Public Health (Restricted Activities – Gatherings, Business or Undertakings) Emergency Direction 2021 (No 3)

Notifiable Instrument NI2021-216

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 3).*

2. Commencement

This instrument commences at 9:00am on 14 April 2021.

3. Public Health Emergency Direction

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 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 2)* [NI2021-115].

Dr Kerryn Coleman Chief Health Officer

9 April 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; and
 - e. for contact tracing purposes:
 - i. register to use the **Check In CBR app**; and
 - ii. display a QR code for the **Check In CBR app** for people to record their attendance at the premises; and
 - iii. take all reasonable steps to ensure that people aged 16 years or older, who attend the premises for 15 minutes or more, record their attendance at the premises using the **Check In CBR app**.
- 7. However, if the **Check In CBR app** is unavailable for use at the premises, the occupier of the premises must:
 - a. keep a written record of:
 - i. the first name and contact phone number of the person; and
 - ii. the date and time at which the person attended the premises; and

- iii. retain the record for 28 days; and
- iv. produce the record if requested by an authorised person; and
- b. not use the written record for any purpose other than for production to an **authorised person.**

Example: Circumstances where the **Check In CBR app** may be unavailable includes where there is an internet service disruption, or a disruption to the app itself.

- 8. A person aged 16 years or older who attends the premises of a **non-essential business or undertaking** for 15 minutes or more must record their attendance using the **Check In CBR app**.
- 9. However, if the **Check In CBR app** is unavailable, a person aged 16 years or older must provide their first name and contact phone number to the occupier of the premises, together with the date and time at which the person attended the premises.
- 10. Paragraphs 6(e)(iii), 7, 8 and 9 apply to a worker who attends a non-essential business or undertaking for the purpose of carrying out work, except where specified otherwise in Column 2 of an item in Attachment A.

D. Organised events

11. 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**.

E. Exemption

- 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.

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

- 14. 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**.
- 15. 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

16. Risk mitigation guidance is provided at <u>Attachment B</u> 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

17. The definition of **gathering** in paragraph 25 sets out the kinds of **gatherings** that are not subject to restriction under this Direction.

D. Definitions

For the purposes of this Direction:

- 18. **Authorised person** means an authorised person under section 121 of the *Public Health Act* 1997.
- 19. **Betting agency** means a TAB or KENO agency either in a stand-alone venue or within a licensed venue.
- 20. Casino has the same meaning as in the Casino Control Act 2006.
- 21. **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.

- 22. 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
 - b. developed with regard to guidance material set out in **Attachment C**.
- 23. COVID Safe Event Protocol means the protocol set out in Attachment D.
- 24. **End of year event** means a school graduation, formal, or end of year ceremony, concert or assembly.
- 25. **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
- I. 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; or
- n. 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.
- 26. For paragraph 25(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**.
- 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. **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.
- 29. **Nightclub** means a nightclub under a *nightclub licence* within the meaning of the *Liquor Act 2010*.



- 30. **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.
- 31. **Non-residential premises** has the same meaning as premises in the *Public Health Act 1997* but does not include residential premises.
- 32. **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.
- 33. **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.
- 34. **Outdoor space** means a space that is not an **indoor space** or a part of residential premises.
- 35. **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.
- 36. **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.
- 37. **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.
- 38. **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

- 39. 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 4) [NI2020-662];
 and
 - b. the Public Health (Returned Travellers) Emergency Direction 2020 (No 9) [NI2020-837].

Dr Kerryn Coleman

Chief Health Officer

9 April 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, signs, and contact tracing measures, which apply unless otherwise noted.

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

	ОШ	Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
~	TO .		 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: a. 25 people across the whole premises; or
	Ω	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	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.	 b. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space
	O	c. a nightclub; or		
	ס	 d. a restaurant, café or canteen, whether or not its premises are on licence premises, but not including: 		
		i. the extent to which it provides takeaway meals or a meal delivery service; or		
		ii. a café or canteen at a hospital; or		

Column 3 Occupancy limit							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 2 Other requirements							 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) and 6(e). b. the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction.
Column 1 Business or undertaking	iii. a café or canteen at a residential aged care facility; or	iv. a café or canteen at a school; or	 v. a café or canteen at a correctional centre; or 	vi. a café or canteen at a community sporting facility; or	vii. a military café or canteen; or	viii. a café or canteen that provides food or drink to those experiencing homelessness	a food court

Column 3 Occupancy limit											
Column 2 Other requirements											
Column 1 Business or undertaking	taking place in a venue described in another item; or	 d. a gaming or gambling venue, a casino or a betting agency; or 	e. a hairdresser or barber; or	f. a nail salon; or	g. a tattoo or body modification studio; or	h. a place that provides beauty therapy, tanning or waxing services; or	 i. a day spa or place that provides massage services, steam-based services (including saunas, steam rooms, steam cabinets and bathhouses); or 	j. a strip club, brothel or escort agency; or	k. an auction house; or	l. a real estate auction, display home or open home	

