



# PARLIAMENT OF VICTORIA

Pandemic Declaration Accountability  
and Oversight Committee

## Review of the Pandemic (Quarantine, Isolation and Testing) Orders

Parliament of Victoria  
Pandemic Declaration Accountability and Oversight Committee

---

Ordered to be published

---

VICTORIAN GOVERNMENT PRINTER  
July 2022

PP No 363, Session 2018–2022  
ISBN 978 1 922425 94 2 (print version), 978 1 922425 95 9 (PDF version)

# Committee membership



**CHAIR**

**Ms Suzanna Sheed**  
Shepparton



**DEPUTY CHAIR**

**Mr Jeff Bourman**  
Eastern Victoria  
(Member until 26 May 2022)



**Mr Josh Bull**  
Sunbury  
(Member from 8 February 2022)



**Hon Anthony Carbines**  
Ivanhoe  
(Member until 8 February 2022)



**Ms Georgie Crozier**  
Southern Metropolitan



**Mr Enver Erdogan**  
Southern Metropolitan



**Ms Emma Kealy**  
Lowan



**Hon Harriet Shing**  
Eastern Victoria



**Ms Vicki Ward**  
Eltham



**Hon Kim Wells**  
Rowville

# About the Committee

## Functions

The Pandemic Declaration Accountability and Oversight Committee is a joint investigatory committee established under the *Parliamentary Committees Act 2003*.

The Committee's functions are to review pandemic orders and other instruments made by the Minister for Health under the pandemic management framework of the *Public Health and Wellbeing Act 2008*.

The Committee reports to Parliament on the orders, including any issues it identifies. It may also recommend that a pandemic order (or parts of an order) be disallowed, suspended or amended. These are available on the Department of Health's website at: <https://www.health.vic.gov.au/covid-19/pandemic-order-register>.

In particular, the Committee examines the orders to ensure compliance with the Public Health and Wellbeing Act, including:

- any retrospective effects
- taxes, fees, fines and penalties (including imprisonment)
- shifting the legal burden of proof to a person accused of an offence
- subdelegation of any powers that have already been delegated by the Act.

The Committee also reviews the orders to ensure they are compatible with the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006*.

## Staff

### Committee secretariat

Matt Newington, Executive Officer  
Caitlin Connally, Research Officer

### Committee Services Office

Larissa Volpe, Manager  
Ebony Cousins, Administrative Officer  
Liz Stankovic, Administrative Officer  
Michelle Summerhill, Administrative Officer

## Contact details

**Address** Pandemic Declaration Accountability and Oversight Committee  
Parliament of Victoria  
Spring Street  
EAST MELBOURNE VIC 3002

**Email** [pdaoc@parliament.vic.gov.au](mailto:pdaoc@parliament.vic.gov.au)

**Web** [www.parliament.vic.gov.au/pdaoc](http://www.parliament.vic.gov.au/pdaoc)

This report is available on the Committee's website.

# Contents

## Preliminaries

Committee membership	ii
About the Committee	iii
Chair's foreword	vii
Findings and recommendations	xi

<b>1</b>	<b>Overview of the COVID-19 pandemic and public health response</b>	<b>1</b>
1.1	Note from the Committee	1
1.1.1	The COVID-19 pandemic in context	2
1.2	Development of the COVID-19 pandemic	5
1.2.1	Chief Health Officer directions	6
1.2.2	Victoria's first wave (March–April 2020)	8
1.2.3	Second wave (June–October 2020)	15
1.2.4	February to October 2021 lockdowns and COVID-19 vaccine rollout	19
1.2.5	Third wave (September–November 2021)	24
1.2.6	Omicron wave and the establishment of the pandemic management framework	29
1.3	Other reports on the COVID-19 pandemic and public health response	32
<b>2</b>	<b>Report summary</b>	<b>35</b>
2.1	Background	35
2.2	Summary of review	37
2.3	Extent and limitations of the Committee's review	39
<b>3</b>	<b>Overview of the Pandemic (Quarantine, Isolation and Testing) Orders</b>	<b>43</b>
3.1	Overview of Orders	43
3.2	Key changes in the requirements of the Pandemic (Quarantine, Isolation and Testing) Orders	46
3.2.1	Testing requirements	46
3.2.2	Isolation periods and notification requirements	50
3.2.3	Quarantine requirements	52
3.2.4	Reasons to leave self-isolation or self-quarantine premises	53

<b>4</b>	<b>Analysis of the Pandemic (Quarantine, Isolation and Testing) Orders</b>	<b>55</b>
4.1	Summary of review	55
4.2	Compliance with the <i>Public Health and Wellbeing Act 2008</i>	56
4.3	Compatibility of the Orders with human rights under the <i>Charter of Human Rights and Responsibilities Act 2006</i>	57
4.3.1	Pandemic (Quarantine, Isolation and Testing) Order (Nos. 1 to 7)	58
4.3.2	Pandemic (Quarantine, Isolation and Testing) Order (Nos. 8 and 9)	61
4.4	Implementation issues	62
4.4.1	Privacy concerns	63
4.4.2	Supply and processing capacity	64
<b>Appendices</b>		
A	Public hearings	69
B	Minister for Health’s response to issues raised on compatibility of Pandemic (Quarantine, Isolation and Testing) Orders with the <i>Charter of Human Rights and Responsibilities Act 2006</i>	73
	<b>Minority report</b>	<b>81</b>

# Chair's foreword

I am pleased to present the Committee's report on the Review of the Pandemic (Quarantine, Isolation and Testing) Orders. This is the Committee's second report in its ongoing review of pandemic orders issued by the Minister for Health.

Since the first case of COVID-19 was detected in Australia in January 2020, it has resulted in an unprecedented public health crisis and response. By the end of 2021, over 3,000 Victorians had died due to COVID-19, and over 9,000 nationally. Globally, the death rate reached over 6 million. The pandemic remains an evolving public health threat for Victoria and globally. As the Committee was finalising this report, Victoria was recording a growth in the number of daily COVID-19 infections, hospitalisations and deaths.

In responding to the COVID-19 pandemic, the Victorian Government and governments around Australia and the world have introduced a suite of public health measures aimed at combatting the virus and protecting public health. Initially, Victoria's public health measures were managed by the Chief Health Officer under State of Emergency powers. Measures introduced did not just shape the Government's health response but had a significant and enduring impact on our economy, justice system, education sector, workforces and the community more broadly.

On 2 December 2021, the Victorian Parliament passed the *Public Health and Wellbeing (Pandemic Management) Amendment Act 2021*. This marked a substantial shift in the Victorian Government's approach to pandemic management, in particular moving responsibility for managing emergency public health measures from the Chief Health Officer to the Minister for Health.

The new pandemic management framework—including this Committee—is the first set of dedicated pandemic oversight laws in Australia. The changes were introduced to respond to calls from the Victorian community to increase the transparency of public health decision making and enhance parliamentary oversight of the Victorian Government's COVID-19 response.

On 15 December 2021, the Premier made a pandemic declaration under the *Public Health and Wellbeing Act 2008* due to the ongoing impact of the COVID-19 pandemic. This declaration empowered the Minister for Health to make pandemic orders to manage Victoria's pandemic response. At the same time this Committee was established with a role to review (under s 165AS of the *Public Health and Wellbeing Act*) any pandemic orders made by the Minister, with a particular focus on the issue of human rights as set out in the *Charter of Human Rights and Responsibilities Act 2006*.

In January 2022 the Committee resolved to conduct a review of the Pandemic (Quarantine, Isolation and Testing) Orders. This review was undertaken due to the significant burden experienced by Victorians who have had to quarantine or isolate due

to contracting COVID-19 or being exposed to the virus. These Orders resulted in people experiencing temporary social isolation and exclusion as well as loss of their ability to go to work or school. It was important that the Committee ensured that the Orders balanced protecting public health as well as supporting the wellbeing of individuals in isolation.

Quarantine and isolation were among the first set of public health measures introduced to combat COVID-19, first introduced in March 2020 for international arrivals. Since then, quarantine and isolation requirements have remained in place in varying forms.

In approaching this review, the Committee considered all variations of the Orders that have been introduced to the date this report was adopted. It is important that there is ongoing oversight of decisions by the Minister for Health to introduce public health measures. This review has identified lessons which can be drawn from previous versions of the Orders which can improve the making of orders in the future. In particular, the Minister must clearly communicate the reasons for making requirements under the orders. Many of the requirements have significantly limited the rights and liberties of Victorians, therefore it is important that the Minister, through their statements on pandemic orders, assure Victorians any limitations on human rights are justifiable.

The Committee spoke to a range of stakeholders about their experiences implementing the Orders to understand the direct impacts they had on them. This included frontline health services and professionals, pathology providers, and community and advocacy groups. The Committee also received evidence from the former Minister for Health Hon Martin Foley, Chief Health Officer Professor Brett Sutton and other representatives from the Department of Health.

The Committee is grateful to all those who contributed to the review.

A surge of COVID-19 cases due to the Omicron variant between December 2021 and January 2022 resulted in Victoria's PCR testing system reaching capacity. This placed considerable pressure on pathology services responsible for processing COVID-19 tests, leading to delays in results and tests being discarded. It is important that COVID-19 testing systems are adequately resourced and prepared to deal with a surge in COVID-19 cases. This is an area where the Commonwealth and Victorian Governments must better work together to ensure they are adequately prepared to manage surge outbreaks, whether for COVID-19 or any future pandemic.

There was also a shortage of available rapid antigen tests in January 2022. This impacted the broader Victorian community but particularly affected Victorian schools who until May 2022 were recommended to undertake frequent COVID-19 testing of staff and students. Given that schools are high-risk setting for COVID-19 outbreaks, it is important that students are able to access rapid antigen tests as needed.

I thank my colleagues on the Committee for their work on this report and ongoing reviews of pandemic orders. I also thank the secretariat for their support: Executive Officer, Matt Newington, Research Officer, Caitlin Connally, and the administrative team



of Larissa Volpe, Ebony Cousins, Liz Stankovic and Michelle Summerhill. Their hard work in producing this report is very much appreciated.

I commend this report to the Parliament.

A handwritten signature in black ink, appearing to read 'S Sheed', written in a cursive style.

**Ms Suzanna Sheed MP**  
**Chair**



# Findings and recommendations

## 4 Analysis of the Pandemic (Quarantine, Isolation and Testing) Orders

**FINDING 1:** The Pandemic (Quarantine, Isolation and Testing) Orders are compliant with the requirements of section 165AS(1)(a) and (b) of the *Public Health and Wellbeing Act 2008*.

57

**FINDING 2:** The Minister for Health did not provide a clear explanation in the Human Rights Statements as to why notification requirements under the Pandemic (Quarantine, Isolation and Testing) Orders did not arbitrarily restrict the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*.

61

**FINDING 3:** In additional information provided to the Committee, the Minister for Health provided an explanation of how the Pandemic (Quarantine, Isolation and Testing) Orders do not limit the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*. In considering this information along with the Orders' Human Rights Statements, the Committee is satisfied that the Orders are not incompatible with rights under the Act.

62

**RECOMMENDATION 1:** That the Minister for Health publishes as an addendum to the Human Rights Statement why the Pandemic (Quarantine, Isolation and Testing) Orders do not limit the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*, as the Committee has done in Appendix B of this report. Any subsequent extension or variation of the orders should include this explanation in the Human Rights Statement.

62

**FINDING 4:** Requirements for operators of education facilities to notify families if a diagnosed or probable case attended the facility during their infectious period may lead to unintentionally identifying that person.

63

**RECOMMENDATION 2:** That the Victorian Government continues supplying two free rapid antigen tests per week to Victorians enrolled in primary and secondary schools as long as testing requirements are still in place.

66

**FINDING 5:** Given the experience of the Omicron surge, the Federal and state governments working together should ensure that in the event of a future pandemic or public health crisis that there are suitable contingencies for such surges. This includes investigating alternative testing methods early on.

68

# Overview of the COVID-19 pandemic and public health response

## 1.1 Note from the Committee

This Chapter provides a historical overview of the COVID-19 pandemic and the Victorian Government's public health response. Whilst this Committee's remit is focused on reviewing pandemic orders made under the pandemic management framework, providing historical context to the pandemic is important.

The Chapter provides an overview of the development of the pandemic (including the Victorian response) since January 2020, when the first case of COVID-19 was detected in Australia. This Chapter does not cover pandemic support packages or initiatives by the state or Commonwealth governments, such as JobSeeker or JobKeeper payments, Emergency Relief Packages or travel vouchers.

Between 3 March 2020 and 31 October 2020, the Parliamentary Budget Office published a report tracking the Victorian Government's policy response to the pandemic which outlined supports put in place. The report can be accessed at: [https://pbo.vic.gov.au/COVID-19\\_pandemic\\_-\\_Victorian\\_government\\_policy\\_response](https://pbo.vic.gov.au/COVID-19_pandemic_-_Victorian_government_policy_response).

The Victorian Government's public health response has focused on limiting the spread of COVID-19 and reducing the burden on the State's healthcare system. This response has involved restricting the movement of Victorians to reduce transmission.

In responding to the pandemic, human rights have been limited. This is an important issue for the Committee and the focus of its reviews into pandemic orders made since December 2021. Throughout the Committee's work, assessing the human rights impact of pandemic orders is at the forefront and has guided the Committee.

It should be noted that during the Committee's deliberations several changes were made to the pandemic orders which lessened many of the restrictions.

## 1.1.1 The COVID-19 pandemic in context

**“The impact of the coronavirus (COVID-19) pandemic is without rival. And like the rest of the world, we are grappling with a challenge the likes of which we have never seen before.”**

Hon Daniel Andrews, Premier, Victoria, Legislative Assembly, 23 April 2020, *Parliamentary debates*, p. 1197.

The onset of the COVID-19 pandemic has been an unprecedented public health crisis for Victoria and around the world. Global pandemics are not a new occurrence,<sup>1</sup> but the challenges faced by Victorians, other Australians and people around the world has been unique and has affected everyone’s daily life.

By the end of 2020 there were over 80 million cumulative cases worldwide and by the end of 2021 they exceeded 288 million.<sup>2</sup> Between January 2020 and 16 June 2022, over 3,000 Victorians died with COVID-19,<sup>3</sup> and over 9,000 nationally.<sup>4</sup> Globally, over 6 million people have died with COVID-19.<sup>5</sup>

In May 2020, the Victorian Parliamentary Library published a research paper which examined pandemics in Victoria over the past 200 years. The authors noted that epidemics and pandemics are not only public health crises but also ‘political cultural events’.<sup>6</sup> Government responses to these crises have an impact on the economy, politics and society, with measures introduced often changing how people move and participate within the community. The COVID-19 pandemic has been no exception.

The first Australian case of COVID-19 was detected on 25 January 2020 in Melbourne. Since then, cases of COVID-19 have been consistently detected around Australia, with Victoria experiencing several large-scale outbreaks. Outbreaks of COVID-19 ‘set off a chain reaction as Australia’s federal, state and territory governments implemented emergency plans to combat the spread of the virus’.<sup>7</sup>

Only weeks prior to the emergence of COVID-19, Victoria was under a State of Disaster declaration due to large-scale bushfires which began in November 2019 in the East Gippsland region.<sup>8</sup> As Australia experienced its first cases of COVID-19, Victoria, New South Wales and Queensland were still dealing with the aftermath of these bushfires.

1 See: Ben Huf and Holly Mclean, *Epidemics and pandemics in Victoria: Historical perspectives*, report for Parliament of Victoria, Parliamentary Library and Information Service, 2020.

2 Our World in Data, *Coronavirus Pandemic (COVID-19)*, 2022, <<https://ourworldindata.org/coronavirus>> accessed 17 June 2022.

3 Victorian Government, *Victorian COVID-19 data*, 2022, <<https://www.coronavirus.vic.gov.au/victorian-coronavirus-covid-19-data>> accessed 7 June 2022.

4 World Health Organization, *Australia: WHO Coronavirus Disease (COVID-19) Dashboard*, 2022, <<https://covid19.who.int/region/wpro/country/au>> accessed 17 June 2022.

5 Our World in Data, *Coronavirus Pandemic (COVID-19)*.

6 Ben Huf and Holly Mclean, *Epidemics and pandemics in Victoria: Historical perspectives*, p. 2.

7 Holly Mclean and Ben Huf, *Emergency Powers, Public Health and COVID-19*, report for Parliament of Victoria, Parliamentary Library and Information Service, August 2020, p. 3.

8 Premier of Victoria, *Victorian Government declares a State of Disaster*, media release, Victorian Government, Melbourne, 2 January 2022.

Various legislation was introduced into the Victorian Parliament to support the Government's management of the pandemic.<sup>9</sup> In March 2020, the Government declared a State of Emergency under the *Public Health and Wellbeing Act 2008*. This declaration remained in place until December 2021 and conferred extraordinary emergency powers on Victoria's Chief Health Officer. This was the first time these powers had been used since the Act commenced in 2008.<sup>10</sup>

These emergency powers allowed the Chief Health Officer to issue directions and requirements to eliminate or reduce public health risks, including:

- detaining any person or group for as long as reasonably necessary
- restricting the movement of any person within Victoria
- preventing any person from entering Victoria
- any other direction reasonably necessary to protect public health.<sup>11</sup>

The COVID-19 pandemic has caused extraordinary social and economic disruption in Victoria and placed a significant burden on the community through strict public health measures. These measures are aimed at reducing the risk of COVID-19 and have caused significant interruptions to people's work, education and social life.

During periods where cases have surged, Victorians were placed under lockdown, businesses were shut, schools were closed, curfews were implemented and barriers between metropolitan and regional areas introduced. By December 2021, Victorians had spent 262 cumulative days in lockdown.<sup>12</sup>

Many other jurisdictions, both nationally and internationally, also introduced measures which restricted movement and gathering of people. Lockdowns and border closures were used early on in several countries in an attempt to curb the spread of COVID-19. By April 2020 around half the global population was under some form of lockdown.<sup>13</sup> The implementation of lockdown measures meant that borders were closed around the world, disrupting tourism, trade and the international economy on an unprecedented scale.<sup>14</sup>

At the time this report was adopted, some international jurisdictions continued to use lockdown measures to manage outbreaks within their borders.

<sup>9</sup> The following Acts were passed by the Parliament related to the pandemic: *COVID-19 Omnibus (Emergency Measures) Act 2020*, *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment 2020*, *Public Health and Wellbeing Amendment (State of Emergency Extension) Act 2021*, and *Public Health and Wellbeing Amendment (Pandemic Management) Act 2021*.

<sup>10</sup> Holly Mclean and Ben Huf, *Emergency Powers, Public Health and COVID-19*, p. 3.

<sup>11</sup> *Public Health and Wellbeing Act 2008* (Vic) s 200.

<sup>12</sup> Hassan Vally and Catherine Bennett, 'COVID in Victoria: 262 days in lockdown, 3 stunning successes and 4 avoidable failures', *The Conversation*, 17 December 2021, <<https://theconversation.com/covid-in-victoria-262-days-in-lockdown-3-stunning-successes-and-4-avoidable-failures-172408>> accessed 20 June 2022.

<sup>13</sup> Alasdair Sandford, 'Coronavirus: Half of humanity now on lockdown as 90 countries call for confinement', *Euronews*, 3 April 2020, <<https://www.euronews.com/2020/04/02/coronavirus-in-europe-spain-s-death-toll-hits-10-000-after-record-950-new-deaths-in-24-hou>> accessed 17 June 2022.

<sup>14</sup> Parliament of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade*, December 2020.

In October 2021, the Minister for Health, Hon Martin Foley MP, reflected on the impact of the first two years of COVID-19 on Victorians:

The impact of this global pandemic on our communities has been enormous. Tens of thousands of people have been infected by COVID-19 in Victoria, and tragically, hundreds have died. Without the robust set of public health measures implemented by the Chief Health Officer and the Victorian Government, it is almost certain that many thousands more would have perished as we have seen in a number of other countries. It must be acknowledged, however, that these measures have come at their own, different cost. The pandemic has affected all of us. The physical, mental and social health of Victorians, as well as our livelihoods and our liberties, have been affected as we continue to deal with this extraordinary event.<sup>15</sup>

One of the most significant challenges during the pandemic has been the impact on people's human rights. Public health measures that were introduced have significantly limited Victorians' rights and liberties. At a public hearing for the Inquiry into the Victorian Government's response to the COVID-19 pandemic, former Victorian Equal Opportunity and Human Rights Commissioner Ms Kristen Hilton outlined:

In a time of emergency and disaster we believe that human rights need to be central to the decision-making of government, and certainly during this health pandemic we have seen that government has made very critical decisions to protect the health, lives, safety and livelihood of Victorians. In doing so the government has also exercised a range of quite extraordinary powers which have had far-ranging limitations on individual rights, such as our freedom of movement, our freedom of association, who we can see, how we move around and how we work and educate, and these have also had significant social and economic impacts.<sup>16</sup>

At the time this report was adopted, the COVID-19 pandemic was still active and the risk to public health remained. As the pandemic continues to evolve, more lessons can be drawn from the Victorian Government's response, as well as the experiences across other jurisdictions. However the pandemic remains a dynamic situation, primarily due to emerging variants of the virus and the effectiveness of medical treatment available.

The evolving nature of the pandemic was highlighted by the Minister for Health in his second reading speech on the Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021 in October 2021:

Almost two years into the defining health crisis of our age, the situation in Victoria and around the world is more hopeful but remains fragile. The emergence of new variants of concern, which have changed the transmission and health risk profile of COVID-19 over time, raises the serious possibility that the virus could persist indefinitely in some form. The changing nature of this deadly virus makes our challenge even harder.<sup>17</sup>

<sup>15</sup> Victoria, Legislative Assembly, 27 October 2021, *Parliamentary debates*, p. 4241.

<sup>16</sup> Ms Kristen Hilton, Former Commissioner, Victorian Equal Opportunity and Human Rights Commission, public hearing, Melbourne, 26 August 2020, *Transcript of evidence*, p. 1.

<sup>17</sup> Victoria, Legislative Assembly, 27 October 2021, *Parliamentary debates*, p. 4241.



The Committee's functions are to review pandemic orders introduced since December 2021 under the new pandemic management framework. However, it is important to provide a historical context of the COVID-19 pandemic to assist future work in pandemic and public health management.

## 1.2 Development of the COVID-19 pandemic

On 9 January 2020, the World Health Organization released a statement about the detection of possible pneumonia cases in Wuhan, China linked to a new novel coronavirus.<sup>18</sup> On 11 February 2020, the disease caused by the novel coronavirus was named COVID-19.<sup>19</sup> The World Health Organisation declared COVID-19 as a pandemic on 11 March 2020.<sup>20</sup>

On 25 January 2020, Australia's first case of COVID-19 was detected in Victoria from a passenger who had flown in from Guangdong, China. On the same day, three additional cases of COVID-19 were detected in international passengers who had arrived in New South Wales. On 1 March 2020, Australia recorded its first COVID-19-related death in Western Australia.<sup>21</sup>

In response to growing public health concerns related to COVID-19, the governments of Australia established National Cabinet on 13 March 2020. National Cabinet is an intergovernmental forum of the Prime Minister, Premiers and Chief Ministers of all Australian jurisdictions. It also replaced the former Council of Australian Governments to increase efficiency in decision making.

To support its management of the pandemic, the Victorian Government established the Crisis Council of Cabinet on 3 April 2020. The purpose of the Crisis Council was to act as the 'core decision making forum' for the Victorian Government on matters relating to the COVID-19 public health emergency'. The Crisis Council was chaired by the Premier and included seven Ministers who were given specific portfolios with responsibility for leading COVID-19 response activities in their respective departments. The Crisis Council concluded in November 2020.<sup>22</sup>

18 World Health Organization, *WHO Statement regarding cluster of pneumonia cases in Wuhan, China*, media release, 9 January 2020, <<https://www.who.int/china/news/detail/09-01-2020-who-statement-regarding-cluster-of-pneumonia-cases-in-wuhan-china.n>>.

19 Director-General of the World Health Organization, 'WHO Director-General's remarks at the media briefing on 2019-nCoV on 11 February 2020', media briefing delivered at 11 February 2020, <<https://www.who.int/director-general/speeches/detail/who-director-general-s-remarks-at-the-media-briefing-on-2019-ncov-on-11-february-2020>>.

20 Director-General of the World Health Organization, 'WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020', media briefing delivered at 11 March 2020, <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>>.

21 Department of Health (Western Australia), *WA confirms first novel Coronavirus death*, media release, Department of Health, 1 March 2020, <<https://ww2.health.wa.gov.au/Media-releases/2020/WA-confirms-first-novel-Coronavirus-death>>.

22 Victorian Ombudsman, *Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020*, December 2020, p. 56.

## 1.2.1 Chief Health Officer directions

From March 2020 to December 2021, the Victorian Government’s public health response to the COVID-19 pandemic was primarily managed by Chief Health Officer directions. These were issued under the *Public Health and Wellbeing Act 2008*. On 16 March 2020, the Victorian Government declared a State of Emergency under the Act due to the pandemic. This is discussed more in Section 1.2.2 below. This declaration gave emergency powers to the Chief Health Officer for the ‘purpose of eliminating or reducing the serious risk to public health’ due to COVID-19.<sup>23</sup>

As discussed previously, the declaration of a State of Emergency was the first time emergency powers had been conferred on the Chief Health Officer since the Act commenced in 2008. The declaration gave the Chief Health Officer extraordinary powers to implement directions in response to the public health threat posed by COVID-19. Directions by the Chief Health Officer did not just relate to shaping the Victorian Government’s health response but also impacted the economy, justice system, education sector and community more broadly.

From March 2020 to 15 December 2021, the Chief Health Officer issued a series of directions aimed at reducing the risk to public health from COVID-19. The types and degrees of restrictions have changed frequently throughout the pandemic, with stricter directions often coinciding with lockdown periods.

Table 1.1 below provides a broad overview of the types of directions issued by the Chief Health Officer. The Sections below also outline some of the specific restrictions implemented, particularly those made during lockdown periods.

**Table 1.1** Examples of Chief Health Officer directions introduced during the COVID-19 pandemic

<b>‘Stay Safe’ directions</b>	<ul style="list-style-type: none"> <li>• prohibiting or limiting mass gatherings, including introducing density limits, caps or total bans</li> <li>• prohibiting or limiting social gatherings, including weddings, funerals, and other gatherings (such as closing playgrounds or other recreational areas)</li> <li>• prohibiting or limiting visitors in high-risk settings, including hospitals and care facilities</li> <li>• closing or limiting the operation of ‘non-essential’ businesses</li> <li>• introducing mandatory COVID-19 testing, isolation and quarantine requirements</li> <li>• requiring people to wear masks, socially distance or comply with other public health measures</li> <li>• requiring people to work from home where possible, and introducing caps on the number of people at a work facility (if work from home arrangements are available)</li> </ul>
-------------------------------	---

<sup>23</sup> *Public Health and Wellbeing Act 2008* (Vic) div 3.

<b>'Stay at Home' directions</b>	<ul style="list-style-type: none"> <li>• requiring people to stay at home unless leaving for permitted reasons</li> <li>• implementing travel limits (e.g. 5 km radius)</li> <li>• requiring certain areas (e.g. metropolitan Melbourne or specific suburbs) to follow Stay at Home directions</li> <li>• requiring schools to conduct online or remote learning</li> <li>• limiting household visits, including: <ul style="list-style-type: none"> <li>– only permitting visits between intimate partners</li> <li>– establishing single household bubbles</li> <li>– capping the number of visitors</li> </ul> </li> </ul>
<b>Detention directions</b>	<ul style="list-style-type: none"> <li>• requiring international travellers to undertake mandatory isolation upon arrival through the Hotel Quarantine program</li> <li>• requiring international travellers to undertake COVID-19 testing</li> <li>• requiring people residing in a specified location (such as specific postcodes or public housing complexes) to limit their interaction with others or stay at home</li> </ul>
<b>Workplace directions</b>	<ul style="list-style-type: none"> <li>• requiring workplaces to record vaccination status of patrons and workers</li> <li>• requiring employees to implement COVIDSafe measures to mitigate risk of onsite transmission (e.g. social distancing measures)</li> <li>• requiring employers to notify the Department of Health of positive cases or outbreaks of COVID-19</li> </ul>




Source: Pandemic Declaration Accountability and Oversight Committee. Adapted from various sources.

The Victorian Government also enforced border closures in response to COVID-19 outbreaks in other Australian jurisdictions. Border closures were also implemented by other states, territories, and by the Commonwealth Government in relation to national borders.

Border closures have been implemented and revoked at various times throughout the COVID-19 pandemic. A detailed chronology of Victorian border closures was published by the Parliamentary Library in September 2021 and is available at: <https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/14010-chronology-of-victorian-border-closures-due-to-covid-19>.

To manage Victoria's border closures, the Chief Health Officer implemented a border crossing permit scheme on 21 November 2020. Initially this was a requirement for people travelling to Victoria from South Australia, which was experiencing an outbreak at the time. This was expanded to all Australian jurisdictions on 11 January 2021 through the Victorian Border Crossing Permit Directions. These introduced a 'traffic light zone system' to manage permits. Figure 1.1 below outlines the traffic light system implemented under the Victorian Border Crossing Permit Directions.

