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industrial relations : human resources : employment matters : training

CIRCULAR: GEN/163/NAT/163/21
DATE: 22 October 2021
SUBJECT: Victoria – *Open Premises Directions* – covering Metro Mel and Regional Victoria
ATTENTION: Chief Executive Officer

The Government has released new / updated Directions to govern the end of lockdown and the continuation of the mandatory vaccination of workers in Victoria, specifically:

- the *COVID-19 Mandatory Vaccination (Workers) Directions (No 5) (the Vaccination Direction)* ([link](#)); and
- the *Open Premises Directions* ([link](#)).

The above Directions end at **11.59pm, 21 November 2021**.

The link for all Directions currently in force is [here](#).

The Vaccination Direction is in line with the No 4 version. Please see our earlier Circulars for a relevant summary of the requirements.

The Open Premises Directions replace the:

- Restricted Activity Directions (Restricted Areas) (No 22);
- the Restricted Activity Directions (Regional Victoria) (No 15); and
- the COVID-19 Vaccinated Activities Directions (No 3).

Accordingly, the above three directions have each been revoked as at **11.59pm on 21 October 2021**.

The Directions must be read together with the Directions currently in force.

Summary of the requirements of the Open Premises Directions

Below is a summary of the requirements of the Open Premises Directions.

Please note:

- the Open Premises Directions provide clarity that workers at open premises are required to be fully vaccinated or excepted persons in order to attend the premises to work;
- that a child under the age of 16 years is within the definition of an 'excepted person';
- '*acceptable evidence*' is a defined term and that definition appears in full at **Appendix A** to this Circular.
- in terms of the definition of '*acceptable evidence*', a '*medical contraindication*' for an excepted person will only be met where the certificate from the medical practitioner indicates that the person has:
 - had anaphylaxis after a previous dose;
 - anaphylaxis to any component of the vaccine;
 - has had a specific / serious reaction to a first dose of AstraZeneca or Comirnaty / Pfizer or Spikevax

Accordingly, a person will not be an excepted person if they produce a medical certificate that indicates that they have anxiety and are unable to receive a vaccine for that reason.

See clause 41(1) of the Open Premises Directions for the full definition of 'medical contraindication'.

- in Regional Victoria, the operator of a food and drink premises does not need to comply with Part 2 of the Open Premises Directions if the premises:
 - does not permit the number of patrons in an outdoor space to exceed 30;
 - does not permit the number of patrons in an indoor space to exceed 10; and
 - does not permit the total number of patrons in the whole of the premises at any time to exceed the lesser of:
 - the density quotient (4 sq metres); or
 - 40.

Part 2 – Open Premises – Vaccination requirements

Clause 5 – Provision of Vaccination Information

- an operator must maintain a system that requires a patron (except a patron under 16 years of age) that attend the premises, on each occasion that they attend:
 - to show a person working at the premises (ie COVID Check-in Marshal) acceptable evidence that records that they are either:
 - fully vaccinated; or
 - an excepted person.
 - check in to their premises (per the Workplace Directions);
- the system that is maintained must include:
 - the placement at each entrance to the premises that is accessible by patrons, a worker who is designed as the COVID Check-in Marshal and who requests each patron attending the premises to show acceptable evidence and check-in to the premises
- reciprocal patron obligation: a patron (except a patron under 16 years of age) who attends an open premises must comply with the requests of the COVID Check-in Marshal, ie to show acceptable evidence and check-in to the premises.

Clause 6 – no entry to particular patrons

- the operator of an open premises must take all reasonable steps to ensure that a patron who:
 - is not fully vaccinated; and
 - is not an excepted person; or
 - does not comply with the requests of the COVID Check-in Marshaldoes not enter, or remain on, the premises.
- reciprocal patron obligation: a patron who is not fully vaccinated or an excepted person must not enter, or remain on, the premises of an open premises.

Clause 7 – worker requirements

- the operator of an open premises must not permit any person to work at the premises unless the person is fully vaccinated or an excepted person;
- the operator must collect, record and hold vaccination information about each fully vaccinated person and each excepted person who works at the premises (noting that compliance with the same obligation under the Vaccination Directions will meet this requirement).

