

Australian Capital Territory

Public Health (Mandatory Face Masks) Emergency Direction 2021 (No 2)

Notifiable Instrument NI2021-402

made under the

Public Health Act 1997, s 120 (Emergency actions and directions)

1. Name of instrument

This instrument is the *Public Health (Mandatory Face Masks) Emergency Direction 2021 (No 2)*.

2. Commencement

This instrument commences at 3:00pm on 30 June 2021.

3. Public Health Emergency Direction

I, Dr Kerryn Coleman, Chief Health Officer, consider it necessary or desirable to alleviate the emergency declared under the *Public Health (Emergency) Declaration 2020 (No 1)* [NI2020-153] (the **declared emergency**) on 16 March 2020, to give the directions as set out in the schedule.

4. Duration

This Direction is in force for the period ending on the day the declared emergency (as extended or further extended) ends, unless it is earlier revoked.

5. Revocation

This instrument revokes the *Public Health (Mandatory Face) Emergency Direction 2021* [NI2020-387].

Dr Kerryn Coleman
Chief Health Officer

30 June 2021

Public Health Emergency Direction

Public Health Act 1997

*Made under the Public Health Act 1997,
section 120 (Emergency actions and directions)*

I, Dr Kerryn Coleman, Chief Health Officer, consider it necessary or desirable to alleviate the emergency declared under the *Public Health (Emergency) Declaration 2020 (No 1)* [NI2020-153] (the **declared emergency**) on 16 March 2020, to give the directions as set out below.

The purpose of this Direction is to limit the spread of coronavirus disease 2019 (**COVID-19**), caused by the novel coronavirus SARS-CoV-2.

In making these directions I have had regard to relevant human rights and I am satisfied that the limitations imposed as a result of these Directions are both demonstrably justifiable in a free and democratic society and necessary to protect the ACT community from the serious public health risk posed by COVID-19.

PART 1 – FACE MASKS TO BE WORN

Note: The requirement to wear face masks at the Canberra airport and on domestic flights is governed by the *Public Health (Mandatory Face Masks – Canberra Airport and Domestic Flights) Emergency Direction 2021* (No 2) [NI2021-401].

A. Directions

1. This Part applies to all persons in the Australian Capital Territory.
2. Subject to this Direction, a person must, at all times:
 - a. carry a **face mask**; and
 - b. wear a **face mask**;if the person is:
 - c. in or at any **business or undertaking**; or
 - d. in a **residential aged care facility**; or
 - e. in or on a **public passenger vehicle**, or in a **public passenger service waiting area**; or
 - f. working at a **business or undertaking** where the person is required to deal directly with members of the public; or
 - g. working at a **hospitality venue** where the person is required to deal directly with members of the public.



3. A person is not required to carry a **face mask** while the person is wearing a **face mask**.
4. A person required to wear and carry a **face mask** under paragraphs 2(f) and 2(g) need only do so while they are required to deal directly with members of the public.
5. A person who owns, operates or controls a **business or undertaking** must ensure that a person working at the venue complies with paragraph 2.
6. The requirement to carry a **face mask** or wear a **face mask** under paragraph 2 does not apply to a person:
 - a. who is an infant or child aged 12 years or under; or
 - b. who has a physical or mental health illness or condition, or disability, which makes wearing a **face mask** unsuitable; or
Examples: Persons who have:
 - obstructed breathing,
 - a serious skin condition on their face,
 - an intellectual disability,
 - a mental health illness, or
 - who have experienced trauma.
 - c. who is a resident of a **residential aged care facility**.
7. Despite paragraph 2, a person who is required to wear a **face mask** may remove the **face mask**:
 - a. if the person is consuming food, drink or medicine; or
 - b. if the person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication; or
 - c. if the person is at work and the nature of the person's work (including workplace training) means that wearing a **face mask** creates a risk to their health and safety; or
 - d. if it is necessary for the proper provision of the goods or service; or
 - e. if the person is asked to remove the **face mask** to ascertain identity; or
Examples: a person may be asked by police to remove a face mask to ascertain identity, or when purchasing alcohol or cigarettes.
 - f. if the person is engaging in physical activity at a gym, health club, fitness centre or wellness centre; or
 - g. if it is required or authorised by law; or
 - h. if it is not safe in all the circumstances; or
 - i. because of an emergency.
8. A person who removes their **face mask** in a circumstance under paragraph 6 must resume wearing the **face mask** as soon as practicable after the circumstance ends.
Examples: a person must resume wearing a face mask as soon as they finish eating, making an announcement or receiving medical care.



