



MinterEllison

# COVID-19 Stage 4 Restrictions

Impacts on the Construction Industry in Victoria

12 August 2020

## Authors

**Jeanette Barbaro**  
Partner

**Maisie Hull**  
Senior Associate

**James Mullins**  
Graduate

Since 5 August 2020, the Chief Health Officer has issued a number of Directions under the *Public Health and Wellbeing Act 2008* which impose obligations and restrictions on various industries, sectors and places of work.

To assist you in navigating these Directions and to provide a 'one stop' overview of the essential restrictions, permissions and obligations that may affect your construction business, this comprehensive Guide contains the following sections:

1. Access to the Directions relevant to the construction industry as at 9am on 12 August 2020.
2. A summary of which construction sites and workers are impacted.
3. An explanation of what construction work can continue under the Directions.
4. An overview of the permissions and restrictions that apply to the construction industry.
5. A summary of the key requirements that must be met.
6. The key contractual impacts you should consider.

For ease of reference, this Guide is hyperlinked, taking you to the relevant Directions, templates and guidance notes, and is cross-referenced throughout to key sections of the Guide itself.

You can find a handy [Compliance checklist](#) for all construction sites at the end of this Guide.

## 1. The relevant Directions as at 9am on 12 August 2020

The Directions relevant to the construction industry as at 9am on Wednesday 12 August 2020 are:

- [Stay at Home Directions \(Restricted Areas\) \(No 10\)](#)
- [Restricted Activity Directions \(Restricted Areas\) \(No 6\)](#)
- [Permitted Worker and Childcare Permit Scheme Directions \(No 2\)](#)
- [Workplace Directions \(No 2\)](#)
- [Workplace \(Additional Industry Obligations\) Directions \(No 3\)](#)
- [Diagnosed Persons and Close Contacts Directions \(No 8\)](#).

Capitalised words within this Guide are defined within the relevant Directions. Unless otherwise stated below, all Directions are effective and must be complied with by **11:59pm on Friday 7 August 2020**.

## 2. The construction sites and workers impacted

The Directions apply in respect of the following construction sites and workers.

Construction sites and workers to which the Directions apply	Clarification
Construction being carried out in metropolitan Melbourne	<p>The local government areas of metropolitan Melbourne include:</p> <ul style="list-style-type: none"> <li>▪ Banyule</li> <li>▪ Bayside</li> <li>▪ Boroondara</li> <li>▪ Brimbank</li> <li>▪ Cardinia</li> <li>▪ Casey</li> <li>▪ Darebin</li> <li>▪ Frankston</li> <li>▪ Glen Eira</li> <li>▪ Greater Dandenong</li> <li>▪ Hobsons Bay</li> <li>▪ Hume</li> <li>▪ Kingston Knox</li> <li>▪ Manningham</li> <li>▪ Maribyrnong</li> <li>▪ Maroondah</li> <li>▪ Melbourne</li> <li>▪ Melton</li> <li>▪ Monash</li> <li>▪ Moonee Valley</li> <li>▪ Moreland</li> <li>▪ Mornington Peninsula</li> <li>▪ Nillumbik</li> <li>▪ Port Phillip</li> <li>▪ Stonnington</li> <li>▪ Whitehorse</li> <li>▪ Whittlesea</li> <li>▪ Wyndham</li> <li>▪ Yarra</li> <li>▪ Yarra Ranges</li> </ul>

Workers who ordinarily live in regional Victoria but who work on a construction site within metropolitan Melbourne	For example, a worker who lives in Geelong but works on a site in Melbourne CBD is required to comply with the relevant Directions, including obtaining a work permit.
Workers who work on construction sites in regional Victoria but ordinarily reside in metropolitan Melbourne	For example, a worker who is working on a construction site in Geelong must abide by the Directions relevant to metropolitan Melbourne if they ordinarily reside in Melbourne.

### 3. What construction work can continue under the Directions?

Only construction work that is undertaken on a **Permitted Work Premises** can continue on the restricted terms prescribed by the relevant Directions.

The Permitted Work Premises list is made under the Restricted Activities Directions (Restricted Areas) (No 6) (**Restricted Activities Directions**). The version of the Permitted Works Premises list current as at 9am on Wednesday 12 August 2020 can be accessed [here](#).

#### What are the Permitted Work Premises for the construction industry?

The following types of construction, and services ancillary to construction, are Permitted Work Premises:

- **Building and non-building construction** (including residential);
- Construction of **critical and essential infrastructure and services to support these projects**, and other construction in line with restrictions;
- **Critical repairs to any premises**, are allowed, where required for emergency or safety;
- **Architecture, surveying, building inspection and engineering services**, where required on site for permitted construction;
- **Ancillary and support businesses** to ensure the necessary production, supply, manufacture, repair, maintenance, cleaning, security, wholesale, distribution, transportation or sale of equipment, goods or services required for the operations of a Permitted Work Premises;
- **Forestry activity** for the purpose of or relating to the production of building supplies for construction;
- **Manufacturing of building supplies** to support construction; and
- **Apprentices** in approved construction.

