COVID-19 Public Health Emergency Directions
Compliance engagement and enforcement framework

Review date: Ongoing
Author branch: Public Health, Protection and Regulation, HPS
Endorsed by: Dr Kerryn Coleman, Chief Health Officer
Audience: ACT Health, Access Canberra, WorkSafe ACT, ACT Policing
Version number: Final Draft 1.0 22/10/21
Contents

Purpose ...................................................................................................................................... 1
Background ................................................................................................................................ 1
Scope.......................................................................................................................................... 2
Exclusions ................................................................................................................................... 2
Human Rights Considerations .................................................................................................... 2
Regulatory Principles .................................................................................................................. 3
Regulatory approach .................................................................................................................. 4
Engage, Educate, Enforce ....................................................................................................... 4
Embedding a COVID-safe Culture .......................................................................................... 5
Enforcement approach ............................................................................................................. 5
Determining an appropriate response ...................................................................................... 5
Business risk identification ...................................................................................................... 7
Escalation tools .......................................................................................................................... 8
Warnings ................................................................................................................................. 8
Authorised Officer Directions (Improvement Direction Notices) ........................................... 8
Issue of infringement notices ................................................................................................. 9
Business Closure ..................................................................................................................... 11
Roles and Responsibilities ...................................................................................................... 12
Records Management ............................................................................................................. 13
Implementation ....................................................................................................................... 13
Review ..................................................................................................................................... 13
References and Related Documents ....................................................................................... 13
Version Control ....................................................................................................................... 14
Attachments ............................................................................................................................. 14
Attachment A – Regulatory Advisory Committee (RAC) Submission templates .......... 14
Attachment B – Access Canberra Regulatory Advisory Committee SOP .................... 14
Appendices ............................................................................................................................... 15
Appendix A – Assessment of business risk ........................................................................... 15
Purpose

The COVID-19 Compliance Engagement and Enforcement Framework (the Framework) sets out the objectives and principles for regulatory activities undertaken to ensure compliance with the public health directions related to coronavirus disease 2019 (COVID-19) caused by SARS-CoV-2.

Background

On 16 March 2020, the Minister for Health declared a public health emergency under section 119 (1) of the Public Health Act 1997 (ACT) (PHA) due to the public health risks posed by coronavirus disease 2019 (COVID-19) caused by SARS-CoV-2. As at 16 August 2021, the declaration has been extended under section 119 (4) 15 times and was most recently extended until 14 November 2021.

Under the PHA, section 120 (Emergency actions and Directions), while an emergency declaration is in force, the Chief Health Officer may take any action, or give any direction, they consider to be necessary or desirable to alleviate the emergency specified in the declaration.

Under the PHA, it is an offence to fail to comply with a direction without reasonable excuse. The maximum penalty is 50 penalty units for a person who is not a utility ($8000 for an individual and $40,500 for a corporation).

A key purpose of the Framework is to integrate compliance, engagement and enforcement activities with Emergency Directions issued by the Chief Health Officer.

Emergency Directions are designed to achieve public health outcomes at a population level adjusted as circumstances change over time.

The key goals of compliance and enforcement activities are to:

- ensure restricted activities actively control risks associated with the transmission of COVID-19; and
- reinforce and support community confidence in emergency public health responses.

A person may be appointed as a Public Health Officer under the PHA, section 12 (Appointment of public health officers) and authorised under section 12A (Functions of public health officers) to undertake inspection and related activities to assess compliance with Emergency Directions. Officers appointed and authorised under s12 and s12A include officers from the Health Protection Service (HPS), Access Canberra (AC) and WorkSafe ACT. All ACT Policing police officers are authorised under the Public Health Act.

The Executive Branch Manager, HPS chairs the COVID-19 Compliance Engagement and Enforcement Working Group (CEEWG). The CEEWG provides ongoing advice to the Chief Health Officer and enforcement agencies on regulatory matters associated with COVID-19. The CEEWG has responsibility for the coordination of compliance activities, the sharing of intelligence and driving a consistent approach to engagement and enforcement activities.
Scope

This Framework applies to all authorised persons who may undertake regulatory activities (including inspections) of businesses, undertakings and the operators of other restricted activities related to the Public Health Emergency Directions.

Authorised persons include:
- **ACT Government officers** in HPS, AC and WorkSafe ACT officers appointed as public health officers and authorised under s12A, PHA and
- **ACT Policing police officers and protective service officers**

This Framework sets out considerations for identifying public health risks and the available risk treatment options related to the transmission of COVID-19 across various business sectors in the ACT. The aim of this document is to ensure appropriate and proportionate regulatory responses to identified public health risks, including appropriate resource allocation and regulatory response.

Exclusions

To remove any doubt, court actions, such as prosecution or injunction (including defending or prosecuting an infringement notice offence in court) are outside the scope of this framework.

