

Australian Capital Territory

Public Health (Health Care and Support Workers COVID-19 Vaccination) Emergency Direction 2022

Notifiable Instrument NI2022-171

made under the

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

1. Name of instrument

This instrument is the *Public Health (Health Care and Support Workers COVID-19 Vaccination) Emergency Direction 2022*.

2. Commencement

This instrument commences at 11:59 pm on 4 April 2022.

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 the *Public Health (Health Care and Support Workers COVID-19 Vaccination) Emergency Direction 2021* [N12021-613]

Dr Kerryn Coleman
Chief Health Officer

04 April 2022

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 this vulnerable population from being exposed to unvaccinated workers within health care facilities.

I consider the Direction is necessary or desirable to alleviate the **COVID-19** emergency on the grounds that:

- a. **COVID-19** poses a serious public health risk to the Australian Capital Territory;
- b. the World Health Organization declared the Omicron variant of **COVID-19** to be a variant of concern on 26 November 2021. In February 2022, the World Health Organization confirmed that the BA.2 sub-lineage of the Omicron variant should continue to be considered a variant of concern and monitored as a distinct sub-lineage of Omicron by public health authorities;
- c. the Omicron variant of **COVID-19** is highly transmissible and remains the dominant variant globally and in the Australian Capital Territory following its introduction on 3 December 2021;
- d. the Australian Capital Territory has experienced persistent community transmission since the original outbreak of **COVID-19** on 12 August 2021;
- e. There is a necessity to limit the impact of **COVID-19** in the Australian Capital Territory to mitigate the burden on the public health system, which includes continued monitoring and support for the public health response; and
- f. vaccination continues to be effective in reducing the risk of severe disease and death from **COVID-19** while it is acknowledged that it does not completely eliminate the risk of 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 HEALTH CARE FACILITIES BY WORKERS

A. Directions

1. A **worker** for a **health care facility** must not work at the premises of a **health care facility** for work in the Australian Capital Territory unless the **worker**:
 - a. has received a **primary course of vaccination**; or
 - b. has a **COVID-19 vaccine exemption**; or
 - c. was a **diagnosed person** within the previous 4 months.
2. The **operator** of a **health care facility** must take all reasonable steps to ensure that a **worker** does not work at the premises of the **health care facility** if:
 - a. the **worker** is prohibited from doing so under paragraph 1; or
 - b. the **operator** of a **health care facility** has been unable to obtain the person's **evidence of vaccination status**, or the person's **COVID-19 vaccine exemption**.
3. A **worker** must provide **evidence of vaccination status** or **evidence of exemption** if required to do so by the **operator** of a **health care facility**.
4. The **operator** of a **health care facility** must:
 - a. take all reasonable steps to collect and maintain **evidence of vaccination status** or **COVID-19 vaccine exemption** for each **worker** of the **health care facility** prior to a **worker** attending work at a **health care facility** under paragraph 1; and
 - b. on request, provide any **evidence of vaccination status** or **COVID-19 vaccine exemption** that the **operator** has collected and maintained to an **authorised person** as soon as practicable after the request is made; and
 - c. not use or disclose **evidence of vaccination status** or **evidence of exemption** except:
 - i. as is provided for by this Direction; or
 - ii. as permitted or required by any other law; or
 - iii. to the extent that the person expressly provided their **evidence of vaccination status** for a purpose other than these directions; and



- d. take all reasonable steps to protect any **evidence of vaccination status** or **evidence of exemption** that it holds from:
 - i. misuse and loss; and
 - ii. unauthorised access, modification or disclosure.

Note: **Evidence 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, disclosure, and destruction of the record.

PART 2 – MATTERS RELEVANT TO THESE DIRECTIONS

A. Enforcement

5. An **authorised person** may ask a person for any information necessary to determine whether the person is complying with this Direction.
6. Any person must comply with any request made under paragraph 5 by an authorised person.
7. 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**.

B. Exemptions

8. 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.
9. Without limiting paragraph 8, 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 vaccine**; or
 - b. a person for whom a **COVID-19 vaccine** is not reasonably available.
10. 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:

11. **Ad hoc volunteer** means a person who provides goods or services at a **healthcare facility** in a voluntary or unpaid capacity, and does so on a non-systematic basis.
12. **Ambulance officer** means:
 - a. a member of the ambulance service who works on an ambulance; or
 - b. a person who works on a patient transport vehicle for a provider approved to provide services in the ACT under s 62 of the *Emergencies Act 2004*.
13. **Authorised person** means an authorised person under section 121 of the *Public Health Act 1997*.
14. **Carer** means a person who provides personal care, support and assistance to another individual to support their daily activities of living and is not employed or otherwise engaged by the relevant **health care facility**.
15. **COVID-19** means the Coronavirus disease 2019, caused by the novel coronavirus SARS-CoV-2.
16. **COVID-19 test** means:
 - a. a rapid antigen test approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia to detect **COVID-19**; and
 - b. a reverse transcription polymerase chain reaction (PCR test) to diagnose **COVID-19**.
17. **COVID-19 vaccine** means a vaccine approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia as a vaccine against **COVID-19**.
18. **COVID-19 vaccine exemption** means:
 - a. an exemption issued by the Chief Health Officer pursuant to paragraph 8 of this Direction, except for an exemption which has been revoked or otherwise lapsed;
Note: A temporary exemption issued to a person will state the time period for which it remains in force.
 - b. a COVID-19 digital certificate issued by Services Australia which is current and displayed through the Medicare app or smartphone wallet, that states that a person is unable to receive a dose, or a further dose, of any **COVID-19 vaccine**;



