

Directions from Public Health Commander in accordance with emergency powers arising from declared state of emergency

Workplace Directions

Public Health and Wellbeing Act 2008 (Vic)

Section 200

I, Dr Finn Romanes, Public Health Commander, consider it 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 (**2019-nCoV**) 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 limit the number of Victorians attending Work Premises to assist in reducing the frequency and scale of outbreaks of 2019-nCoV in Victorian workplaces and to establish more specific obligations on employers and workers in relation to managing the risk associated with 2019-nCoV.
- (3) These directions must be read together with the **Stay at Home Directions (Restricted Areas) (No 7)**, the **Stay at Home Directions (Non-Melbourne)**, the **Restricted Activity Directions (Restricted Areas) (No 6)**, the **Restricted Activity Directions (Non-Melbourne)**, the **Diagnosed Persons and Close Contacts Directions (No 8)** and the **Permitted Worker Permit Scheme Directions**, as amended or replaced from time to time.
- (4) These directions are intended to supplement any obligation an employer may have under the OHS Act and are not intended to derogate from any such obligations.

2 Citation

These directions may be referred to as the **Workplace Directions**.

3 Relationship with other directions

If there is any inconsistency between these directions and a direction or other requirement contained in a **Direction and Detention Notice**, these directions are inoperative to the extent of the inconsistency.

4 Commencement

These directions commence at 11:59:00pm on:

- (1) 5 August 2020 in relation to clauses 6(1) and 6(2) and 6(7)-(16), insofar as they apply to Work Premises that are permitted to operate under the **Restricted Activity Directions (Restricted Areas) (No 6)**, or **Restricted Activity Directions (Non-Melbourne)**, and were specified under the **Restricted Activity Directions (Restricted Areas) (No 5)**, or **Restricted Activity Directions (No 16)**; and
- (2) otherwise, 7 August 2020.

5 Operation of a Work Premises

- (1) An employer must not permit a worker to perform work at the Work Premises where it is reasonably practicable for the worker to work at the worker's place of residence or another suitable premises which is not the Work Premises.

*Note: the **Stay at Home Directions (Non-Melbourne)** permits a person to leave the premises where they ordinarily reside to attend work only if it is not reasonably practicable to work from their premises.*

- (2) An employer must comply with the Permitted Worker Permit Scheme Directions where it applies to that employer.
- (3) Where an employer permits or requires work to be performed at a Work Premises, the employer must comply with clauses 6 to 8.

6 Preventative measures at Work Premises to reduce the risk of 2019-nCoV

Face coverings requirement

- (1) An employer must take reasonable steps to ensure the worker wears a face covering at all times when working at a Work Premises.

Note: a face covering includes a face mask or face shield designed or made to be worn over the nose and mouth to provide the wearer protection against infection. Please refer to the Department of Health and Human Services' guidelines for further information.

- (2) Subclause 6(1) does not apply if:
 - (a) the worker has a physical or mental health illness or condition or disability which makes wearing a face covering unsuitable; or
Examples: workers who have obstructed breathing or a serious skin condition on their face, an intellectual disability, a mental health illness, or who have experienced trauma;
 - (b) the worker is communicating with a person who is deaf or hard of hearing, where visibility of the mouth is essential for communication; or
 - (c) the nature of a worker's work means that wearing a face covering creates a risk to their health and safety; or

- (d) the nature of a worker's work means that clear enunciation or visibility of the mouth is essential; or

Examples: teaching, lecturing, broadcasting.

- (e) the worker is working by themselves in an enclosed **indoor space** (unless and until another person enters that indoor space); or

Example: a person working by themselves in an office.

- (f) the worker is working by themselves in an **outdoor space**, provided no other person is also in the outdoor space (except a person who ordinarily resides at the same premises as the worker); or

Example: a farmer working by themselves in a field.

- (g) the worker is a professional sportsperson when training or competing; or

- (h) the worker is travelling in a **vehicle** for work purposes by themselves or where each other person in the vehicle ordinarily resides at the same premises; or

- (i) the worker is consuming food, drink or medicine; or

- (j) the worker is asked to remove the face covering to ascertain identity; or

Examples: a worker may be asked by police, security or post office staff to remove a face covering to ascertain identity.

- (k) for emergency purposes; or

- (l) required or authorised by law; or

- (m) doing so is not safe in all the circumstances.

Note: a worker is required to wear a face covering at all other times when the circumstances above do not apply.

