

Australian Capital Territory

Public Health (Residential Aged Care Facilities) Emergency Direction 2021 (No 2)

Notifiable Instrument NI2021–56

made under the

Public Health Act 1997, s 120 (Emergency actions and directions)

1. Name of instrument

This instrument is the *Public Health (Residential Aged Care Facilities) Emergency Direction 2021 (No 2)*.

2. Commencement

This instrument commences at 11.59pm on 7 February 2021.

3. Public Health Emergency Direction

I, Dr Kerryn Coleman, Chief Health Officer, consider it necessary or desirable to alleviate the emergency declared under the *Public Health (Emergency) Declaration 2020 (No 1)* [NI2020-153] (the *declared emergency*) on 16 March 2020, to give the directions as set out in the schedule.

4. Duration

This Direction is in force for the period ending on the day the declared emergency (as extended or further extended) ends, unless it is earlier revoked.

5. Revocation

This instrument revokes and replaces the *Public Health (Residential Aged Care Facilities) Emergency Direction 2021 (No 1)* [NI2021-21].

Dr Kerryn Coleman
Chief Health Officer

4 February 2021

Public Health Emergency Direction

Public Health Act 1997

*Made under the Public Health Act 1997,
section 120 (Emergency actions and directions)*

I, Dr Kerryn Coleman, Chief Health Officer, consider it necessary or desirable to alleviate the emergency declared under the *Public Health (Emergency) Declaration 2020 (No 1)* [NI2020-153] (the **declared emergency**) on 16 March 2020, to give the directions as set out below. In order to limit the spread of coronavirus disease 2019 (**COVID-19**), caused by the novel coronavirus SARS-CoV-2, the purpose of this Direction is to make provision for restricted access to residential aged care facilities in order to limit the spread of COVID-19 within a particularly vulnerable population.

In making this Direction, I have had regard to relevant human rights and I am satisfied that the limitations imposed as a result of this Direction are both demonstrably justifiable in a free and democratic society and necessary to protect the ACT community from the serious public health risk posed by COVID-19.

PART 1 — RESTRICTED ACCESS TO RESIDENTIAL AGED CARE FACILITIES

Directions

1. A person must not enter, or remain on, the premises of a **residential aged care facility** in the Australian Capital Territory unless:
 - a. the person is a resident of the **residential aged care facility**; or
 - b. the person is an employee or contractor of the **residential aged care facility**; or
 - c. the person's presence at the premises is for the purposes of providing goods or services that are necessary for the effective operation of the **residential aged care facility**, whether the goods or services are provided for consideration or on a voluntary basis; or
 - d. the person's presence at the premises is for the purposes of providing health, medical or pharmaceutical goods or services to a resident of the **residential aged care facility**, whether the goods or services are provided for consideration or on a voluntary basis; or

- e. the person's presence at the premises is for the purposes of a **care and support visit** to a resident of the **residential aged care facility** on a particular day; or
 - f. the person's presence at the premises is for the purposes of a **welfare or wellbeing visit** to a resident of the **residential aged care facility** on a particular day; or
 - g. the person's presence at the premises is for the purposes of **end of life** support for a resident of the **residential aged care facility**; 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 in the person's capacity as a prospective resident of the **residential aged care facility**.
2. A person referred to in paragraph 1 (b), (c), (d), (e), (f), (g), (h) or (i) must not enter or remain on the premises of a **residential aged care facility** in the Australian Capital Territory if:
- a. during the 14 days immediately preceding the entry, the person arrived in Australia from a place outside Australia; or
 - b. during the 14 days immediately preceding the entry, the person had known contact with a person who has a confirmed case of COVID-19; or
 - c. the person has any symptoms that are associated with COVID-19, a temperature higher than 37.5 degrees celsius, or symptoms of acute respiratory infection.
3. A person referred to in paragraph 1 (b), (c), (d), (f), (g) or (i) must not enter or remain on the premises of a **residential aged care facility** in the Australian Capital Territory if the person does not have an up to date vaccination against influenza, unless such a vaccination is not available to the person because:
- a. of a documented medical contraindication to the influenza vaccine; or
- Note: For what a medical contraindication for the influenza is, see the Australian Immunisation Handbook, Australian Government Department of Health, Canberra, 2018, <https://immunisationhandbook.health.gov.au/>*
- b. the vaccination is not reasonably available to the person due to an issue with vaccine supply.
- Example: The vaccination will not be reasonably available to a person if it is after the 2020 vaccine expires on 28 February 2021 and before the time the 2021 vaccine becomes available.*



4. The **operator** of a **residential aged care facility** in the Australian Capital Territory must take all reasonable steps to ensure that a person does not enter or remain on the premises of the **residential aged care facility** if the person is prohibited from doing so under paragraph 1 or 2.

PART 2 – MATTERS RELEVANT TO THIS DIRECTION

Definitions

For the purposes of this Direction:

5. **Care and support visit**, in relation to a resident of a **residential aged care facility**, means a visit by:
 - a. a spouse,
 - b. family members or close relatives; or
 - c. friends or a carer.
6. **End of life**, in relation to a resident of a **residential aged care facility**:
 - a. means a situation where the resident's death is expected within days (including periods of 14 days or longer), or where the resident, with or without existing conditions, is at risk of dying from a sudden acute event;
 - b. does not mean a situation where a resident has an advanced, progressive, incurable condition, or general frailty and co-existing conditions, that means that the resident is expected to die within 12 months (except where the situation also falls within paragraph 6 (a)).
7. **Operator**, of a **residential aged care facility**, means a person who owns, controls or operates the **residential aged care facility**.
8. **Residential aged care facility** means 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* (Cwlth).
9. **Residential care subsidy** has the same meaning as in the *Aged Care Act 1997* (Cwlth).
10. **Welfare or wellbeing visit**, in relation to a resident of a **residential aged care facility**, means a visit made to one or more residents of a **residential aged care facility** for the purposes of providing welfare or wellbeing services .

Examples:

- *A legal practitioner visiting for the purpose of executing a will by a client who is a resident of the **residential aged care facility**.*



- *A hairdresser visiting for the purposes of providing haircuts to residents of the **residential aged care facility**.*
- Choirs, singers and musicians performing to residents *of the **residential aged care facility**.*
- Religious or spiritual services that cater to more than one resident at a time.

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Dr Kerryn Coleman

Chief Health Officer

4 February 2021

PENALTIES

Section 120 (4) of the *Public Health Act 1997* provides:

A person must not, without reasonable excuse, fail to comply with a direction under this section.

Maximum Penalty:

In the case of a natural person, \$8,000 (50 penalty units).

In the case of a body corporate, \$40,500 (50 penalty units).

In the case of a utility that is a body corporate, \$1,620,000 (2000 penalty units).

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