

Equal Opportunity Tasmania

COVID-19 vaccinations and Tasmanian discrimination law

Is a requirement to be vaccinated unlawful discrimination?

The *Anti-Discrimination Act 1998* (Tas) (the Act) makes discrimination on the basis of a number of attributes unlawful. [Attributes](#) are personal characteristics that people have, such as race, age, sexual orientation, gender and disability.

The status of being unvaccinated is NOT one of the attributes the Act covers.

However, a person may not be able to be vaccinated because they have an attribute the Act covers. For example, there may be medical reasons relating to a person's disability, or a person may not be eligible for the vaccine due to their age.

If a person cannot be vaccinated because they have one of the attributes the Act covers, and they are denied work, accommodation or education, or refused goods or services by a business or service provider, or a club, this may be indirect discrimination.

Indirect discrimination is when a condition, requirement or practice applies to everyone (such as a requirement to be vaccinated) but disadvantages someone because of an attribute (such as disability or age) more than others. It must also be unreasonable in the circumstances.

Relevant circumstances

Whether a requirement to be vaccinated will be unlawful depends on the circumstances.

The Australian Human Rights Commission in its 'COVID-19 vaccinations and federal discrimination law' gives examples of some of the circumstances that may be taken into account, including:

- The existence and scope of any relevant public health orders.
- The nature of the work performed or business/service provided.
- Whether the work or business/service involves contact with people who are vulnerable to COVID-19 health impacts.

- Advice from medical and work health and safety bodies such as the Australian Health Protection Principal Committee and Safe Work Australia about COVID-19 and COVID-19 vaccinations at the relevant times, including duties owed by employers to staff and customers under work health and safety laws.
- Whether there are any alternative methods that might reasonably achieve the employer or business/service provider's objective without recourse to the mandatory COVID-19 vaccine requirement, such as:
 - testing regimes
 - remote work
 - physical distancing
 - personal protective equipment.

Please see <https://humanrights.gov.au/about/covid19-and-human-rights/covid-19-vaccinations-and-federal-discrimination-law> for a more comprehensive list of circumstances.

When discrimination is not unlawful

The Act says actions that are reasonably necessary to comply with the law are not unlawful. Both the Commonwealth and State Governments have mandated that people working in certain industries (such as aged care and health care) must be vaccinated (with some exemptions relating to 'medical contraindication' and age). In these examples, it is unlikely to be unlawful discrimination under the Act because it is reasonably necessary to comply with the law.

The Act also says it is not unlawful for a person to discriminate against another person on the basis of disability if the person's disability is an infectious disease (such as COVID-19) and the discrimination is reasonably necessary to protect public health.

Contact information

If you have any questions or would like to lodge a complaint, please contact Equal Opportunity Tasmania on (03) 6165 7515 or 1300 305 062 or e-mail: complaints@equalopportunity.tas.gov.au.

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