**Figure 1.1 Victorian Travel Permit System, as at 29 March 2021**

Designation	Permit Conditions
 <b>Red</b> ('red zones')	<ul style="list-style-type: none"> <li>Residents of Victoria who are in, or who have been to a red zone can apply for a 'red zone' permit to return home. You must return straight home (or to your accommodation), and self-quarantine for 14 days from the day you enter Victoria</li> <li>Non-residents not entitled to a permit or to travel to Victoria (unless covered by an exception, exemption or permitted worker permit)</li> <li>Non-residents who present at a land border without an exception, exemption or permitted worker permit will be turned around</li> <li>Non-residents who present at a Melbourne airport/seaport without an exception, exemption or permitted worker permit will be fined (\$4957)</li> <li>Non-residents are returned to their originating port at the next available opportunity at their own cost.</li> </ul>
 <b>Orange</b> ('orange zones')	<ul style="list-style-type: none"> <li>Permit required to enter Victoria</li> <li>Person must attest they have not been in a currently listed red zone within the past 14 days, have not been in close contact with a coronavirus (COVID-19) case and do not have any coronavirus (COVID-19) symptoms</li> <li>Person must self-isolate, get a coronavirus (COVID-19) test (within 72 hours) and continue to self-isolate until they get a negative test.</li> </ul>
 <b>Green</b> ('green zones')	<ul style="list-style-type: none"> <li>Permit required to enter Victoria</li> <li>Person must attest they have not been in a currently listed red zone, or orange zone within the past 14 days, have not been in close contact with a coronavirus (COVID-19) case and do not have any coronavirus (COVID-19) symptoms</li> <li>No further conditions on entry other than to monitor for symptoms and abide by existing directions.</li> </ul>

Source: Victorian Ombudsman, *Investigation into decision-making under the Victorian Border Crossing Permit Directions*, December 2021, p. 32.

The Victorian Ombudsman previously reviewed issues on decision-making by Victorian Government authorities under the Border Crossing Permit Directions. The report was tabled in December 2021 and can be accessed at: [https://assets.ombudsman.vic.gov.au/assets/Investigation-into-decision-making-under-the-Victorian-Border-Crossing-Permit-Directions\\_Dec-2021.pdf](https://assets.ombudsman.vic.gov.au/assets/Investigation-into-decision-making-under-the-Victorian-Border-Crossing-Permit-Directions_Dec-2021.pdf).

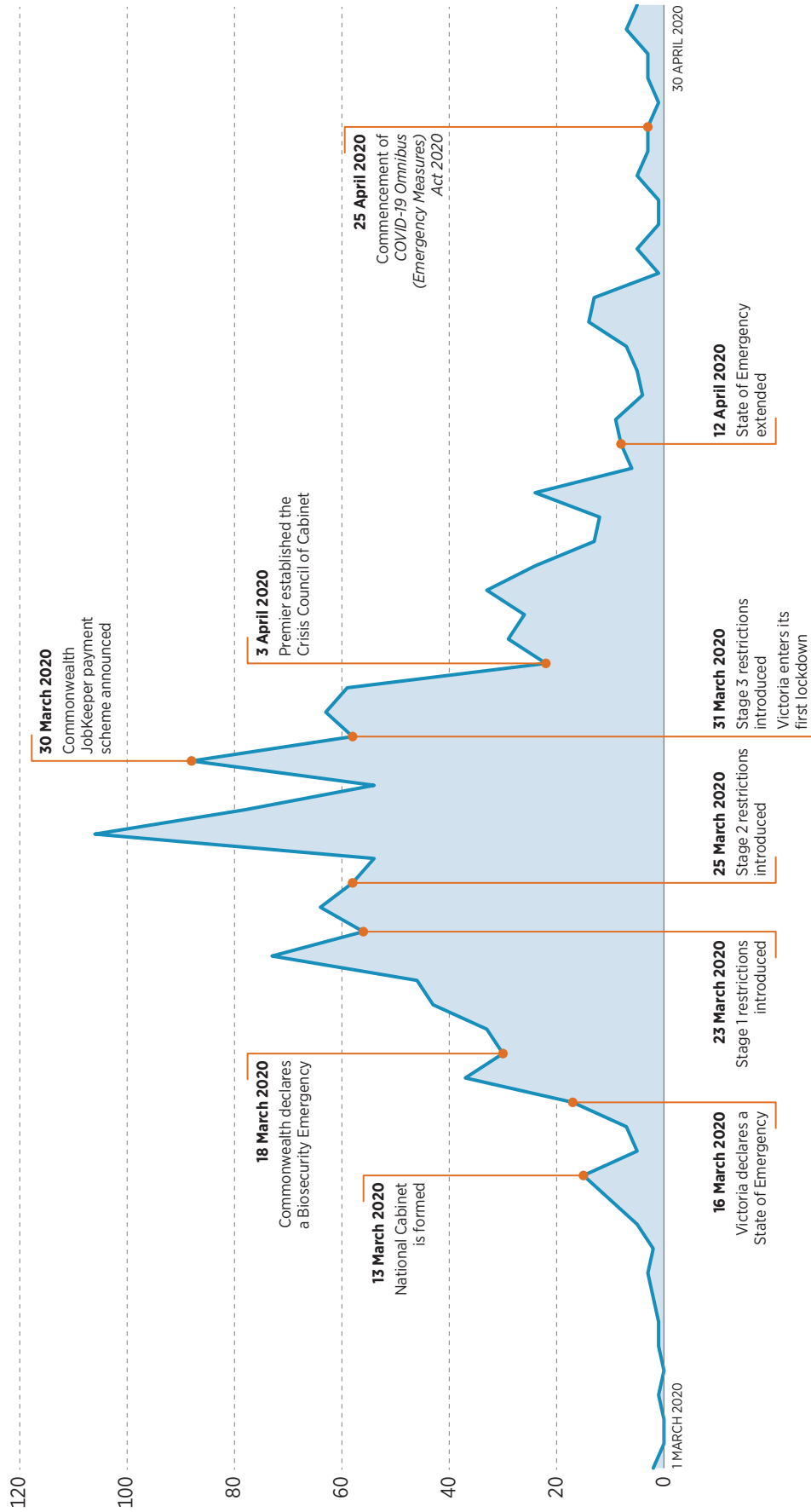
### 1.2.2 Victoria’s first wave (March–April 2020)

Victoria experienced its ‘first wave’<sup>24</sup> of COVID-19 cases between March and April 2020. During this period, daily COVID-19 infections peaked at 106 new cases on 27 March 2020. According to a February 2021 report by the Public Accounts and Estimates Committee on the Victorian Government’s response to the pandemic, the ‘first wave of infections was primarily driven by international transmissions’.<sup>25</sup> Figure 1.2 below outlines the COVID-19 case numbers and key developments in the Victorian Government’s COVID-19 response during the first wave.

<sup>24</sup> COVID-19 ‘waves’ refers to periods where there are surges of new cases followed by declines, creating a wave-like pattern in infection data.

<sup>25</sup> Parliament of Victoria, Public Accounts and Estimates Committee, *Inquiry into the Victorian Government’s response to the COVID-19 pandemic*, February 2021, p. 1.

Figure 1.2 Victoria's daily COVID-19 case numbers and key events, March to April 2020



Source: Pandemic Declaration Accountability and Oversight Committee.

During the first wave, the Victorian Government's public health response was focused on 'flattening the curve'. This was through mandatory quarantine requirements for returned international travellers and introducing public health measures to reduce the spread of COVID-19.<sup>26</sup> Other Australian jurisdictions also experienced a surge of COVID-19 cases during this period.

In response, National Cabinet agreed to introduce uniform public health measures for state and territory governments to implement.<sup>27</sup> The measures were aimed at reducing community transmission by:

- banning non-essential mass gatherings of over 500 people
- introducing 14-day self-quarantine requirements for international passengers flying into Australia.<sup>28</sup>

On 16 March 2020, the Victorian Government declared a four-week State of Emergency under the Public Health and Wellbeing Act. At the time, there were 63 active cases of COVID-19 in the State.<sup>29</sup> The State of Emergency declaration conferred emergency powers on the Chief Health Officer, under s 200 of the Act. This was the first time those powers had been used in Victoria since the Act came into operation. The Chief Health Officer introduced the public health measures agreed to by National Cabinet, which commenced on 16 March 2020.<sup>30</sup>

At the time Victoria first declared a COVID-19 State of Emergency, there were 351 active COVID-19 cases around Australia and 183,177 recorded globally. Due to growing COVID-19 cases in several jurisdictions, some Australian governments began introducing border closures to prevent additional spread of the virus. On 19 March 2020, the Australian Government closed national borders to everyone except Australian residents or citizens.<sup>31</sup> Some state governments also began closing their borders as well.<sup>32</sup>

Victoria's COVID-19 State of Emergency declaration remained in place until 10 December 2021. This was through a series of declared extensions as well as amendments to the Public Health and Wellbeing Act to allow the declaration to continue past the prescribed maximum period of 6 months.

During this period, the Victorian Government's response to the COVID-19 response was primarily managed through Chief Health Officer directions.

<sup>26</sup> Ibid.

<sup>27</sup> Hon Scott Morrison PM, *Coronavirus measures endorsed by National Cabinet*, media release, National Cabinet, Canberra, 16 March 2020.

<sup>28</sup> Ibid.

<sup>29</sup> Victoria, *Victoria Government Gazette*, No. S 129, 16 March 2020.

<sup>30</sup> Premier of Victoria, *State Of Emergency Declared In Victoria Over COVID-19*, media release, 16 March 2020.

<sup>31</sup> Kelsey Campbell and Emma Vines, *COVID-19: a chronology of Australian Government announcements (up until 30 June 2020)*, report for Parliamentary Library, Parliament of Australia, Canberra, June 2021.

<sup>32</sup> Annie Wright, *Chronology of Victorian border closures due to COVID-19*, report for Parliament of Victoria, Victorian Parliamentary Library and Research Service, September 2021, p. 3.

COVID-19 cases continued rising through March 2020, from 28 active cases in Victoria on 13 March (174 nationally) to 399 on 27 March 2020 (2,936 nationally).<sup>33</sup> On 26 March 2020, Victoria recorded its first COVID-19-related death. At the time, Victoria had 520 active cases of COVID-19.<sup>34</sup>

In response, the Victorian and other Australian governments introduced Stage 1 COVID-19 restrictions on 23 March 2020. By 30 March 2020 they had implemented stricter Stage 3 restrictions. Box 1.1 below outlines the public health measures associated with Stage 1 to Stage 3 restrictions.

### **BOX 1.1: COVID-19 restrictions, Stages 1 to 3**

National Cabinet was established on 13 March 2020 to assist a federal–state response to the pandemic. It replaced the former Council of Australian Governments. National Cabinet provided a forum for the governments of Australia to take collective responsibility for the nation’s response to COVID-19 and agree to broad public health measures to be implemented by state and territory governments. In March 2020, as case numbers increased National Cabinet established Stage 1 and Stage 2 restrictions. However, Victoria experienced an ongoing outbreak and the Victorian Government introduced Stage 3 restrictions on 30 March 2020.

#### **Stage 1 restrictions**

The focus of Stage 1 restrictions was to limit social and non-essential gatherings to reduce community transmission of COVID-19. This included:

- restricting the opening or operation of specified facilities, such as hospitality, sporting and retail. For example, restaurants and cafes were restricted to takeaway or home delivery services
- restricting non-essential gatherings
- social distancing and density limits
- limiting non-essential travel
- restricting visitors to aged care facilities
- encouraging schools to provide online or distance learning to students.

**(Continued)**

<sup>33</sup> Victorian Government, *Victorian COVID-19 data*.

<sup>34</sup> Department of Health and Human Services, *Coronavirus update for Victoria - 26 March 2020*, media release, Melbourne, 26 March 2020.

**BOX 1.1: Continued****Stage 2 restrictions**

Stage 2 restrictions included measures under Stage 1 as well as additional restrictions, including limiting the movement of people for non-essential reasons. Restrictions under Stage 2 included:

- restricting the opening or operation of specified businesses, such as:
  - beauty or personal care services
  - food and drink premises
  - retail facilities
  - entertainment venues
  - leisure and recreation facilities
  - residential facilities
  - outdoor recreation
  - non-residential institutions (e.g. libraries, museums, galleries)
- restricting the number of people at social gatherings, for example only 5 people could attend a wedding and a maximum of 10 people could attend funerals
- encouraging people to stay at home except for essential reasons and minimising visitors.

**Stage 3 restrictions (Victoria)**

Stage 3 restrictions limited the non-essential movement of the general public by introducing bans on social gatherings, household visits and closing businesses and communal areas. Restrictions under Stage 3 included:

- banning gatherings of more than two people, except people sharing a household, or for work or education purposes
- banning visitors to homes
- introducing ‘four reasons’ to leave home:
  - shopping
  - exercise
  - care or caregiving
  - work that could not be done from home

**(Continued)**



**BOX 1.1: Continued**

- closing non-essential businesses and communal spaces, including:
  - indoor and outdoor playgrounds, recreational or community areas
  - non-essential businesses, shopping centres, schools and universities
- requiring schools to conduct remote learning, except for children of essential workers.

Source: Pandemic Declaration Accountability and Oversight Committee. Adapted from various sources.

Under Stage 3 restrictions introduced on 31 March 2020, the Victorian Government implemented the State's first lockdown. Victorian residents were only permitted to leave home for 'four reasons':

- essential shopping (only one person per household, once per day)
- exercise
- medical care
- work and education if necessary.<sup>35</sup>

Stage 3 restrictions, including the lockdown, were eased on 12 May 2020. Between 12 May 2020 and 21 June 2020, the Victorian Government eased restrictions on home visitation, social gatherings, some hospitality and retail venues, and sporting activities.<sup>36</sup>

On 25 April 2020, the *COVID-19 Omnibus (Emergency Measures) Act 2020* commenced. The purpose of the Act was to temporarily amend certain Acts and regulations for the 'purpose of responding to the COVID-19 pandemic'.

In his second reading speech, the Premier explained that the aim of the Act was to support the Victorian Government's response to COVID-19 by providing:

flexibility to adjust processes and adopt different ways of delivering critical services. These reforms will minimise the risk of transmission of COVID-19 and revise procedures and practices to ensure critical services can continue operating safely.<sup>37</sup>

<sup>35</sup> Victorian Government, *Stage 3 restrictions in effect from midnight tonight*, 30 March 2020, <<https://web.archive.org/web/20200330213348/https://www.vic.gov.au/coronavirusresponse#stage-3-restrictions-in-effect-from-midnight-tonight>> accessed 6 June 2022.

<sup>36</sup> Rebecca Storen and Nikki Corrigan, *COVID-19: a chronology of state and territory government announcements (up until 30 June 2020)*, report for Parliament of Australia, Parliamentary Library, Canberra, 2020, <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2021/Chronologies/COVID-19StateTerritoryGovernmentAnnouncements](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Chronologies/COVID-19StateTerritoryGovernmentAnnouncements)>.

<sup>37</sup> Victoria, Legislative Assembly 23 April 2020, *Parliamentary debates*, p. 1197.

Table 1.2, based on a Victorian Parliamentary Library report into *Emergency powers, public health and COVID-19*, summarises amendments made under the Omnibus Act.

**Table 1.2** Amendments made under the *COVID-19 Omnibus (Emergency Measures) Act 2020*

Affected portfolio	Amendments
Justice and Community Safety portfolio	Amended a range of legislation to allow courts, VCAT and other justice agencies to manage procedural matters flexibly, including: <ul style="list-style-type: none"> <li>enabling courts to hear matters via audio-visual or audio link</li> <li>enabling courts to deal with matters without a hearing</li> <li>enabling verbal pre-sentence reports in Youth Justice</li> <li>allowing courts to modify procedures or make alternative arrangements relating to physical access to court rooms and buildings</li> <li>providing more flexible procedures for bail matters</li> <li>enabling judge-alone trials for any Victorian indictable offence.</li> </ul>
Workplace Safety portfolio	Amended legislation to give long-term injured workers an additional six months' notice of termination to provide them a longer period to return to work or find employment.
Energy, Environment and Climate Change, Local Government and Planning portfolios	The Act delayed commencement of reforms to the Victorian environment protection framework to: <ul style="list-style-type: none"> <li>enable duty holders to focus on immediate challenges posed by the COVID-19 pandemic</li> <li>permit local councils and libraries to operate more flexibly by having virtual council meetings.</li> </ul> Amended the <i>Planning and Environment Act 1987</i> to allow planning scheme amendments, planning permit applications and other documents to be available for inspection on an internet site.
Education, Training and Skills portfolio	Amended the <i>Education and Training Reform Act 2006</i> to establish a temporary scheme to enable Victoria's education system and its teachers to continue to deliver learning outcomes.
Health portfolio	Amended the <i>Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015</i> to allow the Minister for Health to temporarily suspend enforcement provisions of the Act, should it become impracticable for health services to meet the nurse-to-patient ratios.
Premier's portfolio	Amended the <i>Parliamentary Committees Act 2003</i> to enable members of committees established under that Act to attend meetings and vote remotely.

Source: Holly Mclean and Ben Huf, *Emergency Powers, Public Health and COVID-19*, report for Parliament of Victoria, Parliamentary Library and Information Service, August 2020, p. 34; Victoria, Legislative Assembly 23 April 2020, *Parliamentary debates*, p. 1198.

### 1.2.3 Second wave (June–October 2020)

Following outbreaks in hotel quarantine facilities,<sup>38</sup> Victoria experienced a ‘second wave’ of COVID-19 cases between June and October 2020. Daily case numbers peaked at 686 on 4 August 2020, two days after a State of Disaster was declared under the *Emergency Management Act 1986* due to the ‘scale and severity’ of the pandemic.<sup>39</sup>

The Public Accounts and Estimates Committee’s Inquiry into the Victorian Government’s COVID-19 response found that the second wave was primarily caused by a ‘breach in the Victorian Government’s Hotel Quarantine Program, which occurred in May 2020’.<sup>40</sup> The report noted that 99% of cases in the second wave arose from hotel quarantine outbreaks at the Rydges and Stamford Plaza hotels.<sup>41</sup>

Figure 1.3 below outlines the COVID-19 case numbers and key developments in the Victorian Government’s public health response during the second wave.

---

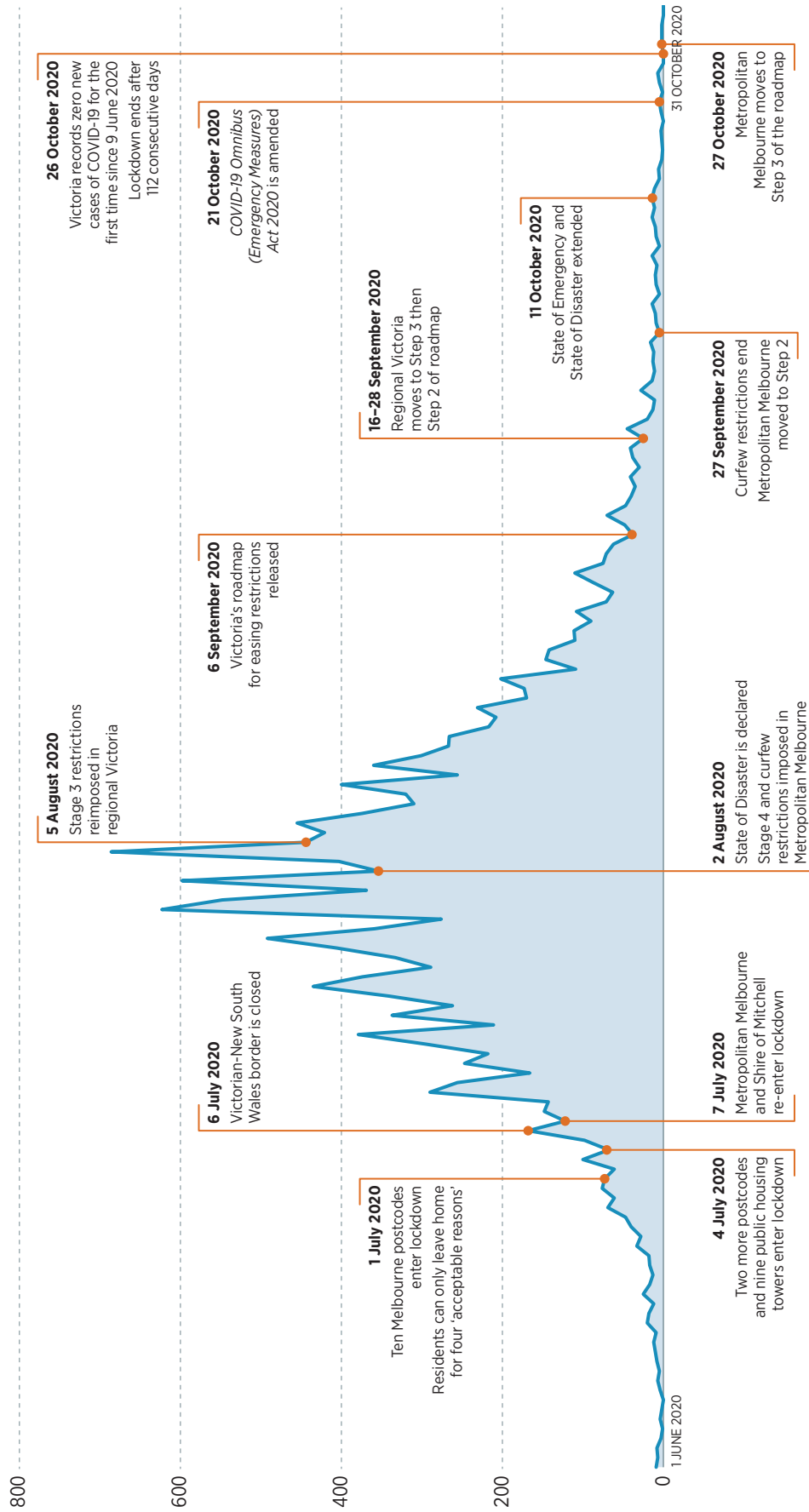
<sup>38</sup> Parliament of Victoria, Public Accounts and Estimates Committee, *Inquiry into the Victorian Government’s response to the COVID-19 pandemic: Interim report*, July 2020, p. 17.

<sup>39</sup> Department of Premier and Cabinet, *Report to Parliament on declaration of State of Disaster – Coronavirus (COVID-19) pandemic – Report 2: Report under section 23(7) of the Emergency Management Act 1986*, 2020, p. 4.

<sup>40</sup> Parliament of Victoria, Public Accounts and Estimates Committee, *Inquiry into the Victorian Government’s response to the COVID-19 pandemic*, p. 1.

<sup>41</sup> *Ibid.*, p. 26.

Figure 1.3 Victoria's daily COVID-19 case numbers and key events, June to October 2020



Source: Pandemic Declaration Accountability and Oversight Committee.

Between May and July 2020, the number of COVID-19 infections and deaths continued to grow in Victoria because of outbreaks in hotel quarantine and a cluster linked to Cedar Meats.<sup>42</sup>

On 1 July 2020, Victoria experienced its fifteenth consecutive day of double-digit daily case growth.<sup>43</sup> In response, the Deputy Chief Health Officer<sup>44</sup> implemented Stay at Home directions for 10 postcodes in Melbourne which were experiencing spikes in COVID-19 cases.<sup>45</sup> Postcodes subject to Stay at Home directions were placed under Stage 3 restrictions, including both households and businesses.

On 4 July 2020, Stay at Home or Detention directions were issued to two more Melbourne postcodes<sup>46</sup> and nine public housing towers.<sup>47</sup> These were placed under Stage 3 restrictions, including lockdown.<sup>48</sup> On 9 July 2020, after a four-day COVID-19 testing blitz, 158 cases of COVID-19 were detected among residents of the public housing estates under lockdown.

On 8 July 2020, Stage 3 restrictions were reimposed on metropolitan Melbourne and Mitchell Shire due to outbreaks of COVID-19. Two of the public housing towers returned to Stage 3 restrictions. Stage 3 restrictions and lockdown were initially imposed for a period of six weeks.<sup>49</sup> At the time, Victoria recorded 860 active cases, 41 hospitalisations and 22 deaths. At the national level, there were 886 active cases, 46 hospitalisations and 106 deaths.

Daily case numbers continued to significantly increase throughout July 2020, and by 1 August 2020 there were 5,919 active cases, 379 hospitalisations and 116 deaths.

On 2 August 2020, the Victorian Government declared a State of Disaster under the *Emergency Management Act 1986*.<sup>50</sup> This conferred additional powers on Victoria Police to enforce public health safety measures.<sup>51</sup> At the same time, Stage 4 restrictions were imposed on Metropolitan Melbourne and a curfew from 8pm to 5am was enforced.<sup>52</sup> Stage 4 restrictions are outlined in Box 1.2 below.

<sup>42</sup> Ibid.

<sup>43</sup> Department of Health and Human Services, *Coronavirus update for Victoria – 1 July 2020*, 2020, <<https://web.archive.org/web/20200702085920/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-1-july-2020>> accessed 6 June 2022.

<sup>44</sup> Acting as Chief Health Officer.

<sup>45</sup> Restricted postcodes were: 3012, 3021, 3032, 3038, 3042, 3046, 3055, 3060 and 3064. Department of Health and Human Services, *Coronavirus update for Victoria - 1 July 2020*.

<sup>46</sup> Additional restricted postcodes: 3031 and 3051.

<sup>47</sup> Located in Flemington and North Melbourne.

<sup>48</sup> Department of Health and Human Services, *Coronavirus update for Victoria - 4 July 2020*, 2020, <<https://web.archive.org/web/20200706030507/https://www.dhhs.vic.gov.au/coronavirus-update-victoria-4-july-2020>> accessed 6 June 2022.

<sup>49</sup> Department of Health and Human Services, *Coronavirus update for Victoria - 08 July 2020*, 2020, <<https://www.dhhs.vic.gov.au/coronavirus-update-victoria-08-july-2020>> accessed 9 June 2022.

<sup>50</sup> Victoria, *Victoria Government Gazette*, No. S 383, 2 August 2020.

<sup>51</sup> Holly Mclean and Ben Huf, *Emergency Powers, Public Health and COVID-19*, p. 3.

<sup>52</sup> Curfew restrictions remained in place for 6 weeks, ending on 27 September 2020. Victoria, *Victoria Government Gazette*.

**BOX 1.2: COVID-19 restrictions, Stage 4**

Restrictions under Stage 4 incorporated many of the restrictions (including lockdown) under Stage 3 but also included:

- implementing a curfew from 8pm to 5am, with Victorians not allowed to leave their home outside this time except for essential work, medical care, caregiving or emergencies
- exercise was limited to a maximum of one hour per day, no more than 5km from home
  - a person was allowed to exercise with one other person, even if they did not live within them
- shopping was limited to one person per household per day, no more than 5km from home (unless the nearest shopping complex was more than 5km away)
- wearing face masks outside of home was compulsory
- schools returned to remote learning arrangements, including TAFE and university study and early childhood education
- weddings were banned.

Source: Premier of Victoria, *Statement on changes to Melbourne's restrictions*, media statement, Victorian Government, Melbourne, 2 August 2020.

On 5 August 2020, Stage 3 restrictions were reimposed on regional Victoria. These restrictions began easing on 16 September 2020.

Metropolitan Melbourne remained under lockdown for 112 days, until restrictions began easing on 26 October 2020. Melbourne moved from 'Stay Home' to 'Stay Safe' directions, allowing some hospitality and retail businesses to open with restrictions and Victorians were allowed to leave home for any reasons.<sup>53</sup>

During the 2020 lockdown, National Cabinet and the Victorian Government both developed 'roadmaps' for COVID-19 recovery. On 4 September 2020, National Cabinet stated that all Australian jurisdictions except for Western Australia had 'agreed in-principle to develop a new plan for Australia to reopen by Christmas, including the use of the hotspot concept for travel between jurisdictions'.<sup>54</sup> The plan built on National Cabinet's previous plan developed in May 2020, prior to Victoria's second wave.

<sup>53</sup> Premier of Victoria, *Statement from the Premier*, media release, Victorian Government, Melbourne, 26 October 2020.

<sup>54</sup> Hon Scott Morrison PM, *National Cabinet: Media release, 4 September 2020*, media release, National Cabinet, Canberra, 4 September 2020.

On 6 September 2020, the Victorian Government released *Victoria's roadmap for reopening*. This identified several 'trigger points' for easing restrictions in Metropolitan Melbourne and regional Victoria, commencing 13 September 2020.<sup>55</sup> These included expected dates for milestones of reduced case numbers in the State.

The roadmap outlined 'four steps' for easing COVID-19 restrictions until Victoria could reach 'COVID normal'.<sup>56</sup> A copy of the roadmap can be found at: <https://web.archive.org/web/20200914050641/https://www.vic.gov.au/coronavirus-covid-19-restrictions-roadmaps>.

On 21 October 2020 the *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* commenced. Among other amendments, the Act empowered the Secretary of the Department of Health and Human Services to appoint additional authorised officers to enforce compliance of health directions under the Public Health and Wellbeing Act.<sup>57</sup> The Act included a sunset clause of 12 months after its commencement.<sup>58</sup>

By the end of the second wave (around 31 October 2020) Victoria was experiencing less than 10 new daily cases. On 31 October 2020, Victoria recorded zero new cases for the first time since COVID-19 had been detected in the State. On 8 November 2020, the State of Disaster declaration expired.<sup>59</sup>

#### 1.2.4 February to October 2021 lockdowns and COVID-19 vaccine rollout

Between 1 October 2020 and 28 February 2021 Victoria did not exceed 15 new daily cases of COVID-19, including periods of no new infections. Early outbreaks in December 2020 to February 2021 were linked to:

- an outbreak of cases from New South Wales and on 31 December 2020 Victoria closed its border to New South Wales
- hotel quarantine outbreaks, such as the February 2021 outbreak in Grand Hyatt Melbourne and Holiday Inn.<sup>60</sup>

<sup>55</sup> Premier of Victoria, *Statement From The Premier*, media release, Victorian Government, Melbourne, 6 September 2020.

