

Closure and Restriction to Limit the Spread

On 7 April 2020, the Commissioner of Police, in his capacity as State Emergency Coordinator (SEC), issued the Closure and Restriction (Limit the Spread) Directions ([Closure and Restriction Directions](#)), pursuant to his powers under s.71 of the *Emergency Management Act 2005 (WA)* (EM Act).

Concurrent to this, existing directions around Closure of Certain Places of Business, Worship and Entertainment, (including No.2 and No.3), Prohibited Gatherings, and Preventative Restriction of Activities, were revoked.

The provisions in the [Closure and Restriction Directions](#) are very similar to the previous directions, however, their issuance under the EM Act rather than the *Public Health Act 2016*, allow for police to deal with non-compliance through the provision of the EM Act, including the capacity to infringe.

The purpose of these directions remains the prohibition of certain gatherings, and activities in order to prevent, control or abate the serious public health risk presented by COVID-19 by limiting the spread of COVID-19.

CLOSURE AND RESTRICTION – OVERVIEW

The [Closure and Restriction Directions](#) include directions on **prohibited gatherings**, **prohibited activities** and the **closure of certain places**.

PROHIBITED GATHERINGS

A person who owns, controls or operates premises* in the State of Western Australia must not allow a **prohibited gathering** to occur on the premises.

A person must not organise a prohibited gathering, or attend a **prohibited gathering**.

A **prohibited gathering** is defined as:

- A gathering of more than two (2) persons in a single undivided indoor space or a single undivided outdoor space that is a public place at the same time; or
- A gathering of two (2) or more persons in a single undivided indoor space or a single undivided outdoor space at the same time, where there is not at least 4 square metres space for each person at the gathering

This does not include:

- Airports.
- Public transport.
- Medical/health service facilities.
- Disability/aged care facilities.
- Providing emergency care or care/assistance to vulnerable people.
- Emergency services.
- Prisons/detention centres.
- Parliament.
- Court/tribunal.
- Food market, supermarket, grocery store, retail store, shopping centre.

* Definition provided in the Closure and Restrictions Directions

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- Office building, factory, mining site, construction site or other place of work that is necessary for the normal business of those premises (excluding those directed to close or restrict their activity).
- School, university, education institute, childcare facility necessary for the normal business of the facility (Note: events that involve members of the community, in addition to staff/students, are taken to be unnecessary and outside normal business).
- Hotel, motel or other accommodation facility.
- An indoor or outdoor place* where the gathering is present for the purpose of transiting (e.g. Forest place; an elevator or lift).
- A place where everyone gathering is a member of the same household* (persons that usually reside together even if not related).
- A place of worship*, for the purposes of live streaming or recording for later broadcast or publication, provided no more than 10 people present and there is at least 4m² per person present.
- An entertainment venue of any kind* for the purposes of live streaming or recording for later broadcast or publication, provided no more than 10 people present and there is at least 4m² per person present.
- An **affected place**, to the extent it may remain open to the public for certain purposes, and they gathering is necessary for any of the purposes for which it may remain open.
- A place that is specified in writing, by the SEC, as being exempt.

PROHIBITED ACTIVITIES

A person must refrain from undertaking or engaging in a **prohibited activity**.

A person must not organise or attend a **prohibited activity**.

Prohibited activities include:

- Real estate auction.
- An open house (excluding private inspection).
- Beauty therapy services including tanning, waxing, massages, nail services, tattooing and piercing, but excluding a hairdresser or barbershop (provided they maintain 1.5m between all persons).
- Personal training (except that it occurs outdoors and involves no more than 2 persons at a time).
- A wedding of more than 5 people.
- A funeral of more than 10 people, unless approved in writing by the SEC or someone authorised by the SEC.

CLOSURE OF CERTAIN PLACES OF BUSINESS, WORSHIP AND ENTERTAINMENT

Every owner, occupier or person apparently in charge of an **affected place** must close that place to the public while these directions remain in effect.

Affected places include:

- Pub, bar or club that supplies alcohol under a liquor license, but not a bottle shop*.
- Hotel, but this does not affect its accommodation, takeaway meals or drinks, meal delivery service or bottle shop.
- Gym.
- Indoor sports centre.
- Casino*.
- Cinema or nightclub.

