

# Customers, face masks and discrimination:

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A guide for Queensland  
businesses and services



Queensland  
**Human Rights**  
Commission



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This publication is available in electronic format on the Queensland Human Rights Commission's website at: [www.qhrc.qld.gov.au](http://www.qhrc.qld.gov.au).

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# Customers, face masks and discrimination: A guide for Queensland businesses and services

During the pandemic, many providers have revised their entry and service policies to accommodate public health directions, such as the requirement to wear a face mask, and to comply with legal obligations to protect their staff and customers.

This resource aims to help service providers to also comply with their obligations under discrimination law in Queensland in relation to their customers and clients. It is not about other laws, such as employment law, and different considerations will apply in relation to staff.

This resource is for general information only and should not be interpreted or relied upon as legal advice. The Commission's telephone information and enquiry service will not be able to provide more information about masks and discrimination than what is contained in this resource.

For more information about public health directions, mask requirements and exceptions please see Queensland Health website at [www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/mandatory-masks](http://www.qld.gov.au/health/conditions/health-alerts/coronavirus-covid-19/current-status/public-health-directions/mandatory-masks) or call 13 42 68.

For information about masks as an employer and your obligations to staff, see the Safe Work Australia website: [www.safeworkaustralia.gov.au/covid-19-information-workplaces](http://www.safeworkaustralia.gov.au/covid-19-information-workplaces).

Your peak body or industry association may have some specific guidance and support, for example, see the Business Queensland website at [www.business.qld.gov.au/industries/covid-19](http://www.business.qld.gov.au/industries/covid-19).

## In this guide:

|  |   |
|--|---|
| Understand current public health directions                  | 4 |
| Understand your obligations under discrimination law         | 5 |
| Develop a non-discriminatory policy or practice around masks | 7 |
| Regularly update your policy and practice                    | 8 |

# Understand current public health directions

- a. When a public health direction requires the wearing of masks, there will usually be exceptions to the rule, such as when people have a physical or mental health illness or condition, or a disability which makes wearing a face mask unsuitable.
- b. A person does not need a medical certificate to prove they have a lawful exception for not wearing a face mask.
- c. The obligations to wear masks are generally imposed on individuals and on certain businesses and services in relation to their staff. Businesses and services may be required to encourage customers to wear a mask, but if a customer refuses, it will not usually result in a penalty for the business or service.
- d. Enforcement of public health directions are the responsibility of the police.

Queensland Health has identified face masks as a significant measure to help control sustained community transmission of COVID-19. Face masks have been made mandatory where there is a high risk of transmission, such as in airports and quarantine facilities. At times, based on the latest public health data and modelling regarding risks, the Chief Health Officer has issued public health directions that temporarily expand the situations where masks must be worn, including any time people leave their homes.

While public health directions around masks change frequently, they have consistently made clear that the requirement does not apply to certain people. This includes people who have a physical or mental health illness or condition, including as a result of trauma, or a disability, which makes wearing a face mask unsuitable.

There is no requirement under the public health directions that a person have a medical certificate to prove they are excepted from not wearing a face mask.

Ensuring you and your staff are informed about the lawful exceptions to wearing a mask is a helpful and easy way to ensure your business or service does not discriminate against customers and clients. Current public health direction requirements can be obtained from the Queensland Health website or call Queensland Health on 13 42 68.

In most cases, the obligation to wear a mask applies to individuals –businesses and services who must operate in accordance with COVID Safe Checklists might have to ensure staff wear masks, but are only required to encourage customers or clients to wear masks while at the venue. Usually it will not be a breach of the public health direction by the business or service if a customer does not wear a mask.

Enforcement of public health directions is the responsibility of the police.

# Understand your obligations under discrimination law

- a. Unlawful discrimination can occur where you require someone to wear a mask when they are unable to because of a protected attribute such as disability, including physical and mental conditions.
- b. In most circumstances, it should be possible for people who are excepted from the health direction not to wear a mask and access your services as normal.
- c. If you do not, then your actions may be unlawful discrimination unless you can prove:
  - It is reasonable in the circumstances to require the person to wear a mask; or
  - It is reasonably necessary to protect public health; or
  - It is reasonably necessary to protect the health and safety of people at a place of work.

These defences are only likely to apply in limited circumstances (for example, delivering personal services in close contact for a lengthy time).

- d. Asking for details or proof about a person's disability or other protected attribute may be unlawful discrimination.

Under the Queensland *Anti-Discrimination Act 1991*, all providers of goods and services have a duty not to discriminate on the basis of a range of personal attributes, such as disability. Disability can include physical conditions, psychiatric conditions (including mental illness), illness or disease, visual and hearing impairments, and cognitive impairment.

If you require someone to wear a mask when they cannot because of a protected attribute, then you could be discriminating against them.

