

Australian Capital Territory

Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 12)

Notifiable Instrument NI2020-666

made under the

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

1. Name of instrument

This instrument is the *Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 12)*.

2. Commencement

This instrument commences at 3:00pm on 9 October 2020.

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 this instrument.

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 (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 11)* [NI2020-660].

Dr Kerry Coleman
Chief Health Officer
9 October 2020



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 these directions is to restrict non-essential gatherings and the operation of non-essential businesses and undertakings in order to limit the spread of coronavirus disease 2019 (**COVID-19**), caused by the novel coronavirus SARS-CoV-2.

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 — NON-ESSENTIAL GATHERING, BUSINESS OR UNDERTAKING

Directions

A. Outdoor areas

1. A person must not organise or attend a **gathering** that exceeds 1 person per 2 square metres or 200 people per **usable outdoor space** (whichever is the lesser).
2. Paragraph 1 does not apply to a **gathering** to which paragraphs 3, 4 or 6 apply.

B. Non-residential premises

3. A person who is the occupier of **non-residential premises** in the Australian Capital Territory must take reasonable steps to not allow or organise a **gathering** that exceeds:
 - a. 25 people across the whole premises; or
 - b. the sum of:
 - i. 1 person per 2 square metres per **usable outdoor space** up to 200 people, and
 - ii. 1 person per 4 square metres per **usable indoor space** up to 200 people,whichever is the greater.



4. A person must not attend a **gathering** in **non-residential premises** that exceeds:
 - a. 25 people across the whole premises; or
 - b. the sum of:
 - i. 1 person per 2 square metres per **usable outdoor space** up to 200 people, and
 - ii. 1 person per 4 square metres per **usable indoor space** up to 200 people,whichever is the greater.

5. Paragraphs 3 and 4 do not apply to a gathering to which paragraph 6 applies.

C. Non-essential business or undertaking

6. A person who owns, controls or operates a **non-essential business or undertaking** described in **Column 1** of an item in **Attachment A** must:
 - a. comply with the requirements in **Column 2** of the item; and
 - b. subject to existing occupancy and licensing requirements under other laws, not allow a **gathering** in the premises that exceeds the occupancy limits listed in **Column 3** of the item, where:
 - i. a **worker** does not count towards the occupancy limit; and
 - ii. if the occupancy limit is expressed in terms of a maximum amount of tickets, each ticketed attendee counts towards the occupancy limit and the performers or participants in the event do not require tickets and do not count towards the occupancy limit; and
 - c. not temporarily divide any **usable indoor space** or **usable outdoor space** for the purposes of calculating **usable** space; and
 - d. develop and adhere to a **COVID-19 Safety Plan**, and produce the plan when requested by an **authorised person**; and
 - e. display a **sign** specifying the maximum occupancy under this Direction of that business; and
 - f. for contact tracing purposes, ask that each person who attends the business or undertaking record their attendance at the business or premises by either:
 - i. using the **Check In CBR app**; or
 - ii. providing a first name and contact phone number, and if provided, keep a record of those details, together with the date and time at which the person attended and produce the record if requested by an **authorised person**.
7. A person must not operate a nightclub under a *nightclub licence* within the meaning of the *Liquor Act 2010*.



D. Exemption

8. 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 on compassionate or other grounds that the Chief Health Officer considers reasonable and appropriate.

Note: For considerations about what is reasonable and appropriate in relation to the delivery of events, see the COVID Safe Event Protocol, available at www.covid19.act.gov.au.

PART 2 — MATTERS RELEVANT TO THESE DIRECTIONS

A. Enforcement

9. If a person fails to comply with any of the directions in this Direction, an **authorised person** may then 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. If a person fails to comply with any of the directions in this Direction, then the **authorised person** may take all reasonable steps to enforce compliance with this Direction pursuant to section 121 of *Public Health Act 1997*.

B. Guidance

11. Risk mitigation guidance is provided at **Attachment B** to this Direction. This guidance relates to all situations in which people are gathered together, whether included or excluded from the definition of **gathering**. It also relates to all businesses and undertakings, whether included or excluded from the definition of **non-essential business or undertaking**.

C. Gatherings

12. The definition of **gathering** in paragraph 19 sets out the kinds of **gatherings** that are not subject to restriction under this direction.

D. Definitions

For the purposes of this Direction:

13. **Authorised person** means an authorised person under section 121 of the *Public Health Act 1997*.
14. **Betting agency** means a TAB or KENO agency either in a stand-alone venue or within a licensed venue.
15. **Casino** has the same meaning as in the *Casino Control Act 2006*.



