

Public Health (Aged Care Workers COVID-19 Vaccination) Emergency Direction 2021 (No 2)

Notifiable Instrument NI2021-669

made under the

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

1. Name of instrument

This instrument is the *Public Health (Aged Care Workers COVID-19 Vaccination) Emergency Direction 2021 (No 2)*.

2. Commencement

This instrument commences at 11:59pm on 11 November 2021.

3. Public Health Emergency Direction

I, Dr Kerry 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 the *Public Health (Aged Care Workers and Visitors COVID-19 Vaccination) Emergency Direction 2021 (No 3)* [NI2021-634].

Dr Kerry Coleman
Chief Health Officer

11 November 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.

The purpose of this Direction is to limit the spread of coronavirus disease 2019 (**COVID-19**), caused by the novel coronavirus SARS-CoV-2 within a particularly vulnerable population by restricting the potential that elderly people are exposed to unvaccinated workers within residential aged care facilities.

I consider the Directions are necessary or desirable to alleviate the COVID-19 Emergency on the grounds that:

- a. the Australian Capital Territory has experienced persistent community transmission since the outbreak of the Delta variant of **COVID-19** in the Australian Capital Territory on 12 August 2021;
- b. the Delta variant of **COVID-19** (labelled as a variant of concern) has proven highly transmissible both nationally and internationally, demonstrating that elimination of the virus is not feasible and community transmission will continue as the Australian Capital Territory seeks to mitigate the impact of this public health risk;
- c. there is a heightened risk of severe illness or death from transmission of **COVID-19** to the elderly due to age-related vulnerabilities;
- d. high vaccination rates reduce the likelihood of **COVID-19** outbreaks, providing protection against severe illness or death and a reduction in the risk of onward transmission of **COVID-19**.

In making these directions I have had regard to relevant human rights and I am satisfied that the limitations imposed as a result of these Directions 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 BY WORKERS

A. Directions

1. A **worker** at a **residential aged care facility** must not enter or remain on the premises of a **residential aged care facility** in the Australian Capital Territory unless:
 - a. if the **worker** is entering the premises on or after 29 October 2021 but before 1 December 2021, the worker has received at least one dose of a **COVID-19 vaccination**; and
 - b. if the **worker** is entering the premises on or after 1 December 2021, the worker has received two doses of a **COVID-19 vaccination**.
2. The **operator** of a **residential aged care facility** 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.
3. Paragraph 1 does not apply to a **permitted person**.

PART 2 – MATTERS RELEVANT TO THESE DIRECTIONS

A. Enforcement

4. An **authorised person** may ask a person for any information necessary to determine whether the person is subject to this Direction.
5. Any person must comply with any request made under paragraph 4 by an authorised person.
6. If a person fails to comply with this Direction, an **authorised person** may direct the person to do such things as are reasonably necessary to comply with this Direction including, upon request, to produce proof of identification to the **authorised person**.
7. A **worker** at a **residential aged care facility** must produce for inspection evidence acceptable to the Chief Health Officer that they have received at least one dose of a **COVID-19 vaccination** if:
 - a. directed to do so by an **authorised person**; or
 - b. required to do so by the **operator** of a **residential aged care facility**.
8. The **operator** of a **residential aged care facility** must:
 - a. take all reasonable steps to collect and maintain a record of the **vaccination status** of each **worker** at the **residential aged care facility**; and



- b. on request, provide any record mentioned in paragraph 8(a) to an **authorised person** as soon as practicable after the request is made; and
- c. not use or disclose any record referred to in paragraph 8(a) except:
 - i. as provided for in paragraph 7; or
 - ii. as permitted by any Territory or Commonwealth Law; or
 - iii. to the extent that the person expressly provided the person's vaccination status for a purpose other than these directions; and
- d. take reasonable steps to protect any record mentioned in paragraph 8 from:
 - i. misuse and loss; and
 - ii. unauthorised access, modification or disclosure.

Note: A record of vaccination status is a health record for the purposes of the *Health Records (Privacy and Access) Act 1997*. An operator will have obligations under the *Health Records (Privacy and Access) Act 1997* in relation to the record including collection, storage, use, access, and disclosure of the record.

- 9. To avoid any doubt, nothing in paragraph 8 prevents the **operator** of a **residential aged care facility** from providing information to the Commonwealth in accordance with any obligation to do so arising under the *Aged Care Act 1997* (Cth).

B. Exemptions

- 10. The Chief Health Officer may, in writing and subject to any conditions that the Chief Health Officer considers necessary, exempt a person from this Direction.
- 11. Without limiting paragraph 10, the Chief Health Officer or an authorised delegate may provide an exemption from this Direction to:
 - a. a person who is unable, due to a medical contraindication, to receive a **COVID-19 vaccination**; or
 - b. a person for whom a **COVID-19 vaccination** is not reasonably available.
- 12. If the Chief Health Officer exempts a person from this Direction, or a stated requirement under this Direction, that person must comply with the conditions of the exemption.

C. Definitions

For the purposes of these directions:

- 13. **Authorised person** means an authorised person under section 121 of the Public Health Act.