**Note:** Basic household trades work is **not permitted** (eg house painting). Only 'critical repairs' may be performed at a person's residential premises.

### 4. Overview of Permissions and Restrictions

In this section, we set out:

- the key permissions and restrictions that apply to all construction sites;
- the additional permissions and restrictions that apply to specific types of construction sites; and
- those construction sites that are exempt from complying with certain restrictions.

#### Compulsory restrictions that apply to all construction sites

The Restricted Activities Directions, together with the Permitted Worker and Access to Onsite Childcare/Kindergarten Permit Scheme Directions (No 2) (**Permitted Worker Directions**) and Workplace Directions (No 2) (**Workplace Directions**), prescribe restrictions applicable to **all** construction sites.

The restrictions set out in **Table A** below must be implemented on **all** construction sites **including** Critical and Essential Infrastructure projects.

**Table A**

Requirement	Heading of this Guide	Relevant Direction
Permitted Worker Permit (incl childcare)	<a href="#">Worker Permits for the Construction Industry</a>	<a href="#">Restricted Activity Directions</a> <a href="#">Permitted Worker Directions</a>
Universal COVID Safe Plan	<a href="#">COVID Safe Plans</a>	<a href="#">Workplace Directions</a>
High Risk COVID Safe Plan	<a href="#">COVID Safe Plans</a>	<a href="#">Workplace (Additional Industry Obligations) Directions (No 3)</a>
Consultation requirements	Consultation requirements	<a href="#">Workplace (Additional Industry Obligations) Directions (No 3)</a>
Multiple Site requirement	Reducing work across multiple sites	<a href="#">Workplace Directions</a> <a href="#">Workplace (Additional Industry Obligations) Directions (No 3)</a>
Density Quotient requirement	<a href="#">Density quotient for shared spaces such as lunchrooms / site offices</a>	<a href="#">Workplace Directions</a>
Face coverings requirement	<a href="#">Face coverings</a>	<a href="#">Workplace Directions</a>
Record keeping requirements	<a href="#">Record-keeping obligations</a>	<a href="#">Workplace Directions</a> <a href="#">Workplace (Additional Industry Obligations) Directions (No 3)</a>
PPE Training Plan in place	<a href="#">PPE training plan</a>	<a href="#">Workplace (Additional Industry Obligations) Directions (No 3)</a>
Cleaning requirements	<a href="#">Cleaning requirements</a>	<a href="#">Workplace Directions</a> <a href="#">Workplace (Additional Industry Obligations) Directions (No 3)</a>
Health declaration from each Worker per shift	<a href="#">Health declarations</a>	<a href="#">Workplace (Additional Industry Obligations) Directions (No 3)</a>
Suspected / confirmed COVID-19 case requirements	<a href="#">Responding to a Suspected / Confirmed Case of COVID-19 in a Work Premises</a>	<a href="#">Workplace Directions</a>

## Additional requirements for certain types of construction sites

In addition to the restrictions applicable to all construction sites, further restrictions must be implemented for certain types of construction sites. These additional restrictions can be found in the Workplace (Additional Industry Obligations) Directions (No 3) (**Additional Industry Obligations**) accessible [here](#). The Additional Industry Obligations set out below apply to different types of construction sites located in metropolitan Melbourne from 1.59am on Saturday 8 August 2020.

In the event of any inconsistency between the restrictions applicable to all construction sites under the Workplace Directions and the Additional Industry Obligations, the Additional Industry Obligations take precedence and must be followed for the construction sites set out in **Table B** below.

**Table B**

Type of construction	Definition of the type of construction	Workforce reduction requirements
Large-scale construction sites	<p>A construction site is considered large-scale if:</p> <ul style="list-style-type: none"> <li>its planning permit has been issued for a building <b>more than 3 storeys</b> tall (excluding basement levels);</li> <li>its size is <b>more than 1,500m<sup>2</sup></b>;</li> <li>it is <b>predominantly for office use</b>, or that is the internal fit-out of retail premises; or</li> <li>it is predominantly for <b>industrial</b> or <b>format retail use</b>.</li> </ul>	<ul style="list-style-type: none"> <li>The site must reduce its workforce to the <b>higher of</b>: <ul style="list-style-type: none"> <li>25% of its baseline daily workforce; or</li> <li>5 workers.</li> </ul> </li> <li>The <b>baseline daily workforce</b> is the daily average number of workers on the site across the project lifecycle as derived from the site's <b>resourcing plan as of 31 July 2020</b>.</li> <li>The <b>project lifecycle</b> commences from the date of on-site mobilisation and ends at handover.</li> </ul>

