

2021

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister
and
Minister for Health)

Public Health Amendment Bill 2021 (No 2)

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister
and
Minister for Health)

Public Health Amendment Bill 2021 (No 2)

A Bill for

An Act to amend the *Public Health Act 1997*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2021-1291

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Public Health Amendment Act 2021 (No 2)*.

3 **2 Commencement**

4 (1) This Act (other than sections 7 to 11) commences on the 7th day after
5 its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 (2) Sections 7 to 11 commence on the later of—

9 (a) the day after this Act's notification day; and

10 (b) the day the *Public Health Amendment Act 2021*, section 3
11 commences.

12 **3 Legislation amended**

13 This Act amends the *Public Health Act 1997*.

14 *Note* This Act also amends other legislation (see sch 1).

15 **4 Protection from liability**
16 **New section 17 (1) (ca)**

17 *insert*

18 (ca) an external reviewer appointed under section 118ZH (1); or

5 New part 6C*insert***Part 6C Public health measures—
COVID-19****Division 6C.1 Preliminary****118M Objects—pt 6C**

The objects of this part are—

- (a) to establish a regulatory framework for protecting the public from risks to public health presented by COVID-19, which may not present a public health emergency; and
- (b) to ensure that directions or guidelines made under this part—
 - (i) recognise and respect the rights, inherent dignity and needs of people affected by decisions or actions made under the directions or guidelines; and
 - (ii) are consistent with human rights, while still achieving the object set out in paragraph (a), and subject only to reasonable limits that are demonstrably justified in accordance with the *Human Rights Act 2004*, section 28.

118N Definitions—pt 6C

In this part:

chief health officer direction—see section 118U (1).*chief health officer exemption guideline* means a guideline made under section 118ZL (1).*Ministerial direction*—see section 118R (1).

1 *Ministerial exemption guideline* means a guideline made under
2 section 118ZK (1).

3 *segregation or isolation direction*—see 118U (1) (b).

4 *vaccination direction*—see section 118ZM (1).

5 *vaccination exemption guideline* means a guideline made under
6 section 118ZM (1).

7 **Division 6C.2 COVID-19 management declaration**

8 **1180 COVID-19 management declaration—general**

9 (1) The Executive may make a declaration (a *COVID-19 management*
10 *declaration*) if the Executive has reasonable grounds for believing
11 that COVID-19 presents a serious risk to public health.

12 (2) In forming a belief on reasonable grounds that COVID-19 presents a
13 serious risk to public health, the Executive must—

14 (a) consider whether a material risk of substantial injury or
15 prejudice to the health of people has happened or may happen
16 because of COVID-19; and

17 (b) take into account the following:

18 (i) the number of people likely to be affected;

19 (ii) the location, immediacy and seriousness of the threat to the
20 health of people;

21 (iii) the nature, scale and effect of any harm, illness or injury
22 that may happen;

23 (iv) the availability and effectiveness of any precaution,
24 safeguard, treatment or other measure to eliminate or
25 reduce any risk to the health of people.

- 1 (3) For subsection (2), it does not matter that the rate of community
2 transmission of COVID-19 in the ACT is low or that there have been
3 no cases of COVID-19 in the ACT, either at all or for a period of time.
- 4 (4) Nothing in this part prevents the Minister declaring a public health
5 emergency in relation to COVID-19 under section 119 or taking any
6 other action under this Act in relation to COVID-19.
- 7 (5) A COVID-19 management declaration is a disallowable instrument.

8 **118P COVID-19 management declaration—duration**

- 9 (1) A COVID-19 management declaration—
- 10 (a) comes into force immediately after it is made, or at a later time
11 stated in the declaration; and
- 12 (b) remains in force for the period, not longer than 6 months, stated
13 in the declaration.
- 14 (2) The Executive may extend the period for which a COVID-19
15 management declaration is to remain in force on 1 or more occasions,
16 for the period, not longer than 6 months on each occasion, stated in
17 the extension.
- 18 (3) The chief health officer must, at least every 60 days during which a
19 COVID-19 management declaration (including as extended) is in
20 force, advise the Executive about the status of the risk presented by
21 COVID-19.
- 22 (4) A failure by the chief health officer to comply with subsection (3)
23 does not affect the validity of the COVID-19 management
24 declaration.
- 25 (5) A COVID-19 management declaration must be revoked if the
26 Executive decides, after taking into account any advice of the chief
27 health officer, that the declaration is no longer justified.
- 28 (6) An extension of a COVID-19 management declaration is a
29 disallowable instrument.

- 1 **118Q COVID-19 management declaration—consultation and**
2 **public notice**
- 3 (1) In making or extending a COVID-19 management declaration, the
4 Executive must ask for advice from the chief health officer about the
5 proposed declaration or extension and take into account any advice
6 given.
- 7 (2) The Executive must, within 7 days after a COVID-19 management
8 declaration or extension is notified, give public notice of any advice
9 given under subsection (1).
- 10 *Note* **Public notice** means notice on an ACT government website or in a daily
11 newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- 12 (3) Also, the Executive must, within 7 days after receiving advice from
13 the chief health officer under section 118P (3), give public notice of
14 the advice.
- 15 (4) A failure by the Executive to comply with subsection (2) or (3) does
16 not affect the validity of the COVID-19 management declaration.

17 **Division 6C.3 Ministerial directions**

18 **118R Ministerial directions—general**

- 19 (1) While a COVID-19 management declaration is in force, the Minister
20 may make a direction (a *Ministerial direction*) in relation to 1 or more
21 of the following:
- 22 (a) preventing or limiting entry into the ACT or an area in the ACT;
23 (b) regulating gatherings, whether public or private;
24 (c) requiring the use of personal protective equipment;
25 (d) regulating the carrying on of activities, businesses or
26 undertakings;

- 1 (e) requiring the provision of information (including information
2 about the identity of a person), or the production or keeping of
3 documents.
- 4 (2) However, the Minister may only make a Ministerial direction if
5 satisfied it is necessary to prevent or alleviate the risk presented by
6 COVID-19.
- 7 (3) A Ministerial direction—
- 8 (a) must include a statement about—
- 9 (i) the nature of the risk presented by COVID-19; and
10 (ii) the grounds on which the Minister believes the direction is
11 necessary to prevent or alleviate the risk; and
- 12 (b) may state the grounds on which the Minister may exempt a
13 person from complying with the direction.
- 14 (4) Any ground stated under subsection (3) (b) must comply with the
15 requirements (if any) under a Ministerial exemption guideline in
16 relation to the ground.
- 17 (5) A Ministerial direction is a notifiable instrument.

