PARLIAMENT OF VICTORIA

Pandemic Declaration Accountability
and Oversight Committee

Review of the Pandemic (Visitors to Hospitals and Care Facilities) Orders

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Pandemic Declaration Accountability and Oversight Committee

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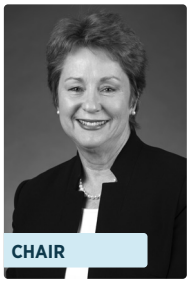

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About the Committee

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*.

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Chair's foreword

I am pleased to present the Committee's report on the Review of the Pandemic (Visitors to Hospitals and Care Facilities) Orders. This is the Committee's first 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 (Visitors to Hospitals and Care Facilities) Orders. This review was undertaken due to the considerable impact visitor restrictions have had on patients, residents of care facilities, and their loved ones.

Restrictions on visiting hospitals and care facilities have been in place in some form since March 2020 and have only recently been relaxed under Victoria's pandemic orders. Restrictions on visiting a care facility were in place until June 2022, and it was only in April 2022 that restrictions under the pandemic orders were relaxed for hospital visitors. For many hospital patients, they were not eligible for visitors at all up until this time. Whilst the Orders have been eased, many hospitals and care facilities are continuing to implement their own visitor restrictions based on local conditions.

In approaching this review, the Committee considered all variations of the Orders that have been introduced to the date this report was adopted. Many of the pandemic orders place a significant burden on the Victorian community, in this case restricting the ability of loved ones to visit those in a hospital or care facility. Therefore, it is important that any lessons which can be drawn from previous pandemic orders are identified and that opportunities to improve Victoria's pandemic response are recognised.

It was important to the Committee to ensure that the Minister's approach to issuing pandemic orders struck the right balance between protecting public health and reducing the burdens placed on Victorians.

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, hospitals, advocacy groups and members of the community. 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.

During this review, the Committee also considered the issues caused by the pandemic orders more generally. The way the Victorian Government communicates pandemic orders and changes to orders should be improved. Pandemic orders are drafted in language which is legalistic and too complex for many people to understand. Using complex language risks pandemic orders being misunderstood, increasing the likelihood of non-compliance. Given the consistent and rapid changes to orders to date, it is important that workforces, individuals and the Victorian community can quickly understand changes to the orders.

The mental health impacts of the COVID-19 pandemic have been a significant challenge for many Victorians. The Committee heard devastating stories about the challenges people have faced during the pandemic, particularly young people and aged care residents. Pandemic orders which require seclusion or isolation, such as restrictions on visiting hospital patients or care facility residents, have contributed to a decline in mental health across Victoria. It is important that the mental health impacts of the pandemic are understood so that they can better inform implementing pandemic orders, or future pandemic preparedness.

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.

Ms Suzanna Sheed MP
Chair

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1 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.

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,[1] 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.[2] Between January 2020 and 16 June 2022, over 3,000 Victorians died with COVID-19,[3] and over 9,000 nationally.[4] Globally, over 6 million people have died with COVID-19.[5]

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'.[6] 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'.[7]

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.[8] As Australia experienced its first cases of COVID-19, Victoria, New South Wales and Queensland were still dealing with the aftermath of these bushfires.

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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 Goverment 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.[9] 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.[10]

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.[11]

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.[12]

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.[13] The implementation of lockdown measures meant that borders were closed around the world, disrupting tourism, trade and the international economy on an unprecedented scale.[14]

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

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9 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*.

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

11 *Public Health and Wellbeing Act 2008* (Vic) s 200.

12 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.

13 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.

14 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.[15]

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.[16]

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.[17]

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15 Victoria, Legislative Assembly, 27 October 2021, *Parliamentary debates*, p. 4241.

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

17 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.[18] On 11 February 2020, the disease caused by the novel coronavirus was named COVID-19.[19] The World Health Organisation declared COVID-19 as a pandemic on 11 March 2020.[20]

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.[21]

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.[22]

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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.[23]

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

'Stay Safe' directions	• prohibiting or limiting mass gatherings, including introducing density limits, caps or total bans • prohibiting or limiting social gatherings, including weddings, funerals, and other gatherings (such as closing playgrounds or other recreational areas) • prohibiting or limiting visitors in high-risk settings, including hospitals and care facilities • closing or limiting the operation of 'non-essential' businesses • introducing mandatory COVID-19 testing, isolation and quarantine requirements • requiring people to wear masks, socially distance or comply with other public health measures • 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)

23 *Public Health and Wellbeing Act 2008* (Vic) div 3.

'Stay at Home' directions	• requiring people to stay at home unless leaving for permitted reasons • implementing travel limits (e.g. 5 km radius) • requiring certain areas (e.g. metropolitan Melbourne or specific suburbs) to follow Stay at Home directions • requiring schools to conduct online or remote learning • limiting household visits, including: – only permitting visits between intimate partners – establishing single household bubbles – capping the number of visitors
Detention directions	• requiring international travellers to undertake mandatory isolation upon arrival through the Hotel Quarantine program • requiring international travellers to undertake COVID-19 testing • 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
Workplace directions	• requiring workplaces to record vaccination status of patrons and workers • requiring employees to implement COVIDSafe measures to mitigate risk of onsite transmission (e.g. social distancing measures) • requiring employers to notify the Department of Health of positive cases or outbreaks of COVID-19

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
Red ('red zones')	• 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 • Non-residents not entitled to a permit or to travel to Victoria (unless covered by an exception, exemption or permitted worker permit) • Non-residents who present at a land border without an exception, exemption or permitted worker permit will be turned around • Non-residents who present at a Melbourne airport/seaport without an exception, exemption or permitted worker permit will be fined ($4957) • Non-residents are returned to their originating port at the next available opportunity at their own cost.
Orange ('orange zones')	• Permit required to enter Victoria • 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 • Person must self-isolate, get a coronavirus (COVID-19) test (within 72 hours) and continue to self-isolate until they get a negative test.
Green ('green zones')	• Permit required to enter Victoria • 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 • No further conditions on entry other than to monitor for symptoms and abide by existing directions.

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.

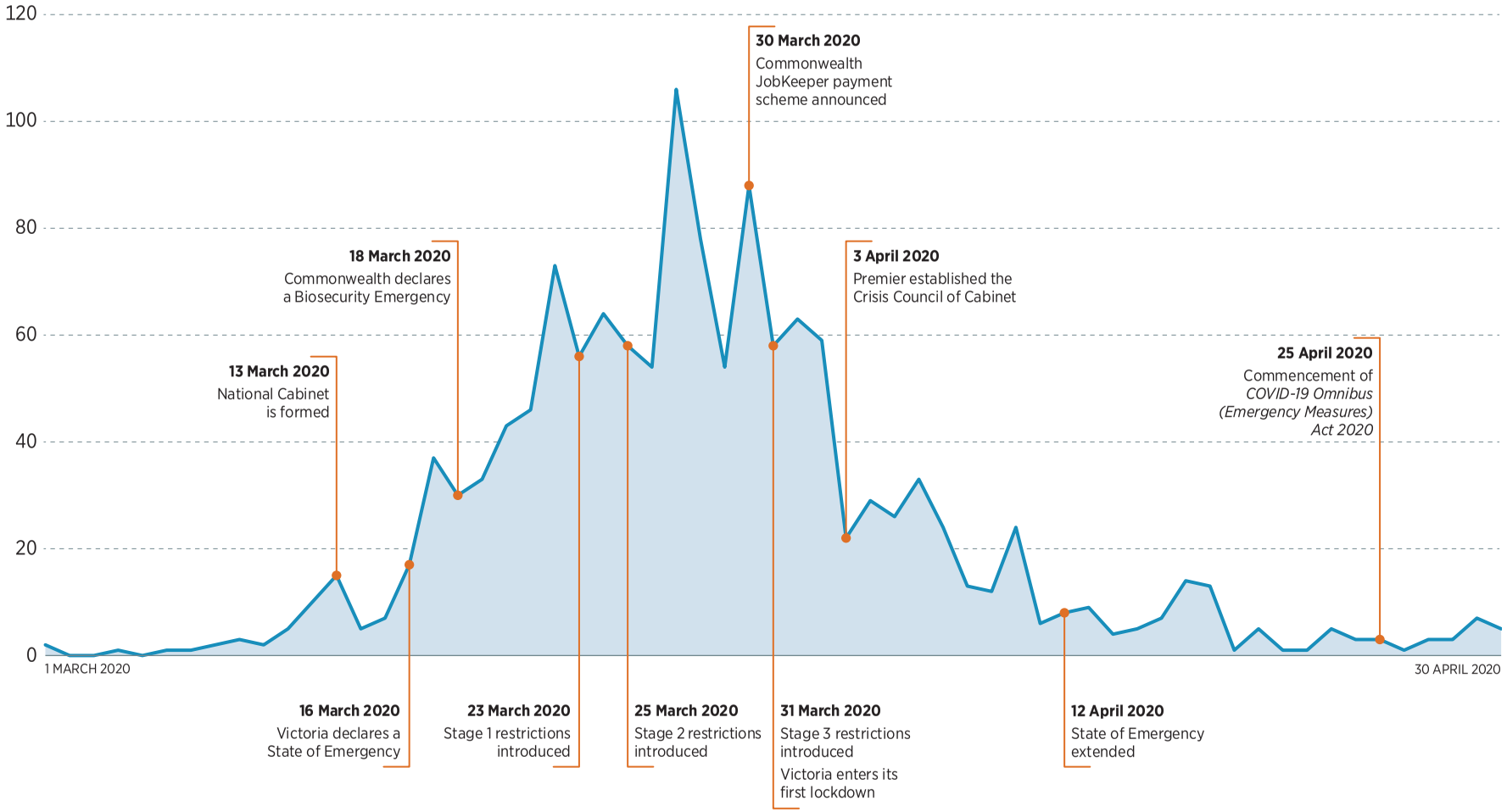
1.2.2 Victoria's first wave (March–April 2020)

Victoria experienced its 'first wave'[24] 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'.[25] 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.

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

25 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.[26] 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.[27] 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.[28]

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.[29] 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.[30]

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.[31] Some state governments also began closing their borders as well.[32]

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.

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26 Ibid.

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

28 Ibid.

29 Victoria, *Victoria Government Gazette*, No. S 129, 16 March 2020.

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

31 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.

32 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).[33] On 26 March 2020, Victoria recorded its first COVID-19-related death. At the time, Victoria had 520 active cases of COVID-19.[34]

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)

33 Victorian Government, *Victorian COVID-19 data*.

34 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.[35]

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.[36]

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.[37]

35 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.

36 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>.

37 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: • enabling courts to hear matters via audio-visual or audio link • enabling courts to deal with matters without a hearing • enabling verbal pre-sentence reports in Youth Justice • allowing courts to modify procedures or make alternative arrangements relating to physical access to court rooms and buildings • providing more flexible procedures for bail matters • enabling judge-alone trials for any Victorian indictable offence.
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: • enable duty holders to focus on immediate challenges posed by the COVID-19 pandemic • permit local councils and libraries to operate more flexibly by having virtual council meetings. Amended the *Planning and Environment Act 1987* 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 *Education and Training Reform Act 2006* to establish a temporary scheme to enable Victoria's education system and its teachers to continue to deliver learning outcomes.
Health portfolio	Amended the *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015* 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 *Parliamentary Committees Act 2003* 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,[38] 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.[39]

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'.[40] The report noted that 99% of cases in the second wave arose from hotel quarantine outbreaks at the Rydges and Stamford Plaza hotels.[41]

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.

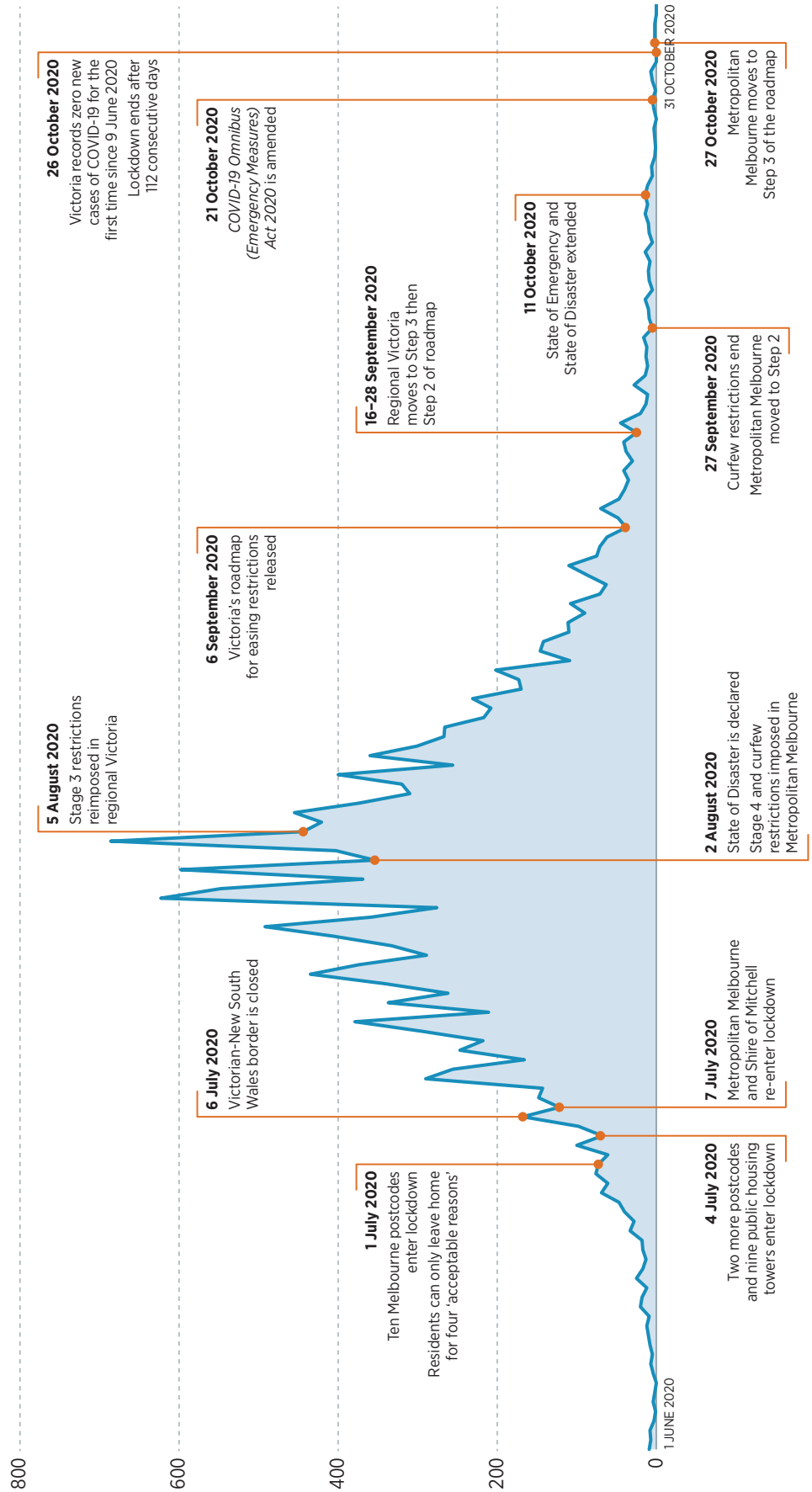
38 Parliament of Victoria, Public Accounts and Estimates Committee, *Inquiry into the Victorian Government's response to the COVID-19 pandemic: Interim report*, July 2020, p. 17.

39 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.

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

41 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.[42]

On 1 July 2020, Victoria experienced its fifteenth consecutive day of double-digit daily case growth.[43] In response, the Deputy Chief Health Officer[44] implemented Stay at Home directions for 10 postcodes in Melbourne which were experiencing spikes in COVID-19 cases.[45] 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[46] and nine public housing towers.[47] These were placed under Stage 3 restrictions, including lockdown.[48] 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.[49] 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*.[50] This conferred additional powers on Victoria Police to enforce public health safety measures.[51] At the same time, Stage 4 restrictions were imposed on Metropolitan Melbourne and a curfew from 8pm to 5am was enforced.[52] Stage 4 restrictions are outlined in Box 1.2 below.

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42 Ibid.

43 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.

44 Acting as Chief Health Officer.

45 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*.

46 Additional restricted postcodes: 3031 and 3051.

47 Located in Flemington and North Melbourne.

48 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.

49 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.

50 Victoria, *Victoria Government Gazette*, No. S 383, 2 August 2020.

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

52 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 release, 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.[53]

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'.[54] The plan built on National Cabinet's previous plan developed in May 2020, prior to Victoria's second wave.

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

54 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.[55] 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'.[56] 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.[57] The Act included a sunset clause of 12 months after its commencement.[58]

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.[59]

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.[60]

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

56 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> accessed 6 June 2022.