Regulatory action against the following entities is out of scope of the Framework, although the principles and considerations may apply:
- an individual (i.e. a ‘natural person’) as a member of the community who is subject to restrictions as a citizen
- premises that are not open to the general public (e.g. educational institutions, hospitals, office buildings, etc).

It is noted that some regulatory agencies have regulatory tools available to them outside of the PHA that may intersect with a Public Health Emergency Direction. To remove any doubt, this Framework does not consider regulatory actions available outside of the PHA.

For example, WorkSafe ACT undertakes regulation of COVID-19 related non-compliances under the PHA or the Work Health and Safety Act 2011 (WHS Act) as appropriate. WorkSafe ACT identifies COVID-19 as a biological hazard and risk in the workplace. As such, WorkSafe may use the WHS Act to ensure businesses implement safety measures to reduce the risk, as far as is reasonably practicable, of COVID-19 transmission. When using the WHS Act, WorkSafe ACT follows the Work Health and Safety Compliance and Enforcement Policy 2020-2024.

This Framework serves as a tool available to police officers to consider in the exercise of their powers and functions. However, the Framework does not displace a police officer’s discretion to take action or not take action under the Public Health Act as provided under the Australian Federal Police Act 1979 (Cwlth). Further, this framework is not intended to interfere with ACT Policing’s role to provide police officers with guidance on the exercise of powers and functions.

Human Rights Considerations

As public authorities, regulatory agencies must have due consideration to the impacts of their activities and decisions on human rights under the Human Rights Act 2004.
Section 40B of the Human Rights Act requires all public authorities to give proper consideration and act in a compatible way with human rights. Section 30 of the Act requires that all Territory laws be interpreted in a human rights compatible way, in so far as it is possible to do so consistently with its purpose, and that section 28 of the Act permits limits to be placed on rights which are demonstrably justifiable in a free and democratic society.

In determining an appropriate response, authorised officers should be cognisant of any human rights engaged, how any actions align with the PHA objectives, public safety, and any information relevant to the circumstance. For example, relevant information may include if the business is operated by a person appearing to have a physical or mental disability, suffering from mental health issues, substance abuse issues, be culturally or linguistically diverse, etc. While human rights do not apply to corporations, they do apply to people affected by decisions about how emergency directions are enforced. This framework acknowledges that many restricted business and undertakings are conducted by individuals operating as natural persons.

Authorised officers should also consider any human rights that have already been limited as a result of a public health emergency direction. It is acknowledged that the limits placed on some human rights by the public health emergency directions imposed are considered necessary and reasonable within a free and democratic society.

When considering the making of emergency directions, the Chief Health Officer considers the manner in which directions engage human rights by supporting and limiting such rights.

In October 2021, the Chief Health Officer issued an updated statement: Consideration of Human Rights Implications of Imposed Public Health Emergency Directions which sets out the rights engaged by emergency directions. The Statement also sets out the scale of the risk posed by COVID-19, public health harms which would arise from those risks and how they would be experienced within the ACT.

This Framework should be read in conjunction with the Chief Health Officer’s Statement on human rights to ensure any proposed regulatory action taken by authorised officers is proportionate and justifiable in all the circumstances.

**Regulatory Principles**

In accordance with the ACTHD Strategic Plan 2020-2025, all regulatory services should remain responsive, aligned with risk and aimed at facilitating regulatory compliance through co-design and engagement.

To deliver a transparent, risk-aligned approach to regulatory services, regulators should perform their regulatory functions in accordance with accepted ACT Government regulatory principles. For the purposes of this framework, ACTHD adopts the regulatory principles established by the Access Canberra Regulatory Compliance and Enforcement Policy (2020). These regulatory principles are set out in Table 1.
Table 1: Regulatory practice principles

<table>
<thead>
<tr>
<th>Principle</th>
<th>Commitment</th>
</tr>
</thead>
</table>
| Risk-based | We will apply a risk-based compliance approach to ensure that our resources are targeted to where the risks of harm, unsafe practices or misconduct are the greatest, thereby strengthening our capacity to act where the community and the environment are most at risk. Public Health Officers will prioritise its actions based on a range of considerations, including the following:  
  • conduct that causes harm or risk to life or health;  
  • conduct that is systemic and is likely to have a detrimental effect on the community or public health, and  
  • conduct that demonstrates a blatant disregard for the law. |
| Proportionate | We will have regard for the current harm/risk, the experience and past conduct of a person or business when determining our regulatory response. |
| Effective | We will apply the appropriate compliance tool to ensure that our regulatory interventions are responsive to the relevant circumstances and will achieve the desired outcomes. We will aim for consistent enforcement outcomes for similar conduct. |
| Constructive | We will provide advice, guidance and support to help business and the community comply with relevant laws. |
| Accountable | We are willing to explain our decisions whilst protecting the integrity of our investigations. We will balance confidentiality requirements with the need to inform businesses and the community about our regulatory actions. |
| Transparent | We will demonstrate impartiality and act with integrity. The community and those who we regulate will know what to expect when engaging with us. |
| Timely | We will conduct our investigations, compliance activities and enforcement action as efficiently as possible to limit disruption to business operations and to provide certainty about our actions. We will be adaptable to responding to new priorities, technologies and changing environments. |

Regulatory approach

Engage, Educate, Enforce

Engage, Educate, Enforce are the three fundamental regulatory escalation steps. Compliance is encouraged through engagement and education; escalating enforcement action will be applied to those whose conduct will, or is likely to, cause harm, or those who demonstrate a disregard for the law.