Example: a worker must wear a face covering when using ingress and egress points to the employer's premises, or other facilities such as toilets.

COVID Safe Plan

- (3) Subject to sub-clause (5), an employer must:

- (a) have in place a COVID Safe Plan, which addresses the health and safety issues arising from 2019-nCoV, including but not limited to:

Note: employers can use the template plan accessible from the following website for guidance:

<https://www.business.vic.gov.au/disputes-disasters-and-succession-planning/covid-safe-business/creating-a-covid-safe-workplace#yourcovidsafeplan>

- (i) the employer's process for implementing the record-keeping obligation under sub-clause 6(7);
- (ii) the appropriate level of PPE to be worn at the Work Premises;

- (iii) actions taken by the employer to mitigate the introduction of 2019-nCoV at the Work Premises;

For example: temperature testing, provision and training for PPE use, regular cleaning, specific cleaning requirements following an outbreak, physical distancing requirements (eg. closing or reconfiguring common areas such as lunchrooms to support workers remaining 1.5m apart at all times);

- (iv) the processes which the employer has put in place to respond to any suspected case and any confirmed case of 2019-nCoV at the Work Premises, taking into account the employer's obligations under these directions;
 - (v) an acknowledgement that the employer understands its responsibilities and obligations under these directions.
- (b) document and evidence, and require its managers to document and evidence, implementation of the COVID Safe Plan.
- (4) The employer and the employer's workers must comply with the COVID-Safe Plan.
 - (5) An employer is not required to comply with sub-clause 6(3) if they have fewer than five workers working at a Work Premises.
 - (6) An employer must:
 - (a) comply with any direction given by an Authorised Officer or WorkSafe **inspector** to modify a COVID Safe Plan, including:
 - (i) following an outbreak of confirmed cases of 2019-nCoV at a Work Premises; or
 - (ii) if the Authorised Officer considers that the COVID Safe Plan is not fit for purpose; and
 - (b) implement any modifications required in accordance with sub-clause 6(6)(a).

Record-keeping obligations (records requirement)

- (7) Subject to clause 6(8), an employer must keep a record of all workers and all visitors who attend the Work Premises for longer than 15 minutes, which includes:
 - (a) their first name; and
 - (b) a contact phone number; and
 - (c) the date and time at which the person attended the Work Premises; and
 - (d) the areas of the Work Premises which the person attended.

Note: the records requirement applies to all persons that attend the facility or venue for longer than 15 minutes, which may include staff, customers, maintenance and delivery workers.

(8) An employer is not required to comply with the record keeping requirement in sub-clause 6(7):

- (a) where they are operating a Work Premises which is a **market**, market stall, a **retail facility or retail shopping centre** with respect to customers who attend that Work Premises, where it is not practicable to do so; or
- (b) in relation to essential support groups if confidentiality is typically required.

Example: support groups for alcohol and drugs or family violence typically require confidentiality.

(9) In collecting the information outlined in sub-clause 6(7), an employer must:

- (a) use reasonable endeavours to protect the personal information from use or disclosure other than in accordance with a request made by an Authorised Officer; and
- (b) destroy the information as soon as **reasonably practicable** following 28 days after the attendance at the Work Premises, unless another statutory requirement permits or requires the personal information to be retained.

Density quotient (**Density quotient**)

(10) In any shared spaces (such as lunchrooms) and publicly accessible areas at the Work Premises, an employer must comply with the **density quotient** for each shared space and each publicly accessible area.

(11) The **density quotient** for the purposes of sub-clause 6(10) limits:

- (a) the number of people who are permitted in a shared space; and
- (b) the number of members of the public who are permitted in a publicly accessible space,

at any one time to the number calculated by dividing the total accessible space (measured in square metres) by 4 and:

- (c) for an **indoor space** applies to each single undivided space permitted to operate under these directions; and
- (d) for an **indoor zone** applies to each indoor zone within an indoor space permitted to operate under these directions; and
- (e) in relation to a publicly accessible space, for an **outdoor space, market or retail shopping centre**, applies to the total space permitted to operate under these directions.

Example:

A: if an indoor space is 8.5 metres long and 4.5 metres wide, its total area is 38.25 square metres. Its density quotient is 9.56, so no more than 9 members of the public would be permitted to be in the indoor space at the same time.

B: if an indoor space is 15 metres long and 10 metres wide, its total area is 150 square metres. Its density quotient is 37.5.

