

EMERGENCY MANAGEMENT ACT 2005 (WA)

Section 72A

COVID SAFE (PHASE 5) DIRECTIONS (NO 2)

The World Health Organization declared COVID-19 a pandemic on 11 March 2020.

On 15 March 2020, the Minister for Emergency Services declared a state of emergency with effect from 12 am on 16 March 2020 in respect of the pandemic caused by COVID-19 pursuant to section 56 of the *Emergency Management Act 2005 (WA)* (**Act**). The state of emergency applies to the State of Western Australia.

I, Christopher John Dawson, Commissioner of Police and State Emergency Coordinator, consider it reasonably necessary to give these directions to prevent, control or abate the risks associated with the emergency presented by the pandemic caused by COVID-19 pursuant to my powers under section 72A of the Act and specify certain information under section 72A(1) of the Act.

PREAMBLE

1. The purpose of these directions is to implement certain COVID safe measures in relation to certain kinds of activities and to give further directions in order to prevent, control or abate the risks associated with the emergency presented by the pandemic caused by COVID-19, by limiting the spread of COVID-19, and for those purposes to specify certain information under section 72A(1) of the Act.

CITATION

2. These directions may be referred to as the **COVID Safe (Phase 5) Directions (No 2)**.

COMMENCEMENT

3. These directions come into effect at the time of signing.

REVOCATION AND CONTINUING OBLIGATIONS

4. The COVID Safe (Phase 5) Directions (**revoked directions**) are revoked.
5. Despite paragraph 4, a person must continue to comply with any obligations which still applied to the person under the revoked directions immediately before these directions came into effect, to the same extent that the person would have had to comply with them if the revoked directions had not been revoked, and, for the

avoidance of doubt, if a person fails to comply with an obligation that applied to them under the revoked directions, the person may commit an offence under the Act.

6. Any **authorisation** or approval given under the revoked directions that was in effect immediately prior to these directions coming into effect remains in effect on the same terms as immediately prior to these directions coming into effect.

INTERACTION WITH OTHER LEGAL REQUIREMENTS

7. For the avoidance of doubt, these directions operate in addition to any other legal requirements applying to gatherings and activities and nothing in these directions:
 - (a) overrides any other law restricting the carrying on of activities or holding of gatherings at any **premises**; or
 - (b) authorises a gathering at premises, whether those premises are a **relevant place** or otherwise, or the carrying out of an activity, which is prohibited under any other law; or
 - (c) relieves a person of any obligation to comply with any licensing or other regulatory regime that applies to premises or activities.

DIRECTIONS

Special requirements applicable to Category 1 events (501 – 2500 patrons)

8. A person:
 - (a) who owns, controls or operates premises in the State of Western Australia must not allow those premises to be used for a **Category 1 Event**; and
 - (b) must refrain from undertaking, engaging in, holding, conducting or attending a Category 1 Event,unless:
 - (c) the organiser of the Category 1 Event, or the person who owns, controls or operates the premises at which the Category 1 Event will be held:
 - (i) has registered the Category 1 Event on the **events register**; and
 - (ii) has completed a **COVID event checklist** and submits that completed COVID event checklist at the same time as any application for approval for the Category 1 Event to the local

government authority for the local government area in which the Category 1 Event is being held; and

- (iii) holds or conducts the Category 1 Event in accordance with the COVID event checklist.

Special requirements applicable to Category 2 Events (2501+ patrons)

9. A person:

- (a) who owns, controls or operates premises in the State of Western Australia must not allow those premises to be used for a **Category 2 Event**; and
- (b) must refrain from undertaking, engaging in, holding, conducting or attending a Category 2 Event,

unless:

- (c) the organiser of the Category 2 Event, or the person who owns, controls or operates the premises at which the Category 2 Event will be held:
 - (i) has registered the Category 2 Event on the events register; and
 - (ii) has completed a **phase 5 COVID event plan** and submits that completed phase 5 COVID event plan at the same time as any application for approval for the Category 2 Event to the local government authority for the local government area in which the Category 2 Event is being held, and if the Category 2 Event involves more than 5000 **patrons**, has lodged that phase 5 COVID event plan in accordance with paragraph 10; and
 - (iii) holds or conducts the Category 2 Event in accordance with the phase 5 COVID event plan.

10. A phase 5 COVID event plan for a Category 2 Event that involves more than 5000 patrons must be lodged by providing it to the Department of Health via the **lodgement address**:

- (a) a minimum of 4 weeks prior to the proposed date of the Category 2 Event; or
- (b) at such other later time as is approved by the Chief Health Officer (or a person authorised by the Chief Health Officer for that purpose) in writing.

