

## **MASKS AND QR CODES FACTSHEET FOR BUSINESSES**

The Commonwealth Constitution is the highest law within Australia.

Section 109: “When a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.”

### **Masks**

- Some people are exempt from wearing a face mask. Conditions include Asthma, Emphysema, Epilepsy, ADHD, PTSD, Anxiety, Panic Disorders, Vertigo, Hearing Problems, Breathing Difficulties, Allergies, among others. Visit your relevant state health department’s website for more information on this.
- Section 16B of the *Privacy Act 1988 (Cth)* ([https://www.legislation.gov.au/Details/C2021C00242/Html/Text#\\_Toc75852286](https://www.legislation.gov.au/Details/C2021C00242/Html/Text#_Toc75852286)) provides for **only** two valid reasons to collect health information about an individual:
  - 1) when providing health services to the person
  - 2) for research purposes relevant to public safety
- Unless you meet either of these two criteria, there is no obligation for a patron to produce their health information in regard to a mask exemption. Since the Privacy Act is a Commonwealth Act, any requirement, directive, or legislation from a state government for requiring mask exemption documentation is constitutionally invalid.
- Furthermore, sections 6, 23, and 24 of the *Disability Discrimination Act 1992 (Cth)* ([https://www.legislation.gov.au/Details/C2018C00125/Html/Text#\\_Toc511911513](https://www.legislation.gov.au/Details/C2018C00125/Html/Text#_Toc511911513)) prohibits discrimination on the grounds of a (medical) disability.
- An offence under the above sections could render someone liable to an imprisonment period of six months ([https://www.legislation.gov.au/Details/C2018C00125/Html/Text#\\_Toc511911557](https://www.legislation.gov.au/Details/C2018C00125/Html/Text#_Toc511911557)).

### **Scanning QR Codes**

- There is a common misconception that it is “compulsory” to scan a QR code before entering a venue.
- However, there is no legal requirement for anyone to own or carry a mobile phone. Therefore, there can be no legal requirement for any patron to scan a QR code. All businesses/venues must have a manual sign-in option available.
- Making legislation in respect of telecommunications are an exclusive power of the Commonwealth (sections 52 and 69 of the Commonwealth Constitution). Therefore, states do not have the constitutional authority to legislate in this area. Any legislation obligating businesses or customers to act in relation to mobile phones would have to come from the Federal Parliament, not the States or their health departments.

### **Businesses/venues:**

Trying to conduct enforcement of any chief health officer’s directions (mask wearing, scanning QR codes) without being delegated or empowered to do so, constitutes an offence of impersonating an authorised officer, under the relevant state’s Public Health Act (or similar).

If you suspect that customers are not abiding by public health orders or any other laws, inform them of your concerns. If the situation is not resolved, you may wish to notify the relevant police or other authorised officers who are empowered to carry out the relevant required enforcement. Businesses are only obligated to have a COVIDSafe plan in place – they are not authorised to conduct enforcement and may be liable to prosecution if they attempt to.

### **Customers:**

If you suspect that businesses are not abiding by public health orders or engaging in discrimination, educate them first. If the situation is not resolved, contact the Human Rights Commissioner of your state. For more serious situations, prosecuting the relevant corporation(s) in question may be an option, although given the economic pressure that smaller businesses have been placed under, it is recommended to reserve this action for larger corporations as they have the means to pay out large compensation claims.