<sup>56</sup> Victorian Government, *Victoria's roadmap for reopening – How we live in Metropolitan Melbourne*, <[https://www.amaze.org.au/wp-content/uploads/2020/09/Victoria-roadmap-Melbourne-Metro\\_0.pdf](https://www.amaze.org.au/wp-content/uploads/2020/09/Victoria-roadmap-Melbourne-Metro_0.pdf)> accessed 6 June 2022.

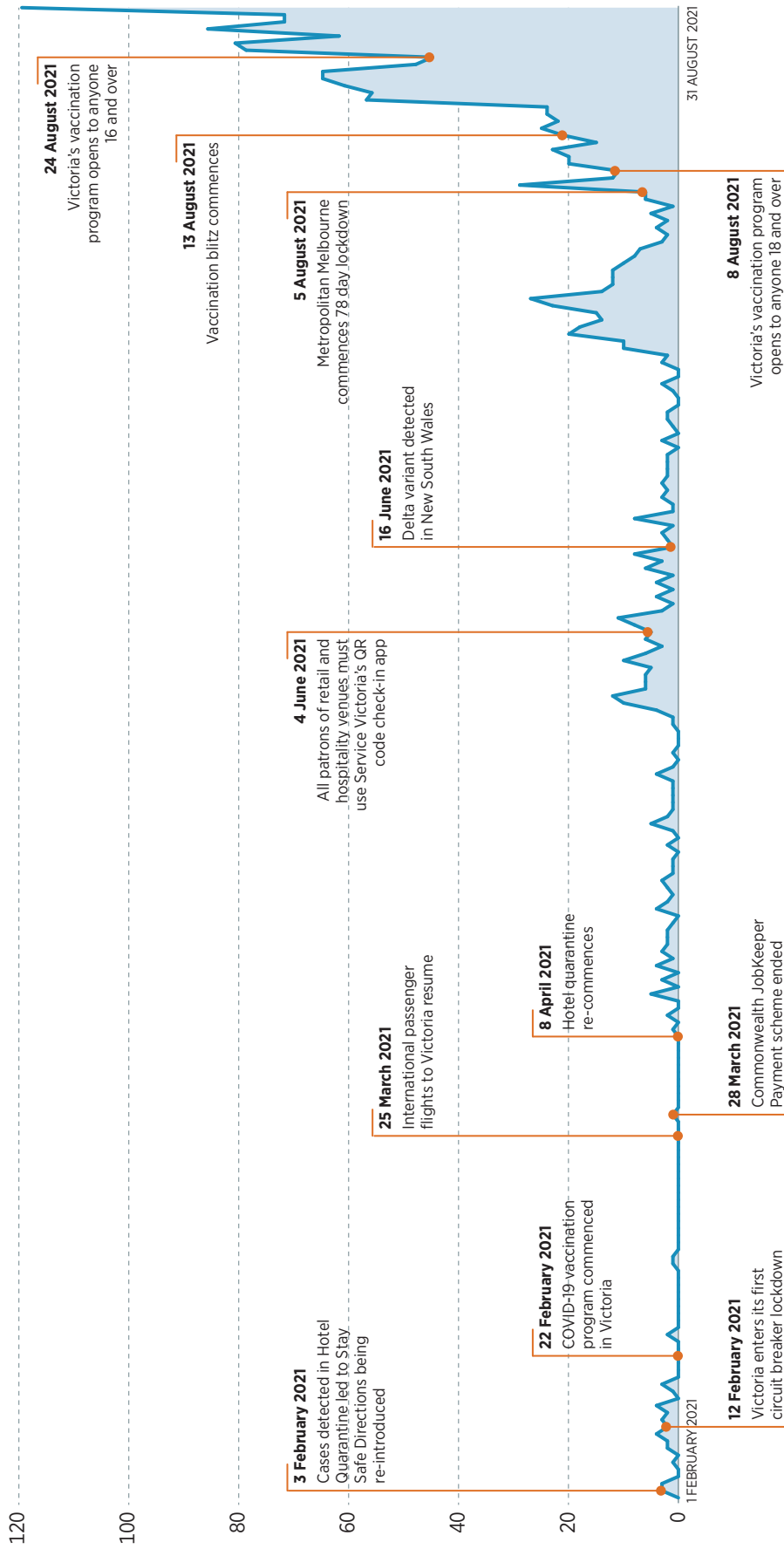
<sup>57</sup> *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* (Vic) s 16.

<sup>58</sup> *Ibid.*, s 46.

<sup>59</sup> Parliament of Victoria, Legislative Council Economy and Infrastructure Committee, *Inquiry into the impact of the COVID-19 pandemic on the tourism and events sectors*, August 2021, p. 6.

<sup>60</sup> Acting Premier of Victoria, *Statement From Acting Premier On NSW Border Closure*, media release, Victorian Government, Melbourne, 31 December 2020; 'Victoria records three new coronavirus cases linked to Holiday Inn outbreak, one admitted to intensive care', *ABC News*, 19 February 2021, <<https://www.abc.net.au/news/2021-02-19/victoria-coronavirus-cases-linked-to-outbreak/13171088>> accessed 7 June 2022.

Figure 1.4 Victoria's daily COVID-19 case numbers and key events, February to August 2021



Source: Pandemic Declaration Accountability and Oversight Committee.



As a result of outbreaks between February and July 2021, the Victorian Government suspended easing restrictions under the roadmap and implemented additional lockdowns. The level of restrictions under these lockdowns ranged from Stage 3 to 4 restrictions.

At the time this report was adopted, the last lockdown implemented in Metropolitan Melbourne (and at times regional Victoria) commenced on 5 August 2021 and ended on 21 October 2021. Initially, the lockdown was announced for seven days, but growing COVID-19 case numbers resulted in several extensions until October 2021. The August to October 2021 lockdown is discussed in details in Section 1.2.5 below. During the same period, several lockdowns were also implemented in regional Victoria.

Table 1.3 below outlines the February to October 2021 lockdown periods, and peak daily case numbers in Victoria and Australia.

**Table 1.3 Victorian lockdowns between February and October 2021**

Lockdown period	Peak daily case numbers	Peak daily case numbers	Accumulative COVID-related deaths	Accumulative COVID-related deaths
	(Vic)	(Aus)	(Vic)	(Aus)
<b>Metropolitan Melbourne lockdowns (February to July 2021, excluding August to October 2021)</b>				
12 February to 15 February 2021	4	8	820	909
27 May to 10 June 2021	11	19	820	910
15 July to 27 July 2021	27	187	820	920
<b>Regional Victoria lockdowns (August to October 2021)</b>				
21 August to 9 September 2021	335	1,741	823	1,066
15 September to 22 September 2021 (Ballarat)	757	1,857	836	1,186
19 September to 26 September 2022 (Greater Geelong and Surf Coast Shire)	839	1,864	844	1,231
19 September to 13 October 2021 (Mitchell Shire)	2,257	2,530	934	1,478
28 September to 5 October 2021 (City of La Trobe)	1,747	2,400	877	1,357

Source: Pandemic Declaration Accountability and Oversight Committee. Adapted from various sources.

Throughout the February to October 2021 lockdowns, public health measures changed several times and were gradually eased in stages.

As agreed by National Cabinet, Australia's vaccination program was rolled out in phases as vaccinations were approved by Therapeutic Goods Administration. At the time this report was adopted, the following COVID-19 vaccinations were approved by the Therapeutic Goods Administration:

- Pfizer (approved 25 January 2021)
- AstraZeneca (approved 15 February 2021)
- Moderna (approved 9 August 2021)
- Novavax (approved 20 January 2022).<sup>61</sup>

In February 2021, Victoria commenced its vaccination program, which was gradually rolled out across the State. Vaccinations were initially only available for priority groups such as aged and disability care residents and workers, frontline health care workers and quarantine and border workers. The vaccination program was expanded to other groups in stages between March and September 2021.<sup>62</sup>

The Victorian Government's vaccination program followed the vaccination strategy developed by the Commonwealth Government, which was released in January 2021. Figure 1.5 below shows the COVID-19 vaccine national rollout strategy, which aligns with the Victorian strategy.

---

<sup>61</sup> Department of Health (Australian Government), *Australia's vaccine agreements*, 2022, <<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/about-rollout/vaccine-agreements>> accessed 30 June 2022.

<sup>62</sup> Hon Martin Foley MP and Hon Greg Hunt MP, *Victoria COVID-19 Vaccination Program Implementation Plan*, Agreement between the Australian Government and the Victorian Government, February 2021, p. 7.

Figure 1.5 COVID-19 vaccine national rollout strategy



Source: Australian Government, Australia's COVID-19 Vaccine and Treatment Strategy, Canberra, 2021, p. 9.

## 1.2.5 Third wave (September–November 2021)

Prior to the ‘third wave’ the focus of the Victorian Government’s COVID-19 response was ‘flattening the curve’ and a ‘COVID-zero’ strategy.<sup>63</sup> However, the emergence of the highly infectious Delta and Omicron COVID-19 strains shifted the Victorian Government’s strategy away from COVID-zero. Instead, the response moved to relying on vaccinations and other public health measures to mitigate the risk of COVID-19 and reduce the strain on the State’s healthcare system.<sup>64</sup>

In June 2021, the Delta strain was first detected in New South Wales, which experienced significant outbreaks of COVID-19 as a result. Delta was detected in Victoria in the same month, causing several outbreak clusters.

Delta continued to be the dominant strain of COVID-19 nationally until January 2022, when Omicron became the dominant strain, eventually displacing Delta almost entirely.<sup>65</sup> Victoria’s Omicron wave in December 2021 and January 2022 is discussed further in Section 1.2.6 below.

Figure 1.6 below outlines the COVID-19 case numbers and key developments in the Victorian Government’s COVID-19 response during the third wave.

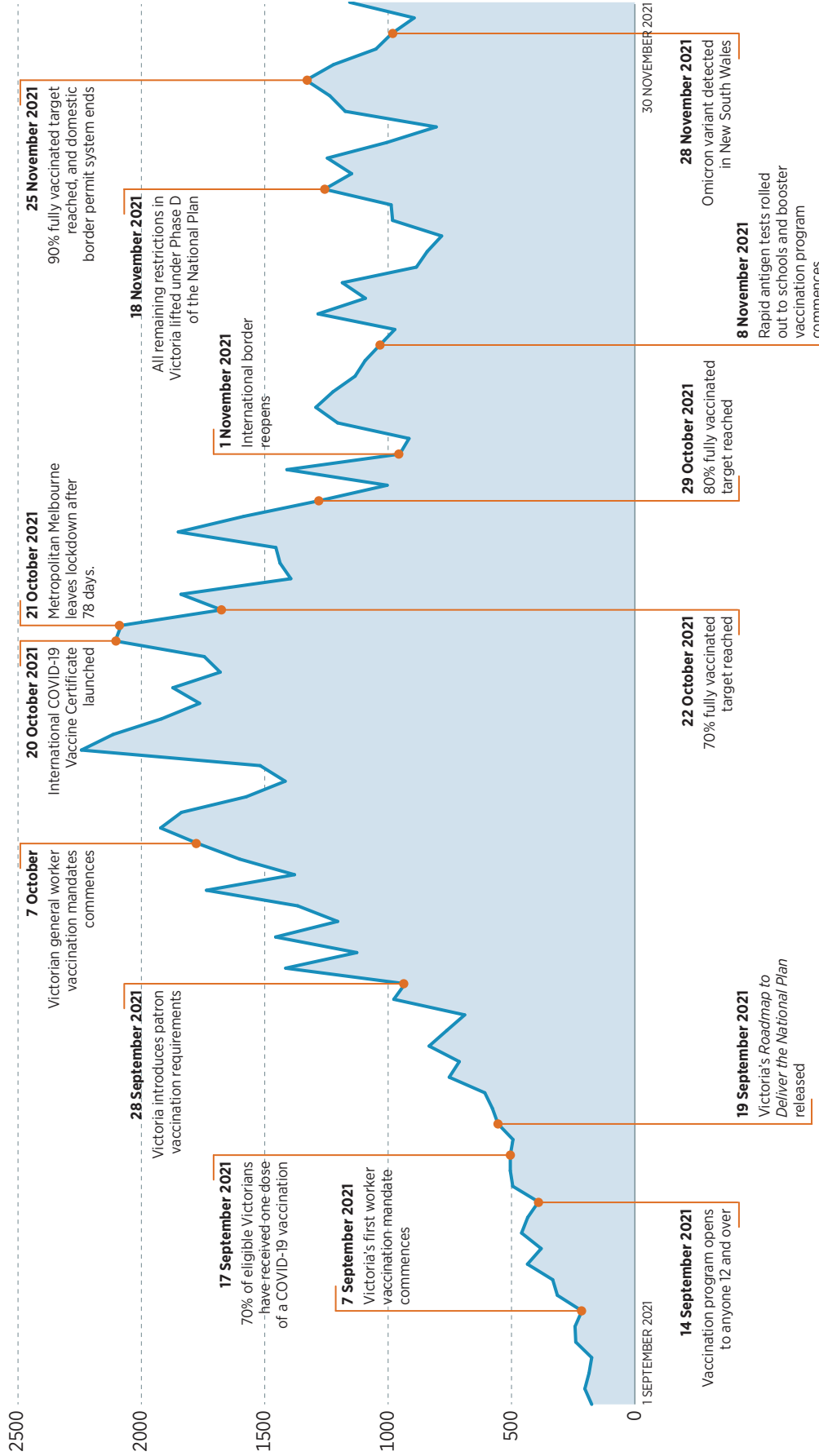
---

63 Aim of the COVID-zero strategy was to use targeted public health measures, particularly lockdowns, to eradicate COVID-19 cases in Victoria.

64 Romesh Abeysuriya et al., ‘COVID-19 mathematical modelling of the Victoria roadmap 2021’, 18 September 2021, <<https://www.premier.vic.gov.au/sites/default/files/2021-09/210919%20-%20Burnet%20Institute%20-%20Vic%20Roadmap.pdf>> accessed 11 June 2022, p. 1.

65 Nick Sas, ‘Omicron COVID strain takes over in Australia, but experts say Delta is still circulating and boosters are critical’, *ABC News*, 12 January 2022, <<https://www.abc.net.au/news/2022-01-12/omicron-delta-covid-strains-in-australia/100747762>> accessed 7 June 2022.

**Figure 1.6** Victoria's daily COVID-19 case numbers and key events, September to November 2021



Source: Pandemic Declaration Accountability and Oversight Committee.

On 19 September 2021, the Victorian Government released *Victoria's roadmap: delivering the national plan* which outlined the phases for easing restrictions based on reaching vaccination target milestones. In a media statement, the Premier explained that the roadmap was developed:

based on expert modelling from the Burnet Institute and is set against COVID-19 thresholds including hospitalisation rates, and the vaccination targets already set out in the *National Plan to transition Australia's National COVID-19 Response*.

The modelling has helped our public health teams get a picture of what our hospitalisation rates could look like while cases are still rising and develop trigger points to indicate if the system is becoming overstretched – allowing time to implement further health measures and protect it from becoming overwhelmed.<sup>66</sup>

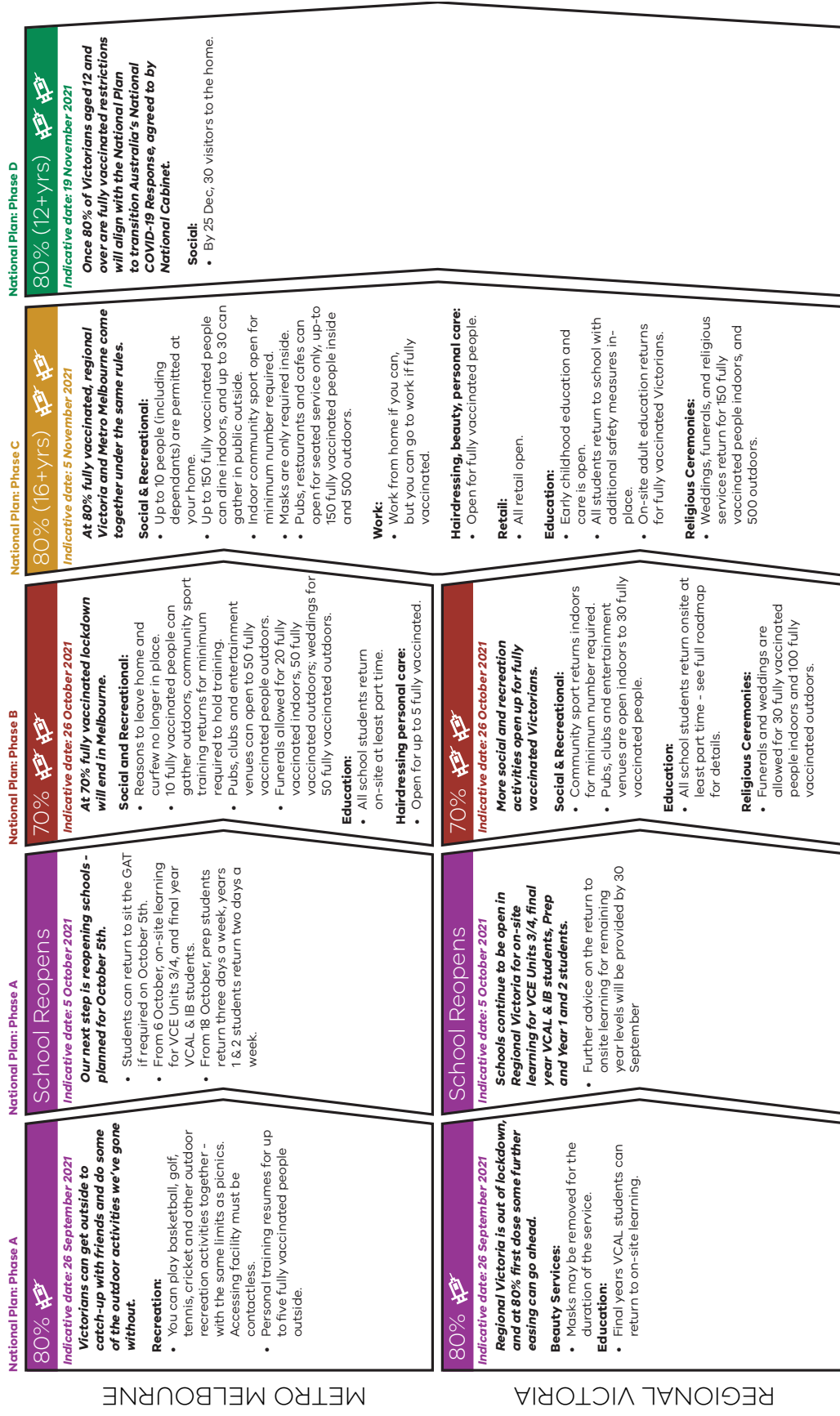
Figure 1.7 below shows the Victorian Government's roadmap. Under the roadmap, milestone dates for easing restrictions were indicative and changed depending on when vaccination milestones were reached, and was also subject to public health advice. For example, Phase B of the roadmap was brought forward to 21 October 2021 due to meeting the 70% fully vaccinated target earlier than predicted.<sup>67</sup>

---

<sup>66</sup> Premier of Victoria, *Victoria's Roadmap: Delivering The National Plan*, media release, Victorian Government, Melbourne, 19 September 2021.

<sup>67</sup> Premier of Victoria, *Victorians' Hard Work Means Hitting Target Ahead Of Time*, media release, Victorian Government, Melbourne, 17 October 2021.

Figure 1.7 Victoria's roadmap: delivering the national plan



Source: Victorian Government, Victoria's Roadmap: Delivering the National Plan, Melbourne, 2021.

On 17 September 2021, National Cabinet agreed to require residential aged care workers to receive a first dose of COVID-19 vaccination as a mandatory condition of employment. On 10 February 2022, National Cabinet endorsed a recommendation to mandate vaccination booster requirements for workers in residential aged care facilities.<sup>68</sup>

To support the Victorian Government's vaccination targets, mandatory vaccination requirements for workers were implemented through Chief Health Officer directions. On 7 October 2021, the COVID-19 Mandatory Vaccination (Workers) Direction (No. 1) commenced. This established a vaccination mandate for general workers.<sup>69</sup> Prior to this, Victoria's first mandate was issued on 7 September 2021 when vaccination requirements were introduced for residential aged care facility workers.<sup>70</sup> At the time this report was adopted, COVID-19 vaccination worker mandates remained in place for certain industries such as emergency workers.

Along with worker requirements, the Victorian Government also implemented vaccination requirements for patrons attending hospitality and entertainment venues. These were first introduced on 28 September 2021 under the COVID-19 Vaccinated Activities Directions (no. 1). The directions required specified workplaces to collect vaccination information from patrons and prevent entry of people who were not fully vaccinated. Requirements to show proof of vaccination at hospitality or entertainment venues remained in place to varying degrees until 12 April 2022.

Table 1.4 below shows the dates Victoria reached each phase of its roadmap, including number of active cases, hospitalisations, deaths and vaccination rates.

**Table 1.4** Victoria's roadmap milestones (actual)

Phase	Date reached	Active COVID-19 cases [Aus]	Hospitalisations [Aus]	Accumulative COVID-related deaths [Aus]	Fully vaccinated rates [Aus]
A <sup>a</sup>	28 September 2021	9,261 [20,289]	375 [1,551]	849 [1,256]	49.8% [54.2%]
B	21 October 2021	22,889 [28,577]	779 [1,343]	1,005 [1,590]	71.8% [71.7%]
C	29 October 2021	23,730 [27,944]	738 [1,126]	1,100 [1,708]	79.7% [76.8%]
D	18 November 2021	13,814 [16,915]	337 [574]	1,260 [1,922]	88.8% [84.6%]

a. Phase A had a vaccination target of 80% of the eligible population receiving a *single* dose of a COVID-19 vaccination.

Source: Pandemic Declaration Accountability and Oversight Committee. Adapted from various sources.

<sup>68</sup> Department of Health and Aged Care, 'Mandatory COVID-19 vaccination in aged care', 30 June 2022, <<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/information-for-aged-care-providers-workers-and-residents-about-covid-19-vaccines/mandatory-covid-19-vaccination-in-aged-care>> accessed 11 July 2022.

<sup>69</sup> COVID-19 Mandatory Vaccination (Workers) Directions (No. 1).

<sup>70</sup> COVID-19 Mandatory Vaccination Directions (No. 1).



## 1.2.6 Omicron wave and the establishment of the pandemic management framework

The COVID-19 Omicron strain was first detected in New South Wales in November 2021. The strain was more infectious than Delta but ‘resulted in less severe clinical outcomes’.<sup>71</sup> It also caused significant spikes in COVID-19 cases throughout all Australian jurisdictions.

In Victoria, Omicron contributed to the State reaching its peak daily COVID-19 cases of all time on 7 January 2022 (current at the time this report was adopted). On this day, Victoria recorded 28,837 new COVID-19 cases.<sup>72</sup>

Prior to the peak of the Omicron wave, the Victorian Government made significant changes to its management of the pandemic. This was through a new pandemic management framework under the *Public Health and Wellbeing Amendment (Pandemic Management) Act 2021*. This was established under a new Part 8A of the Public Health and Wellbeing Act.

Changes to the Victorian Government’s pandemic management were necessary because the State of Emergency declaration could not be extended past December 2021. This was due to statutory limits in the Public Health and Wellbeing Act.<sup>73</sup> However, the pandemic continued as a threat to public health.

The introduction of pandemic-specific legislation also recognised calls for greater accountability and to improve parliamentary oversight over public health measures. In his second reading speech, the Minister for Health described the new pandemic management framework as the ‘crucial next step in the evolution of [the Victorian Government’s] COVID-19 response’.<sup>74</sup> He stated:

It will provide our State with a contemporary, fit-for-purpose regulatory scheme with the right powers and checks and balances to protect our community from the dangers posed by pandemic diseases, while recognising and upholding the human rights, accountability and proportionality imperatives that are so important to our democracy.<sup>75</sup>

Under the new framework, the Premier may make a pandemic declaration if satisfied that there is a serious risk to public health arising from a pandemic disease or a disease of pandemic potential. Public health measures are now implemented under pandemic orders issued by the Minister for Health rather than Chief Health Officer directions under emergency powers.

<sup>71</sup> Professor Jodie McVernon, public hearing, Melbourne, 16 June 2021, *Transcript of evidence*, p. 19.

<sup>72</sup> Victorian Government, *Victorian COVID-19 data*.

<sup>73</sup> Section 198(7)(c), which was repealed on 16 December 2021 on introduction of the pandemic management framework laws.

<sup>74</sup> Victoria, Legislative Assembly, 27 October 2021, *Parliamentary debates*, p. 4241.

<sup>75</sup> *Ibid.*

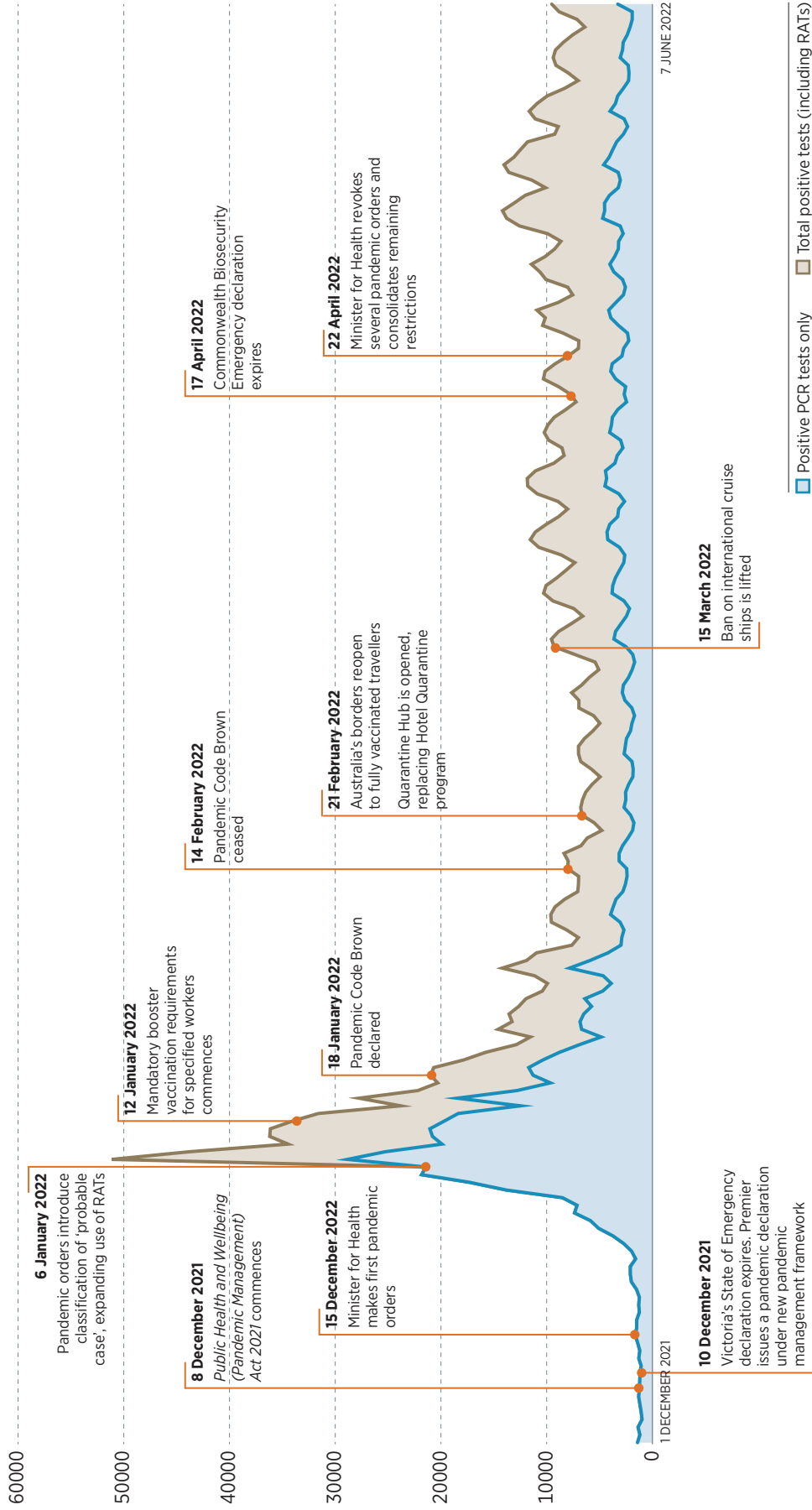
1

On the introduction of the new framework, the COVID-19 State of Emergency declaration expired on 15 December 2021. Upon the expiration, all existing Chief Health Officer directions made under the declaration also expired.

A detailed overview of the new framework, including this Committee's role, is provided in Chapter 2.

Figure 1.8 below shows the COVID-19 case numbers and key developments in the Victorian Government's COVID-19 response between December 2021 and 7 June 2022.

**Figure 1.8** Victoria's daily COVID-19 case numbers and key events, 1 December 2021 to 7 June 2022



Source: Pandemic Declaration Accountability and Oversight Committee.

The shift to the new pandemic management framework coincided with Victoria's largest spike in COVID-19 cases. Between 3 and 19 January 2022, Victoria frequently recorded daily COVID-19 cases exceeding 10,000.<sup>76</sup> The increase in COVID-19 infections was accompanied by increases in hospitalisations and COVID-19-related deaths.

