

Australian Capital Territory

Public Health (Restricted Activities) Emergency Direction 2022 (No 3)

Notifiable Instrument NI2022–85

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) Emergency Direction 2022 (No 3)*.

2. Commencement

This instrument commences at 6:00pm on 18 February 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 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) Emergency Direction 2022 (No 2)* [NI2022-68].

Dr Kerry Coleman
Chief Health Officer

18 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 declared emergency to give the directions as set out below.

The purpose of this Direction is to impose restrictions on certain businesses, activities and undertakings in relation to occupancy and density limits at premises, and the requirement to operate in accordance with COVID-19 safety plans and register and use the Check In CBR app, where applicable, to minimise the public health risk posed by **COVID-19**.

Grounds for directions

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 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 original outbreak of the Delta variant of **COVID-19** in the Australian Capital Territory on 12 August 2021 and the introduction of the Omicron variant of **COVID-19** on 3 December 2021;
- (e) While the Australian Capital Territory continues to see persistent levels of community transmission, case rates and hospitalisations have generally remained stable. Pressures on the public health, hospital and COVID-19 testing clinics have also returned to manageable levels.
- (f) there continues to be a necessity to limit the impact of **COVID-19** in the Australian Capital Territory, however this can be adequately managed with low level public health social measures. .

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 — RESTRICTED BUSINESSES, ACTIVITIES AND UNDERTAKINGS

A. Directions

1. This part applies to a person who owns, controls or operates a **restricted activity, business or undertaking** in the Australian Capital Territory.
2. A person who owns, controls or operates a **restricted activity, business or undertaking** must:
 - a. comply with the conditions for the business, activity or undertaking in column 2 of Attachment 1; and
 - b. not allow a **gathering** that exceeds the occupancy limits listed for the business, activity or undertaking in column 3 of Attachment 1, where a worker does not count towards the occupancy limit except for item 15, column 3 of Attachment 1 where workers are counted in the occupancy limit; and
 - c. develop and adhere to a **COVID-19 Safety Plan**; and
 - d. produce the business, activity or undertaking's **COVID-19 Safety Plan** when requested by an **authorised person**; and
 - e. take all reasonable steps to:
 - i. ensure **social distancing** of people can be accommodated, implemented and monitored by employees or contractors of the business, activity or undertaking; and
 - ii. ensure workers are wearing face masks in accordance with *Public Health (Mandatory Face Masks) Emergency Direction 2021 (No 7)*, as amended or replaced from time to time.

PART 2 — CHECK IN CBR BUSINESSES

B. Directions

3. A person who:
 - a. owns, controls or operates a **Check In CBR business**; or
 - b. is an organiser for an event to be held at an **event venue**, where the event being held is not ticketed or pre-registered;must register to use the **Check In CBR app**.
4. A person required to register to use the **Check In CBR app** must:
 - a. display a QR code for the **Check In CBR app** for people to record their attendance at the premises or event; and
 - b. take all reasonable steps to ensure that people aged 16 years or older, who attend for any purpose, record their attendance at the premises or event using the **Check In CBR app**.



Example 1: Reasonable steps for a **Check In CBR business** or **organised event** may include:

- displaying signage in places accessible to people who attend the premises;
 - actively monitoring points of entry to ensure that people are checking-in;
 - asking staff to ensure that patrons show their **Check In CBR app** 'green tick' demonstrating that they have checked in; and
 - utilising the business profile function to assist patrons who are unable to check in.
5. Paragraph 4(b) does not apply to a **worker** attending an **event venue** when there is no event.
6. If the **Check In CBR app** is unavailable for use at the premises or an event as a direct result of a failure with the **Check In CBR app**, a person required to register to use the **Check In CBR app** must:
- a. keep a written record of:
 - i. the first name and contact phone number of each person who attends the premises or event; and
 - ii. the date and time at which each person attended the premises or event; and
 - b. retain the record for 28 days; and
 - c. produce the record if requested by an **authorised person**; and
 - d. not use the written record for any purpose other than for production to an **authorised person**.
- Note:** A person required to register to use the **Check In CBR app** must take all reasonable steps to ensure that people aged 16 years or older record their attendance, including assisting those people to check in utilising the business profile function.*
- It is an offence under section 2D of the COVID-19 Emergency Response Act 2020 (ACT) for a person to collect check in information other than through the direct entry of the information into the **Check In CBR app** or as permitted under this Direction.*
7. A person aged 16 years or older who for any purpose attends a **Check In CBR business** or **event venue** which is registered to use the **Check In CBR app** must record their attendance using the **Check In CBR app**.
8. Paragraph 7 does not apply to a **worker** attending an **event venue** when there is no event.
9. If the **Check In CBR app** is unavailable as a direct result of a failure with the **Check In CBR app**, a person aged 16 years or older must provide their first name and contact phone number to the person required to register to use the **Check In CBR app**, together with the date and time at which the person attended the premises or event.
10. A person required to register to use the **Check In CBR app**, including staff employed by that person, may refuse entry to any person who fails to comply with the requirement to use the **Check In CBR app**.



