

Public Health (COVID-19 Management) Declaration 2022

Disallowable instrument DI2022–224

made under the

Public Health Act 1997, s118O (COVID-19 Management Declaration – General)

EXPLANATORY STATEMENT

Background

On 11 March 2020 the Director General of the World Health Organisation declared the novel coronavirus SAR-CoV-2 (COVID-19) outbreak a global pandemic and requested that every country urgently take necessary measures to activate and scale up emergency response systems.

On 16 March 2020, the ACT Minister for Health declared a public health emergency under the *Public Health Act 1997* (the Act) in response to the risks posed by the novel coronavirus SAR-CoV-2 (COVID-19). This declaration has been extended numerous times, reflecting the serious ongoing and changing nature of the pandemic.

On 30 September 2022, the public health emergency declaration was revoked by the Minister for Health. On 30 September 2022, the Executive declared that COVID-19 continues to present a serious risk to public health and the COVID-19 management declaration was made to enable public health measures to be implemented to prevent or alleviate the serious risk to public health.

Overview

The Public Health (COVID-19 Management) Declaration (the Declaration) is made under section 118O of the *Public Health Act 1997* as the Executive has reasonable grounds to believe that COVID-19 continues to present a serious public health risk to the Territory. The Executive has considered the advice of the Chief Health Officer in making the Declaration.

This Declaration provides the ability for the Executive, Minister for Health and the Chief Health Officer to make COVID-19 Management Directions relating to implementation of vaccination, public health social measures (PHSMs), and test, segregation or isolation requirements that operate to alleviate the public health risk presented by COVID-19.

The Declaration creates an environment in which Directions may be made and implemented under *Public Health Act 1997* in a timely and effective way to manage the rate of transmission and mitigate the risk to public health, including severe illness or death.

In making the Declaration, the Executive has considered whether a material risk of substantial injury or prejudice to the health of people has happened or may happen because of COVID-19. In addition, the following has been considered, in accordance with 1180 of the *Public Health Act 1997*:

- The number of people likely to be affected.
- The location, immediacy and seriousness of the threat to the health of people.
- The nature, scale and effect of any harm, illness or injury that may happen.
- The availability and effectiveness of any precaution, safeguard, treatment or other measure to eliminate or reduce any risk to the health of people.

Specifically, the Executive has reviewed the *Chief Health Officer Advice – Public Health (COVID-19 Management) Declaration 2022 (No. 1)*, consistent with section 118T of the Public Health Act 1997 and is satisfied that this advice appropriately addresses each item required under section 1180 of the Act.

The Executive has also taken account of the fact that there remains significant uncertainty and complexity relating to the evolution of the COVID-19 pandemic, which is likely to continue over the coming months. A number of significant decisions will need to be taken at a national level in relation to the remaining baseline public health measures, including isolation and quarantine requirements. The ACT continues to transition the COVID-19 response to the endemic management of COVID-19, similar to other notifiable diseases.

Consultation on the Proposed Approach

In providing advice to the Executive, the Chief Health Officer has offered advice on the current situation of COVID-19 within the ACT.

While PHSMs and Test, Trace, Isolate and Quarantine (TTIQ) requirements have gradually been eased in the ACT to align with the National COVID-19 Response, the Communicable Disease Network Australia (CDNA) and the Australian Health Principal Protection Committee (AHPPC) continue to recommend that some TTIQ measures remain in place. This Declaration enables the ACT to provide a targeted and appropriate public health response based on expert advice.

Consistency with Human Rights

Limits placed on human rights by the Declaration are a proportionate and reasonable response to the public health risk presented by COVID-19 in the ACT. As at 9 September 2022, there have been 125 COVID-19 related deaths since the start of the pandemic and 594 active cases across the Territory. Active outbreaks and exposures are currently being managed across the Territory in a range of residential aged-care and disability care settings. The ACT's hospitals continue to care for large numbers of patients affected by COVID-19, although the number of patients requiring intensive care and ventilation remain low and stable. At 9 September 2022, the total number of patients in hospital was 86 (includes active and cleared cases) and one patient was in ICU.

The Declaration is time limited and subject to the Disallowance of the Assembly. It requires the provision of regular published advice by the Chief Health Officer, every 30 days. These mechanisms work to ensure that the Executive can continue to review whether COVID-19 continues to present a serious risk to public health, based on expert advice, and whether any resulting Directions therefore remain appropriate.

The Declaration promotes the right to life under section 9 of the *Human Rights Act 2004* by providing the necessary settings to enable the issuing of Executive, Ministerial and Chief Health Officer Directions that prevent or limit virus transmission and, by extension, mitigates the serious risk to health and life posed.

Issuing Directions during the Declaration period may limit other human rights including but not limited to, the right to recognition and equality before the law (s 8), freedom of movement (s 13), and the right to work (s27B).

The Directions are subject to safeguards, including a requirement for the Executive to consider advice of the Chief Health Officer and to consult with the Human Rights Commissioner, and transparency in relation to publication of material that is relied upon in making the Directions, including human rights considerations.

Ministerial (Division 6C.3) and Chief Health Officer (Division 6C.4) Directions are notifiable instruments that must be presented to the Legislative Assembly and therefore offer a high degree of transparency. Vaccination Directions (Division 6C.5) may be made by the Executive and are disallowable instruments that may be disallowed by the Assembly, providing a further degree of scrutiny as they may act to limit a worker's right to engage in particular work, at a particular place or in a particular activity.

Section Notes

Section 1 – Name of Instrument

This section names the instrument. The name of the instrument will be the *Public Health (COVID-19 Management) Declaration 2022*.

Section 2 - Commencement

This section provides that the Direction will commence on 30 September 2022. This means that the instrument will commence at the beginning of the day.

Section 3 - Declaration

This section outlines that the Executive declares that there are reasonable grounds for believing that COVID-19 presents a serious risk to public health, following consideration of advice from the Chief Health Officer. In forming the belief that COVID-19 presents a serious risk to public, the Executive considered the matters prescribed by s 118O (2)(b) of the *Public Health Act 1997*.

Section 4 – COVID-19 Management Declaration Duration

This section provides that the declaration is in force for a period of 90 days.