

Australian Capital Territory

# Public Health (Disability and Other Care Workers COVID-19 Vaccination) Emergency Direction 2022 (No 2)

Notifiable Instrument NI2022-172

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 (Disability and Other Care Workers COVID-19 Vaccination) Emergency Direction 2022 (No 1)*.

## 2. Commencement

This instrument commences at 11:59pm 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 (Disability and Other Care Workers COVID-19 Vaccination) Emergency Direction 2022 (No 1)* [NI2022-125].

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 coronavirus disease 2019 (**COVID-19**), caused by the novel coronavirus SARS-CoV-2 by restricting the potential that older persons and people with disability are exposed to workers within the disability and the aged care sector 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 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
- 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 ACTIVITIES OF CERTAIN WORKERS

### A. Directions

1. A **worker** must not undertake work in the Australian Capital Territory as a **disability worker** or an **in-home and community aged care worker** unless they:
  - a. are **up to date with COVID-19 vaccination**; or
  - b. have a **COVID-19 vaccine exemption**; or
  - c. were a **diagnosed person** within the previous 4 months.
2. The **responsible person** for a **worker** must:
  - a. take all reasonable steps to ensure that the **worker** complies with paragraph 1; and
  - b. take all reasonable steps to ensure that a person does not work as a **disability worker** or an **in-home and community aged care worker** if:
    - i. the person is prohibited from doing so under paragraph 1; or
    - ii. where the **responsible person** has been unable to obtain the person's **evidence of vaccination status** or the persons' **COVID-19 vaccine exemption**.
3. A **worker** must provide **evidence of vaccination status** or a **COVID-19 vaccine exemption** if required to do so by their **responsible person** or by an **authorised person** prior to the **worker** undertaking work.
4. The **responsible person** for a **worker** must:
  - a. take all reasonable steps to collect and maintain **evidence of vaccination status** or a **COVID-19 vaccine exemption** for each **worker** they are responsible for prior to a **worker** undertaking work; and
  - b. on request, provide any **evidence of vaccination status** or **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 **COVID-19 vaccine exemption** that the **responsible person** holds from:
- i. misuse and loss; and
  - ii. unauthorised access, modification or disclosure.

*Note:* A record 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 – MATTERS RELEVANT TO THESE DIRECTIONS

### A. Enforcement

- 5. An **authorised person** may ask a person for any information necessary to determine whether the person is complying with this Direction.
- 6. Any person must comply with any request made under paragraph 5 by an **authorised person**.
- 7. 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**.
- 8. Any person must comply with a request made under paragraph 7 by an **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 1997*.
13. **Booster deadline date** means the date six months after a person has completed a **primary course of vaccination**.
14. **COVID-19** means the Coronavirus disease 2019, caused by the novel coronavirus SARS-CoV-2.
15. **COVID-19 booster** means an additional **COVID-19 vaccine** dose received after a **primary course of vaccination**.
16. **COVID-19 test** means:
  - a. a rapid antigen test approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia to detect **COVID-19**; and
  - b. a reverse transcription polymerase chain reaction (PCR test) to diagnose **COVID-19**.
17. **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**.
18. **COVID-19 vaccine exemption** means:
  - a. an exemption issued by the Chief Health Officer pursuant to paragraph 9 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.
  - b. 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**;
  - c. a printed version of the COVID-19 digital certificate referred to in paragraph 18(b);
  - d. an Immunisation History Statement displayed through the Medicare app, that states that a fully vaccinated person is unable to receive a **COVID-19 booster**;  
or
  - e. a printed version of the Immunisation History Statement referred to in paragraph 18(d); or

- f. 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.
19. **Diagnosed person** means a person who has undertaken a **COVID-19 test** and returned a positive result.
20. **Disability service** means a service provided to a person with a disability which is funded or provided:
- under the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* of the Commonwealth; or
  - by the ACT Government for the primary purpose of providing support to people living with disability, including the Special Needs Transport and Flexible Bus Service operated by the Transport Canberra and City Services Directorate.
- Example:* the ACT Community Assistance & Support Program funded by the ACT Health Directorate constitutes a **disability service**.
21. **Disability worker** means a person who undertakes work which constitutes a **disability service** and is undertaken directly with people living with disability, or which requires regular interaction with people living with disability, other than work which is undertaken on an ad hoc basis.
22. **Evidence of vaccination status**, for a **worker**, 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
23. **In-home and community aged care provider** means:
- an approved provider for whom a home care subsidy or a flexible care subsidy is payable under the *Aged Care Act 1997* (Cth); or
  - a service provider of a Commonwealth-funded aged care service, as defined in the *Aged Care Quality and Safety Commission Act 2018*, delivering services outside of a **residential aged care facility** setting.
24. **In-home and community aged care worker** means a person who undertakes work, for or on behalf of an **in-home and community aged care provider** that is undertaken directly with a client of the provider, or which requires regular interaction with clients of the provider but does not include work a **residential aged care facility**.
- Note:* A person who works at a **residential aged care facility** must comply with the directions contained in the *Public Health (Aged Care Workers and Visitors COVID-19 Vaccination) Emergency Direction 2021 (No 2)*



25. **Operator** means a person who owns, controls or operates a **disability service** or an **in-home and community aged care provider**.
26. **Primary course of vaccination** means either one dose of the Janssen **COVID-19 vaccine** or two doses of any other **COVID-19 vaccine**.
27. **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).
28. **Responsible person** means the following:
- a. for a **disability worker**, the **operator** of the **disability service** that engages the **disability worker**; and
  - b. for an **in-home and community aged care worker**, the **operator** of the **in-home and community aged care provider** that engages the **in-home and community aged care worker**.
29. **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**.

30. **Worker** means a **disability worker** or an **in-home and community aged care worker**, who performs work whether:
- a. on a permanent, temporary, or casual employment basis; or
  - b. under a contract of service or a contract for services; or
  - c. as a student on a student placement; or
  - d. on a voluntary basis.

**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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