



Australian Capital Territory

Public Health Amendment Act 2022

A2022-9

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Australian Capital Territory

Public Health Amendment Act 2022

A2022-9

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

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

1 Name of Act

This Act is the *Public Health Amendment Act 2022*.

2 Commencement

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

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

- (2) Sections 7 to 11 commence on the later of—
- (a) the day after this Act's notification day; and
 - (b) the day the *Public Health Amendment Act 2021*, section 3 commences.

3 Legislation amended

This Act amends the *Public Health Act 1997*.

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

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

insert

- (ca) an external reviewer appointed under section 118ZI (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 118ZO (1).

Ministerial direction—see section 118R (1).

Ministerial exemption guideline means a guideline made under section 118ZN (1).

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

vaccination direction—see section 118Z (1).

vaccination exemption guideline means a guideline made under section 118ZP (1).

Division 6C.2 COVID-19 management declaration

1180 COVID-19 management declaration—general

- (1) The Executive may make a declaration (a *COVID-19 management declaration*) if the Executive has reasonable grounds for believing that COVID-19 presents a serious risk to public health.
- (2) In forming a belief on reasonable grounds that COVID-19 presents a serious risk to public health, the Executive must—
 - (a) consider whether a material risk of substantial injury or prejudice to the health of people has happened or may happen because of COVID-19; and
 - (b) take into account the following:
 - (i) the number of people likely to be affected;
 - (ii) the location, immediacy and seriousness of the threat to the health of people;
 - (iii) the nature, scale and effect of any harm, illness or injury that may happen;
 - (iv) the availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce any risk to the health of people.

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

118P COVID-19 management declaration—duration

- (1) A COVID-19 management declaration—
 - (a) comes into force immediately after it is made, or at a later time stated in the declaration; and
 - (b) remains in force for the period, not longer than 90 days, stated in the declaration.
- (2) The Executive may extend the period for which a COVID-19 management declaration is to remain in force on 1 or more occasions, for the period, not longer than 90 days on each occasion, stated in the extension.
- (3) The chief health officer must, at least every 30 days during which a COVID-19 management declaration (including as extended) is in force, advise the Executive about the status of the risk presented by COVID-19.
- (4) A failure by the chief health officer to comply with subsection (3) does not affect the validity of the COVID-19 management declaration.
- (5) A COVID-19 management declaration must be revoked if the Executive decides, after taking into account any advice of the chief health officer, that the declaration is no longer justified.
- (6) An extension of a COVID-19 management declaration is a disallowable instrument.

118Q COVID-19 management declaration—consultation and public notice

- (1) In making or extending a COVID-19 management declaration, the Executive must ask for advice from the chief health officer about the proposed declaration or extension and take into account any advice given.
- (2) The Executive must, within 7 days after a COVID-19 management declaration or extension is notified, give public notice of any advice given under subsection (1).

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

- (3) Also, the Executive must, within 7 days after receiving advice from the chief health officer under section 118P (3), give public notice of the advice.
- (4) A failure by the Executive to comply with subsection (2) or (3) does not affect the validity of the COVID-19 management declaration.

Division 6C.3 Ministerial directions

118R Ministerial directions—general

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

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

118S Ministerial directions—duration

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

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

118T Ministerial directions—consultation and public notice

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

- (ii) consult the human rights commissioner about the direction or extension as soon as practicable after it is made.
- (3) The Minister must, within 7 days after the Ministerial direction or extension is notified, give public notice of the following:
 - (a) any advice given under subsection (1) (a);
 - (b) how the direction or extension is consistent with human rights.

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

- (4) Also, the Minister must, within 7 days after receiving advice from the chief health officer under section 118S (3), give public notice of the advice.
- (5) Subsections (1), (2) (b) and (3) do not apply to a Ministerial direction that remakes a Ministerial direction already in force if any change made by the remade direction—
 - (a) is minor or technical only; or
 - (b) does not result in the remade direction being more restrictive than the revoked direction.
- (6) If satisfied that subsections (1), (2) (b) and (3) do not apply to a remade Ministerial direction because of subsection (5), the Minister must include a statement to that effect in the remade direction.
- (7) A failure by the Minister to comply with subsection (2) (b), (3) or (6) does not affect the validity of the Ministerial direction.