Early stage residential land development sites	<p>The following construction sites are considered early stage residential land development sites:</p> <ul style="list-style-type: none"> <li>all civil works undertaken on <b>open air large greenfield sites</b> that are associated with and preparatory to construction of multiple individual residential dwellings on that site;</li> <li>including <b>site remediation and site preparation works</b>, construction of utilities and construction of roads, bridges, stormwater/flood management works and trunk infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>The site must reduce its workforce to <b>10 workers (or fewer) per hectare</b> on the Work Premises at any one time.</li> <li>Post-subdivision, each parcel of land is regarded as a small-scale construction site (see below).</li> <li>If the site would otherwise be a large scale residential development (eg a retirement village) and has a single entity responsible for construction, once construction of dwellings has commenced it will be considered a large-scale construction site</li> </ul>
Small-scale construction sites	Any site <b>other than</b> those above.	The site must reduce its workforce to <b>5 workers</b> (excluding the site supervisor)

## Exemptions from certain requirements for Critical and Essential Infrastructure

### Exemptions for Critical and Essential Infrastructure

'Critical and Essential Infrastructure' sites must comply with the Workplace Directions applicable to all construction sites, as set out at [Table A](#). However, these sites are not required to comply with the Additional Industry Obligations set out at [Table B](#).

### What is Critical and Essential Infrastructure?

Critical and Essential Infrastructure has been defined to mean:

- construction or maintenance (private or public) where the Government has deemed, and the Chief Health Officer has endorsed, that it is urgently required for the purposes of sustaining human health, safety and wellbeing;
- activities deemed by the Government from time to time as 'State Critical Infrastructure Projects'; or
- construction for the purposes of national security or defence.

As at 9am on Wednesday 12 August 2020, the Government has published a list of 32 projects deemed to be State Critical Infrastructure Projects. This includes (amongst others) the following projects:

- critical maintenance and safety works to public infrastructure;
- essential public housing infrastructure;
- rolling stock maintenance and manufacturing;
- the Cladding Rectification Program;
- all road, public transport and telecommunications infrastructure safety and maintenance works;
- the Level Crossing Removal Project works;
- early childhood learning, school and TAFE capital projects to meet time-sensitive enrolment demands;
- road safety projects to maintain critical safe operations on the road network;
- the Metro Tunnel Project and associated works; and
- various major road projects.

You can view the entire list of the projects currently deemed to be State Critical Infrastructure Projects on the DHHS website [here](#).

The Government has expressed that it considers 'very few activities' will meet the remaining tests above. You can email the [COVID-19Team@ecodev.vic.gov.au](mailto:COVID-19Team@ecodev.vic.gov.au) to apply for a determination by the Chief Health Officer.

## Other applicable general restrictions

The obligations and restrictions recently announced supplement and are in addition to those already announced for metropolitan Melbourne at large, such as:

- curfew from 8pm until 5am;
- health declarations; and
- distancing practices on site.

The City of Melbourne was previously issuing Out of Hours **Permits** for construction work to take place outside of the permitted hours in the Activates Local Law 2019. We understand that those permits can still be obtained. You can do so [here](#).

## 5. Summary of obligations and requirements

In this section, we provide more detailed information as to the key specific obligations that apply to the construction industry.

For the purposes of determining how the obligations apply, the Directions helpfully provide a definition as to who constitutes a 'Worker' and who is a 'Specialist Contractor'.

### Who is a Worker?

A Worker at any construction site includes:

Includes	Does not include persons
<ul style="list-style-type: none"> <li>▪ an owner</li> </ul>	<ul style="list-style-type: none"> <li>▪ whose role primarily relates to carrying out the Cleaning Requirements</li> </ul>
<ul style="list-style-type: none"> <li>▪ a manager</li> </ul>	<ul style="list-style-type: none"> <li>▪ undertaking emergency repairs and emergency maintenance</li> </ul>
<ul style="list-style-type: none"> <li>▪ persons carrying out roles necessary to the functioning of the Work Premises</li> </ul>	<ul style="list-style-type: none"> <li>▪ for whom it is reasonably practicable to work at their ordinary place of residence or at another suitable premises which is not the Work Premises</li> </ul>
<ul style="list-style-type: none"> <li>▪ security personnel</li> </ul>	<ul style="list-style-type: none"> <li>▪ whose role primarily relates to supervising compliance with the Workplace Directions</li> </ul>
<ul style="list-style-type: none"> <li>▪ any other person engaged or permitted by an Employer to perform work at the Premises</li> </ul>	<ul style="list-style-type: none"> <li>▪ who are suppliers or workers transporting supplies to the construction site provided that they are only present at the site for such a period of time as is reasonably necessary to deliver the supplies to the site</li> </ul>

