

PUBLIC HEALTH ACT 2016 (WA)

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

PORT WORKER AND EXPOSED PORT 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 some measures to address the unique risks posed by COVID-19 on exposed vessels for the purpose of preventing the importation of COVID-19 into Western Australia and otherwise limiting the spread of COVID-19 in Western Australia and to ensure critical services in ports continue to operate during the current public health state of emergency.

CITATION

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

COMMENCEMENT

3. These directions come into effect upon signing.

REVOCAION AND CONTINUING OBLIGATIONS

4. The Port Worker and Exposed Port Worker (Restrictions on Access) Directions are revoked.
5. Despite paragraph 4, an exposed port worker must continue to comply with any requirement which still applied to them under the revoked directions immediately before they were revoked to the same extent that the exposed port worker would if the revoked directions had not been revoked, and, for the avoidance of doubt, if the exposed port worker fails to comply with a requirement that applied to them under the revoked directions, the exposed port worker may commit an offence under the Act.
6. Any reference to the revoked directions in any **direction** or approval given under or pursuant to a direction is deemed to be a reference to these directions from the commencement of these directions.

DIRECTIONS

Access Restrictions Applying to Exposed Vessel Worker

7. From the commencement of these directions, an **exposed vessel worker** must not embark an **exposed vessel**, if the exposed vessel worker has not been **fully vaccinated** against COVID-19.

Access Restrictions Applying to Exposed Vessel Contact Worker

8. From the commencement of these directions, an **exposed vessel contact worker** must not enter or remain at a **port** to carry out **port activities** or undertake a service in connection with an exposed vessel, if the exposed vessel contact worker has not been fully vaccinated against COVID-19.

Access Restrictions Applying to Exposed Vessel Transport Worker

9. From the commencement of these directions, an **exposed vessel transport worker** must not enter or remain upon a **dedicated conveyance** in order to carry any person disembarking from an exposed vessel, if the exposed vessel transport worker has not been fully vaccinated against COVID-19.

Access Restrictions Applying to Port Worker

10. Subject to paragraph 11:

(a) on and from 12.01am on 1 January 2022, a person who is a **port worker** must not:

- i. embark or perform work on an **unexposed vessel**; or
- ii. enter or remain at a **restricted port location** to carry out port activities or **port operations** or **port services**; or
- iii. remain upon a vehicle in order to carry only persons disembarking from an unexposed vessel,

if the port worker has not been **partially vaccinated** against COVID-19; and

(b) on and from 12.01am on 1 February 2022, a person who is a port worker must not:

- i. embark or perform work on an unexposed vessel; or
- ii. enter or remain at a restricted port location to carry out port activities, or port operations or port services; or
- iii. remain upon a vehicle in order to carry only persons disembarking from an unexposed vessel,

if the port worker has not been fully vaccinated against COVID-19.

General Vaccination Requirements

11. Nothing in these directions prevents a person who is not vaccinated against COVID-19 from embarking an exposed vessel or an unexposed vessel or entering or remaining on a dedicated conveyance or vehicle or entering or remaining at a port or at a restricted port location for the purposes of:

- (a) performing a law enforcement function that cannot reasonably be performed other than by embarking the exposed vessel or unexposed vessel or the dedicated conveyance or vehicle or entering a port or at a restricted port location; or
- (b) performing a statutory duty arising under a law of the Commonwealth that cannot reasonably be performed other than by embarking the exposed vessel or unexposed vessel or the dedicated conveyance or vehicle or entering a port or a restricted port location; 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.
12. An exposed port worker or a port 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 port or restricted port location.
13. Each employer of an exposed port worker or port worker or the owner, occupier, operator or person in charge of a port or restricted port location must:
- (a) take all reasonable and lawful steps to:
 - i. collect and maintain a record of the vaccination status of each:
 - 1. exposed vessel worker who has embarked an exposed vessel;
 - 2. exposed vessel contact worker who has carried out port activities or undertaken a service in connection with an exposed vessel at a port;
 - 3. exposed vessel transport worker who has carried a person that has disembarked from an exposed vessel;
 - 4. port worker who has embarked an unexposed vessel or who has carried out port activities or port operations or port services at a restricted port location or who has carried a person that has disembarked from an unexposed vessel;

