

Australian Capital Territory

Public Health (Ministerial) COVID-19 Management Direction and Exemption 2022 (No 3)

Notifiable instrument NI2022-678

made under the

**Public Health Act 1997, s 118R (Ministerial directions—general) and s 118ZD
(Standing exemption)**

I make the Ministerial directions and standing exemptions as set out below.

Chris Steel MLA
Acting Minister for Health

Date 19 December 2022

Australian Capital Territory

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

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Part 1 Preliminary

1 Name of instrument

This instrument is the *Public Health (Ministerial) COVID-19 Management Direction and Exemption 2022 (No 3)*.

2 Commencement

This instrument commences on 29 December 2022.

3 Dictionary

The dictionary at the end of this instrument is part of this instrument.

4 Directions

I make the directions set out in parts 2 and 3 in relation to the *Public Health (COVID-19 Management) Declaration 2022*.

5 Standing exemptions

I exempt a person mentioned in part 4 from complying with the stated requirements of this instrument, subject to the stated conditions (if any) for the person.

6 Grounds for directions

- (1) I consider the directions are necessary to prevent or alleviate the risk presented by COVID-19 on the following grounds:
 - (a) COVID-19 poses a serious public health risk in the ACT;
 - (b) the World Health Organization declared the Omicron variant of COVID-19 to be a variant of concern on 26 November 2021;
 - (c) several WHO-designated variants of concern, including Omicron and multiple Omicron subvariants and recombinant variants, continue to be detected in the ACT;

- (d) there is increasing variety of new variants and subvariants being detected in the ACT. There is uncertainty on the potential impacts of these subvariants on the ACT community;
 - (e) the ACT has experienced persistent community transmission since the outbreak of COVID-19 on 12 August 2021;
 - (f) the weekly community case numbers in the ACT have increased since 16 October 2022, reflecting an ongoing COVID-19 wave;
 - (g) with continuing evidence of community transmission, it continues to be necessary to mitigate the burden on people who are most vulnerable to severe disease and the Territory's public health system, including by monitoring the level of ongoing transmission and disease burden in the community.
- (2) I am satisfied that the limitations imposed by the directions on human rights are reasonable and demonstrably justifiable in a free and democratic society.

7 Duration

This instrument remains in force until the end of 29 January 2023.

8 Consultation and public notice

I am satisfied that the Act, section 118T (1), (2) (b) and (3) does not apply to this remade Ministerial direction because the direction is not more restrictive than the direction being revoked under section 9.

9 Revocation

The *Public Health (Ministerial) COVID-19 Management Direction and Exemption 2022 (No 2)* (NI2022-510) is revoked.

Part 2 Face masks—individuals

10 When face masks to be worn—direction

A person must wear a face mask at all times the person is at a place mentioned in schedule 1, column 2 if the circumstances mentioned in column 3 apply to the person.

11 When face masks may be removed—direction

- (1) A person who is required to wear a face mask under this part may remove the mask in a circumstance described in schedule 2.
- (2) However, the person must resume wearing a face mask once the circumstance no longer applies to the person.

12 Wearing face masks—direction

- (1) A person required to wear a face mask under this part complies with the requirement if the person wears the face mask in a way that fits securely over the person's nose and mouth.
- (2) For this instrument, a *face mask* is a mask or other covering that is designed or made—
 - (a) to be worn over the nose and mouth; and
 - (b) to provide the wearer with protection from infection.
- (3) To remove any doubt, the following are not face masks:
 - (a) a face shield;
 - (b) a bandana, scarf or other item that is not designed or made for the purposes mentioned in subsection (2).

Part 3 Face masks—employers

13 Responsible people to require workers to wear face masks—direction

- (1) This section applies to a responsible person for a worker required to wear a face mask under part 2.
- (2) The responsible person must ensure that the worker complies with the requirement.
- (3) In this section:

responsible person, for a worker, means a person who engages the worker to carry out work in the person's business or undertaking.

worker means a person who carries out work in any capacity for a business or undertaking.

Part 4 Standing exemptions

14 Exemption for children under 12 years old

A child under 12 years old is exempt from complying with a requirement to wear a face mask under part 2.

15 Exemption for physical or mental condition

A person is exempt from complying with a requirement to wear a face mask under part 2 if the person has a physical or mental condition that makes wearing a face mask unsuitable.

Examples

- intellectual disability
- mental illness or disorder
- obstructed breathing
- serious skin condition

Schedule 1 When face masks to be worn

(see s 10)

| column 1 item | column 2 place | column 3 circumstance |
|------------------|--------------------------------|---|
| 1 | disability service setting | <ul style="list-style-type: none">when working at or visiting the place |
| 2 | hospital | <ul style="list-style-type: none">when working at or visiting the place |
| 3 | residential aged care facility | <ul style="list-style-type: none">when working at or visiting the place |
| 4 | residential care facility | <ul style="list-style-type: none">when working at or visiting the place |
| 5 | residential care setting | <ul style="list-style-type: none">when working at or visiting the place |

Schedule 2 When faces masks may be removed

(see s 11)

| column 1 item | column 2 circumstance |
|------------------|--|
| 1 | when consuming food, drink or medicine |
| 2 | when seated at food or drink premises, such as a cafe |
| 3 | when communicating with a person who is deaf or hearing impaired, and for whom visibility of the mouth is needed for communicating |
| 4 | when undertaking a work task if wearing a face mask would create a risk to health and safety |
| 5 | when working in an indoor area— (a) alone; or (b) at a workstation and at least 1.5m apart from other people |
| 6 | when necessary to deliver services or provide goods |
| 7 | in a vehicle alone or with other members of the person's household only |
| 8 | in an emergency |
| 9 | in a hospital when it is not required by any policy of the hospital |
| 10 | when verifying the person's identity |
| 11 | when otherwise required or authorised by law |
| 12 | when otherwise unsafe to wear a face mask |

Dictionary

(see s 3)

Note Terms used in this instrument have the same meaning that they have in the *Public Health Act 1997*.

disability service means a service—

- (a) funded under the National Disability Insurance Scheme established under the *National Disability Insurance Scheme Act 2013* (Cwlth); or
- (b) funded or provided by the Territory for the primary purpose of supporting people who have a disability.

Examples—par (b)

Special Needs Transport for students and the Flexible Bus Service provided by Transport Canberra

disability service setting means a place at which a disability service is provided.

face mask—see section 12 (2).

indoor area means a room, premises or other area that is substantially enclosed by a roof and walls (of solid construction and stretching from floor to ceiling), whether or not the roof or walls or any part of them are open or closed.

residential aged care facility means a residential facility that provides residential care within the meaning of the *Aged Care Act 1997* (Cwlth), section 41-3 to residents at the facility.

residential care facility means a residential accommodation facility for people who require frequent, close personal care, and are vulnerable to severe disease.

residential care setting means a place, including a person's residential premises, at which either of the following provides services:

- (a) an approved provider that provides home care within the meaning of the *Aged Care Act 1997* (Cwlth), section 45-3 or flexible care within the meaning of that Act, section 49-3;
- (b) a service provider of a Commonwealth-funded aged care service within the meaning of the *Aged Care Quality and Safety Commission Act 2018* (Cwlth), section 8, when delivering the service outside of a residential aged care facility.