

South Australia

Emergency Management (Residential Aged Care Facilities No 42) (COVID-19) Direction 2021

under section 25 of the *Emergency Management Act 2004*

Preamble

- 1 On 22 March 2020 Grantley Stevens, Commissioner of Police, being the State Co-ordinator for the State of South Australia pursuant to section 14 of the *Emergency Management Act 2004* (the *Act*), declared pursuant to section 23 of the Act that a Major Emergency is occurring in respect of the outbreak of the Human Disease named COVID-19 within South Australia.
 - 2 Now I, Grantley Stevens, being of the opinion that this is necessary to achieve the purposes of the Act, give the following directions pursuant to section 25 of the Act.
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1—Short title

This direction may be cited as the *Emergency Management (Residential Aged Care Facilities No 42) (COVID-19) Direction 2021*.

2—Revocation of previous direction

- (1) This direction replaces the *Emergency Management (Residential Aged Care Facilities No 41) (COVID-19) Direction 2020*.
- (2) The *Emergency Management (Residential Aged Care Facilities No 41) (COVID-19) Direction 2020* is revoked.

3—Purpose

The purpose of this direction is to ensure that appropriate measures are taken to establish controls and safeguards to protect vulnerable members of the South Australian community, including by imposing restrictions on visitors and mandating vaccination and record-keeping requirements.

4—Definitions

- (1) In this direction—
ATAGI means the Australian Technical Advisory Group on Immunisation;
care and support visit, in relation to a resident of a RACF—

with 70% or more of its residents having received at least one dose of a COVID-19 vaccine, means a visit made to the resident by one or more persons for the purposes of providing care and support to the resident (and includes a visit by a family member or friend of the resident for the purposes of providing social support to the resident);

with less than 70% of its residents who have received at least one dose of COVID-19 vaccine, means a visit made to the resident by one, or two persons together, for the purposes of providing care and support to the resident (and includes a visit by a family member or friend of the resident for the purposes of providing social support to the resident);

Cross Border Travel direction means the *Emergency Management (Cross Border Travel—General No 2) (COVID-19) Direction 2021* (including any associated direction operating as an appendix to that direction) made under section 25 of the *Emergency Management Act 2004* or any subsequent direction made under that section that replaces that direction;

Department means the Department for Health and Wellbeing (SA);

flexible care subsidy has the same meaning as the *Aged Care Act 1997* of the Commonwealth;

operator of a RACF means a person who owns, controls or operates the RACF;

personal care worker means a person (whether as an employee or contractor) whose primary role is to support residents with their daily care needs, and may include persons employed in a role such as a personal care assistant or care worker;

prescribed authorised officer means the Chief Executive of the Department, the South Australian Chief Public Health Officer or a deputy Chief Public Health Officer;

prescribed quarantine period, in relation to a prescribed RACF, means a period beginning at the declaration by a prescribed authorised officer of an outbreak in relation to the prescribed RACF, and ending at the time declared by a prescribed authorised officer;

prescribed RACF means a RACF in relation to which a prescribed authorised officer has declared an outbreak, being a single confirmed case of COVID-19 in a resident, staff member or frequent attendee of a RACF;

prospective resident visit means a visit to a RACF by one or more persons for the purpose of considering whether a person holding a valid Aged Care Assessment Team approval for residential aged care will become a resident at the facility;

residential aged care facility or RACF means—

- (a) a facility at which accommodation, and personal care or nursing care or both, are provided to a person in respect of whom a residential care subsidy or a flexible care subsidy is payable under the *Aged Care Act 1997* of the Commonwealth; or

- (b) the aged care portion of a Multi-purpose Service (MPS) in which accommodation, and personal care or nursing care (or both), are provided to aged care residents, in aged care beds that are funded through the Commonwealth Government Multi-purpose Service Program; or
- (c) that part of a regional hospital providing State funded residential aged care beds where accommodation, and personal care or nursing care (or both), are provided to a person in the same way as they would be if a residential care subsidy or a flexible care subsidy was payable under the *Aged Care Act 1997* of the Commonwealth;

residential care subsidy has the same meaning as in the *Aged Care Act 1997* of the Commonwealth;

TGA means the Therapeutic Goods Administration.