### Who are Specialist Contractors?

Specialist Contractors are defined to include:

- |                                        |                           |                      |
|----------------------------------------|---------------------------|----------------------|
| ▪ Asphalters                           | ▪ Concrete trucks         | ▪ Truck Drivers      |
| ▪ Carpenters                           | ▪ Concrete pump operators | ▪ Alimak Riggers     |
| ▪ Plasterers                           | ▪ Electricians            | ▪ Welders            |
| ▪ Carpet layers                        | ▪ Plumbers                | ▪ Precast installers |
| ▪ Sprinkler fitters                    | ▪ Tile layers             | ▪ Corkers            |
| ▪ Solar installers                     | ▪ Concreters              | ▪ Floor layers       |
| ▪ Security system installers           | ▪ Gold Class riggers      | ▪ Scaffolders        |
| ▪ Mobile Cranes – Operators and dogmen | ▪ Steel fixers            | ▪ Internal Glaziers  |
|                                        | ▪ Post Tensioners         |                      |

## Worker Permits for the Construction Industry

Under the Permitted Worker Directions, construction workers in metropolitan Melbourne (and in some cases in regional Victoria) must obtain a Permitted Worker Permit by 11:59pm on Wednesday 5 August 2020.

### Who must obtain and carry a Permitted Worker Permit?

Unless exempt (see clause 9 of the Permitted Worker Directions for exemptions), the following construction workers must carry a Permitted Worker Permit and photographic ID at all times:

- all workers who work on construction sites in metropolitan Melbourne regardless of whether they ordinarily live in metropolitan Melbourne or regional Victoria; and
- all workers who work on sites located in regional Victoria if they ordinarily reside in metropolitan Melbourne.

Workers may carry electronic copies (including on their phone) of their permit – it need not be printed.

Further guidance is available [here](#).

### What type of Permitted Worker Permit can be used?

Permits are available [here](#).

Use of this permit is mandatory; entities are not permitted to use their own.

### What information is required?

The Permitted Worker Permit must include the following information:

- the name, ABN, address and trading name of the Permitted Employer company;
- the permitted industry/activity that the Permitted Employer is engaged in;
- the name and date of birth of the employee;
- the employee's expected dates, hours, duration and place of work; and
- the permitted role for on-site work that the Permitted Employer will be undertaking.

The permit must be signed and issued by an authorised representative of the Permitted Employer. That person must reside in Victoria unless there is no such person. The Permitted Employer will need to ensure that it is clear internally who has the authority to sign and issue Permitted Worker Permits.

The employee must also sign the Permitted Worker Permit. Electronic signatures are permissible.

### Are workers with a Permitted Worker Permit bound by the Stage 4 curfew (between 8pm and 5am)?

Everyone is subject to the Stage 4 curfew. However, workers with a Permitted Worker Permit can travel outside of the curfew hours only if they are travelling to or from the construction site.

### Who must issue Permitted Worker Permits?

Only Permitted Employers may issue Permitted Worker Permits to their employees.

A Permitted Employer cannot issue a Permitted Worker Permit to other persons working in their organisation who are not employees such as a sub-contractor. The Permitted Employer of a sub-contractor is required to authorise that a person is required on-site and to issue that person with a Permitted Worker Permit.

Where a person is a sole trader, self-employed or an independent contractor or subcontractor and does not have a Permitted Employer, that person must issue themselves with a Permitted Worker Permit in the approved form, signed as both the Permitted Employer and the employee.

### Are records of issued Permitted Worker Permits required to be kept?

The Permitted Employer must keep a record of all Permitted Worker Permits that it has issued. This record must be produced to an Authorised Officer, a police officer or Protective Services Officer upon request.

The Permitted Employer must also comply with any direction given by these persons in relation to:

- a Permitted Work Permit, a worker at the Permitted Employer's Work;
- a worker at the Permitted Employer's Work Premises; or
- the Permitted Worker Directions.

### **What happens to a Permitted Worker Permit if a construction worker is diagnosed with COVID-19 or is a Close Contact?**

A worker who returns a positive test for COVID-19, or is a Close Contact of someone who tests positive, is subject to the Diagnosed Persons and Close Contacts Directions (No 8) (**Diagnosis Restrictions**). The worker must not subsequently attend a construction site.