Signage requirement (signage requirement)

- (12) Where a Work Premises has a publicly accessible space, an employer must display a sign at each public entry to each such space that includes a statement specifying the maximum number of members of the public that may be present in the space at a single time, being the number permitted by the density quotient, rounded down to the nearest whole number.

Example: if an area is 8.5 metres long and 4.5 metres wide, its total space is 38.25 square metres. Its density quotient is 9.56. The sign should state that the maximum number of members of the public that may be present in the space at a single time is 9.

- (13) A person who owns, operates or controls a market stall, market or retail shopping centre must:
- (a) limit the number of members of the public permitted by the density quotient as it applies respectively to the market stall, market or the retail shopping centre; and
 - (b) use reasonable endeavours to implement relevant recommendations by the Victorian Government to manage public health risks arising out of the operation of the facility.

Cleaning requirements (cleaning requirement)

- (14) An employer must take all reasonable steps to ensure that shared spaces at which work is performed and areas accessible to members of the public at any Work Premises are cleaned on a regular basis, including:

- (a) frequently touched surfaces, including toilets and handrails, are **cleaned** at least twice on any given day; and
- (b) surfaces are cleaned when visibly soiled; and
- (c) if an event is to occur, a reasonable period of time has elapsed since the conclusion of any earlier event to allow for cleaning in between the events; and
- (d) surfaces accessible to a particular group are cleaned between groups; and

Example: cleaning surfaces between shifts of workers

- (e) surfaces are cleaned immediately after a spill on the surface.
- (15) To ensure a surface is **cleaned** for the purposes of this direction, a person must wipe the surface with a disinfectant:

- (a) the label of which states a claim by the manufacturer that the disinfectant has anti-viral properties; or
 - (b) made by a person according to instructions issued by the Department.
- (16) A person who owns, operates or controls a market stall, market or retail shopping centre must comply with the cleaning requirement respectively for the market stall, market or the **common areas** of the retail shopping centre.

Reducing work across multiple sites

- (17) Subject to clause 6(18), an employer must not require or permit a worker to perform work at more than one Work Premises of the employer.
- (18) Sub-clause 6(17) does not apply where it is not practicable to limit a worker to only one Work Premises.

Example: healthcare and social care workers, tradespeople performing essential repairs.

- (19) Where sub-clause 6(18) 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.

For example: rosters.

- (20) 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 sub-clause 6(20)(a) that they are working across more than one Work Premises.

7 Responding to a suspected case of 2019-nCoV in a Work Premises

- (1) An employer must not require a worker to perform work at a Work Premises if the worker is displaying one or more **2019-nCoV Symptoms**.
- (2) As soon as practicable after becoming aware of a **suspected case** in a worker who has attended a Work Premises in the period commencing 48 hours prior to the onset of symptoms, an employer must:
- (a) advise the worker to self-isolate immediately and support the worker in doing so, by either:
 - (i) directing the worker to travel home immediately (and providing support to the worker to do so); or
 - (ii) where the worker is unable to travel home immediately, directing the worker to isolate themselves at the Work Premises and, whilst doing so, to wear a face covering and remain at least 1.5

metres from any other person at the Work Premises, until the worker can return home later that day to self-isolate;

Note: the worker should isolate in a separate room from other persons, where possible;

- (b) advise the worker to be tested for 2019-nCoV as soon as practicable, and to self-isolate whilst awaiting the result of that test;
- (c) take all **reasonably practicable** steps to manage the risk posed by the suspected case, including but not limited to:
 - (i) cleaning areas of the Work Premises used by the worker (including their personal workspace and any areas in the Work Premises frequently used by the worker);
 - (ii) cleaning high-touch surfaces at the Work Premises likely to have been frequented by the suspected case;

For example: lift buttons, door handles, washroom facilities, kitchen facilities, water coolers. For further information, see the guidance at <https://www.dhhs.vic.gov.au/cleaning-and-disinfecting-reduce-covid-19-transmission-tips-non-healthcare-settings>;

- (d) ensure appropriate records are maintained in accordance with clause 6(7) in order to support contact tracing if the suspected case becomes a **confirmed case**, particularly from the period commencing 48 hours prior to the onset of symptoms in the suspected case; and

Note: This will include, for example, rosters and worker details, and details of all visitors to the Work Premises, to ascertain which persons were present at the Work Premises and who they may have come into contact with;

- (e) inform all workers (including the **health and safety representative**) to be vigilant about the onset of symptoms of 2019-nCoV and advise all workers to be tested for 2019-nCoV and self-isolate if they become symptomatic.
- (3) If an employer becomes aware of three or more suspected cases at one Work Premises within a five day period, the employer must, as soon as practicable, undertake a risk assessment to determine whether the Work Premises (or the relevant parts of the Work Premises) must be closed to allow appropriate action to be taken.

