

# Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 9)

## Notifiable Instrument NI2020-592

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 (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 9)*.

### 2. Commencement

This instrument commences at 9:00am on 9 September 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 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 (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2020 (No 8)* [NI2020-533].

Dr Kerry Coleman  
Chief Health Officer  
8 September 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 4 square metres or the **maximum person limit** per **usable outdoor space** (whichever is the lesser), except where otherwise provided in this Direction.

#### **B. Non-residential premises**

2. Except where otherwise provided in this Direction, a person:
  - a. who is the occupier of **non-residential premises** in the Australian Capital Territory must take reasonable steps to not allow or organise a **gathering** of more than 1 person per 4 square metres or the **maximum person limit** per **usable indoor space** or **usable outdoor space** (whichever is the lesser) to occur at the **non-residential premises**; or
  - b. must not attend a **gathering** of more than 1 person per 4 square metres or the **maximum person limit** per **usable indoor space** or **usable outdoor space** (whichever is the lesser) at **non-residential premises** except where otherwise provided in this Direction.



### C. Non-essential business or undertaking

3. A person who owns, controls or operates a **non-essential business or undertaking** in the Australian Capital Territory must comply with the requirements for a **non-essential business or undertaking** in this Direction
4. A person must not operate a nightclub under a *nightclub licence* within the meaning of the *Liquor Act 2010*.
5. Except where otherwise provided in this Direction, and subject to existing occupancy and licensing requirements, each **gathering** in premises from where a **non-essential business or undertaking** operates must not exceed 1 person per 4 square metres or the **maximum person limit** (excluding a **worker**) per **usable** space in the premises (whichever is the lesser).
6. A person who owns, controls or operates a **non-essential business or undertaking** must not temporarily divide any **usable indoor space** or **usable outdoor space** for the purposes of calculating **usable** space under paragraph 5.
7. Except where otherwise provided in this Direction, a person who owns, controls or operates a **non-essential business or undertaking** must:
  - a. develop and adhere to a **COVID-19 Safety Plan**, and produce the plan when requested by an **authorised person**; and
  - b. display a **sign** specifying the maximum occupancy under this Direction of that business; and
  - c. 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**.

### 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 or appropriate.



## 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 A** 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. Definitions

For the purposes of this Direction:

12. A **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.
13. An **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.
14. **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.*
15. **Maximum person limit** means 100 people.
16. **End of year event** means a school or university graduation, formal, or end of year ceremony or assembly.



17. An **outdoor space** means a space that is not an **indoor space** or a part of residential premises.
18. **Non-residential premises** has the same meaning as premises in the Public Health Act 1997 but does not include residential premises.
19. **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.
20. **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 and volunteer.
21. Except where otherwise provided in this Direction, a **gathering** 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**:
- at an airport that is necessary for the normal business of the airport; or
  - in relation to public transportation, including in public transport vehicles or at public transportation facilities such as stations, platforms and stops; or
  - for the purposes of or related to private transportation; or
  - at a medical or health service facility that is necessary for the normal business of the facility; or
  - in relation to providing support or care to a person with a disability; or
  - for emergency services purposes; or
  - for law enforcement purposes; or
  - at a disability or aged care facility that is necessary for the normal business of the facility; or
  - at a correctional centre, place of detention under the *Children and Young People Act 2008* or other place of custody; or
  - at a court or tribunal; or
  - at the Australian Capital Territory Legislative Assembly or Commonwealth Parliament for the purpose of its normal operations; or
  - 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.