Requirement for COVID safety plan and safety plan certificate at relevant places

11. Every owner, occupier or person apparently in charge of a relevant place must:
 - (a) have in place a **COVID safety plan**; and
 - (b) update that COVID safety plan if the number of patrons that may be present at the relevant place at the same time changes as soon as possible after that change occurs; and
 - (c) display a **safety plan certificate** in a prominent place visible to members of the public at the relevant place while the place is open to the public.

TRANSITIONAL PROVISIONS

12. It will be taken to be sufficient compliance with paragraphs 8 to 10 of these directions if a person complies with any **existing COVID event plan** (including any terms or conditions to which that existing COVID event plan is subject) that was approved for an **event** immediately prior to these directions coming into effect and nothing in these directions invalidates that existing COVID event plan.

DEFINITIONS

13. **Authorisation** means any authorisation made or given under the Act or the revoked directions.
14. **Bottleshop** means an area physically attached or adjacent to the premises of a business characterised as a pub, bar or club referred to in paragraph (1) of Schedule 1, or a hotel referred to in paragraph (2) of Schedule 1, that is for the sale of packaged alcohol to be consumed off the premises of the pub, bar, club or hotel.
15. **Casino** has the same meaning as in the *Casino Control Act 1984* (WA).
16. **Category 1 Event** means an event where the anticipated number of patrons is over 500 but does not exceed 2500.
17. **Category 2 Event** means an event where the anticipated number of patrons is over 2500.
18. **COVID event checklist** means a checklist which addresses each of the matters set out in the list which can be found at <https://www.wa.gov.au/government/document-collections/covid-19-coronavirus-events>.

COVID event guidelines and template means the guidelines and template plan prepared by the Department of Health for the purposes of supporting COVID safe events and which are available at the following web address:
<https://www.wa.gov.au/government/document-collections/covid-19-coronavirus-events>.

19. **COVID safety marshal** means a person who meets the following criteria:

- (a) is over 18 years of age; and
- (b) has completed the online training course "COVID-19 Infection Control Training" provided by Aspen Medical and found at <https://www.health.gov.au/resources/apps-and-tools/covid-19-infection-control-training#registration>; and
- (c) can produce a National Police Clearance that is less than 12 months old; and
- (d) wears distinctive clothing sufficient to identify them as a COVID safety marshal; and
- (e) is not simultaneously performing another role at the Category 2 Event unless otherwise approved in writing by the Chief Health Officer or a person authorised by the Chief Health Officer for that purpose,

and is engaged by the organiser of an event to carry out functions under the approved COVID Event Plan for the Category 2 Event.

20. **COVID safety marshal condition** means having one COVID safety marshal present per 1000 patrons at a Category 2 Event or such other ratio as is approved in writing by the Chief Health Officer or a person authorised by the Chief Health Officer for that purpose.

21. **COVID safety plan** means a plan which addresses (for the purposes of preventing the spread of COVID-19) how the owner, occupier or person apparently in charge of the place to which the plan relates, and their **staff**, intend to ensure that:

- (a) physical distancing guidelines will be implemented; and
- (b) required hygiene standards will be maintained; and
- (c) staff will be appropriately trained or educated; and

- (d) an exposure or suspected exposure of a person to COVID-19 will be managed appropriately.

Note: at the time of making these directions, information about preparing safety plans, as well as safety plan certificates, are provided at the following website:

<https://www.wa.gov.au/organisation/departments/premier-and-cabinet/covid-19-coronavirus-business-and-industry-advice#safety-plan>

22. **Entertainment venue of any other kind** means any entertainment venue that is not otherwise expressly referred to in Schedule 1.
23. **Event** means any gathering of more than 500 patrons, whether in public or in private, and whether undertaken or engaged in on a for profit or not for profit basis, unless the gathering:
- (a) falls within the terms of an existing approval that was in place as at 22 June 2021 under section 178 of the *Health (Miscellaneous Provisions) Act 1911* (WA); or
- (b) is an **excluded gathering**.

Note: for the avoidance of doubt, an event includes, but is not limited to, any event that requires approval under section 176 or section 178 of the Health (Miscellaneous Provisions) Act 1911 (WA) or regulation 9 of the Health (Public Buildings) Regulations 1992 (WA), and whether or not that event is at a relevant place.

