

EMERGENCY MANAGEMENT ACT 2005 (WA)

Sections 61, 67, 71 and 72A

COVID RESTRICTIONS (GATHERINGS AND RELATED MEASURES) DIRECTIONS (NO 5)

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 restrict entry to certain **premises** by people who do not produce **accepted proof information** and to require the wearing of a **face covering** 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 5).

COMMENCEMENT

3. These directions come into effect at 6pm on 7 January 2022.

REVOCATION

4. The COVID Restrictions (Gatherings and Related Measures) Directions (No 4) are revoked.

OPERATION

5. 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: FACE COVERING REQUIREMENTS

Requirement to wear a face covering in certain places

6. Subject to paragraph 8, a person in the affected area must wear a face covering at all times while they are:
 - (a) at or in a residential aged care facility, or residential disability facility, whether in an **indoor space** or **outdoor space**; or
 - (b) at a **hospital**; or
 - (c) in a vehicle that is being used for public transport, taxi or rideshare services.
7. A person must not, in the affected area, enter or remain:
 - (a) at or in a residential aged care facility, whether in an indoor space or outdoor space; or
 - (b) at a hospital; or
 - (c) in a vehicle that is being used for public transport, taxi or rideshare services, unless the person is wearing a face covering or one or more of the face covering exceptions in paragraph 8 apply to that person at that time.

Exceptions from face covering requirements

8. 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 at that time 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 residential disability facility; or
- (o) the person is a patient in, or staff of, a hospital; or
- (p) the person is engaged in an activity involving swimming; or
- (q) the person is running or jogging or otherwise engaged in some form of strenuous or vigorous exercise or physical activity; 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,

provided that:

- (w) where a person is relying on an exception under subparagraph (e) and is requested to do so by a **responsible person**, the person produces a medical certificate that certifies that the person has such an illness, injury, condition or disability that makes wearing a face covering unsuitable; and
- (x) where a person is relying on an exception 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 exception.

PART II: VACCINATION REQUIREMENTS

Restriction on Entry by Unvaccinated Person

9. A **patron** over the age of 16 years must not, in the affected area, enter, or remain at a **high risk venue** unless that patron is:
 - (a) **fully vaccinated**; or
 - (b) an **exempt person**.

Proof of vaccination information

10. Subject to paragraph 11, a responsible person must:
 - (a) request that each patron entering a high risk venue in the affected area (or procure that each patron entering a high risk venue in the affected area is requested to) produce the patron's accepted proof information; and
 - (b) take all reasonable steps to ensure that a patron does not remain at the premises for which the person is the responsible person unless they have provided the patron's accepted proof of information.
11. A responsible person is not required to comply with paragraph 10 if:
 - (a) the patron is or appears to be younger than 16 years old; or
 - (b) the patron enters or remains at the particular premises:
 - (i) for the purposes of performing a law enforcement function that cannot reasonably be performed other than by entering the particular premises; or
 - (ii) for medical or emergency purposes.
12. Except for:
 - (a) a child under the age of 16 years; or
 - (b) in any of the circumstances referred to in paragraph 11(b),a patron entering a high risk venue in the affected area must produce a true and accurate copy of their accepted proof information to an **authorised officer** or a responsible person or a member of the **staff** of a responsible person upon request at any time while at the high risk venue.
13. A patron who does not produce their accepted proof information in accordance with paragraph 12 must not remain at the high risk venue.

PART III: EXTENDED APPLICATION OF DIRECTIONS BEYOND THE AFFECTED AREA

Requirements for persons who leave the affected area

14. 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 6 and 7 of these directions whilst they are outside the affected area as if they were in the affected area.

AUTHORISATION

15. 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

16. 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

17. **Accepted proof information** means:
- (a) **accepted proof of vaccination**; or
 - (b) **accepted proof of vaccination exemption**.
18. **Accepted proof of vaccination** means **identification** for the person and one of the following showing that the person is fully vaccinated:
- (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 vaccinations 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; or
 - (d) a digital certificate contained in an **approved app** showing the COVID-19 vaccinations administered to the person,

provided that in the event that the person provides proof of the kind referred to in paragraph (d), any requirement to produce identification does not apply.

19. **Accepted proof of vaccination exemption** means identification for the person and an Immunisation History Statement issued to the person showing a medical exemption recorded on the Australian Immunisation Register for the person.

20. **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).

21. **Approved app** means the Medicare Express app or any other app or application designated in writing by the State Emergency Coordinator, or a person authorised by the State Emergency Coordinator for that purpose, to be an approved app.

22. **Approved COVID-19 vaccine** means:

- (a) any vaccine that has been approved by the Therapeutic Goods Administration for use in Australia for the purpose of vaccinating persons against COVID-19; or
- (b) any other vaccine specified by the Chief Health Officer, or any other person authorised by the Chief Health Officer for that purpose, as an approved COVID-19 vaccine.