18 **118S Ministerial directions—duration**

- 19 (1) A Ministerial direction—
- 20 (a) comes into force immediately after it is made, or at a later time
21 stated in the direction; and
- 22 (b) remains in force for the period, not longer than 90 days, stated
23 in the direction.
- 24 (2) The Minister may extend the period for which a Ministerial direction
25 is to remain in force on 1 or more occasions, for the period, not longer
26 than 90 days on each occasion, stated in the extension.

- 1 (3) The chief health officer must, at least every 30 days during which a
2 Ministerial direction (including as extended) is in force, advise the
3 Minister about whether the chief health officer believes the direction
4 is still justified.
- 5 (4) A failure by the chief health officer to comply with subsection (3)
6 does not affect the validity of the Ministerial direction.
- 7 (5) A Ministerial direction must be revoked if the Minister decides, after
8 taking into account any advice of the chief health officer, that the
9 direction is no longer justified.
- 10 (6) An extension of a Ministerial direction is a notifiable instrument.

11 **118T Ministerial directions—consultation and public notice**

- 12 (1) In making or extending a Ministerial direction, the Minister must—
- 13 (a) ask for advice from the chief health officer about the proposed
14 direction or extension and take into account any advice given;
15 and
- 16 (b) consult the Chief Minister; and
- 17 (c) consult the human rights commissioner about whether the
18 direction or extension are consistent with human rights.
- 19 (2) However, if the Minister considers it is necessary for a direction or
20 extension to be made urgently to alleviate an immediate or imminent
21 risk, the Minister—
- 22 (a) need not consult the human rights commissioner under
23 subsection (1) (c); but
- 24 (b) must—
- 25 (i) include a statement in the direction or extension that the
26 human rights commissioner has not been consulted
27 because the direction is needed urgently; and

- 1 (ii) consult the human rights commissioner about the direction
2 or extension as soon as practicable after it is made.
- 3 (3) The Minister must, within 7 days after the Ministerial direction or
4 extension is notified, give public notice of the following:
- 5 (a) any advice given under subsection (1) (a);
6 (b) how the direction or extension is consistent with human rights.
- 7 *Note* **Public notice** means notice on an ACT government website or in a daily
8 newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- 9 (4) Also, the Minister must, within 7 days after receiving advice from the
10 chief health officer under section 118S (3), give public notice of the
11 advice.
- 12 (5) Subsections (1), (2) (b) and (3) do not apply to a Ministerial direction
13 that remakes a Ministerial direction already in force if any change
14 made by the remade direction—
- 15 (a) is minor or technical only; or
16 (b) does not result in the remade direction being more restrictive
17 than the revoked direction.
- 18 (6) If satisfied that subsections (1), (2) (b) and (3) do not apply to a
19 remade Ministerial direction because of subsection (5), the Minister
20 must include a statement to that effect in the remade direction.
- 21 (7) A failure by the Minister to comply with subsection (2) (b), (3) or (6)
22 does not affect the validity of the Ministerial direction.

1 **Division 6C.4 Chief health officer directions**

2 **118U Chief health officer directions—general**

- 3 (1) While a COVID-19 management declaration is in force, the chief
4 health officer may make a direction (a *chief health officer direction*)
5 in relation to 1 or more of the following:
- 6 (a) a requirement for the medical examination or testing of a person;
- 7 (b) the segregation or isolation of a person (a *segregation or*
8 *isolation direction*);
- 9 (c) a requirement for the provision of information (including
10 information about the identity of a person), or the production or
11 keeping of documents.
- 12 (2) However, the chief health officer may only make a chief health officer
13 direction if satisfied it is necessary to prevent or alleviate the risk
14 presented by COVID-19.
- 15 (3) A chief health officer direction—
- 16 (a) must include a statement about—
- 17 (i) the nature of the risk presented by COVID-19; and
- 18 (ii) the grounds on which the chief health officer believes the
19 direction is necessary to prevent or alleviate the risk; and
- 20 (b) may state grounds on which the chief health officer may exempt
21 a person from complying with the direction.
- 22 (4) Any ground stated under subsection (3) (b) must comply with the
23 requirements (if any) under a chief health officer exemption guideline
24 in relation to the ground.
- 25 (5) A chief health officer direction made in relation to a particular person
26 must be in writing and given to the person.
- 27 (6) A chief health officer direction made other than in relation to a
28 particular person is a notifiable instrument.

- 1 **118V Chief health officer directions—additional matters for**
2 **segregation or isolation directions**
- 3 (1) A segregation or isolation direction, whether made in relation to a
4 particular person or not, must not require a person to be segregated or
5 isolated for more than 14 days on each occasion the direction applies
6 to the person.
- 7 **Example—occasion direction applies to a person**
8 A direction requiring a person to quarantine at a place because they are a close
9 contact of a person diagnosed with COVID-19 may apply to the person on each
10 occasion they are identified as a close contact.
- 11 (2) However, a segregation or isolation direction may require a person to
12 be segregated or isolated for longer than 14 days if the person—
- 13 (a) tests positive to COVID-19; or
14 (b) has not been tested for COVID-19 as required under the
15 direction; or
16 (c) has not returned a negative result for COVID-19 when tested as
17 required under the direction.
- 18 (3) Despite any requirement under a segregation or isolation direction for
19 a person to remain at a place, the person may leave the place in an
20 emergency.
- 21 **Examples—emergency**
22 1 the person is required to evacuate the place in an emergency such as a fire
23 2 the person needs urgent medical treatment
24 3 the person is escaping family violence
- 25 (4) A segregation or isolation direction may describe the circumstances
26 of an emergency to which subsection (3) applies.