Division 6C.4 Chief health officer directions

118U Chief health officer directions—general

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

118V Chief health officer directions—additional matters for segregation or isolation directions

- (1) A segregation or isolation direction, whether made in relation to a particular person or not, must not require a person to be segregated or isolated for more than 14 days on each occasion the direction applies to the person.

Example—occasion direction applies to a person

A direction requiring a person to quarantine at a place because they are a close contact of a person diagnosed with COVID-19 may apply to the person on each occasion they are identified as a close contact.

- (2) However, a segregation or isolation direction may require a person to be segregated or isolated for longer than 14 days if the person—
- (a) tests positive to COVID-19; or
 - (b) has not been tested for COVID-19 as required under the direction; or
 - (c) has not returned a negative result for COVID-19 when tested as required under the direction.
- (3) Despite any requirement under a segregation or isolation direction for a person to remain at a place, the person may leave the place in an emergency.

Examples—emergency

- 1 the person is required to evacuate the place in an emergency such as a fire
- 2 the person needs urgent medical treatment
- 3 the person is escaping family violence

- (4) A segregation or isolation direction may describe the circumstances of an emergency to which subsection (3) applies.
- (5) If the chief health officer makes a segregation or isolation direction in relation to a particular person, the chief health officer must give a copy of the direction to the public advocate.

118W Chief health officer directions—duration

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

118X Chief health officer directions—review

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

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

118Y Chief health officer directions—consultation and public notice

- (1) This section applies to a chief health officer direction or extension made other than in relation to a particular person.
- (2) In making the chief health officer direction or extension, the chief health officer must consult the human rights commissioner about whether the direction or extension is consistent with human rights.
- (3) However, if the chief health officer considers it is necessary for a direction or extension to be made urgently to alleviate an immediate or imminent risk, the chief health officer—
- (a) need not consult the human rights commissioner under subsection (2); but
- (b) must—
- (i) include a statement in the direction or extension that the human rights commissioner has not been consulted because the direction or extension is needed urgently; and
- (ii) consult the human rights commissioner about the direction or extension as soon as practicable after it is made.
- (4) The chief health officer must, within 7 days after a chief health officer direction or extension is notified, give public notice of how the direction or extension is consistent with human rights.

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

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

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

Division 6C.5 Vaccination directions

118Z Vaccination directions—general

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

- (c) a requirement for the provision of information (including information about the identity of a person), or the production or keeping of documents.

Note Power to make a vaccination direction includes power to make different provision in relation to different matters or different classes of matters, and to make a direction that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) However, the Executive may only make a vaccination direction if satisfied it is necessary to prevent or alleviate the risk presented by COVID-19.
- (3) A vaccination direction—
 - (a) must include a statement about the grounds on which the Executive believes the direction is necessary to prevent or alleviate the risk of COVID-19; and
 - (b) must state the medical grounds (if any) on which the director-general may exempt a person from complying with the direction; and
 - (c) may state other grounds on which the director-general may exempt a person from complying with the direction.
- (4) Any ground stated under subsection (3) (b) or (c) must comply with the requirements (if any) under a vaccination exemption guideline in relation to the ground.
- (5) A vaccination direction must not prevent or limit a person from being able to obtain an essential good or service.

Examples—essential good or service

groceries, medical treatment

- (6) Nothing in subsection (5) means a person who provides an essential good or service, and who would otherwise be required to be vaccinated under a vaccination direction, need not be vaccinated.
- (7) A vaccination direction is a disallowable instrument.