The growing strain on the State's healthcare system led the Victorian Government to declare a 'Code Brown' emergency across all metropolitan and major regional hospitals.<sup>77</sup> The Pandemic Code Brown began on 18 January 2022 and remained in place until 14 February 2022.<sup>78</sup>

By the end of January 2022, COVID-19 case numbers began to decline in Victoria and nationally. On 31 January 2022 Victoria recorded 9,922 new cases, 873 hospitalisations and 1,995 total deaths related to COVID-19.<sup>79</sup> Nationally, 32,340 new cases, 4,947 hospitalisations and 3,758 total deaths were recorded.<sup>80</sup>

Vaccination rates were very high both in Victoria and nationally. In Victoria, 93% of eligible Victorians had received their second dose of a COVID-19 vaccination, compared to 93.4% nationally.<sup>81</sup>

In response to declining case numbers and high vaccination rates, some state and national public health measures were eased. For example, Australia reopened its international borders to fully vaccinated travellers on 21 February 2022.<sup>82</sup>

Chapter 2 discusses the Victorian Government's response to COVID-19 following the introduction of the new pandemic management framework in more detail.

### 1.3 Other reports on the COVID-19 pandemic and public health response

The following inquiries and reports also examined the COVID-19 pandemic, including the responses by Victorian and Australian governments:

- [Inquiry into the Victorian Government's response to the COVID-19 pandemic](#).<sup>83</sup> Information available includes public submissions to the inquiry, transcripts from public hearings, an interim report and final report.

<sup>76</sup> Victorian Government, *Victorian COVID-19 data*.

<sup>77</sup> Regional hospitals where Code Brown was implemented were: Barwon Health, Grampians Health, Bendigo Health, Goulburn Valley Health, Albury Wodonga Health and Latrobe Regional Hospital. Premier of Victoria, *Pandemic Code Brown To Support Hospitals*, media release, Victorian Government, Canberra, 18 January 2022.

<sup>78</sup> Premier of Victoria, *Vaccinators Reporting For Duty*, media release, Victorian Government, Melbourne, 11 February 2022.

<sup>79</sup> Victorian Government, *Victorian COVID-19 data*.

<sup>80</sup> Ibid.

<sup>81</sup> Department of Health (Australian Government), *COVID-19 vaccine rollout update - 1 February 2022, 2022*, <<https://www.health.gov.au/resources/publications/covid-19-vaccine-rollout-update-1-february-2022>> accessed 7 June 2022.

<sup>82</sup> Hon Dan Tehan MP, *Australia welcomes back international tourists*, media release, Australian Government, Canberra, 21 February 2022.

<sup>83</sup> <<https://www.parliament.vic.gov.au/paec/inquiry/1000>>

- [Inquiry into the Victorian Government’s COVID-19 contact tracing system and testing regime](#)<sup>84</sup>  
Information available includes public submissions to the inquiry, transcripts from public hearings, and final report.
- [Inquiry into the impact of the COVID-19 pandemic on the tourism and events sectors](#)<sup>85</sup>  
Information available includes public submissions to the inquiry, transcripts from public hearings, and final report.
- [Investigation into the detention and treatment of public housing residents arising from a COVID-19 ‘hard lockdown’ in July 2020, Victorian Ombudsman](#)<sup>86</sup>  
Information available includes a final report and a summary report.
- [Investigation into decision-making under the Victorian Border Crossing Permit Directions, Victorian Ombudsman](#)<sup>87</sup>  
Information available includes a final report and a summary report.
- [COVID-19 Hotel Quarantine Inquiry](#)<sup>88</sup>  
Information available includes submissions, exhibits, transcripts from hearings, orders and rulings made by the Board of Inquiry, the inquiry’s practices and procedures, and an interim report and final report.
- [National Contact Tracing review](#)<sup>89</sup>  
A report is available which reviews COVID-19 contact tracing and outbreak management systems and processes in all states and territories.
- [National Hotel Quarantine review](#)<sup>90</sup>  
A report is available which reviews hotel quarantine arrangements in all jurisdictions, except Victoria. Victoria’s system was not reviewed because there was a separate dedicated inquiry.

---

84 <<https://www.parliament.vic.gov.au/lsc-lc/inquiries/inquiry/1005>>

85 <<https://www.parliament.vic.gov.au/eic-lc/contact/1010-eic-lc/inquiry-into-the-impact-of-the-covid-19-pandemic-on-the-tourism-and-events-sectors>>

86 <<https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-detention-and-treatment-of-public-housing-residents-arising-from-a-covid-19-hard-lockdown-in-july-2020>>

87 <<https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-decision-making-under-the-victorian-border-crossing-permit-directions>>

88 <<https://www.quarantineinquiry.vic.gov.au>>

89 <<https://www.health.gov.au/resources/publications/national-contact-tracing-review>>

90 <<https://www.health.gov.au/sites/default/files/documents/2020/10/national-review-of-hotel-quarantine.pdf>>



# 2 Report summary

## 2.1 Background

On 15 December 2021, Victoria's pandemic management framework established under Part 8A of the *Public Health and Wellbeing Act 2008* came into effect. The new framework replaced the COVID-19 pandemic State of Emergency declaration and introduced significant changes to how the Victorian Government managed the COVID-19 pandemic.

The expiration of the Statement of Emergency declaration meant that all existing Chief Health Officer directions expired. Existing restrictions and requirements were reissued under the pandemic management framework as pandemic orders issued by the Minister for Health.

The pandemic management framework allowed the Victorian Government to introduce public health measures specifically for managing a pandemic outbreak or disease of pandemic potential. Key provisions and accountability measures of the pandemic management framework include:

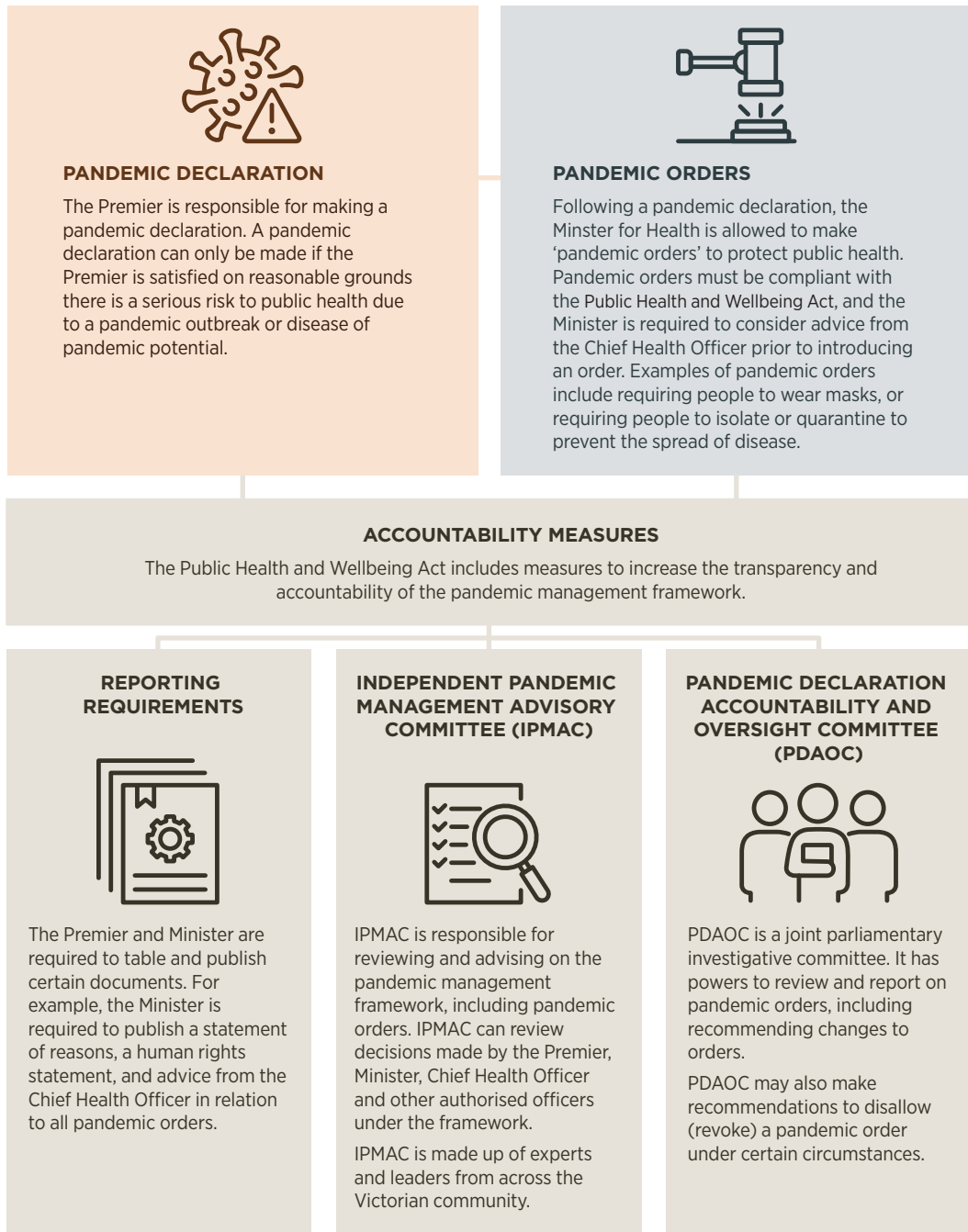
- allowing the Premier to make a pandemic declaration to manage a pandemic outbreak or disease of pandemic potential
- upon a pandemic declaration coming into force, allowing the Minister for Health to issue pandemic orders to protect public health
- reporting requirements for the pandemic declaration and orders, including that the Minister for Health must publish a Statement of Reasons, Human Rights Statement and any Chief Health Officer advice received in relation to a pandemic order
- establishing the Pandemic Declaration Accountability and Oversight Committee to review and report on pandemic orders
- establishing the Independent Pandemic Management Advisory Committee to provide independent advice on the framework, including to the Minister for Health on pandemic orders.<sup>1</sup>

Figure 2.1 below provides an overview Victoria's pandemic management framework.

---

<sup>1</sup> *Public Health and Wellbeing Act 2008* (Vic) pt 8A.

Figure 2.1 Victoria’s pandemic management framework



Source: Pandemic Declaration Accountability and Oversight Committee.

The Pandemic (Quarantine, Isolation and Testing) Order 2021 (No. 1) replaced the Diagnosed Persons and Close Contacts Directions (No. 35). Consistent with the first variations of other pandemic orders, Order No. 1 retained many of the provisions of the previous Chief Health Officer directions.

At the time this report was adopted, there have been nine variations of the Orders since Order No. 1 came into effect on 15 December 2021. These are summarised in detail in Chapter 3.



The Quarantine, Isolation and Testing Orders set out the requirements for:

- people who tested positive to COVID-19 to self-isolate or self-quarantine for a specified period
- notification requirements of positive results to the Department of Health, an employer and operators of an education facility (if relevant)
- persons who tested positive to assist with contact tracing by notifying close and other specified contacts of their diagnosis
- people who are a close contact or had other specified contact with a positive case to get tested for COVID-19
- close contacts or other specified contacts to self-quarantine for a specified period or until they receive a negative COVID-19 test result
- exemptions to testing, quarantining or isolating, including reasons for leaving a quarantine or isolation premises.

## 2.2 Summary of review

The Committee resolved to review the Pandemic (Quarantine, Isolation and Testing) Orders due to the significant burden the requirements placed on individuals, particularly quarantine and isolation requirements.

When Order No. 1 was introduced on 15 December 2021, Victoria was experiencing an outbreak of the Delta variant of COVID-19. There was also increasing public health concern about the spread of the Omicron variant.<sup>2</sup> In his Statement of Reasons for Order No. 1, the Minister noted:

- that despite high vaccination rates in Victoria and nationally, other measures were ‘still required’ to control the spread of COVID-19, especially given that ‘high levels of community transmission’ were still evident
- more information about the Omicron variant was needed, especially on the potential for waning vaccine effectiveness and the need for booster vaccinations
- that there was a risk of a significant impact on vulnerable groups—such older people or people with chronic medical conditions—if no pandemic orders were introduced.<sup>3</sup>

The Committee undertook its review to ensure that the Orders were compliant with the Public Health and Wellbeing Act and were necessary and proportionate in the circumstances. The Committee also reviewed whether the Minister had adequately identified and justified all potential limitations of human rights under the *Charter of Human Rights and Responsibilities Act 2006*.

<sup>2</sup> Minister for Health, *Statements of Reasons: Pandemic Orders made 15 December 2021*, 15 December 2021, para 29.

<sup>3</sup> *Ibid.*, para 37–48.

The Committee found that the Orders were compliant with the requirements under the Public Health and Wellbeing Act, and are compatible with the human rights under the Charter of Human Rights and Responsibilities Act.

In addition, the Committee sought legal advice on the Minister's Human Rights Statements on the Orders. From this advice, the Committee identified additional issues and wrote to the Minister to seek further clarification. The Minister's response is provided in full in Appendix B.

The Committee was assisted in its review by evidence received at public hearings from various stakeholders about the impact and implementation of the Orders. A list of hearings held to date at the time the report was adopted is provided in Appendix A.

During the Committee's review, some stakeholders highlighted general issues relating to the implementation of the Orders. They told the Committee that during late December 2021 and January 2022:

- there was a shortage of supply for rapid antigen tests, including to Victorian schools
- during the peak of the Omicron wave, Victoria's PCR testing system reached capacity, which caused delays in processing tests and resulted in nearly 100,000 tests being discarded
- PCR testing laboratories faced additional challenges which compounded the processing delays, including:
  - additional testing requirements for interstate travel and surveillance testing
  - staff absences and furloughs due to self-isolation and self-quarantine requirements.

In response to the issues identified, the Committee has made the following Findings and Recommendations, as listed in Box 2.1 below.

**BOX 2.1: Findings and Recommendations**

**Finding 1:** The Pandemic (Quarantine, Isolation and Testing) Orders are compliant with the requirements of section 165AS(1)(a) and (b) of the *Public Health and Wellbeing Act 2008*.

**Finding 2:** The Minister for Health did not provide a clear explanation in the Human Rights Statements as to why notification requirements under the Pandemic (Quarantine, Isolation and Testing) Orders did not arbitrarily restrict the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*.

**Finding 3:** In additional information provided to the Committee, the Minister for Health provided an explanation of how the Pandemic (Quarantine, Isolation and Testing) Orders do not limit the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*. In considering this information along with the Orders' Human Rights Statements, the Committee is satisfied that the Orders are not incompatible with rights under the Act.

**Finding 4:** Requirements for operators of education facilities to notify families if a diagnosed or probable case attended the facility during their infectious period may lead to unintentionally identifying that person.

**Finding 5:** Given the experience of the Omicron surge, the Federal and state governments working together should ensure that in the event of a future pandemic or public health crisis that there are suitable contingencies for such surges. This includes investigating alternative testing methods early on.

**Recommendation 1:** That the Minister for Health publishes as an addendum to the Human Rights Statement why the Pandemic (Quarantine, Isolation and Testing) Orders do not limit the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*, as the Committee has done in Appendix B of this report. Any subsequent extension or variation of the orders should include this explanation in the Human Rights Statement.

**Recommendation 2:** That the Victorian Government continues supplying two free rapid antigen tests per week to Victorians enrolled in primary and secondary schools as long as testing requirements are still in place.

## 2.3 Extent and limitations of the Committee's review

The specific functions of the Committee are detailed in s 165AS of the *Public Health and Wellbeing Act 2008* and s 15 of the *Parliamentary Committees Act 2003*. Figure 2.2 below provides an overview of the Committee's functions.



The matters above that the Committee may review relate specifically to the content of pandemic orders. However, the Committee still has general evidence gathering and reporting powers of a parliamentary committee. This extends to reporting on the implementation of the orders and their impacts on the Victorian public.

Under the Public Health and Wellbeing Act the Minister must publish and table a Statement of Reasons, a Human Rights Statement and advice received from the Chief Health Officer whenever an order is made or altered.<sup>6</sup> The Committee has considered these documents in its review and they have informed the report's findings and recommendations.

These documents are available from the Pandemic Order Register at: <https://www.health.vic.gov.au/covid-19/pandemic-order-register>.

The Committee's review powers are not retrospective. As a result, it cannot review directions of the Chief Health Officer made under the COVID-19 State of Emergency declaration made between 16 March 2020 and 15 December 2021. This includes any restrictions made during this period, including lockdowns and work from home directives.

The Committee's review powers also do not allow it to report on emergency actions taken by the Government made under other legislation or government policy. This includes the statewide pandemic code brown declared under State Health Emergency Response Arrangements<sup>7</sup> and the decision to pause elective surgery.<sup>8</sup>

The Committee acknowledges the impact these have had on the healthcare workforce and the Victorian public. However it makes no further findings otherwise on their implementation or effectiveness.

The Committee has included discussions of the Chief Health Officer's directions and other relevant restrictions relating to the pandemic for context where appropriate. This is important as the effects of the COVID-19 pandemic were well established when the pandemic management framework came into effect, and cannot be viewed in isolation.

---

6 Ibid., s 165AP.

7 Made on 19 January 2022.

8 From 6 January to 21 February 2022.



# 3

## Overview of the Pandemic (Quarantine, Isolation and Testing) Orders

### 3.1 Overview of Orders

The Committee reviewed all variations of the Quarantine, Isolation and Testing Orders to determine compliance with requirements under the *Public Health and Wellbeing Act 2008*.

The Pandemic (Quarantine, Isolation and Testing) Order 2021 No. 1 came into effect on 15 December 2021. This replaced the Diagnosed Persons and Close Contacts Directions (No. 35) made by the Chief Health Officer under State of Emergency provisions of the Public Health and Wellbeing Act.<sup>1</sup>

The objective of the Orders is to limit the spread of COVID-19 by requiring people to:

- self-isolate if they are diagnosed with COVID-19
- self-quarantine or undertake testing if they are determined to be a close contact of a person diagnosed with COVID-19.<sup>2</sup>

‘Self-isolation’ and ‘quarantine’ differ from each other based on whether the person has been diagnosed with a disease versus those who are exposed. Box 3.1 below provides public health definitions of isolation versus quarantine.

#### BOX 3.1: Quarantine versus isolation

**Isolation** is a public health practice which separates people *diagnosed* with a contagious disease from those who are not sick.

**Quarantine** is a public health practice which restricts the movement of people who were *exposed* to a contagious disease to see if they become infected.

Source: Government of South Australia, *Stop the Spread, Stay Strong: What is Isolation? What is Quarantine?*, <[https://www.sahealth.sa.gov.au/wps/wcm/connect/e685b1e0-1523-46a7-bccc-b0849fb83238/PostCard\\_8\\_WhatIsIsolationWhatIsQuarantine.pdf](https://www.sahealth.sa.gov.au/wps/wcm/connect/e685b1e0-1523-46a7-bccc-b0849fb83238/PostCard_8_WhatIsIsolationWhatIsQuarantine.pdf)> accessed 16 May 2022.

1 Prior to passing *Public Health and Wellbeing Amendment (Pandemic Management) Act 2021*, Chief Health Officer Directions were used to enforce public health measures in response to the pandemic. From 15 December 2021, pandemic orders were used to enforce COVID-19 related measures.

2 Department of Health, *Quarantine, Isolation and Testing Order, 2022*, <<https://www.health.vic.gov.au/covid-19/quarantine-isolation-and-testing-order>> accessed 28 April 2022.

Based on the categories of exposure, the Orders established the framework for testing for COVID-19, self-isolation for positive cases and self-quarantining for close or other contacts. The categories of exposure are discussed in detail in Section 3.2 below.

At the time this report was adopted, nine versions of the Quarantine, Isolation and Testing Orders were issued. On 22 April 2022, the Minister for Health revoked several pandemic orders and consolidated restrictions into three pandemic orders. As part of this, the Pandemic (Victorian Border Crossing) Order 2022 (No. 7) was revoked, and some requirements were consolidated into Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 8).<sup>3</sup>

Table 3.1 below provides an overview of each variation of the orders.

**Table 3.1 Summary of the Pandemic (Quarantine, Isolation and Testing) Orders**

Order (No.)	Start date	Revocation/ expiry date	Overview
Quarantine, Isolation and Testing Order (No. 1)	15 December 2021	30 December 2021	<ul style="list-style-type: none"> <li>established length of isolation and quarantine periods, testing requirements and exemptions</li> <li>created specific self-quarantine, isolation and testing requirements depending on the level of exposure</li> </ul>
Quarantine, Isolation and Testing Order (No. 2)	30 December 2021	6 January 2022	<ul style="list-style-type: none"> <li>changed requirements for a diagnosed person to notify others of their diagnosis and infectious period</li> <li>changed testing requirements for close contacts, exposed persons and social contacts</li> <li>outlined circumstances in which a RAT could be undertaken</li> <li>asymptomatic exposed persons and social contacts can take a RAT rather than PCR test</li> </ul>
Quarantine, Isolation and Testing Order (No. 3)	6 January 2022	12 January 2022	<ul style="list-style-type: none"> <li>introduced classification of 'probable case' for people who return a positive RAT</li> <li>established requirements for probable cases to self-report results to the Department of Health and self-isolate</li> </ul>
Quarantine, Isolation and Testing Order (No. 4)	12 January 2022	4 February 2022	<ul style="list-style-type: none"> <li>implemented minor changes in determining when self-isolation for probable cases can conclude</li> </ul>

<sup>3</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 8) cl 4(2).*



Order (No.)	Start date	Revocation/ expiry date	Overview
Quarantine, Isolation and Testing Order (No. 5)	4 February 2022	18 March 2022	<ul style="list-style-type: none"> <li>diagnosed and probable cases no longer considered as a close contact, exposed person or social contact for 30 days after their isolation period</li> <li>changed requirements for self-isolation, such as removing the requirement for a person to notify the Department of Health of other people residing at their isolation address</li> <li>further amended conditions for which a probable case's self-isolation could conclude</li> <li>removed the requirement for education facilities to record negative COVID-19 results</li> </ul>
Quarantine, Isolation and Testing Order (No. 6)	18 March 2022	12 April 2022	<ul style="list-style-type: none"> <li>clarified that a positive case must self-isolate for 7 days from confirmation of test result</li> <li>authorised a Director or Medical Lead of a designated Local Public Health Unit to determine close contacts, in addition to the Chief Health Officer and deputies</li> <li>removed requirement for education facilities to collect and store all workers identified as exposed persons</li> <li>allowed authorised persons to vary period of an individual's self-isolation</li> <li>changed the definition of 'recent confirmed cases' to up to 8 weeks from time self-isolation concluded</li> </ul>
Quarantine, Isolation and Testing Order (No. 7)	12 April 2022	22 April 2022	<ul style="list-style-type: none"> <li>none (extension of Order No. 6)</li> </ul>
Quarantine, Isolation and Testing Order (No. 8)	22 April 2022	24 June 2022	<ul style="list-style-type: none"> <li>introduced the category of 'risk individual' which included social contacts, symptomatic persons in the community and international arrivals</li> <li>shifted requirement to notify workplace contacts to the person who tested positive instead of their employer</li> <li>close contacts can choose between self-quarantine or to takes RATs for 5 days (surveillance testing)</li> </ul>
Quarantine, Isolation and Testing Order (No. 9)	24 June 2022	12 July 2022	<ul style="list-style-type: none"> <li>specified that a person may leave a quarantine or isolation premises: <ul style="list-style-type: none"> <li>if essential, to transport someone they live with to work, school or a healthcare appointment</li> <li>to escape the risk of harm, including risk of family violence</li> <li>if they are relocating to the Victorian Quarantine Hub or a Coronavirus Isolation and Recovery Facility</li> </ul> </li> </ul>

Source: Pandemic Declaration Accountability and Oversight Committee. Information compiled from Department of Health, *Pandemic Order Register*, <<https://www.health.vic.gov.au/covid-19/pandemic-order-register>> accessed 24 June 2022.

## 3.2 Key changes in the requirements of the Pandemic (Quarantine, Isolation and Testing) Orders

There have been considerable changes to testing, quarantine and isolation requirements under the nine versions of the Orders. This included:

- testing requirements for those exposed to COVID-19, including the introduction of rapid antigen tests as an alternative to PCR testing
- self-isolation and self-quarantine notification requirements and periods, including moving to self-reporting positive cases
- reasons to leave self-isolation or self-quarantine.

The Sections below highlight the key changes which have been introduced over this time.

### 3.2.1 Testing requirements

The Orders set out requirements for people to undertake testing if they are experiencing COVID-19 symptoms or are at risk due to exposure to a positive case. The Minister for Health's Statement of Reasons for Order No. 1 noted that implementing testing requirements was necessary to ensure potential cases are identified and that further transmission is minimised.<sup>4</sup> It also stated they are an 'important safeguard for early detection of diagnosed persons to prevent large scale outbreaks'.<sup>5</sup>

The Orders set out requirements for testing based on a person's level of exposure and risk to COVID-19. For example, the Orders distinguished between a close contact (e.g. a person living with a positive case) and social contacts (e.g. a work colleague or student).

The categories of exposure determine the type of testing a person must undertake, whether surveillance testing<sup>6</sup> is required, and whether the requirements are mandatory or strongly recommended under the Orders. The definitions of these categories changed across the different versions of the Orders.

Box 3.2 below outlines all the categories of person by exposure to COVID-19 that have been defined under the Orders.

<sup>4</sup> Minister for Health, *Statements of Reasons: Pandemic Orders made 15 December 2021*, 15 December 2021, para 93.1.

<sup>5</sup> Minister for Health, *Statement of Reasons: Pandemic Orders made 22 April 2022*, 22 April 2022, para 124.

<sup>6</sup> Under the Orders, surveillance testing involves regularly testing for COVID-19 over a specified period of time.

### BOX 3.2: Categories of exposure under the Pandemic (Quarantine, Isolation and Testing) Orders

- **Diagnosed person:** a person who has tested positive to COVID-19 from a PCR test.
- **Probable case:** a person who has tested positive to COVID-19 from a RAT.
- **Close contact:** a person who spent a specified amount of time (e.g. more than 4 hours) in an indoor space with a diagnosed person or probable case of COVID-19.
- **Risk individuals:** established under Order No. 8 which consolidated other categories of persons. Refers to a 'social contact', 'symptomatic person in the community' or an international arrival (a person who has been in another country 7 days prior to arriving in Victoria).
- **Exposed person (revoked under Order No. 8):** a person who attended a work premises and spent a specified amount of time (e.g. 2 hours in an indoor space) with a diagnosed or probable case.
- **Social contact (reclassified under Order No. 8):** a person who is not a close contact but has spent a specified amount of time (e.g. 15 minutes of face-to-face contact) with a diagnosed or probable case.
- **Symptomatic person in the community (reclassified under Order No. 8):** a person who is not a close or social contact and is experiencing COVID-19 symptoms.
- **Recent confirmed case:** a person who may ordinarily be considered a close contact or other category of persons under the Order, except that:
  - they are currently within their infectious period
  - their infectious period ended within a specified period of time (e.g. 12 weeks prior).

Note: The definitions in this Box are taken from the most recent pandemic order in which the category appeared.

Source: Department of Health, *Quarantine, Isolation and Testing Order*, 29 April 2022, <<https://www.health.vic.gov.au/covid-19/quarantine-isolation-and-testing-order>> accessed 2 May 2022.

As noted above, testing requirements are divided between mandatory and recommended testing. Mandatory and recommended testing requirements are outlined in the Victorian Government's *Testing requirements for contacts and exposed persons* policy. The Orders specify that people subject to testing requirements 'must comply with the relevant requirements' of the policy.<sup>7</sup> At the time this report was adopted, five versions of the policy have been issued.

Table 3.2 below shows the categories of exposure which were mandatory versus recommended to undertake COVID-19 testing, across Orders Nos. 1 to 9.

<sup>7</sup> Department of Health, *Quarantine, Isolation and Testing Order*.

**Table 3.2 COVID-19 testing requirements in the Pandemic (Quarantine, Isolation and Testing) Orders (Nos. 1 to 9)**

Order Number	Mandatory testing	Recommended testing
Order Nos. 1 and 2	<ul style="list-style-type: none"> <li>• Close contact (symptomatic and asymptomatic): PCR</li> <li>• Exposed person (symptomatic): PCR</li> <li>• Social contact (symptomatic): PCR</li> </ul>	<ul style="list-style-type: none"> <li>• Exposed person (asymptomatic): daily RAT for 5 days</li> <li>• Social contact (asymptomatic): daily RAT for 5 days</li> <li>• Symptomatic person in the community: PCR</li> </ul>
Order Nos. 3 to 7	<ul style="list-style-type: none"> <li>• Close contact (symptomatic and asymptomatic): RAT</li> <li>• Exposed person (symptomatic): PCR or RAT</li> <li>• Social contact (symptomatic): PCR or RAT</li> </ul>	<ul style="list-style-type: none"> <li>• Exposed person (asymptomatic): daily RAT for 5 days</li> <li>• Social contact (asymptomatic): daily RAT for 5 days</li> <li>• Symptomatic person in the community: PCR or RAT</li> <li>• Asymptomatic person in the community who has tested positive on a RAT must confirm results with PCR</li> </ul>
Order Nos. 8 and 9	<ul style="list-style-type: none"> <li>• Close contact (symptomatic): PCR</li> <li>• Close contact (asymptomatic): PCR or surveillance testing (daily RAT for 5 days)</li> <li>• International arrival (symptomatic): PCR or RAT</li> <li>• Social contact (symptomatic): PCR or RAT</li> </ul>	<ul style="list-style-type: none"> <li>• International arrival (asymptomatic): any test within 24 hrs of arrival</li> <li>• Social contact (asymptomatic): daily RAT for 5 days</li> <li>• Symptomatic person in the community: PCR or RAT</li> <li>• Asymptomatic person in the community who has tested positive on a RAT must confirm results with PCR</li> </ul>

Source: Department of Health, *Coronavirus (COVID-19): Testing requirements for contacts and exposed persons*, versions 1 to 5.