Column 1 Business or undertaking except where the activity is described in Item 7 an event at a conference or convention venue are gistration 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. Part 1 paragraph 10 only applies when an event is being used for the supply of filluon, sovice 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 compiled with. c. The venue is being used for the supply of filluon, sovice 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 compiled with. c. the venue displays a sign at the entrance to each usable space, spacefying 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 Occupancy Limit in Column 3, but does	Column 3 Occupancy limit	the greater of: 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	 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
7 4	Column 2 Other requirements		# 6 5 2 6 5 5	
	Column 1 Business or undertaking	_		an event at the National Convention Centre Canberra

Occupancy limit e	the greater of: 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 2 Other requirements not require re-approval in writing by the Chief Health Officer. d. Part 1 paragraph 10 only applies when an event is being held at the venue. 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	the requirements under Part 1 paragraph 6 are subject to the following modifications: a. Part 1 paragraph 6(c) only applies to gatherings of more than 25 people; and
Business or undertaking	a place of worship , including for a religious ceremony, but not including for a wedding or a funeral

Business or undertaking a. a wedding; or b. a funeral; or c. a gathering following a wedding or funeral, such as a reception or a wake (however described) a. a gallery, museum, national institution or historic site; or b. an outdoor amusement park or attraction; or c. a library c. a library a cinema or movie theatre a cinema or movie theatre business or undertaking a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction. Note: If the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space under this Direction. Note: If the venue displays a sign at the entrance to each usable space, specifying the occupancy limit for the space indication and organised sporting activity, or another function/activity addressed separately in this Direction, the provisions relevant to the supply of liquor, separately in this Direction, the provisions relevant to the space activities also need to be complied with. a cinema or movie theatre a cinema or movie theatre a cinema or under this Direction, the provisions relevant to the space that is a theatre, specifying the occupancy limit under this Direction.	Column 3 Occupancy limit	the greater of: 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 .	a. the sum of 1 person per 2 square metres per usable outdoor space and usable indoor space.	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).
7 7	Column 2 Other requirements	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 the Direction, the provisions relevant to those activities also need to be complied with.	a. the venue displays a sign at the entrance to each usable space , specifying the occupancy limit for the space under this Direction. 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.	
	Column 1 Business or undertaking			a cinema or movie theatre



erformance in any location with activity is described in Item 14: sended and attendees remain seated as far as practicable; 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. C. Part 1 paragraph 10 only applies when an event is being held at the venue. Note: If the venue does not have fixed and/or tiered seating, it must comply with the requirements in Item 1. seated as far as practicable; b. D. And 1 paragraph 10 only applies when activity is described in Item 14: seated as far as practicable; arena or auditorium; an event is being held at the venue.		Column 1 Business or undertaking	Column 2 Other requirements	Column 3 Occupancy limit
an indoor event performance in any location with forward facing, fixed and tiered seating, such as a concert venue, theatre, arena or auditorium seated as far as practicable; concert venue, theatre, arena or auditorium b. for an event theat activity is described in Item 14: a. an outdoor event performance in any location with forward facing and tiered seating, such as a concert venue, theatre, arena or auditorium; or b. an organised sporting activity in an outdoor stadium that is enclosed and has permanent				
except where the activity is described in Item 14: a. an outdoor event performance in any location with forward facing and tiered seating, such as a concert venue, theatre, arena or auditorium; or b. an organised sporting activity in an outdoor stadium that is enclosed and has permanent	2	an indoor event performance in any location with forward facing, fixed and tiered seating, such as a concert venue, theatre, arena or auditorium		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); Otherwise:
except where the activity is described in Item 14 : a. it is ticketed and attendees remain as seated as far as practicable; a. an outdoor event performance in any location with forward facing and tiered seating, such as a concert venue, theatre, arena or auditorium; or b. an organised sporting activity in an outdoor stadium that is enclosed and has permanent			e g St	
tiered Septing	6	10		



Column 3 Occupancy limit	 a. 100% of seating capacity for fixed seating areas; and 	b. 1 person per 2 square metres for any unfixed seating areas.				
Column 2 Other requirements	it is ticketed and attendees remain seated as far as practicable;	Part 1 paragraph 10 only applies when an event is being held at the venue.	. Part 1 paragraph 6(e) does not apply if:	i. the venue occupier collects the name, contact number and allocated seating area for all ticket purchasers or registering attendees through the ticketing or registration process; and	ii. the venue occupier produces the record to an authorised person within 4 hours of being requested by an authorised person to produce the record; and	iii. the venue occupier complies with a requirement or direction made by an authorised person .
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Column 1 Business or undertaking	an event at GIO Stadium or Manuka Oval	Q	0		24	

Column 3 Occupancy limit	ies when 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;	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.
Column 2 Other requirements	a. Part 1 paragraph 10 only applies when an event is being held at the venue.	
Column 1 Business or undertaking	an event at Exhibition Park in Canberra (EPIC)	
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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:
 - o 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

If you have difficulty reading a standard printed document and would like an alternative format, please phone 13.22.81



If English is not your first language and you need the Translating and Interpreting Service (TIS), please call 13 14 50.

For further accessibility information, visit: www.health.act.gov.au/accessibility

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