118ZA Vaccination directions—duration

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

118ZB Vaccination directions—consultation and public notice

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

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

Division 6C.6 Exemptions

Subdivision 6C.6.1 Preliminary

118ZC Definitions—div 6C.6

In this division:

affected person means—

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

- (b) in relation to a standing exemption—a person to whom the exemption applies; and
- (c) in relation to an internally reviewable decision—a person in relation to whom an internally reviewable decision has been made; and
- (d) in relation to an externally reviewable decision—a person in relation to whom an externally reviewable decision has been made.

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

- (a) a Ministerial direction to prevent or limit entry into the ACT, or a standing exemption from the direction, where the decision relates to an application to exempt a person from the direction or a condition to which the standing exemption is subject—
 - (i) on medical grounds; or
 - (ii) on compassionate grounds; or
- (b) a segregation or isolation direction.

external reviewer means a person appointed as an external reviewer under section 118ZI (1).

internally reviewable decision means—

- (a) a decision under section 118ZF (3) to give an exemption subject to conditions; or
- (b) a decision under section 118ZF (4) or (5) not to give an exemption.

relevant decision-maker means—

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

- (b) in relation to an application to exempt a person from a chief health officer direction—the chief health officer; and
- (c) in relation to an application to exempt a person from a vaccination direction—the director-general.

standing exemption—see section 118ZD (1).

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

118ZD Standing exemption

- (1) The relevant decision-maker for a Ministerial direction or chief health officer direction may exempt a class of people from complying with a requirement of the direction (a *standing exemption*).

Note Power to make a standing exemption includes power to make different provision in relation to different matters or different classes of matters, and to make an exemption that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (2) A standing exemption may be subject to conditions.
- (3) A standing exemption may be made on the relevant decision-maker's own initiative or the request of a person.
- (4) In making a standing exemption, the relevant decision-maker must comply with the requirements (if any) of—
 - (a) for a standing exemption from a Ministerial direction—a Ministerial exemption guideline; or
 - (b) for a standing exemption from a chief health officer direction—a chief health officer exemption guideline.
- (5) A standing exemption is a notifiable instrument.

118ZE Exemptions—application

- (1) An affected person in relation to a Ministerial direction or chief health officer direction may apply to the relevant decision-maker to exempt the person from complying with a requirement of the direction.
- (2) An affected person in relation to a standing exemption may apply to the relevant decision-maker to exempt the person from complying with a condition to which a standing exemption is subject.
- (3) An application may be made on 1 or more of the following grounds:
 - (a) medical grounds;
 - (b) compassionate grounds;
 - (c) the grounds (if any) stated in the relevant direction or standing exemption.
- (4) The ability to rely on a ground mentioned in subsection (3) (a) or (b) is subject to the limitations on the ground (if any) stated in—
 - (a) for an application in relation to a Ministerial direction or standing exemption from a Ministerial direction—the direction or a Ministerial exemption guideline; or
 - (b) for an application in relation to a chief health officer direction or standing exemption from a chief health officer direction—the direction or a chief health officer exemption guideline.
- (5) An application must—
 - (a) be in writing; and
 - (b) state the grounds on which the exemption is sought.
- (6) The relevant decision-maker may, in writing, request the affected person give the decision-maker additional information the decision-maker reasonably requires to decide the application.

- (7) If the affected person does not comply with a request under subsection (6) within 7 days after the day the request is made, the relevant decision-maker may refuse to consider the application further.

118ZF Exemptions—decision

- (1) On application under section 118ZE (1), the relevant decision-maker may exempt an affected person in relation to a Ministerial direction or a chief health officer direction from complying with a requirement in the direction if satisfied that the exemption is appropriate.
- (2) On application under section 118ZE (2), the relevant decision-maker may exempt an affected person in relation to a standing exemption from complying with a condition to which the exemption is subject.
- (3) An exemption may be subject to conditions.
- (4) If the relevant decision-maker decides not to give an exemption, the decision-maker must tell the affected person in writing of the decision as soon as possible, and not later than—
- (a) for an application for an exemption from a segregation or isolation direction—3 days after—
 - (i) the day the application is made; or
 - (ii) if the decision-maker requests additional information under section 118ZE (6)—the day the affected person gives the additional information to the decision-maker; or
 - (b) in any other case—5 days after—
 - (i) the day the application is made; or
 - (ii) if the decision-maker requests additional information under section 118ZE (6)—the day the affected person gives the additional information to the decision-maker.
- (5) Failure to comply with subsection (4) is taken to be a decision not to give an exemption.