- (2) A prescribed authorised officer may make a verbal declaration for the purpose of the definition of *prescribed quarantine period* in subclause (1), but must confirm a verbal declaration in writing within 48 hours after making the declaration (although a failure to do so will not affect the validity of the declaration).

5—Prohibition on entry and exceptions

Subject to this direction, a person is prohibited from entering, or remaining on, the premises of a RACF in South Australia unless—

- (a) the person is a resident of the RACF; or
- (b) the person is an employee, contractor, student or volunteer of the RACF; or
- (c) the person's presence at the premises is for the purposes of conducting a prospective resident visit; or
- (d) the person's presence at the premises is for the purposes of providing—
 - (i) goods or services that are necessary for the effective operation of the RACF; or
 - (ii) other professional services at the facility; or
- (e) the person's presence at the premises is for the purposes of providing health, medical or pharmaceutical services to a resident of the RACF; or
- (f) the person's presence at the premises is for the purposes of a care and support visit to a resident of the RACF; and in the case of a RACF with less than 70% of its residents having received at least one dose of a COVID-19 vaccine—
 - (i) it is the only care and support visit made to the resident on that day; or
 - (ii) it is one of two care and support visits of no more than one visitor per visit made to the resident on that day; or

Note—

A resident of a RACF with less than 70% of its residents who have received a first dose of COVID-19 vaccine may have one care and support visit of two persons or two separate visits from one person, per day.

- (fa) the person's presence at the premises is for the purposes of participating in a group activity led or supervised by an employee, contractor, student or volunteer of the RACF; or
- (g) the person's presence at the premises is for the purposes of end of life support for a resident of the RACF for whom death is imminent (likely within 2 weeks); or
- (h) the person's presence at the premises is required for the purposes of emergency management or law enforcement; or
- (i) the person's presence at the premises is required for the purposes of regulatory functions or duties, including inspections; or
- (j) the person is a legal practitioner and their presence at the premises is for the purposes of the provision of legal advice or services.

Example—

A legal practitioner entering the premises of a RACF to take instructions from a client who is a resident of the facility or for the purposes of the execution of a will or other testamentary instrument by a client who is a resident of the facility.

6—General limitations relating to persons who may enter RACF

- (1) Despite clause 5, a person referred to in clause 5(b) to (j) must not enter or remain on the premises of a RACF in South Australia if—
 - (a) —
 - (i) during the 14 days immediately preceding the entry, the person had known contact, other than contact during which the person wore appropriate personal protective equipment, with a person who has a confirmed case of COVID-19; or
 - (ii) the person has a temperature higher than 38 degrees Celsius, or has a history of fever or chills in the preceding 72 hours, or symptoms of acute respiratory infection or loss of taste and smell; or
 - (b) from 1 June 2021 the person has not been vaccinated against the 2021 seasonal influenza; or
 - (c) the person has undertaken a COVID-19 test and is awaiting the test result, unless the person submitted to the COVID-19 test in accordance with routine surveillance testing of asymptomatic persons; or
 - (d) the person is prohibited from entry into a RACF by reason of a Cross Border Travel direction; or

Example—

A person arriving from a zone subject to Level 1 requirements under the Cross Border Travel direction must not enter or remain in a high risk setting (which is defined to include a RACF) in South Australia for a period of 14 days after their arrival in South Australia or until they return a negative COVID-19 test result.

- (e) from 6 December 2021, the person has not been vaccinated against COVID-19.

Note—

A person is vaccinated against COVID-19 if the person has received at least two doses of a COVID-19 vaccine approved by the TGA or all dosages of a recognised COVID-19 vaccine in accordance with dosage schedule recommended by ATAGI for that vaccine.

