Facilities Directions** means the **Care Facilities Directions (No 47)** as amended or replaced from time to time;
- (10) **care facility** has the same meaning as in the **Care Facilities Directions**;
- (11) **care facility worker** has the same meaning as “worker” in the **Care Facilities Directions**;
- (12) **Category 1 elective surgery procedure** means a procedure that is clinically indicated within 30 days and where the **patient's** condition has the potential to deteriorate quickly to the point where the patient's condition may become an emergency;
- (13) **Category 2A elective surgery procedure** means a procedure that is clinically indicated within 90 days and where the **patient's** condition may deteriorate quickly and may become an emergency if not admitted within an appropriate time;
- (14) **Category 2B elective surgery procedure** means a procedure that is clinically indicated within 90 days and where the **patient's** condition is unlikely to deteriorate quickly or become an emergency during that period;
- (15) **Category 3 elective surgery procedure** means a procedure that is clinically indicated within 365 days but is unlikely to deteriorate quickly;
- (16) **childcare or early childhood education service** means onsite early childhood education and care services or children's services provided under the:
  - (a) **Children's Services Act 1996** including limited hours services, budget based funded services, occasional care services, early childhood intervention services, mobile services and (if applicable) school holiday care programs; or
  - (b) **Education and Care Services National Law Act 2010** and the **Education and Care Services National Regulations 2011** including long day care services, kindergarten/preschool and family day care services, but does not include outside school hours care services;
- (17) **cleaned** has the same meaning as in the **Workplace Directions**;
- (18) **confirmed case** means a **worker** or person diagnosed with **SARS-CoV-2** and includes the period of time prior to the diagnosis during which the **confirmed case** is considered infectious;
 

*Note: the period during which a person is considered infectious is generally considered to be 48 hours prior to the onset of **SARS-CoV-2 Symptoms**, however, alternative infectious periods may be determined at the discretion of an officer or nominated representative of the **Department** (for instance, in high-risk settings or if the **confirmed case** is asymptomatic).*
- (19) **construction site** means a Work Premises at which civil works, building or construction activities take place;

- (20) **COVID Marshal** has the meaning in clauses 7(2A)(b), 7(28)(a) and 7(36)(c) (as the case may be);
- (21) **COVID streaming area** means any patient treatment area nominated by the relevant health service as an area dedicated to treating a confirmed case or confirmed cases, including negative pressure rooms for SARS-CoV-2 patients;
- (22) **COVIDSafe Plan** has the same meaning as in the **Workplace Directions**;
- (23) **COVID-19 Mandatory Vaccination (Specified Facilities) Directions** means the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions (No 10)** as amended or replaced from time to time;
- (24) **critical and essential infrastructure** means:
- (a) construction or maintenance (including civil works, building or construction activities) of critical and essential infrastructure (whether privately or publicly funded) where the Victorian Government has deemed, and the Chief Health Officer has endorsed, that it is urgently required for the purposes of sustaining human health, safety and wellbeing, on a case by case basis; or
  - (b) activities deemed by the Victorian Government from time to time as **State Critical Infrastructure Projects**; or
  - (c) construction for the purposes of national security or defence;
- (25) **day procedure centre** has the same meaning as in the **Hospital Visitor Directions**;
- (26) **density quotient** has the same meaning as in the **Workplace Directions**;
- (27) **Department** means the Department of Health;
- (28) **Detention Notice** means a notice given to a person requiring the person to be detained for a specified period;
- (29) **Diagnosed Persons and Close Contacts Directions** means the **Diagnosed Persons and Close Contacts Directions (No 31)** as amended or replaced from time to time;
- (30) **Directions currently in force** has the same meaning as in the **Workplace Directions**;
- (31) **early stage land development sites** means all civil works undertaken on open air, large greenfield sites that are associated with and preparatory to construction of multiple individual residential dwellings or industrial or commercial development on that site (including site remediation and site preparation works, construction of utilities and construction of roads, bridges, stormwater/flood management works and trunk infrastructure);
- (32) **elective surgery procedure** means an **urgent elective surgery procedure, urgent non-ESIS procedures, Category 1 elective surgery procedure, Category 2A elective surgery procedure, Category 2B elective surgery procedure, Category 3 elective surgery procedure or non-urgent non-ESIS procedure**;

