

Australian Capital Territory

Public Health (ACT School or Early Childhood Education and Care Workers COVID-19 Vaccination) Emergency Direction 2022

Notifiable Instrument NI2022-170

made under the

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

1. Name of instrument

This instrument is the *Public Health (ACT School or Early Childhood Education and Care Workers COVID-19 Vaccination) Emergency Direction 2022*.

2. Commencement

This instrument commences at 11:59 pm on 4 April 2022.

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 (ACT School or Early Childhood Education and Care Workers COVID-19 Vaccination) Emergency Direction 2021 (No 2)* [NI2021-713].

Dr Kerryn Coleman
Chief Health Officer

4 April 2022

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 **COVID-19** in children by requiring the vaccination of workers in schools and early childhood education and care.

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 declared the Omicron variant of **COVID-19** to be a variant of concern on 26 November 2021. In February 2022, the World Health Organization confirmed that the BA.2 sub-lineage of the Omicron variant should continue to be considered a variant of concern and monitored as a distinct sub-lineage of Omicron by public health authorities;
- c. the Omicron variant of **COVID-19** is highly transmissible and remains the dominant variant globally and in the Australian Capital Territory following its introduction on 3 December 2021;
- d. the Australian Capital Territory has experienced persistent community transmission since the original outbreak of **COVID-19** on 12 August 2021;
- e. There is a necessity to limit the impact of **COVID-19** in the Australian Capital Territory to mitigate the burden on the public health system, which includes continued monitoring and support for the public health response;
- 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**; and

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 EDUCATION FACILITIES BY WORKERS

A. Directions

1. A **worker** must not **work** at an **ACT School or Early Childhood Education and Care facility** in the Australian Capital Territory, unless the **worker**:
 - a. has received a **primary course of vaccination**; or
 - b. has a **COVID-19 vaccine exemption**; or
 - c. was a **diagnosed person** within the previous four months.
2. The **responsible person** of an **ACT School or Early Childhood Education and Care facility** must take all reasonable steps to ensure that a **worker** complies with paragraph 1.
3. A **worker** must provide **evidence of vaccination status** or a **COVID-19 vaccine exemption** if required to do so by the **responsible person** at an **ACT School or Early Childhood Education and Care facility**, or by an **authorised person**.
4. The **responsible person** of an **ACT School or Early Childhood Education and Care facility** must:
 - a. take all reasonable steps to collect and maintain **evidence of vaccination status** or a **COVID-19 vaccine exemption** for each **worker** of the **ACT School or Early Childhood Education and Care facility** prior to a **worker** undertaking **work**; and
 - b. on request, provide any **evidence of vaccination status** or a **COVID-19 vaccine exemption** that the **responsible person** has collected and maintained to an **authorised person** as soon as practicable after the request is made; and
 - c. not use or disclose **evidence of vaccination status** or a **COVID-19 vaccine exemption** except:
 - i. as is provided for by this Direction; or
 - ii. as permitted or required by any other law; or
 - iii. to the extent that the person expressly provided their **evidence of vaccination status** for a purpose other than these directions; and



- d. take all reasonable steps to protect any **evidence of vaccination status** or a **COVID-19 vaccine exemption** that it holds from:
 - i. misuse and loss; and
 - ii. unauthorised access, modification or disclosure.

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

PART 2 – FAMILY DAY CARE RESIDENCES

5. A **family day care residence** must not operate unless each **adult resident**:
 - a. has received a **primary course of vaccination**; or
 - b. has a **COVID-19 vaccine exemption**; or
 - c. was a **diagnosed person** within the previous four months.
6. An **adult resident** must provide **evidence of vaccination status** or a **COVID-19 vaccine exemption** if required to do so by:
 - a. The family day care educator working at the **family day care residence**; or
 - b. The occupier of the **family day care residence**; or
 - c. The **responsible person** for the **family day care residence**; or
 - d. A person authorised by a person mentioned in subparagraphs (a), (b), or (c).

PART 3 – MATTERS RELEVANT TO THESE DIRECTIONS

A. Enforcement

7. An **authorised person** may ask a person for any information necessary to determine whether the person is complying with this Direction.
8. Any person must comply with any request made under paragraph 7 by an **authorised person**.
9. 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**.
10. Any person must comply with a request made under paragraph 9 by an **authorised person**.

B. Exemptions

11. 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.
12. Without limiting paragraph 11, 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
 - b. a person for whom a **COVID-19 vaccine** is not reasonably available.
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.