- (2) Subclause (1) does not apply to prevent a person employed or engaged in the provision of emergency services from entering or remaining on the premises of a RACF in the event of an emergency.
- (3) Despite subclause (1)(d), a person referred to in that paragraph may enter and remain on the premises of a RACF under clause 5(g), provided that the person—
 - (a) wears appropriate personal protective equipment while on the premises of the RACF; and
 - (b) is not prevented from entering or remaining on the premises of a RACF after receiving written confirmation of a negative COVID-19 test in accordance with that direction.
- (4) Subclause (1)(b) does not apply—
 - (a) to a person who has a medical contraindication to the influenza vaccine (such as a person who has a history of anaphylaxis, or has had Guillain-Barré Syndrome, following vaccination, or who is taking checkpoint inhibitor medication for cancer treatment); or
 - (b) to a person to whom the vaccination against influenza is not reasonably available; or
 - (c) to a person referred to in clause 5(g) who is not able to access the influenza vaccine before their visit to the RACF and who takes all reasonable steps to access the influenza vaccine as soon as practicable after their initial visit; or
 - (d) to a child aged 6 months or less;
 - (e) to a person who is observing the recommended waiting period between receiving the COVID-19 vaccine and the influenza vaccine, and
 - (i) provides evidence of the date of receipt of a COVID-19 vaccination to the RACF; and
 - (ii) takes all reasonable steps to ensure they are vaccinated as soon as is reasonably practicable following the preferred minimum interval of seven days between administration of the COVID-19 vaccine and the influenza vaccine.

(5) Subclause (1)(e) does not apply—

- (a) if the person has a medical certificate or letter from a legally qualified medical practitioner certifying that the person—
 - (i) has a medical exemption from receiving a TGA approved COVID-19 vaccine on either a permanent or temporary basis in accordance with the guidelines published from time to time by ATAGI; or
 - (ii) has a medical exemption on either a permanent or temporary basis from receiving the preferred vaccine as recommended by ATAGI for the person's age; or
 - (iii) has an appointment to be assessed by a medical specialist or has commenced an assessment with a medical specialist to determine whether they have a medical exemption from receiving a COVID-19 vaccine on either a permanent or temporary basis in accordance with the guidelines published from time to time by ATAGI; or
 - (iv) is currently taking part in a COVID-19 vaccine trial and receipt of a TGA approved vaccine would impact the validity of the trial; and
 - (v) the certificate or letter specifies the nature of the exemption and the basis on which it applies; and
 - (vi) the Chief Public Health Officer or her delegate has endorsed the exemption; and
 - (vii) the person provides the operator of the RACF with a copy of the endorsement provided under paragraph (vi); or

Notes—

The ATAGI expanded guidance on acute major medical conditions that warrant a temporary medical exemption relevant for COVID-19 vaccines is available at: <https://www.health.gov.au/resources/publications/atagi-expanded-guidance-on-temporary-medical-exemptions-for-covid-19-vaccines>

The current version of the clinical guidance on use of COVID-19 vaccine in Australia in 2021 is available at:

<https://www.health.gov.au/resources/publications/covid-19-vaccination-atagi-clinical-guidance-on-covid-19-vaccine-in-australia-in-2021>

- (b) to a child aged 12 years and 2 months or less.

7—Additional limitations and requirements relating to certain persons

- (1) Despite clause 5 but without limiting clause 6, the following provisions apply in relation to RACFs in South Australia:
 - (a) to the extent reasonably possible, a personal care worker who provides personal care to a resident (whether as an employee or contractor) at a RACF must not also provide personal care to a resident at another RACF;

- (b) a person who provides personal care or nursing care to a resident (whether as an employee or contractor) at a RACF must not enter or remain on the premises of a RACF, unless the person has completed COVID-19 infection control training of a kind, frequency and by a date determined by the Department;
- (c) the operator of a RACF must—
 - (i) keep records of completion of COVID-19 infection control training by persons referred to in paragraph (b) employed or engaged by the RACF; and
 - (ii) provide such records to an authorised officer on request.
- (d) subject to subclause (2), a person (other than a resident or a child under 12 years) must not enter or remain on the premises of a RACF, unless the person is wearing a face mask (covering mouth and nose) at all times when in the physical presence of other persons;

Note—

This requirement does not apply when the person is eating or drinking.