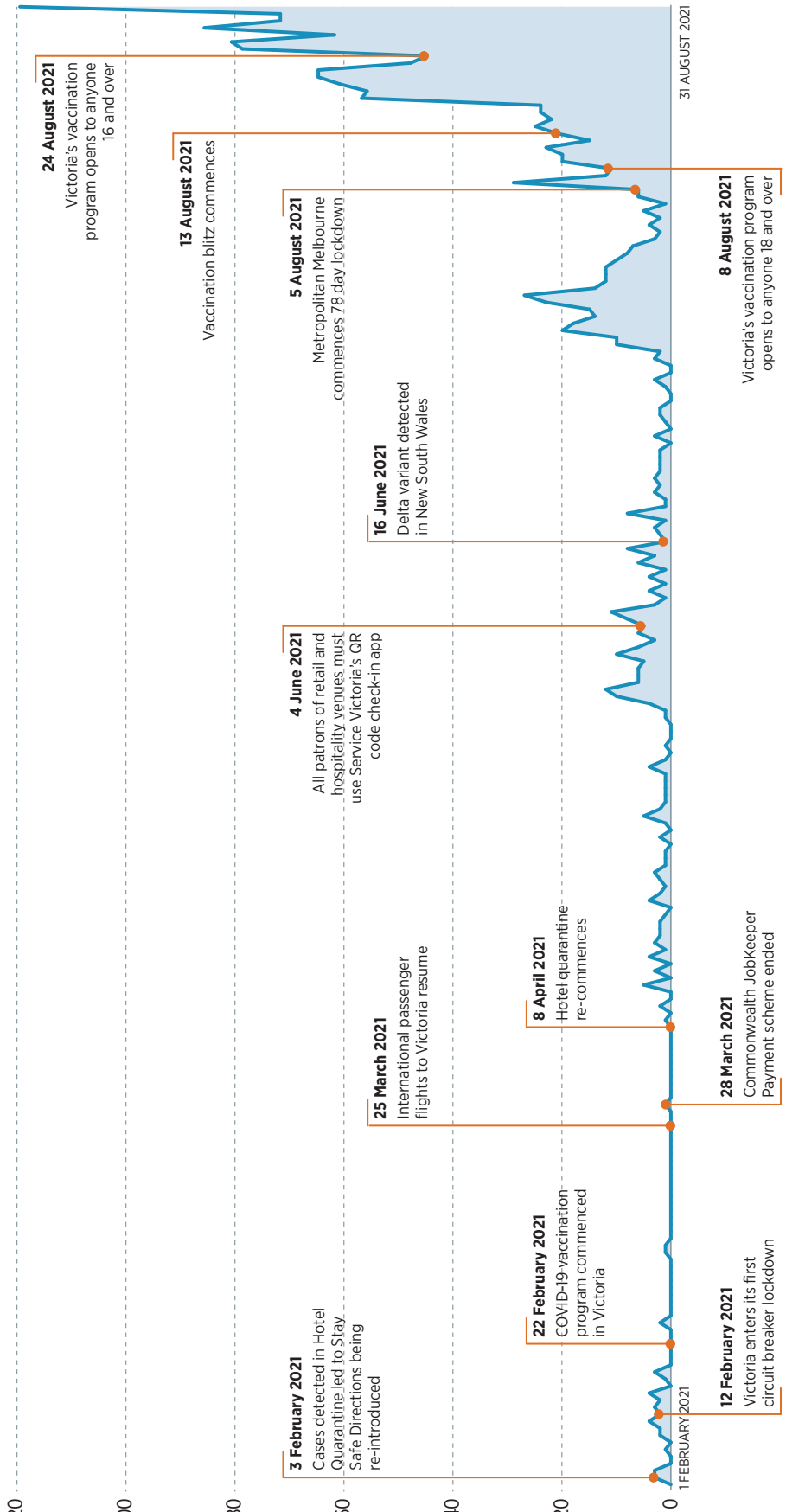
57 *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* (Vic) s 16.

58 Ibid., s 46.

59 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.

60 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 (Vic)	Peak daily case numbers (Aus)	Accumulative COVID-related deaths (Vic)	Accumulative COVID-related deaths (Aus)
Metropolitan Melbourne lockdowns (February to July 2021, excluding August to October 2021)				
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
Regional Victoria lockdowns (August to October 2021)				
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).[61]

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.[62]

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.

61 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.

62 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.[63] 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.[64]

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.[65] 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.

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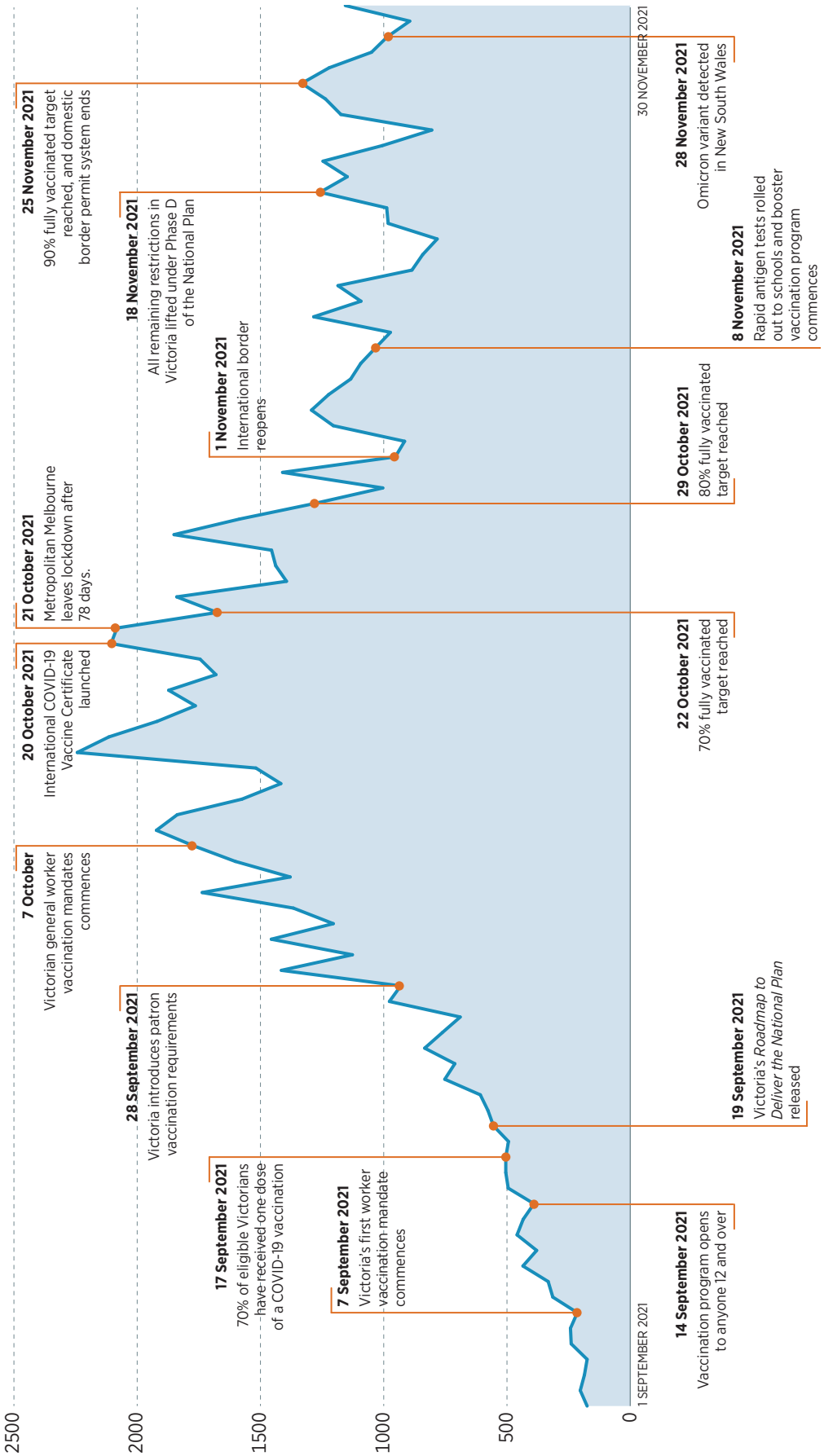
63 Aim of the COVID-zero strategy was to use targeted public health measures, particularly lockdowns, to eradicate COVID-19 cases in Victoria.

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:

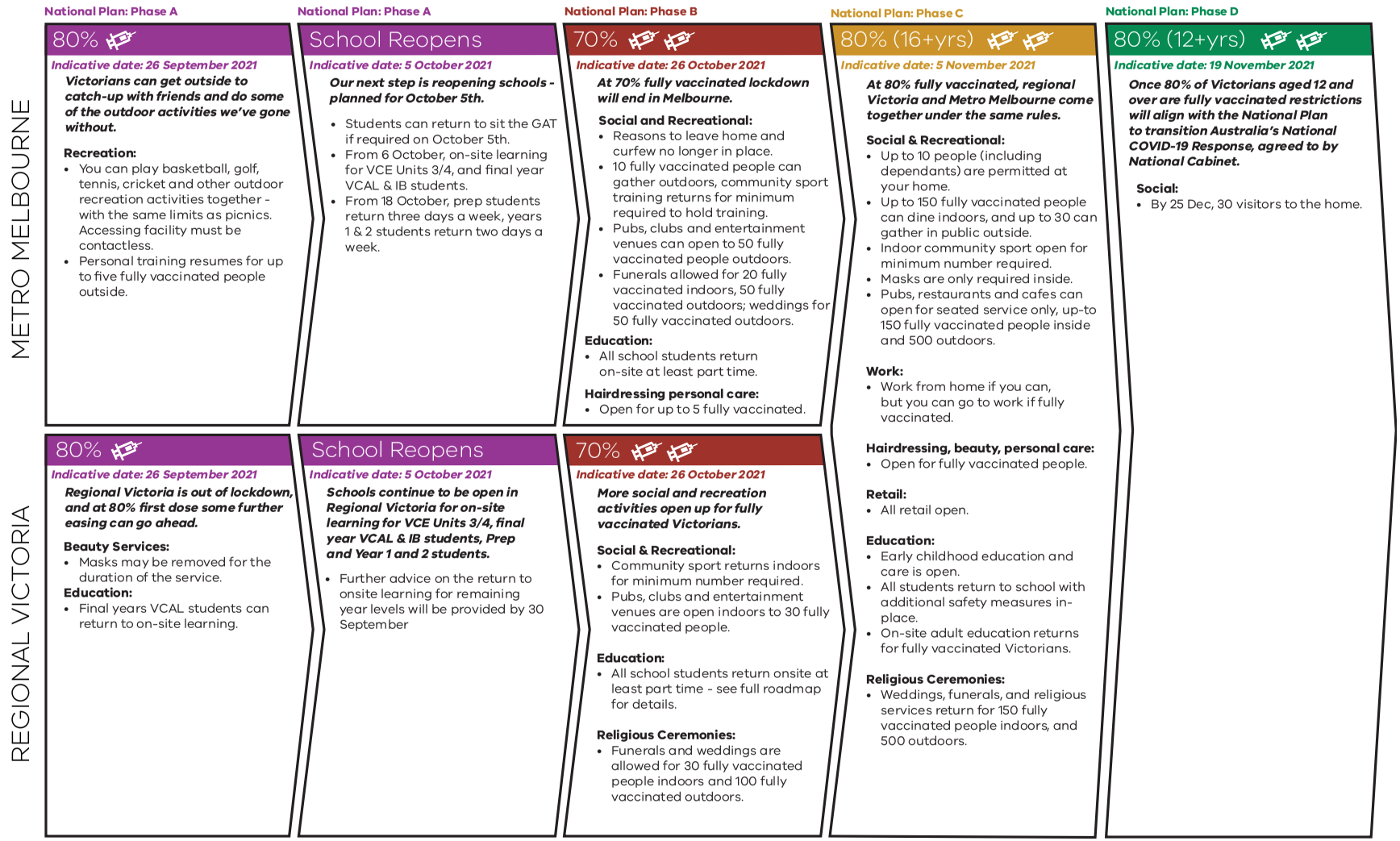
> based on expert modelling from the Burnet Institute and is set against COVID-19 thresholds including hospitalisation rates, and the vaccination targets already set out in the *National Plan to transition Australia's National COVID-19 Response*.
>
> The modelling has helped our public health teams get 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.[66]

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.[67]

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

67 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.[68]

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.[69] Prior to this, Victoria's first mandate was issued on 7 September 2021 when vaccination requirements were introduced for residential aged care facility workers.[70] 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[a]	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.

68 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.

69 *COVID-19 Mandatory Vaccination (Workers) Directions* (No. 1).

70 *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'.[71] 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.[72]

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.[73] 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'.[74] 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.[75]

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.

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

72 Victorian Government, *Victorian COVID-19 data*.

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

74 Victoria, Legislative Assembly, 27 October 2021, *Parliamentary debates*, p. 4241.

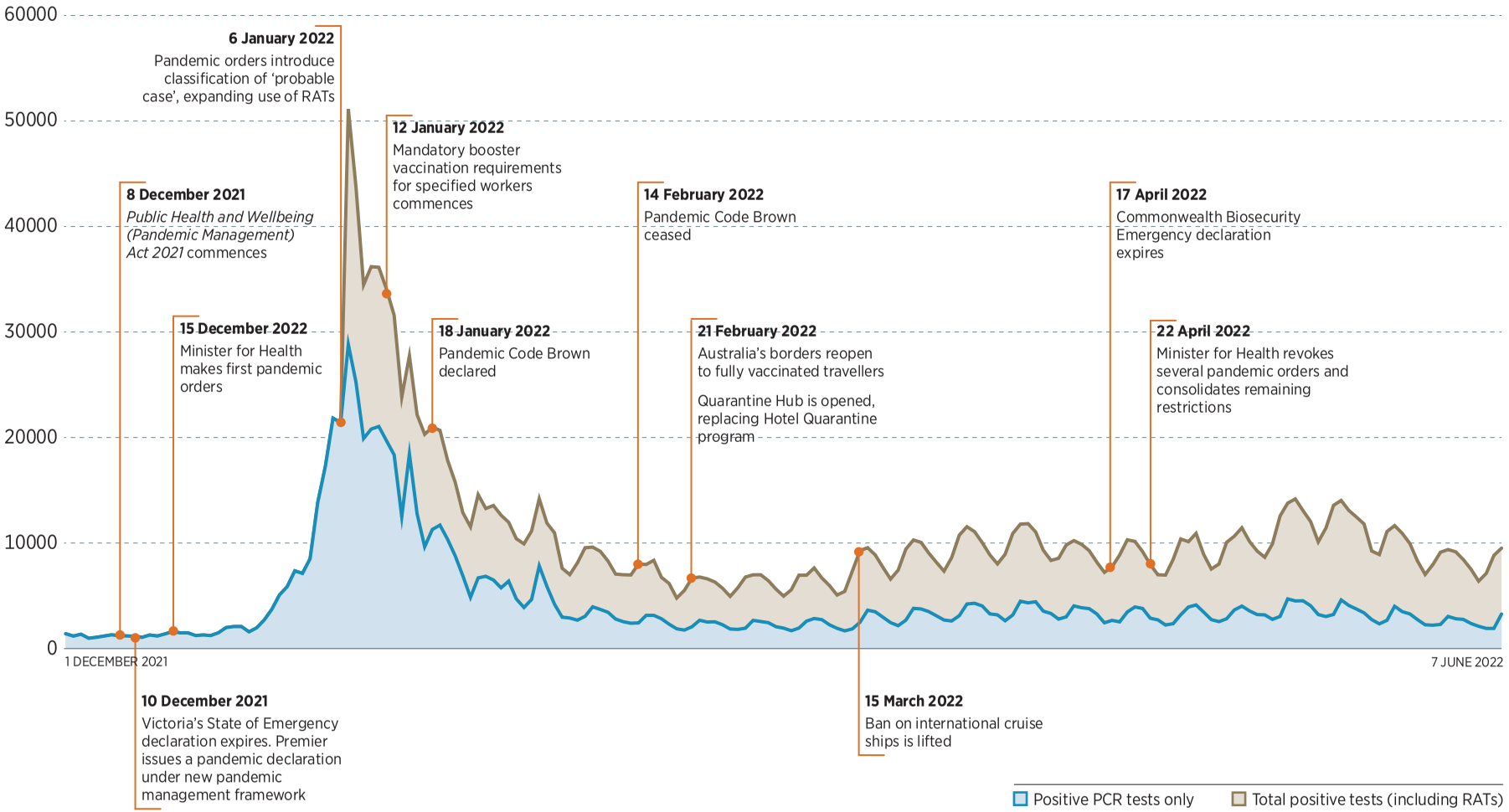
75 Ibid.

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.[76] 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.[77] The Pandemic Code Brown began on 18 January 2022 and remained in place until 14 February 2022.[78]

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.[79] Nationally, 32,340 new cases, 4,947 hospitalisations and 3,758 total deaths were recorded.[80]

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.[81]

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.[82]

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.[83] Information available includes public submissions to the inquiry, transcripts from public hearings, an interim report and final report.

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76 Victorian Government, *Victorian COVID-19 data*.

77 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.

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

79 Victorian Government, *Victorian COVID-19 data*.

80 Ibid.

81 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.

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

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

- Inquiry into the Victorian Government's COVID-19 contact tracing system and testing regime[84]
  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[85]
  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[86]
  Information available includes a final report and a summary report.
- Investigation into decision-making under the Victorian Border Crossing Permit Directions, Victorian Ombudsman[87]
  Information available includes a final report and a summary report.
- COVID-19 Hotel Quarantine Inquiry[88]
  Information available includes submissions, exhibits, transcripts from hearings, orders and rulings made by the Board of Inquiry, the inquiry's practices and procedures, an interim report and final report.
- National Contact Tracing review[89]
  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[90]
  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/lsic-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.

