

PUBLIC HEALTH ACT 2016 (WA)

Sections 157(1)(e), 157(1)(k), 180 and 190(1)(p)

BUILDING AND CONSTRUCTION INDUSTRY WORKER (RESTRICTIONS ON ACCESS) DIRECTIONS (No 2)

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

On 23 March 2020, the Minister for Health declared a public health state of emergency with effect from 1.30 pm on 23 March 2020 in respect of COVID-19 pursuant to section 167 of the *Public Health Act 2016* (WA) (Act). On 22 September 2021, the Minister for Health declared a further public health state of emergency with effect from 4.25 pm on 22 September 2021 in respect of COVID-19 pursuant to section 167 of the Act. The public health state of emergency applies to the State of Western Australia.

I, Dr Andrew Robertson, the Chief Health Officer, authorised as an emergency officer under section 4 of the Act to exercise any of the emergency powers while the public health state of emergency declaration in respect of COVID-19 is in force, consider it reasonably necessary to give the following directions to all persons in Western Australia to prevent, control or abate the serious public health risk presented by COVID-19 pursuant to sections 157(1)(e), 157(1)(k), 180 and 190(1)(p) of the Act.

PREAMBLE

1. The purpose of these directions is to put in place measures, for the purpose of limiting the spread of COVID-19 in Western Australia, that address the risks posed by COVID-19 to the building and construction workforce due to the risk of COVID-19 outbreaks and transmission between workers.

CITATION

2. These directions may be referred to as the **Building and Construction Industry Worker (Restrictions on Access) Directions (No 2)**.

COMMENCEMENT

3. These directions come into effect upon signing.

REVOCATION

4. The Building and Construction Industry Worker (Restrictions on Access) Directions are revoked.

DIRECTIONS

Access Restrictions Applying to Building and Construction Workers

5. Subject to paragraphs 6 and 7:
 - (a) on and from 12.01 am on 1 January 2022, a person who is a **building and construction worker** must not enter, or remain at, a **building and construction site** if the building and construction worker has not been **partially vaccinated** against COVID-19; and
 - (b) on and from 12.01 am on 1 February 2022, a person who is a building and construction worker must not enter, or remain at, a building and construction site if the building and construction worker has not been **fully vaccinated** against COVID-19,

unless the person is present at the building and construction site solely in a capacity other than as a building and construction worker or is an **exempt person**.

General Vaccination Requirements

6. Where only part of **premises** are being used as a building and construction site, nothing in these directions prevents a building and construction worker who does not meet the requirements of paragraph 5 from entering that part of the premises which is not being used as a building and construction site.
7. Nothing in these directions prevents a person who is not vaccinated against COVID-19 from entering any part of a building and construction site for the purposes of:
 - (a) performing a law enforcement function that cannot reasonably be performed other than by entering the site; or
 - (b) performing a statutory duty arising under a law of the Commonwealth that cannot reasonably be performed other than by entering the site; or
 - (c) performing any function or duty or exercising any right or power under a Fair Work entry permit issued by the Fair Work Commission under the *Fair Work Act 2009* (Cth) or a Work Health and Safety entry permit issued by the Fair Work Commission under the *Work Health and Safety Act 2011* (Cth) or a

right of entry permit issued by the Registrar of the Department of the Registrar Western Australian Industrial Relations Commission under the *Industrial Relations Act 1979* (WA); or

- (d) responding to an emergency where the emergency response is required to be provided immediately and a fully vaccinated or partially vaccinated person is not available to provide the response.
8. A building and construction worker must provide evidence in the form approved by the **Chief Health Officer** of their **vaccination status** for inspection, recording and retention of a copy, if:
- (a) **directed** to do so by an **emergency officer** or a **nominated officer**; or
 - (b) required to do so by their employer or by the owner, occupier, operator or person apparently in charge of a building and construction site.
9. The employer of a building and construction worker or the owner, occupier, operator or person apparently in charge of a building and construction site must:
- (a) take all reasonable and lawful steps to:
 - (i) collect and maintain a record of the vaccination status of each building and construction worker; and
 - (ii) only roster on, or otherwise permit to work on a building and construction site, a building and construction worker who is vaccinated or is an exempt person in accordance with these directions; and
 - (iii) if they are the owner, operator or person apparently in charge of a building and construction site, only permit a building and construction worker who is vaccinated or is an exempt person in accordance with these directions to enter, or remain at, the building and construction site, unless the person is present at the building and construction site solely in a capacity other than as a building and construction worker; and
 - (b) on request, provide any record of the kind referred to in paragraph 9(a)(i) to an emergency officer or nominated officer as soon as practicable after the request is made; and

- (c) not use or disclose any record of the kind referred to in paragraph 9(a)(i) except:
 - (i) as provided for in this paragraph 9; or
 - (ii) as permitted or required by law, including any law of the Commonwealth; or
 - (iii) for the purpose of ascertaining compliance with any employer direction restricting entry to a building and construction site; or
 - (iv) to the extent that the person expressly provided the person's vaccination status for a purpose other than for the purposes of these directions; and
 - (d) take reasonable steps to protect any record it holds of the kind referred to in paragraph 9(a)(i) from:
 - (i) misuse and loss; and
 - (ii) unauthorised access, modification or disclosure.
10. A person who is required to provide evidence of their vaccination status under paragraph 8, or a record of the kind referred to in paragraph 9(a)(i) under paragraph 9(b), must only provide that evidence, or a record, that is true and accurate.
11. The forms of evidence approved in the *Chief Health Officer Approved Form Of Evidence Of COVID-19 Vaccination Under Each Of The Restrictions On Access Directions Given Under The Public Health Act 2016 (WA) In Respect Of COVID-19*, as amended or replaced from time to time, are approved for the purposes of paragraph 8 of this direction.