The Statement of Reasons for Order No. 1 noted mandatory and recommended testing requirements recognised that the risk of COVID-19 varied based on the level of a person's exposure. According to the Minister's statement, stronger testing requirements for close contacts or symptomatic people acknowledged the 'high transmission risk' for this group. This required a greater need to ensure chains of transmission are identified and disrupted.<sup>8</sup>

In contrast, exposed or social contacts—particularly those who are asymptomatic—were recommended to undertake testing as a 'precautionary measure to halt potential chains of transmission'.<sup>9</sup>

Despite the *Testing requirements for contacts and exposed persons* policy establishing a framework for mandatory and recommended testing, the Minister for Health noted that the Orders do not impose an obligation to be tested.<sup>10</sup> However, the Minister acknowledged that a person may feel 'compelled' to undertake testing. This potentially limits a person's right under s 10(c) of the *Charter of Human Rights and Responsibilities*

<sup>8</sup> Minister for Health, *Statements of Reasons: Pandemic Orders made 15 December 2021*, para 94.

<sup>9</sup> *Ibid.*, para 99.

<sup>10</sup> Minister for Health, *Human Rights Statement*, 15 December 2021, para 223.

*Act 2006*, against being subjected to medical or scientific experimentation or treatment without full, free and informed consent.<sup>11</sup>

The Minister noted that this was based on a ‘cautious’ interpretation that a PCR or Rapid Antigen Test constitutes medical treatment.<sup>12</sup>

The Orders’ compliance with the Charter of Human Rights and Responsibilities Act is discussed in detail in Chapter 4.

The Orders also established the ‘surveillance testing’ process for close and other high-risk contacts.

Order Nos. 2 to 7 required close contacts to undertake a COVID-19 test on the first and sixth day of their self-quarantine period. They were also recommended to undertake a rapid antigen test on three other days of self-quarantine. An exposed person or social contact without COVID-19 symptoms was strongly recommended to undertake daily rapid antigen testing for five days.<sup>13</sup>

Under Order No. 8 a close contact who is self-quarantining was required to undertake a rapid antigen test on the first or sixth day of their self-quarantine period. Alternatively they could undertake daily rapid antigen tests for five days instead of self-quarantining. A social contact without COVID-19 symptoms was strongly recommended to undertake daily rapid antigen testing for five days.<sup>14</sup>

The Minister’s Statement of Reasons for Order No. 8 explained that the option for close contacts to undertake surveillance testing instead of self-quarantining was introduced to ‘alleviate hardships associated with self-quarantining’.<sup>15</sup> The Minister noted that close contact surveillance testing could still meet the Order’s aim to reduce transmission. He also stated that risk of transmission could be mitigated via regular testing rather than just self-quarantine.<sup>16</sup>

The Minister’s Statement of Reasons highlighted several factors influencing the changes made under Order No. 8:

- Omicron was the dominant variant in Victoria (and globally), with evidence suggesting that the predominant sub-lineage was BA.2.
- Evidence on the implications of BA.2 on individual health, population and the healthcare system—including vaccine effectiveness—was still ‘building’ at the time the Orders were implemented.

<sup>11</sup> Ibid.

<sup>12</sup> Minister for Health, *Human Rights Statement*, 20 June 2022, para 72.

<sup>13</sup> Department of Health, *Testing requirements for contacts and exposed persons*, policy (Version 1.0), 30 December 2021, pp. 3–4.

<sup>14</sup> Department of Health, *Testing requirements*, policy (Version 5.0), 22 April 2022, pp. 3–5.

<sup>15</sup> Minister for Health, *Statement of Reasons: Pandemic Orders made 22 April 2022*, para 56.3.3.

<sup>16</sup> Ibid., para 130.

- Victoria had experienced a decline in case numbers from 9 January 2022, however cases began ‘steadily rising’ again on 15 March 2022.
- As of 21 April 2022, vaccination rates were high in Victoria and nationally.
- Recent changes to pandemic orders recognised the transition of the pandemic response allowing workplaces, industries and the community to make their own decisions based on public health advice.
- There was growing ‘community fatigue’ with public health measures and restrictions and the COVID-19 pandemic more broadly. This could affect people’s compliance with pandemic orders.<sup>17</sup>

### 3.2.2 Isolation periods and notification requirements

People who have tested positive to COVID-19 are required to self-isolate to reduce the risk of further transmission.

The Quarantine, Isolation and Testing Orders set out the requirements for positive cases to self-isolate, including the length of isolation and obligations to notify others of their diagnosis.

Up until 22 April 2022 there were also requirements for international arrivals to quarantine upon arrival in Victoria. These requirements were specified under the Pandemic (Detention) Orders and Pandemic (Victorian Border Crossing) Orders.

Broadly, these orders required international arrivals (including aircrew or maritime service workers) to self-isolate or quarantine upon arrival in Victoria. On 22 April 2022, the Detention Order No. 5 and Victorian Border Crossing Order No. 7 were revoked.<sup>18</sup>

When the Detention Order No. 5 and Victorian Border Crossing Order No. 7 were revoked, testing, isolation and quarantine requirements for international arrivals were incorporated into Quarantine, Isolation and Testing Order No. 8.<sup>19</sup> Under this Order, international arrivals were classified as ‘risk individuals’, which are discussed in detail in Table 3.2 and Box 3.2 above.

Under Order Nos. 1 and 2, a person who received a positive PCR result (referred to as a ‘diagnosed person’) was required to self-quarantine. These Orders did include provisions for people to take a rapid antigen test, however, to confirm a COVID-19 diagnosis they were required to take a PCR test within 24 hours of receiving their initial result.<sup>20</sup>

<sup>17</sup> Ibid.

<sup>18</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022* (No. 8); *Revocation of Pandemic (Detention) Order 2022* (No. 5), 22 April 2022.

<sup>19</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022* (No. 8) cl 27.

<sup>20</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2021* (No. 1) cl 25(23)(b)(i); *Pandemic (Quarantine, Isolation and Testing) Order 2022* (No. 8) sch 1.

Order No. 3 introduced the classification of ‘probable case’ which referred to a person who had received a positive result from a rapid antigen test.<sup>21</sup> This replaced the requirement for a person to confirm their COVID-19 diagnosis with a PCR test if they had tested positive from a rapid antigen test.

The length of self-isolation periods has varied across different Orders. Table 3.3 below outlines the self-isolation periods for each variation of the Orders.

**Table 3.3 Self-isolation periods under the Pandemic (Quarantine, Isolation and Testing) Orders**

Order Number	Self-isolation period
Order No. 1	10 days from undertaking a PCR test
Order No. 2	7 days from undertaking at PCR test
Order Nos. 3 and 4	7 days from receiving a positive result from a RAT or PCR test
Order Nos. 5 to 7	7 days from receiving a positive result from a RAT or PCR test A person could leave self-isolation if they received a negative PCR test result within 48 hours of a positive RAT
Order Nos. 8 and 9	7 days from receiving a positive result from a RAT or PCR test (ending at 12.01 am on the 7th day) A person could leave self-isolation if they received a negative PCR test result within 48 hours of a positive RAT

Source: Department of Health, *Quarantine, Isolation and Testing Order*, 29 April 2022, <<https://www.health.vic.gov.au/covid-19/quarantine-isolation-and-testing-order>> accessed 2 July 2022.

The Orders require diagnosed and probable cases to notify certain people of their diagnosis and provide additional information to the Department.

Notification requirements for people who have tested positive for COVID-19 have remained mostly consistent in each Order. A person who is a diagnosed or probable case is required to:

- notify any other person who lives where they are self-isolating of their COVID-19 diagnosis and that they and have chosen to self-isolate at the premises
- notify the Department of Health of their diagnosis and their self-isolation address
- take reasonable steps to notify their employer or education facility (if they were a student).<sup>22</sup>

Order No. 2 introduced requirements for a positive case to take reasonable steps to notify any close or social contacts of their diagnosis and infectious period.<sup>23</sup>

<sup>21</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022* (No. 8) cl 12(11).

<sup>22</sup> *Pandemic (Quarantine, Isolation and Testing) Orders* (Nos. 1 to 8).

<sup>23</sup> *Pandemic (Quarantine, Isolation and Testing) Orders* (Nos. 2 to 8).

Prior to the commencement of Order No. 5, a positive case was also required to provide the Department of Health the names of people residing at the self-isolation address. The Committee has considered the implications these requirements had on people's right to privacy under the Charter of Human Rights and Responsibilities Act. This issue is discussed in detail in Chapter 4.

Workplace and education facility operators have also been required to notify close and other contacts who may have been exposed through a diagnosed or probable case. These requirements were established under the Pandemic (Workplace) Orders. Notification requirements for workplace or education facility operators is not discussed in detail in this report. However, it has been addressed where relevant to the review of the operation of the Quarantine, Isolation and Testing Orders.

### 3.2.3 Quarantine requirements

Under the Orders, some people are also required to self-quarantine if they fall within the definitions of specified categories of exposure, such as close contacts. The Chief Health Officer's advice for Order No. 1 noted that requiring close or other high-risk contacts to self-quarantine was necessary to prevent further infection. Self-quarantine periods have varied across the Orders and have been determined by various factors, such as vaccination status, surveillance testing requirements and category of exposure.

Table 3.4 below outlines the quarantine periods under each variation of the Quarantine, Isolation and Testing Orders.

**Table 3.4 Self-quarantine requirements under the Pandemic (Quarantine, Isolation and Testing) Orders**

Order Number	Category of exposure	Self-quarantine period/requirements
Order No. 1	Close contact (vaccinated)	• 7 days
	Close contact (unvaccinated)	• 10 days
	Exposed person	• until they receive a negative result from PCR test
Order Nos. 2 to 4	Close contact	• 7 days
Order Nos. 5 to 7	Close contact	• 7 days • a close contact of a probable case could leave self-quarantine, if the probable case received a negative result within 48 hours of initial positive RAT
Order Nos. 8 and 9	Close contact	• 7 days • a close contact of a probable case could leave self-quarantine, if the probable case received a negative result within 48 hours of initial positive RAT • not required to self-quarantine if they: – undertake a daily RAT for 5 days – wear a mask indoors (excluding self-quarantine address) – do not visit a hospital or care facility

Source: Department of Health, *Quarantine, Isolation and Testing Order*, 29 April 2022, <<https://www.health.vic.gov.au/covid-19/quarantine-isolation-and-testing-order>> accessed 2 July 2022.



On 19 April 2022, the Chief Health Officer provided advice to the Minister regarding self-quarantine requirements. The Chief Health Officer explained that regular testing and mask wearing could manage the risk of transmission, reducing the necessity of strict self-quarantine requirements.

A record of the Chief Health Officer's advice on 19 April 2022 stated that there would not likely be a significant impact on hospitalisations if regular testing replaced self-quarantining. Further, the advice stated that the epidemiological situation at the time supported reducing self-quarantine requirements given high vaccination rates and natural immunity.<sup>24</sup>

### 3.2.4 Reasons to leave self-isolation or self-quarantine premises

Under the Orders' general provisions, people are required to remain at the same address for the entire time their quarantine or self-isolation requirements are in effect. However, the Orders outline several reasons a person may leave a premises during their isolation and quarantine period.

All Orders permitted a person to leave isolation or quarantine:

- to obtain medical care or supplies
- to transport a person residing at their premises to or from hospital
- to get tested for COVID-19
- in any emergency situation
- if required to do so by law
- to visit a patient in hospital or a person in a care facility
- if they are not a diagnosed or probable case, to sit a senior secondary examination.<sup>25</sup>

Order No. 1 also permitted an unvaccinated close contact to attend an education facility where they are enrolled for a 'relevant purpose' after day 8 of their self-quarantine period.<sup>26</sup> This was removed under Order No. 2 because there were no longer separate self-quarantine periods for vaccinated and unvaccinated people.

Order No. 8 implemented several additional reasons for a person to leave isolation or quarantine:

- visiting a patient in hospital if permitted by an authorised officer of that hospital
- to work in a care facility if permitted under the Pandemic (Public Safety Order) 2022

<sup>24</sup> Department of Health, *Record of meeting between Minister for Health and the Chief Health Officer*, meeting minutes, 19 April 2022, p. 4.

<sup>25</sup> Department of Health, *Quarantine, Isolation and Testing Order*.

<sup>26</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2021* (No. 1) cl 25(22)(b)(ix).

- if they wear a mask at all times and comply with any other requirements specified in cl 29, people in self-quarantine may leave their quarantine address to:
  - exercise outdoors
  - attend to livestock
  - transport another person to and from a work premises, education facility or healthcare appointment
  - vote in the Australian Federal Election (only applicable if a person receives a negative result from a rapid antigen test prior to leaving).<sup>27</sup>

On 24 June 2022, the Minister implemented Order No. 9 which specified additional reasons for a person to leave their isolation or quarantine premises. These changes were based on advice from the acting Chief Health Officer.<sup>28</sup>

In addition to reasons implemented under Order No. 8,<sup>29</sup> a person was allowed to leave isolation or quarantine:

- if essential, to transport someone they live with to work, school or a healthcare appointment, and that the person in isolation or quarantine ensured they:
  - travelled directly to and from the location only
  - remained in the vehicle at all times
  - wore a mask whilst travelling<sup>30</sup>
- to escape the risk of harm, including risk of family violence or violence from another person
- to relocate to the Victorian Quarantine Hub or a Coronavirus Isolation and Recovery Facility.<sup>31</sup>

<sup>27</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022* (No. 8) cl 29(22)(b).

<sup>28</sup> Record of Meeting between the Minister for Health and the Acting Chief Health Officer - 16 June 2022

<sup>29</sup> Order no. 8 included voting at the federal election as a permissible reason to leave quarantine. However, this was not included in Order no. 9 which was introduced after the 2022 federal election had taken place.

<sup>30</sup> Order no. 8 also allowed people to leave a quarantine or isolation premises to provide essential transport. However, Order no. 9 clarified the reasons and conditions a person required to isolate or quarantine must follow.

<sup>31</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022* (No. 8) cl 2(b).

# 4 Analysis of the Pandemic (Quarantine, Isolation and Testing) Orders

## 4.1 Summary of review

The Committee's review of the Pandemic (Quarantine, Isolation and Testing) Orders consists of three parts:

- assessing the compliance of the Orders with the requirements under s 165AS of the *Public Health and Wellbeing Act 2008*
- assessing the compatibility of the Orders with the *Charter of Human Rights and Responsibilities Act 2006*, including whether the Minister for Health has adequately explained any limitations on the human rights
- reviewing the implementation of the Orders, including identifying any issues which have occurred.

A key focus of the Committee was examining whether the requirements were necessary and adequately explained by the Minister. Requirements to test, quarantine or isolate place a significant compliance burden on Victorians. In particular, quarantining or isolating restricts the movements of people, which may:

- affect their mental health and wellbeing
- disrupt employment or education activities
- temporarily disrupt other aspects of a person's life, such as social activities.<sup>1</sup>

Impacts of quarantine or isolation periods was a particular focus for the Committee given the burden and mental health impacts these requirements place on people.

The Committee heard from mental health service providers and lived experience representatives on the impact of the pandemic on Victorians' mental health. They explained that self-isolation, self-quarantine and other restrictions where people may

---

<sup>1</sup> Ms Georgie Harman, Chief Executive Officer, Beyond Blue, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*; Professor Joseph Ibrahim, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*; Dr Kerry Rubin, Member, Victorian Branch Committee, The Royal Australian & New Zealand College of Psychiatrists, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*; Mr John Foley, Acting Deputy Chief Executive Officer, Mental Health Victoria, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*; Ms Kathryn Mandla, Head, Advocacy and Research, Yourtown, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*; Mr Jason Trethowan, Chief Executive Officer, Headspace, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*; Ms Moran Dvir, Co-Founder, Shadow Pandemic Village, public hearing, Melbourne, 13 May 2022, *Transcript of evidence*, p. 15.

have felt secluded, had one of the most significant impacts on peoples' mental health.<sup>2</sup> It is critical that requiring people to isolate or quarantine is necessary and does not extend for longer periods of time than needed.

The Committee assessed the Statements of Reasons, Human Rights Statements and other documents published by the Minister on the Pandemic Order Register. The Committee found that the Orders were compliant with s 165AS(1)(a) and (b) of the Public Health and Wellbeing Act, which relate to ensuring the Orders do not contain provisions that are outside of the powers conferred by the Act.

To assist the review, the Committee sought legal advice on the compatibility of the orders with the *Charter of Human Rights and Responsibilities Act 2006*. This advice identified issues relating to right to privacy under s 13 of the Act.

The Committee wrote to the Minister seeking further information and clarification on the issues identified. The Minister's full response is provided in Appendix B.

The Committee determined that the Orders are compliant with the Charter of Human Rights and Responsibilities Act, as is required under s 165AS(1)(c) of the Public Health and Wellbeing Act.

The Committee also heard of issues in implementing requirements under the Orders, which occurred during the peak of the Omicron wave in Victoria in January 2022. The Committee was told that during the Omicron wave:

- there was a national shortage of rapid antigen tests and that the roll-out of free tests to schools was impacted
- the shortage may have meant some people did not get tested and detection and contact tracing efforts were affected due to the prohibitive costs of rapid antigen tests
- the PCR testing system exceeded capacity, resulting in testing delays and samples being discarded
- discarded PCR tests and delays may have meant some Victorians were unnecessarily in self-quarantine or did not receive a COVID-19 diagnosis.

## 4.2 Compliance with the *Public Health and Wellbeing Act 2008*

The Committee does not consider the Orders to be outside the powers conferred by the Act and has not received evidence to indicate otherwise.

---

<sup>2</sup> Ms Georgie Harman, *Transcript of evidence*; Professor Joseph Ibrahim, *Transcript of evidence*; Dr Kerry Rubin, *Transcript of evidence*; Mr John Foley, *Transcript of evidence*; Ms Moran Dvir, *Transcript of evidence*; Mr Neil Turton-Lane, NDIS Manager, Victorian Mental Illness Awareness Council, public hearing, Melbourne, 13 May 2022, *Transcript of evidence*.

The Committee has also not identified any aspect of the Orders which demonstrate:

- retrospective effect
- imposition of taxes, fees, or fines
- new penalties, as those under the Orders are general penalties that are authorised under s 165BN of the Public Health and Wellbeing Act
- a shift in the legal burden of proof to the accused
- sub-delegation of powers delegated by the Act.

The Committee makes no further comment on the Orders' compliance with ss 165AS(1)(a) and (1)(b) of the Public Health and Wellbeing Act.

**FINDING 1:** The Pandemic (Quarantine, Isolation and Testing) Orders are compliant with the requirements of section 165AS(1)(a) and (b) of the *Public Health and Wellbeing Act 2008*.

### 4.3 Compatibility of the Orders with human rights under the *Charter of Human Rights and Responsibilities Act 2006*

The Minister for Health's Human Rights Statements noted the following rights under the Charter of Human Rights and Responsibilities Act may be limited by the Quarantine, Isolation and Testing Orders:

- right to equality
- right to freedom from being subjected to medical or scientific experimentation or treatment without full, free and informed consent
- freedom of movement
- peaceful assembly and freedom of association
- protection of families and children
- cultural rights.<sup>3</sup>

The Minister noted that several other rights under the Charter are 'engaged' but not limited by the Orders, specifically:

- right to life
- privacy and reputation
- freedom of thought, conscience, religion and belief

<sup>3</sup> Department of Health, *Quarantine, Isolation and Testing Order*, 2022, <<https://www.health.vic.gov.au/covid-19/quarantine-isolation-and-testing-order>> accessed 2 May 2022.

- freedom of expression
- right to liberty and security of persons
- right to humane treatment when deprived of liberty.<sup>4</sup>

The Minister's identification of limited or engaged rights under the Charter has remained the same from Order Nos. 1 to 9.

### 4.3.1 **Pandemic (Quarantine, Isolation and Testing) Order (Nos. 1 to 7)**

The Quarantine, Isolation and Testing Orders require diagnosed persons or probable cases to provide personal and health information to third parties, such as the Department of Health or an education facility. In the Committee's view, the Minister should clearly explain why the collection is necessary and what the intended use of the information is.

This view was supported by Victoria's Information Commissioner, Mr Sven Bluemmel, at a public hearing. Mr Bluemmel told the Committee that it is important the public understands why information is being collected under the Orders to build community trust and increase compliance. He stated that the public needs to trust that the collection of personal information is 'necessary and proportionate', and that the information will be protected.<sup>5</sup>

The Committee sought legal advice on whether the Quarantine, Isolation and Testing Orders were incompatible with rights under the Charter of Human Rights and Responsibilities Act. The advice provided to the Committee highlighted the following issues:

- that notification requirements for diagnosed and probable cases may be incompatible with the right to privacy under s 13 of the Act
- provisions for collection, recording and storing of personal and health information by the Department of Health, education facilities or Service Victoria may also be incompatible with the right to privacy under s 13 of the Act.

As noted above, the Human Rights Statements stated that notification requirements under the Order 'engaged' but did not limit the right to privacy. In the Statements, the Minister explained this was because:

the right to privacy is not limited by a restriction unless the restriction is unlawful or arbitrary. Here, the restriction is authorised by the [Public Health and Wellbeing] Act, and is clearly for a public health benefit, and is therefore lawful.<sup>6</sup>

<sup>4</sup> Ibid.

<sup>5</sup> Mr Sven Bluemmel, Commissioner, Office of the Information Commissioner Victoria, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*, pp. 44–45.

<sup>6</sup> Minister for Health, *Statements of Reasons: Pandemic Orders made 15 December 2021*, 15 December 2021, para 62.

However, legal advice provided to the Committee suggested that the Minister may not have provided sufficient explanation for imposing the requirements. In particular, whether collecting the information was necessary and why notification requirements were not arbitrary.

On 22 March 2022, the Committee wrote to the Minister seeking an explanation and further information on this matter. The Minister's full response is provided in Appendix B.

In his response,<sup>7</sup> the Minister explained that the notification and data collection requirements under the Orders are used to assist the Department of Health with:

- providing advice on isolation periods
- contact tracing
- identifying treatment options, appropriate care pathways and community support programs.

The Minister explained that to protect an individual's privacy the collection, storage and use of data is handled according to legislative requirements, Victoria's privacy principles<sup>8</sup> and information sharing arrangements between entities.<sup>9</sup>

The Minister noted that pt 8A of the Public Health and Wellbeing Act allows for 'gathering and sharing information in managing a pandemic disease', including:

- empowering the Department of Health Secretary and Chief Health Officer to collect, use and disclose information if 'reasonably necessary' to perform functions or powers under pt 8A
- strengthening existing protections to create 'very limited exceptional circumstances' for information collected through contact tracing to be used for a reason other than public health.<sup>10</sup>

The disclosure of information collected under the Orders is subject to 'specific safeguards' and is limited to the following circumstances:

- for public health purposes
- to exercise powers and functions of pandemic legislation
- with the consent of the individual
- to address an imminent threat to life, safety health or welfare.<sup>11</sup>

<sup>7</sup> The Minister's response consider Pandemic (Quarantine, Isolation and Testing) Orders (Nos. 1 to 6). However, as no changes were implemented in Order no. 7 the advice is still applicable.

<sup>8</sup> Under the *Privacy and Data Protection Act 2014*.

<sup>9</sup> Hon Martin Foley, Minister for Health, *Response to request from Chair, Pandemic Declaration Accountability and Oversight Committee (RE: Quarantine, Isolation and Testing) Orders (Nos. 1 to 6)*, correspondence, 4 April 2022, pp. 1-3.

<sup>10</sup> *Ibid.*, p. 2.

<sup>11</sup> *Ibid.*, p. 5.

One of the key methods for collecting contact tracing information and rapid antigen test results in Victoria is through the Department of Health's online self-reporting form. This data is managed by Service Victoria's digital systems.

Under Order Nos. 1 to 7, the Chief Executive Officer of Service Victoria had varying authority to collect, store and share information, such as:

- check-in information collected via QR codes and providing exposure notifications if a site has been exposed to COVID-19
- self-reported positive rapid antigen test results.

The Orders also authorised information sharing arrangements between Service Victoria and the Department of Health. This included self-reported positive rapid antigen test results and other related information, such as personal and health information.<sup>12</sup>

On 22 April 2022, the authorisation for Service Victoria to collect, store, display and share information was incorporated into the Pandemic (Workplace) Order 2022 (No. 8).<sup>13</sup>

The Committee sent additional questions to the Minister on how the Department of Health uses any data shared by Service Victoria. In his response, the Minister explained that the disclosure of information collected by Service Victoria is also subject to those purposes outlined above. As a result, the Department of Health may only access Service Victoria information for authorised reasons. Further, the Minister stated all data shared by Service Victoria is handled according to:

- established data sharing arrangements
- the *Public Records Act 1973*
- the *Health Records Act 2001*
- the *Privacy and Data Protection Act 2014*
- the Victorian Protective Data Security Standards.<sup>14</sup>

The Committee acknowledges that information collected under the Orders is subject to legislation and practices governing data privacy and security in Victoria. However, in the Committee's view the Minister could have more fulsomely explained the Orders and the right to privacy under the Charter of Human Rights and Responsibilities Act in the Human Rights Statements.

In the Committee's view, the Human Rights Statements and additional information provided by the Minister has provided an adequate explanation of compatibility and limitation of human rights under the Charter of Human Rights and Responsibilities Act.

---

<sup>12</sup> Department of Health, *Quarantine, Isolation and Testing Order*.

<sup>13</sup> Minister for Health, *Statement of Reasons: Pandemic Orders made 22 April 2022*, 22 April 2022, para 113.

<sup>14</sup> Hon Martin Foley, correspondence, p. 5.



However, in the Committee's view the Minister should fulsomely explain the necessity, purpose and use of information collected under the Orders. This includes how people's information will be protected.

As noted by the Minister, the right to privacy is not limited unless the restriction is unlawful or arbitrary. However, the Human Rights Statements did not clearly explain why the requirements were not arbitrary.

**FINDING 2:** The Minister for Health did not provide a clear explanation in the Human Rights Statements as to why notification requirements under the Pandemic (Quarantine, Isolation and Testing) Orders did not arbitrarily restrict the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*.

### 4.3.2 Pandemic (Quarantine, Isolation and Testing) Order (Nos. 8 and 9)

On 22 April 2022, the Minister implemented major changes to the framework of all pandemic orders. This included revoking several orders and consolidating some requirements into three existing pandemic orders.

As part of these changes, the Minister varied some of the notification requirements for diagnosed and probable cases. From 22 April 2022, notification requirements existed under the Pandemic (Quarantine, Isolation and Testing) Order 2022 and Pandemic (Workplace) Order 2022. Whilst the latter is not the focus of this report, the notification requirements are relevant to compatibility with the Charter of Human Rights and Responsibilities Act, particularly the right to privacy.

Variations to notification requirements which existed under previous versions of the Orders included:

- A diagnosed person or probable case is required to notify the operator of any work premises where they ordinarily work if they attended an indoor workspace during their infectious period.
- An employer is only required to provide 'general notifications' to workers if there is a positive case on the premises. Instead, notification of social contacts (which includes workplace contacts) is managed by the person diagnosed with COVID-19.<sup>15</sup>

Whilst the new Orders made moderate changes to notification requirements, the privacy considerations are consistent with concerns raised in relation to Order Nos. 1 to 7.

<sup>15</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022 (No. 7); Pandemic (Workplace) Order 2022 (no. 8); Minister for Health, Statement of Reasons: Pandemic Orders made 22 April 2022.*

In the 20 June 2022 Human Rights Statement, the Minister considered that notification requirements, data collection and information sharing under the orders ‘engage’ the right to privacy but do not limit that right.<sup>16</sup>

Like Order Nos. 1 to 7, the Minister concluded the restrictions on the right to privacy are authorised by the Public Health and Wellbeing Act and ‘therefore lawful’. The Minister noted that the right to privacy can also be limited if a restriction is arbitrary, but did not provide an explanation as to why collecting personal and health information under subsequent Orders is necessary.

In the Committee’s view, this issue should have been addressed by the Minister in the Human Rights Statements and Statements of Reasons. The Committee recommends that the Minister directly address whether requirements interacting with s 13 of the Charter of Human Rights and Responsibilities Act could be considered arbitrary and provide an explanation as to why the requirements are necessary.

**FINDING 3:** In additional information provided to the Committee, the Minister for Health provided an explanation of how the Pandemic (Quarantine, Isolation and Testing) Orders do not limit the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*. In considering this information along with the Orders’ Human Rights Statements, the Committee is satisfied that the Orders are not incompatible with rights under the Act.

**RECOMMENDATION 1:** That the Minister for Health publishes as an addendum to the Human Rights Statement why the Pandemic (Quarantine, Isolation and Testing) Orders do not limit the right to privacy under the *Charter of Human Rights and Responsibilities Act 2006*, as the Committee has done in Appendix B of this report. Any subsequent extension or variation of the orders should include this explanation in the Human Rights Statement.