24. **Events register** means the register of events hosted by the Department of Health on its official website and at the time of commencement of this direction found at https://ww2.health.wa.gov.au/en/Articles/A_E/Events-registration.
25. **Excluded gathering** means a gathering:
- (a) at an **outdoor gym**, or a **playground** or **skate park**; or
- (b) at an airport that is necessary for the normal business of the airport; or
- (c) for the purposes of or related to public transportation, including at public transportation facilities such as stations, platforms and stops; or
- (d) at a medical or health service facility that is necessary for the normal business of the facility; or

- (e) at a disability or aged care facility that is necessary for the normal business of the facility; or
- (f) for the purposes of providing care or assistance (including personal care) to a vulnerable person or providing emergency assistance; or
- (g) for the purposes of emergency services; or
- (h) at a prison, detention centre, lock up or other place of custody for the purposes of or related to the operation of that place of custody; or
- (i) at Parliament for the purposes of its normal operations; or
- (j) at a court or tribunal; or
- (k) at a food market, supermarket, grocery store, retail store or shopping centre that is necessary for the normal business of those premises; or
- (l) at an office building, factory, mining site (including mining site accommodation), construction site or other place of work that is necessary for the normal business of those premises, except premises described in paragraph 25(m); or
- (m) at a school, university, educational institution or childcare facility that is necessary for the normal business of the facility; or
- (n) at a hotel, motel or other accommodation facility that is necessary for the normal operation of accommodation services; or
- (o) in an **outdoor space** where a gathering of persons may be present for the purpose of transiting through the space; or

Example: Forrest Place, Perth.

- (p) in an **indoor space** where a gathering of persons may be present for the purpose of transiting through the space; or

Examples: Perth Busport; an elevator or lift.

- (q) in an indoor space or an outdoor space where everyone in the gathering is a member of the same **household**; or

- (r) in or on a vehicle (including a **motor vehicle**, boat or aircraft), unless the vehicle is being used for the dominant purpose of serving or consuming food or drink.
26. **Existing COVID event plan** has the same meaning as in the revoked directions immediately prior to their revocation.
27. **Household** means two or more persons who usually reside at the same place, irrespective of whether those persons are related to each other.
28. **Indoor space** means an area, room or premises that is or are substantially enclosed by a roof and a **sufficient dividing structure**, regardless of whether the roof or sufficient dividing structure, or any part of them, are permanent or temporary or capable of being opened or closed.
29. **Lodgement address** means Public.Events@health.wa.gov.au.
30. **Main Arena** means that part of HBF Stadium located at Stephenson Avenue, Mount Claremont shown as the main arena in the map attached to the Closure and Restriction (Limit the Spread) Amendment Directions given on 18 July 2020.
31. **Major stadium** means any of:
- (a) Optus Stadium;
 - (b) HBF Park;
 - (c) RAC Arena; and
 - (d) HBF Stadium – **Main Arena**.
32. **Motor vehicle** has the same meaning as in paragraph (b) of the definition of "motor vehicle" in section 4 of the *Road Traffic (Administration) Act 2008* (WA).
33. **Nightclub** means a place that has a nightclub licence under section 42 of the *Liquor Control Act 1988* (WA) or another place that is specified in writing by me, or a person authorised by me for the purpose, to be a nightclub for the purposes of these directions.
34. **Outdoor gym** means an outdoor space used for, and equipped with, facilities or equipment for exercise.
35. **Outdoor space** means a space that is not an indoor space.

36. **Patron** means a person who is not staff (and for the avoidance of doubt includes spectators).

37. **Phase 5 COVID event plan** means a plan in writing that:

- (a) is prepared by or on behalf of the organiser of a Category 2 Event; and
- (b) for the purposes of preventing the spread of COVID-19, sets out the measures the organiser of the event proposes to put in place to address and mitigate any risks of the spread of COVID-19 that the event presents; and
- (c) is consistent with the **COVID event guidelines and template**; and
- (d) complies with the **COVID safety marshal condition**; and
- (e) is submitted to the local government authority for the local government area where the Category 2 Event is being held.

Note: at the time of making these directions, a template phase 5 COVID event plan and information about preparing phase 5 COVID event plans are provided at the following website: <https://www.wa.gov.au/government/document-collections/covid-19-coronavirus-events>.

38. **Place of worship** means premises used for religious activities such as a chapel, church, mosque, synagogue or temple.

39. **Playground** means an outdoor space used for, and equipped with, facilities for recreation, especially by children.

40. **Premises** includes:

- (a) land (whether vacant or not); and
- (b) land covered by water, whether permanently or temporarily or from time to time; and
- (c) the whole or any part of a building or other structure, of whatever type and whether of a permanent or temporary nature; and
- (d) a vehicle.

41. **Relevant place** means any of the places set out in Schedule 1, whether operated on a for profit or not-for-profit basis, but excludes a **major stadium**.