- (33) **employee** includes a person who is self-employed;
- (34) **employer** means a person who owns, operates or controls a **Work Premises** and includes a person who is self-employed or a sole-trader;
- (35) **excepted person** has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions**;
- (36) **face covering** has the same meaning as in the **Workplace Directions**;
- (37) **fully vaccinated** has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions**;
- (38) **Green Zone Country** means a country with a current, valid (and not temporarily or permanently suspended) safe travel zone agreement with the Commonwealth of Australia;

*Note: information regarding countries with current, valid (and not temporarily or permanently suspended) safe travel zone agreements with the Commonwealth of Australia is available at: [www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-travel-and-restrictions/coronavirus-covid-19-advice-for-international-travellers#travel-zones](http://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert/coronavirus-covid-19-travel-and-restrictions/coronavirus-covid-19-advice-for-international-travellers#travel-zones) as amended or replaced from time to time by the Victorian Government.*

- (39) **high-risk hospital Work Premises** means any **hospital** ward treating a **confirmed case** or cases of **SARS-CoV-2**;
- (40) **high-risk hospital Work Premises worker** means any **worker** involved in the direct care of patients, and those who interact with a **high-risk hospital Work Premises**;
- (41) **hospital** has the same meaning as in the **Hospital Visitor Directions**;
- (42) **Hospital Visitor Directions** means the **Hospital Visitor Directions (No 38)** as amended or replaced from time to time;
- (43) **hotel quarantine** means a place (being a hotel or other facility or class of facility), designated by the Attorney-General and published in the Government Gazette, where people are detained in or directed to remain in, or are staying in, quarantine, isolation or emergency accommodation at, for the purpose of eliminating or reducing the serious risk to public health posed by the COVID-19 pandemic;
- (44) **inspector** has the same meaning as in the **OHS Act**;
- (45) **large-scale construction site** means, a construction site if:
  - (a) it is for construction of a building where a planning permit has been issued in relation to the site for a building that is greater than three storeys tall (excluding basement level(s)); or
  - (b) the site size is more than 1,500 m<sup>2</sup> floor size (inclusive of all floors); or
  - (c) it is for construction of a premises that is predominantly for office use, or that is the internal fit-out of a large-format retail **premises**; or
  - (d) it is for construction of a premises that is predominantly for industrial or large format retail use;

*Note: the project lifecycle commences from the date of on-site mobilisation and ends at handover.*

- (46) **meat processing facility** has the meaning under the PrimeSafe licence category “further meat processing facilities”;
- (47) **Metropolitan Melbourne** means the area within the municipal districts under the local government of the municipal councils set out in Schedule 2 of the **Planning and Environment Act 1987**;
- (48) **non-urgent non-ESIS procedure** means a non-time critical procedure that is not reported via the Elective Surgery Information System where the **patient’s** condition is unlikely to deteriorate quickly;
- (49) **OHS Act** means the **Occupational Health and Safety Act 2004**;
- (50) **operator** in relation to a construction site has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions**;
- (51) **outbreak** means:
  - (a) a single **confirmed case** of **SARS-CoV-2** in a resident, staff member or frequent attendee of a residential aged **care facility**; or
  - (b) two or more epidemiologically linked cases outside of a household with symptom onset within 14 days;

*Note: transmission within one household does not constitute an outbreak but will become part of an outbreak response if linked to a high priority setting. In some circumstances, the **Department** may identify other settings that are sensitive and where a single confirmed case will trigger an outbreak response. Relevant parties will be informed if this occurs. Determining whether a person is a frequent or infrequent visitor may be based on frequency of visits, time spent in the setting, and number of contacts within the setting.*

- (52) **partially vaccinated** has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions**;
- (53) **patient** has the same meaning as in the **Hospital Visitor Directions**;
- (54) **perishable food Work Premises** means a **Work Premises** that is predominantly a perishable food facility that is a chilled distribution facility;
- (55) **personal protective equipment** has the same meaning as in the **Occupational Health and Safety Regulations 2017**;
- (56) **PHW Act** means the **Public Health and Wellbeing Act 2008**;
- (57) **port** means the port of Melbourne, the port of Geelong, the port of Portland, the port of Hastings and any other port declared under section 6 of the **Port Management Act 1995** in relation to which port lands or port waters or both port lands and port waters have been declared under section 5 of the **Port Management Act 1995**;
- (58) **port of entry** means a **port** or **airport**;
- (59) **port of entry worker** has the meaning in clause 7(17);