Engage means ensuring there is a productive working relationship between regulators and relevant industry groups, business owners, members of the community and other stakeholders.

Educate means taking reasonable steps to ensure people know how to minimise potential harms and comply (e.g. by publishing requirements, providing information in various formats such as direct...
communications, online materials, and during proactive inspections). A range of resources are available for businesses to educate them on their responsibilities and requirements under the Public Health Directions to enable them to achieve compliance. This includes for example, guidance on the development of a COVID Safety Plan as well as factsheets to assist in many aspects of running a business during COVID. These materials are available at [http://www.covid19.act.gov.au](http://www.covid19.act.gov.au). Advice is also available in a range of languages at [www.covid19.act.gov.au/community/translated-resources](http://www.covid19.act.gov.au/community/translated-resources).

**Enforce** means taking action for non-compliance in proportion with the harm caused, or potentially caused, by the conduct.

## Embedding a COVID-safe Culture

The Engage, Educate, Enforce model is adopted to support community and business understanding and confidence in pandemic public health measures and reduce the public health risk of COVID-19. This model provides an evidence-based approach for driving behavioural change to support a COVID safe practices.

Many variables can affect disease spread (e.g. amount of circulating virus, vaccination rates, population movement, etc) but not all variables are easily regulated. The impact of these variables is strongly influenced by community behaviour. A positive and empowering regulatory approach will encourage and normalise behaviours that reduce disease spread.

As compliance agencies, an important pathway to achieving this influence on community behaviour is through business interaction with the community. That is, if businesses display COVID-safe behaviours and require COVID-safe behaviours of customers, this will help to embed a community-wide covid-safe culture. The Framework seeks to leverage opportunities presented in the business sector to help establish COVID-safe cultural norms and practices in the ACT.

## Enforcement approach

Compliance and enforcement activity should only occur in line with the objectives and priorities set out in the [Access Canberra Accountability Commitment policy series](https://www.canberra.gov.au/access-canberra-accountability-commitment). The Accountability Commitment policy series ensures a consistent, transparent and risk-based approach to regulation.


Authorised public health officers will focus agency resources where the risks of harm or unsafe practices are greatest in the community.

The CEEWG meets regularly to coordinate compliance activities, share intelligence and provide a consistent approach to enforcement activities in line with the Accountability Commitment.

ACT Policing is responsible for guiding the compliance and enforcement approach to be taken by its police officers.

## Determining an appropriate response

Upon identification of an alleged breach, the next step is to determine what type of regulatory response is warranted.
Authorised officers may exercise a level of discretion (including no further action), particularly when the offending conduct is low risk, unintentional and has caused limited harm. Where appropriate, opportunity will be provided to engage and educate businesses to encourage voluntary legislative compliance over punitive enforcement action.

The use of enforcement tools is likely required in situations where a harm has occurred, or public safety endangered, as a direct result of the alleged breach. Enforcement action may also be required if the person has a demonstrated history of non-compliance or for very serious breaches (e.g. a business clearly understands the requirements and then chooses not to comply). Enforcement action should be proportionate to the risk caused, or potentially caused, by the observed offending behaviour.

Responses to breaches are considered on a case-by-case basis and have consideration to the circumstances of the conduct, any reasonable explanation offered by the person, any impact on human rights, the consequences of regulatory action, and level of risk involved. Authorised officers will apply the most appropriate regulatory tool to address the conduct and to achieve the desired regulatory outcome. The range of legislative enforcement options are described by Table 2.

The following enforcement decision matrix should be used when deciding on the most appropriate enforcement intervention, and to promote consistency with enforcement practices across the ACT.

The Engagement and Enforcement matrix acknowledges there are a range of tools and remedies available and recognises a strong education approach as well as escalating enforcement options.

### Table 2: Engagement and Enforcement Decision Matrix

<table>
<thead>
<tr>
<th>Degree of non-compliance / willingness &amp; capacity to comply</th>
<th>Consequence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Negligible</td>
</tr>
<tr>
<td>Category A (High level of compliance expected)</td>
<td>Advice / education</td>
</tr>
<tr>
<td>Category B</td>
<td>Advice / Education</td>
</tr>
<tr>
<td>Category C</td>
<td>Education/ Verbal Warning</td>
</tr>
<tr>
<td>Category D (Low level of compliance expected)</td>
<td>Written Warning</td>
</tr>
<tr>
<td>Category E (Active resistance to compliance and/or risk reduction)</td>
<td>Written Warning / Direction</td>
</tr>
</tbody>
</table>
Table 3: Description of categories

