

# Directions from Deputy Chief Health Officer (Communicable Disease) in accordance with emergency powers arising from declared state of emergency

## Care Facilities Directions (No 3)

*Public Health and Wellbeing Act 2008 (Vic)*

Section 200

I, Dr Annaliese van Diemen, Deputy Chief Health Officer (Communicable Disease), consider it reasonably necessary to protect public health to give the following directions pursuant to 200(1)(b) and (d) of the **Public Health and Wellbeing Act 2008 (Vic) (PHW Act)**:

### 1 Preamble

- (1) The purpose of these directions is to make provision for restricted access to care facilities in order to limit the spread of Novel Coronavirus 2019 (2019-nCoV) within a particularly vulnerable population.
- (2) These directions replace the **Care Facilities Directions (No 2)**, and expressly prohibit a worker or a visitor from entering a care facility if they have been diagnosed with 2019-nCov and have not been cleared from self-isolation.

### 2 Citation

These directions may be referred to as the **Care Facilities Directions (No 3)**.

### 3 Definition of care facility

A **care facility** is a facility in Victoria that is:

- (1) an **alcohol and drug residential service**;
- (2) a **homelessness residential service**;
- (3) a **residential aged care facility**;
- (4) a **disability residential service**;
- (5) an **eligible SDA enrolled dwelling**;
- (6) a **secure welfare service**;
- (7) a **short-term accommodation and assistance dwelling**;
- (8) a **supported residential service**;
- (9) the **Thomas Embling Hospital**.

#### 4 Prohibition on entry

- (1) A person must not enter, or remain on, the premises of a **care facility** between midnight on 11 May 2020 and 11:59:00pm on 31 May 2020 unless:
  - (a) the person is a **resident** of the facility; or
  - (b) the person is a **worker** in relation to the facility, as defined in clause 5; or
  - (c) the person is a **visitor** in relation to the facility, as defined in clause 6.

#### *Excluded persons*

- (2) Despite subclause (1), a person who is a worker or a visitor in relation to a care facility must not enter, or remain on, the premises of the facility between midnight on 11 May 2020 and 11:59:00pm on 31 May 2020 if:
  - (a) during the 14 days immediately preceding the entry, the person arrived in Australia from a place outside Australia; or
  - (b) during the 14 days immediately preceding the entry, the person had known contact with a person who has a confirmed case of 2019-nCov; or
  - (c) the person has a temperature higher than 37.5 degrees or symptoms of acute respiratory infection; or
  - (d) if the facility is a residential aged care facility—the person does not have an up to date vaccination against influenza, if such a vaccination is available to the person; or
  - (e) the person is aged under 16 years, other than:
    - (i) in circumstances where the person's presence at the premises is for the purposes of end of life support for a resident of the facility; or
    - (ii) if the facility is a secure welfare service or a supported residential service and the person is accompanied by an adult; or
    - (iii) if the facility is an alcohol and drug residential service and the person is accompanied by an adult; or
  - (f) the person has been diagnosed with 2019-nCov, and has not yet been given, or taken to have been given, clearance from self-isolation under the **Diagnosed Persons and Close Contacts Directions**.

#### 5 Definition of worker

- (1) A person is a **worker** in relation to a care facility if:
  - (a) the person is the **operator** of the facility or an **employee or contractor** in relation to the facility; or

- (b) the person's presence at the premises of the facility is for the purposes of providing goods or services that are necessary for the effective operation of the facility, whether the goods or services are provided for consideration or on a voluntary basis; or
- (c) the person's presence at the premises of the facility is for the purposes of providing any of the following goods or services to a resident of the facility, whether the goods or services are provided for consideration or on a voluntary basis:
  - (i) health, medical, or pharmaceutical goods or services;
  - (ii) behavioural support services;
  - (iii) other support services; or
- (d) in the case of a disability residential service or an eligible SDA enrolled dwelling—the person's presence at the premises of the facility is for the purposes of providing treatment under a **treatment plan** to a resident of the facility, whether the treatment is provided for consideration or on a voluntary basis; or
- (e) in the case of a secure welfare service—the person's presence at the premises of the facility is for the purposes of providing educational services to a resident of the facility, whether the goods or services are provided for consideration or on a voluntary basis; or
- (f) the person's presence at the premises of the facility is authorised or required for the purposes of emergency management, law enforcement, or the performance of a duty, function or power under a law.

## 6 Definition of visitor

- (1) A person is a **visitor** in relation to a care facility if the person's presence at the premises of the facility is:
  - (a) for the purposes of a **care and support visit** to a resident of the facility; or
  - (b) for the purposes of providing end of life support to a resident of the facility; or
  - (c) in the person's capacity as a prospective resident of the facility (if applicable); or
  - (d) for the purposes of accompanying a prospective resident (provided there are no more than two persons accompanying the prospective resident).
- (2) A resident may only have one care and support visit each day.

