

2021

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Public Health Amendment Bill 2021

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Public Health Amendment Bill 2021

A Bill for

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 2021*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Public Health Act 1997*.

Note This Act also amends the *Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020* (see sch 1).

**4 Emergency actions and directions
New section 120 (4A)**

insert

(4A) Subsection (4) does not apply to a COVID-19 direction.

Note See s 120B for an offence for failing to comply with a COVID-19 direction.

5 New section 120 (9)

insert

(9) In this section:

COVID-19 declaration—see section 119 (7).

COVID-19 direction means a direction given under this section while a COVID-19 declaration is in force.

given, in relation to a COVID-19 direction to which section 120A applies—see section 120A (3).

6 New sections 120A to 120D*insert***120A COVID-19 directions—notification requirement**

(1) This section applies to a COVID-19 direction given—

(a) on or after the commencement day; and

(b) other than to a particular person.

(2) The COVID-19 direction is a notifiable instrument.

(3) In this section:

commencement day means the day the *Public Health Amendment Act 2021*, section 3 commences.

COVID-19 direction—see section 120 (9).

given—a COVID-19 direction to which this section applies is *given* when it is signed by the chief health officer.

120B COVID-19 directions—offence

(1) A person commits an offence if—

(a) a COVID-19 direction 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 COVID-19 direction.

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

(4) For subsection (1), it does not matter if the direction was given before, on or after the commencement day.

- 1 (5) Before requiring a person to comply with a COVID-19 direction, an
2 authorised officer must, if reasonably practicable, warn the person
3 that failure to comply with the direction without a reasonable excuse
4 is an offence.
- 5 (6) Failure by an authorised officer to comply with subsection (5) does
6 not affect—
- 7 (a) the liability of the offender to be prosecuted for the offence; or
8 (b) an infringement notice given to the offender for the offence.
- 9 (7) In this section:
- 10 *commencement day*—see section 120A (3).
11 *COVID-19 direction*—see section 120 (9).
12 *given*, in relation to a COVID-19 direction to which section 120A
13 applies—see section 120A (3).
- 14 **120C COVID-19 directions—cautioning requirements**
- 15 (1) Subsection (2) applies if a police officer believes a person who is
16 18 years old or older has committed an offence against
17 section 120B (1) in relation to a failure to comply with a COVID-19
18 direction, regardless of whether the direction was given before, on or
19 after the commencement day.
- 20 (2) Before questioning the person about whether they have a reasonable
21 excuse for not complying with the COVID-19 direction, the police
22 officer may warn them that they do not have to answer the question
23 or do anything but that anything they say or do may be used in
24 evidence.
- 25 *Note* The [Legislation Act](#), s 170 deals with the application of the privilege
26 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 120B (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.

(5) In this section:

COVID-19 direction—see section 120 (9).

given, in relation to a COVID-19 direction to which section 120A applies—see section 120A (3).

infringement notice—see the *Magistrates Court Act 1930*, section 117.

relevant infringement notice offence means an offence against section 120B (1) that is declared by regulation under the *Magistrates Court Act 1930* to be an offence to which that Act, part 3.8 applies.

- 1 **120D COVID-19 directions—expiry**
- 2 (1) This section and the following sections expire at the end of a
- 3 12-month period during which no COVID-19 declaration has been in
- 4 force:
- 5 (a) section 120 (4A);
- 6 (b) section 120 (9);
- 7 (c) sections 120A to 120C.
- 8 (2) In this section:
- 9 *commencement day*—see section 120A (3).
- 10 *COVID-19 declaration*—see section 119 (7).

**Schedule 1 Magistrates Court (Public
Health (COVID-19) Infringement
Notices) Regulation 2020—
Consequential amendments**

(see s 3)

[1.1] Section 7

substitute

7 Infringement notice offences

The *Magistrates Court Act 1930*, part 3.8 applies to an offence against the *Public Health Act 1997*, section 120B (1), but only if the offence is committed by—

- (a) for an offence for failing to comply with a face mask direction—
a person who is 16 years old or older; or
- (b) in any other case—a person who is 18 years old or older.

[1.2] Section 8 (1)

omit

section 120 (4)

substitute

section 120B (1)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 November 2021.

2 Notification

Notified under the [Legislation Act](#) on 2021.

3 Republications of amended laws

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

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