

FAQs: Face masks and human rights – updated November 2021

During the COVID-19 pandemic, Victoria has introduced COVID-19 settings that have required fitted face masks to be worn. While the specific requirements relating to wearing a face mask can change from time to time, and may vary between metropolitan and regional areas of Victoria, currently everyone in Victoria aged 12 years and older is required to wear a face mask indoors at retail, health, care and justice facilities, on public transport/taxis/rideshare and at airports, unless an exception applies. A person working at a primary school, visiting to a primary school and students in grades 3 to 6 must also wear a face mask, unless an exception applies.

You must carry a face mask with you at all times.

It is lawful not to wear a mask if you cannot do so due to a medical condition. The [Victorian Government](#) states that businesses should not refuse service to patrons who may have a lawful excuse for not wearing a mask. Treating someone badly for not wearing a mask due to a medical condition may amount to unlawful discrimination.

This resource includes frequently asked questions about human rights and the requirement to wear a face mask during the COVID-19 pandemic.

For the most up to date information about what the current requirements regarding face masks are, please visit <https://www.coronavirus.vic.gov.au/face-masks>.

If I have a medical condition, do I have to wear a face mask?

If you have a medical condition that requires you to keep your face uncovered, this will be a lawful exception to the mandatory requirement to wear a face mask.

While the Department of Health and Human Services has not defined what the medical conditions that are included in this exception, the public health directions include persons

who have a physical or mental health illness or condition, or disability which makes wearing a face covering unsuitable, including persons with obstructed breathing, a serious skin condition of the face, an intellectual disability, a mental health condition or persons who have experienced trauma. If you are communicating with a person who is deaf or hard of hearing, and visibility of the mouth is essential for communication you will also be permitted to remove your face mask in settings where it is required; however, you must carry it with you at all times.

To find out more please visit the [Department of Health and Human Services](#).

Exceptions

There are exceptions or lawful excuses that allow people not to wear a face mask. One important exception is made where a person has a physical or mental health illness or condition makes wearing a mask unsuitable.

This could include:

- a medical condition that makes it difficult to breathe
- a serious skin condition on the face
- an intellectual disability
- a mental health condition
- persons who have experienced trauma.

There are [other lawful exceptions](#) including

- communicating with a person with a hearing impairment, where they need to be able to see your mouth for communication,
- people engaging in strenuous exercise such as jogging, running, swimming or cycling, and
- those undergoing some medical treatments.

People with lawful excuses for not wearing a face mask should still keep at least 1.5 metres apart from others, practice regular hand hygiene by washing or sanitising hands frequently, continue to comply with the public health directions currently in force, and get tested if unwell (even with mild symptoms).

Can Victoria Police fine me for not wearing a face mask even if I have a medical reason not to?

The Charter of Human Rights and Responsibilities protects Victorians' fundamental [human rights](#), such as the right to equality, and to live freely without discrimination. When considering whether to issue a fine, Victoria Police must consider your human rights under the Charter and act compatibly with them.

If Victoria Police issues you with a fine for not wearing a face mask, but you have a lawful excuse or exception (for example, a medical reason), you can request a review of the fine from Victoria Police. You can also challenge the fine at the Magistrates' Court. It is important that you get legal advice on these options before the fine is due. You may also be able to make a complaint to IBAC in relation to police misconduct.

Issuing a fine to someone who is lawfully excused from wearing a face mask would not be considered discrimination under the Equal Opportunity Act, because it is not captured by an [area of life protected under that law](#).

Can a shop owner or service refuse to serve me if I am not wearing a face mask, but I have a medical reason not to?

The Equal Opportunity Act prohibits discrimination against people with a medical condition or a disability in the area of goods and services.

If you were refused service and you wanted to make a discrimination complaint against the shop owner, you would need to show that there was a clear link between your medical condition or disability and your inability to wear a face mask. For example, if you have an anxiety disorder, you would only be protected in this scenario if the inability to wear a face mask is a symptom or characteristic of your anxiety disorder. If you aren't sure whether you have a lawful excuse then it is best to ask your doctor or someone else in your treating team.

The Act also requires providers of goods and services to make reasonable adjustments for people with a disability. This may include, for example, not requiring customers with a disability to wear a face mask in a shop if they have a lawful reason not to because of their disability. In the rare cases where it isn't possible to allow people with a relevant medical condition to enter without a mask alongside other customers, it may also include providing a service in a different way to people who can't wear a mask indoors, such as offering

specific trading hours in which to attend the store without a mask or providing services outside the front door or via other means.