- (6) In making a decision under this section, the relevant decision-maker must comply with the requirements (if any) of—
 - (a) for an application in relation to a Ministerial direction or standing exemption from a Ministerial direction—a Ministerial exemption guideline; or
 - (b) for an application in relation to a chief health officer direction or standing exemption from a chief health officer direction—a chief health officer exemption guideline.
- (7) If the relevant decision-maker makes an internally reviewable decision, the decision-maker must tell the affected person in writing that they may apply for internal review of the decision.
- (8) Failure to comply with subsection (7) does not affect the validity of the decision.

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

118ZG Internal review—application

- (1) An affected person in relation to an internally reviewable decision may apply to the relevant decision-maker for internal review of the decision.
- (2) An application must—
 - (a) be in writing; and
 - (b) set out the grounds on which internal review of the decision is sought.
- (3) The making of the application does not affect the operation of the internally reviewable decision.

118ZH Internal review—decision

- (1) On application under section 118ZG, the relevant decision-maker must arrange for someone else (an *internal reviewer*) to review the internally reviewable decision.
- (2) The internal reviewer must review the internally reviewable decision and—
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) revoke the decision and make a new decision.
- (3) The internal reviewer must give written notice of their decision under subsection (2) as soon as possible, and not later than—
 - (a) for an internally reviewable decision in relation to a segregation or isolation direction—3 days after the day the application for internal review is made; or
 - (b) in any other case—5 days after the day the application for internal review is made.
- (4) Failure to comply with subsection (3) is taken to be a decision to confirm the internally reviewable decision.
- (5) In making a decision under this section, the internal reviewer must comply with the requirements (if any) of—
 - (a) for a review in relation to a Ministerial direction—a Ministerial exemption guideline; or
 - (b) for a review in relation to a chief health officer direction—a chief health officer exemption guideline.
- (6) If the internal reviewer makes an externally reviewable decision, the internal reviewer must tell the affected person in writing that they may apply for external review of the decision.

- (7) Failure to comply with subsection (6) does not affect the validity of the externally reviewable decision.

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

118ZI External reviewer

- (1) The Minister—
- (a) may appoint 1 or more external reviewers; and
 - (b) must ensure at least 1 external reviewer is appointed while a Ministerial direction or chief health officer direction is in force.

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

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

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

- (3) The [Legislation Act](#), division 19.3.3 (Appointments—Assembly consultation) does not apply to an appointment of an external reviewer.
- (4) For this section, each of the following are *judicially qualified*:
- (a) a judge or retired judge;
 - (b) a magistrate or retired magistrate;
 - (c) a person who has been a legal practitioner for not less than 5 years.

118ZJ External review—application

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

118ZK External review—decision

- (1) On application under section 118ZJ, the external reviewer must review the externally reviewable decision against the following (the *relevant requirements*):
 - (a) the requirements in relation to exemptions under this division;
 - (b) the requirements (if any) of—
 - (i) for a review in relation to a Ministerial direction—a Ministerial exemption guideline; or
 - (ii) for a review in relation to a chief health officer direction—a chief health officer exemption guideline.
- (2) After completing the review, the external reviewer must—
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) revoke the decision and make a new decision; or
 - (d) refer the decision to the relevant-decision-maker for the decision to be remade.