14. **Community visitors scheme** means an organised volunteer visitation program in respect of which a community visitors grant is payable under Part 5.6 of the *Aged Care Act 1997* (Cth).
15. **COVID-19** means the Coronavirus disease 2019, caused by the novel coronavirus SARS-CoV-2.
16. **COVID-19 vaccination** means the SARS-COV-2 (COVID-19) vaccine listed in the medicines and poisons standard (within the meaning of the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 15) schedule 4.
17. **Emergency services** means the ambulance service, the police, the fire and rescue service, the rural fire service or the SES.
18. **Operator**, of a **residential aged care facility**, means a person who owns, controls or operates the **residential aged care facility**.
19. **Permitted person** means a person described in Column 2 of the table in Attachment A.
20. **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* (Cth).
21. **Staff member** means a person mentioned in Column 1, Item 1 of the table in Attachment A.
22. **Vaccination status** means whether a **worker** has received a **COVID-19 vaccination**.
23. **Visitor** means a person who is a family member or friend of a resident of the **residential aged care facility**.



24. **Worker**, for a **residential aged care facility**, means a person described in Column 1 of the table in Attachment A.

Dr Kerryn Coleman
Chief Health Officer

11 November 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).

Attachment A – Workers and Permitted Persons

Item	Column 1 – Workers	Column 2 – Permitted Persons
1	<p>A staff member, meaning a person who:</p> <p>(a) has, or is reasonably likely to have, access to aged care residents; and is either</p> <p>i. employed, hired, retained or otherwise engaged directly by the operator of a residential aged care facility, to provide care or other services under the control of the residential aged care facility; or</p> <p>ii. is otherwise engaged by the residential aged care facility through a third party, for example an employment or recruitment agency, to provide care or other services under the control of the residential aged care facility.</p> <p><i>Example: people who constitute staff members of a residential aged care facility include:</i></p> <p>(a) <i>key personnel of the residential aged care facility; and</i></p> <p>(b) <i>employees and contractors of the residential aged care facility who provide care to aged care residents; and</i></p> <p>(c) <i>health professionals contracted by the residential aged care facility to provide care to aged care residents; and</i></p>	<p>Any of the following in-reach service providers or contractors, unless they are covered by item 1 Column 1 paragraph (a)(i):</p> <p>(a) a delivery driver or person providing one-off trade deliveries; or</p> <p>(b) a tradesperson; or</p> <p>(c) a hairdresser; or</p> <p>(d) a pastoral care worker or clergy including a resident's personal Minister / clergy / pastoral care worker; or</p> <p>(e) a librarian; or</p> <p>(f) a solicitor; or</p> <p>(g) an AN-ACC / ACAT / RAS assessor; or</p> <p>(h) an Aged Care Quality and Safety Commission Field staff member; or</p> <p>(i) an Aged Care Advocate delivering the National Aged Care Advocacy Program (Older Persons Advocacy Network Members).</p>



	<p>(d) <i>kitchen, laundry, garden and office personnel employed by the residential aged care facility; and</i></p> <p>(e) <i>consultants, trainers and advisors for accreditation support or systems improvement who are under the control of the residential aged care facility; and</i></p> <p>(f) <i>transport operators contracted by the residential aged care facility to collect aged care residents for outings.</i></p>	
2	<p>A volunteer, meaning a person who:</p> <p>(a) is not a staff member of the residential aged care facility; and</p> <p>(b) offers their services to and are engaged by the residential aged care facility; and</p> <p>(c) provides care or other services on the invitation of the residential aged care facility and not solely on the express or implied invitation of an aged care resident; and</p> <p>(d) has, or is reasonably likely to have, unsupervised access to aged care residents.</p>	<p>Any of the following people:</p> <p>(a) a person who visits a residential aged care facility as part of the Community Visitors Scheme; or</p> <p>(b) a visitor, including a participant of the Partners in Care Programme; or</p> <p>(c) volunteers engaged outside of the residential aged care facility.</p> <p><i>Example: volunteers engaged outside of a residential aged care facility include volunteers organised by home care providers, schools and playgroup associations.</i></p>

3	A student on Placement , meaning a person who attends a residential aged care facility for a vocational placement (within the meaning of s 12 of the <i>Fair Work Act 2009</i> (Cth)).	
4	A visiting Health Practitioner, meaning a health practitioner (as defined by s 5 of the <i>Health Practitioner Regulation National Law (ACT)</i>), who is not a staff member but who visits a residential aged care facility to provide care to aged care residents	An emergency services worker or volunteer, or an authorised person , who attends the residential aged care facility in the course of their official duties.
5	<p>A person who provides services in connection with any of the following Commonwealth aged care programs:</p> <ul style="list-style-type: none"> (a) the Transition Care Programme; (b) the Short Term Restorative Care Programme (c) the Multi-Purpose Services Programme; (d) the National Aboriginal and Torres Strait Islander Flexible Aged Care Programme; or (e) Respite care; <p>but only to the extent that those services are being provided at the residential aged care facility.</p>	

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