

COVID-19, disability and the law

March 2022



COVID-19, disability and the law

What's in this document?

This document contains legal information about

- discrimination
- human rights
- duty of care
- criminal law and the Police.

Who is it for?

This document contains information to help people with disability, their families and carers to understand their rights under law during the COVID-19 pandemic.

It is intended as general advice, see a lawyer for more help etc.



About discrimination



Discrimination in Queensland

Queensland has laws to protect against discrimination, including discrimination on the basis of disability.

Queensland has a Human Rights Act, which creates laws designed to protect your human rights.

When public entities (such as the Queensland government and other public organisations) interact with you, they must consider and protect your human rights because of these laws.

The Human Rights Act requires our government to:

- act and make decisions which are compatible with the rights the Act protects
- fully consider human rights in law, policy and practice.



Discrimination against a person with a disability

It is unlawful for you to be treated less favourably than other people because of your disability. That might be **unlawful discrimination**.

It may also be unlawful to treat you the same as everyone else, if that is going to have an unfair impact on you because of your disability. If that is unreasonable, that might also be **unlawful discrimination**.



Discrimination during the COVID-19 pandemic



Discrimination against a person with a disability during COVID-19

Discrimination is unlawful during a pandemic and at other times.

It also does not matter if you get support from the NDIS or not, you have the same protections against unlawful discrimination under Queensland's laws.

In the next few pages are some examples of situations that might constitute discrimination against a person with a disability during the COVID-19 pandemic. These are examples only and the circumstances of each matter would have to be considered to decide whether there might have been unlawful discrimination under Queensland's laws.

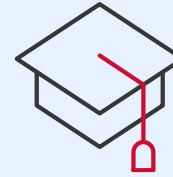


Discrimination against a person with a disability during COVID-19



Denying a person with a disability critical health care

You may be being discriminated against if you are a COVID-19 patient and have been denied critical health on the basis of your disability or 'underlying health conditions' including denying health care on the basis of assumptions or stereotypes.



Denying a person with a disability attendance at school

You may be being discriminated against if you are a school student with a disability and you have been told that you have to stay home instead of attending school, because the school is unwilling to put in reasonable measures to facilitate students with a disability who might be at particular risk of COVID when returning to school, or because the school is unwilling to provide adequate social distancing in the classroom or require staff to wear masks.

Discrimination against a person with a disability during COVID-19



Denying a person with a disability safe access to a venue

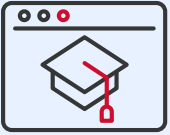
You may be being discriminated against if you are a person with a disability that makes you vulnerable to COVID-19 and you are not safe in, or you cannot get access to, a venue because they have failed to follow health directives (as and when they are applicable). This may include staff not complying with a requirement to wear a mask where they don't have a valid reason not to or failing to enforce vaccination requirements.



Denying a person with a disability assistance to leave home with a support person

You may be being discriminated against if you are unable to obtain essential items because you require assistance to leave your home and utilise public venues, and a support service has introduced a policy that staff are not to enter shops and other public venues in their support role.

Discrimination against a person with a disability during COVID-19



Denying a person with a disability home learning materials that are not accessible

You are being discriminated against if you are a school student with a disability and the school has provided you with home based learning materials in a format that is inaccessible to you because of your particular disability.



Denying a person access to COVID testing

You are being discriminated against if you are a person with a disability and a COVID testing facility has not been set up to help you in a way which accommodates your disability.

Discrimination against a person with a disability during COVID-19



Denying a person with a disability an exemption from mask wearing

You may be being discriminated against if you are a person with a disability and you are unable to wear face masks because of your disability and have obtained a lawful medical exemption to wearing a mask, but a shop (which has mandated mask wearing) refuses to allow you entry.



Denying a person access to a required support person during health care

You may be being discriminated against if you are a person with a disability and you require a support person because of your disability, and a health care practitioner has unreasonably denied a request for you to have a support person present during the examination because of a concern about COVID-19.

Discrimination against a person with a disability during COVID-19



Denying a person with a disability COVID information that is accessible

You may be being discriminated against if you are a person with a disability and your health care practitioner has provided information to you about COVID-19 that is not accessible because of your disability.