For all Diagnosed Persons or Close Contacts, their Permitted Worker Permit is automatically revoked. If the worker is then given 'clearance from isolation' within the meaning of the Diagnosis Directions and is allowed to return to work, their Permitted Worker Permit remains invalid. The employee and Permitted Employer must sign a new Permitted Worker Permit. Use of an invalidated Permitted Worker Permit is an offence.

Employees must immediately notify their employer of a positive diagnosis. See further below for more information on the obligations of employers and workers with respect to suspected or confirmed cases of COVID-19.

### **What are the penalties for not holding a valid Permitted Worker Permit?**

Where employers issue Permitted Worker Permits to employees that do not meet the eligibility requirements of the Permitted Worker Directions, they are liable for on-the-spot fines of up to \$19,826 (for individuals) and \$99,132 (for businesses).

Fines of up to \$1,652 (for individuals) and up to \$9,913 (for businesses) may also be issued for breaches of the permit scheme. For example, when a construction worker uses their Permitted Worker Permit to be away from home when not going to or from work.

## **COVID Safe Plans**

### **Who must have in place a COVID Safe Plan?**

All Employers of Workers working at a Permitted Work Premises must have in place a COVID Safe Plan, unless the Employer has fewer than five Workers working at the Work Premises.

Each Additional Obligation Industry Work Premises (ie construction sites) must have in place a High Risk COVID Safe Plan. This includes Critical and Essential Infrastructure. A High Risk COVID Safe Plan must be completed **in addition to** the universal COVID Safe Plan.

### **Who must comply with the COVID Safe Plan?**

Both Employers and their Workers must comply with the COVID Safe Plan and the High Risk COVID Safe Plan. The Employer must also comply with any direction given by an Authorised Officer or WorkSafe Inspector to modify their High Risk COVID Safe Plan. This includes:

- following a COVID-19 Outbreak at the Work Premises; or
- if the Authorised Officer considers their High Risk COVID Safe Plan to not be fit for purpose.

The Employer must implement any modifications to their High Risk COVID Safe Plan required by the Authorised Officer or Worksafe Inspector.

### **What must the COVID Safe Plan include?**

The COVID Safe Plan must address the health and safety issues arising from COVID-19, including but not limited to:

- the Employer's process for implementing the record-keeping obligation under clause 6(7) of the Workplace Directions;
- the appropriate level of PPE to be worn at the Work Premises;
- actions taken by the Employer to mitigate the introduction of COVID-19 at the Work Premises;



- the processes which the Employer has put in place to respond to any Suspected Case and any Confirmed Case of COVID-19 at the Work Premises; and
- an acknowledgement that the Employer understands its responsibilities and obligations under the Workplace Directions.

The Employer must also document and evidence, and require its managers to document and evidence, implementation of the COVID Safe Plan.

### What must the High Risk COVID Safe Plan include?

The COVID High Risk Safe Plan must specify the construction site address, site contact details (including name and contact number) and the nature of activities undertaken at the site.

More specific requirements apply depending on the type of construction site as follows:

Type of construction site	Additional requirements
large-scale construction site	Confirmation of the following details: <ul style="list-style-type: none"> <li>• baseline workforce (pre-reduction);</li> <li>• reduced daily maximum workforce; and</li> <li>• any additional information relevant to the site.</li> </ul> Action taken to ensure that specialist contractors do not move between more than 3 sites per week.
early stage residential land development site	Confirmation of the following details: <ul style="list-style-type: none"> <li>• size of the site (in hectares); and</li> <li>• reduced daily workforce capacity per day.</li> </ul> Action taken to limit movement of workers between multiple sites (where possible).
small-scale construction site	Action taken to: <ul style="list-style-type: none"> <li>• limit movement between multiple sites (where possible); and</li> <li>• ensure that supervisors and specialist contractors do not move between more than 3 sites per week.</li> </ul>

### Template COVID Safe Plans (and High Risk COVID Safe Plans)

Template plans are available on the Business Victoria website. You can access:

- the universal COVID Safe Plan template [here](#); and
- the High Risk COVID Safe Plan template [here](#).

Completion of the 'High Risk COVID Safe Plan Attachment: Construction' is required for all construction sites in metropolitan Melbourne. The High Risk COVID Safe Plan is additional to the universal COVID Safe Plans. You must complete **both**.

The High Risk COVID Safe Plan must be updated regularly. Where practicable, both COVID Safe Plans must be designed with input from employees and their representatives.

Further guidance is available [here](#).

### Consultation requirements

From 11.59pm on Tuesday 11 August 2020, an Employer must, to the extent reasonably practicable, consult with health and safety representatives, together with Workers who are (or are likely to be) directly affected by any changes to the Work Premises or the performance of work at the Work Premises.