1 **118W Chief health officer directions—duration**

- 2 (1) A chief health officer direction comes into force—
- 3 (a) for a direction made other than in relation to a particular
4 person—immediately after it is made, or at a later time stated in
5 the direction; or
- 6 (b) for a direction made in relation to a particular person—
7 immediately after it is given to the person, or at a later time
8 stated in the direction.
- 9 (2) A chief health officer direction made other than in relation to a
10 particular person remains in force for the period, not longer than
11 90 days, stated in the direction.
- 12 (3) For a chief health officer direction made other than in relation to a
13 particular person, the chief health officer may extend the period for
14 which the direction is to remain in force on 1 or more occasions, for
15 the period, not longer than 90 days on each occasion, stated in the
16 extension.
- 17 (4) An extension of a chief health officer direction made in relation to a
18 particular person must be in writing.
- 19 (5) An extension of a chief health officer direction made other than in
20 relation to a particular person is a notifiable instrument.

21 **118X Chief health officer directions—review**

- 22 (1) This section applies to a chief health officer direction (including any
23 extension) made other than in relation to a particular person.
- 24 (2) The chief health officer must, at least every 30 days during which the
25 chief health officer direction (including as extended) is in force,
26 advise the Minister about whether the chief health officer believes the
27 direction is still justified.
- 28 (3) The chief health officer direction must be revoked if the chief health
29 officer decides that the direction is no longer justified.

- 1 (4) A failure by the chief health officer to comply with subsection (2)
2 does not affect the validity of the chief health officer direction.

3 **118Y Chief health officer directions—consultation and public**
4 **notice**

- 5 (1) This section applies to a chief health officer direction or extension
6 made other than in relation to a particular person.

- 7 (2) In making the chief health officer direction or extension, the chief
8 health officer must consult the human rights commissioner about
9 whether the direction or extension is consistent with human rights.

- 10 (3) However, if the chief health officer considers it is necessary for a
11 direction or extension to be made urgently to alleviate an immediate
12 or imminent risk, the chief health officer—

- 13 (a) need not consult the human rights commissioner under
14 subsection (2); but

- 15 (b) must—

- 16 (i) include a statement in the direction or extension that the
17 human rights commissioner has not been consulted
18 because the direction or extension is needed urgently; and

- 19 (ii) consult the human rights commissioner about the direction
20 or extension as soon as practicable after it is made.

- 21 (4) The chief health officer must, within 7 days after a chief health officer
22 direction or extension is notified, give public notice of how the
23 direction or extension is consistent with human rights.

24 *Note* **Public notice** means notice on an ACT government website or in a daily
25 newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

- 26 (5) Also, the chief health officer must, within 7 days after giving advice
27 to the Minister under section 118X (2), give public notice of the
28 advice.

- 1 (6) Subsections (2), (3) (b) and (4) do not apply to a chief health officer
2 direction that revokes and remakes a chief health officer direction
3 already in force if—
- 4 (a) the remade direction differs from the revoked direction only in
5 a minor or technical way; or
- 6 (b) the remade direction is not more restrictive than the revoked
7 direction.
- 8 (7) If satisfied that subsections (2), (3) (b) and (4) do not apply to a
9 remade chief health officer direction because of subsection (6), the
10 chief health officer must include a statement to that effect in the
11 remade direction.
- 12 (8) A failure by the chief health officer to comply with
13 subsection (3) (b), (4), (5) or (7) does not affect the validity of the
14 chief health officer direction.

15 **Division 6C.5 Vaccination directions**

16 **118Z Vaccination directions—general**

- 17 (1) While a COVID-19 management declaration is in force, the
18 Executive may make a direction (a *vaccination direction*) in relation
19 to 1 or more of the following:
- 20 (a) a requirement for a person to be vaccinated against COVID-19
21 to do any of the following:
- 22 (i) engage in particular work;
- 23 (ii) work at a particular workplace;
- 24 (iii) engage in a particular activity;
- 25 (iv) access a particular place.
- 26 (b) a requirement for a person to prevent or restrict another person
27 who is not vaccinated against COVID-19 from doing a thing
28 mentioned in paragraph (a);

- 1 (c) a requirement for the provision of information (including
2 information about the identity of a person), or the production or
3 keeping of documents.
- 4 *Note* Power to make a vaccination direction includes power to make different
5 provision in relation to different matters or different classes of matters,
6 and to make a direction that applies differently by reference to stated
7 exceptions or factors (see [Legislation Act](#), s 48).
- 8 (2) However, the Executive may only make a vaccination direction if
9 satisfied it is necessary to prevent or alleviate the risk presented by
10 COVID-19.
- 11 (3) A vaccination direction—
- 12 (a) must include a statement about the grounds on which the
13 Executive believes the direction is necessary to prevent or
14 alleviate the risk of COVID-19; and
- 15 (b) must state the medical grounds (if any) on which the Executive
16 may exempt a person from complying with the direction; and
- 17 (c) may state other grounds on which the Executive may exempt a
18 person from complying with the direction.
- 19 (4) Any ground stated under subsection (3) (b) or (c) must comply with
20 the requirements (if any) under a vaccination exemption guideline in
21 relation to the ground.
- 22 (5) A vaccination direction must not prevent or limit a person from being
23 able to obtain an essential good or service.
- 24 **Examples—essential good or service**
25 groceries, medical treatment
- 26 (6) Nothing in subsection (5) means a person who provides an essential
27 good or service, and who would otherwise be required to be
28 vaccinated under a vaccination direction, need not be vaccinated.
- 29 (7) A vaccination direction is a disallowable instrument.

1 **118ZA Vaccination directions—duration**

- 2 (1) A vaccination direction—
- 3 (a) comes into force immediately after it is made, or at a later time
4 stated in the direction; and
- 5 (b) remains in force for the period, not longer than 90 days, stated
6 in the direction.
- 7 (2) The Executive may extend the period for which a vaccination
8 direction is to remain in force on 1 or more occasions, for the period,
9 not longer than 90 days on each occasion, stated in the extension.
- 10 (3) The chief health officer must, at least every 30 days during which a
11 vaccination direction (including as extended) is in force, advise the
12 Executive about whether the chief health officer believes the direction
13 is still justified.
- 14 (4) A failure by the chief health officer to comply with subsection (3)
15 does not affect the validity of the vaccination direction.
- 16 (5) A vaccination direction must be revoked if the Executive decides,
17 after taking into account any advice of the chief health officer, that
18 the direction is no longer justified.
- 19 (6) An extension of a vaccination direction is a disallowable instrument.