22. For paragraph 21(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.

23. A **non-essential business or undertaking** means any of the following, whether operated on a for-profit or not-for-profit basis or purely as a private social activity:
- a. a business that supplies liquor for consumption on **on licence premises**, whether or not it also supplies food, with the following requirements:
    - i. except to the extent it is unreasonable or impracticable, customers remain seated; and  
*Examples of unreasonable or impracticable: entering and exiting the premises, ordering and paying for food or beverages, using the restrooms.*
    - ii. it takes reasonable steps to require patrons queuing to enter the premises to appropriately physically distance from each other; and
    - iii. it displays a **sign** in each individual **usable space** specifying the maximum occupancy of that **usable space**;
  - 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**:
    - i. with the following requirements:
      - A. except to the extent it is unreasonable impracticable, customers remain seated; and  
*Examples of unreasonable or impracticable: entering and existing the premises, ordering and paying for food or beverages, using the restrooms.*
      - B. if the premises are **on licence premises**, it takes reasonable steps to require patrons queuing to enter the premises to appropriately physically distance from each other; and

- C. it displays a **sign** in each individual **usable space** specifying the maximum occupancy of that **usable space**; but
- ii. does not include the following:
  - A. any part of the hotel constituted by a bottle shop; or
  - B. to the extent that it provides accommodation, function facilities, takeaway meals or a meal delivery service;
- c. a restaurant, café, canteen or food court, whether or not its premises are **on licence premises**:
  - i. with the following requirements:
    - A. except to the extent it is unreasonable impracticable, customers remain seated; and  
*Examples of unreasonable or impracticable: entering and existing the premises, ordering and paying for food or beverages, using the restrooms.*
    - B. if the premises are **on licence premises**, it takes reasonable steps to require patrons queuing to enter the premises to appropriately physically distance from each other; and
    - C. if the premises is a food court, the business that provides the tables and chairs in the food court is responsible for the actions outlined under Part 1, paragraphs 7(a) and 7(c); and
    - D. it displays a **sign** in each individual **usable space** specifying the maximum occupancy of that **usable space**; but
  - ii. does not include the following:
    - A. to the extent that it provides takeaway meals or a meal delivery service; or
    - B. a café or canteen at a hospital; or
    - C. a café or canteen at a residential aged care facility; or
    - D. a café or canteen at a school; or
    - E. a café or canteen at a correctional centre; or
    - F. a café or canteen at a community sporting facility; or
    - G. a military café or canteen; or
    - H. a café or canteen that provides food or drink to those experiencing homelessness;



- d. a gym, health club, fitness centre, wellness centre, or a centre providing yoga barre or spin facilities, or a bootcamp or personal trainer, with the following requirements:
  - i. for unstaffed premises, it involves a **gathering** of no more than 25 people; and
  - ii. displays a **sign** specifying the maximum occupancy for staffed and unstaffed periods;
- e. an **organised sporting activity** with the following requirements:
  - i. other than for classes and training, for the purposes of Part 1, paragraph 5, participants are excluded from the **maximum person limit**; and
  - ii. where seating is provided individuals and groups who have not attended together are seated at least 1.5 metres apart from each other;
- f. a swimming pool, but not to the extent that it is being used:
  - i. as a **hydrotherapy pool**; or
  - ii. for an **organised sporting activity** in accordance with the requirements of paragraph 23(e);
- g. a community centre or facility or a youth centre or facility, but:
  - i. not to the extent that:
    - A. the centre or facility hosts essential voluntary or public services, such as food banks or services for those experiencing homelessness; or
    - B. the centre or facility hosts essential services for vulnerable children and families, or for young people at risk of homelessness or engagement with the youth justice system; and
  - ii. the requirements under Part 1, paragraph 7(a) and 7(c) do not apply;  
*Note: If the facility is being used for an activity such as dance or martial arts or another activity addressed separately in this Direction, the provisions relevant to those activities in Part 1, paragraphs 5 and 7 also need to be complied with.*  
*Example: A person holding a dance class in a community hall will need to comply with the rules regarding organised sporting activities.*
- h. a **place of worship**, including for a religious ceremony:
  - i. with the following requirements:
    - A. for the purposes of Part 1, paragraph 5, religious leaders and those necessary to facilitate a service or ceremony are also excluded from the maximum gathering size; and
    - B. the requirements under Part 1, paragraph 7(c) do 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; and



