Face masks and your rights

This information is a general overview of your rights in relation to mask wearing requirements which may be imposed in response to the COVID-19 pandemic. It does not provide information about current restrictions – this can be found on the Queensland’s Government’s COVID-19 website (www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19).

As the pandemic continues, public health directions may mandate the wearing of face masks in particular places or circumstances. These directions can change often and up to date information on current restrictions should be sought from the Queensland Government website (www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19) or by calling their COVID hotline on 134 COVID (13 42 68).

Generally speaking, if you are able to wear a mask, a public direction which requires you to do so will not be a breach of your human rights.

The Human Rights Act obligates public entities – which includes the Chief Health Officer, the Queensland Police Service and Queensland Health – to take positive steps to protect rights. This includes the right to life. Directions which mandate the wearing of masks in particular places or circumstances to reduce risks associated with COVID-19 are in line with these obligations.

Is it a breach of my human rights to make me wear a face mask?

No. Rights are not absolute and must be balanced with other people's rights, such as the right to life, and with the duties that human rights law imposes on governments to protect their citizens. An individual’s rights can be limited if they are outweighed by these competing considerations.

If you are able to wear a mask, a public health direction which requires you to do so is unlikely to be a breach of your individual human rights.

Is it unlawful discrimination to treat me differently for not wearing a face mask?

Discrimination can occur where you are treated differently because you are not wearing a mask and you cannot wear a mask because of a protected attribute, such as age or disability (which includes illness and mental health conditions).

While public health directions around masks change frequently, there are often exceptions to face mask requirements listed on the Queensland Government website (www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks) for people who have a disability or a medical condition or illness, children under 12, and some others.
If you are excepted under public health directions from wearing a mask and are treated differently, or refused service, because of it, it might be unlawful discrimination and you might be able to make a complaint to us at the Commission.

If you don’t have an exception but prefer not to wear a mask, treating you differently or denying you service when there are mask requirements in place is not unlawful discrimination.

**What if I can’t wear a mask?**

Under public health directions, there are usually exceptions to face mask requirements for people who have a disability or a medical condition or illness which makes a mask unsuitable. Children under 12 are also excepted.

You can find a list of who is currently excepted from wearing face masks on the Queensland Health website (www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks).

If you are excepted from wearing a mask and are treated differently, or refused service, because of it, it might be unlawful discrimination and you might be able to make a complaint to us at the Commission.

**Who is legally excepted from wearing a mask?**

Mask requirements usually include exceptions to ensure people with a valid reason they are unable to wear a mask aren’t treated less favourably. Queensland Health’s COVID-19 information lists these exceptions (at www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks), which include children under 12, people with a medical condition or disability, people with a past experience of trauma, those in prison or detention, and others.

**Can I be denied entry to a store, café, or other business or service if I don’t wear a mask?**

If you have a legal exception (listed on the Queensland Health website at www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks), and you are denied entry or service from a business, it might be unlawful discrimination and you may be able to make a complaint to us.

Bear in mind that public health directions are constantly changing, and that it might be difficult for businesses to keep up to date with their obligations.

If a business has a blanket rule about ‘no mask, no entry’, try and talk to them about the exceptions – you might want to show them the Queensland Health information on your phone, for example. It might also help if you explain you are willing to comply with other requirements like checking in, physical distancing and using hand sanitiser, or are open to other ways of accessing their services, such as being served outside or visiting at quiet times.

You do not have to show proof of your exception. However, if you feel this would be helpful for you, you might want to talk to your GP or other health provider about issuing you with a medical certificate for you to present if asked.

Note that there may be different obligations and exceptions to wearing masks in health service settings, due to higher risks of transmission and/or higher risks to patients if they contract COVID-19.
Can I be denied entry to my workplace if I don’t wear a mask?

Under anti-discrimination law, it may be unlawful discrimination for the workplace to require you to wear a mask when you have an exception under public health directions. Current public health directions can be found on the Queensland Government website.

However it is not unlawful discrimination to require you to wear a mask if you can wear one but prefer not to.

Anti-discrimination law also allows employers to impose ‘genuine occupational requirements’ for a position, and to do things which may appear to be discrimination if it’s reasonably necessary to protect public health, or to protect the health and safety of people at a work place. Depending on your workplace, it may or may not be possible for your employer to find alternative options or duties for you if you are unable to wear a mask due to a disability. These factors may include - if the workplace is indoors or outdoors, if physical distancing is possible, if there is a high risk of transmission, if the workplace has a high number of vulnerable employees or customers, or if there are non-COVID-related health and safety considerations that would be impacted by mask wearing. Employers should generally consult with employees about the requirements, and possible exceptions, to wearing masks.

Your employer will also have obligations under industrial law and to provide a safe working environment. See the Safe Work Australia website (www.safeworkaustralia.gov.au/covid-19-information-workplaces) or more information.

Do I need to show proof of my medical condition or disability if I’m not wearing a mask?

There is no requirement under public health directions for you to have a medical certificate or other documentation to prove you have an exception because of your medical condition or disability.

However, if you feel this would be helpful for you, you might want to talk to your GP or other health provider about issuing you with a medical certificate for you to present if asked.

Different considerations apply in employment situations. The Commission is unable to provide information on industrial law and obligations to provide a safe working environment. See Safe Work Australia website and Business Queensland for more information. However, under Queensland anti-discrimination laws, it is not unlawful for an employer to request or require another person to provide information about a medical condition if the person making the request can demonstrate that it is not in connection with, or for the purpose of, unlawfully discriminating against the other person on the ground of disability.

What if the police ask me why I’m not wearing a mask? Can I be fined?

If you have a legal exception (listed on the Queensland Health website at www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks), police should not issue you with a fine or ask you for proof of your medical condition, disability, or other exception.
Police are still able to ask you questions to determine whether an exemption applies. These questions should be asked respectfully, and with regard to your privacy. For example, police will not need to know the details of past trauma to assess whether you are excepted from wearing a mask.

While proof is not necessary, if you feel this would be helpful for you, you might want to talk to your GP or other health provider about issuing you with a medical certificate for you to present if asked.

If you are issued with a fine when you think an exception applies, it might be unlawful discrimination and you might be able to make a complaint to the Commission.

I have an exception but I have been treated differently because I’m not wearing a mask. Can I make a complaint?

If you have a legal exception (listed on the Queensland Health website at www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/protect-yourself-others/face-masks) and are treated differently, or refused service, because you are not wearing a mask, it might be unlawful discrimination and you might be able to make a complaint to us at the Commission.