Note: appropriate action may include, but is not limited to, vacating the Work Premises to allow a comprehensive clean to be undertaken and the Work Premises to then be re-opened pending the outcome of 2019-nCoV test results. Guidance on undertaking a risk assessment, and implementing appropriate action, will be provided by the Department to assist in conducting this risk assessment.

8 Responding to a confirmed case of 2019-nCoV in a Work Premises

- (1) In these directions, in respect of a worker who has tested positive to 2019-nCoV, **Relevant Period** means the 48 hours prior to:
 - (a) the onset of symptoms of 2019-nCoV in the worker, if symptomatic; or
 - (b) the worker having been tested for 2019-nCoV, if asymptomatic.
- (2) A worker who has received a positive test result for 2019-nCoV must, as soon as practicable, notify the employer of any Work Premises which the worker has attended in the Relevant Period.
- (3) As soon as practicable after becoming aware of a confirmed case who has attended the Work Premises in the Relevant Period, the employer must:
 - (a) notify the Department, WorkSafe Victoria in accordance with the *Occupational Health and Safety (COVID-19 Incident Notification) Regulations 2020* (Vic) and the health and safety representative at the Work Premises;
 - (b) to the extent not already completed, direct the **diagnosed worker** not to attend the Work Premises and advise them to self-isolate in accordance with clause 7(2)(a);
 - (c) undertake a risk assessment to determine whether the Work Premises (or the relevant part of the Work Premises in which the diagnosed worker worked in the Relevant Period) must be closed to allow cleaning and contact tracing to occur or whether the risk can be managed whilst the Work Premises (or part of it) continues to operate;
 - (d) undertake a comprehensive clean of the Work Premises (or the relevant part of the Work Premises in which the diagnosed worker worked in the Relevant Period, and any high touch areas likely to have been touched by the diagnosed worker) in accordance with guidelines published by the Department;

Note: online guidance from the Department can be obtained from the following link: <https://www.dhhs.vic.gov.au/cleaning-and-disinfecting-reduce-covid-19-transmission-tips-non-healthcare-settings>;

- (e) consult with the diagnosed worker and examine the employer's own records to determine any close contacts of the diagnosed worker at the Work Premises within the Relevant Period and, where any close contacts are identified and the employer has the relevant contact details of the close contact:

Note: for record-keeping obligations to assist with identification of close contacts and contact tracing, see clause 6(7);

- (i) if the close contact is a worker, direct them to leave the Work Premises and advise them to self-quarantine; and
 - (ii) if the close contact is not a worker, issue them a written communication to recommend that they self-quarantine in accordance with guidance from the Department;
 - (f) notify all workers when a worker has tested positive to 2019-nCoV;

- (g) inform all workers (including health and safety representatives) to be vigilant about the onset of symptoms of 2019-nCoV and advise all workers to be tested for 2019-nCoV and self-quarantine if they become symptomatic;
- (h) put in place appropriate control / risk management measures to reduce the risk of spreading 2019-nCoV at the Work Premises;

Note: employers are encouraged to ensure that any risks identified from the confirmed case are addressed in these control measures. For example: increasing the implementation and enforcement of control measures with respect to PPE (such as face coverings) and physical distancing.

- (i) contact the Department (or other entity nominated by the Department on its website) and:
 - (i) notify it of the actions taken in accordance with sub-clauses 8(3)(a) to 8(3)(h);
 - (ii) provide it with a copy of the risk assessment conducted in accordance with sub-clause 8(3)(c);
 - (iii) provide the Department (or other entity nominated by the Department) with contact details of any close contacts (whether or not workers) identified pursuant to sub-clause 8(3)(e);
 - (iv) 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;
- (j) where the Work Premises (or part of the Work Premises) is closed, not re-open that Work Premises (or that part of the Work Premises which was closed) until all of the following have occurred:
 - (i) the employer has complied with all of its obligations under sub-clauses 8(3)(a) to 8(3)(i);
 - (ii) the Department has completed all relevant contact tracing;
 - (iii) the Department has given clearance for the Work Premises to re-open;
 - (iv) the employer has notified WorkSafe when the Work Premises is re-opened.

