

Australian Capital Territory

Public Health (Mandatory Face Masks) Emergency Direction 2022 (No 1)

Notifiable Instrument NI2022–98

made under the

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

1. Name of instrument

This instrument is the *Public Health (Mandatory Face Masks) Emergency Direction 2022 (No 1)*.

2. Commencement

This instrument commences at 6:00pm on 25 February 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 (Mandatory Face Masks) Emergency Direction 2021 (No 7)* [NI2021-778] and *Public Health (Mandatory Face Masks – Canberra Airport and Domestic Flights) Emergency Direction 2021 (No 2)* [NI2021-401].

Dr Kerryn Coleman
Chief Health Officer

25 February 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] on 16 March 2020, to give the directions as set out below.

The purpose of this Direction is to require people to wear a face mask while in certain indoor spaces to limit community transmission of **COVID-19** in the Australian Capital Territory.

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;
- (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 nationally and internationally, 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 outbreak of the Delta variant of **COVID-19** on 12 August 2021 and the introduction of the Omicron variant of **COVID-19** on 3 December 2021 in the Australian Capital Territory;
- (e) the Australian Capital Territory continues to see persistent levels of community transmission; however, case rates and hospitalisations have generally remained stable with pressures on the public health, hospital and COVID-19 testing clinics having returned to a manageable level;
- (f) there continues to be a necessity to limit the impact of **COVID-19** in the Australian Capital Territory and the use of face masks is a practical measure to reduce transmission in areas of high risk to the community and to vulnerable people.

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 and necessary to protect the ACT community from the serious public health risk posed by **COVID-19**.



PART 1 – FACE MASKS TO BE WORN

A. Directions

1. A person must wear a **face mask** while the person is:
 - a. at the **Canberra airport**;
 - b. on a **domestic commercial aircraft** located at the **Canberra airport** (including when the aircraft is landing at, or taking off from, the airport), or flying in Australian Capital Territory airspace;
 - c. in an **indoor space** at a school or an early childhood education and care setting;
 - d. working at or visiting a **hospital, residential aged care facility, care facility, correctional centre, detention place or other place of custody**;
 - e. working or visiting a residential accommodation facility that supports people who require frequent, close personal care, and who are vulnerable to severe disease;
Note: A person vulnerable to severe disease includes, the elderly, the immunocompromised, and those affected with comorbidities which are known to be associated with adverse outcomes for COVID-19.
 - f. in a **public passenger vehicle**.
2. A person who is undertaking a period of self-isolation or quarantine under the **Diagnosed People and Close Contacts Direction**, must wear a **face mask** when leaving the designated premises for a permitted reason.
Example: A person who needs to leave a designated premises to undertake a **COVID-19 test** must wear a face mask, travelling directly to and from the testing site.
3. The **face mask** must be worn in a way that it covers the person's nose and mouth.
4. 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.
5. A person who owns, operates or controls a business or undertaking mentioned in paragraph 1 must ensure that a person working at the business or undertaking complies with paragraph 1 of this Direction.
6. 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 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
- Example: a person may be asked by police to remove a face mask to ascertain identity.*
- f. 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**.*
- g. if the person is in a vehicle alone or with other members of the same **household** only; or
 - h. if the person is seated at the premises of a **retail food service**; or
 - i. if it is required or authorised by law; or
 - j. if it is not safe in all the circumstances; or
 - k. because of an emergency; or
 - l. in accordance with any policies or procedures applicable within a **hospital**.

7. A person who removes their **face mask** in a circumstance under paragraph 6 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, drinking or receiving medical care.

PART 2 – OTHER DIRECTIONS

A. Directions

8. An **authorised person** may ask a person for any information necessary to determine whether the person is subject to this Direction.
9. Any person must comply with any request made under paragraph 8 by an **authorised person**.
10. 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** in a way that it covers the person's nose and mouth.*

*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**.*

11. Any person subject to this Direction must comply with any request under paragraph 10 by an **authorised person**.
12. 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**.
13. If a person fails to comply with any direction given under paragraph 12, then the **authorised person** may take all reasonable steps to enforce compliance with the direction.

PART 3 – MISCELLANEOUS

A. Exemptions from this Direction

14. 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.
15. 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.
16. 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:

17. **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*.
18. **Canberra airport** means:
 - a. any **indoor space** within the terminal; and
 - b. any outdoor areas (including the tarmac) when used for the purposes of embarking or disembarking from a **domestic commercial aircraft**.

Note: the **Canberra airport** does not include the taxi rank.
19. A **care facility** means the following premises:
 - a. any premises that an **in-home and community aged care provider** provides services to;
 - b. any premises that a **disability service** provides services to.
20. **Diagnosed People and Close Contact Direction** means the *Public Health (Diagnosed People and Household Contacts) Emergency Direction 2022 (No 4)*, as amended or replaced from time to time.

21. **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**.
22. **Domestic commercial aircraft** means an aircraft being used to provide passengers with transportation, on a commercial basis, only within Australia.
23. **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.
24. **Hospital** includes a day hospital, meaning a facility where a person is admitted for surgical or medical treatment and discharged on the same day.
25. **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.
26. **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.
27. **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*
28. **Public passenger vehicle** means:
- a public bus, light rail vehicle, taxi, rideshare vehicle, demand responsive service vehicle or hire car as defined under the *Road Transport (Public Passenger Services) Act 2001*; and
 - a bus chartered for a school excursion carrying children in Years 7 to 12.
- Note:* The wearing of face masks for primary students is at the discretion of the student and their parents/carer.



29. **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).
30. **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

25 February 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).

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