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

Subdivision 6C.6.5 Exemptions—vaccination directions— internal review

118ZL Internal review—vaccination direction—application

- (1) This section applies if—
 - (a) a person makes an application for an exemption from complying with a requirement of a vaccination direction in accordance with a vaccination exemption guideline; and
 - (b) the relevant decision-maker makes either of the following decisions (an *internally reviewable decision*):
 - (i) not to exempt the person;
 - (ii) exempt the person subject to conditions.
- (2) The person may apply to the relevant decision-maker for internal review of the decision.
- (3) An application may only be made on a ground stated in the vaccination direction.
- (4) An application must—
 - (a) be in writing; and
 - (b) set out the grounds on which internal review of the decision is sought.
- (5) The making of the application does not affect the operation of the internally reviewable decision.

118ZM Internal review—vaccination direction—decision

- (1) On application under section 118ZL, the relevant decision-maker must arrange for someone else (an *internal reviewer*) to review the internally reviewable decision.
- (2) The internal reviewer must review the internally reviewable decision and—
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) revoke the decision and make a new decision.
- (3) The internal reviewer must give written notice of their decision under subsection (2) as soon as possible, and not later than 5 days, after the day the application for internal review is made.
- (4) Failure to comply with subsection (3) is taken to be a decision to confirm the internally reviewable decision.
- (5) In making a decision under this section, the internal reviewer must comply with the requirements (if any) of a vaccination exemption guideline.
- (6) In this section:
internally reviewable decision—see section 118ZL (1) (b).

Subdivision 6C.6.6 Exemption guidelines**118ZN Exemptions—Ministerial directions—guidelines**

- (1) The Minister—
 - (a) may make guidelines about applying for an exemption, and exempting a person, from a requirement to comply with a Ministerial direction; and
 - (b) must ensure guidelines mentioned in paragraph (a) are in force while a Ministerial direction is in force.

- (2) Without limiting subsection (1), a guideline may be made about the following:
- (a) making and considering an application for an exemption;
 - (b) making and considering an application for review of an internally reviewable decision;
 - (c) making and considering an application for review of an externally reviewable decision;
 - (d) the grounds on which, or any limitations on the grounds on which, an exemption may be given.
- (3) In making a guideline, the Minister must—
- (a) ask for advice from the chief health officer and take into account any advice given; and
 - (b) consult the human rights commissioner about whether the guideline is consistent with human rights.
- (4) The Minister must, within 7 days after a guideline is notified, give public notice of the following:
- (a) any advice given under subsection (3) (a);
 - (b) how the guideline is consistent with human rights.
- Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- (5) A failure to comply with subsection (4) does not affect the validity of the guideline.
- (6) A guideline is a notifiable instrument.

118ZO Exemptions—chief health officer directions—guidelines

- (1) The chief health officer—
 - (a) may make guidelines about applying for an exemption, and exempting a person, from a requirement to comply with a chief health officer direction; and
 - (b) must ensure guidelines mentioned in paragraph (a) are in force while a chief health officer direction is in force.
- (2) Without limiting subsection (1), a guideline may be made about the following:
 - (a) making and considering an application for an exemption;
 - (b) making and considering an application for review of an internally reviewable decision;
 - (c) making and considering an application for review of an externally reviewable decision;
 - (d) the grounds on which, or any limitations on the grounds on which, an exemption may be given.
- (3) In making a guideline, the chief health officer must consult the human rights commissioner about whether the guideline is consistent with human rights.
- (4) The chief health officer must, within 7 days after a guideline is notified, give public notice of how the guideline is consistent with human rights.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- (5) A failure to comply with subsection (4) does not affect the validity of the guideline.
- (6) A guideline is a notifiable instrument.