23. **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 15 ensures that relevant officers are also authorised officers for the purposes of these directions.

24. **Bottleshop** means an area physically attached or adjacent to the premises of a business falling within the definition of **hospitality venue** and which is for the sale of packaged alcohol for consumption off the premises of that business.

25. **Capacity** means the maximum number of people that can be accommodated at the premises consistently with any legal requirements.
26. **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.
27. **Emergency officer** has the same meaning that it has in the *Public Health Act 2016* (WA).
28. **Event** has the same meaning as in the COVID Safe (Phase 5) Directions (No 2).
29. **Excluded event** means any **event** or class of event designated in writing by the State Emergency Coordinator, or a person authorised by the State Emergency Coordinator for that purpose, or by the Chief Health Officer or a person authorised by the Chief Health Officer to be an excluded event.
30. **Excluded venue** means:
- (a) Adventure World on Progress Drive in Bibra Lake; and
 - (b) Outback Splash on Neaves Road in Bullsbrook; and
 - (c) any other place or venue or class of place or venue designated in writing by the State Emergency Coordinator, or a person authorised by the State Emergency Coordinator for that purpose, or by the Chief Health Officer or a person authorised by the Chief Health Officer to be an excluded venue.
31. **Exempt person** means a person in respect of whom a medical exemption is recorded on the Australia Immunisation Register in relation to the person and is displayed on the person's Immunisation History Statement.
32. **Face covering** means a disposable surgical mask or fitted cloth mask that covers the nose and mouth (but does not include a face shield).
33. **Full course** means:
- (a) in respect of the SPIKEVAX, VAXZEVRIA and COMIRNATY – BNT162b2 vaccines, two doses of the vaccine administered with an appropriate interval between doses; and
 - (b) in respect of the COVID-19 Vaccine Janssen, a single dose of that vaccine; and

- (c) in respect of any other approved COVID-19 vaccine, such number of doses of that vaccine as specified by the Chief Health Officer or a person authorised by the Chief Health Officer for that purpose.

34. **Fully vaccinated** means that the person has been administered with a **full course** of an **approved COVID-19 vaccine**.

35. **High risk venue** means any of the following, other than an **excluded venue**:

- (a) a **nightclub**; or
- (b) a hospitality venue:
 - (i) with a **capacity** of greater than 500 patrons; or
 - (ii) which is legally authorised to operate after midnight (provided that the requirement shall be read as attaching to such premises at any time at which it is operating); or

Note: a hospitality venue that is allowed to operate after midnight pursuant to the licence it holds will be captured by sub-paragraph (b)(ii) at any time it is operating, even if it is not after midnight at the time.

- (c) any other place operating under:
 - (i) a **special facility licence** which:
 - (A) has a capacity greater than 500 patrons or, if the place does not have a capacity, at which more than 500 patrons might reasonably be expected to be in attendance at any given time; or
 - (B) which is legally authorised to operate after midnight (provided that the requirement shall be read as attaching to such premises at any time at which it is operating); or
 - (ii) an **occasional licence** which has a capacity greater than 250 patrons or, if the place does not have a capacity, at which more than 250 patrons might reasonably be expected to be in attendance at any given time; or

- (d) any place that is being used for the purposes of a **music event** or a **specified high risk event**; or
 - (e) the gaming floor of the Perth Crown Casino.
36. **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.
37. **Hospital** has the same meaning as in the *Health Services Act 2016* (WA).
38. **Hospitality venue** means:
- (a) a business characterised as a pub or tavern 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.
39. **Identification** 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 any expiry date for the document has not yet passed.
40. **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.
41. **Music 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 which features the playing of recorded music or live performances involving singing or dancing for the purposes of entertainment and at which the playing of recorded music or live performances is the primary focus of the event, 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) or is an **excluded event**.

42. **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).
43. **Occasional licence** has the same meaning as in the *Liquor Control Act 1988* (WA).
44. **Outdoor space** means any space that is not an indoor space.
45. **Patron** means a person who is not staff and, for the avoidance of doubt, includes spectators.
46. **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.
47. **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.
48. **Relevant officer** means:
- (a) an authorised officer; or
 - (b) an **emergency officer**; or
 - (c) a **responsible officer**.
49. **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.

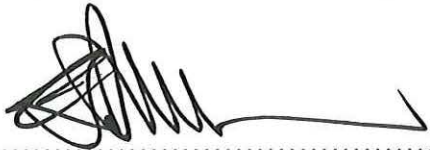
50. **Responsible person**, in relation to particular premises, means the occupier or other person apparently in charge of those premises.
51. **Special facility licence** has the same meaning as in the *Liquor Control Act 1988* (WA).
52. **Specified high risk event** means an event or class of event designated in writing by the State Emergency Coordinator, or a person authorised by the State Emergency Coordinator for that purpose, or by the Chief Health Officer or a person authorised by the Chief Health Officer to be a specified high risk event.
53. **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.
54. **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).

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

7 January 2022 1732 hours