INTERPRETATION

12. Unless specified otherwise, any reference in these directions to any other direction made by the Chief Health Officer or a direction made by the State Emergency Coordinator under the *Emergency Management Act 2005 (WA)* is deemed to be a reference to that direction as amended or replaced from time to time.

DEFINITIONS

For the purposes of these directions:

13. **Building and construction site** means:

- (a) a place at which **building work** and/or **construction work** is being carried out, but not work:
 - (i) carried out in relation to a dwelling in which a person is residing; or
 - (ii) for which, pursuant to paragraph 41 of the *Building Regulations 2012* (WA), a building permit is not required; or
 - (iii) for which, pursuant to paragraph 42 of the *Building Regulations 2012* (WA), a demolition permit is not required; or
- (b) any other place that is specified to be a building and construction site by the Chief Health Officer in writing or any person authorised by him for that purpose.

14. **Building and construction worker** means:

- (a) a person of the kind set out in Column 1 of the table in Schedule 1; or
- (b) any other person specified to be a building and construction worker by the Chief Health Officer in writing or any person authorised by him for that purpose,

but does not include a person who enters any part of a building and construction site for any of the purposes in paragraph 7.

15. **Building work** has the same meaning that it has in the *Building Act 2011* (WA).

16. **Chief Health Officer** has the same meaning that it has in the Act.

17. **Construction work** includes any work that is construction work within the:

- (a) *Construction Contracts Act 2002* (WA); and
- (b) *Occupational Safety and Health Regulations 1996* (WA).

18. **Direction** includes any direction under the Act, whether the direction is given orally or in writing, and **directed** includes directed by way of a direction under the Act, whether the direction is given orally or in writing.

19. **Emergency officer** has the same meaning that it has in the Act.

20. **Exempt person** means, to the extent that any such person is a building and construction worker:
- (a) a person who has:
 - (i) a **medical exemption** of which the person provides proof on request by a person referred to in paragraph 8; or
 - (ii) a **temporary exemption** of which the person provides proof on request by a person referred to in paragraph 8; or
 - (b) any other person or class of persons who the Chief Health Officer, or a person authorised by the Chief Health Officer for the purposes of this paragraph, declares in writing to be an exempt person upon receipt of a request for exemption in the form specified by the Chief Health Officer and subject to any terms and conditions specified.
21. **Fully vaccinated** means that the person has been administered with two doses of a COVID-19 vaccine registered by the Therapeutic Goods Administration.
22. **Medical exemption** means a medical exemption recorded on the Australian Immunisation Register and displayed on the person's Immunisation History Statement.
23. **Nominated officer** means an employee of the Department of Mines, Industry Regulation and Safety authorised by the Chief Health Officer orally or in writing to perform a function for the purposes of these directions.
24. **Partially vaccinated** means that the person has been administered with one dose of a COVID-19 vaccine registered by the Therapeutic Goods Administration.
25. **Premises** has the same meaning that it has in the Act.
26. **Temporary exemption** means an exemption approved by the Chief Health Officer or a person authorised by the Chief Health Officer for that purpose whether in relation to a person or a class of persons and subject to any terms and conditions specified in that approval.
27. **Vaccination status** means whether a building and construction worker has been vaccinated or whether they are an exempt person.

PENALTIES

It is an offence for a person to fail, without reasonable excuse, to comply with any of these directions, punishable by a fine of up to \$20,000 for individuals and \$100,000 for bodies corporate.



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Dr Andrew Robertson
Emergency Officer

2 December 2021 *14:15* hours

SCHEDULE 1

Row	Column 1 Building and construction worker
1.	A person who carries out activities or undertakes services at a building and construction site and is employed or otherwise engaged, including in a voluntary or unpaid capacity: a) by the owner, occupier, operator or person apparently in charge of the building and construction site; or b) by a contractor or subcontractor of the owner, occupier, operator or person in charge of the building and construction site. <i>Example: this will include workers such as architects, drafts people, portaloos service people, development company executives, and food vendors.</i> <i>Note: A person who is a visitor to the building and construction site, including but not limited to the homeowner, will not be a building and construction worker if they are at the building and construction site solely in a capacity other than as a building and construction worker.</i>
2.	A person who is employed or otherwise engaged to carry out or perform a statutory function under a law of the State in relation to building work or construction work at a building and construction site.
3.	A person who is an apprentice or trainee or on work experience on placement at a building and construction site who is performing activities or services as a formal part of their education.