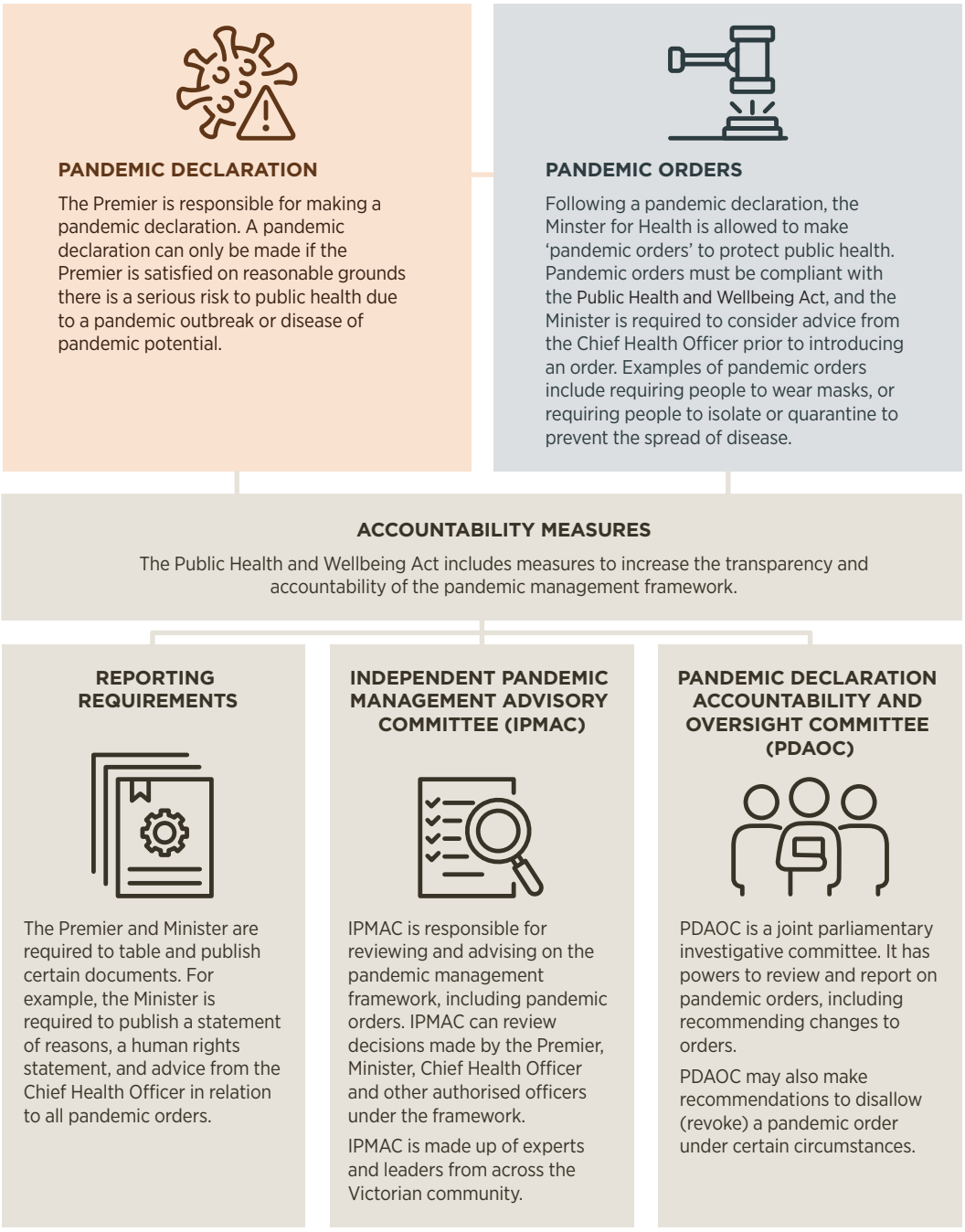
The expiration of the State of Emergency declaration meant all existing Chief Health Officer directions expired. Existing restrictions and requirements were reissued under the pandemic management framework as pandemic orders by the Minister for Health.

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 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 to Parliament
- establishing the Independent Pandemic Management Advisory Committee to provide independent advice to the Minister for Health on the pandemic management framework, including advice on pandemic orders.

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

Figure 2.1 Victoria's pandemic management framework



Source: Pandemic Declaration Accountability and Oversight Committee.

Five versions of the Pandemic (Visitors to Hospitals and Care Facilities) Orders were issued from 15 December 2021 to 22 April 2022. On 22 April 2022 most of the existing restrictions under the Hospitals and Care Facilities Orders were revoked, aside from restrictions on visitors to aged care facilities. These were consolidated into the Pandemic (Public Safety) Order (Nos. 1 and 2). The Orders are discussed in further detail in Chapter 2.

Up until 22 April 2022, most ordinary patients in hospitals were not allowed any visitors, as the exemption categories were narrow. These categories included for emergency support, parents, guardians or carers of patients aged under 18, language interpretation assistance, pregnancy and childbirth, and outpatient support.

In addition, the Committee heard of instances where visitors such as a patient's spouse were not granted entry to a hospital despite being eligible under the exemption categories of the orders.

In mid-December 2021, Victoria was beginning to experience a surge in cases of the COVID-19 Omicron variant. The State had also recorded high levels of fully vaccinated[1] people in the 12+ years bracket. New daily cases during the Omicron wave peaked in January 2022 after which new cases and hospitalisations plateaued. Since March 2022 there has been a slight upward trend in cases and hospitalisations and other variants of concern have emerged.

On 22 April 2022, the Minister for Health implemented significant changes to the pandemic orders framework. This included revoking many existing restrictions, including all restrictions on visitor entry for hospitals. The 5-person cap on visitors to care facilities remained until 20 June 2022, when it was revoked under the Pandemic (Public Safety) Order 2022 (No. 2).

2.2 Summary of review

The Committee resolved to review the Hospitals and Care Facilities Orders due to the considerable impact of visitor restrictions on hospital patients, residents of care facilities, their families and other loved ones.

Under pandemic orders, previous public health measures and hospital-level restrictions, the majority of hospital patients have not been permitted ordinary visitors from as far back as March 2020. This was aside from eased restrictions between November 2020 and February 2021.

In response to the issues identified in its review, the Committee has made six Findings and one Recommendation (see Box 2.1 below).

1 People who had had two doses of COVID-19 vaccine.

BOX 2.1: Findings and Recommendation

Finding 1: Significant visitor restrictions for hospital patients were in place between March 2020 and 22 April 2022, aside from a brief relaxing of restrictions between November 2020 and February 2021. During this time, the majority of hospital patients were not eligible to have visitors outside of seeking an exemption as the criteria for permitted visitors was narrow.

Finding 2: Restrictions on visitors to care facilities were in place between March 2020 and 24 June 2022, aside from a brief relaxing of restrictions between November 2020 and February 2021.

Finding 3: Due to legalistic and complex language, pandemic orders have been difficult to interpret and understand. A lack of plain language guidance for the Victorian community risks orders being misinterpreted or misunderstood.

Finding 4: The evolving nature of the COVID-19 pandemic, in particular the spread of the Omicron variant of the virus, required rapid changes to pandemic orders and the public health response. A range of key stakeholders such as hospitals and care facilities were not informed of major changes to pandemic orders ahead of public announcements in the media and did not receive official communication from the Victorian Government until close to when the orders were to come into effect.

Finding 5: In some instances, public statements and announcements made at Victorian Government and agency press conferences differed from the detailed changes made to pandemic orders. This led to confusion for key stakeholders and the general public when official advice received from the Victorian Government differed from that announced in the media.

Finding 6: The effects of the COVID-19 pandemic itself, as well as the public health response, have contributed to Victoria's mental health crisis. Pandemic orders which require levels of seclusion, such as isolation, quarantine and visitor restrictions, have significantly contributed to a decline in mental health across the Victorian population.

Recommendation 1: That the Department of Health publishes on the Pandemic Order Register summary documents on all current pandemic orders and any changes that are implemented in future. Summary documents should be drafted according to plain language principles, including using language equivalent to a Year 7 level and incorporating graphics where appropriate.

The Committee heard about the significant effects of the restrictions on aged care residents and hospital patients. The restrictions had resulted in further isolation which continued for long periods during the COVID-19 pandemic.

The majority of stakeholders told the Committee they were broadly supportive of the pandemic orders and public health measures in hospitals and aged care facilities. Hospitals and care facilities stated their ongoing priority was the health and welfare

of their patients and staff. In addition, they noted that most members of the public (such as potential visitors) were understanding of the need for restrictions to minimise transmission of COVID-19.

In general, hospital stakeholders were supportive of the amount of communication and support received by government departments in implementing the orders. However, they noted that the orders (and previous Chief Health Officer directions) were complicated to understand, requiring dedicated resources to monitor changes. This was exacerbated by the rate and number of changes to restrictions that were made as well as the short time from announcement to implementation of the changes.

In assessing the Orders, the Committee sought legal advice on the Minister's Human Rights Statement and how human rights under the *Charter of Human Rights and Responsibilities Act 2006* may have been limited. The Committee identified a series of issues and sought further clarification and response from the Minister. The Minister's response is published in Appendix B and discussed in detail in Chapter 4.

The Committee also held a series of public hearings to hear from stakeholders about the impact and implementation of the orders. A full list of hearings the Committee has held to date is detailed in Appendix A.

This is the Committee's first report on pandemic orders. During its reviews, the Committee found that pandemic orders and the pandemic management framework are generally complicated to navigate and understand. In addition, changes have been made rapidly and with little consultation with key stakeholders.

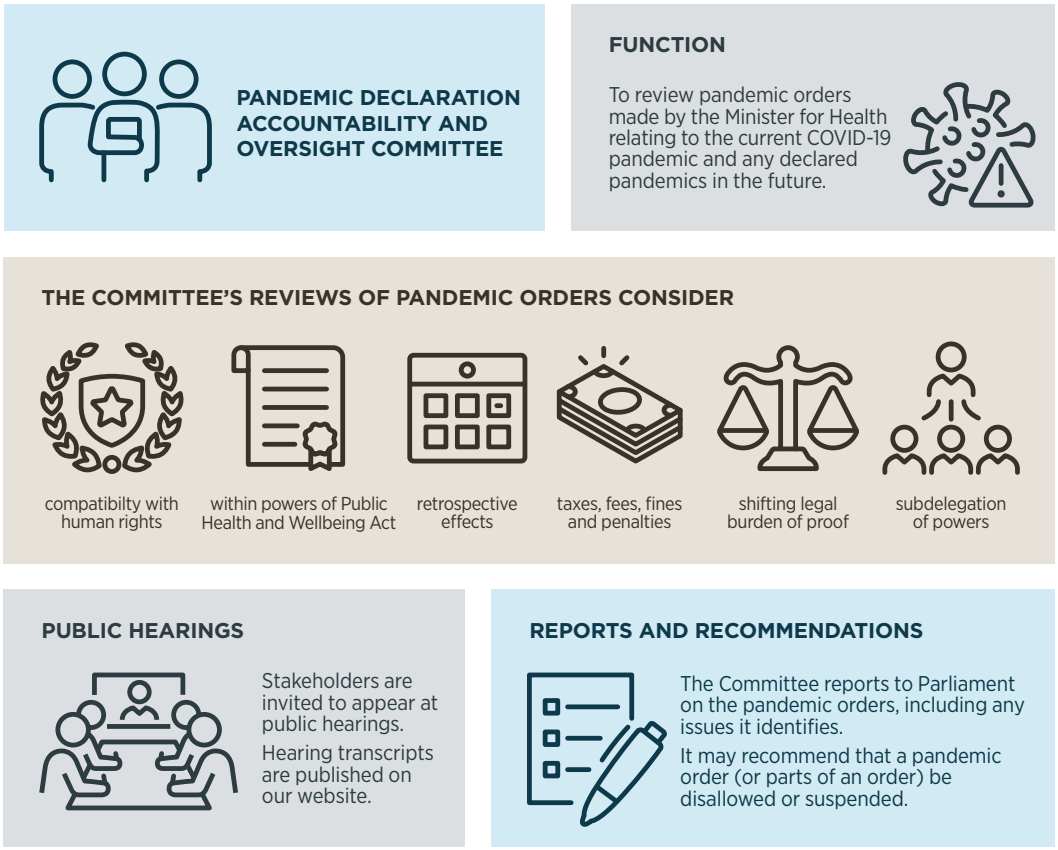
The Committee also heard about the ongoing impacts of mental health during the COVID-19 pandemic, including increasing presentations and demand on services. Mental health and other general issues are discussed in detail in Chapter 5.

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.

Figure 2.2 Functions of the Pandemic Declaration Accountability and Oversight Committee



Source: Pandemic Declaration Accountability and Oversight Committee.

Under s 165AS(1) of the Public Health and Wellbeing Act, the Committee may review and report on pandemic orders[2] where they:

- do not appear to be within the powers of the Act
- without express authority given under the Act:
  - have a retrospective effect
  - impose taxes, fees, fines or other penalties
  - shift the legal burden of proof to a person accused of an offence
  - allow for subdelegation of powers delegated under the Act.

The Committee may also report on whether an order is incompatible with the human rights set out in pt 2 of the *Charter of Human Rights and Responsibilities Act 2006*.

The Committee also has the power to recommend amendments to or disallowance of whole or parts of pandemic orders.[3]

2 Or any instrument that extends, varies or revokes a pandemic order.

3 *Public Health and Wellbeing Act 2008* (Vic) s 165AS(2).

The matters above that the Committee may review relate specifically to the content of pandemic orders. However, the Committee still has the general evidence gathering and reporting powers of a parliamentary committee. This extends to reporting on the implementation of the orders and the 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 of the Chief Health Officer whenever an order is made or altered.[4] The Committee has considered these documents in its review and they have informed report's Findings and Recommendations.

These documents are available on 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 March 2020 and December 2021. This includes any restrictions made during this period, such as 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[5] and the Victorian Government's decision to pause elective surgery.[6]

However, 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.

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.

4 Ibid., s 165AP.

5 Made on 19 January 2022.

6 From 6 January to 21 February 2022.

3 Overview of the Pandemic (Visitors to Hospitals and Care Facilities) Orders

3.1 Overview of Orders

The Committee reviewed all variations of the Pandemic (Visitors to Hospitals and Care Facilities) Orders to determine compliance with requirements under the *Public Health and Wellbeing Act 2008*. This includes restrictions on visitors to aged care facilities that were consolidated into the Pandemic (Public Safety) Order 2022 (Nos. 1 and 2).

The main purpose of the Orders was to limit the spread of COVID-19 in hospital and care facilities. This was achieved through restricting the number of visitors to hospitals and care facilities and requiring visitors to undergo COVID-19 testing to enter a premises.

Other pandemic orders also contained measures specifically for hospital and care facilities, including requirements to wear face masks and vaccine mandates for workers.

Under the Hospitals and Care Facilities Orders, a care facility included residential services, assistance dwellings, residential aged care facilities and Thomas Embling Hospital.

At the time Order No. 1 was made, it revoked the Chief Health Officer's Hospital Visitor Directions (No. 40) and Care Facilities Directions (No. 50) made under the state of emergency provisions of the Public Health and Wellbeing Act. Five versions of the Pandemic (Visitors to Hospitals and Care Facilities) Orders were issued after the pandemic legislation came into effect. Visitor restrictions for care facilities were later consolidated under the Public Safety Order, following the revocation of Hospitals and Care Facilities Order No. 5.

The Minister's reasons for the changes were published in Statements of Reasons as the new orders were published on the Pandemic Order Register.[1] Each Statement addressed changes made throughout all pandemic orders. Similarly, the Minister's explanation of human rights limited by the orders were published in Human Rights Statements.

A copy of the Orders and associated documents is available on the Pandemic Order Register.[2]

Table 3.1 below provides a summary of the changes.

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1 Department of Health, *Pandemic Order Register*, 2022, <https://www.health.vic.gov.au/covid-19/pandemic-order-register> accessed 3 May 2022.

2 Ibid.

Table 3.1 Summary of Visitors to Hospitals and Care Facilities Orders

Order No.	Start date	Revocation/ expiry date	Key changes
Hospitals and Care Facilities Order 2021 (No. 1)	15 December 2021	12 January 2022	• Revoked previous Chief Health Officer directions • No major changes to existing restrictions
Hospitals and Care Facilities Order 2022 (No. 2)	12 January 2022	18 February 2022	Additional PCR/RAT requirement for visitors
Hospitals and Care Facilities Order 2022 (No. 3)	18 February 2022	18 March 2022	Amendments to definition of 'excluded persons'
Hospitals and Care Facilities Order 2022 (No. 4)	18 March 2022	12 April 2022	Allowed director or medical lead of designated Local Public Health Unit to issue visitor exemptions
Hospitals and Care Facilities Order 2022 (No. 5)	12 April 2022	22 April 2022	None (extension of Order No. 4)
Public Safety Order 2022 (No. 1)	22 April 2022	24 June 2022	• Consolidated orders relating to aged care facility restrictions and face masks • All existing hospital visitor restrictions removed
Public Safety Order 2022 (No. 2)	24 June 2022	12 July 2022	• Removed caps on the number of visitors to a care facility in all circumstances • Care facility visitors required to receive a negative RAT result prior to entering premises • Visitors can no longer provide 'acceptable evidence' of a negative result

Source: Pandemic Declaration Accountability and Oversight Committee. Information compiled from Department of Health, *Hospitals and Care Facilities Order*, 2022, <https://www.health.vic.gov.au/covid-19/hospitals-and-care-facilities-order> accessed 19 May 2022; Department of Health, *Public Safety Order 2022*, 2022, <https://www.health.vic.gov.au/covid-19/public-safety-order-2022> accessed 19 May 2022.

The key changes made by each Order are detailed in the Sections below.

3.1.1 Order No. 1

Order No. 1 revoked the Hospital Visitor Directions (No. 40) and Care Facilities Directions (No. 50). The Order consolidated the requirements of the two directions and did not make any major changes to existing restrictions.