20 **118ZB Vaccination directions—consultation and public notice**

- 21 (1) In making or extending a vaccination direction, the Executive must—
- 22 (a) ask for advice from the chief health officer about the proposed
23 direction or extension, and take into account any advice given;
24 and
- 25 (b) consult the human rights commissioner about whether the
26 direction or extension is consistent with human rights.

- 1 (2) The Executive must, within 7 days after the vaccination direction or
2 extension is notified, give public notice of the following:
- 3 (a) any advice given under subsection (1) (a);
4 (b) how the direction or extension is consistent with human rights.
- 5 *Note* **Public notice** means notice on an ACT government website or in a daily
6 newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- 7 (3) Also, the Executive must, within 7 days after receiving advice from
8 the chief health officer under section 118ZA (3), give public notice
9 of the advice.
- 10 (4) Subsections (1) and (2) do not apply to a vaccination direction that
11 remakes a vaccination direction already in force if any change by the
12 remade direction—
- 13 (a) is minor or technical only; or
14 (b) does not result in the remade direction being more restrictive
15 than the revoked direction.
- 16 (5) If satisfied that subsections (1) and (2) do not apply to a remade
17 vaccination direction because of subsection (4), the Executive must
18 include a statement to that effect in the remade direction.
- 19 (6) A failure by the Executive to comply with subsection (2), (3) or (5)
20 does not affect the validity of the vaccination direction.

21 **Division 6C.6 Exemptions**

22 **Subdivision 6C.6.1 Preliminary**

23 **118ZC Definitions—div 6C.6**

24 In this division:

25 ***affected person*** means—

- 26 (a) in relation to a Ministerial direction or chief health officer
27 direction—a person to whom the direction applies; and

1 (b) in relation to an internally reviewable decision—a person in
2 relation to whom an internally reviewable decision has been
3 made; and

4 (c) in relation to an externally reviewable decision—a person in
5 relation to whom an externally reviewable decision has been
6 made.

7 ***externally reviewable decision*** means a decision made by an internal
8 reviewer under section 118ZG (2) in relation to—

9 (a) a Ministerial direction to prevent or limit entry into the ACT,
10 where the decision relates to an application to exempt a
11 person—

12 (i) on medical grounds; or

13 (ii) on compassionate grounds; or

14 (b) a segregation or isolation direction.

15 ***external reviewer*** means a person appointed as an external reviewer
16 under section 118ZH (1).

17 ***internally reviewable decision*** means—

18 (a) a decision under section 118ZE (2) to give an exemption subject
19 to conditions; or

20 (b) a decision under section 118ZE (3) or (4) not to give an
21 exemption.

22 ***relevant decision-maker*** means—

23 (a) in relation to an application to exempt a person from a
24 Ministerial direction—the Minister; and

25 (b) in relation to an application to exempt a person from a chief
26 health officer direction—the chief health officer.

1 **Subdivision 6C.6.2 Exemptions—Ministerial and chief health**
2 **officer directions**

3 **118ZD Exemptions—application**

- 4 (1) An affected person in relation to a Ministerial direction or chief health
5 officer direction may apply to the relevant decision-maker to exempt
6 the person from complying with a requirement of the direction.
- 7 (2) An application may be made on 1 or more of the following grounds:
8 (a) medical grounds;
9 (b) compassionate grounds;
10 (c) the grounds (if any) stated in the relevant direction.
- 11 (3) The ability to rely on a ground mentioned in subsection (2) (a) or (b)
12 is subject to the limitations on the ground (if any) stated in—
13 (a) for an application in relation to a Ministerial direction—the
14 direction or a Ministerial exemption guideline; or
15 (b) for an application in relation to a chief health officer direction—
16 the direction or a chief health officer exemption guideline.
- 17 (4) An application must—
18 (a) be in writing; and
19 (b) state the grounds on which the exemption is sought.
- 20 (5) The relevant decision-maker may, in writing, request the affected
21 person give the decision-maker additional information the
22 decision-maker reasonably requires to decide the application.
- 23 (6) If the affected person does not comply with a request under
24 subsection (5) within 7 days after the day the request is made, the
25 relevant decision-maker may refuse to consider the application
26 further.

1 **118ZE Exemptions—decision**

- 2 (1) On application under section 118ZD, the relevant decision-maker
3 may exempt an affected person in relation to a Ministerial direction
4 or a chief health officer direction from complying with a requirement
5 in the direction if satisfied that the exemption is appropriate.
- 6 (2) An exemption may be subject to conditions.
- 7 (3) If the relevant decision-maker decides not to give an exemption, the
8 decision-maker must tell the affected person in writing of the decision
9 as soon as possible, and not later than—
- 10 (a) for an application for an exemption from a segregation or
11 isolation direction—3 days after—
- 12 (i) the day the application is made; or
- 13 (ii) if the decision-maker requests additional information
14 under section 118ZD (5)—the day the affected person
15 gives the additional information to the decision-maker; or
- 16 (b) in any other case—5 days after—
- 17 (i) the day the application is made; or
- 18 (ii) if the decision-maker requests additional information
19 under section 118ZD (5)—the day the affected person
20 gives the additional information to the decision-maker.
- 21 (4) Failure to comply with subsection (3) is taken to be a decision not to
22 give an exemption.
- 23 (5) In making a decision under this section, the relevant decision-maker
24 must comply with the requirements (if any) of—
- 25 (a) for an application in relation to a Ministerial direction—a
26 Ministerial exemption guideline; or
- 27 (b) for an application in relation to a chief health officer direction—
28 a chief health officer exemption guideline.

1 (6) If the relevant decision-maker makes an internally reviewable
2 decision, the decision-maker must tell the affected person in writing
3 that they may apply for internal review of the decision.