For the relevant matters which must be consulted, see clause 6(7) of the Additional Obligations Directions.

This consultation obligation is in addition to the consultation requirement for COVID Safe Plans set out above.

## Reducing work across multiple sites

### For Workers employed by one Employer

An Employer must not require or permit a Worker to perform work at more than one Work Premises unless it is not practicable to limit the Worker to only one Work Premises (eg a tradesperson doing critical repairs).

### For Workers employed by two or more different Employers

Where a Worker is working at more than one Work Premises for two or more different Employers:

- the Worker must provide a written declaration to each Employer to advise them that they work at more than one Work Premises and must provide details of the other Work Premises to each Employer; and
- each Employer must maintain a record of all Workers who have disclosed to the employer that they are working across more than one Work Premises.

The Employer may use the workplace attendance register template provided by DHHS. You can access that template [here](#). This document is not mandatory. Employers may use their own form provided it captures the requisite information.

### For Specialist Contractors

Specialist contracts are permitted to move between up to three construction sites per week. They are not bound by the general restrictions outlined above.

### For architects, engineers etc?

Workers that provide architecture, surveying, building inspection and engineering services must work from home where reasonably practicable. Where required to attend Work Premises for inspection and safety purposes, they are counted as Workers for the purposes above.

These Workers must not work at more than three Work Premises per week except where those visits are required to meet a minimum statutory obligation or requirement. For example, where a building surveyor is required under the *Building Act 1993* to issue an occupancy certificate.

## Density quotient for shared spaces such as lunchrooms / site offices

By 11:59pm on Wednesday 5 August 2020, employers and Workers must comply with the Density Quotient. The Density Quotient limits the number of people who are permitted in a shared space at the same time. It is calculated as follows:

$$\text{Density Quotient} = \frac{\text{the area (in metres squared) of the Indoor Space or Indoor Zone}}{4}$$

For example, if an indoor space is 8.5 metres long and 4.5 metres wide, its total area is 38.25 square metres. Its density quotient is 9.56, so no more than 9 people would be permitted in the shared space at the same time.

This does not apply to early residential land development sites.

## Face coverings

Unless the Worker is exempt, an Employer must take reasonable steps to ensure that the Worker wears a face covering at all times. This includes when the Employer is using a work vehicle.

For the relevant exemptions, see clause 6(2) of the Workplace Directions.

A specific offence exists for a failure to comply with a requirement in relation to a face covering. The penalty is \$200 per instance and applies in each instance to the Employee and Employer.

Further guidance from WorkSafe Victoria can be accessed [here](#).

## Record-keeping obligations

### General obligations

By 11:59pm on Wednesday 5 August 2020, an Employer must keep a record of all Workers and all visitors who attend the Work Premises for longer than 15 minutes. The information recorded must include:

- their first name;
- a contact phone number;
- the date and time at which the person attended the Work Premises; and
- the areas of the Work Premises which the person attended.

### Obligations in relation to High Risk COVID Safe Plans

By 1.59am on Saturday 8 August 2020, an Employer must keep records to demonstrate compliance with the Additional Obligation Directions including:

- the High Risk COVID Safe Plan;
- all logs created during the time for which the Additional Industry Obligations are in place;
- Work Premises rosters;
- time and attendance records;
- payroll data; and
- the records required under the 'general obligations' set out above.

## PPE training plan

From 11.59pm on Tuesday 11 August 2020, an Employer must have personal protective equipment (PPE) training plan in place as soon as is reasonably practicable. The PPE training plan must be:

- consistent with 'best practice training plans';
- provided to workers in multiple formats (eg infographics and text); and
- accessible for multilingual workers.

## Cleaning requirements

By 11:59pm on Wednesday 5 August 2020, an Employer must take all reasonable steps to ensure that shared spaces at which work is performed at any Work Premises are cleaned with an anti-viral disinfectant on a regular basis. These spaces must also be cleaned between shifts of workers.

From 11.59pm on Tuesday 11 August 2020, an Employer must have a cleaning log on display in all shared workplaces and publicly accessible areas of the Work Premises. This cleaning log must set out:

- dates, times and frequency that the relevant area has been cleaned, including frequently touched surfaces, toilets and handrails; and
- shift or other relevant worker group changes (where applicable) to show that relevant areas of the Work Premises have been cleaned in between shift changes.

All areas of the Work Premises where Workers are working must be cleaned at least daily.

## Health declarations

From 11.59pm on Tuesday 11 August 2020, an Employer must require each of its Workers to declare **in writing** at the start of each shift but before entering the Work Premises that the Worker:

- is free of COVID-19 related Symptoms;
- has not been in contact with a Confirmed Case; and
- has not been directed to self-isolate or self-quarantine by an Authorised Officer.