C. Definitions

For the purposes of these directions:

14. **ACT School or Early Childhood Education and Care facility** means the premises of the following:
 - a. a **childcare or early childhood service**; or
 - b. A **school** which:
 - i. is a primary school; or
 - ii. has a primary school; or
Example: a preschool to year 10 school, or a year 4 to year 12 school.
 - iii. is a specialist school; or
 - iv. is a flexible education program.
15. **Adult resident** means a person who is at least 18 years of age residing at the **family day care residence**.
16. **Authorised person** means an authorised person under section 121 of the *Public Health Act 1997*.
17. **Childcare or early childhood service** means early childhood education and care services, or children's services covered under the:
 - a. *Education and Care Services National Law (ACT) Act 2011* and the *Education and Care Services National Regulations 2011 (NSW)*, including long day care services, preschool and family day care services and out of school hours care services; or

- b. *Children and Young People Act 2008*, Chapter 20, meaning childcare centres and family day care schemes.
18. **COVID-19** means the Coronavirus disease 2019, caused by the novel coronavirus SARS-CoV-2.
19. **COVID-19 test** means:
- a rapid antigen test approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia to detect **COVID-19**; and
 - a reverse transcription polymerase chain reaction (PCR test) to diagnose **COVID-19**.
20. **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**.
21. **COVID-19 vaccine exemption** means:
- an exemption issued by the Chief Health Officer pursuant to paragraph 11 of this Direction, except for an exemption which has been revoked or otherwise lapsed;
Note: A temporary exemption issued to a person will state the time period for which it remains in force.
 - a COVID-19 digital certificate issued by Services Australia which is current and displayed through the Medicare app or smartphone wallet, that states that a person is unable to receive a dose, or a further dose, of any **COVID-19 vaccine**;
 - a printed version of the COVID-19 digital certificate referred to in paragraph 21(b);
 - an Australian Immunisation Register immunisation medical exemption (IM011) form which has been completed and signed by an eligible provider, but only while the person is waiting for the form to be processed by Services Australia.
22. **Diagnosed person** means a person who has undertaken a **COVID-19 test** and returned a positive result.
23. **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** or **adult resident** has received.
- Example*— An online immunisation history statement or COVID-19 digital certificate from the Australian Immunisation Register.
24. **Family day care residence** means a residential premise from which a **family day care scheme** operates.

25. **Family day care scheme** has the same meaning as in the *Children and Young People Act 2008*.
26. **School** means:
- a government school; or
 - a non-government school that is registered under the *Education Act 2004*.
27. **Permitted person** means the following people who attend an **ACT School or Early Childhood Education and Care facility** to undertake **work**:
- A delivery driver or other person providing one-off trade deliveries; or
 - A trades person who attends the **ACT School or Early Childhood Education and Care facility** on an ad hoc basis, or to provide emergency maintenance services; or
 - Construction and maintenance workers engaged on projects at the premises of an **ACT School or Early Childhood Education and Care facility**.
- Example: A construction worker working on the installation of transportable classrooms, maintenance of HVAC systems, or the construction of shade structures.*
28. **Primary course of vaccination** means either one dose of the Janssen **COVID-19 vaccine** or at least two doses of any other **COVID-19 vaccine**.
29. **Relevant work**, for an **ACT School or Early Childhood Education and Care facility**, means **work** undertaken directly with children, or which requires regular interaction with children.
30. **Responsible person** for an **ACT School or Early Childhood Education and Care facility** means the following
- A principal of a school; or
 - If the **worker** carries out **relevant work** on a premises, other than a place of residence, the occupier of the premises; or
 - If the **worker** carries out **relevant work** for an approved education and care service within the meaning of the *Education and Care Services National Law (ACT) Act 2011* – the approved provider for the service under that Law; or
 - If the **worker** carries out **relevant work** for a childcare service within the meaning of the *Children and Young People Act 2008* – the proprietor or controlling person of the childcare service; or
 - In any other case, the person who employs or engages the **worker** or who exercises employer functions for the person who employs the **worker**.
31. **Vaccination status** means whether a **worker** has received a **primary course of vaccination** or holds a **COVID-19 vaccine exemption**.

32. **Work** includes:

- a. work done on a permanent, temporary, or casual employment basis; and
- b. work done under a contract of service or a contract for services; and
- c. work done by a student on a student placement; and
- d. work done on a voluntary basis.

33. **Worker**, means a person engaged by an **ACT School or Early Childhood Education and Care facility**, other than a **permitted person**, who performs **relevant work**.

Example: A worker may include:

- a. *a teacher, including an early childhood teacher or other educator; and*
- b. *a learning assistant; and*
- c. *support staff; and*
- d. *administrative staff, including a school principal or a director of an early childhood education and care setting; and*
- e. *a cleaner, gardener or other maintenance person who works while the **ACT School or Early Childhood Education and Care facility** has children present; and*
- f. *an allied health professional; and*
- g. *a student on placement; and*
- h. *a canteen worker.*

Dr Kerryn Coleman
Chief Health Officer

4 April 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).

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