

Australian Capital Territory

# Public Health (Aged Care Workers COVID-19 Vaccination) Emergency Direction 2022 (No 1)

Notifiable Instrument NI2022-126

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 (Aged Care Workers COVID-19 Vaccination) Emergency Direction 2022 (No 1)*.

## 2. Commencement

This instrument commences at 11:59pm on 28 March 2022.

## 3. Public Health Emergency Direction

I, Dr Vanessa Johnston, Acting 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 (Aged Care Workers COVID-19 Vaccination) Emergency Direction 2021 (No 2)* [NI2021-669].

Dr Vanessa Johnston  
Acting Chief Health Officer

15 March 2022



# Public Health Emergency Direction

## *Public Health Act 1997*

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

I, Dr Vanessa Johnston, Acting 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 **COVID-19** within a particularly vulnerable population by restricting the potential for elderly people to be exposed to workers within residential aged care facilities who are not up to date with COVID-19 vaccination.

I consider the Directions are 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;
- b. the World Health Organization has declared the Omicron variant of **COVID-19** to be a variant of concern which is being monitored closely, both internationally and nationally, for its potential to lead to severe illness;
- c. the Omicron variant of **COVID-19** is highly transmissible and has rapidly replaced the Delta variant of **COVID-19** as the dominant variant;
- d. the Australian Capital Territory has experienced persistent community transmission since the original outbreak of the Delta variant of **COVID-19** in the Australian Capital Territory on 12 August 2021 and the introduction of the Omicron variant of **COVID-19** on 3 December 2021;
- e. there is a necessity to limit the impact of **COVID-19** on vulnerable populations and to mitigate the burden on the public health system;
- f. vaccination continues to be effective in reducing the risk of severe disease and death from **COVID-19** while it is acknowledged that it does not completely eliminate the risk of transmission of **COVID-19**;
- g. evidence supports that vaccine effectiveness is significantly increased following a **COVID-19 booster**.

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 – RESTRICTED ACCESS TO RESIDENTIAL AGED CARE FACILITIES BY WORKERS

### A. Directions

1. A **worker** at a **residential aged care facility** must not work at the premises of a **residential aged care facility** in the Australian Capital Territory unless the **worker** is **up to date with COVID-19 vaccination**.
2. The **operator** of a **residential aged care facility** must take all reasonable steps to ensure that a person does not enter or remain on the premises of the **residential aged care facility** if the person is prohibited from doing so under paragraph 1.
3. A **worker** at a **residential aged care facility** must produce **evidence of vaccination status** or **evidence of exemption** if required to do so by the **operator** of a **residential aged care facility**.
4. The **operator** of a **residential aged care facility** must:
  - a. take all reasonable steps to collect and maintain a record of the **vaccination status** of each **worker** at the **residential aged care facility**; and
  - b. on request, provide any record mentioned in paragraph 4(a) to an **authorised person** as soon as practicable after the request is made; and
  - c. not use or disclose any record referred to in paragraph 4(a) except:
    - i. as provided for by this Direction; or
    - ii. as permitted by any Territory or Commonwealth Law; or
    - iii. to the extent that the person expressly provided the person's **vaccination status** for a purpose other than these directions; and
  - d. take reasonable steps to protect any record mentioned in paragraph 4 from:
    - i. misuse and loss; and
    - ii. unauthorised access, modification or disclosure.
5. To avoid any doubt, nothing in paragraph 4 prevents the **operator** of a **residential aged care facility** from providing information to the Commonwealth in accordance with any obligation to do so arising under the *Aged Care Act 1997* (Cth).

Note: A record of **vaccination status** is a health record for the purposes of the *Health Records (Privacy and Access) Act 1997*. An operator will have obligations under the *Health Records (Privacy and Access) Act 1997* in relation to the record including collection, storage, use, access, and disclosure of the record.



## PART 2 – MATTERS RELEVANT TO THESE DIRECTIONS

### A. Enforcement

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. 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**.