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- Entertainment venue of any kind* (except for live streaming or recording as provided in exempt activities).
- An auction house.
- Beauty parlour or salon, other than a hairdresser or barbershop.
- Nail salon.
- Tattoo parlour.
- Spa.
- Massage parlour.
- Gaming or gambling venue.
- Adult entertainment premises (including strip club, brothels and sex on premises venues).
- Amusement park or arcade.
- Play centre, whether indoors or outdoors.
- Community, recreation centre, youth centre or facility (e.g. RSL; PCYC) other than the extent it remains open for hosting essential voluntary services, or public services, such as food banks or homeless services.
- Health club or fitness centre, including centre offering yoga, barre or spin facilities.
- Sauna.
- Bathhouse.
- Wellness centre.
- Boot camp.
- Swimming pool, except community swimming pool run on a non-commercial basis.
- Gallery.
- Museum.
- Historic site.
- Library.
- Local government facility (Non-essential to continued functioning).
- Playground*.
- Skate park*.
- Outdoor gym*.
- Any part of a roadhouse* selling food or drink, other than to the extent it:
 - provides takeaway/meal delivery, or
 - provides food or drink to drivers of commercial vehicles* or heavy vehicles* (this is not limited to takeaway/meal delivery) **PROVIDED** the owner, occupier, or person in charge implements the **PROTOCOL***, or
 - Provides food or drink to the homeless (not limited to takeaway/meal delivery).

KEY DEFINITIONS

The [Closure and Restriction Directions](#) contain a number of definitions, as indicated by an asterix(*) throughout this guidance document. Some key definitions include:

- **Indoor space** – an area, room or premises that is substantially enclosed by roof and walls, regardless of whether any part of the roof or walls is temporarily or permanently open or closed.
- **Outdoor space** – a space that is not an indoor space.
- **Protocol** – Specified in the [Exemption for heavy vehicle drivers to safely manage fatigue from closure of non-essential services](#) which including hygiene requirements, social distancing, using shower lounge facilities, remaining no longer than one hour, following instructions from employees and non-entry for persons displaying symptoms of illness.

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Public place - open to or used by the public, whether or not for payment or other consideration (whether ordinarily open, or limited to a class of persons), but does not include premises being used, at the relevant time, for holding a wedding or funeral.

ENFORCEMENT OF THE CLOSURE AND RESTRICTION DIRECTIONS

The powers of enforcement given to police officers by the EM Act are in addition to any powers police officers have under other laws. Methods of enforcement such warnings, cautions, move on notices and infringements may also be utilised to enforce compliance with the [Closure and Restriction Directions](#).

Offences under the EM Act.

If a person has failed to comply with the [Closure and Restriction Directions](#) by allowing an affected place (such as a pub, gym, restaurant or beauty salon) to remain open, a police officer may enforce compliance with the [Closure and Restriction Directions](#) by directing the owner, occupier or person apparently in charge of the place that the place be closed to the public (s 71(1) EM Act).

If a person has failed to comply with the [Closure and Restriction Directions](#) by allowing a prohibited gathering to occur, a police officer may enforce compliance with the Directions by directing the people at the gathering to leave the premises (s 67(a), s 71(2) EM Act).

If a person has failed to comply with the [Closure and Restriction Directions](#) by engaging in a prohibited activity (such as an auction, or wedding or funeral with more attendees than allowed), a police officer may enforce compliance with the Directions by directing the people engaging in the prohibited activity to leave (s 67(a), s 71(2) EM Act). Penalties

It is an offence to fail to comply with the [Closure and Restriction Directions](#), with the offence carrying a maximum penalty of 12 months imprisonment or a fine of up to \$50,000 (s 86(1) EM Act).

A police officer may issue an infringement notice for failing to comply with the [Closure and Restriction Directions](#), with a modified penalty of \$1000 for individuals or \$5000 for bodies corporate.

It is a defence if a person has a reasonable excuse for failing to comply with the Closure and Restriction Directions.

General Powers During A State of Emergency

Part 6 of the EM Act provides police, as authorised officers, with a number of powers during a state of emergency for the purposes of emergency management.

Further, special powers are contained within section 75 EM Act. This includes the power to enter a place or vehicle without a warrant or the consent of the occupier of the place or the owner of the vehicle. These are extraordinary powers, therefore, wherever practicable, officers should receive approval from a senior officer of the rank of Sergeant or above, prior to exercising any of the powers under this section.