Applying a blanket rule to always refuse access or service to anyone not wearing a mask is likely to be unlawful. In most circumstances, it should be possible for people with disability or another protected attribute to access your services as normal without wearing a mask.

The following are defences under Queensland discrimination law. If you refuse service to a customer who is unable to wear a mask, or make a reasonable adjustment to enable you to serve the customer, it is your responsibility to prove that the defence applies.

## Is it reasonable, or reasonably necessary, to require a customer or client to wear a mask?

It is not unlawful discrimination to require a customer or client to wear a mask if you can prove that:

- It is reasonable in the circumstances to require the person to wear a mask; or
- It is reasonably necessary to protect public health; or
- It is reasonably necessary to protect the health and safety of people at a place of work.

Where the Chief Health Officer has made exceptions for certain people from wearing a mask, these defences will only apply in limited special circumstances.

Whether the requirement is reasonable, or reasonably necessary, will depend upon all the circumstances, including the risk to staff and other customers of being exposed to COVID-19. This could include:

- 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 the business could put alternative measures in place to protect staff and customers;
- advice from work health and safety bodies, such as Safe Work Australia, or your relevant peak body at the time the service is refused;
- what the public health directions and advice from Queensland Health is at the time the service is refused;
- the rate of community transmission at the time service is refused.

For example, it is likely lawful under discrimination law for a hospital to apply a blanket rule requiring face masks to be worn if you are visiting a patient who has been diagnosed with COVID-19.

Similarly, it may be lawful to refuse a customer entry to a business, if there is a public health direction requiring the customer to wear a mask, and the customer does not have a lawful reason under the direction not to wear a mask.

## What questions can you ask?

It is not unlawful to encourage people to comply with public health directions, and to wear a mask if they can. You may ask a person whether they have a lawful exception to wearing a mask under the public health directions, but you don't need to know the details of the exception or have proof of it. Consider the impact the question might have on the individual, and be respectful and mindful of the person's privacy and dignity.

Remember, unlawful discrimination will only occur if you require someone to wear a mask when they cannot because of a protected attribute, such as disability (including physical and mental health conditions). It is not unlawful discrimination to require someone who simply does not want to wear a mask to wear one.

# Develop a non-discriminatory policy or practice around masks

Requiring all customers and clients to wear a mask without exception is unlikely to be lawful. It is useful for you to develop a policy or practice around masks which acknowledges exceptions for people who are protected by discrimination law, such as people with a disability.

The policy or practice could include:

- a. Exceptions on wearing a mask for people who cannot wear masks because they have a lawful exception not to under the public health directions.
- b. Changing the wording on any posters at the entry to your store. Instead of 'No mask, no entry', consider 'No mask, no entry – unless you have a lawful exception'.
- c. Where necessary, have alternative ways to offer your services to people unable to wear are mask.
- d. Ensuring staff are trained in the policy or practice.
- e. Displaying the policy clearly for customers and clients.

## Alternative ways to offer your services

In most circumstances it should be possible to provide services as normal to people who have a disability or other protected attribute that prevents them from wearing a mask.

In the rare circumstance this is not possible, think about alternative ways to offer your services.

Some ideas could be:

- **Are there services you could provide online?** Could you provide click-and-collect, home delivery or telephone-assisted shopping for people who cannot wear a face mask?
- **Can you serve the person outside of your premises?** If you arrange to serve people who cannot wear a mask outside your premises, make sure there is adequate shelter and consider providing a seat so any customers with disability are comfortable as they wait.
- **Can you accommodate that person at particular times?** Consider designating particular times of day when people who cannot wear a face mask could shop or visit by prior arrangement. For example, a retail store might nominate a quiet time when people without face masks can shop.

## Staff training

Your business can be held responsible for the way your staff treat customers and clients.

Think about who is most likely to be implementing your policies and practices around masks and make sure you provide them with thorough training. This may include security staff at entrances, front line staff, and managers. It is important that they understand your obligations under discrimination law and the policies and practices you've put in place.

Remember that many disabilities are not visible. Some of the common reasons why people cannot wear a mask due to a disability include conditions affecting their lungs and mental health conditions. Make sure that staff understand this and don't make judgments about whether a person's reason not to wear a mask is valid.

## Regularly update your policy and practice

Whether your policy or practice is lawful under discrimination law is likely to change over time as the rate of community transmission and restrictions in Queensland change. Make sure you regularly update your policies and practices as conditions change.

Treat complaints as an opportunity to learn and tailor your policies and practices to cover the kinds of scenarios your staff are faced with to ensure you are providing a respectful and lawful service to the community.



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This information last updated: August 2021.

More information about discrimination law is available on the Queensland Human Rights Commission website at [www.qhrc.qld.gov.au](http://www.qhrc.qld.gov.au).