### B. Exemptions

9. 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.
10. Without limiting paragraph 9, the Chief Health Officer or an authorised delegate may provide an exemption from this Direction to:
  - a. a person who is unable, due to a medical contraindication, to receive a **COVID-19 vaccine** or **COVID-19 booster**; or
  - b. a person for whom a **COVID-19 vaccine** or **COVID-19 booster** is not reasonably available.
11. 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.

### C. Definitions

For the purposes of these directions:

12. **Authorised person** means an authorised person under section 121 of the Public Health Act.
13. **Booster deadline date** means the date six months after a person has completed a **primary course of vaccination**.
14. **Community visitors scheme** means an organised volunteer visitation program in respect of which a community visitors grant is payable under Part 5.6 of the *Aged Care Act 1997* (Cth).
15. **COVID-19** means the Coronavirus disease 2019, caused by the novel coronavirus SARS-CoV-2.

16. **COVID-19 vaccine** means a vaccine approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia as a vaccine against **COVID-19**.
17. **COVID-19 booster** means an additional **COVID-19 vaccine** dose received after a **primary course of vaccination**.
18. **Emergency services** means the ambulance service, the police, the fire and rescue service, the rural fire service or the SES.
19. **Evidence of exemption** means a copy of an exemption issued by the Chief Health Officer pursuant to paragraph 9 of this Direction, or issued by the Commonwealth on the Australian Immunisation Register.
20. **Evidence of vaccination status** means evidence from the Australian Immunisation Register kept under the *Australian Immunisation Register Act 2015* (Cth), or any other evidence in the form approved by the Chief Health Officer, relating to the number of **COVID-19 vaccine** doses that a **worker** has received.

*Example*— An online immunisation history statement or COVID-19 digital certificate from the Australian Immunisation Register.

21. **Operator, of a residential aged care facility**, means a person who owns, controls or operates the **residential aged care facility**.
22. **Permitted person** means a person described in Column 2 of the table in Attachment A.
23. **Primary course of vaccination** means either one dose of the Janssen **COVID-19 vaccine** or two doses of any other **COVID-19 vaccine**.
24. **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* (Cth).
25. **Staff member** means a person mentioned in Column 1, Item 1 of the table in Attachment A.
26. **Up to date with COVID-19 vaccination** means:
  - a. a person who has completed a **primary course of vaccination** and has received a **COVID-19 booster**; or
  - b. a person who has completed a **primary course of vaccination** and is not yet eligible for a **COVID-19 booster**; or

- c. a person who has completed a **primary course of vaccination** and has not received a **COVID-19 booster**, but the person's **booster deadline date** has not yet passed.

*Note 1:* A person is eligible for a **COVID-19 booster** if they meet the eligibility recommendations provided by the Australian Technical Advisory Group on Immunisation (ATAGI). ATAGI does not currently recommend a **COVID-19 booster** for children under 16 years of age.

*Note 2:* a person who has received the **primary course of vaccination**, and who is eligible for a **COVID-19 booster**, and for whom the **booster deadline date** has passed, is not **up to date with COVID-19 vaccination**.

27. **Vaccination status** means whether a **worker** is **up to date with COVID-19 vaccination**.
28. **Visitor** means a person who is a family member or friend of a resident of the **residential aged care facility**.
29. **Worker**, for a **residential aged care facility**, means a person described in Column 1 of the table in Attachment A, but does not include a **permitted person**.

**Dr Vanessa Johnston**  
Acting Chief Health Officer

15 March 2022

## **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).

In the case of a body corporate, \$40,500 (50 penalty units).

In the case of a utility that is a body corporate, \$1,620,000 (2000 penalty units).