11. A person is not required to use the **Check In CBR app** if the person:
 - a. is an **emergency services** worker or volunteer who attends the premises or event in the course of their official duties; or
 - b. is an **authorised person** who attends the premises or event in the course of their official duties.

PART 3 — EXEMPTIONS

12. 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 compassionate or other grounds that the Chief Health Officer considers reasonable and appropriate.
13. 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.

PART 4 — MISCELLANEOUS

A. Directions

14. 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.
15. Any person subject to this Direction must comply with any request under paragraph 14 by an **authorised person**.
16. 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**.
17. If a person fails to comply with any direction given under paragraph 16, the **authorised person** may take all reasonable steps to enforce compliance with the direction.

Example – Closing a premises from which a business, activity or undertaking operates until such time as the business can demonstrate compliance with this Direction.

B. Guidance

18. Risk mitigation guidance is provided at Attachment 2 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 **restricted activity, business or undertaking**.

C. Definitions

For the purposes of this Direction:

19. **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*.
20. **Betting agency** means a TAB or KENO agency either in a stand-alone venue or within a licensed venue.



21. **Casino** has the same meaning as in the *Casino Control Act 2006*.
22. **Check In CBR app** means the mobile application developed and operated by ACT Health to allow people to record their presence at a place using a mobile device for contact tracing purposes.

Note: The information provided is stored for 28 days before being deleted or as soon as reasonably practicable after being used for a purpose under the *COVID-19 Emergency Response Act 2020 (ACT)*.
23. **Check In CBR business** means:
 - a. a bar, including a pub or tavern;
 - b. a registered club;
 - c. a nightclub; and
 - d. a strip club or brothel.
24. **COVID-19** means the coronavirus disease 2019, caused by the novel coronavirus SARS-CoV-2.
25. **COVID-19 safety plan** means a plan in writing that addresses how a 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.
26. **Emergency services** means the ambulance service, the police, the fire and rescue service, the rural fire service or the SES.
27. **Event venue** means a **restricted activity, business or undertaking** mentioned in items 18, 19, 20, 21, 22, 23, 24 and 34 of Attachment 1.
28. **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. to attend at a restaurant or café to collect or deliver takeaway meals and beverages; or
 - m. at an office building or workplace factory, that is necessary for the normal operation of those premises; or
 - n. at a school, university, educational institution or childcare facility that is necessary for the normal business of the facility; or
 - o. at a hotel or motel that is necessary for the normal operation of accommodation services.
29. For paragraph 28(n), 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 the event is an end of year event.
30. **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.
31. **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.
32. **Non-residential premises** has the same meaning as premises in the *Public Health Act 1997* but does not include residential premises.
33. **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.
34. **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.
35. **Outdoor space** means a space that is not an indoor space or a part of a residence.
36. **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.
37. **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).
38. **Restricted activity, business or undertaking** means a business or undertaking or other activity specified in column 1 of Attachment 1.



39. **Retail food services:**

- a. 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 and fast-food outlets;
- b. does not include:
 - i. a café or canteen at a hospital, residential aged care facility, correctional centre or school;
 - ii. a service that provides food or drink to those experiencing homelessness.

40. **Social distancing** means remaining at least 1.5 metres from other people.

41. **Usable** for an **indoor space** or **outdoor space** means the space that people can freely move around in, but not including the following areas:

- a. stages and similar areas;
- b. restrooms, changerooms and similar areas;
- c. areas occupied by fixtures, fittings, and displays; and
- d. staff only areas and areas that are closed off or not being used.

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

Note: A person who is providing a service to a resident including a health service or professional or other service is not a visitor.

43. **Worker** has the same meaning as in s 7 of the *Work Health and Safety Act 2011* (ACT).