Note: employers must comply with their obligations under occupational health and safety laws, including notifying WorkSafe Victoria in accordance with the Occupational Health and Safety (COVID-19 Incident Notification) Regulations 2020 (Vic).

9 Other definitions

For the purposes of these directions:

- (1) **2019-nCoV Symptoms** means symptoms consistent with 2019-nCoV, including but not limited to:

- (a) a fever ($\geq 37.5^{\circ}\text{C}$) or consistent fever of less than 37.5°C (such as night sweats, chills);
 - (b) acute respiratory infection (such as cough, shortness of breath, sore throat);
 - (c) loss of smell; and/or
loss of taste;
- (2) **Authorised Officer** has the same meaning as in the PHW Act;
- (3) **cleaned** has the meaning in clause 6(15);
- (4) **cleaning requirement** has the meaning in clauses 6(14) to 6(16) (both inclusive);
- (5) **close contact** means any person who has had contact greater than 15 minutes face-to-face, cumulative, or the sharing of a closed space for more than two hours, with a confirmed case during the Relevant Period
- (6) **common areas** of a retail shopping centre has the same meaning as in the **Retail Leases Act 2003**;
- (7) **confirmed case** means a diagnoses of 2019-nCoV in a worker at the Work Premises;
- (8) **Department** means the Department of Health and Human Services of Victoria;
- (9) **diagnosed worker** means a worker who is a **diagnosed person**;
- (10) **diagnosed person** has the same meaning as in the **Diagnosed Persons and Close Contacts Directions (No 8)** as amended or replaced from time to time;
- (11) **Direction and Detention Notice** has the same meaning as in the **Stay at Home Directions (Restricted Areas) (No 7)** as amended or replaced from time to time;
- (12) **employee** includes a person who is self-employed;
- (13) **employer** means a person who owns, operates or controls a Work Premises and includes a person who is self-employed;
- (14) **health and safety representative** has the same meaning as in the OHS Act;
- (15) **indoor space** has the same meaning as in the **Restricted Activity Directions (Non-Melbourne)** as amended or replaced from time to time;
- (16) **inspector** has the same meaning as in the OHS Act;
- (17) **market** means a public market, whether indoor or outdoor, including a food market;
- (18) **OHS Act** means the *Occupational Health and Safety Act 2004* (Vic);
- (19) **outbreak** means:
 - (a) a single confirmed case of COVID-19 in a resident, staff member or frequent attendee of residential and aged care facilities (RACF);

- (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. Also, 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.

- (20) **outdoor space** has the same meaning as in the **Restricted Activity Directions (No 16)** as amended or replaced from time to time;
- (21) **PHW Act** means the *Public Health and Wellbeing Act 2008* (Vic);
- (22) **place of worship** has the same meaning as in the **Heritage Act 2017**;
- (23) **PPE** means personal protective equipment;
- (24) **premises** has the same meaning as in the PHW Act;
- (25) **reasonably practicable** is to have its ordinary and common sense meaning;
- (26) **records requirement** has the meaning in clause 6(7) to 6(9) (both inclusive);
- (27) **Relevant Period** has the meaning given in sub-clause 8(1);
- (28) **Restricted Area** has the meaning in the **Area Directions (No 5)**;
- (29) **retail facility** includes any facility that is used wholly or predominantly for:
- (a) the sale or hire of goods by retail; or
 - (b) the retail provision of services;
- (30) **retail shopping centre** has the same meaning as in the Retail Leases Act 2003;
- (31) **self-isolate** has the same meaning as in the **Diagnosed Persons and Close Contacts Directions (No 8)** as amended or replaced from time to time;
- (32) **self-quarantine** has the same meaning as in the **Diagnosed Persons and Close Contacts Directions (No 8)** as amended or replaced from time to time;
- (33) **signage requirement** has the meaning in clauses 6(12) and 6(13);
- (34) **suspected case** means a person who is displaying one or more **2019-nCoV Symptoms**;
- (35) **vehicle** has the same meaning as in the PHW Act;
- (36) **Work Premises** means the premises of an employer in which work is undertaken, including any vehicle whilst being used for work purposes; and

*Note: this includes a community facility such as a community centre or community hall, or a public library, or a **place of worship**.*

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

10 Penalties

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.



Dr Finn Romanes

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

5 August 2020