<table>
<thead>
<tr>
<th>Category</th>
<th>General descriptor</th>
</tr>
</thead>
</table>
| Category A – Indications of future and ongoing compliance are very high. | • No known previous non-compliances;  
  • demonstrated awareness of, and/or capacity to, meet regulatory requirements; and/or  
  • reasonable and cooperative attitude. |
| Category B – Indications of future and ongoing compliance are uncertain. | • Few previous non-compliances; and/or  
  • questionable awareness of, and/or capacity to, meet regulatory requirements. |
| Category C – Indications are that future and ongoing compliance are unlikely. | • Numerous previous non-compliances; and/or  
  • little or no awareness of, and/or capacity to, meet regulatory requirements. |
| Category D – History of non-compliance, no indication of future compliance. | • Wilful violation of regulatory requirements; and/or  
  • little or no demonstrated willingness or capacity to meet regulatory requirements. |
| Category E – Hindering or obstructing an investigation. | • Hindering or obstructing an authorised person;  
  • refusing to provide required information; and/or  
  • intentionally providing false or misleading information. |

Table 4: Description of consequence

<table>
<thead>
<tr>
<th>Human health or safety impacts</th>
<th>General Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligible</td>
<td>• Non-compliance that does not result in any immediate human health impact.</td>
</tr>
<tr>
<td></td>
<td>• Minor administrative non-compliance.</td>
</tr>
<tr>
<td></td>
<td>• No organisational and regulatory scheme risk.</td>
</tr>
<tr>
<td>Minor</td>
<td>• Non-compliance resulting in a minor, temporary threat to human health.</td>
</tr>
<tr>
<td></td>
<td>• Moderate administrative non-compliance.</td>
</tr>
<tr>
<td></td>
<td>• Negligible organisational and regulatory scheme risk.</td>
</tr>
<tr>
<td>Moderate</td>
<td>• Non-compliance resulting in a moderate, temporary threat to human health.</td>
</tr>
<tr>
<td></td>
<td>• Major administrative non-compliance.</td>
</tr>
<tr>
<td></td>
<td>• Moderate organisational and regulatory scheme risk.</td>
</tr>
<tr>
<td>Major</td>
<td>• Non-compliance resulting in a significant threat to human health.</td>
</tr>
<tr>
<td></td>
<td>• Significant organisational and regulatory scheme risk.</td>
</tr>
<tr>
<td>Extreme</td>
<td>• Known or likely human health impact that is severe in effect (e.g. hospitalisation and/or chronic health problems).</td>
</tr>
<tr>
<td></td>
<td>• Extremely high organisational and regulatory scheme risk.</td>
</tr>
</tbody>
</table>

Business risk identification

A risk-based approach is taken to inform compliance activities and allocation of resources. There are a number of qualitative risk factors that are used to determine the degree of risk each type of business may present, such as:

- Business settings (indoors, outdoors, etc);
- Intensity of physical activity;
- Circulating variant/s of COVID-19 (e.g. Delta variant);
- Size of industry: patronage and employees;
• Repeated industry related complaints;
• Gatherings of different social groups;
• Gatherings of unrelated individuals;
• Activities with facemask exemptions;
• Shared equipment;
• Duration of activity;
• Physical contact;
• Lack of social distancing; and
• Factors that may inhibit people’s judgement or encourage risk-taking behaviour.

Where a business type has multiple high-risk factors, the business type may be assigned a higher risk rating and additional risk treatment options considered. Other factors that may influence risk are the number of public complaints, instances of non-compliance, service to vulnerable populations, association with known COVID-19 outbreaks, ability to contact trace patrons, risk control measures already in place, and physical size and nature of the business.

A business risk-rating assessment tool is provided at Appendix A to this framework to assist the regulatory agencies to conduct compliance activities.

Escalation tools

Warnings

Warnings should generally be used in the first instance to achieve compliance of individuals and businesses. For the purposes of this framework, a warning is considered a verbal or written direction to an individual or corporation regarding compliance with a public health emergency direction. Subject to the view of the authorised officer, issue of a warning may be formally documented to assist in identifying any non-compliance trends.

Authorised Officer Directions (Improvement Direction Notices)

Under emergency directions, an authorised officer may direct a person or business to do such things as are reasonably necessary to comply with an emergency direction. Under the escalating enforcement options, these directions (referred to as a ‘Improvement Direction Notice’) are a mechanism to place specific requirements on a business that has demonstrated non-compliance, or where there is a serious non-compliance. The use of such notices is not intended to replace efforts to engage and educate a business on the obligations. Improvement Direction Notices may be used where the business could take steps to come into compliance.

