

## EMERGENCY MANAGEMENT ACT 2005 (WA)

### Sections 61, 67, 71 and 72A

## COVID RESTRICTIONS (GATHERINGS AND RELATED MEASURES) 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**) (**State of Emergency**). The State of Emergency applies to the State of Western Australia.

I, Christopher John Dawson, Commissioner of Police and State Emergency Coordinator, give certain of these directions (relating to the closure of certain places) pursuant to my powers as a police officer under section 71 of the Act and consider it reasonably necessary to give other 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 sections 61, 67 and 72A of the Act.

### PREAMBLE

1. The purpose of these directions is to close certain **premises**, to regulate certain gatherings, and to place restrictions on certain places in the **affected area** 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 following the detection of a positive case of COVID-19 in the Western Australian community and to otherwise limit the spread of COVID-19.

### CITATION

2. These directions may be referred to as the COVID Restrictions (Gatherings and Related Measures) Directions (No 2).

### COMMENCEMENT

3. These directions come into effect at 6.00am on Tuesday 28 December 2021 and continue in effect until 6.00am on Tuesday 4 January 2022.

## **OPERATION**

4. These directions apply in addition to any requirements imposed by other **directions** including the COVID Safe (Phase 5) Directions (No 2), and to the extent of any inconsistency, these directions prevail.

## **DIRECTIONS**

### **PART I: CLOSURES AND REQUIREMENTS FOR GATHERINGS IN THE AFFECTED AREA**

#### **Closure of nightclubs**

5. A person who owns, controls or operates a **nightclub** in the affected area must close that place to the public.

#### **Prohibition on music events and dancing**

6. Unless otherwise permitted by these directions, a person who owns, controls or operates premises in the affected area must not allow the premises to be used for a **music event**.
7. A person must refrain from undertaking, engaging in, holding, conducting or attending a music event in the affected area.
8. A person must not engage in dancing at premises in the affected area other than:
  - (a) if it occurs at a wedding; or
  - (b) at a **home** where the participants are all members of the same **household**.
9. A person who owns, controls or operates premises in the affected area must not allow a person to engage in dancing at those premises other than where it occurs in the circumstances set out in paragraphs 8(a) and 8(b).

### **Hospitality venues to provide seated service only**

10. In addition to any other requirement imposed by these directions or another direction, a person who owns, controls, operates or is otherwise apparently in charge of, a **hospitality venue** in the affected area must only provide:

- (a) **seated service**; or
- (b) **take-away service**,

and must not allow food or beverages (including alcohol) to be consumed at the hospitality venue other than by a **patron** who is seated.

### **Patrons at hospitality venues**

11. A patron at a hospitality venue in the affected area must not consume food or beverages (including alcohol) unless they are seated while consuming the food or beverages.

## **PART II: FACE COVERING REQUIREMENTS**

### **Requirement to wear a face covering in certain places**

12. Subject to paragraph 13, a person in the affected area must wear a **face covering** at all times while they are:
- (a) in an **indoor space**; or
  - (b) at or in a residential aged care facility, whether in an indoor space or **outdoor space**; or
  - (c) at a **designated event**; or
  - (d) in a vehicle of any kind (including public transport, taxi and rideshare services).

### **Exemptions from face covering requirements**

13. A person is not required to wear a face covering where:
- (a) the person is within or at their home unless another direction requires them to wear a mask at home; or
  - (b) the person is attending a gathering of persons at a home, provided that the gathering is not prohibited by these directions; or

- (c) the person is a child 12 years of age or under, except at any time the child is attending school in Year 7 and above; or
- (d) the person is at the time attending school as a student in Year 6 or below; or
- (e) the person has a physical, developmental or mental illness, injury, condition or disability which makes wearing a face covering unsuitable; or
- (f) the person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication; or
- (g) the nature of a person's occupation means that wearing a face covering is impractical to perform that occupation or creates a risk to their health and safety; or
- (h) the person needs to temporarily remove their face covering so as to enable another person to appropriately perform their occupation; or
- (i) the nature of a person's work or the activity that they are engaging in means that clear enunciation or visibility of the mouth is essential; or
- (j) the person is at that time consuming food, drink or medicine; or
- (k) the person is asked to remove the face covering to ascertain identity; or
- (l) not wearing a face covering is required for emergency purposes (other than emergency preparation or emergency preparation activities, unless another exception specified in this paragraph applies); or
- (m) the person is working in the absence of others in an enclosed indoor space (unless and until another person enters that indoor space); or
- (n) the person is a resident in a residential aged care facility; or
- (o) the person is engaged in an activity involving swimming; or
- (p) the person is running or jogging or otherwise engaged in some form of strenuous or vigorous exercise or physical activity; or
- (q) the person is travelling in a vehicle and either is the sole occupant of that vehicle or is travelling in the vehicle with other persons provided that all the occupants of the vehicle are members of the same household; or