- (2) A mask is not required to be worn under subclause (1)(d)—
 - (a) if, in the professional opinion of a service provider or carer on the premises of a RACF, or in the opinion of the service organisation providing the service at the RACF, the wearing of a mask will hinder the provision of the relevant care and/or impact resident safety or wellbeing; or
 - (b) by a person who has a relevant medical condition, including problems with their breathing, a serious condition of the face, a disability or a mental health condition; or
 - (c) in circumstances where the ability to see the mouth is essential for communication, such as to enable communication by or with any person who is deaf or hard of hearing.
- (3) All employees, contractors and volunteers of an RACF must notify the operator of the RACF (as soon as possible) of—
 - (a) any additional place of employment;
 - (b) any COVID-19 case identified at any additional place of employment; and
 - (c) any COVID-19 vaccination they have received, with evidence of such vaccination, if the vaccination was not conducted through a vaccination clinic held at that RACF.
- (4) All persons entering a RACF (including employees, contractors, volunteers and visitors of the RACF) must comply with the requirements in clause 7 of the *Emergency Management (Activities—General No 3) (COVID-19) Direction 2021* as if the RACF were a prescribed place for the purposes of that clause.

Note—

Clause 7 requires a person entering a prescribed place to check in with the COVIDSafeCheckIn app for the purpose of capturing their relevant contact details or, when they are unable to do so, to record their details in a manual register provided for that purpose.

(5) In this clause—

authorised officer means—

- (a) an authorised officer appointed under the *Emergency Management Act 2004*; or
- (b) an authorised officer appointed under the *South Australian Public Health Act 2011*.

8—Operator of RACF—Workforce Management Plan

(1) The operator of a RACF in South Australia must adopt a Workforce Management Plan that—

- (a) requires employees, contractors and volunteers of the RACF to notify the operator of the RACF of their additional place of employment (if relevant); and
- (b) requires employees, contractors and volunteers of the RACF to notify the operator of the RACF if they become aware of a COVID-19 case identified at their additional place of employment.

Note—

This requirement is to assist with contact tracing if an identified case of COVID-19 is confirmed.

- (c) requires employees, contractors and volunteers of the RACF to notify the operator of the RACF of any COVID-19 vaccination they have received, and provide evidence of such vaccination, if the vaccination was not conducted through a vaccination clinic at that RACF.

(2) The operator of a RACF must—

- (a) keep records of notifications given under this clause;
- (b) maintain records of any COVID-19 vaccinations received by employees, contractors and volunteers of an RACF; and
- (c) provide such records to an authorised officer (within the meaning of clause 6) on request.

9—Operator of RACF—COVID-19 Infection Control Plan

- (1) The operator of a RACF in South Australia must ensure that a COVID-19 Infection Control Plan relating to all communal areas at the RACF is approved in accordance with this clause.
- (2) For the purposes of subclause (1), the operator of a RACF must submit a COVID-19 Infection Control Plan to the Department (in such manner and form as is determined by the Department).

- (3) The Department may approve a COVID-19 Infection Control Plan submitted under this clause.
- (4) A COVID-19 Infection Control Plan approved under this clause may be published by the Department.
- (5) An operator of a RACF with a COVID-19 Infection Control Plan that has been approved under this clause is not required to submit any proposed amendment to an approved COVID-19 Infection Control Plan to the Department for approval, unless the operator has been directed to do so in writing by a prescribed authorised officer.
- (6) Despite subclause (5), an operator of a RACF with an approved COVID-19 Infection Control Plan may be directed in writing by a prescribed authorised officer to implement the provisions of the COVID-19 Infection Control Plan approved by the Department and must do so within 48 hours of the direction.
- (7) The operator of a RACF must ensure that a COVID-19 Infection Control Plan approved under this clause (including any amendments) is kept available for inspection by authorised officers and any persons entering the RACF.
- (8) In this clause—

authorised officer means an authorised officer appointed under the *Emergency Management Act 2004* or an authorised officer appointed under the *South Australian Public Health Act 2011*.

communal area includes any area at an RACF where multiple persons (including, for example, employees, contractors and visitors) may come into contact with each other (including, for example, meal areas and locker rooms).

10—Operator of RACF—other requirements etc

- (1) The operator of a RACF in South Australia must take all reasonable steps to ensure that a person does not enter or remain on, or perform work or duties at, the premises of the RACF if the person is prohibited from doing so under this direction.
- (2) The operator of a RACF must ensure that a resident of the RACF who has undertaken a COVID-19 test remains isolated and segregated from other persons in accordance with the directions of an authorised officer until the result of the test is known.

Note—

Another direction under the *Emergency Management Act 2004* requires a person to remain isolated and segregated from other persons on being diagnosed with COVID-19.