Improvement Direction Notices should clearly outline the responsible parties, non-compliances, the required actions, and implementation timeframes. A template for the issue of Improvement Direction Notices is attached to the Issue of Improvement Direction Notice Standard Operating Procedure.
Issue of infringement notices

Infringement notice offence

The PHA provides that a person must not, without reasonable excuse, fail to comply with a public health emergency direction. Authorised persons must be able to exercise their professional discretion when deciding what approach may be required to achieve compliance with a public health emergency direction i.e. education, issue of a warning or infringement notices. In doing so, an authorised person should bear in mind that a core purpose of the public health emergency directions is to protect public safety and minimise disease transmission during the COVID-19 declared emergency period. Infringement notices should only be considered where a reasonable excuse has not been provided, and the action is appropriate and proportionate response in the circumstance.

If an authorised person observes continued non-compliance following a verbal or written warning, consideration should be given to issuing an infringement notice.

Infringement penalties under the Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020 are $1,000 for an individual and $5,000 for a corporation, unless they relate to face masks, in which case the penalty is $200 (individual) and $1000 (corporation). The Regulation enables authorised persons to issue an infringement notice to persons aged over 18 years for failing to comply with a public health emergency direction (or to persons over 16 years for failing to comply with a face mask direction) without reasonable excuse. Officers authorised to issue infringement notices include select ACT Health, WorkSafe ACT and Access Canberra staff (following consideration of the Access Canberra COVID-19 Regulatory Advisory Committee) as well as ACT Policing.

A police officer or other authorised person, as a public authority under the Human Rights Act, must consider human rights in making a compliance decision. The public reporting of enforcement actions taken is not considered within scope of this framework.

The relevant processes and considerations for issuing infringement notices for ACT Policing, Access Canberra, WorkSafe ACT and ACT Health staff are detailed below.

Issue of infringement notices by ACT Policing

In noting the compliance hierarchy outlined in this document, ACT Policing police officers may use their discretion to issue an on-the-spot infringement notice to an individual or corporation through the AutoIssue system.

ACT Policing police officers should consider any ‘reasonable excuse’ provided by a person in making a decision about issuing an on-the-spot infringement notice. The objective reasonableness of any ‘reasonable excuse’ offered by a person should be determined by the relevant officer, after having regard to any relevant circumstances.

The AutoIssue system is currently used for other infringement notices issued by ACT Policing police officers. ACT Policing will manage all infringement notices issued by police officers in accordance with relevant organisational policies and procedures including managing notice payments, extension requests, or reviews.
Issue of infringement notices – other authorised persons

Infringement notices issued by authorised officers other than police officers should meet existing [Access Canberra compliance frameworks and accountability commitments](#). Infringement notices must not be issued without being first considered by the Access Canberra COVID-19 Regulatory Advisory Committee (CV19 RAC).

As described by the above processes, the issue of an infringement notice should only be considered when:

- an authorised person has a reasonable belief that the alleged offending behaviour could be proven beyond a reasonable doubt;
- any excuse offered by the individual/corporation has been taken into account; and
- the issue of the infringement is appropriate in the circumstances.

If an authorised person believes that issue an infringement notice is warranted, the steps outlined in the [Issue of Infringement Notices Standard Operating Procedure](#) should be followed.

**COVID-19 Regulatory Advisory Committee (CV19 RAC)**

The CV19 RAC meets to consider individual proposed enforcement actions. Outcomes will be reported back to the CEWG by the responsible regulatory agency. The CV19 RAC is based on an existing internal government Regulatory Advisory Committee established within Access Canberra with responsibility to consider and make recommendations regarding if a proposed regulatory action is an appropriate and proportionate response in the circumstance.

The CV19 RAC has been established to support and facilitate the timely consideration of matters calling for an assessment of what enforcement action may be appropriate. The CV19 RAC has an established Standard Operating Procedure to govern its membership, function, record keeping and accepted procedures for consideration of a compliance activity (at [Attachment B](#)).

The CV19 RAC will function under the same procedural arrangements as an ordinary RAC and will meet more regularly to ensure timely responses to emerging issues are implemented. Additionally, the decision maker (i.e. the authorised officer responsible for issuing the infringement notice) will be present at the meeting and will independently make a final decision on the matter. The CV19 RAC is not a decision-making body.

On consideration of a referred matter relating to a public health emergency direction, the CV19 RAC may issue a recommendation to the responsible delegate to issue an infringement notice or to take an alternate compliance or enforcement action. To provide a degree of objectivity, a CV19 RAC member whose proposed infringement notice is before the CV19 RAC will not participate as a CV19 RAC member in discussions of the notice.

As a public authority, the CV19 RAC also has an obligation to consider how their recommendations may engage human rights and to act consistently with rights under the Human Rights Act.

The CV19 RAC does not apply to decisions and adjudications made in relation to infringement notices or other decisions made, or enforcement actions taken, by ACT Policing’s police officers.
Processing infringement notices

ACT Health and Access Canberra will jointly manage the administrative arrangements relating to receiving payments and requests for payment extensions, penalty waiver, notice review, and disputed liability. The processing and management of infringement notices issued by ACT Health or Access Canberra will be performed in line with established regulatory and administrative processes performed by Access Canberra. This includes managing the payment of infringement notices, requests for extension, waiver or disputed liability.