## 4.4 Implementation issues

The Committee heard from stakeholders about further implementation issues that occurred when key changes were made under the Quarantine, Isolation and Testing Orders. The issues included:

- additional privacy concerns relating to the requirements for education facilities and workplaces to notify close and social contacts when a positive case attended the premises
- challenges to the supply of rapid antigen tests at the beginning of the Omicron wave in January 2022
- challenges to the processing of PCR tests in January 2022.

---

<sup>16</sup> Minister for Health, *Statement of Reasons: Pandemic Orders made 22 April 2022*, para 78–80.

### 4.4.1 Privacy concerns

Some stakeholders expressed concern that the requirement for employers or education facilities to collect information for contact tracing may unintentionally identify people who have tested positive to COVID-19. They explained that it was easier to identify who these people were in small communities or student cohorts, which could lead to judgement and stigma.

Education facilities told the Committee they are endeavouring to strike the right balance between meeting their obligations under the pandemic orders and protecting the privacy of individuals.<sup>17</sup>

From Order No. 7 onwards, an education facility operator was required to take 'reasonable steps' to notify parents, guardians and carers of students:

- that a diagnosed person or probable case had attended the facility during their infectious period
- to monitor if students begin to experience COVID-19 symptoms
- if a student experiences symptoms, that they must comply with the Testing Requirements Policy and follow COVID-19 rapid antigen test procedure.<sup>18</sup>

The Committee acknowledges concerns that these requirements may unintentionally identify an individual's positive COVID-19 status to others. This is a particular risk for smaller communities such as regional and rural workplaces or education facilities. The Committee shares the concerns of stakeholders that unintentionally identifying a positive case may cause social stigma and impact that individual's wellbeing.

The Committee notes that as of Workplace Order No. 8 education facilities are only required to take 'reasonable steps' to notify parents, guardians or carers if a positive case visited the facility during their infectious period.<sup>19</sup> In the Committee's view, this allows operators sufficient flexibility to protect an individual's identity as much as possible.

**FINDING 4:** Requirements for operators of education facilities to notify families if a diagnosed or probable case attended the facility during their infectious period may lead to unintentionally identifying that person.

<sup>17</sup> Mr Robert Boucher, Principal, Swifts Creek P-12 School, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*, p. 59; Dr Heather Schnagl, Ambassador, Independent Schools Victoria, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*, p. 74; Ms Pitsa Binnion, Principal, McKinnon Secondary College, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*, p. 59.

<sup>18</sup> *Pandemic (Quarantine, Isolation and Testing) Order 2022* (No. 7) cl 29.

<sup>19</sup> *Pandemic (Workplace) Order 2022* (no. 8) cl 13.

## 4.4.2 Supply and processing capacity

Another issue noted by stakeholders related to the implementation of the Quarantine, Isolation and Testing Orders was the supply and processing of COVID-19 tests. The Committee identified two key issues:

- the supply of rapid antigen tests to workplaces and schools<sup>20</sup>
- diagnostic laboratory capacity to process PCR test results, particularly prior to the scale up of rapid antigen testing during January 2022.

Rapid antigen tests were first approved for home use as of 1 November 2021.<sup>21</sup> Although tests were available in Australia before that time, they were only for use under medical supervision. At a public hearing, Chief Health Officer Professor Brett Sutton noted that the Victorian Government introduced rapid antigen testing ‘in some settings’ around August 2020.<sup>22</sup>

Media reports from December 2021 to January 2022 show that the use of rapid antigen tests was scaled up in several Australian jurisdictions during this time. This was primarily due to a surge in Omicron variant COVID-19 cases, leading to significant demand and shortages in PCR testing across Australia.<sup>23</sup>

At a public hearing, Professor Sutton explained the advice provided to the Department during the period when Omicron was emerging in Victoria. This included:

verbal advice to the state controller and to the minister that we would face testing challenges and would need a significant uplift in our rapid antigen testing capability, the ability to capture those positive tests and the ability to use those positive tests to isolate and quarantine people in response to the omicron wave.<sup>24</sup>

During this time, the Quarantine, Isolation and Testing Orders were amended to allow for rapid antigen testing. Initially under Order No. 2 this was only for certain circumstances. However Order No. 3 introduced a new category of ‘probable case’ for those who tested positive to a rapid antigen test, as well as new self-reporting

20 For example, see: Mr Peter Roberts, Head of School Services, Independent Schools Victoria, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*.

21 Therapeutic Goods Administration, *COVID-19 rapid antigen tests that are approved in Australia*, 2022, <<https://www.tga.gov.au/covid-19-rapid-antigen-self-tests-are-approved-australia>> accessed 8 June 2022.

22 Professor Brett Sutton, Chief Health Officer, Department of Health, public hearing, Melbourne, 31 January 2022, *Transcript of evidence*, p. 18.

23 For example, see: Carolyn Webb and Roy Ward, “‘Like nothing we have faced before’: Chemists struggle to stay open amid RAT shortage”, *The Age*, 16 January 2022, <<https://www.theage.com.au/national/victoria/like-nothing-we-have-faced-before-chemists-struggle-to-stay-open-amid-rat-shortage-20220116-p590lx.html>> accessed 11 May 2022; Michael Janda, ‘RATs in short supply: Rapid antigen test shortage shows little sign of ending soon’, *ABC News*, 12 January 2022, <<https://www.abc.net.au/news/2022-01-12/rat-test-supply-crisis-shows-little-sign-of-ending-soon/100750492>> accessed 11 May 2022; “‘Don’t panic’: Calls to only “get the test you need” amid rapid antigen test shortage’, *Sky News*, 30 December 2021, <<https://www.skynews.com.au/australia-news/coronavirus/dont-panic-calls-to-only-get-the-test-you-need-amid-rapid-antigen-test-shortage/video/abbc8f51982cab71caac9e7da3c7fb36>> accessed 11 May 2022.

24 Professor Brett Sutton, *Transcript of evidence*, p. 24.

requirements for those who tested positive. At the time, Victoria was the first Australian jurisdiction to introduce a self-reporting requirement.<sup>25</sup>

From 1 November to 31 December 2021, the Victorian Government ordered approximately 50 million rapid antigen tests.<sup>26</sup> Mr Jeroen Weimar, Commander, COVID-19 Response at the Department of Health, noted that the first ‘significant order’ of approximately 20 million tests was made on 24 December 2021.<sup>27</sup> He also stated that Victoria was the first jurisdiction in Australia to do so due to the scale of cases caused by the number of PCR tests required at the time.<sup>28</sup> This order was supplemented by 80 million tests ordered by the Commonwealth Government for national distribution between January and February 2022.<sup>29</sup>

The Victorian Government began providing rapid antigen tests to Victorian schools in November 2021. This was before the new pandemic management framework came into effect in December 2021.<sup>30</sup> The Government has continued to provide the tests to schools, with students able to collect two tests per week.<sup>31</sup>

Mr Peter Roberts, Head of School Services at Independent Schools Victoria, told the Committee that many schools did not receive their full allocation of rapid antigen tests when expected. He stated some schools were concerned the supplies received would not cater to their needs:

once kits started going out in those couple of days before school started there seemed to be an unusual distribution method where schools were getting dropped off a fifth or so of their allocation with the remainder coming the next day or by the time school started on the Monday ... the phones just went into meltdown—‘We just got about 20 per cent. We only have 20 per cent’. We had no idea what was going on.<sup>32</sup>

Similarly, Ms Veronica Jamison, Chief Executive Officer of private aged care provider Shepparton Villages, stated that her facility received only a limited supply of rapid antigen tests from early December 2021. At times the facility restricted visitors due to shortages of tests in order to protect its residents from further COVID-19 outbreaks.<sup>33</sup>

<sup>25</sup> Mr Jeroen Weimar, Commander, COVID-19 Response, Department of Health, public hearing, Melbourne, 4 March 2022, *Transcript of evidence*, p. 18.

<sup>26</sup> Professor Euan Wallace, Secretary, Department of Health, Review of Pandemic Orders hearing, response to questions on notice received 23 March 2022, p. 3.

<sup>27</sup> Mr Jeroen Weimar, *Transcript of evidence*, p. 10.

<sup>28</sup> *Ibid.*, p. 15.

<sup>29</sup> Department of Health (Australian Government), *Rapid antigen test orders not being redirected to the Department of Health*, media release, Canberra, 14 January 2022.

<sup>30</sup> Premier of Victoria, *Free Rapid Antigen Testing to Keep Victorian Schools Safe*, media release, Victorian Government, Melbourne, 8 November 2021.

<sup>31</sup> Victorian Government, *Rapid antigen testing in schools - information for parents and carers*, 2022, <<https://www.coronavirus.vic.gov.au/rapid-antigen-testing-schools>> accessed 10 May 2022.

<sup>32</sup> Mr Peter Roberts, *Transcript of evidence*, p. 76.

<sup>33</sup> Ms Veronica Jamison, Chief Executive Officer, Shepparton Villages, public hearing, Melbourne, 1 March 2022, *Transcript of evidence*, p. 36.

At a public hearing on 31 January 2022, Professor Sutton noted that regarding supply of rapid antigen tests to private sector aged care facilities (regulated by the Commonwealth Government):

the constraints in RAT availability have been substantial, but they [were] really much improved in recent weeks, especially in Victoria, with the very substantial order and the rollout of millions of rapid antigen tests.<sup>34</sup>

The Committee received evidence that the supply of rapid antigen tests generally increased from late January 2022. However, it wishes to emphasise the importance of ensuring that schools continue to access an appropriate supply of tests whilst there are still requirements for testing in place.

In January 2022, the Australian Competition and Consumer Commission raised concerns with the price of rapid antigen tests in Australia, noting at the time that tests cost between \$20–30 or over \$70 in smaller retail outlets.<sup>35</sup> On 7 January 2022, the federal Minister for Health Care made a Determination which prohibited people from engaging in ‘price gouging in relation to a COVID-19 rapid antigen test kit’. The Determination prevented kits from being sold for more than 120% of the purchase value.<sup>36</sup>

In February 2022, the Australian Competition and Consumer Commissioner reported that the Commission was:

continuing to receive a high number of consumer reports about pricing and selling practices relating to rapid antigen tests in Australia and is investigating several potential Australian Consumer Law breaches.<sup>37</sup>

According to the Commissioner, since December 2021 to February 2022 95% of consumer complaints to the Commission related to the price of rapid antigen test kits.<sup>38</sup>

The cost of rapid antigen tests that are required due to mandatory testing may be prohibitive for many people. The free tests for students scheme ended on 20 May 2022. The Committee recommends that the Victorian Government consider extending the scheme while testing requirements are still in place.

**RECOMMENDATION 2:** That the Victorian Government continues supplying two free rapid antigen tests per week to Victorians enrolled in primary and secondary schools as long as testing requirements are still in place.

<sup>34</sup> Professor Brett Sutton, *Transcript of evidence*, p. 5.

<sup>35</sup> Australian Competition and Consumer Commission, *Concerning pricing of rapid antigen tests*, media release, 17 January 2022.

<sup>36</sup> *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (COVID-19 Rapid Antigen Tests) Determination 2022* (Cth) cl 5.

<sup>37</sup> Australian Competition and Consumer Commission, *Update on action on rapid antigen test pricing*, media release, 1 February 2022.

<sup>38</sup> *Ibid.*

Another issue the Committee identified was the capacity for pathology laboratories to process COVID-19 tests. This was a particular concern from mid-December 2021 to mid-January 2022 as cases of the Omicron variant began to rise and rapid antigen testing was being rolled out in Victoria.

In January 2022, Victoria was in the middle of a surge of cases attributed to the Omicron variant. In mid-January 2022, nearly 100,000 PCR tests were discarded by pathology laboratories because processing delays meant some tests were no longer suitable for processing. Affected individuals were informed on 14 January 2022, with some people having done tests as early as 5 January 2022.<sup>39</sup>

At a public hearing on 31 January 2022, Professor Brett Sutton, Victoria's Chief Health Officer, explained how the Omicron wave had affected PCR testing capacity:

10 000 cases per day would create a demand for testing that could not conceivably be met by PCR testing, especially given the high positivity rate for those who are presenting for testing, which is around one in five individuals. That means that those tests need to be processed individually. Previously they had undergone batch testing, where you can do a number at a time. So the PCR system could not hold up with the omicron wave ...<sup>40</sup>

The Committee heard evidence from pathology service providers who similarly noted that the surge in Omicron cases put significant strain on processing capacity. They told the Committee that Victorian processing requirements exceeded service capacity during the peak of the Omicron wave in January 2022 because:

- significant increases in positivity rates meant that the pooling testing method<sup>41</sup> was no longer viable
- there was a surge of Omicron cases across Australia, meaning that processing capacity was affected nationally and Victorian pathology providers were unable to use interstate providers for surge capacity
- the PCR system experienced additional system capacity issues, such as:
  - additional testing requirements for interstate travel and surveillance
  - staff absences and furloughs putting additional pressure on collection systems
  - the scale up of rapid antigen testing was introduced during the peak in January 2022, whilst the PCR system was struggling with capacity.<sup>42</sup>

<sup>39</sup> Serena Seyfort, 'Almost 100,000 Victorians told they will not get their PCR test results', *Nine News*, 15 January 2022, <<https://www.9news.com.au/national/around-100000-victorians-told-they-will-not-get-their-pcr-test-results-from-melbourne-pathology-and-australian-clinical-labs/88ca51aa-478b-4afe-a517-ea5d37275df9>> accessed 11 May 2022.

<sup>40</sup> Professor Brett Sutton, *Transcript of evidence*, p. 17.

<sup>41</sup> Where specimens are batched together and tested.

<sup>42</sup> Mr Ian McPhan, Chief Operations Officer, Healius Pathology, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*; Professor Deborah Williamson, Director, Victorian Infectious Disease Reference Laboratory, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*.

These factors contributed to several pathology providers exceeding their capacity to process PCR tests. This led to delays and subsequent discarding of tests. Mr Ian McPhan, Chief Operations Officer at Healius Pathology, told the Committee that ‘excessive delays in testing’ meant samples became invalid and not reliable to diagnose a case of COVID-19.<sup>43</sup>

Self-quarantine restrictions place a significant compliance burden on Victorians whose movements are restricted, and their mental health and wellbeing is affected. Should Victoria experience another significant surge in cases, it is vital that there is sufficient capacity to manage and process testing.

In early January 2022, Victoria’s PCR testing system exceeded capacity due to the surge of COVID-19 Omicron cases. As a result, some pathology providers experienced significant delays in processing PCR tests, leading to nearly 100,000 tests being discarded. The scale up of rapid antigen testing in January 2022 reduced the burden on the PCR testing system which had already exceeded capacity.

**FINDING 5:** Given the experience of the Omicron surge, the Federal and state governments working together should ensure that in the event of a future pandemic or public health crisis that there are suitable contingencies for such surges. This includes investigating alternative testing methods early on.

**Adopted by the Pandemic Declaration Accountability and Oversight Committee  
Parliament of Victoria, East Melbourne  
11 July 2022**

---

<sup>43</sup> Mr Ian McPhan, *Transcript of evidence*, p. 34.



# Appendix A

## Public hearings

### Monday 31 January 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Professor Brett Sutton	Chief Health Officer	Department of Health
Nicole Brady	Deputy Secretary, Public Health Policy and Strategy	Department of Health
Jacinda de Witts	Deputy Secretary and General Counsel, Regulatory Risk, Integrity and Legal	Department of Health

### Thursday 17 February 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Professor Andrew Way	Chief Executive	Alfred Health
Kethley Fallon	Chief Nursing Officer	Alfred Health
Debra Bourne	Acting Chief Operating Officer	Northern Health
Dr Saliya Hewagama	Infectious Diseases Physician	Northern Health
Bernadette McDonald	Chief Executive Officer	Royal Children's Hospital
Maria Flynn	Executive Director, Nursing and Allied Health and Chief Nursing Officer	Royal Children's Hospital
Dr Sue Matthews	Chief Executive	Royal Women's Hospital
Damian Gibney	COVID Commander	Royal Women's Hospital
Professor Shelley Dolan	Chief Executive	Peter MacCallum Cancer Centre
Mark Dykgraaf	Chief Executive Officer	Central Gippsland Health Service
Jacque Phillips	Chief Executive Officer	NCN Health

## Tuesday 1 March 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Matt Sharp	Chief Executive Officer	Goulburn Valley Health
Dale Fraser	Chief Executive Officer	Ballarat Health Services
Mick Kirby	Interim Executive Director, Aged Operations	Ballarat Health Services
Jeanette Powell	Board Director and Vice-President	Shepparton Villages
Veronica Jamison	Chief Executive Officer	Shepparton Villages
Adjunct Associate Professor Kelly Rogerson	Board Chair	Palliative Care Victoria
Adjunct Associate Professor Violet Platt	Chief Executive Officer	Palliative Care Victoria
Tina Hogarth-Clarke	Chief Executive Officer	Council of the Ageing Victoria
Corey Irlam	Deputy Chief Executive	Council of the Ageing Australia

## Friday 4 March 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Professor Euan Wallace	Secretary	Department of Health
Jacinda de Witts	Deputy Secretary and General Counsel, Regulatory Risk, Integrity and Legal	Department of Health
Jeroen Weimar	Commander, COVID-19 Response	Department of Health
Nicole Brady	Deputy Secretary, Public Health Policy and Strategy	Department of Health
Jodie Geissler	Deputy Secretary, Commissioning and System Improvement	Department of Health
Hon Martin Foley MP	Minister for Health	-

## Tuesday 29 March 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Jo de Morton	Chief Executive Officer	Service Victoria
Professor Deborah Williamson	Director	Victorian Infectious Diseases Reference Laboratory
Ian McPhan	Chief Operations Officer	Healius Pathology
Sven Bluemmel	Information Commissioner	Office of the Victorian Information Commissioner
Rachel Dixon	Privacy and Data Protection Deputy Commissioner	Office of the Victorian Information Commissioner
Joanne Kummrow	Public Access Deputy Commissioner	Office of the Victorian Information Commissioner
Robert Boucher	Principal	Swifts Creek P-12 School
Pitsa Binnion	Principal	McKinnon Secondary College
Peter Roberts	Head of School Services	Independent Schools Victoria
Dr Heather Schnagl AM	Ambassador	Independent Schools Victoria

## Friday 29 April 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Dr Neil Coventry	Chief Psychiatrist	Department of Health
Anna Love	Chief Mental Health Nurse	Department of Health
Georgie Harman	Chief Executive Officer	Beyond Blue
Alastair Stott	Chief Services Officer	Beyond Blue
John Foley	Acting Joint Chief Executive Officer and Director of Policy and Advocacy	Mental Health Victoria
Kathryn Mandla	Head, Advocacy and Research	Yourtown
Jason Trethowan	Chief Executive Officer	Headspace
Professor Joseph Ibrahim	-	-
Dr Kerryn Rubin	Fellow Member, Victorian Branch Committee	Royal Australian and New Zealand College of Psychiatrists
Tegan Carrison	Executive Director	Australian Association of Psychologists Inc.
Amanda Curran	Chief Services Officer	Australian Association of Psychologists Inc.

## Friday 13 May 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Craig Wallace	Chief Executive Officer	Victorian Mental Illness Awareness Council
Neil Turton-Lane	NDIS Manager	Victorian Mental Illness Awareness Council
Shellie Braverman-Lichtman	Advocate	Victorian Mental Illness Awareness Council
Jacque Blackwell	Co-founder	Shadow Pandemic Victoria
Moran Dvir	Co-founder	Shadow Pandemic Victoria
Sam Biondo	Executive Officer	Victorian Alcohol and Drug Association
Dave Taylor	Policy and Media Officer	Victorian Alcohol and Drug Association

## Thursday 16 June 2022

Rooms G1 & G2, 55 St Andrews Place, East Melbourne

Name	Title	Organisation
Professor Margaret Hellard AM	Deputy Director, Programs	Burnet Institute
Professor Jodie McVernon	Director, Doherty Epidemiology	Doherty Institute
Matt McCrohan	Acting Commander, COVID-19	Ambulance Victoria
Sarah Crema	Workplace Relations Strategy Lead	Ambulance Victoria
Professor Nancy Baxter	-	-
Professor Catherine Bennett	-	-
Lisa Fitzpatrick	Victorian Branch Secretary	Australian Nursing and Midwifery Federation

## Appendix B

# **Minister for Health's response to issues raised on compatibility of Pandemic (Quarantine, Isolation and Testing) Orders with the *Charter of Human Rights and Responsibilities Act 2006***





Martin Foley MP

Minister for Health  
Minister for Ambulance Services  
Minister for Equality

GPO Box 4057  
Melbourne Victoria 3001  
Telephone: +61 3 9096 8561  
[www.health.vic.gov.au](http://www.health.vic.gov.au)

BAC-CO-25850

Ms Suzanna Sheed MP  
Chair  
Pandemic Declaration Accountability and Oversight Committee  
via email: [pdoac@parliament.vic.gov.au](mailto:pdoac@parliament.vic.gov.au)

Dear Ms Sheed

Thank you for your correspondence of 22 March 2022 in relation to the *Pandemic (Quarantine, Isolation and Testing Order) 2022 (Nos. 1 to 6)* and compatibility with the Charter of Human Rights and Responsibilities. Please see my attached response to the matters you have identified.

Should you wish to discuss this matter further, please contact [REDACTED]  
Public Health Policy and Strategy, COVID-19 Response Division at the Department of Health  
[REDACTED].

Yours sincerely

**Martin Foley MP**  
Minister for Health  
Minister for Ambulance Services  
Minister for Equality

04/04/2022

## DH Response to request from Chair, Pandemic Declaration Accountability and Oversight Committee

Re: Pandemic (Quarantine, Isolation and Testing Order) 2022 (Nos. 1 to 6)

---

### QUESTION 1

*Legal advice provided to the Committee has identified specific issues relating to compatibility with the Charter of Human Rights:*

*The notification provisions contained in clauses 11 and 16 which may not be compatible with the right to privacy in s 13 of the Charter*

*Provisions concerning the collection, recording and storing of personal and health information by the Department in clauses 11 and 16, by education facility operators in clause 29 and by Service Victoria in clause 35, which may also not be compatible with s 13 of the Charter.*

*Accordingly the Committee seeks your response to the issues outlined below.*

#### **Notification requirements (cl 11 and 16)**

*Paragraph 333. of the Statement of Reasons (4 February 2022) states that notification requirements are appropriate to allow work or education settings to ‘more promptly instigate public health responses’. It also state they are intended to enable organisations to ‘grow more proficient at appropriately responding to exposures and to become more aware of their responsibilities and capabilities during this evolving stage of the pandemic’. In respect of notifying the Department and persons living at the isolation premises, the Statement of Reasons states this requirement will ‘ensure these persons can take precautions to minimise risk of infection’.*

*Paragraphs 209 and 210 of the Human Rights Statement state your consideration of how the notification requirements are compatible with a person’s privacy under the Charter. The advice provided to the Committee does not consider the explanation has provided sufficient explanation on the necessity of collecting the information or what the Department will do once collected, and why the notification requirements are not arbitrary.*

*In addition, the advice provided to the Committee does not consider there is sufficient explanation for why it is necessary for the Department to receive notification of a person’s COVID-19 status. Paragraph 210 of the Human Rights Statement states this is to ‘[identify] which people are at risk of becoming infected with COVID-19’. However, it does not explain what measures will be taken by the Department once persons are identified.*

*The Committee seeks your response to the following questions:*

- Why does the Department of Health require a COVID-19 positive case to notify it of the positive diagnosis, infectious period and isolation address?*
- What does the Department of Health propose to do with this information once it receives it?*

All personal and health information collected by the State Government is protected under the *Privacy and Data Protection Act 2014* (PDP Act) and the *Health Records Act 2001* (HR Act). These Acts set out binding principles that regulate when and how that information can be collected and used. For example, an organisation must not collect personal information



about an individual unless the information is necessary for the organisation's functions or activities.

These protections apply to information collected by and on behalf of the Government as a necessary part of a pandemic response.

Key amendments were made last year to the *Public Health and Wellbeing Act 2008* (PHW Act) to allow for gathering and sharing information in managing a pandemic disease. These include:

- empowering the Information Commissioner to create a Pandemic Information Determination (in consultation with the Health Complaints Commissioner if related to health information), which allows for organisations to be exempt from complying with specified Information Privacy Principles and/or the Health Privacy Principles, if this is in the public interest; and
- empowering the Secretary, Department of Health and the Chief Health Officer to (amongst other things) collect, use and disclose information if this is reasonably necessary for the performance of functions or powers under or in relation to Part 8A of the PHW Act, or achieving the objective of Part 8A (PHW Act, s 165BR). Part 8A of the PHW Act is concerned with the protection of life and public health during pandemics. 'Information' includes personal information within the meaning of the PDP Act and health information within the meaning of the HR Act (PHW Act, s 3(1));
- clarifying that the disclosure of personal information or health information in (for example) answering a question or producing a document or other thing as authorised by Part 8A is taken to be authorised or required by law for the purposes of the PDP Act and the HR Act (PHW Act, s 165BS); and
- significantly strengthening existing protections to ensure that information voluntarily supplied as part of the contact tracing process, or through QR codes and manual check-ins, can only be used for public health purposes apart from in very limited exceptional circumstances.

The PHW Act and its regulations require medical practitioners and laboratories to notify the Department of notifiable diseases (prescribed health conditions and micro-organisms).

This information enables the monitoring and development of responses to manage the COVID-19 pandemic using a test, trace, isolate and quarantine approach to: disrupt chains of transmission; provide critical information to inform policy and preventive measures to mitigate subsequent impacts, such as those on health system capacity and provision of essential services.

The Department of Health receives:

- notification of positive test results from probable cases following a COVID-19 rapid antigen test;
- notification of all results (positive and negative) obtained by PCR tests from pathology laboratories; and
- the location at which a diagnosed person or probable case is self-isolating.

The reporting of these results enables the Victorian Department of Health (the Department) to protect the health and safety of the community. Data on notifiable diseases has been collected and used by health authorities worldwide to inform and monitor the extent of the burden and trend of diseases, measure effects of the disease, assess the effectiveness of control and prevention measures, identify populations at high risk, allocate resources

appropriately, formulate prevention strategies and develop public health policies. COVID-19 is one such notifiable disease.

As the number of cases increased and the PCR system reached capacity, Victoria responded by identifying probable cases using self-administered rapid antigen testing. Adding the number of probable cases to the number of confirmed cases provided the Victorian Department of Health (the Department) with critical and timely information to manage the pandemic effectively.

When a probable case notifies the Department, this provides an avenue for the Department to provide relevant and important information directly to the individual about how to isolate properly and connects them to their Local Public Health Units and local health services to ensure their care needs are met. Provision of the address where they are isolating provides linkages into the Department's community support programs such as the Household Engagement Program, COVID-19 Positive Pathway Program, and our Compliance and Enforcement Program. While most cases do not require hospitalisation, it is important that individuals at high risk of severe outcomes are identified and supported.

The infectious period of a case, which is identifiable when diagnosed or probable cases notify the Department that they are COVID positive, is also important in informing these support programs, the appropriate care pathway and an individual's eligibility for treatment for COVID-19. The infectious period is also necessary for providing advice as to when someone is released from isolation, and identifying and managing contacts of confirmed cases, as when someone was potentially exposed determines if they are, or are not, a contact.

The information is not shared outside of the scope and purpose of case, contact and outbreak management and only disclosed where authorised or required by law including under Part 8A of the PHW Act.

## **QUESTION 2**

### **Collection, recording and storing of personal and health information (clauses 11, 16, 29 and 35):**

*The advice provided to the Committee does not consider there is adequate explanation on how provisions in the Order concerning collection, use and disclosure, data security and disposal of personal information are compatible with the right to privacy. Neither the Privacy and Data Protection Act 2014 nor the Health Records Act 2001 are referred to in either the Human Rights Statement or Statement of Reasons, despite imposing obligations relating to data and health information.*

*Under clause 28, educational facility operators must notify certain people after being informed of a positive COVID-19 case. There is no equivalent clause in the Order requiring the Department to notify anyone of a positive case (e.g through contact tracing). Clause 29 further places an obligation on education facility operators to collect, record and store certain information relating to notifications made under clauses 11 or 16. As noted above, the advice provided to the Committee does not consider there is sufficient explanation for why it is necessary for educational facilities to receive notification of a person's COVID-19 status.*

*Clause 35 permits the CEO of Service Victoria to do various things with personal and health information. This clause is not addressed in detail in either the Statement of Reasons or the Human Rights Statement despite directly impacting a person's right to privacy.*

*The Committee seeks your response to the following questions:*

- How will the Department, educational facilities and Service Victoria protect a person's privacy after receiving the information that persons are required to disclose under this Order?*
- What privacy protections apply to information disclosed and held by the Department, education facilities and Service Victoria under the Order?*
- How does the Department propose to use any data shared by Service Victoria?*

## **RESPONSE**

### **2.1 How will the Department, educational facilities and Service Victoria protect a person's privacy after receiving the information that persons are required to disclose under this Order?**

In addition to existing regulatory frameworks that govern the protection of personal and health information, as described above, the Department also has policies relating to privacy and disclosure of contact tracing information.

Department staff must complete training at induction and at regular intervals to ensure that they are aware of and supported to comply with privacy protections. There are also comprehensive systems-based information security measures to protect any data held by the Department, education facilities and Service Victoria.

Data sharing arrangements between the Department, education facilities and Service Victoria are established under information sharing agreements, MOUs and/or and the VPS Data Sharing Heads of Agreement, which set out the specific data protections practices and procedures.