## What are the Symptoms of COVID-19?

The Symptoms of COVID-19 include but are not limited to:

- a fever ( $\geq 37.5^{\circ}\text{C}$ ) or consistent fever of less than  $37.5^{\circ}\text{C}$  (eg night sweats, chills);
- acute respiratory infection (eg cough, shortness of breath, sore throat);
- loss of smell; and/or
- loss of taste.

## Responding to a Suspected Case of COVID-19 in a Work Premises

### What must an Employer do, or refrain from doing, if one of its Workers displays Symptoms?

An Employer must not require a Worker to perform work at a Work Premises if the Worker is displaying one or more Symptoms. If a Worker has attended a Work Premises in the 48 hours prior to the onset of Symptoms, an Employer must:

- advise the Worker to self-isolate immediately;
- advise the Worker to be tested as soon as practicable, and to self-isolate whilst awaiting the test result of that test;
- take all Reasonably Practicable steps to manage the risk posed by the Suspected Case, such as cleaning areas used by the Worker and cleaning high-touch areas of the Work Premises;
- maintain appropriate records to support contact tracing; and
- inform all Workers and the Health and Safety Representative to be vigilant of Symptoms and to be tested and to self-isolate if they show any Symptoms.

### What must a Worker do once tested for COVID-19?

Whilst awaiting the results of a COVID-19 test, a Worker must not attend a Work Premises. The Worker must also not attend Work Premises while their Symptoms of COVID-19 persist.

### What happens if more than one Worker displays Symptoms?

If an Employer becomes aware of three or more Suspected Cases at one Work Premises within a five day period, the Employer must undertake a risk assessment to determine whether the Work Premises (or the relevant parts of the Work Premises) must be closed to allow appropriate action to be taken.

Guidance on undertaking a risk assessment, and implementing appropriate action, will be provided by DHHS to assist in conducting this risk assessment.

## Responding to a Confirmed Case of COVID-19 in a Work Premises

### What must a Worker diagnosed with COVID-19 do?

A Worker who has received a positive test result must notify the Employer of any Work Premises which they have attended in the 48 prior to:

- the onset of symptoms of COVID-19, if symptomatic; or
- the Worker having been tested for COVID-19, if asymptomatic.

### What must an Employer do once notified of a Confirmed Case?

Once notified, the Employer must:

- notify DHHS, WorkSafe Victoria and the Health and Safety Representative at the Work Premises;
- direct the Diagnosed Worker not to attend the Work Premises and advise them to self-isolate;
- undertake a risk assessment to determine whether the Work Premises (or the relevant part of the Work Premises in which the Diagnosed Worker worked in the Relevant Period) must close to allow cleaning and contact tracing to occur or whether the risk can be managed whilst the Work Premises (or part of it) continues to operate;

- undertake a comprehensive clean of the Work Premises (or the relevant part) and any high touch areas likely to have been touched by the Diagnosed Worker in accordance with guidelines published by DHHS;
- ensure it has contact details of any Close Contacts of the Diagnosed Worker at the Work Premises;
- notify all Workers and the Health and Safety Representative and inform all Workers to be vigilant about the onset of Symptoms to be tested and self-quarantine if they become symptomatic;
- put in place appropriate control / risk management measures to reduce the risk of COVID-19 spreading at the Work Premises (eg increasing PPE or physical distancing);
- provide the relevant information listed in clause 8(3)(i) of the Workplace Directions to DHHS and not re-open any closed Work Premises (or part) until:
  - the Employer has complied with all the above;
  - DHHS has completed all relevant contact tracing and has given clearance for the Work Premises to re-open; and
  - the Employer has notified WorkSafe when the Work Premises is re-opened.

## Childcare services

### What types of construction worker can make use of childcare services?

Only construction workers with a signed Permitted Worker Permit may use:

- childcare services;
- kindergarten services; or
- babysitters or nannies,

but only where there is no other person available at home to care for the children. This includes where the other parent is also a Permitted Worker or works full-time from home, or it is a single parent household.

For the avoidance of doubt, both carers do not have to be Permitted Workers to access childcare but neither must be able to care for the children at home. At least one must be a Permitted Worker.

The Stay at Home Directions (Restricted Areas) (No 10) also note that only one of the parents is required to be a Permitted Worker. A person may leave their home to obtain childcare services (or permit another entry to their home) in such circumstances.

Babysitters and nannies must have a Permitted Worker Permit if they are registered as a sole trader or employee. Grandparents that provide childminding for Permitted Workers do not need a permit. Any in-home care must form part of a continuing care arrangement. No new arrangements are permitted.

More information on Permitted Worker Permits (including childcare) is available [here](#).