Disputed liability, review and appeal rights

A business or an individual served with an infringement notice has a right to dispute liability for the notice. The *Magistrates Court Act 1930* enables a person to dispute liability for an infringement notice by giving written notice to the administering authority. The administering authority for the service of infringement notices is the Director-General ACT Health, however this function has been delegated to several officers within ACT Policing for infringement notices issued by police officers. The *Magistrates Court Act 1930* sets out clear steps to be taken if liability is disputed.

A business or individual may also request that the decision to issue an infringement notice be reviewed internally reviewed by the agency that issued it. Internal reviews must be requested in writing and state the grounds for the review.

ACT Ombudsman

The [ACT Ombudsman](https://ombudsman.act.gov.au) performs an important administrative law function by resolving complaints and monitoring the actions of government agencies, including any regulatory decisions. The Ombudsman has strong investigatory powers and can investigate many types of complaints relating to matters of administration. Investigations may be initiated by the Ombudsman or in response to a complaint.

Business Closure

Under s120 of the PHA, the CHO may direct a person or business to undertake certain actions to protect public health during the pandemic. Under the escalation pathway, this may include directing a proprietor (or responsible person) to cease trading of a particular good or service, or temporarily suspend business activity (business closure).

In addition to the CHO ordering a business to close, under s121 the CHO may require a closed business to display a closure notice at the entrance to the business. In deciding to issue any business closure notice (including display of a closure notice), the CHO must be satisfied that the following conditions are met:

- the direction aligns with the objectives of the PHA;
- the direction removes or reduces the public health risk;
- that the action is responsible, appropriate and proportionate in the circumstances; and
- the direction is the least restrictive means to achieve the intended outcome.

The CEEWG may recommend the issue of a business closure notice. Only the CHO, Deputy CHO or Executive Branch Manager for the HPS may issue a business closure direction under s121.
Business closures can have considerable consequences for proprietors, staff and patrons. They should only be used where other enforcement actions have failed to achieve a desired result, or evidence of serious or repeated non-compliances have been observed. Business closure notices should be issued in accordance with the Business Closure Notices Standard Operating Procedure.

## Roles and Responsibilities

<table>
<thead>
<tr>
<th>Position</th>
<th>Responsibility</th>
</tr>
</thead>
</table>
| **ACT Health Director-General** | Appoints Public Health Officers  
Administering authority for infringement notices  
issued by authorised public health officers |
| **Chief Health Officer** | Making of public health emergency directions  
Owner of COVID19 Compliance Engagement and Enforcement Framework  
Authorises Public Health Officers and assigns relevant functions |
| **Executive Branch Manager, Health Protection Service** | Chair CEEWG  
Management of ACT Health Directorate resources |
| **Executive Branch Manager, Engagement, Compliance and COVID-19 Response, Access Canberra** | Management of Access Canberra resources  
Serves as alternate for Executive Branch Manager, Health Protection Services on all matters related to COVID-19 Compliance |
| **Access Canberra authorised officers** | Responsible for detection and response to non-compliance with public health directions. |
| **ACT Policing** | Responsible for detection and response to non-compliance with public health directions.  
Administering authority for infringement notices issued by police officers. |
| **WorkSafe ACT authorised officers** | Responsible for detection and response to non-compliance with public health directions in the building and construction industry. |
| **Transport Canberra and City Services** | Responsible for detection of non-compliance with public health directions. |
| **ACT Health authorised officers** | Responsible for detection and response to non-compliance with public health directions. |
| **Public Information Coordination Centre (PICC)** | Responsible for public information about the public health emergency directions. |
Records Management

ACT Policing are responsible for records management with respect to regulatory activities undertaken by Police Officers.

ACT Health, WorkSafe ACT and Access Canberra will ensure adequate records of any regulatory activities through existing records management processes.

Implementation

ACT Policing will undertake compliance and enforcement activities using their existing systems, policies and procedures. The CEEWG has developed a suite of SOPs to assist authorised officers to implement the regulatory approach outlined in this framework. These are: [insert details of finalised SOPs). Current versions of these SOPs are available on the COVID-19 Public Health Response SharePoint under the Compliance tab.

Senior Directors in ACT Health and Access Canberra who oversee authorised persons will have a role in quality assurance (i.e. ensuring regulatory consistency, proportionality, staff training etc).

Review

This Framework will be reviewed:

- as required, and
- three months after the end of the Public Health (Emergency) Declaration 2020 (No 1) ends or twelve months after it is approved by the Chief Health Officer, whichever is sooner.