What to do if you experience discrimination



What to do if you experience discrimination

If you have been discriminated against because of your disability you may be able to make a complaint to the Queensland Human Rights Commission or the Australian Human Rights Commission.



Your human rights

Under the Queensland Human Rights Act, your human rights include:

- the right to life
- the right to freedom of expression (the right to communication)
- the right to equality and non-discrimination
- the right to health services.

Guardianship laws also protect human rights by protecting your right to make decisions about your health care, unless:

- A guardian has been appointed by a tribunal; or
- You are too ill to make these decisions yourself.

If you feel like you can make a decision about your health care, the people around you should support you to make that decision for yourself.



Your human rights



The right to life

You have the right to life. This means that your life and the lives of other people with disability, have the same value as any other person. This means that you cannot be refused life-saving treatment.



The right to freedom of expression

Freedom of expression means that you have the right to seek, receive and communicate information. This includes making sure that you can seek, receive and communicate information in a way that is accessible to you. This means that when you engage with the government and other public organisations doing things for the government, information should be provided to you in a way you find easy to understand. The government and other public organisations should also take steps to make it easy for you to communicate with them.

Your human rights



The right to equality and non-discrimination

You have a right to equality and to not be discriminated against. This is similar to the protections from discrimination that are listed above, which the Human Rights Act also protects when the Queensland government or other public organisations are interacting with you.