and

- ii. only roster on, or otherwise permit to work at a port or a restricted port location, an exposed port worker or port worker who is vaccinated or is an exempt person in accordance with these directions; and
 - (b) on request, provide any record of the kind referred to in paragraph 13(a)(i) that the employer of an exposed port worker or port worker or the owner, occupier, operator or a person apparently in charge of a port or a restricted port location has collected and maintained to an emergency officer or a nominated officer as soon as practicable after the request is made; and
 - (c) on request, provide any record of the kind referred to in paragraph 13(a)(i) that the employer of an exposed port worker or port worker or the owner, occupier, operator or a person apparently in charge of a port or a restricted port location has collected and maintained to the Chief Executive Officer of a relevant **Port Authority** as soon as practicable after the request is made; and
 - (d) not use or disclose any record of the kind referred to in paragraph 13(a)(i) except:
 - i. as provided for in this paragraph 13; or
 - ii. as permitted by law, including any law of the Commonwealth; or
 - iii. for the purposes of ascertaining compliance with any employer direction restricting entry to an exposed vessel, an unexposed vessel, a port or a restricted port location or a dedicated conveyance or a vehicle; or
 - iv. to the extent that the person expressly provided the person's vaccination status for a purpose other than these directions; and
 - (e) take reasonable steps to protect any record it holds of the kind referred to in paragraph 13(a)(i) from:
 - i. misuse and loss; and
 - ii. unauthorised access, modification or disclosure.
14. A person who is required to provide evidence of their vaccination status under paragraph 12 or a record of the kind referred to in paragraph 13(a)(i) under paragraphs 13(b) and 13(c) must not provide that evidence or record unless the evidence is true and accurate.

15. 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 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 12 of this direction.

INTERPRETATION

16. Unless specified otherwise, any reference in these directions to any other direction made by the Chief Health Officer is deemed to be a reference to that direction as amended or replaced from time to time.

DEFINITIONS

For the purposes of these directions:

17. **Access card** is a card that is issued to a person as part of a **security access system** to enter a restricted port location.
18. **Chief Health Officer** has the same meaning that it has in the Act.
19. **Dedicated conveyance** has the meaning that it has in the Transport and Accommodation Services (Exposed Maritime Worker) Directions (No 2) as amended or replaced from time to time.
20. **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.
21. **Emergency officer** has the same meaning that it has in the Act.
22. **Exempt person** means, to the extent that any such person is an exposed port worker or a port 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 12; or
 - ii. a **temporary exemption** of which the person provides proof on request by a person referred to in paragraph 12; 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.

23. **Exposed port worker** means a person who is:
 - (a) an exposed vessel worker; or
 - (b) an exposed vessel contact worker; or
 - (c) an exposed vessel transport worker.
24. **Exposed vessel** has the meaning that it has in the Exposed On-Board Worker Directions (No 2) as amended or replaced from time to time.
25. **Exposed vessel worker** means a person who is an **on-board worker**.
26. **Exposed vessel contact worker** means a person of the kind set out in Column 1 of the table in Schedule 1.
27. **Exposed vessel transport worker** means a person who is a **transport worker**.
28. **Fully vaccinated** means that the person has been administered with two doses of a COVID-19 vaccine registered by the Therapeutic Goods Administration.
29. **Medical exemption** means a medical exemption recorded on the Australian Immunisation Register and displayed on the individual's Immunisation History Statement.
30. **Mining or petroleum worker** has the meaning that it has in the Resources Industry Worker (Restrictions on Access) Directions (No 2) as amended or replaced from time to time.
31. **MSIC** means a Maritime Security Identification Card issued under the *Maritime Transport and Offshore Facilities Security Regulations 2003* (Cth).
32. **Nominated officer** means an employee of the Department of Transport (WA), or an employee of a **Port Authority** governed under the *Port Authorities Act 1999* (WA) authorised by the Chief Health Officer orally or in writing to perform a function for the purposes of these directions.
33. **On-board worker** has the meaning that it has in the Exposed On-Board Worker Directions (No 2) as amended or replaced from time to time.
34. **Partially vaccinated** means that the person has been administered with one dose of a COVID-19 vaccine registered by the Therapeutic Goods Administration.
35. **Port** means:
 - (a) an area defined as a port under the *Port Authorities Act 1999* (WA); or
 - (b) the Port of Onslow; or

- (c) any other location as specified in writing by the Chief Health Officer or a person authorised by him for that purpose.
36. **Port activities** means:
- (a) the movement, mooring, hauling out, maintenance and launching of vessels; or
 - (b) the movement of, and provision of services to, passengers of vessels; or
 - (c) the movement, handling and storage of goods,
- at a port.
37. **Port Authority** has the meaning that it has in the *Port Authorities Act 1999* (WA).
38. **Port facilities** means facilities provided for or in relation to port activities or the administration of the port and includes:
- (a) maritime structures and other buildings, structures and enclosures;
 - (b) railways;
 - (c) machinery, equipment, vessels, vehicles and aircraft.
39. **Port operations** means:
- (a) the carrying out of port activities or **port works**; or
 - (b) the provision of port services; or
 - (c) the provision, management or operation of **port facilities**.
40. **Port services** means:
- (a) carrying out port activities; or
 - (b) dredging, engineering, marine civil construction, pollution management, security, pilotage, towage, vessel movement control, emergency response, shore stabilisation and waste management services; or
 - (c) supplying provisions or equipment to vessels; or
 - (d) supplying water, fuel or electricity; or
 - (e) providing for the use or hire of port facilities; or
 - (f) providing labour for any purpose.
41. **Port works** means works for port purposes and includes:
- (a) designing, constructing, extending, maintaining, removing or demolishing:
 - i. maritime structures and other buildings, structures and enclosures; and
 - ii. railways, roads, bridges, dams and embankments; and
 - (b) reclaiming land from the sea or a river.