4 (7) Failure to comply with subsection (6) does not affect the validity of
5 the decision.

6 **Subdivision 6C.6.3 Exemptions—Ministerial and chief health**
7 **officer direction—internal review**

8 **118ZF Internal review—application**

9 (1) An affected person in relation to an internally reviewable decision
10 may apply to the relevant decision-maker for review of the decision.

11 (2) An application must—

12 (a) be in writing; and

13 (b) set out the grounds on which internal review of the decision is
14 sought.

15 (3) The making of the application does not affect the operation of the
16 internally reviewable decision.

17 **118ZG Internal review—decision**

18 (1) On application under section 118ZF, the relevant decision-maker
19 must arrange for someone else (an *internal reviewer*) to review the
20 internally reviewable decision.

21 (2) The internal reviewer must review the internally reviewable decision
22 and—

23 (a) confirm the decision; or

24 (b) vary the decision; or

25 (c) revoke the decision and make a new decision.

- 1 (3) The internal reviewer must give written notice of their decision under
2 subsection (2) as soon as possible, and not later than—
- 3 (a) for an internally reviewable decision in relation to a segregation
4 or isolation direction—3 days after the day the application for
5 internal review is made; or
- 6 (b) in any other case—5 days after the day the application for
7 internal review is made.
- 8 (4) Failure to comply with subsection (3) is taken to be a decision to
9 confirm the internally reviewable decision.
- 10 (5) In making a decision under this section, the internal reviewer must
11 comply with the requirements (if any) of—
- 12 (a) for a review in relation to a Ministerial direction—a Ministerial
13 exemption guideline; or
- 14 (b) for a review in relation to a chief health officer direction—a
15 chief health officer exemption guideline.
- 16 (6) If the internal reviewer makes an externally reviewable decision, the
17 internal reviewer must tell the affected person in writing that they
18 may apply for external review of the decision.
- 19 (7) Failure to comply with subsection (6) does not affect the validity of
20 the externally reviewable decision.

1 **Subdivision 6C.6.4 Exemptions—Ministerial and chief health**
2 **officer directions—external review**

3 **118ZH External reviewer**

4 (1) The Minister—

5 (a) may appoint 1 or more external reviewers; and

6 (b) must ensure at least 1 external reviewer is appointed while a
7 Ministerial direction or chief health officer direction is in force.

8 *Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.

9 (2) A person may be appointed as an external reviewer only if the person
10 is judicially qualified and consents, in writing, to be appointed as an
11 external reviewer.

12 *Note* The appointment of a magistrate to another position under a law of the
13 Territory requires consultation between the Attorney-General and the
14 Chief Magistrate (see [Magistrates Court Act 1930](#), s 7G (Magistrates not
15 to do other work)).

16 (3) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly
17 consultation) does not apply to an appointment of an external
18 reviewer.

19 (4) For this section, each of the following are *judicially qualified*:

20 (a) a judge or retired judge;

21 (b) a magistrate or retired magistrate;

22 (c) a person who has been a legal practitioner for not less than 5
23 years.

1 **118ZI External review—application**

- 2 (1) An affected person in relation to an externally reviewable decision
3 may apply to an external reviewer for review of the decision.
- 4 (2) The application must—
- 5 (a) be in writing; and
- 6 (b) set out the grounds on which external review of the decision is
7 sought.
- 8 (3) The making of the application does not affect the operation of the
9 externally reviewable decision.

10 **118ZJ External review—decision**

- 11 (1) On application under section 118ZI, the external reviewer must
12 review the externally reviewable decision against the following (the
13 *relevant requirements*):
- 14 (a) the requirements in relation to exemptions under this division;
- 15 (b) the requirements (if any) of—
- 16 (i) for a review in relation to a Ministerial direction—a
17 Ministerial exemption guideline; or
- 18 (ii) for a review in relation to a chief health officer direction—
19 a chief health officer exemption guideline.
- 20 (2) After completing the review, the external reviewer must—
- 21 (a) confirm the decision; or
- 22 (b) vary the decision; or
- 23 (c) revoke the decision and make a new decision; or
- 24 (d) refer the decision to the relevant-decision-maker for the decision
25 to be remade.

- 1 (3) If the external reviewer refers the decision back to the relevant
2 decision-maker under subsection (2) (d), the external reviewer must
3 tell the decision-maker how the decision did not comply with the
4 relevant requirements.

5 **Subdivision 6C.6.5 Exemption guidelines**

6 **118ZK Exemptions—Ministerial directions—guidelines**

- 7 (1) The Minister—
- 8 (a) may make guidelines about applying for an exemption, and
9 exempting a person, from a requirement to comply with a
10 Ministerial direction; and
- 11 (b) must ensure guidelines mentioned in paragraph (a) are in force
12 while a Ministerial direction is in force.
- 13 (2) Without limiting subsection (1), a guideline may be made about the
14 following:
- 15 (a) making and considering an application for an exemption;
- 16 (b) making and considering an application for review of an
17 internally reviewable decision;
- 18 (c) making and considering an application for review of an
19 externally reviewable decision;
- 20 (d) the grounds on which, or any limitations on the grounds on
21 which, an exemption may be given.
- 22 (3) In making a guideline, the Minister must—
- 23 (a) ask for advice from the chief health officer and take into account
24 any advice given; and
- 25 (b) consult the human rights commissioner about whether the
26 guideline is consistent with human rights.

- 1 (4) The Minister must, within 7 days after a guideline is notified, give
2 public notice of the following:
- 3 (a) any advice given under subsection (3) (a);
- 4 (b) how the guideline is consistent with human rights.
- 5 *Note* **Public notice** means notice on an ACT government website or in a daily
6 newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- 7 (5) A failure to comply with subsection (4) does not affect the validity of
8 the guideline.
- 9 (6) A guideline is a notifiable instrument.