The Minister's Statement of Reasons noted advice from the Chief Health Officer which described the COVID-19 context in Victoria as follows:

- COVID-19 cases remained elevated despite significant vaccination rates in the 12+ years population
- the Omicron variant had been detected in Victoria, and its effects were not yet fully understood

- care facilities are sensitive settings and warranted additional public health measures to protect residents and the workforce
- COVID-19 outbreaks during Victoria's second wave of 2020 resulted in high case numbers, uncontained outbreaks, major workforce shortages and deaths
- COVID-19 infection and exposure to hospital and care facilities staff creates additional workforce pressure that may compromise patient and resident care
- limiting visitors reduces the number of interactions between people, reducing opportunities for transmission
- hospital patients are at an increased risk of being exposed to and transmitting COVID-19 and are particularly vulnerable to the negative impacts of the disease
- healthcare workers are more likely to be exposed to infectious cases while providing care.[3]

The Minister concluded that other non-restrictive measures such as health promotion, education, epidemiology and monitoring were not sufficient to manage COVID-19 risks in hospital and care facilities settings.[4] Therefore, the Minister considered continuing with the additional restrictions in hospital and care facilities was appropriate and proportional in the circumstances.

Hospitals

Under Order No. 1, a person was not permitted to enter a hospital unless they were:

- a patient
- a permitted hospital worker
- visitors who were permitted under the Order
- present in an area of the hospital that was exempted from requirements.[5]

Specific classes of persons were excluded from entry, subject to certain exemptions.[6] This included:

- a person diagnosed with COVID-19 and undergoing self-isolation
- a person who arrived in Australia from overseas in the past 14 days, unless they had a valid arrival permit and were not prohibited from attending a hospital under the Pandemic (Victorian Border Crossing) Orders

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3 Minister for Health, *Statements of Reasons: Pandemic Orders made 15 December 2021*, 15 December 2021, para 60–63.

4 Ibid., para 70.

5 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2021* (no. 1) cl 7.

6 Such as for purposes of breastfeeding, end of life support or when a patient's condition is life threatening. Clause 9(2) also allowed for application for exclusion to an executive direct of nursing, or to the Chief Health Officer or Deputy Chief Health Officer.

- international aircrew services workers who had arrived in Australia from overseas in the past 14 days, unless they were permitted to attend a hospital under the Victorian Border Crossing Orders
- a person who was a known contact of a person diagnosed with COVID-19 in the past 7 days (if the contact was fully vaccinated) or 14 days (if they were not fully vaccinated)
- a person who had symptoms that was similar to those of COVID-19 (unless these were caused by an underlying health condition or medication)
- a person aged under 16, unless:
  - visiting a patient for end-of-life support
  - visiting a patient who had a life-threating condition
  - they were a child, grandchild or sibling of the patient, or had a kinship relationship to them
  - visiting with their parent, carer or guardian and were unable to be left unattended.
- visitors who had been tested for COVID-19 and not yet received results.[7]

Up to two visitors at a time were permitted when providing end of life care to a patient.[8]

In addition to those who were not 'excluded persons', visitors were only permitted if they fell into the following categories:

- they were providing essential care necessary for a patient's immediate wellbeing (including dementia and mental health support)
- they were parents, guardians or had temporary care of the patient (if the patient was under 18)
- 'nominated persons' of patients who have a mental illness or dementia
- they were providing interpretation or informal language support to assist hospital workers
- the person was learning to provide support or care to the patient upon their discharge
- a pregnant patient's partner or support person (where the patient was admitted related to the pregnancy)
- a maternity ward patient's partner or support person (where the patient was admitted related to pregnancy or childbirth)

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7 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2021* (no. 1) sch 1(4).

8 Ibid., cl 10.

- they were attending with a patient admitted to the emergency department
- they were accompanying an outpatient.[9]

Hospital operators were also required to facilitate phone, video or other means of electronic communication to support the wellbeing of residents.[10]

Aged care facilities

Order No. 1 prevented a person entering a care facility unless they were a resident, a staff member defined in the Order or a visitor of a resident who was not otherwise excluded.[11]

Excluded persons were not permitted to enter a care facility unless they were providing end of life care to a resident or were authorised to enter via an exemption.[12]

Aged care residents were allowed up to five visitors per day. Prospective residents were allowed up to four other people in total accompanying them and a maximum of one visit to the facility per day.[13]

In addition, the operator of a care facility was required to facilitate phone, video or other means of electronic communication to support the wellbeing of residents.[14]

These restrictions remained through each variation of the Orders until all restrictions on visitors were revoked under the Public Safety Order 2022 (No. 2).

3.1.2 Order No. 2

Order No. 2 came into effect on 12 January 2022. It implemented additional requirements to restrictions on visitors to hospital settings, including new COVID-19 testing on entry requirements and associated exceptions.[15]

The Minister's Statement of Reasons noted advice provided by the acting Chief Health Officer that advised further restrictions should be considered. The advice highlighted the Victorian COVID-19 context, in particular the following issues that had arisen since the previous Order was introduced:

- rising cases of the Omicron variant, along with observations of increased hospitalisations in Denmark and the United Kingdom

9 Ibid., sch 1(4).

10 Ibid., cl 13.

11 Ibid., cl 18.

12 By the director of a facility, Chief Health Officer or Deputy Chief Health Officer.

13 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2021* (no. 1) cls 20–21.

14 Ibid., cl 22.

15 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2022* (no. 2) cls 8–9.

- from 1 August to 21 December 2021, 13% of all outbreaks, 1.6% of all cases and 11.7% of all deaths were linked to hospital settings
- in the same period, 7.4% of all outbreaks, 1.5% of all cases and 23.2% of all deaths were linked to care facilities.[16]

All visitors aged over 18 were required to be fully vaccinated or provide a negative rapid antigen test result on the same day and wear an N95 mask during their visit.[17] Those under 18 who were also unvaccinated were required to return a negative rapid antigen test result on the same day.[18]

The exemptions to testing on entry requirements included:

- visitors providing end-of-life support to patients
- essential carers, where undertaking a test before entry was not practicable
- visitors who had received a negative PCR test result within the past 24 hours
- a person providing professional patient care, including emergency workers (in the event of an emergency), ambulance workers and visiting healthcare professionals
- visitors with a physical or mental condition or a disability, which makes both vaccination and rapid antigen testing unsuitable in the circumstances
- visitors for whom vaccination and rapid antigen testing are unsafe in all circumstances.[19]

Order No. 2 required that care facility operators must not permit entry to visitors, prospective residents or support persons of prospective residents unless they presented 'acceptable evidence' of a negative rapid antigen test.[20] For visitors who could not obtain a test after reasonable attempts, Order No. 2 allowed the following exemptions:

- for visitors of residents, if the resident has had less than two visitors on the day, provided that only one other person may enter at the same time (if the resident has had no visitors)
- for prospective residents or their support persons, only one person may accompany the prospective resident.[21]

New exemptions to entry requirements included:

- visitors providing end-of-life support to a resident
- an essential carer of a resident, where undertaking a rapid antigen test prior to entry was not practicable

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16 Minister for Health, *Statement of Reasons: Pandemic Orders made 12 January 2022*, 12 January 2022, para 220.7.

17 Unless they are not required to wear a face covering under the Guidance for the Pandemic (Movement and Gathering) Orders.

18 Under Order No. 2, general face covering requirements under the Guidance for the Pandemic (Movement and Gathering) Orders still applied.

19 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2022* (no. 2) cl 9.

20 Ibid., cl 19.

21 Ibid., cl 19(12).

- a person nominated by a director or equivalent of the care facility for the purpose of having in-person contact with a resident,[22] where undertaking a rapid antigen test prior to entry was not practicable
- visitors who have undertaken a PCR test within 24 hours and can provide acceptable evidence of the negative result
- a person providing professional patient care, including emergency workers (in the event of an emergency), ambulance workers and visiting healthcare professionals.[23]

Order No. 2 also made consequential changes to visitor declarations. This required a visitor to declare they had received a negative rapid antigen test result or had not been able to obtain a test after making reasonable attempts.[24]

Other changes included further consequential amendments, correcting minor typographical errors and removal of redundant and transitional provisions.

3.1.3 Order No. 3

Order No. 3 came into effect on 18 February 2022 and made only minor changes. This included allowing entry for the following persons:

- parents, carers or guardians of patients and the purpose was to breastfeed the patient
- persons providing end-of-life support to a patient
- immediate family members of a patient who had a life-threatening condition.[25]

The Statement of Reasons noted the Chief Health Officer's advice that exemption categories needed to be broadened to align closer to circumstances for ordinary hospital visits. For example, allowing consideration of an exemption for a COVID-19 positive birth partner to be present for the birth of their child.[26]

Order No. 3 also amended the definition of 'hospital excluded person' to reflect changes to self-quarantine requirements under the Victorian Border Crossing Order.[27] The definition was replaced with 'persons required to self-quarantine under the Victorian Border Crossing Order'.[28]

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22 For example, to provide urgent assistant to a resident experiencing severe dementia symptoms.

23 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2021* (no. 1) cl 9.

24 Ibid., cl 27.

25 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2022* (no. 2) cl 11.

26 Minister for Health, *Statement of Reasons: Pandemic Orders made 18 February 2022*, 18 February 2022, para 252.

27 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2022* (no. 2) sch 1.

28 Ibid., sch 4.

3.1.4 Order No. 4

Order No. 4 came into effect on 18 March 2022. It made minor amendments to allow a director or medical lead of a designated Local Public Health Unit to permit certain excluded persons to visit hospitals[29] and care facilities.[30]

The Minister's Statement of Reasons noted this was appropriate as the Local Public Health Units:

- primarily manage COVID-19 cases and close contacts as well as the strategies to control the spread of the virus
- have a significant role in collaborating with local health networks, which best placed them to work with these services on permitting excluded persons.[31]

The Minister stated in the Human Rights Statement that this would allow greater discretion to allow visitors whilst retaining the case-by-case approval process.[32]

In addition, the Minister also stated in the Statement of Reasons that the change would support more flexible and timely decision making.[33]

3.1.5 Order No. 5

Order No. 5 came into effect on 12 April 2022. It did not implement any changes to restrictions and extended the existing requirements of Order No. 4.[34]

The Minister's Statement of Reasons noted workforce availability was a significant factor influencing capacity of the health system. It also noted that while COVID-19-related hospital and intensive care unit admissions had declined since 28 January 2022, hospitalisation and unplanned workforce absences had recently started to rise.[35]

The Statement of Reasons also noted the Minister had chosen not to implement 'essential visitors lists' for care facilities during outbreaks, as advised by the Chief Health Officer. The Minister explained this was because:

- case numbers in Victoria were likely to peak in mid-April 2022, with hospitalisations peaking shortly afterwards
- it is open for the Minister to consider timing for implementing pandemic measures
- the Minister may draw on earlier Chief Health Officer advice or external information (such as Australian Health Protection Principal Committee statements).[36]

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29 Ibid., cl 11.

30 Ibid., cl 22.

31 Minister for Health, *Statement of Reasons: Pandemic Orders made 18 March 2022*, 18 March 2022, para 168.

32 Minister for Health, *Human Rights Statement*, 18 March 2022, para 121.3.

33 Minister for Health, *Statement of Reasons: Pandemic Orders made 18 March 2022*, para 168.

34 Minister for Health, *Statement of Reasons: Pandemic Orders made 12 April 2022*, 12 April 2022, para 406.

35 Ibid., para 414.6.

36 Ibid., para 416.

3.1.6 Public Safety Order 2022 (Nos. 1 and 2)

On 22 April 2022, the Minister for Health implemented major changes to the framework of pandemic orders, including revoking several orders in full.[37] The Public Safety Order 2022 (No. 1) consolidated remaining elements of the Hospitals and Care Facilities Order (No. 5) and the Pandemic (Movement and Gathering) Order 2022 (No. 5).

The focus of the Committee's review only includes clauses of the Public Safety Order that relate to restrictions on entry and visitors to care facilities.

When the Public Safety Order came into operation, all restrictions on visitors entering hospital premises were abolished in favour of allowing hospitals to manage visitors at a local level. This was based on advice by the Chief Health Officer that noted 'health services are best placed to manage their own settings'.[38]

In addition, the Order allowed for excluded persons to visit a care facility for end-of-life visits. In these instances, the care facility must record the 'excluded' visitor's contact details and times of entry for at least 28 days.[39]

The Chief Health Officer's advice noted that:

- care facilities are sensitive settings requiring 'specific consideration'
- visitor restrictions should still remain a requirement in pandemic orders to ensure residents are protected as Victoria approaches winter.[40]

The Public Safety Order also introduced an essential visitors list for care facilities to support the wellbeing of residents. This was to address concerns that some care facilities had implemented visitor restrictions in excess of the requirements of the Orders.[41]

The essential visitors list includes:

- parents or guardians of residents under 18
- parents, guardians, partners, carers, support persons or other named persons who are providing emotional and social support to a resident who is over 18
- persons providing immediate physical, cognitive, social or emotional support to a resident (including mental health support for residents with dementia)
- visitors providing end-of-life support and visits to a resident

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37 On 22 April 2022, the following pandemic orders were revoked: Pandemic (Hospitals and Care Facilities) Order 2022 (no. 5), COVID-19 Mandatory Vaccination (General Workers) Order 2022 (no. 4), COVID-19 Mandatory Vaccination (Specified Facilities) Order 2022 (no. 7), COVID-19 Mandatory Vaccination (Specified Workers) Order 2022 (no. 6), Pandemic (Movement and Gathering) Order 2022 (no. 5), Pandemic (Open Premises) Order 2022 (no. 6), Pandemic (Additional Industry Obligations) Order 2022 (no. 10), Pandemic (Detention) Order 2022 (no. 5), Pandemic (Victorian Border Crossing) Order 2022 (no. 7).

38 Department of Health, *Record of meeting between Minister for Health and the Chief Health Officer*, meeting minutes, 19 April 2022.

39 *Pandemic (Public Safety) Order 2022* (no. 1) cl 14.

40 Department of Health, *Record of meeting between Minister for Health and the Chief Health Officer*, p. 1.

41 Minister for Health, *Statement of Reasons: Pandemic Orders made 22 April 2022*, 22 April 2022, para 91.

- 'nominated persons' of residents with a mental illness or incapacity
- persons providing learning or training to support a resident's care or discharge
- interpreters and people providing language support
- aged and disability care advocates
- legal representatives or those with power of attorney for residents
- volunteers in the Community Visitors Scheme.[42]

On 24 June 2022, the Minister for Health implemented the Public Safety Order 2022 (No. 2). Order No. 2 removed all caps on the number of visitors allowed at a care facility. This was based on advice from the acting Chief Health Officer which noted care facility residents can come and go from their residence as they please. As a result, limiting daily visitors was no longer considered a proportionate measure.[43]

Order No. 2 required visitors to care facilities to provide a written declaration on entry that:

- they had received a negative rapid antigen test result
- had no COVID-19 symptoms prior to entering the premises
- were not required to isolate or quarantine or were considered a close contact at time of visiting.[44]

The acting Chief Health Officer's advice noted that rapid antigen testing was a useful screening tool to protect residents and remained a proportional measure.[45]

Order No. 2 also outlined certain excluded persons who could only visit a care facility if an exception applied.[46] This included those listed on the essential visitors list for residential aged care facilities.[47]

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42 Ibid., para 82.15.

43 Minister for Health, *Statement of Reasons: Pandemic orders made on 20 June 2022*, 20 June 2022, para 64.2.1.

44 *Pandemic (Public Safety) Order 2022* (no. 1) cl 17(11).

45 Minister for Health, *Statement of Reasons: Pandemic orders made on 20 June 2022*, para 64.2.2.

46 *Pandemic (Public Safety) Order 2022* (no. 1) cl 14.

47 Ibid., cl 15.

4 Analysis of the Pandemic (Visitors to Hospitals and Care Facilities) Orders

4.1 Summary of review

The focus of the Committee's review was the restrictions placed on visitors to hospitals and care facilities. From 15 December 2021 to 22 April 2022 most hospital patients were not permitted any ordinary visitors, apart from a very narrow set of exempted circumstances. This was despite additional requirements introduced in Order No. 2 for any visitors to produce a negative PCR or rapid antigen test result before entry.

From 22 April 2022, there are no longer specific visitor restrictions for hospitals under the pandemic orders. These are now managed at a local level by hospitals and Local Public Health Units based on current COVID-19 case numbers and general hospital capacity.

Restrictions on visitors to aged care facilities were also removed on 24 June 2022 under Pandemic (Public Safety) Order 2022 (No. 2).[1]

These types of restrictions were in place as far back as March 2020,[2] aside from some easing between November 2020 and February 2021, when visitor restrictions were temporarily removed. This aligned with the Victorian Government's 'last step' of reduced restrictions under a period of no new COVID-19 cases.[3]

The Committee also heard about the impacts of visitor restrictions in hospitals and other care facilities during COVID-19 lockdowns, where at times no visitors were allowed at all apart from very narrow exceptions. Lockdown restrictions were implemented through directions of the Chief Health Officer under State of Emergency powers and are outside the remit of the Committee's review. The Committee acknowledges the evidence it received and makes no further comment.

The Committee's review of the Hospitals and Care Facilities Orders consists of three key parts:

- assessing compliance of the Orders with the requirements of the *Public Health and Wellbeing Act 2008*

1 *Pandemic (Public Safety) Order 2022* (no. 2).

2 Victoria, *Victoria Government Gazette*, No. S 147, 24 March 2020.

3 Premier of Victoria, *Summary of last step restrictions: from 11.59pm on 22 November 2020*, 2020, <https://www.premier.vic.gov.au/sites/default/files/2020-11/221120%20-%20Last%20Step%20restrictions%20.pdf> accessed 8 June 2022.