D. Inconsistency with other directions

44. 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:

- a. the *Public Health (Diagnosed People and Close Contacts) Emergency Direction 2022 (No 3)*, as amended or replaced from time to time; and
- b. the *Public Health (Returned Travellers) Emergency Direction 2022 (No 1)*, as amended or replaced from time to time.

Dr Kerryn Coleman
Chief Health Officer

18 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).

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).

Accessibility

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Attachment 1 – Restricted businesses, activities or undertakings

Note: This Direction imposes requirements for all **restricted businesses, activities or undertakings**. This Direction requires all **restricted businesses, activities or undertakings** to develop and adhere to a **COVID-19 Safety Plan** which must be produced to an **authorised person** on request.

| | Column 1 Restricted activity, business or undertaking | Column 2 Any additional conditions (other than those outlined in the Direction) | Column 3 Occupancy limit |
|----------|--|--|-------------------------------------|
| 1 | <p>Early childhood education and care (including out of school hours care)</p> <p><i>Note: The Health Guidelines for Schools and Early Childhood Education and Care requires staff and visitors to record their attendance through the Check In CBR app.</i></p> | <p>Must operate in accordance with the Health Guidelines for Schools and Early Childhood Education and Care as published at https://www.education.act.gov.au.</p> | |
| 2 | <p>Schools (preschool to year 12) and out of school hours care</p> <p><i>Note: The Health Guidelines for Schools and Early Childhood Education and Care requires staff and visitors to record their attendance through the Check In CBR app.</i></p> | <p>Must operate in accordance with the Health Guidelines for Schools and Early Childhood Education and Care as published at https://www.education.act.gov.au.</p> | |
| 3 | Higher education and training | | |
| 4 | Places of worship | | |

| | Column 1 Restricted activity, business or undertaking | Column 2 Any additional conditions (other than those outlined in the Direction) | Column 3 Occupancy limit |
|-----------|---|--|---|
| 5 | Wedding venues | | |
| 6 | Funeral venues | | |
| 7 | <ul style="list-style-type: none"> a. A gym, health club, fitness centre, wellness centre; or b. A centre providing yoga, pilates, barre or spin classes; or c. A bootcamp or personal trainer | | |
| 8 | A swimming pool, but not to the extent that it is being used as a hydrotherapy pool | | <p>No more than 2,000 people across the whole premises.</p> <p><i>Note: The venue may apply for an exemption for events greater than 2000 people.</i></p> |
| 9 | Dance classes | | |
| 10 | Retail food services | | |
| 11 | Nightclubs | | |
| 12 | Strip club or brothel | | |
| 13 | Gaming or gambling venues, casinos or a betting agency | | |

| | Column 1 Restricted activity, business or undertaking | Column 2 Any additional conditions (other than those outlined in the Direction) | Column 3 Occupancy limit |
|-----------|--|--|-------------------------------------|
| 14 | <ul style="list-style-type: none"> a. A hairdresser or barber; or b. A nail salon; or c. A tattoo or body modification studio; or d. A place that provides beauty therapy, tanning or waxing services; or e. A day spa or place that provides massage services, steam-based services (including saunas, steam rooms, steam cabinets and bathhouses) | | |
| 15 | Building and construction activities | Building and construction activities must operate in accordance with their COVID-19 safety plan which must, as far as is reasonably possible, be consistent with the 'ACT Building and Construction Industry COVID-19 Guidance Document'. | |
| 16 | A gallery, museum, national institution, historic site, zoo or other outdoor tourist attraction | | |
| 17 | Musical rehearsals, including choirs, bands and orchestras | | |