Providers of goods and services are not required to make adjustments for people with a disability if the provider can prove the adjustments are not reasonable. What is 'reasonable' is based on individual facts and circumstances of each case. The scope of the Chief Health Officer's directions is likely to be relevant to whether something is considered to be reasonable or not.

A provider of goods and services may rely on exceptions under the Act to argue the discrimination was lawful, in particular the health and safety exception which allows discrimination against people with a medical condition or disability if it is reasonably necessary to protect the health and safety of any person, or the public generally. The responsibility would fall on the shop owner to prove that these exceptions apply. A range of things will likely be relevant to whether the exception applies in this context including:

- how long people generally stay inside the building when receiving the goods or services
- whether it is possible to stay 1.5 metres away from each other inside the building
- the type of people who use the goods and services and whether there is a heightened risk they will suffer severe symptoms if they contract COVID-19 (for example people over 60 or people with respiratory conditions)
- the consequences of refusing access to the goods and services
- whether alternative measures could have been put in place to protect staff and customers
- the rate of community transmission at the time service is refused.

If you have a disability or medical condition which prevents you from wearing a mask, then this may amount to unlawful discrimination

If you have a medical condition or disability that affects your ability to wear a face mask and you have alerted a shop owner to your lawful exception, but they refuse entry or service because you are not wearing a face mask, this may amount to unlawful discrimination under the Equal Opportunity Act.

If you find yourself in this situation, contact us on [1300 292 153](tel:1300292153) for more information about your rights and how you can make a complaint.

If you don't have a relevant medical condition, this is unlikely to be unlawful discrimination

If you do not have a medical condition or disability that affects your ability to wear a face mask and are refused entry or service by a shop owner, you are unlikely to meet the requirements of the lawful exception to public health orders – and the refusal of entry or service is unlikely to be discrimination.

Do I have to provide a medical certificate to prove I can't wear a mask due to my medical condition?

The [Department of Health and Human Services website](#) says that you do not need a medical certificate to prove you have a lawful reason for not wearing a face mask under the public health directions.

If you are asked to show a service provider, school or employer a medical certificate confirming that you have a lawful medical reason for not wearing a mask before allowing you to enter their premises this may amount to unlawful discrimination depending on the considerations below.

Whether it is lawful will depend on whether asking you to provide the medical certificate is reasonably necessary to protect the health and safety of other people, such as other customers or employees. This will depend on the circumstances, however the fact that the public health directions do not require this suggests that in many circumstances it won't be reasonably necessary to require this kind of proof.

In an employment context it may be reasonably necessary, and therefore lawful, for an employer to require a medical certificate from an employee to show they have a lawful medical reason for not wearing a mask. Employers have an obligation to ensure they are providing a safe workplace for their employees, including the employee with a lawful reason not to wear a mask, and they may seek medical evidence to identify whether the work environment is safe and whether any reasonable adjustments need to be put in place. If you have a medical condition that prevents you from wearing a face mask and you have been asked to provide proof by a service provider, school or employer you can contact us on 1300 292 153 for more information about your rights and how you can make a complaint.

I have a hearing impairment, and I cannot lip-read when people are wearing face masks; does a service provider need to make adjustments to communicate with me?

Under the Equal Opportunity Act, a provider of goods and services must make reasonable adjustments for people with a disability, unless the adjustment they are seeking is not reasonable.

If you are communicating with a person who has a hearing impairment, the directions allow you to remove your face mask in settings where it is required in order to communicate with that person. If you do remove your face mask in this situation, you must maintain physical distancing of 1.5 metres and cover your mouth with a tissue or elbow if you need to cough or sneeze.

If a person with a hearing impairment asks a shop owner to make adjustments (such as removing their face mask so that person can lip read, or using a voice-to-text app on their phone) or communicate from a safe distance, and the shop owner refuses to make these adjustments, this may amount to unlawful discrimination under the Equal Opportunity Act.

If you find yourself in this situation, contact us on [1300 292 153](tel:1300292153) for more information about your rights and how you can make a complaint.