- compatibility of the Orders with the *Charter of Human Rights and Responsibilities Act 2006*, including whether the Minister has adequately explained limitations of the rights and the reasons for limitations
- reviewing how the Orders have been implemented by health and aged care services, including any issues that have occurred.

The Committee's assessment of the Human Rights Statement identified issues requiring clarification from the Minister for Health. The Committee wrote to the Minister seeking further information and the Minister provided a response which is provided in Appendix B.

The Committee has determined that the Orders are compliant with the requirements of the Act and the Charter, and is satisfied with the Minister's responses.

However, the Committee heard concerns that some health services—particularly hospitals—had restricted entry to visitors in certain circumstances despite it being lawful for them to enter under the Orders at the time.

The Committee wrote to all Victorian public and private hospitals requesting information on these circumstances. From the survey responses the Committee found there were differing reasons where hospitals had imposed additional restrictions on visitors, including:

- aligning with requirements for care facilities, particularly in facilities where hospitals and care facilities were co-located
- existing internal protocols for managing COVID-19 and operational issues
- misinterpretation of the pandemic orders
- requirements of other pandemic orders, including pandemic directives from other jurisdictions.

A copy of the questionnaire responses is available on the Committee's website at https://new.parliament.vic.gov.au/get-involved/inquiries/review-of-pandemic-orders/submissions.

4.2 Compliance of the Orders with the *Public Health and Wellbeing Act 2008*

Under s 165AS of the Public Health and Wellbeing Act, the Committee may report on pandemic orders[4] that:

(a) do not appear to be within the powers confined by the Act

(b) without clear and express authority being conferred by the Act:

(i) has retrospective effect

4 Or instruments that extend, vary or revoke orders.

(ii) imposes any tax, fee, fine, imprisonment or other penalty

(iii) shifts the legal burden of proof to a person accused of an offence

(iv) provides subdelegation of powers delegated by the Act

(c) are incompatible with the human rights under the Charter of Human Rights and Responsibilities Act.

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

In addition, the Minister's Statement of Reasons noted that all decisions on pandemic orders are informed by the guiding principles of the Public Health and Wellbeing Act.[5]

Similarly, the Committee has not identified any aspects of the Orders that infringe the matters in s 165AS(1)(b), noting:

- the Orders are not retrospective
- penalties under the Orders are general penalties of failure to comply with pandemic orders, directions or other requirements which is provided under s 165BN of the Act
- the Orders otherwise do not impose taxes, fees, fines or other penalties
- no clauses proport to shift the legal burden of proof to the accuser or provide unlawful subdelegation of powers.

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

The Minister's Statements of Reasons and Human Rights Statements along with further evidence provided to the Committee indicated that the Orders are compatible with the Charter of Human Rights and Responsibilities Act.[6]

However, in its review the Committee identified areas of concern which are discussed further in the Sections below.

The Committee's consideration of compatibility with the Charter of Human Rights and Responsibilities Act is based on explanations given by the Minister in:

- the Human Rights Statements, Statements of Reasons and other accompanying documents published with the Orders
- further information provided to the Committee in writing and at public hearings.

5 *Public Health and Wellbeing Act 2008* (Vic) ss 5–10.

6 Requirements are prescribed under s 165AC(1)(c).

The human rights in the Charter are not absolute and may be limited according to the principles in s 7(2) of the Act. This requires that any limitation is lawful, reasonable and justified.

In determining whether the limitations were lawful, reasonable and justified, the Committee identified two issues requiring further consideration by the Minister:

- less restrictive means to prevent the spread of COVID-19 in hospitals that were not considered by the Minister in the Human Rights Statements
- human rights that may be limited in the Orders but were not considered in the Human Rights Statements.

The Committee wrote to the Minister on 14 February 2022 seeking an explanation and further information relating to these matters. The Minister's full response is provided in Appendix B.

The Committee also wrote to the Minister seeking responses on issues relating to how hospitals had implemented visitor restrictions under the Orders. This response is provided in Appendix C.

4.3.1 Summary of Human Rights Statements

The Minister's Human Rights Statements identified four rights under the Charter of Human Rights and Responsibilities Act that he considered were limited by the Orders:

- right to equality
- freedom of movement
- protection of families and children
- cultural rights.[7]

In addition, he noted the obligations 'engaged'—but did not limit—the right to life and privacy and reputation.[8]

The Committee sought legal advice on whether the content of the Orders was incompatible with rights under the Charter of Human Rights and Responsibilities Act. This advice is referred to in the Sections below, where relevant.

4.3.2 Less restrictive measures

Pandemic orders may be incompatible with the Charter of Human Rights and Responsibilities Act if there were less restrictive means that could reasonably achieve the desired purpose. In the Committee's view the Minister has adequately explained the reasoning behind not adopting possible less restrictive measures.

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7 Minister for Health, *Human Rights Statement*, 15 December 2021, para 198.

8 Ibid., para 199.

In the context of visitor restrictions under the Hospitals and Care Facilities Orders, 'reasonably less restrictive means' may have included:

- allowing hospital patients to have a single visitor per day, or even a single visitor per week
- allowing longer term hospital patients to have visitors while maintaining the no visitors rule for patients who are only in hospital short-term
- allowing all fully vaccinated visitors or fully vaccinated visitors for fully vaccinated patients and residents
- allowing visitors who have produced a negative rapid antigen test and requiring them to wear an N95 mask.

The Committee requested a response from the Minister whether in his opinion these means would have achieved the desired purpose of the Orders. In his response, the Minister noted:

> The less restrictive options that you have detailed do not take into the account the broad ranging circumstances where hospital patients were allowed to have visitors under the Pandemic Orders applicable at the time. Therefore, I consider some of those options as not "less restrictive" and others were not appropriate given the public health advice at the time.[9]

The Minister then noted the exemptions under Order No. 1 that allowed visitors in specific circumstances.[10]

The Minister also highlighted that the exemptions were designed in a way to limit children being separated from parents, guardians or carers as much as possible. However, the Committee notes that until Order No. 2 came into effect, children under 16 were not permitted to enter a hospital unless they fell into an exemption category.[11]

At a public hearing, the Minister provided further context on the risks assessments made when implementing the restrictions on visitors:

> at the time of making orders for each of those facilities, those different risk assessments and the different components underlining those were taken into account. As such, in making orders with respect to visitors for care facilities as opposed to hospitals, it was considered necessary to strike a balance between allowing visitors to places people called home whilst at the same time protecting these sensitive settings[12]

The Committee acknowledges there were exemptions for visiting hospitals, as outlined by the Minister in his response. However, this does not address the Committee's concerns that most hospital patients were not permitted any ordinary visitors at all.

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9 Hon Martin Foley, Minister for Health, *Response to request from Chair, Pandemic Declaration Accountability and Oversight Committee 14 February 2022*, correspondence, 2 March 2022, p. 3.

10 Ibid.

11 *Pandemic (Visitors to Hospitals and Care Facilities) Order 2021* (no. 1) sch 1.

12 Hon Martin Foley MP, Minister for Health, public hearing, Melbourne, 4 March 2022, *Transcript of evidence*, p. 24.

These restrictions have been in place as far back as March 2020 and may still continue under local restrictions at each hospital.

In particular, the 'broad ranging circumstances' noted by the Minister only allowed visitors to enter if they were not 'excluded' under the Orders[13] and fell into a category of exemption. This continued through Order Nos. 2 to 5, where visitors were also required to undergo COVID-19 testing in addition to the existing entry requirements.

The Committee sought further clarification from the Minister on why significant visitation restrictions as well as a requirement for a negative PCR or rapid antigen test result were necessary. In correspondence received on 17 May 2022, the Minister referred the Committee back to his Statement of Reasons for Order No. 2.[14]

The Committee acknowledges the Minister's response and a copy is provided in Appendix C.

The Committee notes that when Order No. 2 was implemented on 12 January 2022, visitor restrictions were unchanged despite the added requirement to undergo COVID-19 testing on entry. However, during this time access to rapid antigen tests was still restricted due to supply issues. In addition, Victoria was experiencing a surge in COVID-19 cases due to the Omicron wave.[15]

Since then, rapid antigen tests are widely available and COVID-19 cases and hospitalisation trends have somewhat stabilised. It is the Committee's view that under current local-level arrangements, hospitals should adopt a 'least restrictive' approach to visitor restrictions wherever possible, taking into account their current capacity.

FINDING 1: Significant visitor restrictions for hospital patients were in place between March 2020 and 22 April 2022, aside from a brief relaxing of restrictions between November 2020 and February 2021. During this time, the majority of hospital patients were not eligible to have visitors outside of seeking an exemption as the criteria for permitted visitors was narrow.

FINDING 2: Restrictions on visitors to care facilities were in place between March 2020 and 24 June 2022, aside from a brief relaxing of restrictions between November 2020 and February 2021.

13 For example, people required to undergo COVID-19 isolation.

14 Hon Martin Foley, Minister for Health, *Response to Pandemic Declaration Accountability and Oversight Committee: Review of Pandemic (Visitors to Hospitals and Care Facilities) Orders*, correspondence, 17 May 2022, p. 1.

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

4.3.3 Other human rights that may be limited

Legal advice provided to the Committee identified two additional rights which may have been limited and were not addressed by the Minister in the Human Rights Statements:

- The protection from medical treatment without full, free and informed consent,[16] which may apply where there is a requirement to be vaccinated or to undertake a medical test like a rapid antigen test.
- The right to equality,[17] as patients in hospitals and residents in care facilities will generally have a disability or some other 'protected attribute',[18] and because of that disability or attribute they are allowed to have visitors.

In response, the Minister noted that the Orders did not specifically require a person to be fully vaccinated to visit a hospital or care facility due to exemptions allowed in certain circumstances. The Minister also stated that undertaking a PCR or rapid antigen test does not constitute medical treatment as it 'does not have an individual focus and is not aimed at the remediation or alleviation of a medical condition'. As a result, in his opinion the right to protection from medical treatment was neither affected nor limited by the Orders.[19]

In response to the right to equality, the Minister noted that the visitor restrictions were stricter for people in hospital and care facilities compared to other settings. However, he stated that the restrictions were imposed not because some patients and residents have disabilities but due to the epidemiological risks associated in both settings.[20]

The Minister also considered that indirect discrimination against people with a disability was reasonable in the circumstances. He further stated there was possibly no indirect discrimination under the protections of the *Equal Opportunity Act 2010*. As a result, he believed the right to equality was neither affected nor limited in the context of the Orders.[21] This was later acknowledged in the Statement of Reasons on 22 April 2022.[22]

4.4 Implementation issues

The Committee heard from a range of stakeholders about the difficulty they had in implementing pandemic orders in hospital and care facilities settings. General issues included:

- the complexity of orders and the legalistic language used which at times led to ambiguity, particularly on the definition of what is a 'carer'

16 Under s 10(c) of the *Charter of Human Rights and Responsibilities Act 2006*.

17 Under s 8 of the *Charter of Human Rights and Responsibilities Act 2006*.

18 Under the *Equal Opportunity Act 2010*.

19 Hon Martin Foley, correspondence, p. 5.

20 Ibid., p. 6.

21 Ibid.

22 Minister for Health, *Statement of Reasons: Pandemic Orders made 22 April 2022*, 22 April 2022.

- conflicting requirements between pandemic orders, particularly for hospitals and care facilities that were co-located on the same site
- the rate of changes to pandemic orders
- inconsistent statements made in media announcements compared to official advice from the Victorian Government.

'Consistency in the rules and messaging would have made it much easier to implement'[a]

'orders have been confusing and need to be read carefully for application in the local context'[b]

'At times the orders that came through were ambiguous and required site specific interpretation.'[c]

'Visitor restrictions stated in press conferences often contradicted the communication sent out to hospitals leading to confusions and anger from patients and visitors'.[d]

'Ensuring full communication in the first place, not telling us something one day and then adding a crucial detail in the next day that changes how implementation occurs'.[e]

'language was often confusing and open for misinterpretation'.[f]

a. Boort District Health, *Questionnaire 3*, p. 3.
b. Mallee Track Health and Community Services, *Questionnaire 6*, p. 3.
c. Gippsland Southern Health Service, *Questionnaire 7*, p. 3.
d. Mulgrave Private Hospital, *Questionnaire 10*, p. 3.
e. Wyndham Private Clinic, *Questionnaire 12*, p. 3.
f. The Royal Victorian Eye and Ear Hospital, *Questionnaire 30*, p. 3.

Many issues identified above are common throughout the pandemic orders and were raised in evidence by several stakeholders. These are further discussed in Chapter 5.

On 27 April 2022, the Committee wrote to the Minister for Health seeking further information on how the Department has supported hospitals to implement the Orders. A copy of the Minister's response is provided in Appendix C.

The Minister noted that the Department has developed guidance to 'support services in determining visitor restrictions, appropriate to their own circumstances and according to local risks'.[23] In addition, the Department of Health:

- 'routinely communicates' with the health sector on pandemic orders and seeks feedback to ensure guidance is clear
- has established a dedicated email contact point

23 Hon Martin Foley, correspondence, p. 2.

- conducts regular livestreamed broadcasts to provide updates to the health sector.[24]

The Committee also issued a questionnaire to Victorian public and private hospitals to seek information on how they had implemented the pandemic orders. The questionnaire sought responses on:

- the implementation of visitor restrictions in Victorian hospitals, including if a hospital:
  - implemented restrictions that were in excess of pandemic order requirements
  - experienced any issues interpreting or applying the pandemic orders
- complaints received in relation to hospital visitor restrictions
- the number of exemption applications made and approved, and who was responsible for assessing exemption requests
- communication strategies for patients, visitors and staff to ensure understanding of the visitor restrictions and exemption process
- overall impression of the pandemic orders and operation of the pandemic management framework.

At the time of adopting this report, the Committee received 34 responses to the questionnaires. These are published on the Committee's website at: https://new.parliament.vic.gov.au/get-involved/inquiries/review-of-pandemic-orders/submissions.

4.4.1 Conflicting requirements between pandemic orders and other jurisdictions

Some questionnaire respondents noted that interpreting orders was difficult because of conflicting requirements between pandemic orders or restrictions. This was a particular issue for hospitals with co-located aged care services because they were required to implement the hospital visitation and aged care restrictions simultaneously.

In general, hospital respondents indicated that they implemented restrictions different to the pandemic orders where there were conflicting requirements (such as care facilities restrictions) or were unclear on an order's directions.

Several hospitals co-located with care facilities noted that at times the aged care and hospital visitation restrictions did not align. This led to them enforcing stricter visitor restrictions in hospitals to accommodate the required care facility restrictions. This occurred on sites where hospitals and care facilities were co-located, and where an organisation managed both hospitals and care facilities and chose to implement the stricter restrictions.[25]

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24 Ibid.

25 For example, see: Moyne Health Services, *Questionnaire 1*; Boort District Health, *Questionnaire 3*; Orbost Regional Health, *Questionnaire 4*; Gippsland Southern Health Service, *Questionnaire 7*.

Orbost Regional Health said that the differences in orders caused confusion for staff and suggested limited staffing resources made this more difficult.[26]

Variances in pandemic requirements between different jurisdictions was also an issue. Albury–Wodonga Private Hospital stated that varying requirements in each jurisdiction made orders difficult to implement.[27] As a private hospital, it also suggested that 'public sector restrictions/practices were in excess of requirements' causing 'confusion'.[28]

Similarly, Shepparton Villages noted that at times there were inconsistencies in directives received from the Victorian and Commonwealth Governments. As a private aged care provider it is regulated by the Commonwealth Government, but is still required to comply with the Victorian Government's pandemic orders.[29] Ms Veronica Jamison, Chief Executive Officer, considered one single government agency to manage COVID-19 in residential aged care would prevent duplication,[30] stating:

> The real point I am trying to make: let us forget about governments here; let us just have one body managing COVID in residential aged care so everybody gets treated equally.[31]

4.4.2 Restrictions implemented in excess of the pandemic orders

Some hospitals noted that they introduced additional visitation restrictions under internal hospital policies. In some cases this occurred as early as March 2020 as a proactive measure due to uncertainty about the virology and effects of COVID-19 at the time.

In questionnaire responses, the reasons hospitals implemented additional stricter requirements included:

- electing to take a more 'conservative approach'[32] to protect patients and staff from increased risk of COVID-19 exposure
- resourcing and staffing constraints making it difficult to manage visitors, particularly during periods of higher community transmission
- maintaining internal policies made prior to the pandemic that mandated stricter visitation, even where pandemic orders may have allowed greater flexibility
- the physical infrastructure and resources available made it difficult to implement pandemic orders

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26 Orbost Regional Health, *Questionnaire 4*, p. 3.

27 Albury-Wodonga Private Hospital, *Questionnaire 13*, p. 3.

28 Ibid.

29 Ms Veronica Jamison, Chief Executive Officer, Shepparton Villages, public hearing, Melbourne, 1 March 2022, *Transcript of evidence*, p. 33.

30 Ibid., p. 38.

31 Ibid., p. 42.

32 Austin Health, *Questionnaire 14*, p. 3.

- mitigating exposure risks when a community or facility outbreak of COVID-19 cases occurred.[33]

Some hospitals also explained that they implemented stricter visitor restrictions to ensure that they complied with their COVIDSafe plans. This included requirements for social distancing and density limits, which were required under other pandemic orders. Hospitals with smaller infrastructure or shared beds indicated they found it difficult to manage the requirements, which required stricter visitation rules.[34]

At a public hearing, Professor Euan Wallace, Secretary of the Department of Health, acknowledged these issues were at times caused by layout constraints, particularly at older hospitals.[35]

The Committee notes that after the Hospitals and Care Facilities Order No. 5 was revoked, there are no longer statewide restrictions on hospital visitors under pandemic orders. As hospitals and Local Public Health Units now manage restrictions locally, this will lead to varying restrictions between hospitals.