42. **Port worker** means:
- (a) a person of the kind set out in Column 1 of the table in Schedule 2; and
 - (b) any other person specified in writing to be a port worker by the Chief Health Officer or a person authorised by him for that purpose.
43. **Restricted port location** means:
- (a) an area of a port which is generally accessible only by persons holding an **access card** (including a **MSIC**); or
 - (b) restricted access areas in the Port of Onslow.
44. **Security access system** means a security system for a port.
45. **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 an individual or a class of persons and subject to any terms and conditions specified in that approval.
46. **Transport, freight and logistics driver** has the meaning that it has in the Transport, Freight and Logistics Directions (No 7) as amended or replaced from time to time.
47. **Transport worker** has the meaning that it has in the Transport and Accommodation Services (Exposed Maritime Worker) Directions (No 2) as amended or replaced from time to time.
48. **Unexposed vessel** has the meaning that it has in the Exposed On-Board Worker Directions (No 2) as amended or replaced from time to time.
49. **Vaccination status** means whether an exposed port worker or port worker has been partially or fully 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

8 December 2021 13:17 hours

SCHEDULE 1

Exposed Vessel Contact Workers

Row	Column 1
1	<p>A person who carries out port activities or undertakes a service in connection with an exposed vessel and is employed or otherwise engaged, including in a voluntary or unpaid capacity:</p> <ul style="list-style-type: none">a. by the employer or the owner, occupier, operator or person apparently in charge in that port; orb. a third party who provides goods and services in connection with an exposed vessel for or on behalf of the employer or person in charge of that port, including a labour hire firm who provides staff to supplement the permanent workforce, <p>including for the avoidance of doubt a person that carries out the following roles in connection with an exposed vessel;</p> <ul style="list-style-type: none">c. a port or bulk service officer; ord. a port rubbish collector; ore. a port security guard or wharf supervisor; orf. a landside operator; org. a person who assists a person with taking off (doffing) personal protective equipment after the person has:<ul style="list-style-type: none">(i) disembarked from an exposed vessel; or(ii) transported any exposed vessel crew.
2	<p>A person who is an apprentice or cadet or trainee or on work experience on a placement at a port location carrying out port activities as a formal part of their education.</p>

SCHEDULE 2

Port Workers

Row	Column 1	Column 2
1	<p>A person who carries out at a restricted port location, port activities, port operations or port services or undertakes a service in connection with an unexposed vessel and is employed or otherwise engaged, including in a voluntary or unpaid capacity:</p> <ul style="list-style-type: none">a. by the employer or the owner, occupier, operator or person apparently in charge in that restricted port location; orb. a third party who provides goods and services in connection with an unexposed vessel for or on behalf of the employer or person in charge of that restricted port location, including a labour hire firm who provides staff to supplement the permanent workforce, <p>including for the avoidance of doubt,</p> <ul style="list-style-type: none">c. a person who is an access card holder; ord. a person who is an MSIC holder; ore. an administrative staff member including a person working in administration, policy,	<p>A person who is a visitor to a port, including but not limited to:</p> <ul style="list-style-type: none">a. a person who uses a boat ramp for a recreational activity; orb. a person who accesses a beach for a recreational activity.

	<p>management or reception services,</p> <p>but does not include a person who is:</p> <ul style="list-style-type: none"> (i) an exposed port worker; or (ii) a worker located on port land in a role or function that is not related to port activities, port services or port operations; or <p><i>Example: a person who works in a retail business, café or restaurant or a fishing boat harbour business.</i></p> <ul style="list-style-type: none"> (iii) a transport, freight and logistics driver unless the transport, freight and logistics driver disembarks their vehicle in a port; or (iv) a mining or petroleum worker. <p><i>Note: a mining or petroleum worker is required to meet the vaccination requirements under the Resources Industry Worker (Restrictions on Access) Directions (No 2) as amended or replaced from time to time.</i></p>	
2	<p>A person who is an apprentice or cadet or trainee or on work experience on a placement at a restricted port location,</p>	

	carrying out port activities as a formal part of their education.	
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