

Australian Capital Territory

# Public Health (Mandatory Face Masks) Emergency Direction 2021 (No 5)

Notifiable Instrument NI2021-649

made under the

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

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## 1. Name of instrument

This instrument is the *Public Health (Mandatory Face Masks) Emergency Direction 2021 (No 5)*.

## 2. Commencement

This instrument commences at 5:00pm on 2 November 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 Masks) Emergency Direction 2021 (No 4)* [NI2021-635].

Dr Kerryn Coleman  
Chief Health Officer

2 November 2021



# Public Health Emergency Direction

## *Public Health Act 1997*

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

I, Dr Kerry 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] on 16 March 2020, to give the directions as set out below.

### **Grounds for directions**

I consider this direction is necessary or desirable to alleviate the **COVID-19** emergency on the grounds that—

- (a) **COVID-19** poses a serious public health risk to the Australian Capital Territory community;
- (b) the Australian Capital Territory has experienced persistent community transmission since the outbreak of the Delta variant of **COVID-19**, in the Australian Capital Territory on 12 August 2021;
- (c) the Delta variant of **COVID-19** (labelled as a variant of concern) has proven challenging both nationally and internationally, demonstrating that elimination of the virus is not feasible and community transmission will continue as the Australian Capital Territory seeks to mitigate the impact of this public health risk;
- (d) it is important to limit the spread of **COVID-19** in the Australian Capital Territory community.

In making this Direction, I have had regard to relevant human rights and I am satisfied that the limitations imposed as a result of this Direction are both demonstrably justifiable in a free and democratic society.

## **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. A person who is in an **indoor space** outside their **residence** must, at all times, wear a **face mask**.

2. However, a person is not required to wear a **face mask** if the person:
  - a. is an infant or child aged under 12 years;  
**Note:** only children in Years 7 to 12 are required to wear a **face mask** while in an **indoor space** at school. The wearing of face masks for primary students is at the discretion of the student and their parents/carer but is not recommended for children in early care and education centres.
  - b. has a physical or mental health illness or condition, or disability, which makes wearing a **face mask** unsuitable;  
**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.
3. A person who owns, operates or controls a business or undertaking must ensure that a person working at the business or undertaking complies with paragraph 1 of this Direction.
4. Despite paragraph 1, 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 goods or services; 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 vigorous exercise; or
  - g. if the person is performing work in an **indoor space**:
    - i. either:
      - A. in an office where no other people are present; or
      - B. in a seated position or standing position at a workstation in an office; and
    - ii. at least 1.5 metres from any other person;  
**Note:** As soon as a person is no longer alone or seated or stationary that person must wear a **face mask**.
  - h. if the person is in the process of getting married; or
  - i. if the person is in a vehicle alone or with other members of the same **household** only; or
  - j. if the person is seated at the premises of a **retail food service**; or
  - k. if it is required or authorised by law; or



- l. if it is not safe in all the circumstances; or
  - m. because of an emergency.
5. A person who removes their **face mask** in a circumstance under paragraph 4 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

6. An **authorised person** may ask a person for any information necessary to determine whether the person is subject to this Direction.
7. Any person must comply with any request made under paragraph 6 by an **authorised person**.
8. 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**.

9. Any person subject to this Direction must comply with any request under paragraph 8 by an **authorised person**.
10. 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 to produce proof of identification to the **authorised person**.
11. If a person fails to comply with any direction given under paragraph 10, then the **authorised person** may take all reasonable steps to enforce compliance with the direction.

## PART 3 – MISCELLANEOUS

### A. Exemptions from this Direction

12. 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, or a stated requirement under this Direction, on grounds that the Chief Health Officer considers reasonable and appropriate.
13. If the Chief Health Officer exempts a person from this Direction, or a stated requirement under this Direction that person must comply with the conditions of the exemption.



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. Definitions

For the purposes of these directions:

15. **Authorised person** means an authorised person under section 121 of the *Public Health Act 1997* and includes an authorised medical officer under the *Public Health Act 1997*.
16. **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.*
17. **Household** means people who ordinarily reside at the same residence, including people staying at the residence temporarily from another state or territory.
18. **Indoor space** means an area, room or premises that is, or are, substantially enclosed by a roof and walls (of permanent solid construction and stretching from floor to ceiling), regardless of whether the roof or walls or any part of them are open or closed.
19. **On licence premises** means premises in relation to which any of the following licences is held under the *Liquor Act 2010*:
- an *on licence* subclass (other than a *nightclub licence*);
  - a *general licence*;
  - a *club licence*;
  - a *special licence*
20. **Residence:**
- means:
    - residential premises in the Australian Capital Territory that are used, or intended to be used as a principal place of residence, or home that a person primarily occupies on an ongoing and permanent basis; or
    - the premises at which the person is staying on an ongoing basis; and
  - includes a **residential aged care facility** or correctional centre, detention place or other place of custody.
21. **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).



22. **Retail food services** means a retail business which provides food and/or drink, whether pre-prepared or prepared on site, and includes **on licence premises**, cafés, canteens, restaurants, food courts and fast-food outlets.

**Dr Kerryn Coleman**

Chief Health Officer

2 November 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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