16. **Check In CBR app** means the app developed by ACT Health for contact tracing purposes which, when used by a person, provides ACT Health with details of their attendance at a **non-essential businesses or undertaking**.

Note: The information provided is stored for 28 days before being deleted, and is only used in accordance with ACT Health's privacy policy.

17. **COVID-19 Safety Plan** means a plan:

- a. in writing that addresses how the business or undertaking will manage its operations to minimise the risks posed to any person by **COVID-19** because of the operation of the business or undertaking; and
- b. developed with regard to published guidance material endorsed by the Chief Health Officer.

18. **End of year event** means a school graduation, formal, or end of year ceremony, concert or assembly.

19. **Gathering**, except where otherwise provided in this Direction, means a group of 2 or more people occupying a single **usable indoor space** or **usable outdoor space** at the same time, but does not include a **gathering**:

- a. at an airport that is necessary for the normal business of the airport; or
- b. in relation to public transportation, including in public transport vehicles or at public transportation facilities such as stations, platforms and stops; or
- c. for the purposes of or related to private transportation; or
- d. at a medical or health service facility that is necessary for the normal business of the facility; or
- e. in relation to providing support or care to a person with a disability; or
- f. for emergency services purposes; or
- g. for law enforcement purposes; or
- h. at a disability or aged care facility that is necessary for the normal business of the facility; or
- i. at a correctional centre, place of detention under the *Children and Young People Act 2008* or other place of custody; or
- j. at a court or tribunal; or
- k. at the Australian Capital Territory Legislative Assembly or Commonwealth Parliament for the purpose of its normal operations; or
- l. at a food market, supermarket, grocery store, retail store, or shopping centre that is necessary for the normal business of those premises; or
- m. to attend at a restaurant or café to collect or deliver takeaway meals and beverages and where social distancing of 1 person per 4 square metres is observed; or



- n. at an office building, workplace factory or construction site (or any other workplace that is not excluded from operation by Part 2 of this Direction), that is necessary for the normal operation of those premises; or
 - o. at a school, university, educational institution or childcare facility that is necessary for the normal business of the facility; or
 - p. at a hotel or motel that is necessary for the normal operation of accommodation services.
20. For paragraph 19(o), a school event that involves members of the community in addition to staff and students is not necessary for the normal business of the facility unless:
- a. the event is an **end of year event**; and
 - b. is operated in accordance with published guidance material endorsed by the Chief Health Officer.
21. **Hydrotherapy pool** means a heated swimming pool (heated to 33 to 36 degrees Celsius) for use by people receiving hydrotherapy, who use the pool to undergo that therapy either on their own or with assistance from another person.
22. **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.
23. **Non-essential business or undertaking** means a business or undertaking described in **Column 1** of an item in **Attachment A**, whether operated on a for-profit or not-for-profit basis or purely as a private social activity.
24. **Non-residential premises** has the same meaning as premises in the *Public Health Act 1997* but does not include residential premises.
25. **On licence premises** means premises in relation to which any of the following licences is held under the *Liquor Act 2010*:
- a. an *on licence* subclass (other than a *nightclub licence*);
 - b. a *general licence*;
 - c. a *club licence*;
 - d. a *special licence*.
26. **Organised sporting activity** means sporting activities arranged through peak sporting organisations, community clubs, commercial providers or individual activities, and includes dance classes and training, but does not include dance performance or professional sport.
27. **Outdoor space** means a space that is not an **indoor space** or a part of residential premises.
28. **Place of worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.



29. **Sign** means information displayed adjacent to or in close proximity to an entrance that is clearly visible to a member of the public.
30. **Usable** for an **indoor space** or **outdoor space** means the space that people can freely move around in, but not including the following areas:
- stages and similar areas;
 - restrooms, changerooms and similar areas;
 - areas occupied by fixtures, fittings, and displays; and
 - staff only areas and areas that are closed off or not being used.
31. **Worker** means an individual who carries out work in relation to a business or undertaking, whether for reward or otherwise, under an arrangement with the person conducting the business or undertaking, and includes an employee, independent contractor, outworker, person doing a work experience placement, volunteer, and an official for an organised sporting activity.

