

PEOPLE: VICTORIA'S STAGE 4 RESTRICTIONS: NAVIGATING THE CURRENT RULES FOR EMPLOYERS*

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Legal Briefings - By **Natalie Gaspar, Anthony Wood and Marco Fedeli**

*This update reflects the Victorian government's stage 4 restrictions and directions and is accurate as of 19 August 2020. Employers relying on this information should always seek up to date advice. The Victorian government's directions have been constantly modified over recent weeks and this update takes into account government changes, including those to the onsite childcare permit scheme which were made on 16 August.

Victoria's Stage 4 restrictions came into proper effect from 11:59pm, Wednesday 5 August 2020. Although the restrictions significantly impact a substantial number of businesses across metropolitan Melbourne, attempting to navigate the framework involves reviewing a myriad of sources, including formal directions, Department of Health and Human Services (**DHHS**) guidance material, supporting documents and materials. This is a complex exercise in itself, exacerbated by the drip-fed nature of information that has been released by the Victorian Government, and changes that occur to documents almost daily.

Below is a high level summary of the key current directions relevant to employers that are in force as at 19 August 2020, and where you are able to find their underlying sources. This article is not intended to be exhaustive, and certainly should not replace a careful consideration of all the directions that are currently in place.

STAY AT HOME DIRECTION

The starting position remains with the [Stay at Home Directions \(Restricted Areas\) \(No 12\)](#) (**Stay at Home Direction**). Although the direction itself has been updated and varied from time to time, most people are now familiar with the basic requirement that those who reside in a Restricted Area (essentially metropolitan Melbourne under the stage 4 restrictions) are not to leave the premises where they ordinarily reside other than defined circumstances, such as to access necessary goods or services, care or other compassionate reasons, work or education, or exercise.

In relation to workplaces, the Stay at Home Direction makes clear that a person is only permitted to leave their premises for work in metropolitan Melbourne if:

- it is not reasonably practicable for the person to work from home; and
- the person is a permitted worker. A 'permitted worker' means a person who holds a Permitted Worker Permit, which is outlined below.

Breach of the Stay at Home Direction can result in the imposition of penalties of \$19,826.40 for individuals or \$99,132.00 for body corporates.

RESTRICTED AREAS DIRECTION

The [Restricted Activity Directions \(Restricted Areas\) \(No 8\)](#) (**Restricted Areas Direction**) provides that workplaces in metropolitan Melbourne must be closed *unless* the workplace is a 'Permitted Work Premises' (see below) or all employees are working from home.

A person who owns, controls or operates a Permitted Work Premises is able to continue to operate that premises, including to permit employees to work from that place, to the extent permitted by the directions that are currently in force. If a work premises includes a number of functions and only some of those functions undertaken at the premises are within the scope of being 'Permitted Work Premises', only those permitted functions may operate onsite.

Any business or operation that is not considered a 'Permitted Work Premises' is therefore a 'Closed Work Premises' and is not permitted to allow persons to attend that premises except for very limited circumstances, such as essential maintenance or ensuring that the premises is closed safely. There are some defined further exceptions such as professional sport, educational facilities and childcare.

Breach of the Restricted Areas Direction can result in the imposition of penalties of \$19,826.40 for individuals or \$99,132.00 for body corporates.

PERMITTED WORK PREMISES

The next step is to ascertain what is a 'Permitted Work Premises'. In the Restricted Areas Direction, this is defined as being the 'Stage 4 Restrictions - Permitted Work Premises' webpage accessible [here](#). This page sets out all of the defined permitted workplaces by reference to industry, and provides a reference to when that industry was announced as being a Permitted Work Premises and the date upon which it is effective.

For those who may have been monitoring the DHHS webpage, it will be apparent that this webpage is now in a substantially different format to the original table that was released by the Government. The webpage and its contents have been continually updated and developed, with additions and amendments made to the permitted industries over time.