42. **Safety plan certificate** means a certificate which:

- (a) states the number of patrons who can be accommodated at the place; and
- (b) records the agreement of the owner, occupier or person apparently in charge of the place where the safety plan certificate is displayed to maintain the WA Government's safety measures.

Note: at the time of making these directions, information about the requirements and form of a safety plan certificate is provided at the following website:

<https://www.wa.gov.au/organisation/departments-and-cabinet/covid-19-coronavirus-business-and-industry-advice#safety-plan>

43. **Skate park** means a facility specifically designed for skateboarding, rollerskating or rollerblading, containing structures such as ramps and basins.

44. **Staff** means a person who has responsibilities at a place as an officer or employee or in some other capacity (including a voluntary capacity) and includes:

- (a) in the case of a sporting activity, coaches and officials such as umpires, referees or scorekeepers;
- (b) in the case of a religious service at a **place of worship**:
 - (i) a person who leads or presides at the service, such as an imam, priest or rabbi; and
 - (ii) persons who assist the person who leads or presides at the service (including those who would ordinarily read from scripture or some other sacred text to a congregation or other group gathered to participate in the service); and
 - (iii) persons present for the purpose of live streaming or recording the service.

45. **Sufficient dividing structure** means a wall or other structure which:

- (a) substantially comprises material that is impervious to air flow; and
- (b) is capable of being cleaned or sanitised; and
- (c) is anchored to the ground or floor in a way which ensures that it cannot be lifted or pushed apart; and

- (d) either:
- (i) reaches from the ground or floor to the ceiling (or roof if there is no ceiling); or
 - (ii) starts from the ground or floor and is at least 2 metres high from the ground or floor to its lowest vertical point measured from the ground or floor.

Note: in addition to meeting these requirements, a sufficient dividing structure must comply with any other legal requirements applicable to the structure in any way, including any legal requirements relating to the structural integrity of the structure (such as, but not limited to, requirements typically imposed or administered by local governments).

46. **Wildlife park** means an amusement park at which the dominant form of amusement or entertainment relates to any or all of exposure to or experiences with or viewing of wildlife but, for the avoidance of doubt, does not include Perth Zoo.

Example: Caversham Wildlife Park is an amusement park which falls within this definition of a wildlife park.

SPECIFICATION OF INFORMATION UNDER SECTION 72A(1) OF THE ACT

47. For the purposes of the definition of "relevant information" in section 72A(1) of the Act, I specify information relating to whether a person has completed or updated a COVID safety plan.

PENALTIES

It may be an offence to fail to comply with any of these directions, punishable by imprisonment for up to 12 months or a fine of up to \$50,000 for individuals and \$250,000 for bodies corporate.



.....
Christopher John Dawson
Commissioner of Police and State Emergency Coordinator

1 December 2021 0750 hours

SCHEDULE 1 – RELEVANT PLACES

1. a business characterised as a pub, bar or club (but not a **nightclub**) that supplies alcohol under a licence granted under the *Liquor Control Act 1988* (WA) (but not including any part of the business constituted by a **bottleshop**); or
2. a hotel, whether licensed or unlicensed, except any part of the hotel constituted by a bottleshop or to the extent that the hotel provides accommodation; or
3. a gym, indoor sporting centre, wellness centre, health club or fitness centre (including a centre offering yoga, barre, pilates, aerobics, dancing or spin facilities) or boot camp; or
4. a cinema (including a drive-in cinema or outdoor cinema); or
5. an **entertainment venue of any other kind**; or
6. a restaurant or café (including premises selling food or drink in a food court); or
7. a place of worship; or
8. an auction house; or
9. a beauty parlour or salon (other than a hairdressers or barbershop); or
10. a nail salon; or
11. a tattoo parlour; or
12. a spa; or
13. a massage parlour; or
14. a gaming or gambling venue; or
15. adult entertainment premises (including but not limited to strip clubs, brothels and sex on premises venues); or
16. an amusement park or arcade (including, for the avoidance of doubt, a **wildlife park**, irrespective of whether the wildlife park was ever an affected place under previous directions made by me); or
17. a play centre, whether indoors or outdoors; or

18. a community, recreation or youth centre or facility (including but not limited to community halls, clubs, Returned and Services League facilities and Police and Community Youth Centres); or

Note: for the avoidance of doubt, outdoor facilities such as sporting grounds and parks are community, recreation or youth centres or facilities.

19. a sauna; or
20. a bathhouse; or
21. a swimming pool, whether indoors or outdoors; or
22. a gallery; or
23. a museum; or
24. an historic site; or
25. a library; or
26. Perth Zoo; or
27. a casino; or
28. a nightclub; or
29. a major stadium.