Depending on the adjustment you are seeking, the shop owner may rely on exceptions under the Act to argue the discrimination was lawful – in particular, the health and safety exception which allows discrimination against persons with a disability if it is reasonably necessary to protect health and safety. The responsibility would fall on the shop owner to prove that these exceptions apply.

Do I need to wear a face mask in the workplace? Can my employer require me to wear a face mask, even if I have a medical reason not to?

Face masks are required in certain workplaces, including airports, indoor retail, all hospitality, primary schools, prisons and other detention facilities, hospitals and other health care settings, and meat processing facilities

DHHS requires that every Victorian business that is open must follow six principles to ensure a COVIDSafe workplace. It is also mandatory for every Victorian business to have a

COVIDSafe Plan. High-risk industries must have a specific High Risk COVIDSafe Plan in order to operate.

Under the Equal Opportunity Act, employers are prohibited from discriminating against an employee or prospective employee with a disability. Employers are also required to make reasonable adjustments for employees with a disability (such as allowing an employee with a relevant medical condition to work without a face mask). An employee in these circumstances may request their employer make adjustments for them. However, an employer is not required to make adjustments for an employee with a disability if the adjustments the employee is seeking are not reasonable.

If you have a disability or medical condition that prevents you from wearing a face mask and your employer treats you unfavourably because you aren't wearing one, could this be unlawful discrimination?

If you have a disability or medical condition that affects your ability to wear a face mask, and you have alerted your employer to this, but you face disciplinary action for not wearing a face mask, this may amount to unlawful discrimination under the Act.

An employer may rely on exceptions under the Act to argue the discrimination was lawful, in particular the health and safety exception which allows discrimination against people with a medical condition or disability if it is reasonably necessary to protect the health and safety of any person, or the public generally. The responsibility would fall on the employer to prove that these exceptions apply. A range of things will likely be relevant to whether the exception applies in this context including:

- how long people generally stay inside the workplace
- whether it is possible to stay 1.5 metres away from each other inside the workplace
- the type of people who visit the workplace and whether there is a heightened risk they will suffer severe symptoms if they contract COVID-19 (for example, people over 60 or people with respiratory conditions)
- whether alternative measures could have been put in place to protect staff and customers
- the rate of community transmission at the time the discrimination occurs.

If you find yourself in this situation, contact us on [1300 292 153](tel:1300292153) for more information about your rights and how you can make a complaint.

If you don't have a relevant medical condition, then an employer treating you unfavourably because you aren't wearing a mask is unlikely to be unlawful discrimination

If an employee or prospective employee with a medical condition or disability affecting their ability to wear a face mask, who has alerted their employer to their lawful exception to the public health orders, faces disciplinary action for failing to wear a face mask this may amount to unlawful discrimination under the Act.

I'm a student with a disability; can my school or a teacher make me wear a face mask when I'm at school?

Students in grades 3 to 6 who are on-site at a primary school are required to wear a face mask. Students are not required to wear a face mask if they have an illness, condition or disability that means it would not be suitable.

Under the Equal Opportunity Act, educational authorities must not discriminate against a student with a disability. Education authorities must also make reasonable adjustments for students with a disability (such as allowing a student who, for medical reasons, is not able to wear a face mask to be exempt from this requirement).

A student in these circumstances may request that the educational authority make reasonable adjustments for them. However, the educational authority will not be required to make these adjustments if the adjustments are not reasonable. The educational authority will need to show that the adjustments sought are not reasonable. Educational authorities are also able to set reasonable standards of dress and behaviour. A standard will be reasonable if the educational authority took into account the views of the school community in setting the standard. Therefore, a school may argue that making an adjustment for a student is not reasonable because it impacts upon the standard of dress or behaviour required of all students.

If you are a student with a disability that prevents you from wearing a face mask and your school treats you badly, this may amount to unlawful discrimination.

If you find yourself in this situation, contact us on [1300 292 153](tel:1300292153) for more information about your rights and how you can make a complaint.

If a student does not have a disability affecting their ability to wear a face mask any direction by their school or a teacher to wear a face mask is unlikely to amount to discrimination.

In these circumstances, an educational authority may rely on exceptions under the Act to argue the discrimination was lawful, in particular the health and safety exception which allows discrimination against people with a disability if it is reasonably necessary to protect the health and safety of any person, or the public generally. The responsibility would fall on the educational authority to prove that these exceptions apply.