

Directions giving effect to previously announced eased restriction levels have commenced operation

Further to our previous [Bulletin](#), various public health directions giving effect to the Victorian Premier's [announcement](#) of the easing of restrictions ('Directions') commenced operation at 11:59pm last night, **21 October 2021**.

The following list of Directions have been updated, while the **Open Premises Directions** has replaced the previous **Restricted Activities Directions**. Each of the updated Directions have a current nominal expiry date of **11:59pm, Thursday 18 November 2021**, in line with the **Extension of the Declaration of State of Emergency** – which also occurred at 11:59pm last night.

- [Workplace Directions \(No 52\)](#)
- [Open Premises Directions](#)
- [COVID-19 Mandatory Vaccination \(Workers\) Directions \(No 5\)](#)
- [Extension of the Declaration of State of Emergency](#)
- [Stay Safe Directions \(Metropolitan Melbourne\) \(No 4\)](#)
- [Stay Safe Directions \(Regional Victoria\) \(No 14\)](#)

Under the new **Stay Safe Directions** in **Metropolitan Melbourne**, the **curfew and 15km travel radius has ended** (although travel between Regional Victoria and Metropolitan Melbourne continues to be restricted to permitted reasons). **Working from home settings remain**, with those **authorised to work under the current version of the COVID-19 Mandatory Vaccination (Workers) Directions**, required to have at least one dose of the vaccine in order to **work on site** (unless an exception applies).

Under the new **Open Premises Directions**, a business operating a **food and drink facility** (e.g. café, restaurant) can utilise different restriction settings where both customers and workers are fully vaccinated (see density quotient section below). **In all other instances, no vaccination status requirements apply for automotive business customers under the current Directions.**

Metropolitan Melbourne

The following automotive industry businesses can operate subject to COVIDSafe settings below:

- Petrol stations, including a petrol station that sells groceries
- Vehicle and mechanical repair services
- Retail facilities - contactless 'Click and collect/deliver' services and **outdoor service**
- Retail workers working in or in connection with an authorised retail facility or a wholesale or distribution facility
- Roadside assistance services
- Car washing services

- Food and drink facilities
- Manufacturing machinery and equipment manufacturing, including parts
- Manufacturing whole or partial products

Regional Victoria

All automotive businesses are able to operate subject to the COVIDSafe settings below.

COVIDSafe Settings

Face masks

Face masks must be carried at all times and **worn indoors and outdoors** throughout Victoria except if at home, or when visiting an intimate partner's place of residence or if an exemption applies. This continues to apply in **Regional Victoria**, with an express requirement that **masks remain mandatory and cannot be removed for eating/drinking in retail facilities**.

With the start of warmer weather, where face masks are identified as posing a risk to workers when conducting certain strenuous tasks, it may be removed. These particular tasks must be **risk assessed** and if deemed as hazardous, the employee can remove their face mask for these activities **only**. The tasks could include activities whereby:

- Employees are working on their own in a restricted space (i.e. under a vehicle in hot conditions)
- The task involves heavy lifting or is strenuous in nature.

It is important to note that where a task has been risk assessed as not requiring the use of a face mask, **physical distancing of 1.5m** should be strictly adhered to.

Employers must be able to demonstrate a documented risk assessment process has been conducted; and that as soon as the specific task is completed, the mask must be reapplied as soon as practical.

Density quotients

For workplaces in **Regional Victoria**, and those authorised to remain open in **Metropolitan Melbourne** density quotients in shared spaces and publicly accessible areas at the work premises from **11:59pm 21 October 2021** are **1 person per 4 square metres (DQ4)**, subject to the following:

- **Food and drink facilities – in Metropolitan Melbourne:** open for seated service only with maximum of **50 outdoors and 20 indoors (DQ4) where customers and staff are fully vaccinated**, otherwise open for **takeaway only**. **In Regional Victoria:** open for seated service only with maximum of **100 outdoors (DQ2) and 30 indoors (DQ4) where customers and staff are fully vaccinated**, otherwise maximum of **30 outdoors and 10 indoors (DQ4)**. Food courts open for takeaway service only. **Note:** A business operating under the fully vaccinated arrangements must ensure that a worker is located at each entrance to the premises in the capacity of a COVID-Check-in Marshal, who will ensure that patrons (16 years and over) show acceptable evidence that they are either fully vaccinated or an excepted person.
- **Office work environment in Regional Victoria** – 25 per cent or up to 10 people if total workplace is 40 people or less, subject to a density quotient of 1 person per 4 square metres.