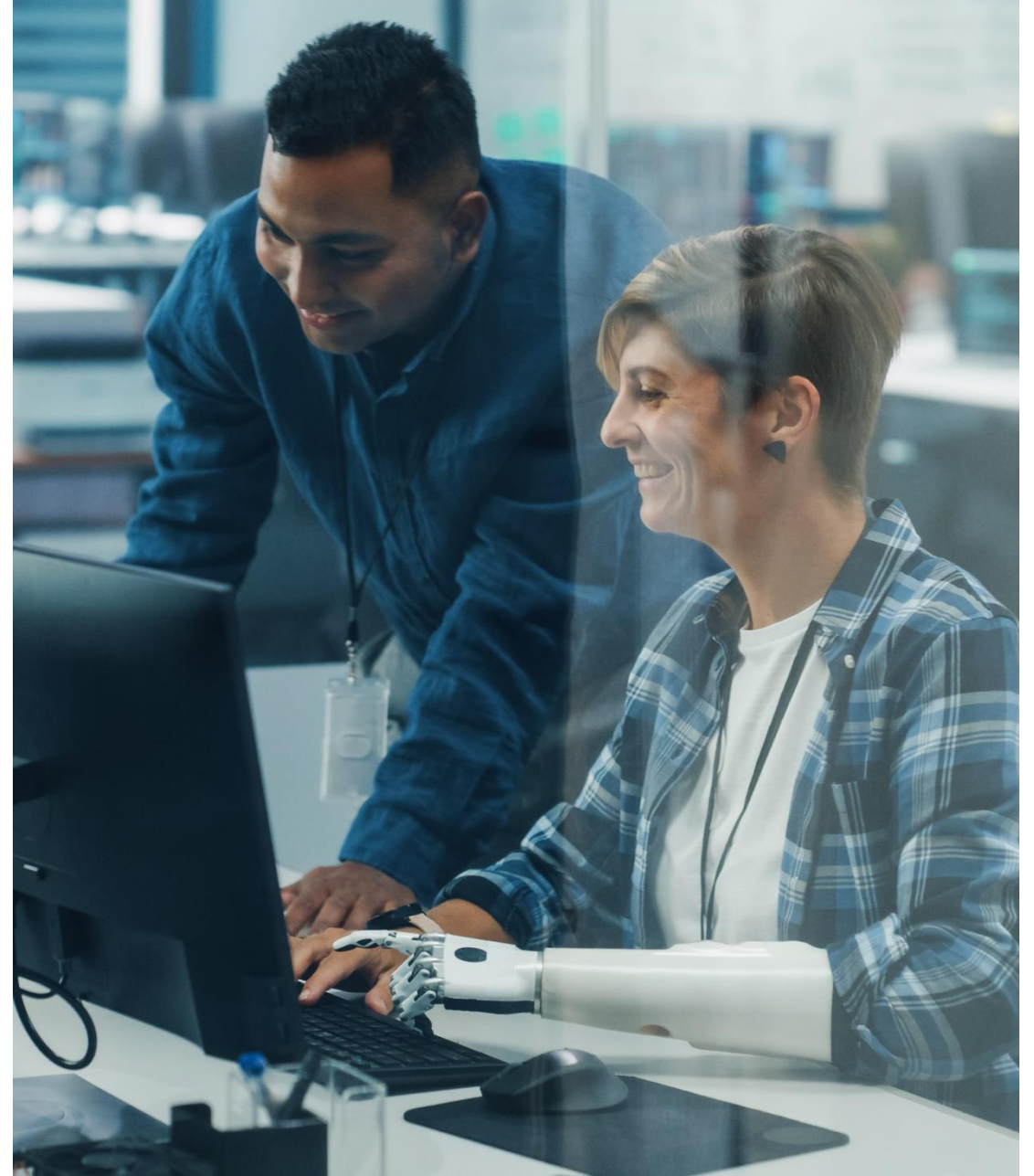
The right to health services

You must not be discriminated against when you are seeking health services. This means that public hospitals and other public health services cannot refuse to care for you on the basis of your disability or for other discriminatory reasons.

Also, you must not be refused emergency medical treatment that is immediately necessary to save your life or prevent you from suffering a serious impairment. This means that if you really need to receive health care in order to save your life or prevent you being seriously harmed, a public hospital or health service must provide this care to you.

Your human rights

If you think the Queensland Government or another public organisation has treated you in a way that does not protect your human rights, you can complain to the Queensland Human Rights Commission. You will need to complain to the organisation that you are complaining about first, to give the organisation an opportunity to resolve your complaint directly. If you wish to make a complaint, you might want to contact an advocate or lawyer to assist you.



Duty of care



Duty of care

A person owes you a duty of care if they provide you with goods or services or you rely on them for help because of special skills they have. This duty can be breached when the person you rely on does something, or does not do something and because of this you suffer some injury loss or damage.