PART 2 – OTHER DIRECTIONS

A. Directions

9. An **authorised person** may ask a person for any information necessary to determine whether the person is subject to this Direction.
10. Any person must comply with any request made under paragraph 8 by an **authorised person**.
11. An **authorised person** may direct a person who is subject to this Direction to do such things as are reasonably necessary to comply with this Direction.
Examples of directions:
An authorised person may direct a person to put on a **face mask**.
An authorised person may direct a person to explain the nature of a physical or mental health illness or condition, or disability, that prevents the person from wearing a **face mask**.
12. Any person subject to this Direction must comply with any request under paragraph 10 by an **authorised person**.

PART 3 – MISCELLANEOUS

A. Exemptions from this Direction

13. The Chief Health Officer may, in writing and subject to any conditions that the Chief Health Officer considers necessary, exempt a person from this Direction.
Note: if the Chief Health Officer exempts a person from this Direction, the Chief Health Officer may give such other direction to the person as the Chief Health Officer considers necessary or desirable to alleviate the declared emergency.
14. An **authorised person** may, in writing and subject to any conditions that the **authorised person** considers necessary, exempt a person from the requirement to wear a **face mask**.

B. Enforcement

15. If a person fails to comply with this Direction, an **authorised person** may direct the person to do such things as are reasonably necessary to comply with this Direction including, upon request, to produce proof of identification to the **authorised person**.
16. If a person fails to comply with any direction given under paragraph 14, then the **authorised person** may take all reasonable steps to enforce compliance with the direction.

C. Definitions

For the purposes of these directions:

17. **Authorised person** means an authorised person under section 121 of the *Public Health Act 1997*.



18. **Betting agency** means a TAB or KENO agency either in a stand-alone venue or within a licensed venue.
19. **Business or undertaking** means:
- a. retail or business premises that provide goods or services to members of the public who attend the premises (excluding for the purposes of providing health services), including, but not limited to:
 - i. a food retailer, including but not limited to:
 - A. supermarkets and grocery stores;
 - B. fresh meat, fish and poultry retailers;
 - C. liquor retailers;
 - D. other specialised food retailers; or
 - E. food court; or
 - ii. clothing, footwear and personal accessory retailers; or
 - iii. newsagents; or
 - iv. shopping centres, including food courts; or
 - v. bank branches; or
 - vi. pharmaceutical retailers; or
 - vii. post offices; or
 - viii. a gaming or gambling venue, a **casino** or **betting agency**; or
 - ix. a hairdresser or barber; or
 - x. a nail salon; or
 - xi. a tattoo or body modification studio; or
 - xii. a place that provides beauty therapy, tanning or waxing services; or
 - xiii. a day spa or place that provides massages services; or
 - xiv. an auction house; or
 - xv. a real estate auction, display home or open home; or
 - xvi. galleries, museums or national institution; or
 - xvii. community centres, youth centres or facilities; or
 - xviii. government shopfronts or government service centres;
 - b. premises being used for public worship or religious services, including a **place of worship**; or
 - c. an **entertainment or sporting facility**; or
 - d. a gym, health club, fitness centre, or wellness centre, excluding any outdoor activities.

20. **Casino** has the same meaning as in the *Casino Control Act 2006*.
21. **Entertainment and sporting facility** means:
- a cinema or movie theatre; or
 - an indoor event or indoor event performance; or
 - indoor stadiums and indoor sporting events to the extent that a person attending the stadium or event is a spectator.
22. **Face mask** means a mask or other covering that fits securely around the face and is designed or made to be worn over the nose and mouth to provide the wearer with protection against infection (but does not include a face shield).
- Note – a scarf or bandana is not a face mask.*
23. **Hospitality venue** includes, but is not limited to:
- a venue that sells food or beverages (including alcohol), including take away services; and
 - a **casino** or **betting agency**.
24. **Public passenger service waiting area** means:
- a light rail platform; or
 - a bus stop or light rail stop, including any area where people queue or gather when waiting at the stop; or
 - a taxi rank, including any area where people queue or gather when waiting at the taxi rank; or
 - any other waiting area for a **public transport vehicle**, including any area where people queue or gather when waiting for a **public passenger vehicle**.
25. **Public passenger vehicle** means a public bus, light rail vehicle, taxi, rideshare vehicle, hire car or demand responsive service vehicle.
26. **Residential aged care facility** means a facility at which accommodation, and personal care or nursing care or both, are provided to a person in respect of whom a residential care subsidy or a flexible care subsidy is payable under the *Aged Care Act 1997* (Cwlth).

Dr Kerryn Coleman

Chief Health Officer

30 June 2021



PENALTIES

Section 120 (4) of the *Public Health Act 1997* provides:

A person must not, without reasonable excuse, fail to comply with a direction under this section.

Maximum Penalty:

In the case of a natural person, \$8,000 (50 penalty units).

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