- (3) The operator of a RACF must ensure that any person providing care to a resident at a RACF who is awaiting a COVID-19 test result wears appropriate personal protective equipment when providing care to that resident until the result of the test is known.

(4) The operator of a RACF must—

- (a) comply with the requirements in clause 7 of the *Emergency Management (Activities—General No 3) (COVID-19) Direction 2021* as if the RACF were a prescribed place for the purposes of that clause and they were the relevant person for that place; and

Note—

Clause 7 requires the relevant person for a prescribed place to enable the use of the COVIDSafeCheckIn app for the purpose of capturing relevant contact details of a person entering the place, including (where applicable) the use of a dedicated code provided by the State Government, and to provide a manual register in the event that a person is unable to check in via the app.

- (b) as far as is reasonably practicable, maintain a record of residents of the RACF who have received COVID-19 vaccinations.

- (5) The register and records kept under subclause (4) must be made immediately available for inspection (on request) by an authorised officer or for contact tracing purposes.
- (6) Nothing in this direction is to be taken to prevent a RACF from accommodating new residents (whether on a permanent basis or for respite care).

11—Quarantine for residents of a prescribed RACF and certain carers

- (1) Despite any other clause of this direction, a resident of a prescribed RACF must not leave the premises of the RACF during a prescribed quarantine period.
- (2) Subclause (1) does not apply to a resident who leaves the premises of a prescribed RACF—
- (a) for urgent medical or dental treatment; or
- (b) for transfer to hospital; or
- (c) for transfer to another RACF determined to be suitable by an authorised officer; or
- (d) in order to quarantine at another location, including a family home, approved by an authorised officer.

Note—

Nothing in subclause (2) authorises the provision of treatment to a person that is contrary to an Advance Care Directive applying to that person.

- (3) A resident of a prescribed RACF to whom subclause (2)(d) applies must reside and remain at the approved location during the prescribed quarantine period, quarantined and segregated from other persons, except—
- (a) to obtain or receive urgent medical or dental treatment; or
- (b) for transfer to hospital; or
- (c) for transfer to a RACF determined to be suitable by an authorised officer; or

- (d) to the extent that close contact with a family member residing in the same premises is necessary in order to provide food and essential care to the person.
- (4) A person who has close contact with a resident for the purpose identified in subclause (3)(d), or with another person identified in this subclause, must also reside and remain at the approved location during the prescribed quarantine period, quarantined and segregated from other persons, subject to the exceptions in subclause (3).
- (5) For the purposes of subclause (4), *close contact* with another person occurs if they are in the company of the other person—
 - (a) within an enclosed space for a period of 1 hour or longer; or
 - (b) within 1.5 metres of the other person at any time.

Note—

Subclause (4) means that another person living at the same location must also quarantine at that location if they do not have close contact with the resident during the prescribed quarantine period but have close contact with the person providing care to the resident.

- (6) A person working at a prescribed RACF (whether as an employee, contractor or student) during a prescribed quarantine period (during a declared outbreak) must not attend any other place of employment during the prescribed quarantine period.
- (7) Subclause (6) does not apply to a person who attends a prescribed RACF for the purpose of emergency management or law enforcement in the case of an emergency.

12—Vaccination requirements and compliance for RACF staff and volunteers

- (1) This clause applies to any person who is—
 - (a) employed or engaged by or on behalf of a RACF (whether as an employee, contractor or agency staff) to work or perform duties at a premises of a RACF on a full time, part time or casual basis, including:
 - (i) Direct care workers (nurses; personal care workers; allied health professionals; allied health assistants);
 - (ii) Administration staff (reception; management; administration);
 - (iii) Ancillary staff (food preparation; cleaning; laundry; garden; maintenance);
 - (iv) Lifestyle / social care (music/art therapy);
 - (v) Transport drivers of residents of RACFs;

- (b) Volunteers engaged by a RACF to undertake duties at a RACF;
 - (c) Students on placement at a RACF; and
 - (d) Medical practitioners and allied health professionals who attend and provide care to residents of a RACF whether employed or engaged by the resident, RACF or another person.
- (2) Subject to subclause (4) and (6), a person to whom this clause applies must not engage in work or duties at a RACF from 17 September 2021 unless—
- (a) the person has received at least one dose of a TGA approved or recognised COVID-19 vaccine; and
 - (b) the person has received, or has evidence of a booking to receive, a second dose of a TGA approved or recognised COVID-19 vaccine within the interval after the first dose recommended by the ATAGI for that COVID-19 vaccine.