- (r) the person is undergoing medical, dental or beauty related care or treatment to the extent that such care or treatment requires that no face covering be worn; or
- (s) the person is directed by a judicial officer or tribunal member in proceedings in a court or tribunal to remove their face covering to ensure the proper conduct of those proceedings; or
- (t) the person is a prisoner or detainee in a prison, detention centre or other place of custody; or

*Note: Nothing in these directions affects any other power a person may have to require a prisoner or detainee to wear a face covering.*

- (u) not wearing a face covering is otherwise required or authorised by law; or
- (v) wearing a face covering is not safe in all the circumstances; or
- (w) in the case of a designated event, the person is a jockey and is at the time engaged in the performance of the role of a jockey,

provided that, where a person is relying on an exemption under subparagraph (f) to (v), that person resumes wearing the face covering as soon as reasonably practicable after the person no longer falls within the relevant exemption.

### **PART III: PROOF OF VACCINATION REQUIREMENTS**

#### **Proof of vaccination information**

14. Except for:

- (a) a child under the age of 16 years; or
- (b) where the person enters the **proof of vaccination venue**:
  - (i) for the purposes of performing a law enforcement function that cannot reasonably be performed other than by entering the particular proof of vaccination venue; or
  - (ii) for medical or emergency purposes,

a person entering a proof of vaccination venue must produce their **accepted proof information** if requested to do so by a **responsible person**.

## **PART IV: EXTENDED APPLICATION OF DIRECTIONS BEYOND THE AFFECTED AREA**

### **Requirements for persons who leave the affected area**

15. A person who was in the affected area at any time after 12.01am on 16 December 2021 and travels or has travelled outside of the affected area must, for a period of 14 days after the date and time that the person was last in the affected area, comply with paragraph 12 of these directions whilst they are outside the affected area as if they were in the affected area.

### **AUTHORISATION**

16. For the avoidance of doubt, in addition to and without limiting any other authorisation any **relevant officer** may have to do so, all relevant officers are authorised under section 61 of the Act to give any direction to a person for the purpose of giving effect to these directions.

### **INTERPRETATION**

17. Unless specified otherwise, any reference in these directions to any other direction made by the State Emergency Coordinator is deemed to be a reference to that direction as amended or replaced from time to time.

### **DEFINITIONS**

18. **Accepted proof information** means:
  - (a) **accepted proof of vaccination**; or
  - (b) **accepted proof of vaccination exemption**.
19. **Accepted proof of vaccination** means **photo ID** for the person and:
  - (a) a COVID-19 digital vaccination certificate or an Immunisation History Statement issued to the person showing the COVID-19 vaccination recorded on the Australia Immunisation Register for the person; or
  - (b) an International COVID-19 Vaccination Certificate issued by the Commonwealth Government to the person showing the COVID-19 vaccination recorded on the Australian Immunisation Register for the person;  
or

- (c) written confirmation of vaccination issued by the Chief Health Officer or a person authorised by the Chief Health Officer to the person of the COVID-19 vaccination administered to the person.
20. **Accepted proof of vaccination exemption** means photo ID for the person and:
- (a) an Immunisation History Statement issued to the person showing a medical exemption recorded on the Australian Immunisation Register for the person; or
- (b) a temporary exemption issued to the person by the Chief Health Officer or a person authorised by the Chief Health Office for that purpose.
21. **Affected area** means:
- (a) the Metropolitan region described in Schedule 3 to the *Planning and Development Act 2005* (WA); and
- (b) the Peel Region described in item 6 of Schedule 4 to the *Planning and Development Act 2005* (WA); and
- (c) Rottnest Island, as described in section 4 of the *Rottnest Island Authority Act 1987* (WA).
22. **Authorised officer** has the same meaning that it has in the Act.
- Note: At the time of making these directions, all **police officers** are **authorised officers**, and paragraph 16 ensures that relevant officers are also authorised officers for the purposes of these directions.*
23. **Bottleshop** means an area physically attached or adjacent to the premises of a business falling within paragraph (a) or (b) of the definition of hospitality venue and which is for the sale of packaged alcohol for consumption off the premises of that business.
24. **Designated event** means:
- (a) the Perth Cup at Ascot Racecourse; or
- (b) any other event designated in writing by the State Emergency Coordinator, or a person authorised by the State Emergency Coordinator for that purpose to be a designated event.
25. **Direction** includes a quarantine direction and any other direction under the Act or the *Public Health Act 2016* (WA), whether the direction is given orally or in writing.