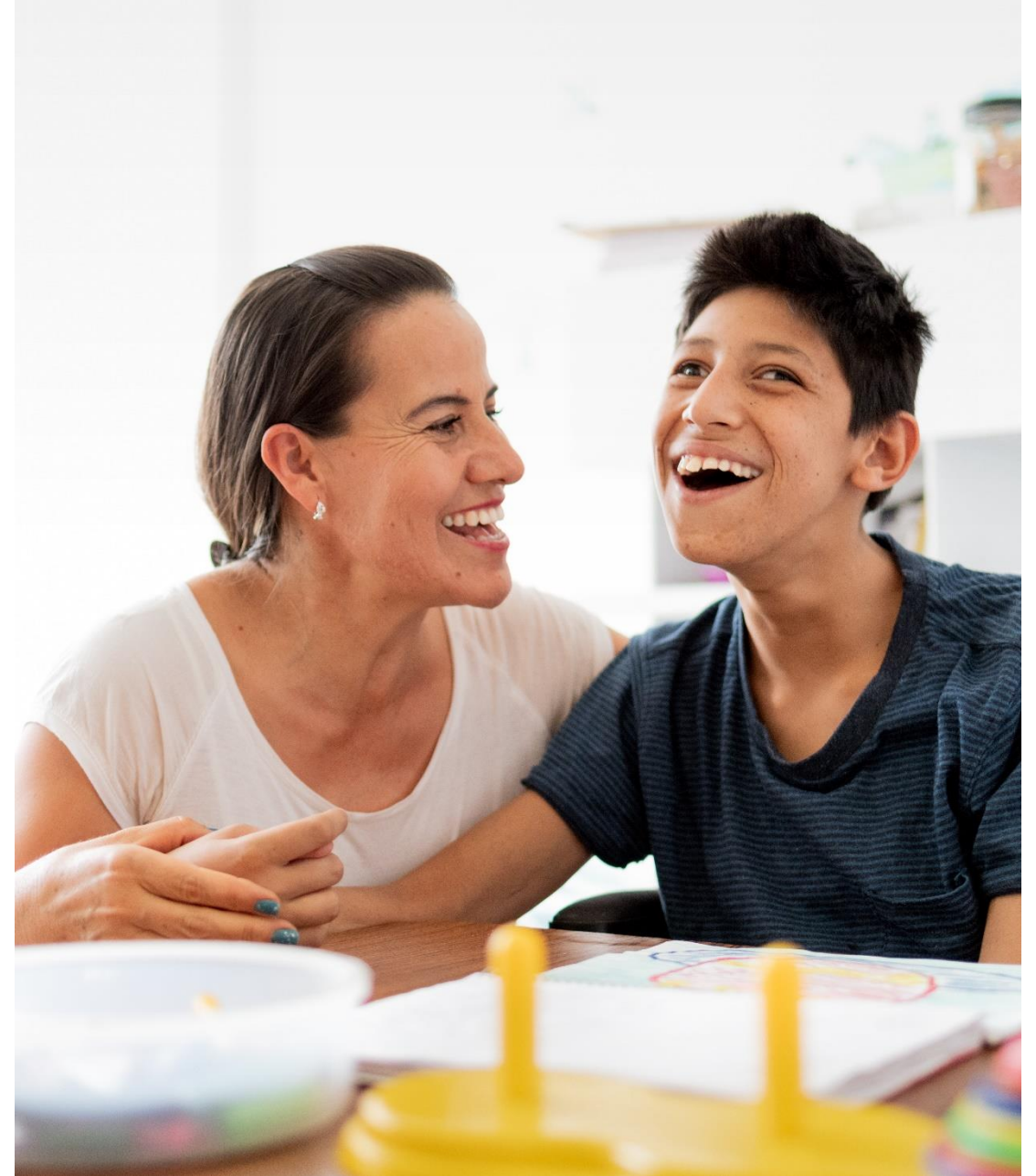
The most common examples of people who owe a duty of care to people with disability are health professionals or support workers who care for people with disability. Lots of other people also owe you a duty of care, including landlords, drivers and people who run businesses that you access.



Duty of care

A person who owes you a duty of care must exercise reasonable care in the course of their interaction with you. The standard of care is what would be expected of a person of similar qualifications and experience.

For example, a support worker for a person with a disability is expected to have more training and skills than an untrained friend or family member and so it is reasonable to expect the support worker to use those skills in caring for you.