10 **118ZL Exemptions—chief health officer directions—guidelines**

- 11 (1) The chief health officer—
- 12 (a) may make guidelines about applying for an exemption, and
13 exempting a person, from a requirement to comply with a
14 Ministerial direction; and
- 15 (b) must ensure guidelines mentioned in paragraph (a) are in force
16 while a chief health officer direction is in force.
- 17 (2) Without limiting subsection (1), a guideline may be made about the
18 following:
- 19 (a) making and considering an application for an exemption;
- 20 (b) making and considering an application for review of an
21 internally reviewable decision;
- 22 (c) making and considering an application for review of an
23 externally reviewable decision;
- 24 (d) the grounds on which, or any limitations on the grounds on
25 which, an exemption may be given.
- 26 (3) In making a guideline, the chief health officer must consult the human
27 rights commissioner about whether the guideline is consistent with
28 human rights.

- 1 (4) The chief health officer must, within 7 days after a guideline is
2 notified, give public notice of how the guideline is consistent with
3 human rights.
- 4 *Note* **Public notice** means notice on an ACT government website or in a daily
5 newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- 6 (5) A failure to comply with subsection (4) does not affect the validity of
7 the guideline.
- 8 (6) A guideline is a notifiable instrument.

9 **118ZM Exemptions—vaccination directions—guidelines**

- 10 (1) The Executive—
- 11 (a) may make guidelines about applying for a person to be exempt,
12 and exempting a person, from a requirement to comply with a
13 vaccination direction; and
- 14 (b) must ensure guidelines mentioned in paragraph (a) are in force
15 while a vaccination direction is in force.
- 16 (2) In making a guideline, the Executive must—
- 17 (a) ask for advice from the chief health officer and take into account
18 any advice given; and
- 19 (b) consult the human rights commissioner about whether the
20 guideline is consistent with human rights.
- 21 (3) The Executive must, within 7 days after a guideline is notified, give
22 public notice of the following:
- 23 (a) any advice given under subsection (2) (a);
- 24 (b) how the guideline is consistent with human rights.
- 25 *Note* **Public notice** means notice on an ACT government website or in a daily
26 newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- 27 (4) A failure to comply with subsection (3) does not affect the validity of
28 the guideline.

- 1 (5) A person applying for, considering or otherwise taking action in
2 relation to an exemption from a requirement to comply with a
3 vaccination direction must comply with the requirements (if any) in a
4 guideline in relation to the action.
- 5 (6) A guideline is a notifiable instrument.

6 **Division 6C.7 Miscellaneous**

7 **118ZN Offence—failure to comply with direction**

- 8 (1) A person commits an offence if—
9 (a) a direction made under this part is in force; and
10 (b) the person fails to comply with the direction.
11 Maximum penalty: 50 penalty units.
- 12 (2) Strict liability applies to subsection (1) (a).
- 13 (3) Subsection (1) does not apply if a person has a reasonable excuse for
14 failing to comply with the direction.
- 15 *Note 1* The defendant has an evidential burden in relation to the matter
16 mentioned in s (3) (see [Criminal Code](#), s 58).
- 17 *Note 2* The [Criminal Code](#) also sets out circumstances in which a person is not
18 criminally responsible for an offence, including in a sudden or
19 extraordinary emergency (see s 41).
- 20 (4) Before requiring a person to comply with a direction made under this
21 part, an authorised officer must, if reasonably practicable, warn the
22 person that failure to comply with the direction without a reasonable
23 excuse is an offence.
- 24 (5) Failure by an authorised officer to comply with subsection (4) does
25 not affect—
26 (a) the liability of the offender to be prosecuted for the offence; or
27 (b) an infringement notice given to the offender for the offence.

1 **118ZO Directions—cautioning requirements**

2 (1) Subsection (2) applies if a police officer believes a person who is
3 18 years old or older has committed an offence against
4 section 118ZN (1) in relation to a failure to comply with a direction
5 made under this part.

6 (2) Before questioning the person about whether they have a reasonable
7 excuse for not complying with the direction, the police officer may
8 warn them that they do not have to answer the question or do anything
9 but that anything they say or do may be used in evidence.

10 *Note* The [Legislation Act](#), s 170 deals with the application of the privilege
11 against self-incrimination.

12 (3) Subsection (4) applies if a police officer—

13 (a) gives a warning under subsection (2); and

14 (b) intends to—

15 (i) serve an infringement notice on the person in relation to an
16 offence against section 118ZN (1); or

17 (ii) take no further action against the person in relation to the
18 offence.

19 (4) The [Crimes Act 1900](#), section 187 (1) does not apply to the relevant
20 infringement notice offence in relation to the questioning mentioned
21 in subsection (2).

22 *Note* The [Crimes Act 1900](#), s 187 (1) applies the [Crimes](#)
23 [Act 1914](#) (Cwlth), pt 1C (Investigation of Commonwealth offences) and
24 the schedule (Form of explanation under section 23V) to ACT offences
25 not punishable by imprisonment, or punishable by imprisonment for 12
26 months or less.

27 **118ZP Compensation—pt 6C**

28 Compensation is not payable by the Territory in relation to any loss
29 or damage suffered by a person as a result of anything done in the
30 exercise of a function under this part.

- 1 **118ZQ Consideration of Ministerial and chief health officer**
2 **directions by standing committee of Assembly**
- 3 (1) The relevant standing committee must report to the Legislative
4 Assembly about human rights issues raised by Ministerial directions
5 and chief health officer directions.
- 6 (2) In this section:
- 7 *relevant standing committee* means—
- 8 (a) the standing committee of the Legislative Assembly nominated
9 by the Speaker for this section; or
- 10 (b) if no nomination under paragraph (a) is in effect—the standing
11 committee of the Legislative Assembly responsible for the
12 consideration of legal issues.
- 13 **118ZR Expiry—pt 6C**
- 14 (1) The following provisions expire 18 months after the day this part
15 commences:
- 16 (a) section 17 (1) (ca);
17 (b) this part;
18 (c) the relevant definitions.
- 19 (2) In this section:
- 20 *relevant definitions* mean the following definitions in the dictionary:
- 21 (a) *affected person*;
22 (b) *chief health officer direction*;
23 (c) *chief health officer exemption guideline*;
24 (d) *externally reviewable decision*;
25 (e) *internally reviewable decision*;
26 (f) *Ministerial direction*;

