

PUBLIC HEALTH ACT 2016 (WA)

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

CRITICAL BUSINESSES 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 risk posed by COVID-19 in the context of persons working in critical retail, hospitality and accommodation services businesses, for the purposes of limiting the spread of COVID-19 to vulnerable groups and the general community in Western Australian and to ensure that these workers can continue to provide critical services to the community.

CITATION

2. These directions may be referred to as the **Critical Businesses Worker (Restrictions on Access) Directions (No 2)**.

COMMENCEMENT

3. These directions come into effect at 12:01 am on 5 February 2022.

REVOCATION

4. The Critical Businesses Worker (Restrictions on Access) Directions are revoked.

DIRECTIONS

Access Restrictions Applying to Critical Business Workers

5. Subject to paragraphs 6 and 7:
 - (a) on and from 12:01am on 1 January 2022, a person who is a **critical business worker** must not enter, or remain at, a **critical business site** if the critical business 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 critical business worker must not enter, or remain at, a critical business site if the critical business worker has not been **fully vaccinated** against COVID-19,unless the person is present at the critical business site solely in a capacity other than as a critical business worker or is an **exempt person**.

General Vaccination Requirements

6. Where only part of a **premises** are being used as critical business site, nothing in these directions prevents a critical business worker who does not meet the requirements of paragraph 5 from entering that part of the premises which is not being used as a critical business site.
7. Nothing in these directions prevents a person who is not vaccinated against COVID-19 from entering any part of a critical business site for the purposes of:
 - (a) performing a statutory duty arising under a law of the Commonwealth that cannot reasonably be performed other than by entering the critical business site; or
 - (b) 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

- (c) 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; or
 - (d) in any circumstances approved in writing by the Chief Health Officer or a person authorised in writing by the Chief Health Officer for that purpose and subject to any conditions expressed in that approval.
8. A critical business 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 the person in charge of the critical business worker.
9. The employer of a critical business worker or the owner, occupier or person apparently in charge of a critical business site must:
- (a) take all reasonable and lawful steps to:
 - (i) collect and maintain a record of the vaccination status of each critical business worker employed by that person; and
 - (ii) collect and maintain a record of each critical business worker who enters a critical business site under their control, unless the person enters the critical business site solely in a capacity other than as a critical business worker; and
 - (iii) only roster on, or otherwise permit to work at a critical business site, a critical business 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 9(a)(i) and 9(a)(ii) that it has collected and maintained 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) and 9(a)(ii) 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 critical business site; or
 - (iv) to the extent that the person expressly provided the person's vaccination status for a purpose other these directions, and
 - (d) take reasonable steps to protect any record it holds of the kind referred to in paragraph 9(a)(i) and 9(a)(ii) 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 paragraphs 9(a)(i) and 9(a)(ii) under paragraph 9(b) must only provide 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 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. **Ad hoc basis** means attendance at no more than one critical business site no more than once per week.
14. **Bulk food shop** means a premises where processed or unprocessed food is sold from aggregate containers from which quantities desired by the consumer or staff are withdrawn (not including fresh whole fruits or vegetables).

15. **Camping ground** has the same meaning that it has in the *Caravan Parks and Camping Grounds Act 1995* (WA).
16. **Caravan park** has the same meaning that it has in the *Caravan Parks and Camping Grounds Act 1995* (WA).
17. **Chief Health Officer** has the same meaning that it has in the Act.
18. **Critical accommodation premises** means:
 - (a) a hotel, motel, or other accommodation facility or premises to the extent that they provide accommodation services;
 - (b) a **quarantine centre**; or
 - (c) **caravan park** or **camping ground**, but not including any part of a caravan park or camping ground which is a **residential park**.
19. **Critical business site** means:
 - (a) a **critical accommodation premises**; or
 - (b) a **critical hospitality premises**; or
 - (c) a **critical retail, service or distribution premises**; or
 - (d) any other premises or class of premises specified in writing to be a critical business site by the Chief Health Officer or a person authorised by him for that purpose.
20. **Critical business worker** means:
 - (a) a person of the kind set out in Column 1 of the table in Schedule 1; and
 - (b) any other person or class of persons specified in writing to be a critical business worker by the Chief Health Officer or a person authorised by the Chief Health Officer for that purpose,but does not include:
 - (c) a person who enters any part of a critical business site for any of the purposes in paragraph 7; or
 - (d) a person of the kind set out in Column 2 of Schedule 1.

21. **Critical hospitality premises** means:

- (a) a restaurant, café, pub, bar or club (not including **nightclubs**) whether licensed or unlicensed (including premises selling food in a food court, shopping centre, or from a vehicle) whether for consumption on site, takeaway meals or a meal delivery service; or
- (b) a truckstop or roadhouse; or
- (c) a distillery, brewery or winery, but only to the extent that those premises are used for the providing of food for consumption on site, takeaway meals or a meal delivery service.