References and Related Documents

Legislation

- Public Health Act 1997
- Magistrates Court Act 1930
- Magistrates Court (Public Health (COVID-19) Infringement Notices) Regulation 2020

Supporting Documents

- Access Canberra Accountability Commitment
- COVID-19 Pandemic Access Canberra Regulatory Compliance Approach
- Business Closure Notices SOP
- Issue of Infringement Notices SOP
- Issue of Improvement Direction Notices SOP
- Working with vulnerable people compliance framework
- WorkSafe ACT compliance framework
Version Control

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>11 October 2021</td>
<td>Final</td>
</tr>
</tbody>
</table>

Attachments

**Attachment A – Regulatory Advisory Committee (RAC) Submission templates**
Attachment A1 – RAC Submission template
Attachment A2 – RAC Mention template

These templates are used for referring regulatory matters to the Access Canberra RAC for review and recommendation. Each template is available as a Microsoft Word document from HP Content Manager container HPS2020/1406.

**Attachment B – Access Canberra Regulatory Advisory Committee SOP**
Appendices

Appendix A – Assessment of business risk

With reference to the ACT Health Enterprise Risk Management (ERM) Framework, ACT Health has developed a risk-assessment tool, to assign business types with a low, medium, high or extreme risk rating based on a business type’s risk of transmitting COVID-19 from person to person, or through equipment used in the normal operation of the business.

Risk ratings have been assigned using the ERM Framework and risk matrix tool with consideration to the public health consequence and likelihood of COVID-19 transmission (where related to business type). As a public health risk exercise, the risk assessment does not consider individual health impacts unless directly related to the business type i.e. residential aged care facilities provide services to vulnerable populations. An assessment of a business’ potential risk to transmit COVID-19 in the community is at Table 5.

The Public Health Emergency Direction places obligations on both businesses and patrons regarding mandatory facemask and the use of the Check In CBR App. The business proprietor or operator is the responsible person for the treatment of risks associated with COVID-19 transmission at their premises. Existing risk treatment controls are any public health measures imposed on business operators and patrons through a Public Health Emergency Direction e.g. limiting the number of patrons in a business, mandatory facemasks or Check In CBR.

ACT Health and Access Canberra collates all reported compliance checks and publishes information to a Power BI dash board. This information is available to agencies in planning compliance activities.

It is acknowledged that assigned business sector risk ratings are likely to increase or decrease proportionately in response to any COVID-19 outbreaks in the ACT, or evidence of local community transmission. Therefore, this document and associated risks should be reassessed every three months, or after each restriction change, whichever is sooner.

Limitations of Risk Assessment Tool

Use of the risk assessment tool is insufficient to reliably state, unequivocally, that any one type of business poses a greater risk than another. The actual risk associated with a premises will be influenced by a variety of factors that must be considered on a case-by-case basis for each business such as the size of business premises, premises location and design (airflow, temperature, ventilation etc), the level of patronage, risk profile of patrons and compliance, and engagement of the provider with public health advice and direction.

In noting the limitations of the assessment tool as determining individual premises risk, it may be useful in determining resource allocation and public health actions across business sectors and types.