QR Code Requirements

The electronic record keeping requirements through **Victorian Government QR Code Service** continue to apply for those businesses that are eligible to continue operating throughout Victoria. **The requirement to make reasonable efforts to ensure people check-in and to prominently display QR Code signage at each entrance remains unchanged.**

COVIDSafe Plan

COVIDSafe Plans are mandatory for **all** Victorian workplaces. VACC recommends that COVIDSafe Plans should be **reviewed to ensure it is tailored to your business and remains up-to-date**; and that face covering, cleaning, signage, record-keeping and other requirements applicable to your business (including response to suspected or confirmed case of COVID-19 at the work premises) are being adhered to and communicated with all relevant staff. Members are encouraged to contact the VACC OHSE Unit for any further information or assistance, including in relation to their [COVIDSafe Plan obligations](#) on 03 9829 1265.

COVID-19 Mandatory Vaccination (Workers) Directions

As noted above, the Acting Chief Health Officer has issued the **COVID-19 Mandatory Vaccination (Workers) Directions (No 5)** (the Directions) which commenced at **11:59pm, 21 October 2021**. The previous nominal end date on 11:59pm 21 October 2021 has been replaced with the new date of **11:59pm 18 November 2021**, in line with the current extension to the Declaration of State of Emergency.

With the exception of this change to nominal end date, there has been **no substantive change** to the previous version of the Directions. Members should however ensure that any correspondence that they issue in future to workers are **updated to reflect the latest version of the COVID-19 Mandatory Vaccination (Workers) Directions**. VACC have updated the references in the [Consultation Template](#) and [Confirmation of Termination Template](#) accordingly.

Members are reminded that they are strongly encouraged to seek member-specific advice and assistance from the IR Department before actioning the above (including how to facilitate vaccination exempted employees working at the workplace), to ensure that the written correspondence provided to an employee reflects the consultation process that has occurred – and that it is undertaken in a lawful and procedurally fair manner.

Frequently Asked Questions - FAQs

Who is responsible for enforcing vaccination related requirements?

Employers of workers in the categories listed in the COVID-19 Mandatory Vaccination (Workers) Directions are responsible for complying with these vaccination requirements and must collect, record and hold vaccination information for any worker going on-site for work. From 15 October 2021, employers must not allow anyone who is working away from home who has not received their first vaccination or made an appointment to receive their first dose by 22 October (or who isn't exempt) to work on site.

What evidence of vaccination status needs to be provided by the worker?

Evidence of vaccination status can include:

- Immunisation history statement available from Medicare
- [MyGov COVID-19 digital certificate](#)
- My Health Record and Medicare online account
- Document or proof of relevant medical exemption

The Victorian Government has updated the Service Victoria app to provide the option of proving vaccination status.

In the period before an employee's immunisation history is updated, evidence of vaccination can also include a recent booking confirmation email, or the card received at the time of vaccination.

What information should be recorded?

Updated advice from the Victorian Government states that a record should include:

- The name of the worker or individual accessing the site
- Their vaccination status
- Their vaccine appointment booking (if relevant)
- Who sighted the evidence (e.g. HR Manager)
- The date the evidence was sighted
- The nature of that evidence (e.g. COVID-19 vaccine digital certificate, immunisation history statement, or medical exception letter or certificate)

The Victorian Government have produced a template COVID-19 Vaccination Status Register that is available [here](#).

What ability do employers and business owners have to ask for the vaccination status of a worker?

Employers are able to ask for evidence of a worker's vaccination status if they are covered by the COVID-19 Mandatory Vaccination (Workers) Directions. If a worker chooses not to disclose, they will be considered unvaccinated for the purposes of work and must not be allowed to continue working outside their home.

Who is considered an employer for the purposes of the COVID-19 Mandatory Vaccination (Workers) Directions?

An employer means a person who employs or engages a person for work (including volunteers, contractors and students on placement), or who owns, operates or controls a work premises. This includes a person who is self-employed.

However, if a worker from another company attends your work premises – it is that worker's employer that is responsible for checking their vaccination status.

Whose responsibility is it for a worker to be vaccinated?

It is the responsibility of the authorised worker to get a COVID-19 vaccination, but it is the responsibility of the employer to ensure that their workers meet the vaccination requirements, ensure unvaccinated workers do not work outside their place of residence (i.e. their home), and collect and record employee vaccination information.

What data and privacy requirements do employers need to meet?

All details should be recorded and securely kept for the duration necessary to confirm compliance with the COVID-19 Mandatory Vaccination (Workers) Directions.

Any personal or health information (including about vaccination status) collected, used, managed, stored, disclosed, or transferred must be in accordance with applicable legislation. This includes informing employees about why their COVID-19 vaccination status is being collected, collecting only the minimum amount of information required, disclosing the information on only a 'need-to-know' basis and taking reasonable steps to keep the information secure.

