

Navigating patient and visitor face mask exemptions QRG

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Western Health

COVID - 19

Be Safe -- Be Smart -- Be Kind

Face mask rules

Anyone 12 years and over must wear a fitted face mask whenever they leave their home, indoors or outdoors, unless lawful exception applies¹.

It is against the law to unreasonably require clients to wear a mask. This means we must take reasonable exceptions for people who cannot wear a mask because of their disability or other attribute³.

When is this guidance relevant?

This guidance is relevant when face mask rules, as directed by the Department of Health, are in place.

Exceptions for not wearing a face mask

The Victorian Government² outline lawful excuses or exceptions for not wearing a face mask including, but not limited to:

- Infants and children under the age of 12 years.
- 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.
- Persons communicating with those who are deaf or hard of hearing and visibility of the mouth is essential for communication.
- Persons who are engaged in any strenuous physical exercise such as running, jogging, swimming or cycling.
- The person is undergoing dental or medical care or treatment to the extent that such care or treatment requires no face mask be worn.
- The person is consuming food, non-alcoholic drink or medicine.
- The person has experienced trauma that makes it difficult for them to wear a face mask.

Is a medical certificate, exemption or permit required to not wear a face mask?

A medical certificate stating that the individual has a lawful reason for not wearing a face mask is not required, nor do they need to apply for an exemption or permit².

Can a face shield be worn instead of a face mask?

Although face shields on their own do not meet the face covering requirements, if the individual has a lawful reason for not wearing a face mask, a face shield or specially designed face covering can be worn².

If you cannot reasonably allow a person not to wear a mask, can you adjust your service to provide it safely?

'A key obligation under discrimination law is the requirement to make reasonable adjustments for people with a disability. This means that service providers must take positive steps to meet the needs of clients with a disability where reasonable. What is reasonable will depend on all the circumstances. If you fail to make reasonable adjustments, your actions could be discriminatory unless an exception applies³.

Does an exception apply?

'The Victorian Equal Opportunity & Human Rights Commission³ report that where an **exception** applies, discrimination may be lawful. The law allows service providers to discriminate in limited circumstances where a policy or practice is reasonably necessary to:

1. Protect the health and safety of staff or other customers, or
2. Where it is authorised by law

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-19³.

Determining whether your approach to face masks is reasonable

The Victorian Equal Opportunity & Human Rights Commission³ report that in order to determine whether a policy or practice requiring people to wear face masks is reasonable and therefore lawful, you will need to consider a range of factors 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 the business could put alternative measures in place to protect staff and customers
- advice from work health and safety bodies, such as WorkSafe Victoria, at the time the service is refused
- what the public health directions and advice from the Department of Health is at the time the service is refused
- the rate of community transmission at the time service is refused.

What do I do if a patient or visitor is not wearing a mask?

In the first instance, ask the individual (patient/ visitor/ support person) whether they have a lawful reason not to wear a face mask.

If the individual reports they **do not** have a lawful reason not to wear a face mask, let them know that anyone 12 years and over must wear a fitted face mask whenever they leave their home, indoors or outdoors, unless lawful exception applies¹ and offer them a surgical mask.

If the individual reports they **do** have a lawful reason not to wear a face mask, consider the impact of continuing service provision/ permitting visitation while ensuring the health and safety of staff, patients and visitors are protected. Contact the manager of the clinical setting (e.g. NUM/ AHA, service manager) to discuss how to proceed, for example,

- how services could be **provided safely/ visitation could proceed safely** (e.g. with infection prevention strategies implemented, offering the individual a face shield, ensuring physical distancing measures are in place). In this scenario it is important that the staff member feels comfortable seeing the patient/ visitor, if they are not comfortable they should not see the patient/ visitor.
- how services could be delivered via an **alternative method** e.g. via telehealth
- whether services should be **postponed**
- whether services should be **declined**.

References

¹Victorian Government. (2021). *Face Masks*. Retrieved from <https://www.coronavirus.vic.gov.au/face-masks>

²Victorian Government. (2021). *Face masks – when to wear a face mask – Metropolitan Melbourne*. Retrieved from <https://www.coronavirus.vic.gov.au/face-masks-when-wear-face-mask>

³Victorian Equal Opportunity & Human Rights Commission. *Retailer's guide: Face masks, vaccination and discrimination*. Retrieved from <https://www.humanrights.vic.gov.au/resources/retailers-guide-face-masks-and-discrimination/>