- (60) **poultry processing facility** has the meaning under the PrimeSafe licence category “poultry meat processing facilities”;
- (61) **premises** has the same meaning as in the **PHW Act**;
- (62) **private hospital** has the same meaning as in the **Hospital Visitor Directions**;
- (63) **public hospital** has the same meaning as in the **Hospital Visitor Directions**;
- (64) **reasonably practicable** is to have its ordinary and common sense meaning;
- (65) **registered facility** means a **private hospital** or a **day procedure centre** that is registered with the Department as a 'private hospital' or a 'day procedure centre';
- (66) **Regional Victoria** has the same meaning as in the **Area Directions**;
- (67) **representative** in relation to the **operator** of a construction site means the site manager, the duty holder or a registered builder;
- (68) **revoked Workplace (Additional Industry Obligations) Direction** means any of the previous **Workplace (Additional Industry Obligations) Directions** which are no longer in force;
- (69) **SARS-CoV-2 Symptoms** has the same meaning as in the **Workplace Directions**;
- (70) **school** means a registered school as defined in the **Education and Training Reform Act 2006**;
- (71) **seafood processing facility** has the meaning under the PrimeSafe licence category “seafood processing facilities”;
- (72) **seasonal horticultural work** means work that is seasonal in nature in the horticulture (ie production of fruit and vegetables) sector of the agriculture industry, including the picking, packing and harvesting of seasonal produce, but does not include:
- (a) the production of nuts, wine grapes and olives; or
  - (b) storage and distribution activities that occur post production;
- (73) **seasonal Work Premises** means a farm or workplace where **seasonal horticultural work** is undertaken;
- (74) **seasonal worker** means a **worker** temporarily employed or engaged to perform **seasonal horticultural work** at **seasonal Work Premises**;
- (75) **self-isolate** has the same meaning as in the **Diagnosed Persons and Close Contacts Directions**;
- (76) **self-quarantine** has the same meaning as in the **Diagnosed Persons and Close Contacts Directions**;
- (77) **Service Victoria CEO** has the same meaning as in the **Service Victoria Act 2018**;

- (78) **Service Victoria system** means the digital system provided by the **Service Victoria CEO** and other parts of the Victorian Government and includes the Service Victoria app;
- (79) **small-scale construction site** means a construction site other than a large-scale construction site or an early stage land development site;
- (80) **specialist contractor** means:
- (a) asphalters;
  - (b) carpenters;
  - (c) plasterers;
  - (d) carpet layers;
  - (e) sprinkler fitters;
  - (f) solar installers;
  - (g) security system installers;
  - (h) mobile cranes – operators and dogmen;
  - (i) electricians;
  - (j) plumbers, including roof plumbers;
  - (k) tile layers, including roof tilers;
  - (l) concreters;
  - (m) gold class riggers;
  - (n) steel fixers;
  - (o) post tensioners;
  - (p) vertical access riggers;
  - (q) welders;
  - (r) precast installers;
  - (s) caulkers;
  - (t) floor layers;
  - (u) window and glass installers/glaziers;
  - (v) engineers;
  - (w) floor installers;
  - (x) insulation installers;
  - (y) brick layers;
  - (z) joiners;
  - (aa) painters;
  - (bb) appliance installers;
  - (cc) water proofers;
  - (dd) cladding installers;