The Committee acknowledges that hospitals are best placed to monitor and manage visitors depending on the current COVID-19 situation at their facilities. However, as stated previously visitor restrictions have been in place in some form since March 2020. This has had a significant impact on the welfare of patients, their families and other loved ones.

In the Committee's view, hospitals and Local Public Health Units need to appropriately communicate the reasons for restrictions to the public and opt for the least restrictive options available.

Members of this Committee have heard privately from constituents who have not been able to visit loved ones in hospitals. This occurred when they may have been eligible for exemptions or even when they were eligible to enter hospitals under the pandemic orders. This is a matter of serious concern given that friends and family play an important role in patient care, particularly improving a patient's physical, emotional and social wellbeing.

In light of these issues raised, the Committee will continue to consider any visitor restrictions in hospital settings. In addition to the rights of individuals to make complaints and for the Parliament to refer matters to the Ombudsman, the Committee notes its own ability to refer matters under the *Ombudsman Act 1973* and reserves this right in future.

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33 Malvern Private and Essendon Private, *Questionnaire 2*; Austin Health, *Questionnaire 14*; Royal Women's Hospital, *Questionnaire 15*; Mercy Health, *Questionnaire 20*; Alfred Health, *Questionnaire 21*; Western Health, *Questionnaire 22*; West Gippsland Health Care Group, *Questionnaire 23*; Healthscope, *Questionnaire 24*; Eastern Health, *Questionnaire 27*; Peninsula Health, *Questionnaire 28*.

34 For example, see: Western Health, *Questionnaire 22*; Alfred Health, *Questionnaire 21*.

35 Professor Euan Wallace, Secretary, Department of Health, public hearing, Melbourne, 4 March 2022, *Transcript of evidence*, pp. 2–3.

4.4.3 Impact on care facility residents

Residential care facilities have a unique issue in that they are also a place where people live. When visitor restrictions were implemented to limit COVID-19 spread, this restricted residents from allowing people into their place of residence.

As stated previously, there were restrictions on visitors into care facilities between March 2020 and 24 June 2022, aside from relaxed restrictions between November 2020 and January 2021.

At a public hearing, Shepparton Villages made a presentation which included quotes from residents about how they had been impacted by pandemic restrictions and lockdowns. This illustrated the ongoing impact that public health measures and restrictions had on the mental health and wellbeing of residents.[36]

Ms Tina Hogarth-Clarke, Chief Executive Officer of Council on the Ageing Victoria, acknowledged that the Victorian Government had attempted to take a 'least restrictive' approach compared to other jurisdictions. However, she also noted reports to her organisation of aged-care providers not allowing visitors in. She said this was due to non-compliance with industry codes related to organisational risk assessments or decisions by a Local Public Health Unit.[37]

At a public hearing, Chief Health Officer Professor Brett Sutton acknowledged this issue and spoke about the 'challenge' in applying the restrictions. He noted there was 'somewhat [of] a cultural reluctance or a risk aversion' to applying restrictions that were not in excess of the base measures in the pandemic orders.[38]

Professor Sutton also stated the Department of Health provided guidance to the sector that was being updated to be 'more explicit' about visitation. He acknowledged that lockdowns had occurred for protracted periods of time and that in some cases visitor restrictions in excess of the pandemic orders have been less than reasonable.[39]

Professor Sutton explained there was a need to balance health and human rights concerns and to explore alternative means for COVID-19 reduction:

> I think we need to just have ongoing conversations about the balancing of those health and human rights concerns within those settings and to be as clear as we can that there is an easier pathway that balances those risks where, for example, lockdown of entire facilities does not need to occur, that positive residents need to be kept to their rooms, that there might need to be restricted movement for people in the same wing or one area of an aged-care facility but not the entire facility, and that for those who are fully

36 Ms Veronica Jamison, *Transcript of evidence*, pp. 31–32.

37 Ms Tina Hogarth-Clarke, Chief Executive Officer, Council of the Ageing Victoria, public hearing, Melbourne, 1 March 2022, *Transcript of evidence*, p. 60.

38 Professor Brett Sutton, Chief Health Officer, Department of Health, public hearing, Melbourne, 31 January 2022, *Transcript of evidence*, p. 5.

39 Ibid.

> vaccinated, especially those who have received a booster dose, the risk is much, much less for them even though it is not zero.[40]

The Minister's 22 April 2022 Statement of Reasons acknowledged ongoing community concern that some care facilities had implemented overly restrictive visitation rules. The Minister further stated:

> An important balance must be achieved to ensure residents have vital personal, social, emotional and community support and connection when living in care facilities, whilst continuing to mitigate the risk of COVID-19 introduction and spread.[41]

These factors led to the establishment of an essential visitors list under the Pandemic (Public Safety) Order 2022 (No. 1). The Committee acknowledges the list and will consider its effectiveness as part of ongoing review.

4.4.4 Exemptions granted and complaints received on hospital visitor restrictions

Directors of hospitals and care facilities, and later Local Public Health Units, have been allowed to issue exemptions to allow excluded persons to enter a premises.

As part of the questionnaire to all Victorian hospitals, the Committee sought information regarding the exemption requests and complaints hospitals had received whilst visitation restrictions were in place.

The number of requests and approvals varied significantly across respondents. Some hospitals stated they had no exemption requests whilst others received more than 1,000 during the period the Orders were in place.

Some of the reasons for exemption requests included:

- visiting patients outside hospital visiting hours
- allowing a person who was unvaccinated and/or diagnosed with COVID-19 to visit a patient in hospital
- allowing an additional visitor during end-of-life care.[42]

Regarding complaints received by hospitals, the Committee notes:

- hospitals received a mix of formal and informal complaints regarding hospital visitation restrictions
- handling complaints has been a significant challenge for staff and their wellbeing, as well as an administrative burden for hospitals that were required to establish dedicated complaints handling processes

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40 Ibid.

41 Minister for Health, *Statement of Reasons: Pandemic Orders made 22 April 2022*, p. 24.

42 For example, see: Austin Health, *Questionnaire 14*; Mulgrave Private Hospital, *Questionnaire 10*; Royal Women's Hospital, *Questionnaire 15*.

- some hospitals noted that their staff were subject to verbal abuse, threats of physical violence, threats of property damage and other aggressive behaviours.[43]

Whilst complaints handling was a significant issue for some hospitals, several others noted that even though patients and their visitors were frustrated with the Orders there was compliance and understanding of the need for the restrictions.[44]

43 For example, see: Albury-Wodonga Private Hospital, *Questionnaire 13*; Royal Women's Hospital, *Questionnaire 15*; Tallangatta Health Service Hospital, *Questionnaire 5*; Bendigo Health, *8*; Cohuna District Hospital, *Questionnaire 9*; Corryong Health, *Questionnaire 17*; Jessie McPherson Private Hospital, *Questionnaire 34*.

44 Tallangatta Health Service Hospital, *Questionnaire 5*; Cohuna District Hospital, *Questionnaire 9*.

5 General issues

5.1 Introduction

Through the Committee's ongoing reviews of pandemic orders it has identified general issues on the broader operation and implementation of the orders.

The main issues the Committee has identified include:

- general difficulty in interpreting pandemic orders due to legalistic language used and the complexity of navigating the pandemic order framework
- the way changes to orders were implemented, including the high frequency of changes, short lead times between public announcements and changes coming into effect, and lack of consultation with some key stakeholders.

The Committee also received evidence on the mental health impacts caused by the requirements of pandemic orders as well as previous public health measures. However, it is also important to note the impact on mental health of the pandemic itself.

The Committee acknowledges that mental health during the pandemic is a serious issue and it will continue to consider the ongoing impacts in further reviews of pandemic orders.

Some stakeholders told the Committee that the COVID-19 pandemic has worsened the mental health of many Victorians. This has exacerbated systemic issues which existed prior to the pandemic.

The Committee received evidence that the types of mental health presentations during the pandemic are generally more acute, and more people are requiring longer term support from services. As a result, the mental health sector is struggling to meet service demand, leading to longer waiting periods for clients and higher levels of unmet need.

5.2 General interpretation issues

In Chapter 4, the Committee found that some stakeholders experienced difficulties in interpreting the Hospitals and Care Facilities Orders. This contributed to inconsistent application of pandemic orders in hospital settings.[1] Difficulties interpreting orders is a broader issue across the pandemic management framework.

1 For example, see: Tallangatta Health Service Hospital, *Questionnaire 5*; Mr Matt Sharp, Chief Executive Officer, Goulburn Valley Health, public hearing, Melbourne, 1 March 2022, *Transcript of evidence*; Professor Andrew Way, Chief Executive Officer, Alfred Health, public hearing, Melbourne, 17 February 2022, *Transcript of evidence*.

This is primarily a result of the legalistic language of the pandemic orders which is difficult to understand and for some stakeholders required dedicated resources to interpret them.

The views of stakeholders echoes independent research on the readability of COVID-19 information and public health directives on Victorian Government websites. The researchers found that the readability and text complexity levels were at a senior secondary reading level. This is higher that the recommended reading level for health material, which is a Year 7 equivalent.[2]

Before the pandemic management framework came into operation in December 2021, the Department of Health did issue plain language summaries of Chief Health Officer directions. These were usually in a table format and published online.

For pandemic orders relevant to healthcare services, the Department of Health does issue a plain language statement to service providers when orders are introduced or changed.[3] The Royal Women's Hospital stated that the Department of Health provided plain language guidance on visitor restrictions. It noted that this guidance 'assisted health services to interpret the Pandemic Orders' and 'helped ensure a level of consistency in practice across health services'.[4]

However, plain language guides on the pandemic order framework as a whole are no longer available to the general public.

In the Committee's view, the requirements to publish the Minister's Statements of Reasons, Human Rights Statements and Chief Health Officer advice have provided more transparency on the decision-making process for pandemic orders. However, the lack of summary material for current pandemic orders and changes that are implemented has made the orders difficult for the public to interpret.

The pandemic orders use legalistic language which is difficult to understand. The complexity of the language increases the risk that requirements are misinterpreted. Further, making pandemic orders easier to understand may also increase the Victorian community's understanding of why the restrictions are necessary and their intended purpose as a public health measure.

FINDING 3: Due to legalistic and complex language, pandemic orders have been difficult to interpret and understand. A lack of plain language guidance for the Victorian community risks orders being misinterpreted or misunderstood.

2 Tanya Serry et al., 'Improving access to COVID-19 information by ensuring the readability of government websites', *Health Promotion: Journal of Australia*, 20222022, doi: 10.1002/hjpa.610.

3 Professor Euan Wallace, Secretary, Department of Health, public hearing, Melbourne, 4 March 2022, *Transcript of evidence*, p. 21.

4 Royal Women's Hospital, *Questionnaire 15*, p. 5.

RECOMMENDATION 1: That the Department of Health publishes on the Pandemic Order Register summary documents on all current pandemic orders and any changes that are implemented in future. Summary documents should be drafted according to plain language principles, including using language equivalent to a Year 7 level and incorporating graphics where appropriate.

5.3 Consultation on ongoing changes and implementation issues

The high frequency of changes made interpreting orders more difficult for some stakeholders.[5] This was exacerbated by the time between public announcements and implementation of the orders, which at times came into effect with less than 48 hours' notice.[6]

Several key stakeholders noted that they did not receive any consultation from the Victorian Government before key changes to the orders were announced in the media.[7] As a result, they were required to adapt to new orders and restrictions with little notice.[8]

Some stakeholders suggested that sectors where multiple pandemic orders applied (such as healthcare) should be alerted to changes before public announcements were made. They also believed clearer information should be provided by the Victorian Government.[9]

Some hospitals also reported that there was often a delay in pandemic orders, guidance material and other documentation being made available.[10] Without these resources, hospitals said they were unable to implement changes to visitor restrictions despite expectations from patients, families and staff.[11] This was compounded by conflicting or unclear advice in the media which led to community expectations which did not align with the reality of the visitor restrictions.[12]

5 Maryvale Private Hospital, *Questionnaire 16*; Heywood Rural Health, *Questionnaire 19*. Ms Georgie Harman, Chief Executive Officer, Beyond Blue, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*.

6 Southwest Healthcare, *Questionnaire 18*; Corryong Health, *Questionnaire 17*; Heywood Rural Health, *Questionnaire 19*; Mercy Health, *Questionnaire 20*; Alfred Health, *Questionnaire 21*; Western Health, *Questionnaire 22*; Healthscope, *Questionnaire 24*; Delmont Private Hospital, *Questionnaire 26*; Eastern Grampians Health Service, *Questionnaire 31*; Jessie McPherson Private Hospital, *Questionnaire 34*.

7 Ms Bernadette McDonald, Chief Executive Officer, Royal Children's Hospital, public hearing, Melbourne, 17 February 2022, *Transcript of evidence*, p. 24; Dr Sue Matthews, Chief Executive Officer, Royal Women's Hospital, public hearing, Melbourne, 17 February 2022, *Transcript of evidence*, p. 24.

8 Mr Peter Roberts, Head of School Services, Independent Schools Victoria, public hearing, Melbourne, 29 March 2022, *Transcript of evidence*, p. 75; Mr Dale Fraser, Chief Executive Officer, Ballarat Health Services, public hearing, Melbourne, 1 March 2022, *Transcript of evidence*.

9 Ms Georgie Harman, *Transcript of evidence*, pp. 22–23; Mr Peter Roberts, *Transcript of evidence*, p. 78.

10 For example: St Vincent's Hospital, *Questionnaire 25*.

11 Monash Health, *Questionnaire 32*.

12 Western Health, *Questionnaire 22*; Eastern Health, *Questionnaire 27*; Central Gippsland Health, *Questionnaire 29*.

FINDING 4: The evolving nature of the COVID-19 pandemic, in particular the spread of the Omicron variant of the virus, required rapid changes to pandemic orders and the public health response. A range of key stakeholders such as hospitals and care facilities were not informed of major changes to pandemic orders ahead of public announcements in the media and did not receive official communication from the Victorian Government until close to when the orders were to come into effect.

FINDING 5: In some instances, public statements and announcements made at Victorian Government and agency press conferences differed from the detailed changes made to pandemic orders. This led to confusion for key stakeholders and the general public when official advice received from the Victorian Government differed from that announced in the media.

5.4 Mental health impacts

> **"Many experts believe the pandemic is similar to a natural disaster in that it has impacted the whole population and there has been a sense of enduring a collective trauma—except unlike the trauma that follows most disasters, events which are over relatively quickly, this crisis has been drawn out, has had peaks and troughs and remains ongoing."**
>
> Ms Georgie Harman, Chief Executive Officer, Beyond Blue, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*, p. 22.

In the Committee's view, the mental health impacts of the pandemic and associated restrictions is of great concern. Many Victorians have struggled with their mental health during this pandemic. The mental health toll of the pandemic has been well-documented and will continue on for years to come.

Making specific recommendations relating to mental health responses is beyond the scope of the Committee's powers and this review of pandemic orders. However, the Committee has presented the issues below to highlight the need for ongoing support from the Victorian Government into the mental health sector as the COVID-19 response continues.

The Committee received evidence on how the pandemic has affected the mental health of Victorians, including impacts from pandemic orders. This included hearing from representatives in the mental health sector, including representatives of those with lived experience.

5.4.1 Trends in mental health issues during COVID-19

The mental health issues experienced by Victorians have been compounded by a number of factors, such as:

- the realities of living through a global pandemic
- the type of public health measures and restrictions introduced
- the length of time measures and restrictions remain in place
- additional external or local factors which may have existed prior to the pandemic.

At a public hearing, Chief Psychiatrist Dr Neil Coventry noted that in May 2022, mental health–related presentations to emergency departments had stabilised to pre-pandemic levels. However, he noted there was a rise in presentations relating to self-harm and eating disorders, with most increases in adolescents. At the time of providing evidence, Dr Coventry noted there was no upward trend in the number of suicides.[13]

In May 2022, the Coroner's Court of Victoria released data which showed that there had been an increase in suicides by 5 in Victoria from 2019 to 2020 at the time of reporting.[14] At the time of adopting this report, the May 2022 report was the most recent report publicly available.

Assessing the mental health impacts of the pandemic is a complex issue and cannot be considered in isolation to other factors contributing to mental health issues.

The Royal Commission into Victoria's Mental Health System previously identified systemic issues in Victoria's mental health sector which existed long before the COVID-19 pandemic. The Commission provided its final report to the Victorian Government on 3 February 2021, which was tabled in Parliament on 2 March 2021.

Many stakeholders told the Committee that the restrictions implemented were all contributing to increased mental health challenges amongst the Victorian population. This included self-quarantine and isolation requirements, hospital and care facilities restrictions on visitors, physical distancing measures and lockdowns.[15]

The Committee also received evidence that the pandemic has heightened risk factors associated with poorer mental health, including:

- financial insecurity
- unemployment or reduced educational engagement

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13 Dr Neil Coventry, Chief Psychiatrist, Department of Health, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*, pp. 2–3.

14 Coroners Court of Victoria, *Monthly Suicide Data Report: April 2022 update*, May 2022, p. 3.

15 Lockdowns were implemented under Chief Health Officer directions made under the COVID-19 state of emergency declaration. The Committee has acknowledged them for context.

- increased social isolation and disconnect
- disruption to daily life such as interrupted routines and other protective factors such as exercise.[16]

These have contributed to an increase in mental health issues experienced by Victorians and demand for mental health support.

The Committee heard from stakeholders in the mental health sector—including those with lived experience—over two days of public hearings in April and May 2022. They discussed trends in mental health presentations observed during the pandemic. These are outlined in Box 5.1 below.

