

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

Western Health requires anyone 8 years old and over to wear a fitted face mask on entry to any Western Health site, unless a lawful exception applies. Entry for those with a face mask exception will only be granted in exceptional circumstances, such as for end of life care. However, 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 and Western 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
- Students in primary school in Grade 2 or below
- 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 requirements², if the individual has a lawful reason for not wearing a face mask, they should be encouraged to wear a face shield or specially designed face covering. Face shields are available at Western Health security manned entry points.

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 8 years old and over must wear a fitted face mask whenever they enter a Western Health site, unless a lawful exception applies, 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. Entry will only be granted in exceptional circumstances such as for end of life care.

Contact the manager of the clinical setting (e.g. NUM/ AHA, service manager) to discuss how to proceed, for example,

- where exceptional circumstances apply, 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/>

⁴Victorian Government. (2021). *Face masks – when to wear a face mask*. Retrieved from <https://www.coronavirus.vic.gov.au/face-masks-when-wear-face-mask>