

Australian Capital Territory

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

Notifiable Instrument NI2022-173

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 2)*.

## 2. Commencement

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

## 3. Public Health Emergency Direction

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] (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 2022 (No 1)* [NI2022-126].

Dr Kerry 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** 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 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 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**:
  - a. is **up to date with COVID-19 vaccination**; or
  - b. has a **COVID-19 vaccine exemption**; or
  - c. was a **diagnosed person** within the previous 4 months.
2. A **worker** at a **residential aged care facility** must produce **evidence of vaccination status** or a **COVID-19 vaccine exemption** if required to do so by the **operator** of a **residential aged care facility** prior to working at the premises of a **residential aged care facility**.
3. The **operator** of a **residential aged care facility** must take all reasonable steps to ensure that a person does not work at the premises of a **residential aged care facility** if the person is prohibited from doing so under paragraph 1, or where the **operator** of a **residential aged care facility** has been unable to obtain the person's **evidence of vaccination status** or the person's **COVID-19 vaccine exemption**.
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.

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, disclosure, and destruction of the record.



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).

## 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 booster** means an additional **COVID-19 vaccine** dose received after a **primary course of vaccination**.
17. **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**
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. **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**.
20. **Diagnosed person** means a person who has undertaken a **COVID-19 test** and returned a positive result.
21. **Emergency services** means the ambulance service, the police, the fire and rescue service, the rural fire service or the SES.



22. **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.

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

29. **Vaccination status** means whether a **worker** is **up to date with COVID-19 vaccination** or holds a **COVID-19 vaccine exemption**.

30. **Visitor** means a person who is a family member or friend of a resident of the **residential aged care facility**.
31. **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 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).

**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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