## 7 Operator to take all reasonable steps

The operator of a care facility in Victoria must take all reasonable steps to ensure that a person does not enter or remain on the premises of the facility if the person is prohibited from doing so by clause 4.

## 8 Definitions

For the purposes of these directions:

- (1) **alcohol and drug residential service** means any of the following:
  - (a) a treatment centre within the meaning of the **Severe Substances Dependence Treatment Act 2010**;
  - (b) a residential treatment service (however described) that provides drug or alcohol withdrawal or rehabilitation services in a residential setting to people dependent on alcohol or other drugs;
  - (c) a service that provides supported accommodation to a person after the person has received residential treatment services of the kind referred to in paragraph (b);
- (2) **care and support visit** means a visit of no longer than 2 hours made to a resident of a care facility by one person, or two persons together, for the purposes of providing care and support to the resident;
- (3) **disability residential service** means a residential service within the meaning of the **Disability Act 2006** and to avoid doubt, includes the facility called the Intensive Residential Treatment Program of the Statewide Forensic Service;

*Note: The Intensive Residential Treatment Program of the Statewide Forensic Service is often referred to as "DFATs".*
- (4) **eligible SDA enrolled dwelling** means an SDA enrolled dwelling that is provided under an SDA residency agreement within the meaning of section 498B of the **Residential Tenancies Act 1997**;
- (5) **employee or contractor**, in relation to a care facility, means a person employed or engaged as a contractor by the **operator** of the facility, and includes a person who **provides labour hire services** to the operator of the facility;
- (6) **flexible care subsidy** has the same meaning as in the **Aged Care Act 1997** of the Commonwealth;
- (7) **homelessness residential service** means a service that is funded by government to provide a staffed residential service to people who are homeless or at risk of being homeless;
- (8) **operator** of a care facility means:
  - (a) for an **alcohol and drug treatment facility**—the operator of the facility;
  - (b) for a **homelessness residential service**—the entity that receives government funding to provide the service;

- (c) for a **residential aged care facility**—the operator of the facility;
  - (d) for a **disability residential service**—the **disability service provider** that operates the service;
  - (e) for an **eligible SDA enrolled dwelling**—the **disability service provider** or the **registered NDIS provider** that operates the service;
  - (f) for a **short-term accommodation and assistance dwelling**—the **registered NDIS provider** or the **disability service provider** that operates the service;
  - (g) for a **secure welfare service**—the Secretary to the Department of Health and Human Services;
  - (h) for a **supported residential service**—the **proprietor** of the supported residential service;
  - (i) for the **Thomas Embling Hospital**—the **Victorian Institute of Forensic Mental Health**;
- (9) **proprietor** of a supported residential service has the same meaning as in the **Supported Residential Services (Private Proprietors) Act 2010**;
  - (10) **provides labour hire services** has the same meaning as in the **Labour Hire Licensing Act 2018**;
  - (11) **registered NDIS provider** has the same meaning as in the **National Disability Insurance Scheme Act 2017** of the Commonwealth;
  - (12) **resident** of a care facility includes a patient of the care facility;
  - (13) **residential aged care facility** means a premises at which accommodation, and personal care or nursing care or both, are provided to a person in respect of whom a residential care subsidy or a flexible care subsidy is payable under the **Aged Care Act 1997** of the Commonwealth.
  - (14) **residential care subsidy** has the same meaning as in the **Aged Care Act 1997** of the Commonwealth;
  - (15) **secure welfare service** has the same meaning as in the **Children Youth and Families Act 2005**;
  - (16) **supported residential service** has the same meaning as in the **Supported Residential Services (Private Proprietors) Act 2010**;
  - (17) **Thomas Embling Hospital** means the hospital of that name operated by the **Victorian Institute of Forensic Mental Health**.
  - (18) The following expressions have the same meaning as they have in the **Disability Act 2006**:
    - (a) disability service provider;
    - (b) SDA enrolled dwelling;
    - (c) SDA provider;
    - (d) short-term accommodation and assistance dwelling;
    - (e) treatment plan.

- (19) **Victorian Institute of Forensic Mental Health** has the same meaning as in the **Mental Health Act 2014**.

## 9 Relationship with other Directions

If there is any inconsistency between these directions and the **Hospital Visitors Directions (No 3)**, these directions are inoperative to the extent of the inconsistency.

## 10 Penalties

Section 203 of the PHW Act provides:

### Compliance with direction or other requirement

- (1) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.
- Penalty: In the case of a natural person, 120 penalty units.  
In the case of a body corporate, 600 penalty units.
- (2) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction or requirement



**Dr Annaliese van Diemen**

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

11 May 2020