E. Note

32. Any requirement in this Direction to keep a record or where a record is provided pursuant to these directions, of name, contact phone number, and date and time of visit, requires the record to be kept for 28 days.
33. If there is any inconsistency between this Direction and any of the directions specified below, this Direction is inoperative to the extent of any inconsistency:
- the *Public Health (Self-Isolation) Emergency Direction 2020 (No 4)* [NI2020-662];
 - the *Public Health (COVID-19 Interstate Travellers) Emergency Direction 2020 (No 2)* [NI2020-661]; and
 - the *Public Health (Returned Travellers) Emergency Direction 2020 (No 8)* [NI2020-663].

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Dr Kerryn Coleman

Chief Health Officer

9 October 2020



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 – Requirements, Including Occupancy Limits, for Non-Essential Businesses or Undertakings

(see paragraphs 6(a) and 6(b) of this direction)

Note 1: Part 1 paragraph 6 imposes requirements for all **non-essential businesses or undertakings** for safety plans, signs, and contact tracing measures, which apply unless otherwise noted.

Note 2: Part 1 paragraph 6(b) governs when workers or other participants count towards the limits in **Column 3** of this attachment.

	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
1	<ul style="list-style-type: none"> a. a business that supplies liquor for consumption on on licence premises, whether or not it also supplies food; or b. a hotel to the extent it supplies food or beverages for consumption on its premises, whether or not the premises are on licence premises, but not including any part of the hotel constituted by a bottle shop, accommodation provision, function facilities, takeaway meals or a meal delivery service; or c. a restaurant, café or canteen, whether or not its premises are on licence premises, but not including: <ul style="list-style-type: none"> i. the extent to which it provides takeaway meals or a meal delivery service; or ii. a café or canteen at a hospital; or iii. a café or canteen at a residential aged care facility; or iv. a café or canteen at a school; or 	<p>except to the extent it is unreasonable or impracticable, customers remain seated;</p> <p><i>Examples of unreasonable or impracticable: entering and exiting the premises, ordering and paying for food or beverages, using the restrooms, playing a game of pool, operating a jukebox machine.</i></p>	<p>the operator’s choice of:</p> <ul style="list-style-type: none"> a. 25 people across the whole premises; or b. for premises with a total usable space of 101 square metres or more, 50 people across the whole premises; or c. the sum of: <ul style="list-style-type: none"> i. 1 person per 2 square metres per usable outdoor space up to 200 people; and ii. 1 person per 4 square metres per usable indoor



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
	<ul style="list-style-type: none">v. a café or canteen at a correctional centre; orvi. a café or canteen at a community sporting facility; orvii. a military café or canteen; orviii. a café or canteen that provides food or drink to those experiencing homelessness;		space up to 200 people
2	a food court	<ul style="list-style-type: none">a. except to the extent it is unreasonable or impracticable, customers remain seated; and <i>Examples of unreasonable or impracticable: entering and exiting the premises, ordering and paying for food or beverages, using the restrooms, playing a game of pool, operating a jukebox machine.</i>b. the business that provides the tables and chairs in the food court is responsible for the actions outlined under Part 1, paragraphs 6(d) and 6(f);	1 person per 4 square metres per usable indoor space up to 200 people



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
3	<ul style="list-style-type: none"> a. a gym, health club, fitness centre, wellness centre; or b. a centre providing yoga, barre or spin classes; or c. a bootcamp or personal trainer; 		<p>The greater of:</p> <ul style="list-style-type: none"> a. 25 people across the whole premises; or b. if staffed, 1 person per 4 square metres per usable outdoor space or usable indoor space up to 200 people
4	<ul style="list-style-type: none"> a. an organised sporting activity, except where the activity is described in Item 11; or b. a swimming pool, but not to the extent that it is being used as a hydrotherapy pool; 		<p>the sum of:</p> <ul style="list-style-type: none"> a. 1 person per 2 square metres per usable outdoor space up to 200 people, and b. 1 person per 4 square metres per usable indoor space up to 200 people
5	<ul style="list-style-type: none"> a. a community centre or facility, or a youth centre or facility; or b. an event at a conference or convention venue; or c. an indoor or outdoor play centre, or an indoor arcade or amusement centre; or 	<p><i>Note: If the venue is being used for the supply of liquor, service of a meal, an organised sporting activity, or another function/activity addressed separately in this Direction, the provisions relevant to those activities also need to be complied with.</i></p>	<p>the greater of:</p> <ul style="list-style-type: none"> a. 25 people across the whole premises; or b. the sum of: <ul style="list-style-type: none"> i. 1 person per 2 square metres per



Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
<ul style="list-style-type: none"> d. musical rehearsals, including for choirs, bands and orchestras, except where the rehearsal is taking place in a venue described in another item; or e. a gaming or gambling venue, a casino or a betting agency; or f. a hairdresser or barber; or g. a nail salon; or h. a tattoo or body modification studio; or i. a place that provides beauty therapy, tanning or waxing services; or j. a day spa or place that provides massage services, steam-based services (including saunas, steam rooms, steam cabinets and bathhouses); or k. a strip club, brothel or escort agency; or l. an auction house; or m. a real estate auction, display home or open home; 		<ul style="list-style-type: none"> usable outdoor space up to 200 people; and ii. 1 person per 4 square metres per usable indoor space up to 200 people
<p>6 a place of worship, including for a religious ceremony, but not including for a wedding or a funeral</p>	<p>the requirements under Part 1 paragraph 6 are subject to the following modifications:</p> <ul style="list-style-type: none"> a. Part 1 paragraph 6(d) only applies to gatherings of more than 25 people; and 	<p>the greater of:</p> <ul style="list-style-type: none"> a. 25 people across the whole premises; or b. the sum of:



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
		b. Part 1 paragraph 6(f) does not apply, but it must provide a visitor book in which attendees can enter their first name, contact phone number, and date and time of visit if they choose;	i. 1 person per 2 square metres per usable outdoor space up to 200 people; and ii. 1 person per 4 square metres per usable indoor space up to 200 people
7	a. a wedding; or b. a funeral; or c. a gathering following a wedding or funeral, such as a reception or a wake (however described)	<i>Note: If the gathering takes place at a venue being used for the supply of liquor, service of a meal, or another function/activity addressed separately in this Direction, the provisions relevant to those activities also need to be complied with.</i>	1 person per 4 square metres per usable outdoor space or usable indoor space up to 200 people
8	a. a gallery, museum, national institution or historic site; or b. an outdoor amusement park or attraction; or c. a library	<i>Note: If the venue is being used for the supply of liquor, service of a meal, or another function/activity addressed separately in this Direction, the provisions relevant to those activities also need to be complied with.</i>	a. 1 person per 2 square metres per usable outdoor space , and b. 1 person per 4 square metres per usable indoor space
9	a cinema or movie theatre	it is ticketed and attendees remain seated	50% of seating capacity, up to 200 tickets, in each cinema or theatre



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
10	an open-air drive-in cinema		200 vehicles and 200 people per usable outdoor space
11	a. an event performance in any location, including a concert venue, theatre, arena or auditorium, but not including GIO Stadium or Manuka Oval; or b. an organised sporting activity in an outdoor venue that is enclosed and has permanent tiered stadiums	it is ticketed and attendees remain seated	50% of seating capacity, up to 1000 tickets
12	an event at GIO Stadium or Manuka Oval	it is ticketed and attendees remain seated	50% of seating capacity



ATTACHMENT B – Risk Mitigation Guidance

This Direction should be read in conjunction with the guidance material prepared by the Chief Health Officer, including the COVID Safe Event Protocol and guidance material about how to prepare a **COVID-19 Safety Plan**, which are available at www.covid19.act.gov.au.

It is suggested that, as far as reasonably practicable, the following risk mitigation measures be applied to gatherings of 2 people or more:

- In a given occupied space, there be a density of no more than 1 person per 4 square metres for a **usable indoor space** or 1 person per 2 square metres for a **usable outdoor space**, and in any event no more than 200 people in any **usable space**, and this should take into account objects and items that may impact the total free space;
- Hand hygiene products and suitable waste receptacles should be available, to allow for frequent cleaning and waste disposal;
- Promote physical distancing of at least 1.5 metres between people, and physical contact should be avoided wherever possible, taking reasonable steps to require this when patrons are queuing outside a venue;
- The occupancy allowance should be displayed at the entrance of each venue or space;
- The recommendations for unwell individuals to isolate at home and not attend published by the Commonwealth Department of Health should be promoted and displayed prominently so that they can be seen and read easily by a person at or near an entrance to the **indoor space**;
- For settings where there is ongoing movement and an increased number of interactions between people (for example food markets) and an individual's attendance is not in the course of their employment at the place, an individual's attendance should be less than 2 hours duration;
- Buffets and self-service for food, beverages, and condiments should not be provided; and
- Where activities involve the use of equipment, that equipment should be regularly cleaned and, where practicable, not be shared by people other than members of the same household.

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