118ZP Exemptions—vaccination directions—guidelines

- (1) The Executive—
 - (a) may make guidelines about applying for a person to be exempt, and exempting a person, from a requirement to comply with a vaccination direction; and
 - (b) must ensure guidelines mentioned in paragraph (a) are in force while a vaccination direction is in force.
 - (2) In making a guideline, the Executive must—
 - (a) ask for advice from the chief health officer and take into account any advice given; and
 - (b) consult the human rights commissioner about whether the guideline is consistent with human rights.
 - (3) The Executive must, within 7 days after a guideline is notified, give public notice of the following:
 - (a) any advice given under subsection (2) (a);
 - (b) how the guideline is consistent with human rights.
- Note* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- (4) A failure to comply with subsection (3) does not affect the validity of the guideline.
 - (5) A person applying for, considering or otherwise taking action in relation to an exemption from a requirement to comply with a vaccination direction must comply with the requirements (if any) in a guideline in relation to the action.
 - (6) A guideline is a notifiable instrument.

Division 6C.7 Miscellaneous

118ZQ Offence—failure to comply with direction

- (1) A person commits an offence if—
 - (a) a direction made under this part is in force; and
 - (b) the person fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1) (a).
- (3) Subsection (1) does not apply if a person has a reasonable excuse for failing to comply with the direction.

Note 1 The defendant has an evidential burden in relation to the matter mentioned in s (3) (see [Criminal Code](#), s 58).

Note 2 The [Criminal Code](#) also sets out circumstances in which a person is not criminally responsible for an offence, including in a sudden or extraordinary emergency (see s 41).

- (4) Before requiring a person to comply with a direction made under this part, an authorised officer must, if reasonably practicable, warn the person that failure to comply with the direction without a reasonable excuse is an offence.
- (5) Failure by an authorised officer to comply with subsection (4) does not affect—
 - (a) the liability of the offender to be prosecuted for the offence; or
 - (b) an infringement notice given to the offender for the offence.

118ZR Directions—cautioning requirements

- (1) Subsection (2) applies if a police officer believes a person who is 18 years old or older has committed an offence against section 118ZQ (1) in relation to a failure to comply with a direction made under this part.
- (2) Before questioning the person about whether they have a reasonable excuse for not complying with the direction, the police officer may warn them that they do not have to answer the question or do anything but that anything they say or do may be used in evidence.

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

- (3) Subsection (4) applies if a police officer—
 - (a) gives a warning under subsection (2); and
 - (b) intends to—
 - (i) serve an infringement notice on the person in relation to an offence against section 118ZQ (1); or
 - (ii) take no further action against the person in relation to the offence.
- (4) The [Crimes Act 1900](#), section 187 (1) does not apply to the relevant infringement notice offence in relation to the questioning mentioned in subsection (2).

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

118ZS Compensation—pt 6C

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

118ZT Consideration of Ministerial and chief health officer directions by standing committee of Assembly

(1) The relevant standing committee must report to the Legislative Assembly about human rights issues raised by Ministerial directions and chief health officer directions.

(2) In this section:

relevant standing committee means—

- (a) the standing committee of the Legislative Assembly nominated by the Speaker for this section; or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the consideration of legal issues.

118ZU Oversight functions unaffected

(1) Nothing in this part is intended to interfere with the exercise of a function by an entity that involves visiting a place of detention under another territory law.

Examples—other territory laws

- *Auditor-General Act 1996*
- *Children and Young People Act 2008*
- *Corrections Management Act 2007*
- *Inspector of Correctional Services Act 2017*
- *Integrity Commission Act 2018*
- *Mental Health Act 2015*
- *Mental Health (Secure Facilities) Act 2016*
- *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*
- *Official Visitor Act 2012*

(2) However, a person visiting a place of detention must comply with any chief health officer direction or vaccination direction that applies to the place or the person.

118ZV Expiry—pt 6C

(1) The following provisions expire 18 months after the day this part commences:

- (a) section 17 (1) (ca);
- (b) this part;
- (c) the relevant definitions.