| | Column 1 Restricted activity, business or undertaking | Column 2 Any additional conditions (other than those outlined in the Direction) | Column 3 Occupancy limit |
|-----------|--|--|--|
| 18 | Indoor entertainment and event venues with forward facing, fixed and tiered seating | For events attended by over 1000 people, the venue must ensure the event organiser has submitted a COVID-19 safety plan to the Chief Health Officer for review. | No more than 2,000 people for each organised event. <i>Note: Event organisers may apply for an exemption for events greater than 2000 people.</i> |
| 19 | Indoor entertainment and event venues, not including a venue mentioned in item 18 | For events attended by over 1000 people, the venue must ensure the event organiser has submitted a COVID-19 safety plan to the Chief Health Officer for review. | No more than 2,000 people for each organised event. <i>Note: Event organisers may apply for an exemption for events greater than 2000 people.</i> |
| 20 | Conference or convention venues, not including a venue mentioned in item 21 | For events attended by over 1000 people, the venue must ensure the event organiser has submitted a COVID-19 safety plan to the Chief Health Officer for review. | No more than 2,000 people for each organised event. <i>Note: Event organisers may apply for an exemption for events greater than 2000 people.</i> |
| 21 | National Convention Centre | For events attended by over 1000 people, the venue must ensure the event organiser has submitted a COVID-19 safety plan to the Chief Health Officer for review. | No more than 2,000 people for each organised event. <i>Note: Event organisers may apply for an exemption for events greater than 2000 people.</i> |
| 22 | Outdoor entertainment and event venues, not including a venue mentioned in items 23 or 24. | For events attended by over 1000 people, the venue must ensure the event organiser has submitted a COVID-19 safety plan to the Chief Health Officer for review. | No more than 2,000 people for each organised event. <i>Note: Event organisers may apply for an exemption for events greater than 2000 people.</i> |

| | Column 1 Restricted activity, business or undertaking | Column 2 Any additional conditions (other than those outlined in the Direction) | Column 3 Occupancy limit |
|-----------|---|---|---|
| 23 | GIO Stadium or Manuka Oval | | |
| 24 | Exhibition Park in Canberra | | No more than 3,000 people across the entire venue. <i>Note: The event organiser may apply for an exemption for events greater than 3,000 people.</i> |
| 25 | Cinema or movie theatre | | |
| 26 | Libraries | | |
| 27 | Community centre, community facility or youth centre, not including activities held at these premises that are mentioned elsewhere in Attachment 1. | | |
| 28 | Real estate services | | |
| 29 | Auction houses | | |
| 30 | Organised sporting activity | For organised sporting events to be attended by over 1000 people, the event organiser must ensure they have submitted a COVID-19 safety plan to the Chief Health Officer for review. | No more than 2,000 people for each organised event. <i>Note: Event organisers may apply for an exemption for events greater than 2000 people.</i> |

| | Column 1 Restricted activity, business or undertaking | Column 2 Any additional conditions (other than those outlined in the Direction) | Column 3 Occupancy limit |
|-----------|---|--|---|
| 31 | An indoor or outdoor play centre, or an indoor arcade or amusement centre | | |
| 32 | Organised events, not including a restricted activity, business or undertaking mentioned elsewhere in Attachment 1. Example: music events, sporting events greater than permitted venue capacities | <ul style="list-style-type: none"> a. For events to be attended by over 1000 people, the event organisers must ensure a COVID-19 safety plan has been submitted to the Chief Health Officer for review. a. the event complies with the COVID Safe Event Guidance as published at https://www.covid19.act.gov.au/restrictions/covid- safe-events | <p>No more than 2,000 people for each organised event.</p> <p><i>Note: Event organisers may apply for an exemption for events greater than 2000 people.</i></p> |
| 33 | Residential Aged Care Facility | Must not allow more than 5 visitors to visit a resident at any one time or in any one day, other than for end of life. Prospective residents can visit with up to four people accompanying them. | |

Attachment 2 – 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:

- Hand hygiene products and suitable waste receptacles should be available, to allow for frequent cleaning and waste disposal;
- Wherever possible promote physical distancing of at least 1.5 metres between groups of people not known to each other, and physical contact should be avoided wherever possible, taking reasonable steps to require this when patrons are queuing outside a venue;
- The recommendations for unwell individuals to remain at home and not attend gatherings 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;
- If businesses choose to have self-serve buffets, they must implement additional risk mitigation measures, and ensure that they are documented in the COVID-19 Safety Plan for the business. Some important considerations will include:
 - Ensure that self-serve buffets are appropriately supervised by staff, particularly during busy periods;
 - Ensure that hand sanitiser is available and used by patrons prior to using the self-serve buffet;
 - Regularly replace any shared utensils with clean ones. This could be done at least every hour and more regularly during busy periods;
- Businesses should continue to avoid offering communal snacks;
- Any communal condiments should be wiped down on a regular basis, and more so during busy periods;
- 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;
- Where required to take reasonable steps to ensure patrons record their attendance using the Check In CBR App, the following measures are taken:
 - Actively monitoring points of entry;
 - Requesting to see confirmation from a patron that they have recorded their attendance using the Check In CBR App; and
 - Clear signage or messaging to customers of the need to record their attendance using the Check In CBR App.