**Attachment A – Workers and Permitted Persons**

Item	Column 1 – <b>Workers</b>	Column 2 – <b>Permitted Persons</b>
1	<p>A <b>staff member</b>, meaning a person who:</p> <p>(a) has, or is reasonably likely to have, access to aged care residents; and is either</p> <p>i. employed, hired, retained or otherwise engaged directly by the <b>operator</b> of a <b>residential aged care facility</b>, to provide care or other services under the control of the <b>residential aged care facility</b>; or</p> <p>ii. is otherwise engaged by the <b>residential aged care facility</b> through a third party, for example an employment or recruitment agency, to provide care or other services under the control of the <b>residential aged care facility</b>.</p> <p><i>Example: people who constitute <b>staff members</b> of a <b>residential aged care facility</b> include:</i></p> <p>(a) <i>key personnel of the residential aged care facility; and</i></p> <p>(b) <i>employees and contractors of the residential aged care facility who provide care to aged care residents; and</i></p> <p>(c) <i>health professionals contracted by the residential aged care facility to provide care to aged care residents; and</i></p>	<p>Any of the following in-reach service providers or contractors, unless they are covered by item 1 Column 1 paragraph (a)(i):</p> <p>(a) a delivery driver or person providing one-off trade deliveries; or</p> <p>(b) a tradesperson; or</p> <p>(c) a hairdresser; or</p> <p>(d) a pastoral care worker or clergy including a resident's personal Minister / clergy / pastoral care worker; or</p> <p>(e) a librarian; or</p> <p>(f) a solicitor; or</p> <p>(g) an AN-ACC / ACAT / RAS assessor; or</p> <p>(h) an Aged Care Quality and Safety Commission Field staff member; or</p> <p>(i) an Aged Care Advocate delivering the National Aged Care Advocacy Program (Older Persons Advocacy Network Members).</p>



	<p>(d) <i>kitchen, laundry, garden and office personnel employed by the residential aged care facility; and</i></p> <p>(e) <i>consultants, trainers and advisors for accreditation support or systems improvement who are under the control of the residential aged care facility; and</i></p> <p>(f) <i>transport operators contracted by the residential aged care facility to collect aged care residents for outings.</i></p>	
2	<p>A volunteer, meaning a person who:</p> <p>(a) is not a <b>staff member</b> of the <b>residential aged care facility</b>; and</p> <p>(b) offers their services to and are engaged by the <b>residential aged care facility</b>; and</p> <p>(c) provides care or other services on the invitation of the <b>residential aged care facility</b> and not solely on the express or implied invitation of an aged care resident; and</p> <p>(d) has, or is reasonably likely to have, unsupervised access to aged care residents.</p>	<p>Any of the following people:</p> <p>(a) a person who visits a residential aged care facility as part of the <b>Community Visitors Scheme</b>; or</p> <p>(b) a <b>visitor</b>, including a participant of the Partners in Care Programme; or</p> <p>(c) volunteers engaged outside of the residential aged care facility.</p> <p><i>Example: volunteers engaged outside of a residential aged care facility include volunteers organised by home care providers, schools and playgroup associations.</i></p>



3	A student on Placement, meaning a person who attends a <b>residential aged care facility</b> for a vocational placement (within the meaning of s 12 of the <i>Fair Work Act 2009</i> (Cth)).	
4	A visiting Health Practitioner, meaning a health practitioner (as defined by s 5 of the <i>Health Practitioner Regulation National Law (ACT)</i> ), who is not a <b>staff member</b> but who visits a <b>residential aged care facility</b> to provide care to aged care residents	An <b>emergency services</b> worker or volunteer, or an <b>authorised person</b> , who attends the residential aged care facility in the course of their official duties.
5	<p>A person who provides services in connection with any of the following Commonwealth aged care programs:</p> <ul style="list-style-type: none"> <li>(a) the Transition Care Programme;</li> <li>(b) the Short Term Restorative Care Programme</li> <li>(c) the Multi-Purpose Services Programme;</li> <li>(d) the National Aboriginal and Torres Strait Islander Flexible Aged Care Programme; or</li> <li>(e) Respite care;</li> </ul> <p>but only to the extent that those services are being provided at the <b>residential aged care facility</b>.</p>	

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