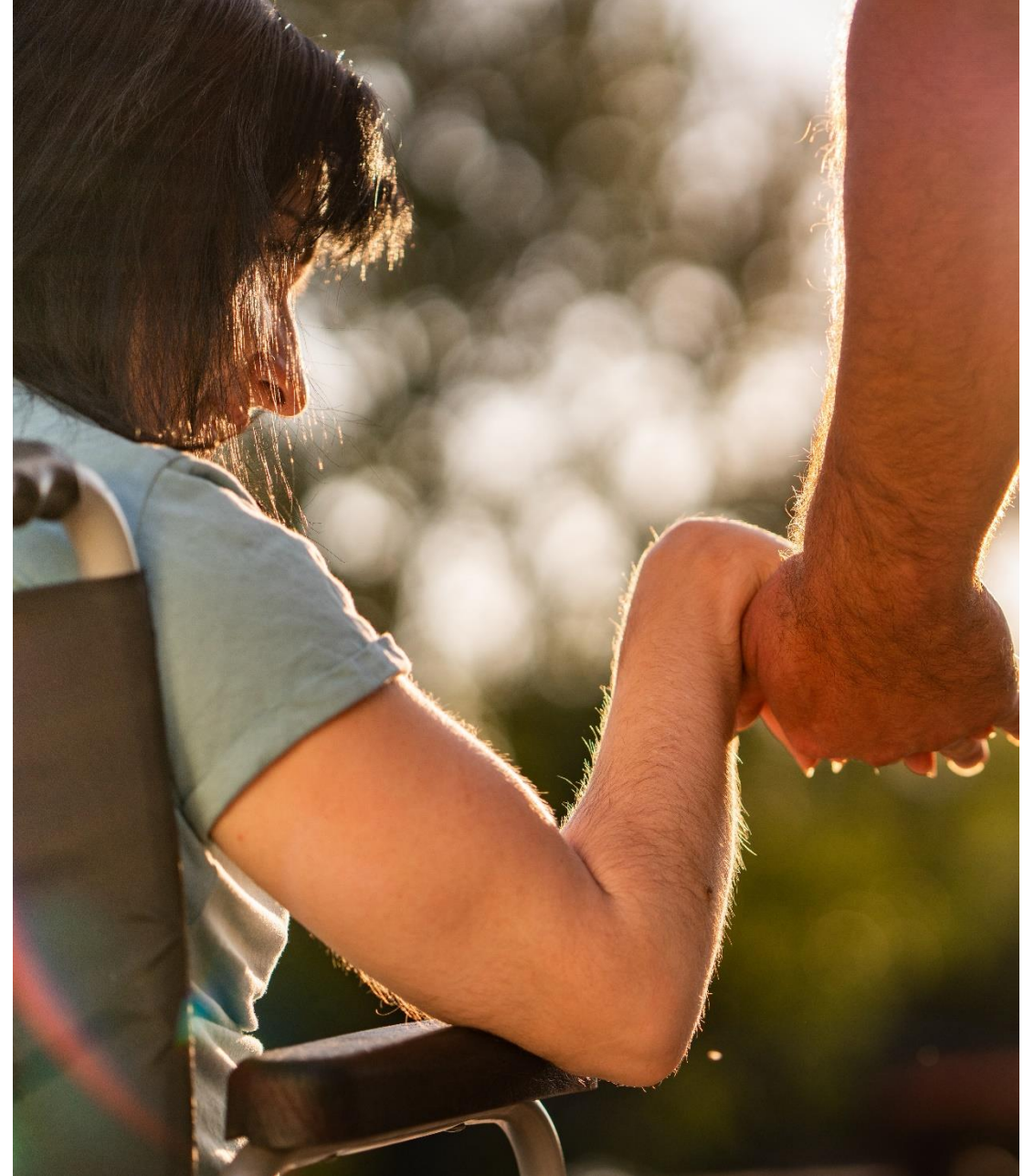


What is negligence?

It is called negligence when someone who owes you a duty of care does not take reasonable care in the course of their interactions with you and this causes you to suffer some injury, loss or damage.

To succeed in a case for negligence, you will need to prove:

- that there was a duty of care owed to you by another person or organisation
- that they did something or failed to do something that, and it was not reasonable for them to do or not do that thing; and
- that you suffered harm as a result.



Compensation for negligence

You may be entitled to monetary compensation where negligence is established.

Generally speaking, some examples of what your support workers and organisations are required to do to fulfil the duty of care they owe you, are:

- deliver care to you that is safe and does not put you at risk of harm
- ensure that you have sufficient support, and notify the NDIS Quality and Safeguards Commission if it is not possible for you to receive the supports you are entitled to under the NDIS
- take reasonable steps to protect you from COVID-19 (such as a care worker not coming to your house when they are sick, or the organisation which provides you with supports making sure their staff wear masks, if required, when caring for you); and

- organisations must have processes in place to ensure that support workers they send to care for you do not put you at risk of harm.

If you think you have been harmed because of someone's negligence, you may wish to find a lawyer and ask for their advice.