- 1 (g) *Ministerial exemption guideline;*
2 (h) *relevant decision-maker;*
3 (i) *segregation or isolation direction;*
4 (j) *vaccination direction.*

5 **6 Emergency declarations**
6 **Section 119**

- 7 *omit*
8 COVID-19 declaration
9 *substitute*
10 COVID-19 emergency declaration

11 **7 Section 119 (7)**

- 12 *omit*

13 **8 Emergency actions and directions**
14 **Section 120 (9), definition of *COVID-19 declaration***

- 15 *omit*

16 **9 Section 120 (9), definition of *COVID-19 direction***

- 17 *omit*
18 COVID-19 declaration
19 *substitute*
20 COVID-19 emergency declaration

- 1 **10 COVID-19 directions—expiry**
2 **Section 120D (1)**
- 3 *omit*
4 COVID-19 declaration
5 *substitute*
6 COVID-19 emergency declaration
- 7 **11 Section 120D (2), definition of COVID-19 declaration**
8 *omit*
- 9 **12 Compensation**
10 **Section 122 (3) (c)**
- 11 *omit*
12 COVID-19 declaration
13 *substitute*
14 COVID-19 emergency declaration
- 15 **13 Section 122 (4), definition of COVID-19 declaration**
16 *omit*

14 **New part 7A***insert***Part 7A** **Check-in information—COVID-19****123A** **Definitions—pt 7A**

In this part:

authorised collector means—

- (a) a person who may or must collect check-in information under a COVID-19 public health direction; or
- (b) a person who has registered with the Territory to use the Check In CBR app in relation to a place.

Check In CBR app means the mobile application, known as ‘Check In CBR’, developed and operated by the Territory to allow people to record their presence at a place using a mobile device.

check-in information—

- (a) means information about the presence of a person at a place in the ACT, collected for the purpose of contact tracing; but
- (b) does not include—
 - (i) information collected in the ordinary course of carrying on a business, activity or undertaking if the information would have been collected in any case for a purpose other than contact tracing; or
 - (ii) personal health information within the meaning of the *Health Records (Privacy and Access) Act 1997*; or

Note Requirements for handling personal health information are set out in the *Health Records (Privacy and Access) Act 1997*.

1 (iii) information relating to the registration of a business,
2 activity or undertaking to use the Check In CBR app; or

3 (iv) statistical or summary information.

4 **contact tracing** means the process of identifying, notifying,
5 communicating with, managing or directing a person who—

6 (a) may be or may have been a source of COVID-19 infection; or

7 (b) may have been in contact, directly or indirectly, with a person
8 who is or may have been a source of COVID-19 infection; or

9 **Examples—direct contact**

10 1 living in the same house as a person with COVID-19

11 2 having sat near a person who may have been a source of COVID-19
12 infection during the screening of a movie at a cinema

13 **Examples—indirect contact**

14 1 having attended a takeaway coffee shop during a period of time that a
15 person with COVID-19 also attended the shop

16 2 having attended the same screening of a movie at a cinema as, although
17 not sitting near, a person with COVID-19

18 (c) if a person mentioned in paragraph (a) or (b) is a child—is a
19 parent or guardian of the child.

20 **court** includes a tribunal, authority or person having power to require
21 the production of documents or the answering of questions.

22 **COVID-19 public health direction** means a direction—

23 (a) made under part 6C (Public health measures—COVID-19); or

24 (b) given by the chief health officer under section 120 in relation to
25 a COVID-19 emergency declaration.

26 **permitted purpose** means any of the following:

27 (a) undertaking contact tracing;

1 (b) assisting an entity administering a law of a State that provides
2 for contact tracing to undertake contact tracing, including
3 sharing information with the entity;

4 (c) another purpose related to undertaking contact tracing;

5 **Examples**

6 1 to assess the integrity or security of check-in information

7 2 to provide support services in relation to the Check In CBR app

8 (d) a purpose mentioned in section 123D (2);

9 (e) deriving statistical or summary information.

10 *statistical or summary information* means statistical or summary
11 information that could not reasonably be expected to lead to the
12 identification of an individual.

13 *use*, in relation to information includes—

14 (a) communicate, publish or otherwise do something to disclose the
15 information; and

16 (b) make a record of the information.

17 **123B Collection of check-in information**

18 (1) An authorised collector must not collect information at a place that,
19 on collection, would be check-in information other than in 1 or both
20 of the following ways:

21 (a) through the direct entry of the information into the Check In
22 CBR app;

23 (b) in a way permitted under a COVID-19 public health direction,
24 including any exemption given under a direction.

25 Maximum penalty: 40 penalty units.

26 (2) An offence against subsection (1) is a strict liability offence.

1 **123C Use of check-in information**

2 (1) A person must not use check-in information unless the person is an
3 authorised officer or an authorised person.

4 Maximum penalty: 40 penalty units.

5 (2) Subsection (1) does not apply to a person who uses check-in
6 information for any of the following purposes:

7 (a) collecting information in accordance with section 123B;

8 (b) for a purpose mentioned in section 123D (2);

9 (c) making a record of, disclosing (including to an authorised
10 person on request) or otherwise using the information in
11 accordance with a COVID-19 public health direction.

12 (3) An offence against subsection (1) is a strict liability offence.

13 (4) An authorised person may use check-in information only for a
14 permitted purpose.

15 (5) In this section:

16 *authorised person*—see section 121 (4).

17 **123D Check-in information not admissible in court**

18 (1) Check-in information is not admissible in evidence in a court
19 proceeding, other than in accordance with subsection (2).

20 (2) Check-in information may be used for the purpose of investigating or
21 prosecuting—

22 (a) an offence against this part; or

23 (b) an offence for failing to comply with a COVID-19 public health
24 direction in relation to contact tracing; or

25 (c) an offence for giving false or misleading information in
26 compliance or purported compliance with a COVID-19 public
27 health direction in relation to contact tracing.