As outlined in the evidence of both Service Victoria and the Office of the Victorian Information Commissioner (OVIC) at the committee's hearing on 29 March, Service Victoria has regularly consulted with OVIC to ensure that the privacy of any data collected or stored through its platform is protect.

## *2.2 What privacy protections apply to information disclosed and held by the Department, education facilities and Service Victoria under the Order?*

There are numerous privacy protections that apply to information disclosed and held by the Department, education facilities and Service Victoria under the pandemic orders. The pandemic legislation has specific safeguards for contact tracing information. It is an offence for any person to use or disclose contact tracing information except for a very limited number of purposes. Those include:

- a public health purpose
- to perform powers or exercise functions under the pandemic legislation
- with the consent of the individual the information relates to
- to address an imminent threat to life, health, safety or welfare relating to the individual's self-harm or their harm to others.

The data collected by Service Victoria, is only accessed by the Department of Health where there are grounds for accessing that data, outlined above.

In addition, the PDP Act and the HR Act provide privacy protections. This is the primary legislation that regulates the information handling of personal and health information. The department manages information in accordance with the Information Privacy Principles and Health Privacy Principles that provide standards for information collection, storage, access, transmission, disclosure, use and disposal as prescribed within these Acts.

## *2.3 How does the Department propose to use any data shared by Service Victoria?*

As outlined at 2.2 above, disclosure of contact tracing information is for a very limited number of purposes including: a public health purpose; to perform powers or exercise functions under the pandemic legislation; with the consent of the individual the information relates to; and to address an imminent threat to life, health, safety or welfare relating to the individual's self-harm or their harm to others.

As outlined at 2.1 above, all data shared with the Department by Service Victoria is handled in accordance with established data sharing arrangements. Additionally, data collected by Service Victoria is subject to several pieces of governing legislation dealing with the protection of the personal information of users, including the *Public Records Act 1973*, HR Act, PDP Act and *Service Victoria Act 2018*, and this data is stored in accordance with the Victorian Protective Data Security Standards.

# Minority report



## THE MINORITY REPORT

### **Pandemic Declaration Accountability and Oversight Committee Liberal and Nationals Minority Report**

#### **BACKGROUND:**

The Pandemic Declaration Accountability and Oversight Committee was established as part of the Andrews Government's *Public Health and Wellbeing (Pandemic Management) Bill 2021* which passed with support of a number of Independents. They included the Reason Party's Ms Fiona Patten, the Greens' Dr Samantha Ratnam, the Animal Justice Party's Mr Andy Meddick and the Transport Matters Party's Mr Rod Barton. The new pandemic management framework came into effect on December 15 2021, and at the time of writing the Pandemic Declaration remains in place until 12 October 2022.

**The Liberals and Nationals remain concerned about the Andrews Labor Government's handling of the COVID-19 response. Throughout the public hearings the Committee heard from a range of witnesses that provided evidence which was inconsistent and contradicted what the Government had told Victorians.**

During the course of the past two years, Victorians had been constantly told by the Premier, Government Ministers and various bureaucrats, that the decisions and Orders made for the COVID-19 response were based on health advice from medical experts including the Chief Health Officer (CHO), Professor Brett Sutton.

The Premier and Professor Brett Sutton for many months throughout 2020 and 2021 were present at daily press conferences. It was entirely appropriate therefore, for the Committee to have heard from the Chief Health Officer, despite the Legislation and review of Orders remit having moved to the responsibility of the Minister for Health.

At a Public Hearing in January 2022 the Committee heard from the Department of Health and the Chief Health Officer, Professor Brett Sutton.

**Despite the numerous changes to Pandemic Orders over the past six months since, the Liberals and Nationals were concerned that the Chief Health Officer did not provide further evidence to the Committee beyond evidence given in January 2022.**

At the time of writing this report the Liberals and Nationals were of the view that there was an inconsistent approach from the Andrews Labor Government regarding the management of COVID-19. This includes mixed messaging coming from the new Health Minister (the 4<sup>th</sup> Health Minister in four years) and her colleagues regarding mandates and restrictions, and the extension of the Pandemic Declaration on 12 July 2022 to 12 October 2022. It is entirely appropriate, and a community expectation, that the Chief Health Officer therefore appear as a witness before the Committee again.

# CONTENTS

BACKGROUND:	<b>1</b>
MINISTER FOR HEALTH, DEPARTMENT OF HEALTH AND CHIEF HEALTH OFFICER:	3
FINDINGS:	5
RECOMMENDATIONS:	5
MENTAL HEALTH	<b>7</b>
CHIEF PSYCHIATRIST AND CHIEF MENTAL HEALTH NURSE	7
BEYOND BLUE	9
MENTAL HEALTH VICTORIA	9
YOURTOWN/KIDS HELPLINE	10
ROYAL AUSTRALIAN AND NEW ZEALAND COLLEGE OF PSYCHIATRISTS and AUSTRALIAN ASSOCIATION OF PSYCHOLOGISTS	12
VICTORIAN MENTAL ILLNESS AWARENESS COUNCIL	13
SHADOW PANDEMIC	14
VICTORIAN ALCOHOL AND DRUG ASSOCIATION	15
FINDINGS:	16
RECOMMENDATIONS:	18
EPIDEMIOLOGIST EVIDENCE:	<b>19</b>
FINDINGS	20
RECOMMENDATIONS:	20
HEALTH SERVICES:	<b>20</b>
FINDINGS:	21
RECOMMENDATION:	21
SERVICE VICTORIA:	<b>21</b>
FINDINGS:	22
PATHOLOGY:	<b>22</b>
FINDINGS:	22
RECOMMENDATION:	23
ADDITIONAL RECOMMENDATIONS:	<b>23</b>
<b>SUMMARY OF FINDINGS:</b>	<b>24</b>
<b>SUMMARY OF RECOMMENDATIONS:</b>	<b>27</b>



## MINISTER FOR HEALTH, DEPARTMENT OF HEALTH AND CHIEF HEALTH OFFICER:

In making any Orders the Minister for Health is required to *have asked* for advice from medical experts, including the CHO.

### Evidence to the Committee from the Chief Health Officer, Professor Sutton:

*“My role in pandemic orders—this flowchart provides an overview of how orders are made and how my advice as CHO facilitates the minister’s acquittal of his legislative responsibilities. The process is followed regardless of the urgency, complexity or nature of changes to orders being proposed. Even when changes are urgent the minister must still formally request and consider my advice and undertake a charter assessment to ensure the measures are proportionate to the public health risk. The Act does allow for advice to be given verbally to ensure orders can be made urgently as required, and a written record of my advice still needs to be made public and published”*

### Evidence to the committee from the Minister for Health:

*“The legislation requires me first and foremost to take advice from the Chief Health Officer through the health concerns.”*

Despite the numerous lockdowns and harsh restrictions mandated by the Andrews Labor Government throughout 2020 and 2021, evidence to the Committee, including decisions regarding the suspension of IVF services, the suspension of surgery and the implementation of a CODE BROWN, did not involve the CHO.

Likewise, decisions made regarding vaccine mandates, and caps on crowds at the Australian Open were not decisions made by the CHO nor was he asked for specific advice.

**Prof. SUTTON:** *So the decision about the increased cap for the tennis was a decision made by the Minister for Health. Again, I did not make a recommendation—*

**Ms CROZIER:** *So he did not get advice? Sorry, Dr Sutton, did he not get advice from you about the risk of spread when the crowd increased?*

**Prof. SUTTON:** *So I had a request for a public health view, and I provided no recommendation for or against. I said that it was primarily a matter really of social licence and social considerations as a really significant public event.*

**Prof. SUTTON:** *I have not been requested to provide advice on broader vaccine mandates at this stage—*

**Ms KEALY:** *Thank you, Professor Sutton. Mandatory vaccination for school students—is that something that you are considering at present?*

**Prof. SUTTON:** *The question, again, has not been asked of me. The mandates will come up for consideration, and I will put my mind to the advice available to me—again the epidemiology and the recommendations—bearing in mind that children are a special case where it comes to the exercise of their sovereignty. They need to be considered separately and specially, I think, with regard to mandates.*

**Ms KEALY:** *Thank you very much, Professor Sutton. In regard to the advice that has been provided to the minister, it does refer to the issue around staff furloughing. But we know in specific instances it has*

targeted areas, particularly when we refer to that one-size-fits-all approach, that work alone. For example, during harvest we had people who would be on a header or in a truck all day and they were not able to work because they could not get vaccinated. I am worried that the proportionate response is not always in place, and if the government is not seeking a review of those orders, perhaps we are not correctly meeting the requirements of supporting our Victorian community to get food from the paddock to the plate.

**Prof. SUTTON:** I would absolutely take into consideration the criticality of particular workforces and how they might be impacted by not being available to provide work.

**Ms KEALY:** With due respect, Professor Sutton, that has not occurred to date.

**Prof. SUTTON:** No, it has. All of the pandemic orders are made on recommendations that take into consideration the proportionality for those specific areas.

**Mr WELLS:** In regard to the tennis—I want to just loop this in—with the government medical panel that was established or constituted, under what legislation was that constituted?

**Prof. SUTTON:** I do not know that it was constituted under legislation. I do not know about the panel and its constitution.

**Ms KEALY:** Minister, my question is specific to when the mask mandates for primary school age children will end.

**Mr FOLEY:** Well, with the greatest of respect, you did set the context of the question by reference to one particular form of advice, and it is my contention to the committee that particularly when it comes to public health advice and pandemic advice in an area where there is a contest of ideas, there are many areas where that advice is tested and where that advice is shared. In that regard I rely on the forums that the public health unit and the Chief Health Officer in particular have, where the public health team consult through a variety of different experts in this field. And with the obligations that I have under the legislation, which requires me to take into specific account the advice in these areas of the Chief Health Officer—**Ms KEALY:** Minister and Chair, can I cut off the Minister there? It was a quit Minister and Chair, can I cut off the Minister there? It was a quite specific question: when will it end?

**Mr FOLEY:** I am required to do that. And the Chief Health Officer's advice as registered is pretty clear. In regard to what that means, theoretically the advice and therefore the orders that have flowed from that are in place until the pandemic declaration ceases—

**Ms KEALY:** So until the end of time. Thank you, Minister, very much for that extensive response that did not actually answer the question.

**Mr FOLEY:** so in a technical sense it is in April. But in regard to all of these orders—if I could be allowed to finish. I am trying to set the context.

**The CHAIR:** I think you have answered the question in saying that it will be based on the Chief Health Officer's advice.

**Mr FOLEY:** Correct

## FINDINGS:

1. The legislation requires first and foremost that the Minister for Health takes advice from the Chief Health Officer on the health concerns.
2. Professor Sutton had not been asked by the Minister or the Government, and did not provide health advice regarding a mandatory third vaccination prior to the Premier publicly announcing his recommendation that the definition of fully vaccinated be changed to mean three doses of a COVID-19 vaccine.
3. Decisions around the suspension of elective surgery and IVF services were made by the Department Secretary.
4. The Chief Health Officer was not aware of the membership of the medical exemption review panel that was providing advice to Tennis Australia for the 2022 Australian Open. Other Health Departmental Officials were also unaware of who was on the medical exemption panel or who had appointed members to the panel.
5. Mandates are not based on the Chief Health Officer's advice.

## RECOMMENDATIONS:

1. That the Andrews Labor Government provide the committee with the names of appointees to the medical exemption review panel, when they were appointed, and the process of appointment.
2. That the Andrews Labor Government provide the details of how many times the medical exemption review panel met during 2020, 2021 and 2022.
3. That the Andrews Labor Government publish a copy of the health advice as to decisions made by the medical exemption review panel.
4. That the Premier provides clarity on which health advice he was reliant on to make the recommendation that the definition of fully vaccinated be changed to mean three doses of COVID-19 vaccine.
5. That the Andrews Labor Government provide details of the "different experts in the field" and the "public health team" that provided advice to the public health unit and CHO.

## MENTAL HEALTH

The Committee heard evidence from a number of representatives from the mental health sector. All witnesses gave evidence of increased demand for mental health services during the pandemic, which peaked when lockdowns were announced and for the duration of the lockdown period.

Of significant concern during the public hearings was not one expert witness was requested to provide mental health advice to the Minister for Health or the Chief Health Officer regarding the impacts of pandemic orders before the orders were announced and came into force. This resulted in a systematic whole-of-government failure to recognise mental health stresses within the Victorian community, especially amongst under 25's.

### CHIEF PSYCHIATRIST AND CHIEF MENTAL HEALTH NURSE

The Chief Psychiatrist confirmed that he did not make recommendations around amendments to the pandemic orders in evidence obtained through Questions on Notice:

#### **Chief Psychiatrist, Questions on Notice:**

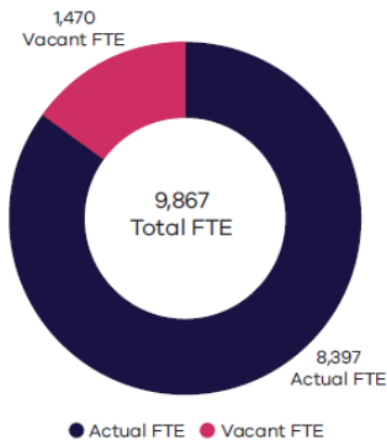
***Ms KEALY** Question asked to Dr Coventry: Given that data, in your opinion, is being utilised to advise the creation of the pandemic orders, can I please ask for copies of the minutes from those meetings to be provided to the committee, including the recommendations that you have made around amendments to the orders?*

***Response:** The Chief Psychiatrist does not make recommendations around amendments to pandemic orders*

The Chief Mental Health Nurse also provided evidence that there were 1470 EFT job vacancies across Victorian public specialist mental health services.

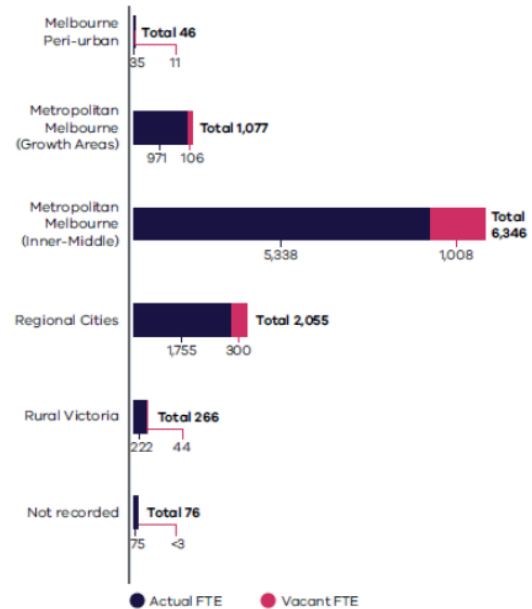
- Specific vacancy rates can be found below (source: *Victoria’s Mental Health and Wellbeing Workforce Strategy 2021-24* <https://www.health.vic.gov.au/strategy-and-planning/mental-health-workforce-strategy>)

**Figure 9: Public specialist mental health service overall vacancy rate (FTE)**



Source: Service Census Survey dataset (2021). Melbourne peri-urban areas surround Metropolitan Melbourne and interface with rural or bush areas – they are neither urban nor rural in the conventional sense. There are six peri-urban areas in Victoria (Bass Coast, Baw Baw, Mansfield, Mitchell, Moorabool and Murrindindi).

**Figure 10: Public specialist mental health FTE positions by region (actual and vacant FTE positions)**



The Chief Psychiatrist gave evidence that a contributing factor in respect of increased use of restrictive interventions includes staffing shortages and use of agency staff:

**Dr COVENTRY:** One of the things we do know, though, is there is certainly a factor when we have got staffing problems and we are using a lot of agency staff or there are not sufficient staff in a unit. That is always one of the risks, and you are probably aware—

**Ms KEALY:** Are you saying that the shortage of staffing leads to an increasing level of restraint?

**Dr COVENTRY:** Well, we know that was pre pandemic too—that that can be one of the factors that is involved.

Despite the Chief Psychiatrist indicating there was not an increase in suicides over the pandemic lockdowns and restrictions, the Coroners Court of Victoria (CCOV) has reported the highest number of suicides on record in 2020 (712)<sup>1</sup>. There remains a number of cases pending for 2020, 2021 and 2022 to date so recent figures cannot be used comparatively.

Further, a peer reviewed study into suicides in Victoria investigated by the Victorian Coroner found that almost 10% of all suicides in 2020 were COVID-linked, “where COVID-19 and its associated impacts were identified as being a factor in the suicide”<sup>2</sup>.

<sup>1</sup> Coroners Court of Victoria, *Coroners Court Monthly Suicide Data Report December 2021 update*, 20 January 2022.

<sup>2</sup> Justin Dwyer and Jeremy Dwyer et al, *COVID-19 as a Context in Suicide: Early Insights from Victoria, Australia*, 12 July 2021.

## BEYOND BLUE

Beyond Blue provided evidence that demand for support services peaked during lockdowns. They also highlighted that the mental health workforce is overwhelmed, exhausted, and that demand for mental health services continues to outstrip workforce capacity.

**Demand for Beyond Blue’s support services reached record levels during the pandemic and remain higher today than they were before March 2020.**

- Up until the middle of 2021, monthly demand for Beyond Blue’s support services was 20 to 30 per cent above pre-pandemic levels nationally.
- Nationally, Beyond Blue handled 419,037 calls, 8,438 callbacks, 116,195 web chats and 14,193 emails between April 2020 and February 2022 – a total of 557,863 contacts. This includes a total of 128,000 calls and 13,000 webchats between July 2020 and February 2022, from Victorian contacts only.

**Victoria has consistently had the highest contacts as a proportion of the Australian population since the beginning of the pandemic-related lockdowns.**

- Demand increased even before lockdowns were announced. The days leading up to lockdowns usually saw demand from Victoria increase by an average of 13.65 per cent.
- From our service data and insights, the pandemic in general has brought about a complex mix of (comorbid) feelings and mental health issues:
  - Anxiety, isolation, exhaustion and worry (about the virus and future).
  - Family conflict and relationship and financial stress.
  - Sleeplessness, irritability, withdrawal and feelings of hopelessness.
  - Social anxiety, especially people struggling with the transition back to face-to-face contact.
- This prolonged state of change, rolling uncertainty and hypervigilance has exacerbated pressure points including financial hardship, housing security and access to affordable services.

**The current mental health workforce is overwhelmed and exhausted. Demand continues to outstrip workforce availability.**

- These structural and systemic issues existed pre-COVID, and the pandemic has served to spotlight them, exacerbate them and amplify them. Now more than ever we need to continue genuine structural, governance, funding and workforce reform, in order to design a system built around people, with lived experience at the heart of everything. We need to continue to build the capacity and size of the traditional workforce but also invest in new workforces.

## MENTAL HEALTH VICTORIA

When “speaking to the impacts of the pandemic and the associated public health orders”, the peak body for mental health services in Victoria, Mental Health Victoria, wrote in December 2021 that **“Victoria is in the midst of a mental health ... crisis.”**

Supporting evidence was provided around the significant increase in demand for mental health support as a result of lockdowns and restrictions, including:

- Compassionate Friends Victoria: First contacts with people bereaved by suicide increased from 31 in 2019–20 to 64 in 2020–21. Grief calls to their helpline increased by 25 per cent in the same period.
- The Mental Health Legal Centre pivoted at the start of the pandemic into becoming a de facto food bank, and they did all of this whilst taking around 2000 phone calls a month from people in need.
- Data that is still emerging shows us that there were increases in mental health presentations across the state for younger children, under the age of 12.
- There were rises in presentations for infant feeding difficulties and irritability, anxiety and developmental behavioural disorders.
- We also know that children living in lower SES areas were more likely to present for mental health conditions than children living in higher SES areas, except for eating disorders where the reverse trend appears to be evident.
- The increased prevalence of eating disorders for children between the ages of 12 and 18.
- There has been a sharp rise in presentations for eating disorders, anxiety disorders, mood disorders and self-harm.
- Seven community-managed mental health organisations surveyed their service consumers in late 2020 to gain insight into the impacts of the pandemic and found that over **half of the respondents reported that their mental health had deteriorated since the start of the pandemic**, and social isolation and physical distancing were the most prominent proximate causes of this.
- VMIAC (Victorian Mental Illness Awareness Council) saw a 126 per cent increase in consumers contacting them for assistance throughout the course of last year, as consumers experienced delays in and lack of support from community-based services. Consumers reported to VMIAC that the cessation of face-to-face support, **as mandated by the pandemic orders, caused increased distress, feelings of hopelessness and vulnerability.**
- From June 2020 to June 2021, Tandem saw a 432 per cent increase in the number of family members, carers and supporters seeking support through their helpline

## YOUTOWN/KIDS HELPLINE

Yourtown operates Kids Helpline, a well-known and highly respected telephone and online counselling service for children and youth. During pandemic lockdowns and restrictions, Kids Helpline was regularly promoted by the Victorian Government as a key point of mental health support for children.

For the duration of the pandemic lockdowns and restrictions, Kids Helpline reported a significant increase in demand for their counselling services. This increased demand has endured to the time that this report was finalised.

*In 2021 close to 123 000 attempts were made to connect to our Kids Helpline counsellors from young people in Victoria. This represented a 20 per cent increase in demand from 2019—pre COVID. On current funding levels we could only respond to 38 per cent of those attempted contacts, or just over 46 000 children and young people. This represented 27 per*

cent of all Kids Helpline contacts in 2021. **Sadly, we could not respond to 62 per cent of these children and young people, or over 76 000 attempted contacts.** Of the contacts we were able to respond to in 2021, 38.8 per cent sought help in relation to mental health or emotional wellbeing concerns, 11.5 per cent for suicide-related concerns, 7.7 per cent for child-parent relationships and 6.3 per cent for parents' wellbeing.

**Kids Helpline also experienced a 264 per cent increase in immediate emergency responses in Victoria in 2021 (compared to 2019, pre-COVID)—this is where we have to contact ambulance, police or child protection because a child is at imminent risk of harm.** From the beginning of COVID in March 2020 to December 2021 Kids Helpline provided emergency support to 2408 Victorian children and young people. This included **978 young people who attempted suicide or expressed suicidal ideation and 749 children who reported child abuse.**

The longevity of lockdown measures in Victoria, the uncertainty around education and the increased restrictions and disruptions had a major impact on demand for Kids Helpline. For example, we experienced a 30 per cent spike in demand from Victorian children and young people between March and August 2020 compared to the same time in 2019. Lockdown has also impacted the number of immediate emergency responses that we provided to Victorian children and young people. During the Victorian lockdowns on average there were four emergency responses per day, a 100 per cent increase compared to the 2 per cent per day pre COVID in 2019.

However, on 7 October 2021 we provided emergency support for 15 children and young people. **In particular we saw an increase in child abuse and sexual assault.** Since the pandemic Kids Helpline has responded to nearly 8000 contacts from Victorian young people which specifically mentioned COVID-19 as a concern. We saw a peak with COVID-related issues particularly in April 2020 when it was announced that students would participate in remote and flexible learning for term 2, when stage 4 restrictions were announced in August 2020 and around the time of lockdown in August and September in 2021.

During periods of lockdown and higher level restrictions COVID-related concerns constituted around one-third of all contacts from children young people in Victoria that required a counselling response. Of the contacts that raised COVID as an issue we saw significant increases in concerns relating to mental health and emotional wellbeing, family relationships and study and education issues. Of the key concerns when young people specifically referred to COVID, over 72 per cent sought support for mental health or emotional wellbeing, over 19 per cent for family relationships, 11.6 per cent for suicide-related concerns and 11 per cent for study and education concerns.

Yourtown gave evidence that prior to the COVID-19 pandemic, and continuing throughout the pandemic to date, Yourtown sought additional funding from the Andrews Labor Government to build capacity in their system to respond to the 76,000 calls from Victorian children that went unanswered during the pandemic.



### **As provided in Questions on Notice:**

*In April 2020 after the COVID pandemic reached Australia, the Victorian Department of Health and Human Services advised Yourtown it would receive \$500,000 to provide critical counselling services to children and young people in Victoria during the COVID-19 pandemic.*

*In January 2021, Yourtown submitted a \$2.3 million request for funding (in 2021-22) to the Victorian Government seeking increased funding for Kids Helpline to meet demand from Victorian children and young people for the service, the establishment of a Kids Helpline Counselling Centre in Victoria, and commitment to continuation of funding support.*

*On 15 June 2021, the Victorian Department of Health and Human Services advised Yourtown that it would receive \$500,000 non-recurrent funding to respond to the impact of a COVID-19 lockdown.*

**Despite advocacy by Yourtown, all additional COVID support funding has now been cut, and from 1 July 2022 no further additional funding has been provided by the Andrews Labor Government to Yourtown to enable Kids Helpline to provide critical counselling service to children and young people in Victoria experiencing mental ill-health and mental illness due pandemic orders and restrictions.**

### **ROYAL AUSTRALIAN AND NEW ZEALAND COLLEGE OF PSYCHIATRISTS and AUSTRALIAN ASSOCIATION OF PSYCHOLOGISTS**

Both the RANZCP and AAPI provided evidence that the critical mental health workforce shortage impacted on the sector's ability to meet demand. While this was evident in 2019, it was exacerbated as a result of the mental health impacts of pandemic lockdowns and restrictions.

The Committee heard evidence that both the RANZCP and AAPI had strongly advocated for and approached the Andrews Labor Government with solutions to build the mental health workforce.

***DR RUBIN:** We as a college have been very strong advocates for looking at multiple measures to increase our workforce. The problem is that, really, to have the workforce we need, we needed to start 10 years ago. But even now it is about measures that Tegan has spoken about, including providing some access in private settings to Medicare rebates for provisional psychologists, but it is also about introducing graduate or trainee positions within public mental health services for psychologists, for OTs, for graduate nurses wishing to work in this area.*

### **Questions on notice, RANZCP:**

*Those in psychiatry training programs are at the frontline of clinical service delivery and frequently the first point of contact for consumers and carers. In 2021, the number of applications for psychiatry training positions was greater than available. That is, 35 candidates identified as qualified for fellowship training were turned away as no position was available.*

**The Committee also heard that RANZCP and AAPI directly approached the Andrews Labor Government with solutions to build the mental health workforce, but these requests did not receive funding support, and in some instances, no response was provided by the Minister for Mental Health.**

**Ms KEALY:** Did your college make an approach to the state government to fund more supervised positions, given that would have unlocked about 30 psychiatrists into the system when we were desperately short of workers?

**Dr RUBIN:** We have been making approaches on a yearly basis to government to expand those training positions for as long as I have been a member of the Victorian branch as a psychiatrist and a trainee for over a decade now. It is not about funding those first-year positions, but there are other positions that you need to train in to train as a psychiatrist, and if there are not positions available in those specialty areas, you are not able to fund a first-year position—so particularly that child and adolescent psychiatry training.

... But the reality is with appropriate funding, and I am hopeful that is going to come via the royal commission, we could increase the number of psychiatrists we are training by 20 to 30 per cent almost—I will not say overnight, but within 12 months.

**Ms KEALY:** I find it quite astonishing that there are so many psychologists that are wanting to train into the area when we have got this workforce shortage and that it is a matter of funding when there is a lot of money available and it was recommended by the royal commission back in 2019, in the interim report I believe. I cannot believe that just last year we still did not have enough training positions for those trainees, and we have not developed that youth and adolescent pathway either.

**Dr RUBIN:** The concern for me is that Victoria is unusual in the sense that we have a significant oversupply of people wishing to train here, because at least in Victoria our training program is considered to be one of the best in Australia. What then happens is New South Wales tends to struggle to fill their positions and that some of those people who have missed out on places in Victoria go and get a training position in New South Wales, and the majority of them never return. There are a lot of good statistics that say people tend to work where they train, which has been the basis behind trying to get more trainees into rural areas, and one thing that government has done successfully is expand the number of rural training psychiatry positions. But, again, if there were 20 additional positions, we could probably fill those tomorrow.

**Ms KEALY (to Ms CARRISON):** Have you approached the state government to see if there is any surge funding that might be available to provide funding support to allow supervision for those provisional psychologists so that more Victorians would be able to get some level of mental health support?

**Ms CARRISON:** Thanks for the question, Emma. Yes, we have directly approached the Victorian government. As of today I have not received a response.

**Ms KEALY:** When did you approach them?

**Ms CARRISON:** I would have written at least six letters over the last two years.

## VICTORIAN MENTAL ILLNESS AWARENESS COUNCIL

During the pandemic VMIAC reported a “126 per cent increase in consumers contacting for assistance and support as consumers experienced delays in and lack of support from community-based services.

Consumers reported the cessation of face-to-face support, as mandated by the pandemic orders, caused increased distress, feelings of hopelessness and vulnerability.”