- (ee) termite specialists;
  - (ff) mechanics who install and repair plant;
  - (gg) landscape architects;
  - (hh) renderers;
  - (ii) cabinet installers;
  - (jj) shower screen/mirror installers;
  - (kk) earthworks and drainage specialists;
  - (ll) flora and fauna specialists;
  - (mm) garage door installers;
  - (nn) gas contractors;
  - (oo) geotechnical specialists;
  - (pp) heritage and cultural heritage specialists;
  - (qq) retaining wall specialists;
  - (rr) sewer contractors;
  - (ss) telecommunications installers;
  - (tt) traffic engineers;
- (81) **Stay Safe Directions (Metropolitan Melbourne)** means the **Stay Safe Directions (Metropolitan Melbourne) (No 5)** as amended or replaced from time to time;
- (82) **Stay Safe Directions (Regional Victoria)** means the **Stay Safe Directions (Regional Victoria) (No 15)** as amended or replaced from time to time;
- (83) **supermarket** has the same meaning as “supermarket business” in the **Food Act 1984**, and includes supermarket distribution and warehousing (including in relation to liquor products) but excludes retail facilities;
- (84) **supermarket Work Premises** means the total of all **supermarket** distribution facilities;
- (85) **Surveillance Testing Industry List and Requirements** means the **Department** document that lists the industries (as amended from time to time on the advice of the Chief Health Officer) that are required to carry out surveillance testing on their **workers**, and also sets out the surveillance testing requirements for those listed industries;
- Note: the Surveillance Testing Industry List and Requirements are available at [www.dhhs.vic.gov.au/surveillance-testing-industry-list-covid-19](http://www.dhhs.vic.gov.au/surveillance-testing-industry-list-covid-19) as amended from time to time by the Victorian Government.*
- (86) **unvaccinated** has the same meaning as in the **COVID-19 Mandatory Vaccination (Specified Facilities) Directions**;
- (87) **urgent elective surgery procedure** means a procedure where admission within 30 days is clinically indicated for a condition that has the potential to deteriorate quickly to the point that it might become an emergency; a

procedure that is clinically indicated within 90 days and where the patient's condition may deteriorate quickly and become an emergency if not admitted within an appropriate time; an **urgent non-ESIS procedure** including a procedure undertaken for the purposes of cancer diagnosis and early or overdue cancer surveillance and includes a **Category 1 elective surgery procedure**, a **Category 2A elective surgery procedure** and a **urgent non-ESIS procedure**;

(88) **urgent non-ESIS procedure** means a procedure that is a time critical procedure that is not reported via the Elective Surgery Information System where the **patient's** condition is likely to deteriorate quickly including procedures undertaken for the purposes of cancer diagnosis and early or overdue cancer surveillance;

(89) **vaccination information** means information about a person's vaccination status and includes information that is derived from a record of information that was made under, or in accordance with, the **Australian Immunisation Register Act 2015** of the Commonwealth;

*Note: vaccination information may be recorded in a variety of documents, such as a letter from a medical practitioner, a certificate of immunisation or an immunisation history statement obtained from the Australian Immunisation Register.*

(90) **vehicle** has the same meaning as in the **PHW Act**;

*Note: under the PHW Act, vehicle includes any means of transport, whether used on land, sea or in the air.*

(91) **Workplace Directions** means the **Workplace Directions (No 53)** as amended or replaced from time to time;

(92) **Work Premises** means the **premises** of an **employer** in which work is undertaken, including any **vehicle** whilst being used for work purposes, and including a **seasonal Work Premises**;

*Note: a Work Premises does not include an **employee's** ordinary place of residence.*

(93) **worker** includes **employees**, labour hire, subcontractors (and their employees), volunteers and any other person engaged or permitted by an **employer** to perform work.

## 10 Penalties

(1) Section 210 of the PHW Act provides:

### **False or misleading information**

- (1) A person must not—
- (a) give information that is false or misleading in a material particular; or
  - (b) make a statement that is false or misleading in a material particular; or
  - (c) produce a document that is false or misleading in a material particular—

to the Secretary, a Council, the Chief Health Officer or an authorised officer under this Act or the regulations without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty:            In the case of a natural person, 60 penalty units;  
                          In the case of a body corporate, 300 penalty units.

- (2) A person must not make an entry in a document required to be kept by this Act or the regulations that is false or misleading.

Penalty:            In the case of a natural person, 60 penalty units;  
                          In the case of a body corporate, 300 penalty units.

- (3) In a proceeding for an offence against subsection (1) or (2) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, statement or document was true or was not misleading.

- (2) Section 203 of the **PHW Act** provides:

**Compliance with direction or other requirement**

- (1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.