- C. the requirements for a **COVID-19 Safety Plan** in Part 1, paragraph 7(a) only apply in relation to **gatherings** on the premises of more than 20 people; but
- ii. does not include use of the place for the purposes of a wedding or funeral;
- i. a gallery, museum, national institution or historic site, with the following requirements:
- i. for the purposes of Part 1, paragraph 5, the **maximum person limit** does not apply; and
  - ii. where a group of people attending a tour (other than a school tour) at the premises does not exceed more than 20 people (excluding necessary personnel to facilitate the activity) and the tour is limited to a duration of no more than 2 hours;
- 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.*
- j. an outdoor amusement park or attraction, with the following requirements:
- i. for the purposes of Part 1, paragraph 5, the **maximum person limit** does not apply; and
  - ii. where a group of people attending a tour (other than a school tour) at the premises does not exceed more than 20 people (excluding necessary personnel to facilitate the activity) and the tour is limited to a duration of no more than 2 hours;
- k. a cinema with the requirement that, where seating is available individuals and groups who have not attended together are seated at least 1.5 metres apart from each other;
- Example: If a person books a ticket to attend on their own, they should be seated at least 1.5 metres from a person who has made a separate booking. If a group of 10 books together, they can sit together, but need to be at least 1.5 metres away from other groups/individuals.*
- l. an open-air drive-in cinema with the requirement that the vehicles are parked at least 1.5 metres apart;
- m. performances in all locations, including in a concert venue, theatre, arena or auditorium, with the following requirements:
- i. for the purposes of Part 1, paragraph 5, performers are also excluded from the maximum gathering size; and
  - ii. where seating is available individuals and groups who have not attended together are seated at least 1.5 metres apart from each other; and
- Example: If a person books a ticket to attend on their own, they should be seated at least 1.5 metres from a person who has made a separate booking. If a group of 10 books together, they can sit together, but need to be at least 1.5 metres away from other groups/individuals.*



- iii. for a rehearsal or performance, it is ticketed and attendees remain seated;
- n. events in a conference or convention venue, with the requirement that where seating is available individuals and groups who have not attended together are seated at least 1.5 metres apart from each other;

*Note: If the venue is being used for a performance, 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.*

*Example: A person serving a meal with wine will need to comply with the rules regarding food and alcohol service.*

- o. a wedding;
- p. a funeral;
- q. a library;
- r. an indoor or outdoor play centre, or an indoor arcade or amusement centre;
- s. a gaming or gambling venue, a **casino** or **betting agency**;
- t. a hairdresser or barber;
- u. a nail salon;
- v. a tattoo or body modification studio;
- w. a place that provides beauty therapy, tanning or waxing services;
- x. a day spa or a place that provides massage services, steam-based services (including saunas, steam rooms, steam cabinets and bathhouses);
- y. a strip club, brothel or an escort agency;
- z. an auction house;
- aa. a real estate auction, display home or an open house inspection.

24. **Authorised person** means an authorised person under section 121 of the Public Health Act 1997.

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

26. **Casino** has the same meaning as in the *Casino Control Act 2006*.

27. **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.

28. **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*.

29. **Organised sporting activity** means sporting activities arranged through peak sporting organisations, community clubs, commercial providers or individual activities, and includes dance activities, but does not include professional sport.

30. **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.

31. **Sign** means information displayed adjacent to or in close proximity to an entrance that is clearly visible to a member of the public.

#### D. 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:

- a. the *Public Health (Self-Isolation) Emergency Direction 2020 (No 3)* (NI2020-534);
- b. the *Public Health (COVID-19 Interstate Hotspots) Emergency Direction 2020 (No 5)* (NI2020-440);
- c. the *Public Health (COVID-19 Interstate Travellers) Emergency Direction 2020* (NI2020-399); and
- d. the *Public Health (Returned Travellers) Emergency Direction 2020 (No 7)* (NI2020-535).

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**Dr Kerryn Coleman**

Chief Health Officer

8 September 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 - Risk Mitigation Guidance

This Direction should be read in conjunction with the guidance material prepared by the Chief Health Officer, including guidance material about how to prepare a **COVID-19 Safety Plan**, which is available at [www.covid19.act.gov.au](http://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 or the **maximum person limit of usable** space (whichever is the lesser), 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;
- 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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