During the pandemic lockdowns and restrictions, VMIAC was provided additional funding from the Victorian Government as part of the ‘Keeping Victorians Connected and Supported – Mental Health and Wellbeing Coronavirus Response Package’. This funding was used to provide the Check-In program:

**Ms CROZIER:** *I understand that VMIAC undertook a survey in 2020, at the start of the pandemic, where you had 176 who responded to that with some fairly alarming results, and that you undertook a series of other surveys. In June 2021 you launched a third survey. I am just wondering what the results of that are, because there is nothing on your website with those findings. Would you be able to explain to the committee what those findings were?*

**Mr WALLACE:** *Sure. Thank you for the question. I think you are referring to our COVID surveys, and the outcome of the early work there was the establishment of our Check-In program. So Check-In was, I guess, time-dependent, context-dependent funding for a program to provide consumers with individual and group Level support given the extra stress that they were feeling during the pandemic. That program was funded by the state government, and it is quite a timely question because we have only just found out in the last week that that program has not been refunded.*

**Ms CROZIER:** *Not been refunded?*

**Mr WALLACE:** *No. The funding for that program finishes on 30 June this year—in seven weeks or six weeks. That is a great disappointment to us as an organisation and of course a terrible disappointment to the staff, who have put so much into creating, really, a bespoke service for consumers during the pandemic. As we all know, the pandemic is not over, yet that service has been defunded. What that service enabled us to do was actually to hold some consumers better than we would otherwise be able to do so that they could participate in other programs of ours, like that the program that Shellie works in, in advocacy, and also some NDIS participants to get that support from Check-In. So Check-In was an outcome of the COVID survey, and yet it is finishing up on 30 June.*

## SHADOW PANDEMIC

The Shadow Pandemic group grew organically through social media connections between parents concerned about their children’s mental health as a result of pandemic lockdowns and restrictions. Over 20,000 Victorians are now involved in the Shadow Pandemic group.

The Committee heard dozens of compelling stories from parents regarding the impact of pandemic lockdowns and restrictions on their children’s mental health, and particularly, the impact of school closures.

**Ms BLACKWELL:** *The lockdowns went on too long. Our children are the most locked-down kids in the world, and they did not need to be. Other schools opened up internationally much earlier than us, and they did a test to stay. Our kids were made to stay at home. Not only that, they had their playgrounds taped up and were told that, ‘No, you children can’t go and play’. That is horrific.*

The Committee also heard that funding provided by the Victorian Government to deliver additional mental health support in schools would not be available in metropolitan schools for another two years, deemed “too late” by the Shadow Pandemic group.

**Mr WELLS:** *I just want to go back to one of the questions that was asked before about the school mental health funding. My understanding is that in rural and regional schools it will be in term 3 this year, but in metro schools it is not going to be for a couple of years. Surely that part of the funding has to be fixed.*

**Ms BLACKWELL:** *We would like that, because the thing is the children are suffering now—you have heard from teachers what the kids are experiencing. I mean, aside from the fact that some of them are academically behind, their social behaviour, their anxiety, their level of concentration and focus—if we leave that for another couple of years, they are still just going to be battling through. We need to provide programs now, not in two to three years time, and particularly in metropolitan Melbourne because that is where the children suffered the greatest.*

**Mr WELLS:** *And the point that was made earlier that with metropolitan kids being the most locked-down schoolkids in the world, I would have thought the mental health programs would have been available now to be able to deal with that instead of in two years time. It just seems so stupid.*

**Ms DVIR:** *I would have thought that too.*

**Ms BLACKWELL:** *In two years time is too late.*

## VICTORIAN ALCOHOL AND DRUG ASSOCIATION

VAADA is the peak body representing alcohol and other drug service providers in Victoria.

They shared key statistics regarding the impact of pandemic lockdowns and restrictions on use and abuse of alcohol and other drugs (AOD), and demand for AOD treatment and support:

- The number of people calling helplines for alcohol and other drugs doubled from 2019 to 2020.
- Worryingly, fatal overdose data from the Victorian Coroners Court revealed that 2020 had the highest number of women fatally overdose from alcohol and more generally, the highest number of overdoses where alcohol was the sole contributing drug. The Coroners Court data goes back to 2010.
- Alcohol and other drug treatment agencies informed the committee that there was an increase in the number of people relapsing, as well as people who had not previously attended treatment but presented concerned about their alcohol consumption during the pandemic.
- Treatment agencies have indicated an increasing presence of these novel benzodiazepines throughout the pandemic, during which we have seen a dramatic increase in fatal overdose involving these substances, from '0' deaths in 2017 to '28' in 2020.
- In September 2020, there was a daily waitlist of 2385 people across the state; this increased by 50.9% in July 2021, to 3599 people. We anticipate that this has further increased.
- During the pandemic, closing the waitlist for treatment became more frequent, with the common refrain of agencies noting 'they have to close the counselling books for a couple of weeks'. Closing the waitlists means no new clients, for at times weeks.

- The impact on the forensic AOD system is yet to be properly felt, with reports indicating that there is a backlog in the Courts of well over 100,000 cases and with a good portion of those cases likely to require forensic AOD treatment, we hold grave concerns on how this will impact sector capacity. Of particular concern is, not only access issues for those directed by the Court, but how this surge in forensic treatment demand will push aside those voluntarily seeking support further back in the queue.

VAADA highlighted concerns regarding the ability of the sector to meet current and future demand for AOD treatment and support, particularly on the back of significant funding cuts by the Andrews Labor Government in this years budget:

*Finally, we did welcome the \$25.62M announcement for an additional 100 workers. Despite recruitment challenges, this was most welcome no doubt providing vital support for Victorians who would have otherwise been waiting, dropping off waitlists or experiencing greater substance related harm.*

***Unfortunately, and sadly the 2022/23 budget discontinued funding the 100 workers beyond 2023, which will result in a significant cut in capacity. This cut, 9 coupled with other items, amounts to a \$39.8M (11.2%) cut to the AOD sector, being the first retrograde AOD budget in at least 17 years.***

*It is likely that the impact of COVID-19 on AOD treatment demand will continue to be felt for years; it is unlikely to have yet peaked. With this in mind, it is incredibly perilous to be cutting support for AOD treatment at this time.*

## FINDINGS:

6. The Chief Psychiatrist and Chief Health Nurse did not make recommendations to the Chief Health Officer nor Minister for Health around pandemic orders to minimise the impact on the mental health of Victorians.
7. There is a critical mental health workforce crisis in Victoria, with Victoria's Mental Health and Wellbeing Workforce Strategy 2021-24 finding 1,470 EFT specialist mental health jobs are vacant in Victoria's public specialist mental health services.
8. Mental health workforce shortages contribute to increased use of restraint in hospital settings.
9. The current mental health workforce is overwhelmed and exhausted, with demand outstripping workforce availability.
10. The Andrews Labor Government did not provide sufficient funding to enable an additional 35 candidates to specialise as a psychiatrist in Victoria in 2021, despite the RANZCP directly advocating to the Andrews Labor Government for funding support for these additional training places.

11. The failure of the Andrews Labor Government to expand psychiatry training places in Victoria will lead to these psychiatry candidates undertaking their training interstate including NSW, with the majority unlikely to return to Victoria to practice.
12. The Australian Association of Psychologists wrote to the Minister for Mental Health on six occasions over two years requesting funding support for provisional psychologists to boost workforce capacity, however the Minister did not respond to any of these letters.
13. The failure of the Andrews Labor Government to support more training for psychiatrists and provide funding support for provisional psychologists and their supervision has significantly impacted on the number of mental health practitioners in Victoria, and the availability of mental health support for Victorians.
14. Victoria's pandemic orders and restrictions led to a significant increase in demand for all mental health services including BeyondBlue, KidsHelpline, Compassionate Friends Victoria, the Mental Health Legal Centre, VMIAC and Tandem, as well as clinical support services and alcohol and other drug treatment and support.
15. The full impact of the pandemic response is unknown with the Department of Health revealing that a lot of data and information about demand is not available or collated.
16. A peer reviewed study into suicides in Victoria investigated by the Victorian Coroner found that almost 10% of all suicides in 2020 were COVID-linked.
17. The impact of school closures had a profound impact on child and youth mental health, and increased mental health support has been slow to be enacted by the Andrews Labor Government.
18. The impact of pandemic lockdowns and restrictions had a disproportionate impact on children and young people.
19. The impact of pandemic orders and restrictions on Victorians continues to drive increased demand for mental health support – the shadow pandemic is not over.
20. Due to insufficient funding, KidsHelpline were unable to respond to 62% of all contacts in 2021, representing 76,000 attempted contacts from Victorian children.
21. KidsHelpline experienced a 264% increase in immediate emergency responses in Victoria in 2021 (compared to 2019), where the child was in imminent danger of harm, representing 2,408 Victorian children and young people from March 2020 to December 2021.
22. The Andrews Labor Government cut COVID surge funding to KidsHelpline to assist provide additional critical counselling services to children and young people, effective 1 July 2022.
23. The Andrews Labor Government cut funding to the 'Keeping Victorians Connected and Supported – Mental Health and Wellbeing Coronavirus Response Package', effective 1 July 2022, which impacted organisations including VMIAC to deliver more mental health support and online engagement, where demand for these services remains very high.

24. The Victorian Government's School Mental Health Fund will not be rolled out to metropolitan schools until 2024.
25. The Coroners Court of Victoria have reported that 2020 (most recent data and during pandemic lockdowns) demonstrated the highest number of women fatally overdosing from alcohol on record, and the highest number of overdoses where alcohol was the sole contributing drug.
26. There is a critical shortfall of drug and alcohol treatment and support services in Victoria, and waitlists have doubled from September 2020 to July 2021 to 3,599 people.
27. The demand for AOD treatment is expected to continue to increase over the coming year, and there are grave concerns around the capacity of the sector to support this demand which has not yet peaked.
28. The Andrews Labor Government cut funding for the AOD sector in this year's budget, including funding for 100 EFT AOD workers under the COVID workforce initiative. This is the first overall funding cut to the sector in 17 years.

## RECOMMENDATIONS:

6. That the Andrews Labor Government immediately extend funding to the 'Keeping Victorians Connected and Supported – Mental Health and Wellbeing Coronavirus Response Package', including funding to organisations including VMIAC, PANDA and Kids Helpline, for a minimum period of a further 12 months.
7. That the Andrews Labor Government provide funding support for Provisional Psychologists to assist meet surge demand for mental health support.
8. That the Victorian Government and the Victorian Liberals and Nationals advocate to the Federal Government to include mental health services provided by provisional psychologists to be included in the Medicare Benefits Schedule.
9. That the Andrews Labor Government immediately provide additional funded positions to ensure the number of post graduate psychiatrists is sufficient for all suitable candidates to train to be a psychologist in Victoria.
10. That the Coroner's Court of Victoria undertake a special inquiry into COVID-19 related stressors present in suicides in Victoria, and this report be tabled in Parliament.
11. That the Department of Health undertake a special inquiry into suicide and suicidal behaviour due to COVID-19 related stressors, especially for Victorians under 25, and this report be tabled in Parliament.
12. That the Andrews Labor Government immediately bring forward funding for the Schools Mental Health Fund from 2024, to meet the immediate demand for mental health support by students in metropolitan Melbourne.

13. That the Department of Health undertake a special inquiry into the impact of COVID-19 related stressors on women presenting under the influence of alcohol and/or with indications of high alcohol use or addiction in ambulance presentations, presentations to the emergency department and hospital admissions.
14. That the Andrews Labor Government immediately expand drug and alcohol treatment services in Victoria.
15. That the Andrews Labor Government immediately reverse funding cuts to the AOD sector delivered in this year's budget, and reinstate funding for 100 EFT AOD workers under the COVID workforce initiative.
16. While pandemic orders are in force, that the Department of Health publish data on a weekly basis related to presentations to emergency department with self harm or suicidal behaviour, eating disorders, presence of drug and alcohol addiction, family violence and mental illness, defined by key demographics such as gender, age, CALD and ATSI, and include historical data for trending purposes.

## EPIDEMIOLOGIST EVIDENCE:

Despite the Andrews Labor Government indicating months prior to the onset of winter that Victoria would face a severe influenza season in addition to increase cases of COVID-19, it is unclear what modelling the Andrews Government is relying on to form some of their decision making for the continuation of the Pandemic Declaration and subsequent Pandemic Orders.

Evidence provided to the committee on 16 June 2022, by leading epidemiologists included that not all modelling provided to the Andrews Labor Government had been publicly released and that the Doherty Institute had not done any modelling specifically for Victoria.

Professor Jodie McVernon, Director of Doherty Epidemiology at the Doherty Institute, confirmed that at no stage had they been asked to provide modelling to the Andrews Labor Government.

When asked at a public hearing about modeling undertaken by the Doherty Institute for the Victorian Government, Professor McVernon confirmed:

**Prof. McVernon:**

*"We (the Doherty Institute) have not done modelling specific for the state of Victoria"*

**Ms. Kealy:**

*"...have you ever been asked by the Victorian Government to directly provide advice around COVID modelling?"*

**Prof. McVernon:**

*"No."*

When asked at a public hearing about decisions made at the time being based on modelling available and impact of decisions around restrictions such as mask mandates Professor Baxter told the Committee:



**Prof BAXTER:**

*"I think we need an honest conversation about when that might happen. I do not think that is a politically expedient conversation to have..."*

## FINDINGS

29. Despite the Andrews Labor Government's commentary that the orders are based on health advice, leading epidemiologists indicated to the Committee that modelling had not been requested nor provided.
30. Leading epidemiologists gave evidence that some decisions were attributable to 'political decisions', rather than based on expert health advice.
31. That IPMAC (Independent Pandemic Management Committee) had not requested any information from those leading epidemiologists that came before the Committee.

## RECOMMENDATIONS:

17. That the Andrews Labor Government provide details on how many times IPMAC (Independent Pandemic Management Committee) have met and what advice they have requested on modelling.
18. That the Andrews Labor Government provide details on all modelling undertaken in the past six months, and when it was provided to the government.
19. That the Andrews Labor Government also publishes any other information, directions or reports which IPMAC have been supplied.

## HEALTH SERVICES:

During January 2022, the Andrews Labor Government suspended elective surgery on 6 January 2022 and then implemented a Code Brown across Victoria from 19 January 2022 to 12 February 2022.

The Code Brown suspension meant all elective surgery in both the public and private health systems was cancelled, with exception to the most urgent of cases, known as Category 1 cases. Victoria was the only state to have implemented a Code Brown. Included in the Code Brown was also the suspension of critical IVF services.

The Andrews Labor Government at the time of implementing the Code Brown claimed that it would assist with supporting Victoria's health system due to a rise in COVID-19 hospitalisations and the ability for utilisation of private staff in the public system.

Victoria's elective surgery wait list was at record levels prior to COVID-19 and as a result of numerous lockdowns and the implementation of a Code Brown the elective surgery wait list has continued to increase.

**Professor Euan Wallace told the Committee:**

*“Our elective surgery waiting list continues to grow, given the recent cessation.”*

**FINDINGS:**

32. Despite the Andrews Government claims that private hospital staff would be supporting the public health system that did not occur.
33. Elective surgery wait lists have increased further as a result of the implementation of a Code Brown and suspension of surgeries. The latest figures available as of 31 March, 2022 were that 89,611 Victorians remain on the waitlist.
34. Despite individual health services providing current elective surgery wait list numbers to the committee, the Andrews Government refused to disclose the latest statewide figures.
35. The committee heard examples of a failure by the government to plan for the ongoing management of elective surgery wait lists.

**RECOMMENDATION:**

20. While pandemic orders are in operation, the Andrews Labor Government provides weekly updates on elective surgery waitlists per health network.
21. That a full breakdown of private health staff that were re-deployed to the public system during the Code Brown be provided, what positions they left, and what positions they filled.

**SERVICE VICTORIA:**

**Ms KEALY:** *Can I just go back? I have got some dates if you would like to go back to that and provide: more information. I will just quote this, so 12 January 2021: ... Police Minister— Lisa Neville— ... apologised to thousands of interstate travellers who struggled to apply for a permit to enter the state last night after technical issues caused a delay ... Despite the permit system commencing at 6.00 pm on 11 January, it was not until around 9.00 pm that the Service Victoria application patch was available. ... last night was terrible and apologies to everyone who was frustrated, held up ...*

And:

*‘There were technical issues of trying to get this set up properly, with Services Victoria working through some of the glitches to make sure it was working properly before it went online*

**FINDINGS:**

36. Evidence to the Committee included Service Victoria Border Decision/Permits Service Vic were not given sufficient notice to develop a system and unable to deliver resources in a suitable time frame.

## PATHOLOGY:

Evidence provided to the Committee from VIDRL (Victorian Infectious Diseases Reference Laboratory) was not consistent with other evidence provided to the Committee. Pathology companies had warned of their capacity and the Andrews Labor Government failed to act on those warnings leaving Victoria with an insufficient ability to be able to test.

**Ms CROZIER:** *My point is: 1 December there were 74 000 that were being tested; 11 December, 84 000 Victorians were being tested; 22 December, 92 000 Victorians were being tested. Professor Sutton said the maximum test capacity in December was for 50 000, so well over those numbers were Friday. What advice for the increasing testing capacity was given, and when did the ordering of rapid antigen tests kits actually happen?*

**Ms CROZIER:** *The point is that Dr Sutton told the committee that it was 50 000; that was the capacity. So my question is: when we had these big numbers coming through in early December, the government had been told in late September, early October—well, the country was told—that rapid antigen test home kits would be available from 1 November. We have evidence from the committee—a letter from the CHO to the minister on 23 December. So when did the government order the rapid antigen test kits?*

**Mr WEIMAR:** *So to the rapid antigen testing kits, ATAGI made the decision on 1 November that authorised some rapid antigen test kits for at-home use. Before 1 November, uniquely here in Australia, we could not use rapid antigen tests for home use; they had to be used under medical supervision. We ordered relatively small numbers, hundreds of thousands of rapid antigen kits, during November and December for use within the healthcare system.*

**Ms CROZIER:** *How many hundreds? Is that 100 000, 200 000?*

**Mr WEIMAR:** *I can get you the exact number on notice, but relatively small numbers for use within the healthcare system. So we had stock of around 200 000, 300 000 during the early part of December. The significant order on rapid antigen test kits was made right before Christmas. On 24 December we made the first significant order—*

## FINDINGS:

37. Despite peak capacity for pathology testing being reached in October/November 2021, and home Rapid Antigen Tests (RATs) being approved for public use by the Federal Government in November 2021, the Andrews Labor Government failed to act to build testing capacity, or amend orders to reduce testing protocols around close contacts to take pressure of the testing system. As a result, 100,000 PCR tests were discarded in January 2022 and insufficient RATs were available to the broader Victorian population.

38. The Andrews Labor Government only placed an order for RATs on 24 December 2021 which took a significant amount of time to be made available to the Victorian community and during the peak of the Omicron wave in January.

#### RECOMMENDATION:

22. That the Andrews Labor Government provides a breakdown of the number of RATs received into the state distribution centres from which manufacturer and dates distributed to the community since 1 December 2021.

#### ADDITIONAL RECOMMENDATIONS:

23. That the Chief Health Officer and Acting Chief Health Officer appear before the Committee as **a matter of urgency** to provide further clarity around advice that was requested by the former Minister for Health, the current Minister for Health and the Premier.
24. That for as long as the Pandemic Declaration remains in place the CHO appear before the Committee at a public hearing on a monthly basis.
25. That the Andrews Labor Government provide a full response to this Minority Report on the last day of the sitting of the Parliament for this Parliamentary term, Thursday 15 September 2022.
26. Consistent with previous calls from the Liberals and Nationals, that all health advice be made available to the Victorian public, rather than selected health advice as was detailed in evidence during the public hearings.

## SUMMARY OF FINDINGS:

1. The legislation requires first and foremost that the Minister for Health takes advice from the Chief Health Officer on the health concerns.
2. Professor Sutton had not been asked by the Minister or the Government, and did not provide health advice regarding a mandatory third vaccination prior to the Premier publicly announcing his recommendation that the definition of fully vaccinated be changed to mean three doses of a COVID-19 vaccine.
3. Decisions around the suspension of elective surgery and IVF services were made by the Department Secretary.
4. The Chief Health Officer was not aware of the membership of the medical exemption review panel that was providing advice to Tennis Australia for the 2022 Australian Open. Other Health Departmental Officials were also unaware of who was on the medical exemption panel or who had appointed members to the panel.
5. Mandates are not based on the Chief Health Officer's advice.
6. The Chief Psychiatrist and Chief Health Nurse did not make recommendations to the Chief Health Officer nor Minister for Health around pandemic orders to minimise the impact on the mental health of Victorians.
7. There is a critical mental health workforce crisis in Victoria, with Victoria's Mental Health and Wellbeing Workforce Strategy 2021-24 finding 1,470 EFT specialist mental health jobs are vacant in Victoria's public specialist mental health services.
8. Mental health workforce shortages contribute to increased use of restraint in hospital settings.
9. The current mental health workforce is overwhelmed and exhausted, with demand outstripping workforce availability.
10. The Andrews Labor Government did not provide sufficient funding to enable an additional 35 candidates to specialise as a psychiatrist in Victoria in 2021, despite the RANZCP directly advocating to the Andrews Labor Government for funding support for these additional training places.
11. The failure of the Andrews Labor Government to expand psychiatry training places in Victoria will lead to these psychiatry candidates undertaking their training interstate including NSW, with the majority unlikely to return to Victoria to practice.
12. The Australian Association of Psychologists wrote to the Minister for Mental Health on six occasions over two years requesting funding support for provisional psychologists to boost workforce capacity, however the Minister did not respond to any of these letters.

13. The failure of the Andrews Labor Government to support more training for psychiatrists and provide funding support for provisional psychologists and their supervision has significantly impacted on the number of mental health practitioners in Victoria, and the availability of mental health support for Victorians.
14. Victoria's pandemic orders and restrictions led to a significant increase in demand for all mental health services including BeyondBlue, KidsHelpline, Compassionate Friends Victoria, the Mental Health Legal Centre, VMIAC and Tandem, as well as clinical support services and alcohol and other drug treatment and support.
15. The full impact of the pandemic response is unknown with the Department of Health revealing that a lot of data and information about demand is not available or collated.
16. A peer reviewed study into suicides in Victoria investigated by the Victorian Coroner found that almost 10% of all suicides in 2020 were COVID-linked.
17. The impact of school closures had a profound impact on child and youth mental health, and increased mental health support has been slow to be enacted by the Andrews Labor Government.
18. The impact of pandemic lockdowns and restrictions had a disproportionate impact on children and young people.
19. The impact of pandemic orders and restrictions on Victorians continues to drive increased demand for mental health support – the shadow pandemic is not over.
20. Due to insufficient funding, KidsHelpline were unable to respond to 62% of all contacts in 2021, representing 76,000 attempted contacts from Victorian children.
21. KidsHelpline experienced a 264% increase in immediate emergency responses in Victoria in 2021 (compared to 2019), where the child was in imminent danger of harm, representing 2,408 Victorian children and young people from March 2020 to December 2021.
22. The Andrews Labor Government cut COVID surge funding to KidsHelpline to assist provide additional critical counselling services to children and young people, effective 1 July 2022.
23. The Andrews Labor Government cut funding to the 'Keeping Victorians Connected and Supported – Mental Health and Wellbeing Coronavirus Response Package', effective 1 July 2022, which impacted organisations including VMIAC to deliver more mental health support and online engagement, where demand for these services remains very high.
24. The Victorian Government's School Mental Health Fund will not be rolled out to metropolitan schools until 2024.
25. The Coroners Court of Victoria have reported that 2020 (most recent data and during pandemic lockdowns) demonstrated the highest number of women fatally overdosing from alcohol on record, and the highest number of overdoses where alcohol was the sole contributing drug.

26. There is a critical shortfall of drug and alcohol treatment and support services in Victoria, and waitlists have doubled from September 2020 to July 2021 to 3,599 people.
27. The demand for AOD treatment is expected to continue to increase over the coming year, and there are grave concerns around the capacity of the sector to support this demand which has not yet peaked.
28. The Andrews Labor Government cut funding for the AOD sector in this year's budget, including funding for 100 EFT AOD workers under the COVID workforce initiative. This is the first overall funding cut to the sector in 17 years.
29. Despite the Andrews Labor Government's commentary that the orders are based on health advice, leading epidemiologists indicated to the Committee that modelling had not been requested nor provided.
30. Leading epidemiologists gave evidence that some decisions were attributable to 'political decisions', rather than based on expert health advice.
31. That IPMAC (Independent Pandemic Management Committee) had not requested any information from those leading epidemiologists that came before the Committee.
32. Despite the Andrews Government claims that private hospital staff would be supporting the public health system that did not occur.
33. Elective surgery wait lists have increased further as a result of the implementation of a Code Brown and suspension of surgeries. The latest figures available as of 31 March, 2022 were that 89,611 Victorians remain on the waitlist.
34. Despite individual health services providing current elective surgery wait list numbers to the committee, the Andrews Government refused to disclose the latest statewide figures.
35. The committee heard examples of a failure by the government to plan for the ongoing management of elective surgery wait lists.
36. Evidence to the Committee included Service Victoria Border Decision/Permits Service Vic were not given sufficient notice to develop a system and unable to deliver resources in a suitable time frame.
37. Despite peak capacity for pathology testing being reached in October/November 2021, and home Rapid Antigen Tests (RATs) being approved for public use by the Federal Government in November 2021, the Andrews Labor Government failed to act to build testing capacity, or amend orders to reduce testing protocols around close contacts to take pressure of the testing system. As a result, 100,000 PCR tests were discarded in January 2022 and insufficient RATs were available to the broader Victorian population.

38. The Andrews Labor Government only placed an order for RATs on 24 December 2021 which took a significant amount of time to be made available to the Victorian community and during the peak of the Omicron wave in January.

## SUMMARY OF RECOMMENDATIONS:

1. That the Andrews Labor Government provide the committee with the names of appointees to the medical exemption review panel, when they were appointed, and the process of appointment.
2. That the Andrews Labor Government provide the details of how many times the medical exemption review panel met during 2020, 2021 and 2022.
3. That the Andrews Labor Government publish a copy of the health advice as to decisions made by the medical exemption review panel.
4. That the Premier provides clarity on which health advice he was reliant on to make the recommendation that the definition of fully vaccinated be changed to mean three doses of COVID-19 vaccine.
5. That the Andrews Labor Government provide details of the “different experts in the field” and the “public health team” that provided advice to the public health unit and CHO.
6. That the Andrews Labor Government immediately extend funding to the ‘Keeping Victorians Connected and Supported – Mental Health and Wellbeing Coronavirus Response Package’, including funding to organisations including VMIAC, PANDA and Kids Helpline, for a minimum period of a further 12 months.
7. That the Andrews Labor Government provide funding support for Provisional Psychologists to assist meet surge demand for mental health support.
8. That the Victorian Government and the Victorian Liberals and Nationals advocate to the Federal Government to include mental health services provided by provisional psychologists to be included in the Medicare Benefits Schedule.
9. That the Andrews Labor Government immediately provide additional funded positions to ensure the number of post graduate psychiatrists is sufficient for all suitable candidates to train to be a psychologist in Victoria.
10. That the Coroner’s Court of Victoria undertake a special inquiry into COVID-19 related stressors present in suicides in Victoria, and this report be tabled in Parliament.



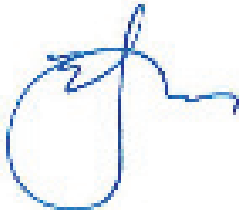
11. That the Department of Health undertake a special inquiry into suicide and suicidal behaviour due to COVID-19 related stressors, especially for Victorians under 25, and this report be tabled in Parliament.
12. That the Andrews Labor Government immediately bring forward funding for the Schools Mental Health Fund from 2024, to meet the immediate demand for mental health support by students in metropolitan Melbourne.
13. That the Department of Health undertake a special inquiry into the impact of COVID-19 related stressors on women presenting under the influence of alcohol and/or with indications of high alcohol use or addiction in ambulance presentations, presentations to the emergency department and hospital admissions.
14. That the Andrews Labor Government immediately expand drug and alcohol treatment services in Victoria.
15. That the Andrews Labor Government immediately reverse funding cuts to the AOD sector delivered in this year's budget, and reinstate funding for 100 EFT AOD workers under the COVID workforce initiative.
16. While pandemic orders are in force, that the Department of Health publish data on a weekly basis related to presentations to emergency department with self harm or suicidal behaviour, eating disorders, presence of drug and alcohol addiction, family violence and mental illness, defined by key demographics such as gender, age, CALD and ATSI, and include historical data for trending purposes.
17. That the Andrews Labor Government provide details on how many times IPMAC (Independent Pandemic Management Committee) have met and what advice they have requested on modelling.
18. That the Andrews Labor Government provide details on all modelling undertaken in the past six months, and when it was provided to the government.
19. That the Andrews Labor Government also publishes any other information, directions or reports which IPMAC have been supplied.
20. While pandemic orders are in operation, the Andrews Labor Government provides weekly updates on elective surgery waitlists per health network.
21. That a full breakdown of private health staff that were re-deployed to the public system during the Code Brown be provided, what positions they left, and what positions they filled.
22. That the Andrews Labor Government provides a breakdown of the number of RATs received into the state distribution centres from which manufacturer and dates distributed to the community since 1 December 2021.

23. That the Chief Health Officer and Acting Chief Health Officer appear before the Committee as **a matter of urgency** to provide further clarity around advice that was requested by the former Minister for Health, the current Minister for Health and the Premier.
24. That for as long as the Pandemic Declaration remains in place the CHO appear before the Committee at a public hearing on a monthly basis.
25. That the Andrews Labor Government provide a full response to this Minority Report on the last day of the sitting of the Parliament for this Parliamentary term, Thursday 15 September 2022.
26. Consistent with previous calls from the Liberals and Nationals, that all health advice be made available to the Victorian public, rather than selected health advice as was detailed in evidence during the public hearings.

**Ms Georgie Crozier MLC, Member for Southern Metropolitan Region**



**Ms Emma Kealy MLA, Member for Lowan**



**The Hon. Kim Wells MLA, Member for Rowville**



***As dated at 15 July 2022***