

Australian Capital Territory

Public Health (Restricted Activities) Emergency Direction 2022 (No 5)

Notifiable Instrument NI2022–169

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 5)*.

2. Commencement

This instrument commences at 11:59pm on 1 April 2022.

3. Public Health Emergency Direction

I, Dr Vanessa Johnston, Acting 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 4)* [NI2022-97].

Dr Vanessa Johnston
Acting Chief Health Officer

1 April 2022



Public Health Emergency Direction

Public Health Act 1997

*Made under the Public Health Act 1997,
section 120 (Emergency actions and directions)*

I, Dr Vanessa Johnston, Acting 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 require restricted businesses, activities and undertakings to operate in accordance with COVID-19 safety plans and for a certain number of businesses and all public events to register and use the Check In CBR app to limit 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 declared the Omicron variant of **COVID-19** to be a variant of concern on 26 November 2021. In February 2022, the World Health Organization confirmed that the BA.2 sub-lineage of the Omicron variant should continue to be considered a variant of concern and monitored as a distinct sub-lineage of Omicron by public health authorities.
- (c) the Omicron variant of **COVID-19** is highly transmissible and remains the dominant variant globally and in the Australian Capital Territory following its introduction on 3 December 2021;
- (d) the Australian Capital Territory has experienced persistent community transmission since the original outbreak on 12 August 2021;
- (e) there is a necessity to limit the impact of **COVID-19** in the Australian Capital Territory to mitigate the burden on the public health system, 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. A person who owns, controls or operates a **restricted business, activity or undertaking** must:
 - a. develop and adhere to a **COVID-19 Safety Plan**; and
 - b. produce the **restricted business, activity or undertaking's COVID-19 Safety Plan** when requested by an **authorised person**; and
 - c. comply with the conditions for the business, activity or undertaking in column 2 of Attachment 1.
2. A person who organises a **public event** at an **event venue** in excess of 5,000 people must submit a **COVID-19 Safety Plan** for the event to the Chief Health Officer for review.

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 a **public 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. 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 State Emergency Service.
27. **Event venue** means:
 - a. an indoor entertainment and event venue;
 - b. a conference or convention venue;
 - c. an outdoor entertainment and event venue; and
 - d. any other premises which hosts a **public event**.
28. **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.
29. **Non-residential premises** has the same meaning as premises in the *Public Health Act 1997* but does not include residential premises.
30. **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.
31. **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.
32. **Public event** means an organised public gathering which is an event (or series of events), and which is:
 - a. conducted on a one-off or periodic basis; and
 - b. open to members of the public; and
 - c. which is publicly announced or advertised;but does not mean:
 - a. an ad hoc public gathering in a public place; or
 - b. a private gathering; or
 - c. a wedding, funeral or other end of life activity; or
 - d. a routine religious gathering or ceremony.
33. **Restricted business, activity or undertaking** means a business or activity or undertaking specified in Attachment 1.



34. **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.

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

D. Inconsistency with other directions

36. 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 Household Contacts) Emergency Direction 2022 (No 4)*, as amended or replaced from time to time; and
- b. the *Public Health (Returned Travellers) Emergency Direction 2022 (No 2)*, as amended or replaced from time to time.

Dr Vanessa Johnston

Acting Chief Health Officer

1 April 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**.

Item	Column 1 Restricted business, activity or undertaking	Column 2 Any additional conditions (other than those outline in the Direction)
1	Early childhood education and care (including out of school hours care)	Must operate in accordance with the Health Guidelines for Schools and Early Childhood Education and Care published at https://www.education.act.gov.au .
2	Schools (preschool to year 12) and out of school hours care	Must operate in accordance with the Health Guidelines for Schools and Early Childhood Education and Care published at https://www.education.act.gov.au .
3	Higher education and training	
4	Places of worship	
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	
9	Dance classes	
10	Retail food services	
11	Nightclubs	
12	Strip club or brothel	
13	Gaming or gambling venues, casinos or a betting agency	

Item	Column 1 Restricted business, activity or undertaking	Column 2 Any additional conditions (other than those outline in the Direction)
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	
16	A gallery, museum, national institution, historic site, zoo or other outdoor tourist attraction	
17	Musical rehearsals, including choirs, bands and orchestras	
18	Indoor entertainment and event venues with forward facing, fixed and tiered seating	
19	Indoor entertainment and event venues, not including a venue mentioned in item 18	
20	Conference or convention venues, not including a venue mentioned in item 21	
21	National Convention Centre	
22	Outdoor entertainment and event venues, not including a venue mentioned in items 23 or 24	
23	GIO Stadium or Manuka Oval	
24	Exhibition Park in Canberra	
25	Cinema or movie theatre	
26	Libraries	
27	Community centre, community facility or youth centre	
28	Real estate services	

Item	Column 1 Restricted business, activity or undertaking	Column 2 Any additional conditions (other than those outline in the Direction)
29	Auction houses	
30	Organised sporting activity	
31	An indoor or outdoor play centre, or an indoor arcade or amusement centre	
32	Public events held at an event venue	

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 Guidance 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.