

**2022**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON HEALTH AND COMMUNITY  
WELLBEING - REPORT 4 - INQUIRY INTO THE PUBLIC HEALTH AMENDMENT BILL 2021 (No.2)**

**Presented by  
Rachel Stephen-Smith MLA  
Minister for Health  
22 March 2022**



## **Introduction**

The Government welcomes the Standing Committee's Report on the Inquiry into the Public Health Amendment Bill 2021 (No. 2) (the Bill).

The Bill seeks to amend the *Public Health Act 1997* to include a new regulatory framework to address an anticipated situation where COVID-19 continues to present a significant public health risk that cannot be effectively addressed through existing notifiable condition provisions, but which no longer justifies the ongoing declaration of a public health emergency.

The Government referred the Bill to the Standing Committee to ensure members of the Legislative Assembly, stakeholder organisations, statutory authorities including the ACT Human Rights Commission, and members of the public had the opportunity to review the proposed legislation and provide feedback for the Government to consider prior to debate on the Bill.

In the process of considering the Standing Committee's Report, the Government engaged with the ACT Human Rights Commission to inform the responses to each recommendation.

The responses and proposed Government amendments will provide a balanced approach in ensuring Directions under the Bill achieve their intended outcome to protect the health and wellbeing of Canberrans from COVID-19 while balancing key human rights considerations and limitations.

## **Government responses to the Standing Committee's recommendations**

### **Recommendation 1**

Subject to the amendments proposed in this report, the Committee recommends that the Assembly pass the Public Health Amendment Bill 2021 (No 2).

#### **Government response**

##### ***Noted***

The Government welcomes the Committee's recommendation that the Legislative Assembly pass the Public Health Amendment Bill 2021 (No. 2). The Government will introduce a number of amendments to reflect its response to the Committee's recommendations.

### **Recommendation 2**

The Committee recommends that the COVID-19 declaration and other notifiable directions be disallowable instruments.

#### **Government response**

##### ***Agreed in Part***

The Bill currently provides that a COVID-19 management declaration would be a disallowable instrument.

The ACT Government does not support public health directions, whether these are made by the Minister for Health or Chief Health Officer, to be subject to disallowance.

The Bill contains several safeguards to ensure scrutiny of the public health directions, including requirements for the Chief Health Officer to provide formal advice, consultation requirements (including with the Human Rights Commission) and regular review requirements and public notification.

The Bill also provides that the relevant standing committee must report to the Assembly about human rights issues raised by Ministerial and Chief Health Officer Directions in section 118ZQ (1).

### **Recommendation 3**

The Committee recommends that the length of a COVID-19 declaration be reduced to four weeks, with provision for four-week approved extensions.

#### Government response

#### ***Agreed in Part***

The ACT Government accepts the Committee's position that the timeframes for the length of a COVID-19 management declaration should be reduced from six months, however a four-week period is not supported.

The ACT Government will move amendments to the length of a COVID-19 management declaration to a period of three months (90 days), with a report to be provided by the Chief Health Officer to the Executive every 30 days (rather than every 60 days).

This is consistent with the amendment previously agreed by the Assembly in relation to a Public Health Emergency Declaration for COVID-19.

### **Recommendation 4**

The Committee recommends that directions should only be applicable to all persons or specified classes of persons.

#### Government response

#### ***Noted***

The ACT Government notes that the Committee made this recommendation based on the *Public Health and Wellbeing Act 2008 (Victoria)*, section 165AK (To whom a pandemic order may apply) which provides at subsection 2 that a pandemic order must not be expressed to apply to a single named individual. However, the ACT Government notes that the Victorian Act does allow for a person to be the subject of a pandemic management order under sections 165B(1)(b) and section 165BA (1)(b).

The ACT Government is of the view that making an individual person subject to powers under proposed new Part 6C is appropriate given the application of relevant protections and safeguards.

### **Recommendation 5**

The Committee recommends that express provision in the Bill should be made for internal and external review rights in relation to vaccine directions.

## Government response

### ***Agreed in Part***

The ACT Government notes the Committee's recommendation is concerned about unintended consequences that may impact an affected person's wellbeing.

The ACT Government will move an amendment to the Bill to allow a person to apply for an internal review in relation to a decision to refuse a vaccination exemption on a ground described under a Vaccination Direction Exemption Guideline made under section 118ZM.

The ACT Government is of the view that allowing a person to seek an internal review, together with other existing safeguards in the Bill will address the possibility of unintended consequences. These safeguards include that vaccination directions are to be made by the Executive as a disallowable instrument, exemptions may be provided on medical and other grounds determined by the Executive, exemption guidelines will be notifiable, and consultation must take place with the ACT Human Rights Commissioner. Directions are time limited to 90 days and must be reviewed by the Chief Health Officer every 30 days to determine whether the direction is still justified.

The ACT Government also notes that that judicial review options are available where the applicant has standing.

### **Recommendation 6**

The Committee recommends that there be minimum entitlements and supports which must be provided to community service providers and individuals (particularly vulnerable and disadvantaged persons), subject to quarantine and isolation directions.

## Government response

### ***Agreed in Principle***

The ACT Government provides a range of supports to ensure that a person subject to a quarantine or isolation direction understands the requirements, has access to urgent medical and other services and is able to access food and other essential items. Wellbeing services are also provided to individuals in quarantine or isolation.

Where a person is required to isolate and does not have a safe place to do so, the ACT Government facilitates access to appropriate accommodation for the period of the person's isolation.

### **Recommendation 7**

The Committee recommends that the ACT Government establish clear communications channels for community groups and service providers to include provision of guidance, information and materials in formats relevant to the specific needs of those recipients and their clients.

## Government response

### ***Agreed***

The ACT Government continues to work with community groups and non-government service providers to ensure that there is clear communication with organisations and individuals about public health directions and the Government's response to the COVID-19 pandemic.

## **Recommendation 8**

The Committee recommends that, if directions are given to individuals involving detention, they be notified to an appropriate oversight entity.

### Government response

#### ***Agreed***

The Government will move amendments to the Bill to require notification to the Public Advocate where an individual person is given a direction by the Chief Health Officer requiring the person to isolate.

## **Recommendation 9**

The Committee recommends that the Bill should expressly specify that oversight agencies must be able to conduct visits to places of detention in a COVID-safe manner.

### Government response

#### ***Agreed***

The ACT Government will move an amendment to the Bill to remove any doubt that nothing in Part 6C is intended to interfere with an oversight agency's functions under the *Auditor-General Act 1996*, *Children and Young People Act 2007*, *Corrections Management Act 2007*, *Human Right Commission Act 2005*, *Mental Health Act 2015*, *Mental Health (Secure Facilities) Act 2016*, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* and the *Official Visitors Act 2012* to the extent the requirements of a Chief Health Officer, Ministerial and Vaccination Directions are met.

## **Recommendation 10**

The Committee recommends that the ACT Government consult with, and report outcomes on/to, industry sectors and community groups most heavily impacted by new health directives.

### Government response

#### ***Agreed in Part***

The ACT Government continues to work with industry sectors and community groups to ensure impacts of new or changed public health directions are understood. Any feedback on the impacts of public health directions will also continue to be considered together with risks to public health as part of ongoing planning for COVID-19 directions and operational responses.