22. **Critical retail, service or distribution premises** means:

- (a) a **supermarket, grocery store**, butcher, fruit and vegetable store or fishmonger; or
- (b) a retail bakery; or
- (c) a **bulk food shop**; or
- (d) a **health food shops**; or
- (e) a permanent fixture indoor or outdoor market but only to the extent that they are providing groceries, meat, fruit, vegetables, fish, fresh or prepared food; or
- (f) a bank or credit union or building society but only to the extent that the premises consist of a shopfront; or
- (g) a **retail hardware store**; or
- (h) a **food distribution centre** (excluding food manufacturers); or
- (i) a petrol station (including but not limited to a petrol station that sells groceries or food); or
- (j) a veterinary clinic or veterinary hospital; or
- (k) a place where funerals, burials, cremations or related activities are performed, including funeral parlours and crematoriums.

23. **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.
24. **Emergency officer** has the same meaning that it has in the Act.
25. **Exempt person** means, to the extent that any such person is a critical business 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.
26. **Food distribution centre** means any premises where food is warehoused (whether fresh or frozen) before it is transported to retail stores or to customers for sale, but does not include premises where food is warehoused as part of the manufacture or production of food.
27. **Fully vaccinated** means that the person has been administered with two doses of a COVID-19 vaccine registered by the Therapeutic Goods Administration.
28. **Grocery store** means a store selling predominantly food, with or without the selling of general articles of household or domestic use, including convenience stores and delicatessens.
29. **Health food shop** means a store selling food or other consumable products that are purchased for their dietary or health-giving qualities that is not otherwise a critical hospitality premises.
30. **Medical exemption** means a medical exemption recorded on the Australian Immunisation Register and displayed on the individual's Immunisation History Statement.

31. **Nightclub** means a place that has a nightclub licence under section 42 of the *Liquor Control Act 1988* (WA).
32. **Nominated officer** means a person authorised by the Chief Health Officer orally or in writing to perform a function for the purposes of these directions.
33. **Partially vaccinated** means that the person has been administered with one dose of a COVID-19 vaccine registered by the Therapeutic Goods Administration.
34. **Premises** has the same meaning it has in the Act.
35. **Quarantine centre** means any quarantine centre operated or managed by the State Health Incident Coordination Centre (including a hotel quarantine centre) or which has been arranged by the State Health Incident Coordination Centre for the quarantining of people for public health purposes in connection with COVID-19 and, where the entirety of the premises is not being used as a quarantine centre, means only that part of the premises which is being operated or managed by the State Health Incident Coordination Centre as a quarantine centre.
36. **Residential park** has the same meaning as in the *Residential Parks (Long-stay Tenants) Act 2006* (WA).
37. **Retail hardware shop** means a store predominantly supplying by retail construction materials, tools, fittings and other products and equipment appropriate for home improvement to the building industry or general public.
38. **Supermarket** means a large self-service retail store selling predominantly food and other domestic goods.
39. **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.
40. **Vaccination status** means whether a critical business 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.

A handwritten signature in cursive script, appearing to read "Robertson", is written above a horizontal dotted line.

Dr Andrew Robertson

Emergency Officer

1 February 2022 15:41 hours

SCHEDULE 1

Row	Column 1	Column 2
	Critical business worker	Excluded persons
1	<p>A person who is employed or otherwise engaged, including in a voluntary or unpaid capacity to carry out activities or provide goods or services at a critical business site by the owner, occupier, operator or person apparently in charge of the critical business site or by a contractor or subcontractor of the owner, occupier, operator or person apparently in charge of the critical business site.</p>	<p>A person who carries out activities or provides goods and services at a critical business site on an ad hoc basis, including but not limited to:</p> <ul style="list-style-type: none"> (a) a tradesperson, including but not limited to a drainer, gasfitter, plumber, mechanic, electrician, builder, air conditioning or refrigeration worker, metal fabricator, plumber, plasterer; or (b) a delivery driver who delivers goods to a critical business site; <p>but not including a person who, in order to carry out activities or provide goods or services at a critical business site, is required to come within 1.5 metres of a critical business worker.</p> <p><i>Note: This exclusion does not apply to person carrying out activities or providing goods and services to more than one critical business site in a week. For example, a person who on a fortnightly basis goes to site A and B on week 1 and site C and D on week 2.</i></p>
2	<p>A person who is an apprentice or cadet or trainee or on work experience or a placement at a critical business site.</p>	<p>A visitor, guest or patron to a critical business site.</p>

3

A person who is the owner, occupier, operator or person apparently in charge of a critical business site.