BOX 5.1: Trends in mental health presentations during the COVID-19 pandemic

- There were increased presentations to emergency departments due to mental health crises, such as self-harm, suicidal thoughts or suicide attempts.[a] However, notably there was not an increase in suicide rates.[b]
- A higher number of young people have presented to mental health services with an eating disorder.[c]
- Specific groups reported experiencing more acute or higher rates of mental health issues, including:
  - women
  - Aboriginal and Torres Strait Islander people
  - culturally and linguistically diverse communities
  - the LGBTIQA+ community
  - people with a disability, chronic health conditions or pre-existing mental health conditions.[d]
- People are accessing mental health support services more often and requiring more intense support (such as face-to-face support rather than telehealth),[e] often for longer periods of time.[f]

(Continued)

16 For example, see: Ms Georgie Harman, *Transcript of evidence*, p. 22; Dr Kerryn Rubin, Member, Victorian Branch Committee, The Royal Australian & New Zealand College of Psychiatrists, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*, p. 70; Mr Jason Trethowan, Chief Executive Officer, Headspace, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*, p. 46; Professor Joseph Ibrahim, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*, p. 59; Mr Craig Wallace, Chief Executive Officer, Victorian Mental Illness Awareness Council, public hearing, Melbourne, 13 May 2022, *Transcript of evidence*, p. 2; Ms Jacquie Blackwell, Co-Founder, Shadow Pandemic Victoria, public hearing, Melbourne, 13 May 2022, *Transcript of evidence*; Ms Moran Dvir, Co-Founder, Shadow Pandemic Village, public hearing, Melbourne, 13 May 2022, *Transcript of evidence*.

BOX 5.1: Continued

- Some groups are struggling with the reduction in public safety measures, such as people with anxiety, young people with social skill difficulties or people with autism spectrum disorder.[g]
- There are increasing rates of alcohol and drug use (including relapses into addiction), particularly during periods of heightened restrictions.[h]

a. Ms Jacquie Blackwell, *Transcript of evidence*.

b. Dr Neil Coventry, *Transcript of evidence*; Mr Jason Trethowan, *Transcript of evidence*.

c. Dr Neil Coventry, *Transcript of evidence*; Mr Jason Trethowan, *Transcript of evidence*; Dr Kerryn Rubin, *Transcript of evidence*; Ms Moran Dvir, *Transcript of evidence*.

d. Ms Georgie Harman, *Transcript of evidence*; Dr Kerryn Rubin, *Transcript of evidence*.

e. Mr Alastair Stott, Chief Services Officer, Beyond Blue, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*.

f. Ms Kathryn Mandla, Head, Advocacy and Research, Yourtown, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*.

g. Dr Kerryn Rubin, *Transcript of evidence*.

h. Mr Sam Biondo, Executive Officer, Victorian Alcohol and Drug Association (VAADA), public hearing, Melbourne, 13 May 2022, *Transcript of evidence*; Mr Dave Taylor, Policy and Media, Victorian Alcohol and Drug Association (VAADA), public hearing, Melbourne, 13 May 2022, *Transcript of evidence*.

Mr Craig Wallace, Chief Executive Officer at the Victorian Mental Illness Awareness Council, spoke of the complex issues faced by NDIS recipients. He stated that many NDIS recipients were unable to use their funding due to stay-at-home orders, which resulted in loss of a portion of their funding. These orders also led to people being cut off from informal supports such as social networks.[17]

Geriatric medicine specialist and academic researcher Professor Joseph Ibrahim noted the impact on older Victorians of the COVID-19 pandemic and pandemic orders in general:

> The important thing is as people get older what they value in life tends to change or what they are able to articulate changes. As everyone gets older, as everyone has some type of infirmity or disability, their ability to value what is at hand, what each day brings—the small things in life have a far greater value than they would for an able-bodied or younger person. The ability to have some sense of control about what you do is also far more important to that person because their choices have become so limited. So the ability to decide who does or does not come into your room has far greater importance when you are older than it does for any of us now. What the pandemic and the situation with both the lockdowns and the quarantine did is it

17 Mr Craig Wallace, *Transcript of evidence*, p. 2.

> increased the level of social isolation. The decision about what was to happen was taken out of the hands of the people that were most affected, and they were not able to voice what their preferences would be and what sacrifices or compromises they would have liked to have had. This increases the level of both anxiety and depression, which were already high, particularly in the aged care nursing home sector, running at around 50 per cent.[18]

Ms Amanda Curran, Chief Services Officer at the Australian Association of Psychologists Inc., spoke of the mental health issues faced by families in early perinatal and prenatal periods:

> There was a real withdrawal of face-to-face services, and that increased a lot of anxiety about the health and wellbeing of unborn babies, and then there were restrictions around who could access hospital settings and supports that they would be able to receive within hospital and then in the perinatal period. So we did see a lot of anxiety increase within that group. And especially when there were restrictions around being able to visit family members there was a large number of people feeling very isolated and not having great outcomes in that early period of parenthood.[19]

The Committee heard from representatives of Shadow Pandemic, a social media group representing parents concerned about the mental health of children and young people during the COVID-19 pandemic. Ms Jacquie Blackwell and Ms Moran Dvir, Co-Founders of the group, discussed that disruptions to schooling and social activities caused by public health measures has caused poorer mental health for many young people. They considered that dedicated, long-term investment in young people's mental health recovery was necessary as Victoria unwinds pandemic orders.[20]

Reading a quote from a person to its social medica account who identified themselves as a paediatrician, Ms Blackwell said:

> I am a paediatrician but not a psychologist, and a mother of 3 boys. I have a patient with a high IQ and ADHD. Dealing with the separation of her parents and the commencement of high school all during lockdown she became disengaged with learning and made no social connections. Sneaking out one night she experimented with recreational drugs and under the influence of drugs was gang raped at a park. After assessment at ED my patient was sent home. Not engaging well with telehealth she was untreated. This year my patient is still disengaged from school and has been unable to access a private or public provider. This child has engaged in self-harm and has made two attempts on her life, she is yet to turn 15'.[21]

Other stakeholders told the Committee that quarantine requirements had 'increased the level of social isolation' experienced by people in aged care facilities. They also noted

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18 Professor Joseph Ibrahim, *Transcript of evidence*, p. 59.

19 Ms Amanda Curran, Chief Services Officer, Australian Association of Psychologists Inc, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*, p. 73.

20 Ms Jacquie Blackwell, *Transcript of evidence*; Ms Moran Dvir, *Transcript of evidence*.

21 Ms Jacquie Blackwell, *Transcript of evidence*, p. 14.

that compliance with pandemic order restrictions compounded feelings of anxiety and depression.[22]

The Committee also heard that the healthcare sector is experiencing significant mental health stress. This is exacerbated by the pressure of being the frontline response to the pandemic and other workforce issues such staff shortages and furloughs. Mr Matt McCrohan, Deputy Commander COVID-19 at Ambulance Victoria, spoke about the uptake in mental health support services offered by Ambulance Victoria across the workforce. Mr McCrohan stated:

> the services that we do provide are not for individuals alone, they certainly support immediate families as well. As we all know, the challenges of us working in various professions do not start and finish when we leave home or arrive home; there are a lot of other things we have had to contend with, I guess, beyond the professional scale in the personal as well.[23]

This was echoed by Ms Lisa Fitzpatrick, Secretary, Victorian Branch of the Australian Nurses and Midwifery Federation. She discussed the 'mental health strain' experienced by nurses, midwives and personal carers since the pandemic began in 2020:

> I never envisaged, neither did our members, that some three years down the track we would be in the situation that we are with different variants of COVID, the extraordinary requirement for the furloughing of staff and still having 7000 or 8000 infections reported—and of course we expect that to be under-reporting—even as we speak today. We have gone through an extraordinary two years with little break, and the mental health strain on our members has been very, very significant.
>
> ...
>
> But I am also very concerned that we are seeing a growing fatigue in relation to wellbeing, because I do think a number of our members have lost hope in relation to COVID-19 ever ending, with the continual discussion around 'We just have to live with COVID' or no discussion at all about COVID and the 450-odd people that are in hospital today. That has only come down this week from 500 or 550 last week.[24]

Ms Fitzpatrick further explained that whilst public health restrictions are easing more broadly in Victoria, there is still a significant burden placed on frontline healthcare workers. She discussed the broad views of the Federation's members, stating:

> They feel alone. They do not feel that they are being taken seriously or that COVID is being taken seriously. They desperately want to be able to nurse and be midwives like they used to be and provide the care that they used to be able to, particularly in those wards and units across the state that are being hard hit. It is not just metropolitan, there are regional health services that are really struggling as well that do not have the same

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22 For example, see: Mr Alastair Stott, *Transcript of evidence*, p. 23; Dr Kerryn Rubin, *Transcript of evidence*, p. 70; Ms Jacquie Blackwell, *Transcript of evidence*; Ms Moran Dvir, *Transcript of evidence*.

23 Mr Matt McCrohan, Deputy Commander COVID-19, Ambulance Victoria, public hearing, Melbourne, 16 June 2022, *Transcript of evidence*, p. 34.

24 Ms Lisa Fitzpatrick, Secretary, Victorian Branch, Australian Nurses and Midwifery Federation, public hearing, Melbourne, 16 June 2022, *Transcript of evidence*, p. 65.

access to a backup casual workforce that some of metropolitan Melbourne might, so they are very desperate to be listened to and to have action taken that actually supports the reduction of COVID cases in the community, the transmission of COVID, including vaccination levels increasing so that people do not become as unwell as they would with only two doses of the vaccine.[25]

5.4.2 Impacts on mental health service providers

Growing mental health issues resulting from the pandemic has increased pressure on the mental health sector to provide support to more Victorians. The Committee heard from several stakeholders that service demand was exceeding the capacity of the sector.

The Committee was made aware of significant issues the mental health sector is experiencing, such as:

- increases in wait times to access services, with some people waiting more than eight weeks to access mental health support
- increased demand led to some service providers having to suspend accepting new clients
- staffing shortages, particularly in rural and regional Victoria
- mental health workers working longer hours, which is contributing to:
  - workforce burnout
  - people leaving the mental health sector
  - people working in the sector experiencing their own mental health issues and are exposed to greater levels of vicarious trauma.[26]

Mr Craig Wallace from the Victorian Mental Illness Awareness Council noted there had been a 126% increase in contacts to his organisation for support. This was due to delays and lack of support from community-based services. He stated that cessation of face-to-face support as required under pandemic orders and previous directions had increased 'distress, feelings of hopelessness and vulnerability'.[27]

A stark example of the level of unmet need in Victoria's mental health sector was provided by Yourtown, the parent company of Kids Helpline. Ms Kathryn Mandla, Head of Advocacy and Research at Yourtown, told the Committee in 2021 62% (approximately 76,000) of Victorian children who called Kids Helpline did not connect through.[28]

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25 Ibid., p. 72.

26 See: Ms Tegan Carrison, Executive Director, Australian Association of Psychologists Inc, public hearing, Melbourne, 29 April 2022, *Transcript of evidence*; Ms Amanda Curran, *Transcript of evidence*; Dr Kerryn Rubin, *Transcript of evidence*; Ms Kathryn Mandla, *Transcript of evidence*, p. 57; Mr Craig Wallace, *Transcript of evidence*; Mr Dave Taylor, *Transcript of evidence*.

27 Mr Craig Wallace, *Transcript of evidence*, pp. 1–2.

28 Ms Kathryn Mandla, *Transcript of evidence*, p. 45.

Ms Mandla explained that the current funding levels for Kids Helpline meant the company was only able to respond to 38% of Victorian calls, despite a 20% increase in demand compared to 2019.[29] She noted Kids Helpline 'do not know the severity of the issues that would have been raised by young people' in calls that were not connected.[30]

In addition, the Committee was informed by some stakeholders that funding for COVID-19-specific mental health supports had decreased or been discontinued. These stakeholders expressed concern that the decrease in funding would mean these services could not be continued. This is despite mental health impacts of the pandemic remaining acute and service demand being high.[31]

FINDING 6: The effects of the COVID-19 pandemic itself, as well as the public health response, have contributed to Victoria's mental health crisis. Pandemic orders which require levels of seclusion, such as isolation, quarantine and visitor restrictions, have significantly contributed to a decline in mental health across the Victorian population.

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

29 Ibid.

30 Ibid., p. 51.

31 Mr Craig Wallace, *Transcript of evidence*; Ms Shellie Braverman, Advocate, Victorian Mental Illness Awareness Council, public hearing, Melbourne, 13 May 2022, *Transcript of evidence*; Mr Sam Biondo, *Transcript of evidence*.

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

A

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.

A

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
Jacquie 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 (Visitors to Hospitals and Care Facilities) Orders with the *Charter of Human Rights and Responsibilities Act 2006*

Response to request from Chair, Pandemic Declaration Accountability and Oversight Committee 14 February 2022

QUESTION

A significant limitation arising under the Orders is that the majority of hospital patients are not allowed to have any ordinary visitors, apart from some exemptions. In contrast, the visitor limits in care facilities are much less restrictive, with a resident allowed to have up to five visitors per day, regardless of whether they are there with any particular purpose or not.

Some potentially less restrictive options may include:

- *allowing hospital patients to have a single visitor per day, or even a single visitor per week*
- *allowing longer term hospital patients to have visitors while maintaining the 'no visitors' rule for patients who are only in hospital short-term*
- *allowing all fully vaccinated visitors or allowing fully vaccinated visitors for fully vaccinated patients and residents, and/or all visitors who have performed a RAT and wear an N95 face covering.*

The Committee seeks your response as to whether less restrictive options including those listed above were considered when implementing the Orders and an explanation as to whether or not they would achieve the desired purpose or whether they are 'reasonably available'.

RESPONSE

Regarding the limits on hospital visitors, we note that from 15 December 2021 under Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No.1), a person was able to visit a patient in a hospital if:

> (a) the person's presence at the hospital is for the purposes of providing essential care and support necessary for the patient's immediate emotional or physical wellbeing (including mental health support and support for people living with dementia); or
>
> (b) in the case of a patient of the hospital aged under 18 years – the person is the parent, carer or guardian of the patient or has temporary care of the patient; or
>
> (c) in the case of a patient of the hospital who has a mental illness or is living with dementia – the person is the patient's nominated person and the person's presence at the hospital is for the purposes of matters relating to their role as nominated person; or
>
> (d) the person's presence at the hospital is for the purposes of providing interpreter or informal language support to enable the delivery of care by hospital workers; or
>
> (e) the person's presence at the hospital is for the purposes of the person learning to support the patient's care upon the patient's discharge; or

(f) in the case of a pregnant patient of the hospital whose status as a patient relates to the pregnancy – the person is the patient's partner or support person; or

(g) in the case of a patient of the hospital who is in a maternity ward whose status as a patient relates to pregnancy or childbirth – the person is the patient's partner or support person; or

(h) in the case of a patient of the hospital attending at the hospital's emergency department – the person is accompanying the patient; or (i) in the case of a patient of the hospital attending an outpatient appointment – the person is accompanying the patient.

As of 12 January 2022, under Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No.2), hospital patients have been allowed up to 2 visitors per day (unless visiting for end-of life reasons), with the following requirements:

Visitors aged 18 and over must be:

- fully vaccinated; or
- able to undertake and present a negative RAT result from just prior to entry and wear an N95 face covering for the duration of their visit.

Visitors aged under 18 must be:

- fully vaccinated; or
- able to present a negative RA test result prior to entry.

There were also significant exceptions in place from the visitor limits to ensure parents, carers and guardians were not separated from children unnecessarily. Birth partners were excepted as were those breastfeeding an infant. Other exceptions were for life threatening or end of life support situations. These exceptions allowed for the physical and mental wellbeing of children to be protected and for individuals to support family or dependants through key life events.

At the time of making *Pandemic (Visitors to Hospitals and Care Facilities) Order 2021 (No. 1)*, Victoria was experiencing an outbreak of the Delta strain of severe acute respiratory syndrome coronavirus 2, the virus which causes COVID-19. Additionally, there was global uncertainty and growing concern about the rapid spread of the Omicron Variant of concern.

At the time of making Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No.2), Victoria was experiencing an outbreak of both the Delta strain and Omicron strain of severe acute respiratory syndrome coronavirus 2, the virus which causes COVID-19. There continued to be global uncertainty and growing concern about the rapid spread of the Omicron Variant of concern. Most relevantly, the public health advice is that the priority was to reduce morbidity and mortality and limit the impact of the Omicron variant on Victoria's most vulnerable residents, our health system and other essential services and sectors

When making these pandemic orders as Minister I had regard to the advice provided by the Chief Health Officer (CHO) (10 December 2021) and the Acting Chief Health Officer (ACHO) (10 January 2022) including in relation to current outbreak patterns, growth in case numbers, and vaccination rates.

As noted in the ACHO advice from 10 January 2022 (paragraphs 79 to 81) hospitals are high risk settings for COVID outbreaks with heightened exposure to risk within hospital settings for patients particularly vulnerable to COVID infection, including severe disease, hospitalisation and death.

The less restrictive options that you have detailed do not take into the account the broad ranging circumstances where hospital patients were allowed to have visitors under the Pandemic Orders applicable at the time. Therefore, I consider some of those options as not "less restrictive" and others were not appropriate given the public health advice at the time.

QUESTION:

Paragraphs 228 to 234 of the Statement of Reasons (12 January 2022) details your consideration of less restrictive alternatives for the orders. A consideration of these less restrictive means is required in order for the Committee to determine the issue of incompatibility under s 165AS(1)(c). However, the Committee does not consider the current information published in the paragraphs to be sufficient for the Committee's considerations.