Clause 8 – Patron limits

- the operator of an open premises must not permit the number of patrons in an indoor or outdoors space to exceed the number specified in Schedule 1 (Metro Melbourne) or Schedule 3 (Regional Victoria) as applicable to the type of business and geographic area;

- we note the following:

Open premises	Area	Patron indoor limit	Patron outdoor limit
Food and drink premises	Metro Melb	The lesser of: (a) the density quotient (4 sq m); or (b) 20	The lesser of: (a) the density quotient (4 sq m); or (b) 50.
	Regional Vic	The lesser of: (a) the density quotient (4 sq m); or (b) 30.	The lesser of: (a) the density quotient (2 sq m); or (b) 100.
Real estate premises - auctions	Metro Melb	Zero	The lesser of: (a) the density quotient (4 sq m); or (b) 50.
	Regional Vic	The lesser of: (a) the density quotient (4 sq m); or (b) 30.	The lesser of: (a) the density quotient (2 sq m); or (b) 100.
Physical recreation premises (inc golf, lawn bowls)	Metro Melb	Zero.	The lesser of: (a) the density quotient (4 sq m); or (b) 50
	Regional Vic	The lesser of: (a) the density quotient (4 sq m); or (b) 30.	The lesser of: (a) the density quotient (2 sq m); or (b) 100.

The patron limits do not prevent an operator from permitting a patron to access a bathroom.

Part 4 – Additional requirements and exceptions for specific premises

** below is a summary only of select types of operators. If your business is not covered please review the Open Premises Directions

Clause 29 Food and drink premises

- the operator of a food and drink premises must take all reasonable steps to ensure that a patron remains seated when the patron is:
 - entering or leaving the premises;
 - making an order; or
 - accessing the bathroom
- a food and drink premises can operate a take away and a seated service at the same time. The obligations for patrons to provide acceptable evidence do not apply where the patron attends only to collect their goods as part of a take away service and such patrons do not count for the purposes of the patron limit;

** we note that in the above scenario, the operator would still be an 'operator of an open premises' and therefore the worker requirement to be fully vaccinated will apply.

Clause 34 Real Estate

- the obligations of Part 2 apply where an auction is conducted

** while not express, it must be assumed that this refers to an in-person auction only and will not apply where auctions are conducted online
- Metro Melbourne – an estate agent may conduct an inspection by patrons of a real estate premises by private appointment only and if the patrons who attend the inspection are from a single household and the estate agent does not enter the premises during the inspection;
- Regional Victoria – the obligations in Part 2 do not apply where an estate agent conducts an auction of a real estate premises in Regional Victoria and the estate agent does not permit the number of patrons attending the auction in person to exceed the lesser of (not

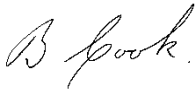
including the owners or residents of the property and the minimum number of persons required to conduct / broadcast the auction):

- the density quotient (4 sq metres); and
- 10

The penalties for refusing or failing to comply with the requirements of the Open Premises Directions are:

- in the case of a natural person – up to \$21,808.80
- in the case of a body corporate – up to \$109,044

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447. The Information provided in this email is generic advice. For advice in respect of your specific situation please contact us.



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Appendix A – definition of ‘acceptable evidence’

Vaccination information and acceptable evidence

(8) For the purposes of these directions:

(a) **acceptable evidence** means:

(i) in relation to a person who is **fully vaccinated**:

- (A) successful completion of a Service Victoria QR check-in that includes confirmation that the person is fully vaccinated displayed through the Service Victoria App; or
- (B) a COVID-19 digital certificate displayed through the Medicare App, the Service Victoria App or equivalent smartphone wallet; or
- (C) a printed version of the COVID-19 digital certificate or immunisation history statement issued by the vaccination provider, a **medical practitioner** or the Australian Immunisation Register, but does not include a copy of the COVID-19 digital certificate that is printed by the person;

(ii) in relation to an **excepted person**:

- (A) certification from a **medical practitioner** that the person is unable to receive a dose, or a further dose, of a **COVID-19 vaccine** due to a **medical contraindication**; or
- (B) certification from a **medical practitioner** that the person is unable to receive a dose, or a further dose, of a **COVID-19 vaccine** due to an acute medical illness (including where the person has been diagnosed with SARS-CoV-2);

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

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