(2) In this section:

relevant definitions mean the following definitions in the dictionary:

- (a) *affected person*;
- (b) *chief health officer direction*;
- (c) *chief health officer exemption guideline*;
- (d) *externally reviewable decision*;
- (e) *internally reviewable decision*;
- (f) *Ministerial direction*;
- (g) *Ministerial exemption guideline*;
- (h) *relevant decision-maker*;
- (i) *segregation or isolation direction*;
- (j) *standing exemption*;
- (k) *vaccination direction*.

**6 Emergency declarations
Section 119**

omit

COVID-19 declaration

substitute

COVID-19 emergency declaration

7 Section 119 (7)

omit

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

omit

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

omit

COVID-19 declaration

substitute

COVID-19 emergency declaration

**10 COVID-19 directions—expiry
Section 120D (1)**

omit

COVID-19 declaration

substitute

COVID-19 emergency declaration

11 Section 120D (2), definition of COVID-19 declaration

omit

**12 Compensation
Section 122 (3) (c)**

omit

COVID-19 declaration

substitute

COVID-19 emergency declaration

13 Section 122 (4), definition of COVID-19 declaration

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*.
- (iii) information relating to the registration of a business, activity or undertaking to use the Check In CBR app; or
 - (iv) statistical or summary information.

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

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

Examples—direct contact

- 1 living in the same house as a person with COVID-19
- 2 having sat near a person who may have been a source of COVID-19 infection during the screening of a movie at a cinema

Examples—indirect contact

- 1 having attended a takeaway coffee shop during a period of time that a person with COVID-19 also attended the shop
- 2 having attended the same screening of a movie at a cinema as, although not sitting near, a person with COVID-19

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

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

COVID-19 public health direction means a direction—

- (a) made under part 6C (Public health measures—COVID-19); or
- (b) given by the chief health officer under section 120 in relation to a COVID-19 emergency declaration.

permitted purpose means any of the following:

- (a) undertaking contact tracing;
- (b) assisting an entity administering a law of a State that provides for contact tracing to undertake contact tracing, including sharing information with the entity;
- (c) another purpose related to undertaking contact tracing;

Examples

- 1 to assess the integrity or security of check-in information
 - 2 to provide support services in relation to the Check In CBR app
- (d) a purpose mentioned in section 123D (2);
 - (e) deriving statistical or summary information.

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

use, in relation to information includes—

- (a) communicate, publish or otherwise do something to disclose the information; and
- (b) make a record of the information.

123B Collection of check-in information

- (1) An authorised collector must not collect information at a place that, on collection, would be check-in information other than in 1 or both of the following ways:
 - (a) through the direct entry of the information into the Check In CBR app;
 - (b) in a way permitted under a COVID-19 public health direction, including any exemption given under a direction.

Maximum penalty: 40 penalty units.

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

123C Use of check-in information

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

Maximum penalty: 40 penalty units.

- (2) Subsection (1) does not apply to a person who uses check-in information for any of the following purposes:
 - (a) collecting information in accordance with section 123B;
 - (b) for a purpose mentioned in section 123D (2);
 - (c) making a record of, disclosing (including to an authorised person on request) or otherwise using the information in accordance with a COVID-19 public health direction.
- (3) An offence against subsection (1) is a strict liability offence.
- (4) An authorised person may use check-in information only for a permitted purpose.
- (5) In this section:
authorised person—see section 121 (4).

123D Check-in information not admissible in court

- (1) Check-in information is not admissible in evidence in a court proceeding, other than in accordance with subsection (2).
- (2) Check-in information may be used for the purpose of investigating or prosecuting—
 - (a) an offence against this part; or
 - (b) an offence for failing to comply with a COVID-19 public health direction in relation to contact tracing; or
 - (c) an offence for giving false or misleading information in compliance or purported compliance with a COVID-19 public health direction in relation to contact tracing.