The Statement of Reasons states that you considered non-restrictive measures including health promotion, education, epidemiology and monitoring. It also notes that the Chief Health Officer does not consider that these measures alone will be sufficient to deal with current COVID-19 risks. However, this does not explain why less restrictive measures such as those discussed above would impose an intolerable burden or create an intolerable risk.

The Statement of Reasons also states that many patients and care facility residents may be unable to be vaccinated due to other medical conditions, so removing all limits on the number of visitors is inappropriate. Similarly, this does not explain why allowing hospital patients to have a single visitor per day, or per week, would be inappropriate. It also does not explain why those hospital patients who are vaccinated cannot receive any visitors.

The Committee seeks further information and clarification on the less restrictive means considered in paragraphs 228 to 234 in the Statement of Reasons and your response to the issues noted above.

As noted in answer to a previous question, the less restrictive options that you have detailed in the question, do not take into the account the broad ranging circumstances where hospital patients were allowed to have visitors under the Pandemic Orders applicable at the time.

As noted in my Statement of Reasons on 12 January 2022, decisions on all Pandemic Orders were made under the key guiding principles:

- Principle of evidence-based decision-making
- Precautionary principle
- Principle of primacy of prevention
- Principle of accountability
- Principle of proportionality
- Principle of collaboration

The principle of proportionality requires that decisions made and actions taken in the administration of the *Public Health and Wellbeing Act 2008* (the Act) should be proportionate to the risk sought to be prevented, minimised or controlled, and should not be made or taken in an arbitrary manner.

In deciding to make the pandemic orders, as Minister I am required to be satisfied that the orders are 'reasonably necessary' to protect public health, which requires consideration of the proportionality of those measures to the risk to public health.

As stated above, at the time of making *Pandemic (Visitors to Hospitals and Care Facilities) Order 2021 (No. 1)*, Victoria was experiencing an outbreak of the Delta strain of severe acute respiratory syndrome coronavirus 2, the virus which causes COVID-19. Additionally, there was global uncertainty and growing concern about the rapid spread of the Omicron Variant of concern.

At the time of making Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No.2), Victoria was experiencing an outbreak of both the Delta strain and Omicron strain of severe acute respiratory syndrome coronavirus 2, the virus which causes COVID-19. There continued to be global uncertainty and growing concern about the rapid spread of the Omicron Variant of concern. Most relevantly, the public health advice is that the priority was to reduce morbidity and mortality and limit the impact of the Omicron variant on Victoria's most vulnerable residents, our health system and other essential services and sectors

When making these pandemic orders as Minister I had regard to the advice provided by the Chief Health Officer (CHO) (10 December 2021) and the Acting Chief Health Officer (ACHO) (10 January 2022) including in relation to current outbreak patterns, growth in case numbers, and vaccination rates.

As noted in the ACHO advice from 10 January 2022 (paragraphs 79 to 81), hospitals are high risk settings for COVID outbreaks with heightened exposure to risk within hospital settings for patients particularly vulnerable to COVID infection, including severe disease, hospitalisation and death.

As mentioned, Paragraphs 228 to 234 of the Statement of Reasons – 12 January – outline less restrictive alternatives that were considered along with why these were not considered appropriate at the time of making this order. This included the following options:

1. removing all limits on the number of visitors; and/or
2. options for mandatory vaccination and testing requirements on visitors.

These were not recommended given the transmissibility of the Omicron variant and the increasing pressures on the health system at the time.

QUESTION

The advice provided to the committee has also identified two further potential limitations of the rights under the Charter of Human Rights and Responsibilities Act 2006 that are not addressed in the Human Rights Statement:

- *The protection in s 10(c) from medical treatment without full, free and informed consent, which may apply where there is a requirement to be vaccinated or to undertake a medical test like a rapid antigen test.*

- *The right in s 8 to equality, insofar as patients in hospitals and residents in care facilities will generally have a disability and/or some other attribute protected under the Equal Opportunity Act 2010 and it is because of that disability that they are not being allowed to have visitors.*

The Committee seeks an explanation of whether, in your opinion, the right in s 10(c) may be limited by the orders and the right in s 8 is limited in the alternative way identified above. If so, the Committee requests and explanation of the matters in s 165AP(2)(d) of the Public Health and Wellbeing Act 2008 with respect to those additional limitations. The Committee recommends that such an explanation should be published on the Pandemic Order Register website alongside the Human Rights Statement.

The right in s 10(c)

Neither of the Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No.1) or (No.2), required a person to be fully vaccinated in order to visit a hospital or a care facility. The Orders create different exclusions depending on the purpose of a person's visit, a cap on visitor numbers, and COVID-19 rapid antigen test results, but they only refer to vaccination status where not being fully vaccinated created slightly longer exclusion periods if a close contact, or slightly more onerous visiting conditions in the form of taking a COVID-19 rapid antigen test and wearing an N95 face covering. The Orders have taken the approach that people will make their own choices about full vaccination according to a number of intrinsic and extrinsic factors, and that permitting visits to hospitals and care facilities should work around these choices by dialling other public health measures (such as testing and face coverings) up or down according to vaccination-related risk.

Given that there is no explicit or implicit requirement to be vaccinated under these Orders, the right in s 10(c) of the *Charter* is not affected or limited by the powers and responsibilities they create.

The requirement to be tested before entering a hospital or care facility is a public health measure that does not amount to medical treatment because it does not have an individual focus and is not aimed at the remediation or alleviation of a medical condition. A person cannot be forced into taking a test, and the negative consequences of not taking a test are a part of the right to refuse that constitutes a core element of consent. Testing to enter a hospital or care facility therefore does not affect or limit the right in s 10(c).

The right in s 8

The visiting restrictions for hospitals and care facilities are aimed at protecting workers, patients, residents, and other people who are required to be in those higher-risk settings by reducing the risk of incursion of COVID-19 by people who have less need to be in that setting.

Some patients or residents are people with disability, but people with disability are everywhere in the community including *not* in a hospital or care facility, and some people in hospitals and care facilities would not have disabilities

Visiting rules in the Pandemic (Visitors to Hospitals and Care Facilities) Order 2021 (No. 1) and (No. 2) were stricter for people in hospitals and care facilities than for people not in those settings. However, these stricter settings were not imposed because those patients and residents have disabilities. They

were imposed because of the need to protect against incursion of COVID-19 in accordance with the epidemiological risks identified above in relation to the setting: the close quarters, the importance of maintaining skilled staff, the desirability of avoiding frequent major operational changes that are confusing for patients and residents, the desirability of avoiding facility-wide or sectioned lockdowns which may be distressing to patients or residents, and the importance of protecting people already at higher risk, including people with some kinds of disability.

This is confirmed by the fact that:

(a) not all patients in a hospital have a disability, and some may have required medical treatment for a condition that would not be considered a disability, for example where the condition is temporary;

(b) not all care facilities are primarily aimed at treatment for conditions which would amount to a disability, including homelessness residential service, secure welfare services, short-term accommodation and assistance dwellings, supported residential services (although residents may present with more conditions amounting to disability);

(c) many people with disability do not live in a hospital or care facility. They live in the community and have the visitation rules applying to the population at large;

(d) some people in care facilities that are residential aged care facilities might be perfectly healthy and not consider themselves, or be considered, disabled; and

(e) there are visiting exceptions for people with severe medical conditions that are considered disability (such as end-of-life support or where a medical condition is life-threatening).

The visitor restrictions do not directly discriminate against people with disability just because they are in a hospital or care facility. To the extent that there might be indirect discrimination against people with disability in hospitals and care facilities as a result of the visitor restrictions (and it possible that there is no indirect discrimination in the sense of the *Equal Opportunity Act 2010*), it is likely that the discrimination is reasonable in all the circumstances given the higher epidemiological risk within hospitals and care facilities. The right in s 8 is therefore neither affected nor limited.

Appendix C
Minister for Health's response to issues raised on the implementation of hospital visitor restrictions under pandemic orders

Martin Foley MP

Minister for Health
Minister for Ambulance Services
Minister for Equality

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BAC-CO-26791

Suzanna Sheed MP
Chair
Pandemic Declaration Accountability and Oversight Committee
PDAOC@parliament.vic.gov.au

Dear Ms Sheed

Thank you for your correspondence in relation to your review of Pandemic (Visitors to Hospitals and Care Facilities) Order (Nos. 1 to 5) and the Pandemic (Public Safety Order) 2022.

Please find below my responses to the questions that were enclosed.

1. Please provide an explanation as to why you determined that both significant restrictions on hospitals visitors as well as a requirement that any visitor to a hospital produce a negative PCR or RAT result was necessary. In providing this explanation, please outline what information was provided to you to make this determination.

My reasons and the information that I considered in determining the need for restrictions to prohibit unvaccinated visitors from entering a hospital unless they presented a negative PCR or RA test result are detailed in my Statement of Reasons published on 12 January 2022 in relation to the Pandemic (Visitors to Hospitals and Care Facilities) Order 2022 (No. 2) on the Department of health website at www.health.vic.gov.au/covid-19/hospitals-and-care-facilities-order.

The Pandemic (Visitors to Hospitals and Care Facilities) Order No. 5 was revoked at 11:59pm on 22 April 2022, removing these requirements in hospitals.

2. What additional advice has been provided to Victorian hospitals to support them implementing the Order?

a. Does the Department undertake any follow-up or consultation with hospitals on the operation of this Order, or any others?

3. What resources have been supplied to hospitals to support the implementation of the Order, including:

a. how the Order may be varied to address the specific geographic, demographic or clinical needs of a particular hospital

b. how the Order may be varied to address the requirements of specific cohorts?

Most recently, in consultation with the sector and internal stakeholders, the department developed a guidance document to support services in determining visitor restrictions, appropriate to their own circumstances and according to local risk assessments.

The guidance recognises that the ability of patients to receive visitors while in hospital plays an important role in the provision of care and support to patients and positively impacts their health status and recovery. Equally, this need must be balanced to protect the health, safety and wellbeing of all patients, staff and visitors.

The department routinely communicates with the sector regarding the Pandemic Orders and encourages feedback to ensure communication and guidance is clear and provides the necessary clarity to enable services to meet requirements of the Orders and to manage and mitigate impacts that may result.

There is a dedicated email contact point that services regularly use to provide feedback and seek advice or clarity on all matter of operational, policy and guidance issues relating to the COVID-19 response.

The department also conducts regular live streamed broadcasts. These broadcasts provide an opportunity to update the sector on new or emerging issues or advice, including pandemic orders. The broadcasts also include a Q&A function through which services can ask questions of the department's senior executive and receive live responses to those questions.

Yours sincerely

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

17/05/2022

Appendix D

Media release announcing appointment of the Independent Pandemic Management Advisory Committee

Media Release

The Hon Martin Foley MP
Minister for Health
Minister for Ambulance Services
Minister for Equality

Tuesday, 15 February 2022

INDEPENDENT EXPERT VOICES TO OVERSEE PANDEMIC RESPONSE

The Minister for Health has today appointed a panel of independent experts to provide oversight and advice as part of Australia's most transparent and accountable pandemic management framework.

The Independent Pandemic Management Advisory Committee (IPMAC) – formally established by the Minister for Health last week – will include members with knowledge and experience in fields such as public health, infectious diseases, primary care, emergency services, critical care, business, law and human rights.

Multiple members will also represent the interests and needs of traditional owners and Aboriginal Victorians as well as other vulnerable communities, including those from culturally and linguistically diverse backgrounds. More than half of the Committee's inaugural members are women.

The members are:

- Penny Armytage AM (Chair) – former Chair of the Royal Commission into Victoria's Mental Health system and former Secretary of the Victorian Department of Justice
- Paris Aristotle AO – CEO of Victorian Foundation for Survivors of Torture
- Pip Carew – health sector professional with 20 years of experience in clinical nursing and union representation
- Assoc. Prof. Joseph Doyle – infectious diseases physician and public health physician
- Belinda Duarte – education and training leader and CEO of Culture Is Life
- Dr Peter Harcourt OAM – sport and exercise physician and Chair of International Cricket Council (ICC) Medical Advisory Committee
- Michael Graham – CEO of the Victorian Aboriginal Health Service and Acting Chair of VACCHO
- Rabea Khan – barrister, previously a lawyer with Office of Public Prosecutions, IBAC and the Victorian Aboriginal Legal Service
- Vivienne Nguyen AM – Chairperson of the Victorian Multicultural Commission
- Dr Amanda Rojek – emergency medicine registrar at the Royal Melbourne Hospital
- Mark Stone AM – former CEO of Victorian Chamber of Commerce and Industry
- Dr Helen Szoke AO – former Victorian Equal Opportunity and Human Rights Commissioner, and member of Advisory Boards for the Royal College of Surgeons and the Royal College of Australia and New Zealand Obstetrics and Gynaecology

The Committee can review, provide advice and make recommendations to the Minister for Health on the exercise of the Minister's powers. The Minister must consider any reviews initiated by the Committee and may also request its advice. The Committee's reports to the Minister must be tabled in Parliament within four sitting days.

The Pandemic Declaration Accountability and Oversight Committee must request and consider the advice of the IPMAC before it can recommend that a pandemic order be disallowed in whole or in part.

Media contact: Kieran Jones 0421 031 900 | kieran.jones@minstaff.vic.gov.au

The establishment of the Committee and the appointment of its members is part of the Victorian Government's fit-for-purpose pandemic management framework, which also includes the publication of advice provided by the Chief Health Officer to the Minister for Health and the ability of the parliament to disallow pandemic orders.

Quotes attributable to Minister for Health Martin Foley

"We've learned a lot over the past two years of this global pandemic, and we've applied these lessons to manage pandemics in the future."

"We're drawing upon these expert voices to help oversee our ongoing pandemic response, guiding us with their knowledge of areas like public health, law, human rights and business."

"This is all part of Australia's most transparent and accountable pandemic management framework."

Media contact: Kieran Jones 0421 031 900 | kieran.jones@minstaff.vic.gov.au

Extracts of proceedings

All Members have a deliberative vote. In the event of an equality of votes, the Chair also has a casting vote.

The Committee divided on the following questions during consideration of this report. Questions agreed to without division are not recorded in these extracts.

Committee Meeting—30 June 2022

Section 5.2

In the Committee's view, the requirements to publish the Minister's Statement of Reasons, Human Rights Statement and Chief Health Officer advice have provided transparency on the decision making process for pandemic orders.

Mr Wells moved, in section 5.2, paragraph 8, omit 'transparency' and insert 'more documents'.

Question—That the words proposed to be omitted stand part of the question—put

The Committee divided.

Ayes [3]	Noes [3]
Mr Bull	Ms Crozier
Ms Sheed	Ms Kealy
Ms Ward	Mr Wells

The ayes and noes being equal, the Chair gave her casting vote with the ayes.

Question agreed to.

Ms Sheed moved, in section 5.2, paragraph 8, before 'transparency' insert 'more'.

Question—That such words be inserted—put

The Committee divided.

Ayes [3]	Noes [3]
Mr Bull	Ms Crozier
Ms Sheed	Ms Kealy
Ms Ward	Mr Wells

The ayes and noes being equal, the Chair gave her casting vote with the ayes.

Question agreed to.

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 4th 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

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

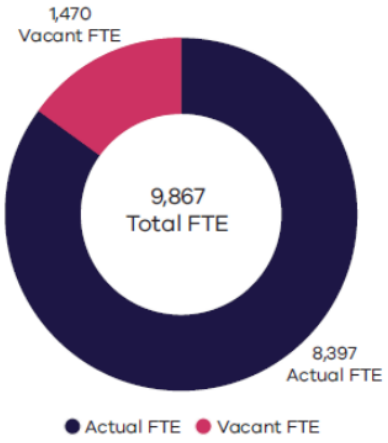
The Chief Psychiatrist confirmed that he did not make recommendations around amendments to the pandemic orders in evidence obtained through Questions on Notice:

> **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.

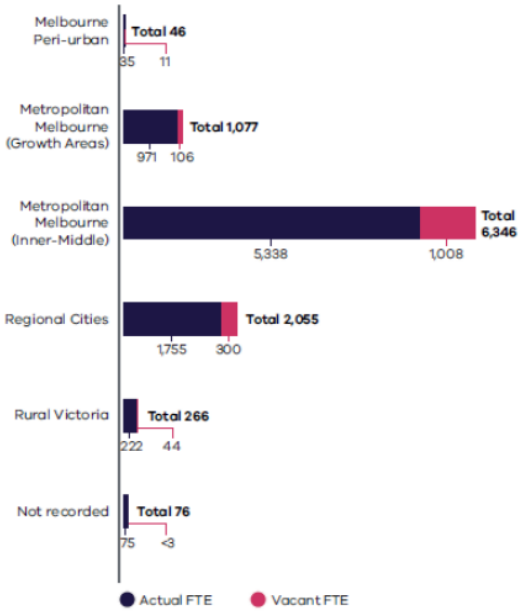
- Specific vacancy rates can be found below (source: *Victoria's Mental Health and Wellbeing Workforce Strategy 2021-24 https://www.health.vic.gov.au/strategy-and-planning/mental-health-workforce-strategy)*

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)[1]. 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"[2].

[1] Coroners Court of Victoria, *Coroners Court Monthy Suicide Data Report December 2021 update*, 20 January 2022.
[2] 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

YOURTOWN/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.

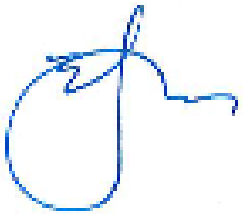
24. That for as long as the Pandemic Declaration remains in place the CHO appear before the Committee at a public hearing on a monthly basis.

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