26. **Emergency officer** has the same meaning that it has in the *Public Health Act 2016* (WA).
27. **Excluded gathering** means:
- (a) The Wizard of Oz at Crown Theatre; and
  - (b) any other event designated in writing by the State Emergency Coordinator, or a person authorised by the State Emergency Coordinator for that purpose to be an excluded event.
28. **Face covering** means a disposable surgical mask or fitted cloth mask that covers the nose and mouth (but does not include a face shield).
29. **Home** means the premises or place where a person usually resides or other premises (such as a hotel or short stay accommodation) at which a person is able to reside.
30. **Hospitality venue** means:
- (a) 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
  - (b) 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
  - (c) a restaurant or café (including premises selling food or beverages in a food court); or
  - (d) to the extent that it does not otherwise fall within one of paragraphs 30(a) – 30(c):
    - (i) premises at which a designated event is being held at the time; or
    - (ii) any part of premises 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).
31. **Household** means two or more persons who usually reside at the same home, irrespective of whether those persons are related to each other.



32. **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.
33. **Music event** means:
- (a) any gathering that is listed in Schedule 1; or
  - (b) any gathering, other than an **excluded 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 which features the playing of recorded music or live performances involving singing or dancing for the purposes of entertainment unless the gathering 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).
34. **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 the State Emergency Coordinator, or a person authorised by the State Emergency Coordinator for that purpose, to be a nightclub for the purposes of these directions or the COVID Safe (Phase 5) Directions (No 2).
35. **Outdoor space** means any 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. **Photo ID** means one of the primary or secondary documents identified as being acceptable proof of identification in the information available at:
- <https://www.wa.gov.au/government/covid-19-coronavirus/covid-19-coronavirus-what-proof-of-covid-19-vaccinations-can-i-use>
- provided that document includes a photograph of the person and any expiry date for the document has not yet passed.
38. **Police officer** means a person appointed under Part I of the *Police Act 1892* (WA) to be a member of the Police Force of Western Australia.

39. **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, including a vessel.
40. **Proof of vaccination venue** means Ascot Racecourse but only on any day on which patrons are present to attend the Perth Cup.
41. **Relevant officer** means:
- (a) an authorised officer; or
  - (b) an **emergency officer**; or
  - (c) a **responsible officer**.
42. **Responsible officer** means:
- (a) an officer, employee or contractor of the Department of Health; or
  - (b) an officer, employee or contractor of a health services provider; or
  - (c) any other person authorised by the Chief Health Officer orally or in writing to perform a function for the purposes of these directions.
43. **Responsible person**, in relation to particular premises, means the occupier or other person apparently in charge of those premises or a member of the staff of such a person.
44. **Seated service** means service to seated patrons or service where patrons may order at a counter or bar but must consume any food or beverages whilst seated.

45. **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; and
- (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.

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

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

47. **Take-away service** means service to patrons where the food or drink supplied is to be consumed at a place other than the hospitality venue.

## 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.



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**Christopher John Dawson**

Commissioner of Police and State Emergency Coordinator

27 December 2021 1600 hours

## SCHEDULE 1

| <b>Event</b>                    | <b>Location</b>         | <b>Scheduled Commencement Dates</b> |
|---------------------------------|-------------------------|-------------------------------------|
| Snack New Year's Eve            | Claremont Showgrounds   | 31/12/2021                          |
| Seasons New Year's Eve          | Wellington Square       | 31/12/2021                          |
| Factory New Year's Eve          | Optus Stadium           | 31/12/2021                          |
| Slumberjack                     | Claremont Showgrounds   | 31/12/2021                          |
| Icecream Factory New Year's Eve | Roe Street, Northbridge | 31/12/2021 – 1/1/2022               |
| Motif – Jazz on the Beach       | Fremantle               | 31/12/2021                          |
| Origin                          | Langley Park            | 31/12/2021 – 2/1/2022               |
| Eveolution NYE 2021             | Boddington              | 31/12/2021- 2/1/2022                |
| Motif – Open Air NYD            | Fremantle               | 1/1/2022                            |
| Banana Social                   | Elizabeth Quay          | 1/1/2022                            |