



**Victorian Equal Opportunity
& Human Rights Commission**

Mask wearing

**SELECTIONS FROM THE 2020 REPORT ON
THE OPERATION OF THE CHARTER OF
HUMAN RIGHTS AND RESPONSIBILITIES**



4. Mask wearing

At a glance

- One of the measures adopted to reduce the spread of COVID-19 was the requirement for people to wear a face mask outside their homes unless an exception applied.
- While some Victorians raised concerns that being required to wear a mask was a violation of their human rights, it is clear that this requirement does not breach the Charter or international human rights instruments.
- However, many people with medical conditions and disabilities who had a lawful exemption from wearing a face mask were denied access to goods and services when they did not wear one.
- The Commission has received over 250 complaints about this issue (117 of which were received in 2020), all based on disability discrimination, which it has accepted for dispute resolution.

"In certain circumstances, Victorians have been and may continue to be required to wear face coverings in specific settings. There is extensive evidence that face coverings are effective in reducing transmission of COVID-19. However, each time that face coverings have been mandated, there has also been a carefully designed set of exemptions to this requirement, informed by Charter rights and discrimination laws. At all times, we have sought to strike an optimal balance between the human rights and protected attributes of specific persons in our diverse Victorian community with the human right of right to life and protection of the health of all Victorians."

Prof. Brett Sutton, Chief Health Officer

As COVID-19 spread, global experts including the World Health Organization recommended that people wear face masks to slow the spread of COVID-19.⁸⁸ On 22 July 2020 during Victoria's second wave, the Victorian Government introduced a requirement for people in Greater Melbourne and the Mitchell Shire to wear a face mask or covering in almost all settings when they were outside their home, unless an exception applied.⁸⁹ On that day, the State recorded 484 new cases of COVID-19 and two deaths. The direction for individuals to wear a face mask in certain settings was in place from 22 July 2020 and into 2021. The requirement to wear a face mask was reduced significantly from 6 December onward. The DHHS website listed current places where face masks were still required to be worn, including public transport, taxis, hospitals and indoors at aged care facilities.⁹⁰

Some Victorians raised concerns that the requirement to wear a mask was a violation of their human rights. The Commission released a statement clearly stating that the requirement for residents to wear a face mask or covering when leaving the house does not violate any rights set out under Victoria's Charter or any international human rights instruments.

The Chief Health Officer directions provided exceptions to the requirement to wear a mask for people who had a 'relevant medical condition' (such as difficulty in breathing, a skin condition or a disability). People communicating with a person with a hearing impairment were also not required to wear a mask. Children under the age of 12 and people who had a professional reason or were undertaking strenuous exercise were also exempt.

Although people with a disability or medical condition requiring them to keep their face uncovered were legally exempted from the direction to wear a face mask, the Commission heard from people who were nonetheless discriminated against when receiving services or in employment for not wearing a mask, impacting on their right to equality.

In the interest of educating the community, the Commission published an explainer to assist people, shops, supermarkets, clinics and workplaces to navigate these issues. The explainer made it clear that:

- If you were refused goods and services for not wearing a mask in circumstances where you had a lawful excuse, the refusal could amount to discrimination.
- The provider of goods and services could rely on the health and safety exception if they thought a mask requirement was reasonably necessary to protect the health and safety of the person or the public generally.
- Whether that exception applied would depend on the risk of transmission in the particular situation, the vulnerability of people in the service and the consequences of refusal.
- People could come to the Commission if they were treated unfavourably or fined because they were not wearing a mask despite an exception applying to them.⁹¹

Nonetheless, the Chief Health Officer direction to wear masks led to a large number of complaints of disability discrimination under the *Equal Opportunity Act 2010*. The Commission successfully resolved many of these complaints through dispute resolution, with the outcomes including letters of apology, financial compensation and gift cards, changing an organisation's policy, providing training to staff and education of respondents of their obligations under the Equal Opportunity Act and DHHS guidelines.

The Commission's explainer on the requirement to wear face masks was one of our most-viewed pieces of content during 2020, with over 3000 views and with people spending an average of three minutes on the page. Likewise, our downloadable fact sheet on face masks and human rights was viewed over 160 times with an average read-time of six minutes.