The power of arrest for any offence committed against the EM Act is contained within Section 128 of the *Criminal Investigation Act 2003*.

POLICE MANAGEMENT OF CLOSURES AND RESTRICTIONS

Management and dispersal of crowds and activities is a function performed by police on a regular basis. The following guidelines are provided supplementary to existing guidelines and procedures

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to inform officers on the manner in which **prohibited gatherings, prohibited activities, and affected places** are to be managed.

Unlike traditional gatherings and activities that require police involvement, [Closure and Restriction Directions](#) prohibits gatherings, activities that would otherwise be lawful, and places that would ordinarily be considered private.

All personnel involved in the policing response to these directions are asked to approach them with compassion and courtesy, and with the understanding that the directions may cause community members to become stressed and anxious. Police officers should primarily rely on effective and influential communication to bring about compliance with the direction, and use enforcement strategies as a last resort.

Before Police attendance

- Considerations prior to arrival;
 - Is this a **prohibited gathering, prohibited activity** or **affected place**?
 - Is there an owner, occupier or person in charge of the place?
 - What is the purpose of the gathering or the activity?
 - Can a direction be given remotely (i.e. phone call) rather than by Police attendance?
 - Is there a requirement for PPE?
- Consider contacting other relevant stakeholders e.g. Local Government, Business owners etc. to attend and assist police with compliance.

On Police arrival

- Assess the situation, including the type of location, number of people and whether the affected place is open for business contrary to the directions.
- Attempt to identify the owner, occupier or person in charge of the place and advise them that they are breaching the directions, and direct them to disperse, cease the activity or close the place to the public immediately.
- Should the breach of the direction immediately cease, no further action is to be taken.
- Details of interactions are to be recorded in the CAD task.
- Consider the use of warnings, cautions and move on notices under the CIA. This is a realistic consideration for non-resident persons at the scene. Other more appropriate courses of action should be considered for the owner, occupier or person in charge of the business.
- An EM Act infringement can be considered for individuals over 18 who fail to comply with this direction but officers should exercise common sense when considering this option. Further guidance is provided in the relevant [Operation Guidance-Issuing Infringements](#).
- Should a charge be considered officers should gather evidence of the breach (Guidance should be sought from supervisors).

Beaches, Parks and Public Open Spaces

In situations where beaches and large open spaces, such as Kings Park, are being used in breach of the **prohibited gatherings** or activities, the relevant stakeholder or authority responsible for that area should, where possible, attend to assist police. In situations where a failure to comply continues the police should work with the relevant authority to close or restrict access to the area. In all cases the SCI at SOCC must be consulted.

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On Police arrival

- Identify the persons and groups of people and advise them that they are breaching the directions, direct them to disperse, and/or cease the activity immediately.
- Should the breach of the direction immediately cease, no further action is to be taken.
- Should the breach of direction continue officers may consider the use of Move on Notices under the CIA. Officers should exercise common sense when considering this option and to approach it with compassion and courtesy. Should a Move on Notice be breached then the appropriate actions should follow.
- An EM Act infringement can be considered for individuals over 18 who fail to comply with this Direction but officers should exercise common sense when considering this option. Further guidance is provided in the relevant [Operation Guidance-Issuing Infringements](#).
- Officers should record the incident and gather evidence of the breach whilst at the scene, should there become a need to prefer a charge (Guidance should be sought from supervisors).

Prohibited gathering enforcement is to be approached in an educative manner in the first instance to encourage compliance. However, where there is significant failure to comply with prohibited gathering provisions and the situation is beyond the capacity of attending police to manage, then attending officers are to seek direction from the SOCC SCI. The SOCC may consult with the A/Commander Metropolitan Operations or the A/Commander, Regional WA Operations as required.

At the completion of any task of this nature, practice good hygiene by washing your hands and dispose of any PPE appropriately.

INTRANET AND OTHER LINKS

Intranet	WA Police COVID 19 Intranet Operation Guidance-Issuing Infringements
Other Links	Exemption for heavy vehicle drivers to safely manage fatigue from closure of non-essential services Closure and Restriction Directions

Approved Commissioner of Police

Date ___/_04_/2020

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