Note—

The ATAGI clinical guidance on COVID-19 vaccine is available at <https://www.health.gov.au/resources/publications/covid-19-vaccination-atagi-clinical-guidance-on-covid-19-vaccine-in-australia-in-2021>.

- (3) A person subject to the requirement in subclause (2) must provide the operator of the RACF with evidence of their vaccination status upon request.
- (4) A person to whom this clause applies may engage in work or duties at a RACF between 17 September 2021 and 5 December 2021 despite not having received a first dose of a TGA approved COVID-19 vaccine if—
- (a) —
 - (i) the person has a medical exemption from receiving the COVID-19 vaccine; or
 - (ii) the person is pregnant; and
 - (iii) the person provides the operator of the RACF a medical certificate from a legally qualified medical practitioner certifying that the person either has a medical exemption from receiving the COVID-19 vaccine on either a permanent or temporary basis or is pregnant; or
 - (b) —
 - (i) the person has received a temporary exemption of the requirement in subclause (2) in writing from an authorised officer; and
 - (ii) the person provides the operator of the RACF evidence of the authorised officer's exemption in writing.

- (5) A temporary exemption may be given under subclause (3)(b) in relation to a person to whom this clause applies if—
- (a) the person is not reasonably able to access a COVID-19 vaccine by 17 September 2021;
 - (b) the person's work or duties at a RACF is necessary to provide for specialist clinical care of a resident; or
 - (c) the person's work or duties at a RACF is necessary to ensure maintenance of the quality of care available to residents.

Note—

For example, temporary exemptions may be given where it has been necessary to deploy staff at short notice to ensure continuation of quality of care at a RACF or to ensure the provision of specialist clinical care in rural settings.

- (6) Despite subclause (2), a person to whom this clause applies may engage in work or duties at a RACF after 6 December 2021 if—
- (a) the person has a medical certificate or letter from a legally qualified medical practitioner certifying that the person
 - (i) has a medical exemption from receiving a TGA approved COVID-19 vaccine on either a permanent or temporary basis in accordance with the guidelines published from time to time by ATAGI; or
 - (ii) has a medical exemption on either a permanent or temporary basis from receiving the preferred vaccine as recommended by ATAGI for the person's age; or
 - (iii) has an appointment to be assessed by a medical specialist or has commenced an assessment with a medical specialist to determine whether they have a medical exemption from receiving a COVID-19 vaccine on either a permanent or temporary basis in accordance with the guidelines published from time to time by ATAGI; or
 - (iv) is currently taking part in a COVID-19 vaccine trial and receipt of a TGA approved vaccine would impact the validity of the trial; and
 - (v) the certificate or letter specifies the nature of the exemption and the basis on which it applies; and
 - (vi) the Chief Public Health Officer or her delegate has endorsed the exemption; and
 - (vii) the person provides the operator of the RACF with a copy of the endorsement provided under paragraph (vi).

Notes—

The ATAGI expanded guidance on acute major medical conditions that warrant a temporary medical exemption relevant for COVID-19 vaccines is available at: <https://www.health.gov.au/resources/publications/atagi-expanded-guidance-on-temporary-medical-exemptions-for-covid-19-vaccines>

The current version of the clinical guidance on use of COVID-19 vaccine in Australia in 2021 is available at:

<https://www.health.gov.au/resources/publications/covid-19-vaccination-atagi-clinical-guidance-on-covid-19-vaccine-in-australia-in-2021>

13—Exemptions

A prescribed authorised officer may, if satisfied that exceptional circumstances exist, exempt (conditionally or unconditionally) a person or class of persons from this direction or a provision of this direction.

14—Powers of authorised officers

Nothing in this direction derogates from the powers of authorised officers to exercise powers pursuant to the Act.

IMPORTANT—FAILURE TO COMPLY WITH THIS DIRECTION IS AN OFFENCE.

This direction operates from the 8th day of November 2021 at 1601 hours

SIGNED at Adelaide on this 8th day of November 2021 at 1601 hours



GRANTLEY STEVENS
STATE CO-ORDINATOR