Victoria Police also worked with DHHS to develop fact sheets to build awareness among frontline police of the experiences of priority communities that might mean they could not wear a mask. This included people with a disability, people experiencing mental health issues, the LGBTIQ community, the Aboriginal and Torres Strait Islander communities, people from multicultural backgrounds, seniors and young people. Victoria Police advised the Commission that the key message from this information was that "not everyone who fails to wear a mask when required is consciously non-compliant".⁹²

COMMISSION MASK COMPLAINT SNAPSHOT

The Commission received **182 complaints** relating to COVID-19 in 2020. **64% (117)** of these complaints, were related to the requirement to wear a mask.

Complaints about mask-wearing



Resolution of complaints about mask-wearing

89% of complaints about mask-wearing that were conciliated were successfully resolved by the Commission.



CASE STUDY

Denied bank service for not wearing a mask

In September 2020, bank staff refused to serve a woman for not wearing a mask or face covering. She suffered from bipolar disorder and depression, and had a medical exemption from wearing a face mask. She wore or carried a sticker that read, "I am exempt from wearing a face mask or covering" to prevent harassment and to inform staff when she entered a business. She also offered to provide her medical exemption certificate. Other customers at the bank took a step back during her exchange with the bank's representative and the whole incident left her feeling humiliated.

After her initial attempts to lodge a complaint with the bank were unsatisfactory, the woman made a complaint of disability discrimination to the Commission. The bank agreed to participate in the Commission's dispute resolution process.

During conciliation, the bank agreed that the complainant's exemption enabled her to attend her local branch without a mask. The bank also indicated that after considering DHHS guidance, it had sent updated communications to all branches regarding face-mask requirements and lawful exemptions. The bank had also updated in-branch posters to reflect this new position. This outcome recognised the discriminatory impact of the mandatory mask policy on this woman and achieved a systemic outcome promoting the right to equality for all customers of this bank who were medically exempt from wearing masks.



CASE STUDY

No mask, no work

A man obtained a medical certificate that exempted him from wearing a mask or a face shield at work due to the likelihood that wearing one might cause anxiety or panic attacks. The man provided an exemption certificate to his employer. His employer told him that he could not attend work unless he wore a mask and did not offer an alternate working arrangement. In the end the man was forced to take annual leave.

The man complained to the Commission, alleging disability discrimination against his employer. The Commission conciliated the complaint. The outcome was that the man was allowed to work remotely and had his annual leave recredited.



CASE STUDY

Denied hospitality for not wearing a mask

A man who was exempt from wearing a mask because of his disability was refused service when he entered a hotel. When the man told hotel staff that he could not wear a mask for medical reasons, he was asked to show a medical exemption certificate and then refused service. The complainant felt embarrassed and ostracised in front of his friends and other customers.

The man complained to the Commission that he had been discriminated against on the basis of his disability. The Commission conducted a negotiation between the parties. The matter was resolved with the hotel providing a letter of apology, a change in its policy in relation to mask-wearing on its premises and training for all staff regarding the new policy.

Endnotes

- 88 State Government of Victoria, 'Coronavirus: Face masks – Importance of Face Masks' (Webpage, 12 April 2021) <<https://www.coronavirus.vic.gov.au/face-masks-importance-face-masks>>.
- 89 The Deputy Public Health Commander gave the mask directions using emergency powers pursuant to s 200 of the PHWA.
- 90 DHHS, 'Coronavirus: Face masks – How to Stay Safe and Well' (Webpage, 3 January 2021) <<https://www.dhhs.vic.gov.au/face-masks-vic-covid-19>>.
- 91 Victorian Equal Opportunity and Human Rights Commission, 'FAQs: Face Masks and Human Rights' (Webpage, April 2021) <<https://www.humanrights.vic.gov.au/resources/faqs-face-masks-and-human-rights/>>.
- 92 Advice provided to the Commission by Victoria Police on 24 February 2021.

Contact us

Enquiry Line	1300 292 153 or (03) 9032 3583
Fax	1300 891 858
NRS Voice Relay	1300 555 727 then quote 1300 292 153
Interpreters	1300 152 494
Email	enquiries@veohrc.vic.gov.au
Live chat	livechat.humanrights.vic.gov.au
Follow us on	twitter.com/VEOHRC
Find us at	facebook.com/VEOHRC

humanrights.vic.gov.au