- 1 **123E Protecting and destroying check-in information**
- 2 (1) An authorised collector must take reasonable steps to protect check-in
3 information held by the authorised collector—
- 4 (a) from misuse, interference or loss; and
- 5 (b) from unauthorised access, modification or disclosure.
- 6 Maximum penalty: 5 penalty units.
- 7 (2) An authorised collector must take reasonable steps to destroy
8 check-in information held by the authorised collector—
- 9 (a) if the information is used for a purpose mentioned in
10 section 123D (2)—as soon as reasonably practicable after the
11 authorised collector no longer needs the information for the
12 purpose; or
- 13 (b) in any other case—at the end of the contact tracing period.
- 14 Maximum penalty: 5 penalty units.
- 15 (3) The director-general must take reasonable steps to destroy check-in
16 information held by the directorate—
- 17 (a) if the information is used for a permitted purpose—as soon as
18 reasonably practicable after the director-general no longer needs
19 the information for the purpose; or
- 20 (b) in any other case—at the end of the contact tracing period.
- 21 (4) In this section:
- 22 ***contact tracing period*** means—
- 23 (a) a period of 28 days beginning on the day the check-in
24 information is collected; or
- 25 (b) if another period is prescribed by regulation—the other period.

1 **123F Expiry—pt 7A**

2 (1) This part and the relevant definitions expire on the later of the
3 following:

4 (a) at the end of a 12-month period during which no COVID-19
5 emergency declaration has been in force;

6 (b) if a COVID-19 management declaration has been made before
7 the end of the period mentioned in paragraph (a)—at the end of
8 a 12-month period during which no COVID-19 management
9 declaration has been in force.

10 (2) In this section:

11 *relevant definitions* means the following definitions in the dictionary:

12 (a) *authorised collector*;

13 (b) *Check In CBR app*;

14 (c) *check-in information*;

15 (d) *contact tracing*;

16 (e) *court*;

17 (f) *COVID-19 public health direction*;

18 (g) *permitted purpose*;

19 (h) *statistical or summary information*;

20 (i) *use*.

15 New section 136A

insert

136A Expiry—certain definitions

- (1) The relevant definitions expire on the later of the following:
- (a) the expiry of part 6C (Public health measures—COVID 19);
 - (b) the expiry of section 120D (COVID-19 directions—expiry);
 - (c) the expiry of part 7A (Check-in information—COVID-19).
- (2) In this section:

relevant definitions means the following definitions in the dictionary:

- (a) *COVID-19*;
- (b) *COVID-19 emergency declaration*;
- (c) *COVID-19 management declaration*.

16 Dictionary, new definitions

insert

affected person, for division 6C.6 (Exemptions)—see section 118ZC.

authorised collector, for part 7A (Check-in information—COVID-19)—see section 123A.

Check In CBR app, for part 7A (Check-in information—COVID-19)—see section 123A.

check-in information, for part 7A (Check-in information—COVID-19)—see section 123A.

chief health officer direction, for part 6C (Public health measures—COVID-19)—see section 118U (1).

- 1 **chief health officer exemption guideline**, for part 6C (Public health
2 measures—COVID-19)—see section 118N.
- 3 **contact tracing**, for part 7A (Check-in information—COVID-19)—
4 see section 123A.
- 5 **court**, for part 7A (Check-in information—COVID-19)—see
6 section 123A.
- 7 **COVID-19** means the coronavirus disease 2019 (COVID-19) caused
8 by the novel coronavirus SARS-CoV-2.
- 9 **COVID-19 emergency declaration** means a declaration made under
10 section 119 because of the coronavirus disease 2019 (COVID-19)
11 caused by the novel coronavirus SARS-CoV-2.
- 12 **COVID-19 management declaration** means a declaration made
13 under section 118O.
- 14 **COVID-19 public health direction**, for part 7A (Check-in
15 information—COVID-19)—see section 123A.
- 16 **externally reviewable decision**, for division 6C.6 (Exemptions)—see
17 section 118ZC.
- 18 **external reviewer**, for division 6C.6 (Exemptions)—see
19 section 118ZC.
- 20 **internally reviewable decision** , for division 6C.6 (Exemptions)—see
21 section 118ZC.
- 22 **Ministerial direction**, for part 6C (Public health measures—
23 COVID-19)—see section 118R (1).
- 24 **Ministerial exemption guideline**, for part 6C (Public health
25 measures—COVID-19)—see section 118N.
- 26 **permitted purpose**, for part 7A (Check-in information—
27 COVID-19)—see section 123A.
- 28 **relevant decision-maker**, for division 6C.6 (Exemptions)—see
29 section 118ZC.

- 1 ***segregation or isolation direction***, for part 6C (Public health
2 measures—COVID-19)—see section 118U (1) (b).
- 3 ***statistical or summary information***, for part 7A (Check-in
4 information—COVID-19)—see section 123A.
- 5 ***use***, for part 7A (Check-in information—COVID-19)—see
6 section 123A.
- 7 ***vaccination direction***, for part 6C (Public health measures—
8 COVID-19)—see section 118ZM (1).
- 9 ***vaccination exemption guideline***, for part 6C (Public health
10 measures—COVID-19)—see section 118N.

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 COVID-19 Emergency Response**
4 **Act 2020**

5 **[1.1] Part 1 and part 2 headings**

6 *omit*

7 **[1.2] Sections 2C to 2G**

8 *omit*

9 **[1.3] Part 3 heading**

10 *omit*

11 **[1.4] Dictionary, note 2**

12 *omit*

- 13 • child
14 • penalty unit (see s 133)

15 **[1.5] Dictionary**

16 *omit the definitions of*

17 *authorised collector*

18 *authorised person*

19 *Check In CBR app*

20 *check-in information*

21 *contact tracing*

22 *court*

- 1 (b) if a COVID-19 management declaration has been made before
2 the end of the period mentioned in paragraph (a)—at the end of
3 a 12-month period during which no COVID-19 management
4 declaration or extension has been in force.

5 **[1.9] Section 13 (2), new definition of *COVID-19 management***
6 ***declaration***

7 *insert*

8 ***COVID-19 management declaration*** means a declaration made
9 under the [Public Health Act 1997](#), section 118O (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2 December 2021.

2 Notification

Notified under the [Legislation Act](#) on 2021.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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