

Requests for information

People may be curious about a person's disability, however Section 30 of the act makes it unlawful to request or require information about their disability except in very specific and limited circumstances.

- (1) This section applies in relation to a person (the first person) if, under Division 1 or this Division, it would be unlawful for the first person, in doing a particular act, to discriminate against another person on the ground of a disability of the other person.
- (2) It is unlawful for the first person to request or require the other person to provide information (whether by completing a form or otherwise) if:
 - (a) the first person requests or requires the information in connection with, or for the purposes of, doing the act referred to in subsection (1); and
 - (b) either or both of the following applies:
 - (i) persons who do not have the disability would not be requested or required to provide the information in circumstances that are not materially different;
 - (ii) the information relates to the disability.
- (3) Subsection (2) does not apply if:
 - (a) evidence is produced to the effect that none of the purposes for which the first person requested or required the information was the purpose of unlawfully discriminating against the other person on the ground of the disability; and
 - (b) the evidence is not rebutted.
- (4) This section has effect subject to subsection 54A(5) (evidence that an animal is an assistance animal).

Directions from State Chief Health Officers

Directions issued by the state Chief Health Officers include exemptions for people with medical conditions and disabilities that make wearing a face mask unsuitable. Further information on each state's requirements can be found using the link in the QR code on the right. Eastern seaboard states links are below.



NSW



Qld



Vic

Disclaimer: This is not legal advice. You should verify all the information in this document using the information and links provided and please seek legal advice for your specific circumstances.

You can download this brochure using the link or QR code below.

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github.com/bfwee/maskdisability
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Disability discrimination and not wearing a mask

Although state directions from Chief Health Officers at times may require the wearing of masks at certain times or places, these directions have exemptions for people with medical conditions or disabilities that make wearing a mask unsuitable.

The Australian Disability Discrimination Act 1992 makes it **unlawful** to discriminate against people with disabilities. Where a company's policy is unlawful, it cannot stand and must always be subject to the law. Refusing entry or service to a person with a disability who is unable to wear a mask is against the law!

A number of legal avenues are available where individuals or companies unlawfully discriminate against people with a disability. The Australian Human Rights Commission can take action and individuals may also take legal action.

Just as it is unthinkable to discriminate against a wheelchair-bound person, so it should also be unthinkable to discriminate against a person who cannot wear a mask due to their disability!

Definition of "disability"

Section 4 of the *Commonwealth Disability Discrimination Act 1992* defines a disability. There are a range of disabilities and several of them make wearing a mask unsuitable.

disability, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
 - (b) total or partial loss of a part of the body; or
 - (c) the presence in the body of organisms causing disease or illness; or
 - (d) the presence in the body of organisms capable of causing disease or illness; or
 - (e) the malfunction, malformation or disfigurement of a part of the person's body; or
 - (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
 - (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;
- and includes a disability that:
- (h) presently exists; or
 - (i) previously existed but no longer exists; or
 - (j) may exist in the future (including because of a genetic predisposition to that disability); or
 - (k) is imputed to a person.

To avoid doubt, a **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

The full legislation can be found at legislation.gov.au or directly using the following QR code.



Indirect disability discrimination

Section 6 of the act defines *indirect disability discrimination*. It includes the situation when a disabled person is required to meet conditions that disadvantage them due to their disability.

For example, if a store had a policy that wheelchairs were not allowed inside the store, a disabled person confined to a wheelchair would be discriminated against by being refused entry while in the wheelchair.

Similarly, a business with a policy that face masks must be worn will **discriminate** against a person with a disability that makes wearing a face mask unsuitable if they are refused entry.

Unlawful to refuse access to premises

Section 23 of the act makes it unlawful to discriminate against a person due to their disability by refusing access to premises.

It is unlawful for a person to discriminate against another person on the ground of the other person's disability:

- (a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or

- (b) in the terms or conditions on which the first mentioned person is prepared to allow the other person access to, or the use of, any such premises; or
- (c) in relation to the provision of means of access to such premises; or
- (d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- (e) in the terms or conditions on which the first mentioned person is prepared to allow the other person the use of any such facilities; or
- (f) by requiring the other person to leave such premises or cease to use such facilities.

Unlawful to refuse to provide goods, services, access to facilities

Similar to the previous section, Section 24 makes it unlawful to discriminate on the grounds of a person's disability by refusing to provide goods or services or to make facilities available to the person.

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's disability:

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person; or
- (b) in the terms or conditions on which the first mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- (c) in the manner in which the first mentioned person provides the other person with those goods or services or makes those facilities available to the other person.