Although the Permitted Work Premises list is intended to be exhaustive, it is worth noting that there is a general 'ancillary business' clause that provides the following are also considered to be a Permitted Work Premises:

Ancillary and support businesses are able to open on-site 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, or for Closed Work Premises where there are safety or environmental obligations. The business cannot operate on-site for any other purpose. Ancillary and support businesses are defined as those businesses that are necessary for the operation of the permitted industry (for example, brick manufacturing is critical to residential construction, while carpet manufacturing is not).

The intent of this clause appears to capture businesses that may not otherwise fall clearly within the defined list of Permitted Work Premises, but are otherwise necessary to ensure that those businesses may continue to operate as required (using the example of brick manufacturing being critical to construction, whilst carpet manufacturing is not). Although one can appreciate the purpose of this clause, it does raise some valid questions about its scope and how far one can seek to rely upon it. For instance, does this clause contemplate that all support services (such as head office functions) could be considered 'necessary' for a Permitted Work Premises to continue operating, or perhaps just a handful? How does one determine what is necessary and what is not, especially given most people have an important role to play in ensuring the business keeps on ticking?

PERMITTED WORKER SCHEME

The [Permitted Worker Permit Scheme and Access to Onsite Childcare/Kindergarten Permit Scheme Directions \(No 4\)](#) (**Permitted Worker Scheme**) ties together each of the above documents by establishing the framework for how employees who work at a Permitted Work Premises are able to attend work each day.

In order to be considered a 'Permitted Worker', unless an exemption applies, the person must:

1. work for a 'Permitted Employer', being an organisation which operates a Permitted Work Premises;
2. provide a 'Permitted Service', being the services that are delivered by those operating a Permitted Work Premises; and
3. not be able to work from home.

If an employee meets the above three criteria, they may be issued with a 'Permitted Worker Permit' (available [here](#)) and are permitted to work onsite at a Permitted Work Premises. Employers must be aware of their obligations when they have employees attending onsite, including but not limited to the requirements set out in the *Workplace Directions (No 3)* ([here](#)) and, if applicable, the *Workplace (Additional Industry Obligations) Directions (No 4)* ([here](#)).

A penalty of up to \$19,826 for individuals or \$99,132 for body corporates apply to employers who issue a Permitted Worker Permit to employees who do not meet these requirements or otherwise breach the Permitted Worker Scheme, with further on the spot fines of up to \$1,600 for individuals or \$9,900 for body corporates who breach the Permitted Worker Scheme requirements, such as failure to carry with them a Permitted Worker Permit.

ACCESS TO ONSITE CHILDCARE/KINDERGARTEN PERMIT SCHEME

Finally, the Permitted Worker Scheme also provides the framework for how employees of Permitted Employers may access onsite early childhood education and care.

In this respect, there are two categories of employees of Permitted Employers:

- if your employee is a Permitted Worker who wishes to access childcare and they perform work onsite, they are to be issued with the ‘Permitted Worker Permit (including childcare)’ (available [here](#)) in lieu of the ‘Permitted Worker Permit’; or
- if your employee wishes to access childcare and they perform their duties from home, they may be issued with an ‘Access to Childcare and Kinder (Working from Home) form’ (available [here](#)).

In order to fall within the latter group, an employee must attest that their child and/or dependent cannot otherwise be cared for during work hours by the employee or another responsible adult at the employee’s ordinary place of residence. The introduction of the current Permitted Worker Scheme has clarified one point for this category of employees though: an employee must work for a Permitted Employer and provide a Permitted Service in order to be able access to onsite childcare/kindergarten. This appears to do away with the previous construction of the Permitted Worker Scheme, which suggested that an employee needed to simply work for a Permitted Employer who may perform a Permitted Service (rather than personally performing a Permitted Service in their role) in order to be eligible to hold an Access to Onsite Childcare/Kindergarten Permit. This clarification seems to better align with the intended operation of this Scheme, including the Government’s request that, although both carers do not have to be permitted workers to access childcare, *“we are asking that Victorians only access childcare and kinder services if they have to.”*

* * * * *

Navigating all of these directions and rules can be complex, made even more difficult by their ever-changing scope and definitions. It remains critically important to ensure that you are always referring to the most up to date material that is relevant to you in order to understand what impact, if any, this may have on your business operations. If you would like any assistance in understanding how it applies to your business, please contact us.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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