

Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2021 (No 4)

Notifiable Instrument NI2021–405

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 2021 (No 4)*.

2. Commencement

This instrument commences at 11:59pm on 1 July 2021.

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 2021(No 3)* [NI2021-216].

Dr Kerry Coleman
Chief Health Officer
1 July 2021



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 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 — 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 1000 people per **usable outdoor space** (whichever is the lesser).
2. This part does not apply to a **gathering** to which Part 1B of this Direction applies or to a **non-essential business or undertaking**.

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 the greater of:
 - a. 25 people across the whole premises; or
 - b. the sum of:
 - i. 1 person per 2 square metres per **usable outdoor space**; and
 - ii. 1 person per 2 square metres per **usable indoor space**.



4. A person must take all reasonable steps to not attend a **gathering** in **non-residential premises** that exceeds the greater of:
 - a. 25 people across the whole premises; or
 - b. the sum of:
 - i. 1 person per 2 square metres per **usable outdoor space**; and
 - ii. 1 person per 2 square metres per **usable indoor space**.
5. This part does not apply to a **non-essential business or undertaking**.

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. develop and adhere to a **COVID-19 Safety Plan**, and produce the plan when requested by an **authorised person**; and
 - d. display a **sign** at the entrance to the premises, specifying the occupancy limit of the premises under this Direction.

*Note: A **non-essential business or undertaking** must also comply with the directions relating to the **Check In CBR app** contained in the **Public Health (Check In Requirements) Emergency Direction 2021**.*

D. Organised events

7. A person who organises a **gathering** of more than 500 people for a planned event or function must develop and adhere to a **COVID-19 Safety Plan** and adhere to the requirements for the gathering in the **COVID Safe Event Protocol**.

*Note: A person who organises a gathering to which Part 1D applies must also comply with the directions relating to the **Check In CBR app** contained in the **Public Health (Check In Requirements) Emergency Direction 2021**.*



E. 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, or a stated requirement under this Direction, on compassionate or other grounds that the Chief Health Officer considers reasonable and appropriate.
9. 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.

*Note: For considerations about what is reasonable and appropriate in relation to the delivery of events, see the COVID Safe Event Protocol, set out in **Attachment D**.*

PART 2 — MATTERS RELEVANT TO THESE DIRECTIONS

A. Enforcement

10. If a person fails to comply with any requirement under this Direction, an **authorised person** may 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**.
11. If a person fails to comply with any requirement under this Direction, the **authorised person** may take all reasonable steps to enforce compliance with this Direction pursuant to section 121 of the *Public Health Act 1997*.

B. Guidance

12. 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

13. The definition of **gathering** in paragraph 21 sets out the kinds of **gatherings** that are not subject to restriction under this Direction.

D. Definitions

For the purposes of this Direction:

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



17. **Check In CBR app** has the same meaning as in the *Public Health (Check In Requirements) Emergency Direction 2021*.

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

18. **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; and
 - developed with regard to guidance material set out in **Attachment C**.
19. **COVID Safe Event Protocol** means the protocol set out in **Attachment D**.
20. **End of year event** means a school graduation, formal, or end of year ceremony, concert or assembly.
21. **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**:
- 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
 - to attend at a restaurant or café to collect or deliver takeaway meals and beverages; or
 - at an office building, workplace factory or construction site, 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**; or
 - b. the event is operated in accordance with the **COVID Safe Event Protocol** set out in **Attachment D**.
- 23. **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.
- 24. **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.
- 25. **Nightclub** means a nightclub under a *nightclub licence* within the meaning of the *Liquor Act 2010*.
- 26. **Non-essential business or undertaking** means a business or undertaking in the Australian Capital Territory 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.
- 27. **Non-residential premises** has the same meaning as premises in the *Public Health Act 1997* but does not include residential premises.
- 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 classes and training, but does not include dance performance or professional sport.
- 30. **Outdoor space** means a space that is not an **indoor space** or a part of residential premises.
- 31. **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.



32. **Sign**, displayed at an entrance to a place, means information displayed adjacent to or in close proximity to the entrance that is clearly visible to a member of the public entering the place.
33. **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.
34. **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. Other

35. 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]; and
 - the *Public Health (Returned Travellers) Emergency Direction 2021* [NI2021-339].

Dr Kerryn Coleman

Chief Health Officer

1 July 2021



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, and signs, 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.

Note 3: A **non-essential business or undertaking** must also comply with the directions relating to the **Check In CBR app** contained in the Public Health (Check In Requirements) Emergency Direction 2021.

	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 nightclub; or d. a restaurant, café or canteen, whether or not its premises are on licence premises, but not including: 	<ul style="list-style-type: none"> a. the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction. b. for a business or undertaking that has a dedicated dancing area, 1 person per 2 square metres may be in each dedicated dancing area at one time. 	<p>the greater of:</p> <ul style="list-style-type: none"> a. 25 people across the whole premises; or b. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
	<ul style="list-style-type: none">i. the extent to which it provides takeaway meals or a meal delivery service; orii. a café or canteen at a hospital; oriii. a café or canteen at a residential aged care facility; oriv. a café or canteen at a school; orv. 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		
2	a food court	<ul style="list-style-type: none">a. the business that provides the tables and chairs in the food court is responsible for the actions outlined under Part 1 paragraphs 6(c).b. the venue displays a sign at the entrance to each usable space,	the greater of: <ul style="list-style-type: none">a. 25 people across the whole premises; orb. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
		specifying the occupancy limit for the space under this Direction.	
3	<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 (except where the centre is a medical or health service facility outlined in paragraph 21(d)); or c. a bootcamp or personal trainer 	<ul style="list-style-type: none"> a. the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction. 	the greater of: <ul style="list-style-type: none"> a. 25 people across the whole premises; or b. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space
4	<ul style="list-style-type: none"> a. an organised sporting activity, except where the activity is described in Item 13(b) or Item 14; or b. a swimming pool, but not to the extent that it is being used as a hydrotherapy pool 	<ul style="list-style-type: none"> a. the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction. 	the greater of: <ul style="list-style-type: none"> a. 25 people across the whole premises; or b. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space, up to 1000 people across the whole premises.
5	<ul style="list-style-type: none"> a. a community centre or facility, or a youth centre or facility; or 	<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</i>	the greater of <ul style="list-style-type: none"> a. 25 people across the whole premises; or



Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
<ul style="list-style-type: none">b. an indoor or outdoor play centre, or an indoor arcade or amusement centre; orc. musical rehearsals, including for choirs, bands and orchestras, except where the rehearsal is taking place in a venue described in another item; ord. a gaming or gambling venue, a casino or a betting agency; ore. a hairdresser or barber; orf. a nail salon; org. a tattoo or body modification studio; orh. a place that provides beauty therapy, tanning or waxing services; ori. a day spa or place that provides massage services, steam-based services (including saunas, steam rooms, steam cabinets and bathhouses); orj. a strip club, brothel or escort agency; ork. an auction house; orl. a real estate auction, display home or open home	<p><i>those activities also need to be complied with.</i></p>	<ul style="list-style-type: none">b. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space.



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
6	except where the activity is described in Item 7 an event at a conference or convention venue	<ul style="list-style-type: none"> a. it is ticketed or requires a formal registration for attendance; b. the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction. <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 1 person per 2 square metres per usable outdoor space and usable indoor space
7	an event at the National Convention Centre Canberra	<ul style="list-style-type: none"> a. it is ticketed or requires a formal registration for attendance; b. the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction. c. the venue's Covid-19 Safety Plan must be updated to reflect the changes in 	<ul style="list-style-type: none"> a. For the Royal Theatre within the National Convention Centre Canberra, 100% of seating capacity where an event is ticketed and seated (excluding workers and performers); b. For all other usable spaces, 75% of capacity



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
		<p>Occupancy Limit in Column 3, but does not require re-approval in writing by the Chief Health Officer.</p> <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>	
8	a place of worship , including for a religious ceremony, but not including for a wedding or a funeral	<p>the requirements under Part 1 paragraph 6 are subject to the following modifications:</p> <p>a. Part 1 paragraph 6(c) only applies to gatherings of more than 25 people; and</p>	<p>the greater of:</p> <p>a. 25 people across the whole premises; or</p> <p>b. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space.</p>
9	<p>a. a wedding; or</p> <p>b. a funeral; or</p>	<p><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</i></p>	<p>the greater of:</p> <p>a. 25 people across the whole premises; or</p>



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
	c. a gathering following a wedding or funeral, such as a reception or a wake (however described)	<i>the Direction, the provisions relevant to those activities also need to be complied with.</i>	b. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space .
10	a. a gallery, museum, national institution or historic site; or b. an outdoor amusement park or attraction; or c. a library	a. the venue displays a sign at the entrance to each usable space , specifying the occupancy limit for the space under this Direction. <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>	a. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space .
11	a cinema or movie theatre	a. it is ticketed and attendees remain seated b. the venue displays a sign in each usable space that is a theatre, specifying the occupancy limit under this Direction	a. If there is a COVID-19 Safety Plan approved in writing by the Chief Health Officer, 100% of seating capacity for each individual cinema or movie theatre (excluding any workers on the premises). Otherwise: b. 75% of capacity within each individual theatre.



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
12	an indoor event performance in any location with forward facing, fixed and tiered seating, such as a concert venue, theatre, arena or auditorium	<p>a. it is ticketed and attendees remain seated as far as practicable;</p> <p>b. for an event that has a dedicated dancing area, 1 person per 2 square metres may be in each dedicated dancing area at one time.</p> <p><i>Note: If the venue does not have fixed and/or tiered seating, it must comply with the requirements in Item 1.</i></p>	<p>a. If there is a COVID-19 Safety Plan approved in writing by the Chief Health Officer, 100% of seating capacity (excluding workers and performers);</p> <p>Otherwise:</p> <p>b. 75% of seating capacity</p>
13	except where the activity is described in Item 14 : <p>a. an outdoor event performance in any location with forward facing and tiered seating, such as a concert venue, theatre, arena or auditorium; or</p> <p>b. an organised sporting activity in an outdoor stadium that is enclosed and has permanent tiered seating.</p>	<p>a. it is ticketed and attendees remain seated as far as practicable;</p>	<p>a. 100% of seating capacity for fixed seating areas; and</p> <p>b. 1 person per 2 square metres for any unfixed seating areas, up to 1000 people.</p>
14	an event at GIO Stadium or Manuka Oval	<p>a. it is ticketed and attendees remain seated as far as practicable;</p>	<p>a. 100% of seating capacity for fixed seating areas; and</p> <p>b. 1 person per 2 square metres for any unfixed seating areas.</p>



	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
15	an event at Exhibition Park in Canberra (EPIC)		<p>a. If the event is attended by fewer than 2000 people, and has a COVID-19 Safety Plan approved in writing by the Chief Health Officer, 75% of capacity across each indoor and outdoor space, or;</p> <p>b. If the event is attended by fewer than 2000 people but does not have a COVID-19 Safety Plan approved in writing by the Chief Health Officer, the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space.</p>



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:

- 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 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 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**;
- 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;
- 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**.

Accessibility

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