Penalty:            In the case of a natural person, 120 penalty units;  
                          In the case of a body corporate, 600 penalty units.

- (2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction or requirement.

- (3) A person who fails to comply with these directions is liable for an on-the-spot fine of:

- (a) in the case of a natural person:

- (i) aged 18 years or older – 10 penalty units;  
(ii) aged 15 years or older but under the age of 18 years – 4 penalty units;  
(iii) aged under 15 years – 1 penalty unit; or

- (b) in the case of a body corporate – 60 penalty units.

*Note: section 209 of the PHW Act provides for infringement notices to be served on any person who has refused or failed to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199. The amount payable pursuant to the infringement notice varies depending on the nature of the failure or refusal.*

- (4) Additionally, a person who fails to comply with these directions may in certain circumstances be liable to prosecution under the PHW Act for the maximum penalties outlined in subclause (2).



**Professor Benjamin Cowie**

Acting Chief Health Officer, as authorised to exercise emergency powers under section 199(2)(a) of the PHW Act.

23 October 2021

## SCHEDULE 1 – RESTRICTIONS ON ELECTIVE SURGERY

| Work Premises<br>(Column 1)   | Commencement date<br>(Column 2) | Restriction on elective surgery<br>(Column 3)  |
|---|---------------------------------|--|
| <p><b>Private hospitals in Metropolitan Melbourne</b> and in the local government area of the City of Greater Geelong</p> <p><b>Day procedure centres in Metropolitan Melbourne</b></p> | <p>14 October 2021</p>          | <p>(a) An <b>employer</b> may only permit an <b>elective surgery procedure</b> to be performed that is an <b>urgent elective surgery procedure</b>.</p> <p>(b) An employer must ensure that all <b>elective surgery procedures</b> that are not <b>urgent elective surgery procedures</b> are temporarily postponed.</p> <p>(c) An employer must not permit cosmetic surgery or other procedures not addressing significant medical conditions to be performed.</p> <p>(d) The restrictions in paragraphs (a) to (b) do not apply to the following services completed by <b>private hospitals</b> and <b>day procedure centres</b>:</p> <ul style="list-style-type: none"> <li>(i) all activity undertaken on behalf of a public health service or <b>public hospital</b>; and</li> <li>(ii) emergency surgery.</li> </ul> |
| <p><b>Private hospitals</b> in the local government areas of the City of Ballarat and the City of Greater Shepparton</p>  | <p>18 October 2021</p>          | <p>(a) An employer must reduce 50 per cent of allocated <b>elective surgery procedure</b> lists per week at each <b>registered facility</b>.</p> <p>(b) An employer must ensure patients requiring <b>elective surgery procedures</b> are prioritised based on clinical need. An employer must accommodate time critical elective surgery patients within the 50 per cent cap specified in paragraph (a).</p>  |

|  |                        |   |
|--|------------------------|---|
| <p><b>Private hospitals</b> in the local government areas of the City of Greater Bendigo and the City of LaTrobe</p> | <p>25 October 2021</p> | <p>(c) An employer must not permit cosmetic surgery or other procedures not addressing significant medical conditions to be performed.</p> <p>(d) The following services completed by <b>private hospitals</b> do not count towards the 50 per cent cap in place at each registered facility in accordance with paragraph (a):</p> <ul style="list-style-type: none"> <li>(i) all activity undertaken on behalf of public health services or <b>public hospitals</b>; and</li> <li>(ii) emergency surgery.</li> </ul> |
| <p>All public health services located in <b>Metropolitan Melbourne</b> and that are part of Barwon Health</p>        | <p>14 October 2021</p> | <p>(a) An employer may only permit an <b>elective surgery procedure</b> to be performed that is an <b>urgent elective surgery procedure</b>.</p> <p>(b) An employer must ensure all <b>elective surgery procedures</b> that are not <b>urgent elective surgery procedures</b> are temporarily postponed.</p>  |
| <p>All public health services that are part of Ballarat Health and Goulburn Valley Health</p>                        | <p>18 October 2021</p> |   |
| <p>All public health services that are part of Bendigo Health and the Latrobe Regional Hospital</p>                  | <p>25 October 2021</p> |   |