### If a construction worker requires childcare services, what permit must they obtain?

The Worker must obtain the relevant Permitted Worker Permit (including childcare) permit. Where the Permitted Worker:

- cannot work from home, the Employer must issue them with the Permitted Worker Permit (including childcare). You can access that permit [here](#); or
- is working from home but unable to supervise their children in the course of their duties (provided no one else can either), the Employer must issue them with the Access to Onsite Childcare/Kindergarten Permit for an Employee working from home. You can access that permit [here](#).

The same rules apply to the Employer issuing a childcare permit as if the Employer were issuing a Permitted Worker Permit. The Employer must keep adequate records of all childcare permits it has issued.

A Worker is not required to carry this permit in addition to the Permitted Worker Permit – only one document is required. The Worker and Employer must attest to the lack of alternative in-home care.

If the non-Permitted Worker is transporting children to childcare, they should carry a copy of the Permitted Worker's childcare permit with them.

## 6. Legal and contractual ramifications

### **Do I need to give timely notice of the effect of these directions under my contract?**

Depending on the terms of your contract, the current Directions may trigger rights for claiming relief under your construction contract. Contractors will ordinarily have an obligation to give timely written notice of any event which may give rise to an entitlement to make a claim for an extension of time or additional costs. Ensure that you give any notice on time as a failure to do so will likely bar your entitlement to claim.

### **What happens if you can no longer deliver or perform under a contract?**

You should consider whether the contract includes a force majeure clause. Force majeure clauses differ between contracts and a clause may not be drafted in a way which provides relief in the current circumstances. You should also consider the doctrine of frustration to discharge your obligations under a contract. We discuss these issues in detail in a previous Guide which you can read [here](#).

Please let us know if you would like us to provide advice in relation to your particular contract or would like our assistance in preparing any relevant notices.

## COVID-19 Stage 4 Restrictions | Impacts on the Construction Industry in Victoria as at 9am on 12 August 2020

### Compliance checklist of requirements for all construction sites

Requirement	Relevant heading of this Guide	Compliance
Permitted Worker Permit <a href="#">[here]</a>	<a href="#">Worker Permits for the Construction Industry</a>	<input type="checkbox"/>
Permitted Worker Permit incl childcare <a href="#">[here]</a>		<input type="checkbox"/>
Universal COVID Safe Plan <a href="#">[here]</a>	<a href="#">COVID Safe Plans</a>	<input type="checkbox"/>
High Risk COVID Safe Plan <a href="#">[here]</a>	<a href="#">COVID Safe Plans</a>	<input type="checkbox"/>
Consultation requirements	Consultation requirements	<input type="checkbox"/>
Workers not working across multiple sites	Reducing work across multiple sites	<input type="checkbox"/>
Specialist Contractors not working across 3 sites per week	Reducing work across multiple sites	<input type="checkbox"/>
One Worker per four square metres in any enclosed (unless exempt)	<a href="#">Density quotient for shared spaces such as lunchrooms / site offices</a>	<input type="checkbox"/>
Required face coverings <a href="#">[here]</a>	<a href="#">Face coverings</a>	<input type="checkbox"/>
Record keeping for Permitted Work Premises	<a href="#">Record-keeping obligations</a>	<input type="checkbox"/>
Record keeping as per High Risk COVID Safe Plan	<a href="#">Record-keeping obligations</a>	<input type="checkbox"/>
PPE Training Plan in place	<a href="#">PPE training plan</a>	<input type="checkbox"/>
Cleaning requirements	Cleaning requirements	<input type="checkbox"/>
Health declaration from each Worker per shift	<a href="#">Health declarations</a>	<input type="checkbox"/>
Suspected / confirmed COVID-19 case requirements	<a href="#">Responding to a Suspected / Confirmed Case of COVID-19 in a Work Premises</a>	<input type="checkbox"/>
Additional capacity reductions apply?	<a href="#">Additional requirements for certain types of construction sites</a>	<input type="checkbox"/>
Comply with directions from an Authorised Officer or WorkSafe Inspector	<a href="#">Are records of issued Permitted Worker Permits required to be kept?</a>	<input type="checkbox"/>

# MinterEllison contacts



**Jeanette Barbaro**

Partner

T +61 3 8608 2515 | M +61 413 427 265  
E [jeanette.barbaro@minterellison.com](mailto:jeanette.barbaro@minterellison.com)



**Peter Wood**

Partner

T +61 3 8608 2537 | M +61 412 139 646  
E [peter.wood@minterellison.com](mailto:peter.wood@minterellison.com)



**Cameron Ross**

Partner

T +61 3 8608 2383 | M +61 401 148 664  
E [cameron.ross@minterellison.com](mailto:cameron.ross@minterellison.com)