123E Protecting and destroying check-in information

- (1) An authorised collector must take reasonable steps to protect check-in information held by the authorised collector—
 - (a) from misuse, interference or loss; and
 - (b) from unauthorised access, modification or disclosure.Maximum penalty: 5 penalty units.
- (2) An authorised collector must take reasonable steps to destroy check-in information held by the authorised collector—
 - (a) if the information is used for a purpose mentioned in section 123D (2)—as soon as reasonably practicable after the authorised collector no longer needs the information for the purpose; or
 - (b) in any other case—at the end of the contact tracing period.

Maximum penalty: 5 penalty units.

-
- (3) The director-general must take reasonable steps to destroy check-in information held by the directorate—
- (a) if the information is used for a permitted purpose—as soon as reasonably practicable after the director-general no longer needs the information for the purpose; or
 - (b) in any other case—at the end of the contact tracing period.
- (4) In this section:
- contact tracing period* means—
- (a) a period of 28 days beginning on the day the check-in information is collected; or
 - (b) if another period is prescribed by regulation—the other period.

123F Expiry—pt 7A

- (1) This part and the relevant definitions expire on the later of the following:
- (a) at the end of a 12-month period during which no COVID-19 emergency declaration has been in force;
 - (b) if a COVID-19 management declaration has been made before the end of the period mentioned in paragraph (a)—at the end of a 12-month period during which no COVID-19 management declaration has been in force.
- (2) In this section:
- relevant definitions* means the following definitions in the dictionary:
- (a) *authorised collector*;
 - (b) *Check In CBR app*;
 - (c) *check-in information*;
 - (d) *contact tracing*;

- (e) *court*;
- (f) *COVID-19 public health direction*;
- (g) *permitted purpose*;
- (h) *statistical or summary information*;
- (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).

chief health officer exemption guideline, for part 6C (Public health measures—COVID-19)—see section 118N.

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

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

COVID-19 means the coronavirus disease 2019 (COVID-19) caused by the novel coronavirus SARS-CoV-2.

COVID-19 emergency declaration means a declaration made under section 119 because of the coronavirus disease 2019 (COVID-19) caused by the novel coronavirus SARS-CoV-2.

COVID-19 management declaration means a declaration made under section 118O.

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

externally reviewable decision, for division 6C.6 (Exemptions)—see section 118ZC.

external reviewer, for division 6C.6 (Exemptions)—see section 118ZC.

internally reviewable decision, for division 6C.6 (Exemptions)—see section 118ZC.

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

Ministerial exemption guideline, for part 6C (Public health measures—COVID-19)—see section 118N.

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

relevant decision-maker, for division 6C.6 (Exemptions)—see section 118ZC.

segregation or isolation direction, for part 6C (Public health measures—COVID-19)—see section 118U (1) (b).

standing exemption—see section 118ZD (1).

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

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

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

vaccination exemption guideline, for part 6C (Public health measures—COVID-19)—see section 118N.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 COVID-19 Emergency Response Act 2020

[1.1] Part 1 and part 2 headings

omit

[1.2] Sections 2C to 2G

omit

[1.3] Part 3 heading

omit

[1.4] Dictionary, note 2

omit

- child
- penalty unit (see s 133)

[1.5] Dictionary

omit the definitions of

authorised collector

authorised person

Check In CBR app

check-in information

contact tracing

court

permitted purpose

public health direction

statistical or summary information

use

Part 1.2 **Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020**

[1.6] Section 7

after

applies to an offence against the *Public Health Act 1997*,

insert

section 118ZQ (1) or

[1.7] Section 8

after

for an offence against the *Public Health Act 1997*,

insert

section 118ZQ (1) or

[1.8] Section 13 (1)

substitute

- (1) This regulation expires on the later of the following:
 - (a) at the end of a 12-month period during which no COVID-19 emergency has been in force;

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

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

insert

COVID-19 management declaration means a declaration made 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 17 June 2022.

3 Republications of amended laws

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

I certify that the above is a true copy of the Public Health Amendment Bill 2022, which originated in the Legislative Assembly as the Public Health Amendment Bill 2021 (No 2) and was passed by the Assembly on 7 June 2022.

Clerk of the Legislative Assembly

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