- c. a printed version of the COVID-19 digital certificate referred to in paragraph 18(b);
 - d. an Australian Immunisation Register immunisation medical exemption (IM011) form which has been completed and signed by an eligible provider, but only while the person is waiting for the form to be processed by Services Australia.
19. **Day hospital** means a facility where a person is admitted for surgical or medical treatment and discharged on the same day.
20. **Diagnosed person** means a person who has undertaken a **COVID-19 test** and returned a positive result.
21. **Evidence of vaccination status**, for a **worker**, means evidence from the Australian Immunisation Register kept under the *Australian Immunisation Register Act 2015* (Cth), or any other evidence in the form approved by the Chief Health Officer, relating to the number of **COVID-19 vaccine** doses that a **worker** has received .

Example— An online immunisation history statement or **COVID-19** digital certificate from the Australian Immunisation Register
22. **Guardian** means someone who is a guardian, health attorney, power of attorney, carer, manager or any other person necessary to make decisions for a patient at a **health care facility**.
23. **Health care facility** means:
 - a. a **hospital**, including a **day hospital**; or
 - b. a hospice; or
 - c. all health care facilities operated by Canberra Health Services.
24. **Hospital** includes a public and private hospital.
25. **Operator**, for a **health care facility**, means the owner, occupier, or person in charge (however described) of the **health care facility**.
26. **Permitted person** means a person described in Column 2 of the table in Attachment A.



27. **Primary course of vaccination** means either one dose of the Janssen **COVID-19 vaccine** or at least two doses of any other **COVID-19 vaccine**.
28. **Worker**, for a **health care facility**, means a person described in Column 1 of the table in Attachment A and excludes a **permitted person**.

Dr Kerryn Coleman
Chief Health Officer

4 April 2022

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>Any person who provides health, medical, dental, nursing, pathology, pharmaceutical, social work or allied health services to a patient at the health care facility, including in a voluntary or unpaid capacity.</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> - A person employed as a nurse by a hospital; - A person employed by a third party who provides pharmaceutical services at a hospital on behalf of the owner of a hospital. 	<p>The following people:</p> <ul style="list-style-type: none"> a. An ad hoc volunteer; or b. A carer.
2	<p>A person who provides direct care to a Patient at the health care facility.</p>	
3	<p>A person who is a student and is on a placement at a health care facility as a formal part of their education.</p>	
4	<p>An ambulance officer.</p>	
5	<p>Any person who provides goods or services at a health care facility in a regular and systematic way, whether in a paid or voluntary capacity, including:</p> <ul style="list-style-type: none"> a. A person who is employed or engaged by a third party who provides goods and services at the health care facility, including a labour hire firm who provides staff to supplement the permanent workforce; b. A direct care worker, including a personal care worker; c. An administrative staff member including a person working in administration, information technology, management or reception services; 	<p>The following people:</p> <ul style="list-style-type: none"> a. A person who is a family member or friend of a patient; b. A carer; c. A guardian for a patient at a health care facility; d. An ad hoc volunteer; e. Any of the following in-reach service providers or contractors, unless they are employed or otherwise engaged, including in a regular and systematic way whether in a paid or voluntary capacity, by the owner or operator of a healthcare facility: <ul style="list-style-type: none"> i. A delivery driver or person providing one-off trade deliveries;

<ul style="list-style-type: none"> d. An ancillary staff member including a cleaner, a laundry staff member, a gardener, a person performing food preparation services, a security officer, store person, supply services person, and a person providing maintenance or construction services; e. A person providing lifestyle and social care, including a person providing music or art therapy f. A transport driver who transports patients of the health care facility; g. A person who provides commercial activities at premises that constitute a health care facility whether pursuant to any lease, licence or otherwise. h. A pastoral care worker or clergy who is engaged as a contractor by the health care facility. i. Members of the public providing regular volunteer services at the health care facility. 	<ul style="list-style-type: none"> ii. A tradesperson or contractor who attends to provide urgent maintenance or repair services, or otherwise on a non-systematic basis; iii. A patient's personal minister / pastoral care worker or clergy who is not engaged as a contractor by the health care facility and attends on an irregular basis; or iv. A legal practitioner.
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