I have an employee that won't get vaccinated. What am I required to do?

If the employee does not have a medical exemption, the employer is required to take reasonable steps to prevent entry of unvaccinated workers, or workers who choose to not disclose their vaccination status.

Employers are encouraged to consult with the employee to try to understand the reason for the refusal – and if appropriate, encourage the employee to obtain information from their GP. If working from home is not an option, the employer might consider offering the employee the option of taking a period of accrued annual leave or long service leave – or unpaid leave – for the purposes of reconsidering their position. Ultimately, the requirement to be vaccinated in accordance with the COVID-19 Mandatory Vaccination (Workers) Directions will be an **inherent requirement of their employment**. Members are strongly encouraged to seek advice and assistance from the IR Department before taking steps to end the employment relationship, to ensure the process is undertaken in a lawful and procedurally fair manner.

I have granted my employee unpaid leave, are they eligible for COVID-19 Disaster Payment?

Eligibility for the \$750 COVID-19 Disaster Payment is based on hours of work lost as a result of public health restrictions. If an employer has granted an employee a period of unpaid leave as a result of their vaccination status preventing them from being able to attend work, they remain eligible. However, it should be noted that the payment is being phased out – and will reduce and ultimately end two weeks after Victoria reaches 80% fully vaccinated status (16 years and over).

What happens if I allow an unvaccinated worker on site to continue working?

You face a penalty of up to 120 penalty units (\$21,808) if you are an individual – or a penalty of up to 600 penalty units (\$109,044) if you are a corporation.

My employee is claiming they have a medical exemption. What evidence do I need to see?

Medical exemptions are determined by [ATAGI clinical guidance](#). You must sight and record evidence (e.g. medical certificate or a letter) from one of the following authorised medical practitioners:

- a general practice registrar on an approved 3GA training placement; or
- a public health physician; or
- an infectious disease physician; or
- a clinical immunologist; or
- a general practitioner who is vocationally registered; or
- a general practitioner who is a fellow of the Royal Australian College of General Practitioners; or
- a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine; or
- a paediatrician; or
- a medical practitioner who is a fellow of the Royal Australasian College of Physicians.

What if my employee is unable to be vaccinated due to previously having COVID-19?

An employee will be able to get a medical exemption by holding certification from a medical practitioner that they are unable to receive a dose, or further dose, of a COVID-19 vaccine due to an acute medical illness (which includes COVID-19). The certification is effective until the earlier of the date specified by the medical practitioner, or, the date 6 months from the date of the certification.

What happens if the worker provides me with false or misleading evidence about their vaccination status?

If a worker provides false or misleading information about their vaccination status they may be fined up to \$10,904.40 as an individual.

Do authorised workers in regional Victoria need to be vaccinated?

Yes. These requirements apply statewide.

Does the COVID-19 Mandatory Vaccination (Workers) Directions vaccine requirement apply to customers?

No. The COVID-19 Mandatory Vaccination (Workers) Directions requirements only applies to workers (including employees and contractors).

Under the new **Open Premises Directions**, a business operating a **food and drink facility** (e.g. café, restaurant) can utilise different restriction settings where both customers and workers are fully vaccinated. **In all other instances, no vaccination status requirements apply for automotive business customers under the current Directions.**

Can a general retail facility (e.g. vehicle sales) operating outside in Metropolitan Melbourne, put up a marquee?

Yes. However, members should note that they should take care to ensure that the marquee does not constitute an "indoor space". Under clause 39(3)(e) of the **Open Premises Directions**, an indoor space means:

*"an area, room or **premises** that is or are substantially enclosed by a roof and walls that are either floor to ceiling high or are at least 2.1 metres high, regardless of whether the roof or walls or any part of them are:*

- i. *permanent or temporary; or*
- ii. *open or closed."*

How long will this vaccination requirement last?

It is not currently known how long the vaccination requirements will last.

The Directions have a current nominal end date of 11:59pm on Thursday 18 November 2021. This in line with the current extension of the **Declaration of the State of Emergency** – and is also around the time Victoria is expected to reach the 80% (12 years and over) fully vaccinated level, which under Victoria's current 'Roadmap' would see restriction settings align with the National Plan to transition Australia's National COVID-19 Response. Currently, extensions to the current **State of Emergency** can continue until **11:59pm on Wednesday 15 December 2021** – however, it is understood that Victorian Parliament will move to ensure **continued application into 2022**, including necessary amendments to the Victorian *Public Health and Wellbeing Act 2008*.

Members seeking further advice or assistance are encouraged to contact VACC's Workplace Relations team on 03 9829 1123 or ir@vacc.com.au.

Daniel Hodges
Executive Manager – Workplace Relations
Industrial Relations | OHSE