

# Public Health (COVID-19 Management) Declaration Extension 2022

## Disallowable instrument DI2022–267

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 was extended numerous times, reflecting the serious ongoing and changing nature of the pandemic.

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. The COVID-19 management declaration in place for a period of 90 days, to 28 December 2022.

Section 118P of the Public Health Act 1997 stipulates that 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. The COVID-19 management declaration was extended from 29 December 2022 by the Executive, having considered advice of the Chief Health Officer.

### 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 agreed to extend the Declaration, in accordance with section 118P, following its consideration of the advice of the Chief Health Officer.

The 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 118O 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 Extension 2022 and associated COVID-19 Management Directions*, consistent with section 118Q of the Public Health Act 1997 and is satisfied that this advice appropriately addresses each item required under section 118O of the Act.

The Executive has also taken account of the fact that there remains uncertainty and complexity relating to the evolution of the COVID-19 pandemic, which is likely to continue over the coming months. 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.

### **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 December 2022, there have been 132 COVID-19 related deaths since the start of the pandemic. The

ACT, like other jurisdictions, is actively transitioning to the management of COVID-19 like other notifiable diseases. However, community transmission is likely to persist in a cyclical fashion over coming months, in response to emerging variants and waning immunity. The Declaration enables the Government to respond appropriately to the public health risk presented by COVID-19.

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 Extension 2022*.

### **Section 2 - Commencement**

This section provides that the Declaration will commence on 29 December 2022. The instrument will commence at the beginning of the day.

### **Section 3 - Declaration**

This section provides that the Executive declares an extension of the period for which the *Public Health (COVID-19 Management) Declaration 2022* (DI2022-224) is in force for a period of 90 days.