Table 5 – Business risk assessment

<table>
<thead>
<tr>
<th>Risk Reference</th>
<th>Risk setting:</th>
<th>Industry patrons and employees per operational day</th>
<th>Indoor setting? (Y/N)</th>
<th>Duration (mins)</th>
<th>Socially distant activity greater?</th>
<th>Consequence</th>
<th>Likelihood</th>
<th>Inherent Risk Rating</th>
<th>ACT Gov. lead agency (business assessment)</th>
<th>ACT Gov. secondary agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Health clubs, or a fitness centre, group exercise e.g. gym, yoga, spin, dance classes, martial arts</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>2</td>
<td>Clubs and pubs - licenced venues</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing</td>
<td>Health HPS</td>
</tr>
<tr>
<td>3</td>
<td>Hotels/accommodation – non-licenced venues</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&lt;15</td>
<td>Y</td>
<td>2</td>
<td>3</td>
<td>Medium</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>4</td>
<td>Indoor sporting centres e.g. futsal, basketball, netball etc</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>High</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>5</td>
<td>Outdoor social sporting-based activity</td>
<td>&gt;1000</td>
<td>N</td>
<td>&gt;15</td>
<td>N</td>
<td>2</td>
<td>4</td>
<td>High</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>6</td>
<td>Place of worship</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>High</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>7</td>
<td>Sauna, bathhouse or wellness</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>Extreme</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>8</td>
<td>Boot camp</td>
<td>&lt;500</td>
<td>N</td>
<td>&gt;15</td>
<td>N</td>
<td>2</td>
<td>4</td>
<td>High</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>9</td>
<td>Swimming pool (outdoor)</td>
<td>&lt;500</td>
<td>N</td>
<td>&gt;15</td>
<td>N</td>
<td>2</td>
<td>4</td>
<td>Medium</td>
<td>Health HPS, Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>10</td>
<td>Swimming pool (indoor)</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>High</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>11</td>
<td>Gallery, museum, national institute or historic site</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>Y</td>
<td>3</td>
<td>4</td>
<td>Medium</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>12</td>
<td>Library</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>Y</td>
<td>3</td>
<td>4</td>
<td>High</td>
<td>Health HPS, Access Canberra, ACT Policing</td>
<td>Health HPS</td>
</tr>
<tr>
<td>13</td>
<td>Gaming or gambling venue</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing</td>
<td>Health HPS</td>
</tr>
<tr>
<td>14</td>
<td>Casino</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing, Health HPS</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Cinema</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>Y</td>
<td>3</td>
<td>3</td>
<td>Extreme</td>
<td>Access Canberra (liquor licenced) Health, HPS (no liquor licence)</td>
<td>Health HPS</td>
</tr>
<tr>
<td>16</td>
<td>Nightclub</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing, Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>17</td>
<td>Restaurant or café – takeaway or delivery service only</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing, Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>18</td>
<td>Restaurant or café – liquor licence (indoor)</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>3</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing, Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>19</td>
<td>Restaurant or café – no liquor licence (indoor)</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing, Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>20</td>
<td>Community centre or facility or a youth centre</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>3</td>
<td>High</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>21</td>
<td>A nail salon</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>Extreme</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>22</td>
<td>A tattoo parlour</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>2</td>
<td>4</td>
<td>High</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>Risk Reference</td>
<td>Risk setting:</td>
<td>Industry, patrons and employees per operational day</td>
<td>Indoor Setting? (Y/N)</td>
<td>Duration (mins)</td>
<td>Socially distant activity</td>
<td>Consequence</td>
<td>Likelihood</td>
<td>Inherent Risk Rating</td>
<td>ACT Gov. lead agency (business assessment)</td>
<td>ACT Gov. secondary agency</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------</td>
<td>---------------------------------------------------</td>
<td>----------------------</td>
<td>-----------------</td>
<td>---------------------------</td>
<td>-------------</td>
<td>-----------</td>
<td>----------------------</td>
<td>-------------------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>23</td>
<td>Beauty therapy, tanning or waxing services</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>Extreme</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>24</td>
<td>Spa or a massage parlour</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>Extreme</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>25</td>
<td>Strip club, brothel, escort agency</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra, ACT Policing</td>
<td>Health HPS</td>
</tr>
<tr>
<td>26</td>
<td>Concert venue, theatre, arena, auditorium, stadium (indoor)</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>High</td>
<td>Access Canberra, ACT Policing (user pays only)</td>
<td>Health HPS</td>
</tr>
<tr>
<td>27</td>
<td>Concert venue, theatre, arena, auditorium, stadium (outdoor)</td>
<td>&gt;1000</td>
<td>N</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>High</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>28</td>
<td>Amusement park or arcade (indoor)</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>29</td>
<td>Indoor play centre</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>30</td>
<td>Food court (indoor)</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>4</td>
<td>4</td>
<td>Extreme</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>31</td>
<td>Auction house (indoor)</td>
<td>&lt;500</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>High</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>32</td>
<td>Real estate auction or an open house inspection (indoor)</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>4</td>
<td>High</td>
<td>Access Canberra</td>
<td>Health HPS</td>
</tr>
<tr>
<td>33</td>
<td>Supermarkets</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>3</td>
<td>High</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>34</td>
<td>Retail settings</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>3</td>
<td>High</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>35</td>
<td>Petrol stations</td>
<td>&lt;500</td>
<td>Y</td>
<td>&lt;15</td>
<td>N</td>
<td>3</td>
<td>3</td>
<td>Medium</td>
<td>Health HPS</td>
<td>Access Canberra</td>
</tr>
<tr>
<td>36</td>
<td>General practice settings and day surgery</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>3</td>
<td>2</td>
<td>Extreme</td>
<td>Health Emergency Coordination Centre</td>
<td>Health, HPS</td>
</tr>
<tr>
<td>37</td>
<td>Aged Care facility</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>5</td>
<td>4</td>
<td>Extreme</td>
<td>Health Emergency Coordination Centre</td>
<td>Health, HPS</td>
</tr>
<tr>
<td>38</td>
<td>People in detention / prison</td>
<td>500 to &lt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>N</td>
<td>5</td>
<td>3</td>
<td>Extreme</td>
<td>Health Emergency Coordination Centre</td>
<td>Health, HPS</td>
</tr>
<tr>
<td>39</td>
<td>People under quarantine / isolation</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>Y</td>
<td>5</td>
<td>5</td>
<td>Extreme</td>
<td>Health Emergency Coordination Centre, ACT Policing</td>
<td>Health, HPS</td>
</tr>
<tr>
<td>40</td>
<td>Construction Commercial</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>S+</td>
<td>3</td>
<td>3</td>
<td>High</td>
<td>WorkSafe</td>
<td>Health HPS</td>
</tr>
<tr>
<td>41</td>
<td>Construction Residential</td>
<td>&gt;1000</td>
<td>Y</td>
<td>&gt;15</td>
<td>S+</td>
<td>3</td>
<td>3</td>
<td>High</td>
<td>WorkSafe</td>
<td>Health HPS</td>
</tr>
</tbody>
</table>