If you are presently in danger, you should call the Police on **000** or the disability abuse hotline on **1800 737 732**

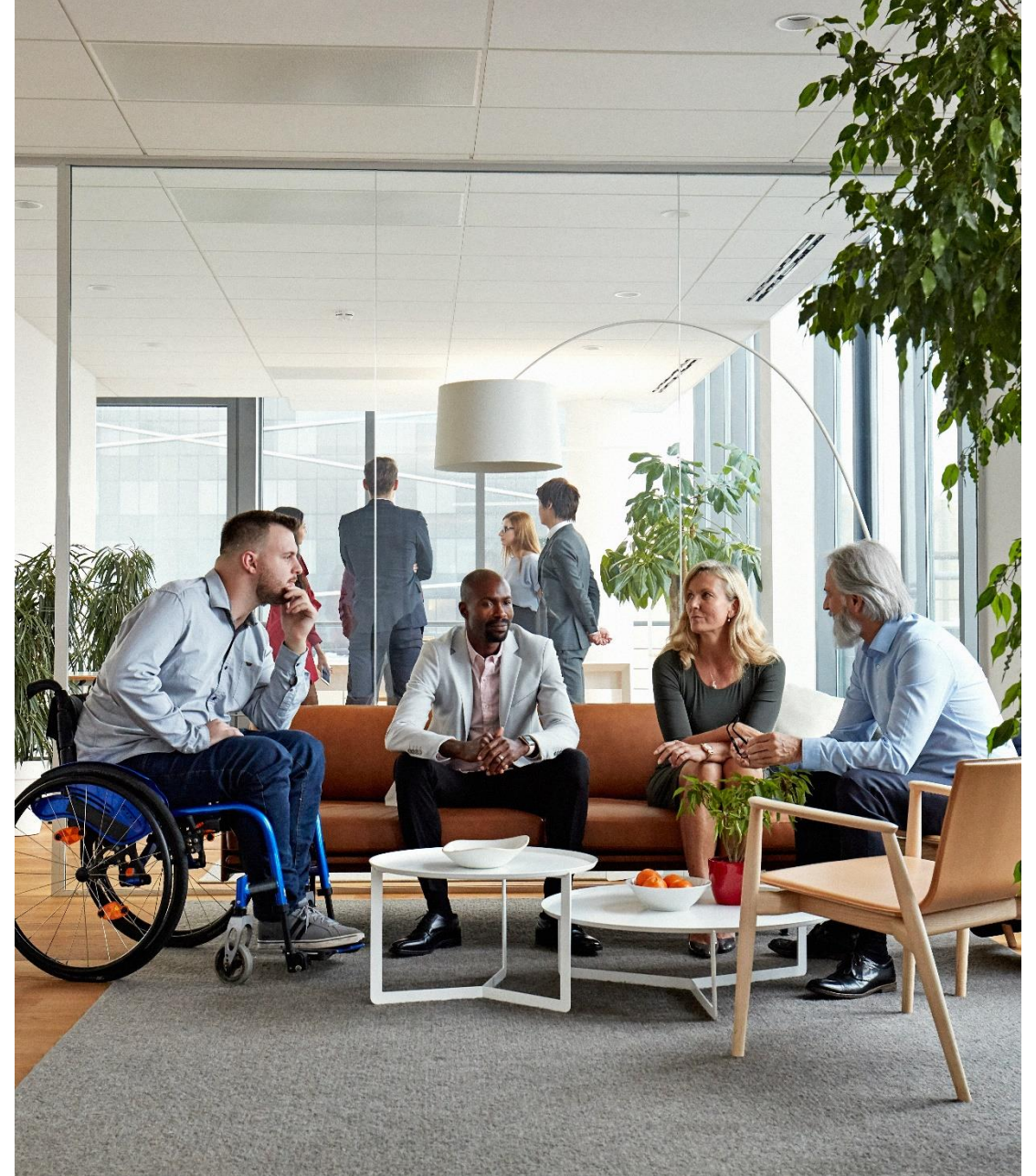
<https://www.jobaccess.gov.au/complaints/hotline>

Criminal law and police

It can be a crime to deprive someone of liberty or to touch and especially hurt someone without their consent.

Criminal acts against a person with a disability during the pandemic might look like the following:

- An accommodation provider has locked you in your room because a staff member has tested positive to COVID-19, but you are not required to isolate in your room under a health direction as a close contact (for example, you do not meet the definition of a "close contact"). Health directions clearly state you should have normal access to shared areas and movement outside the service if not under an order from the government to stay.



Criminal law and police

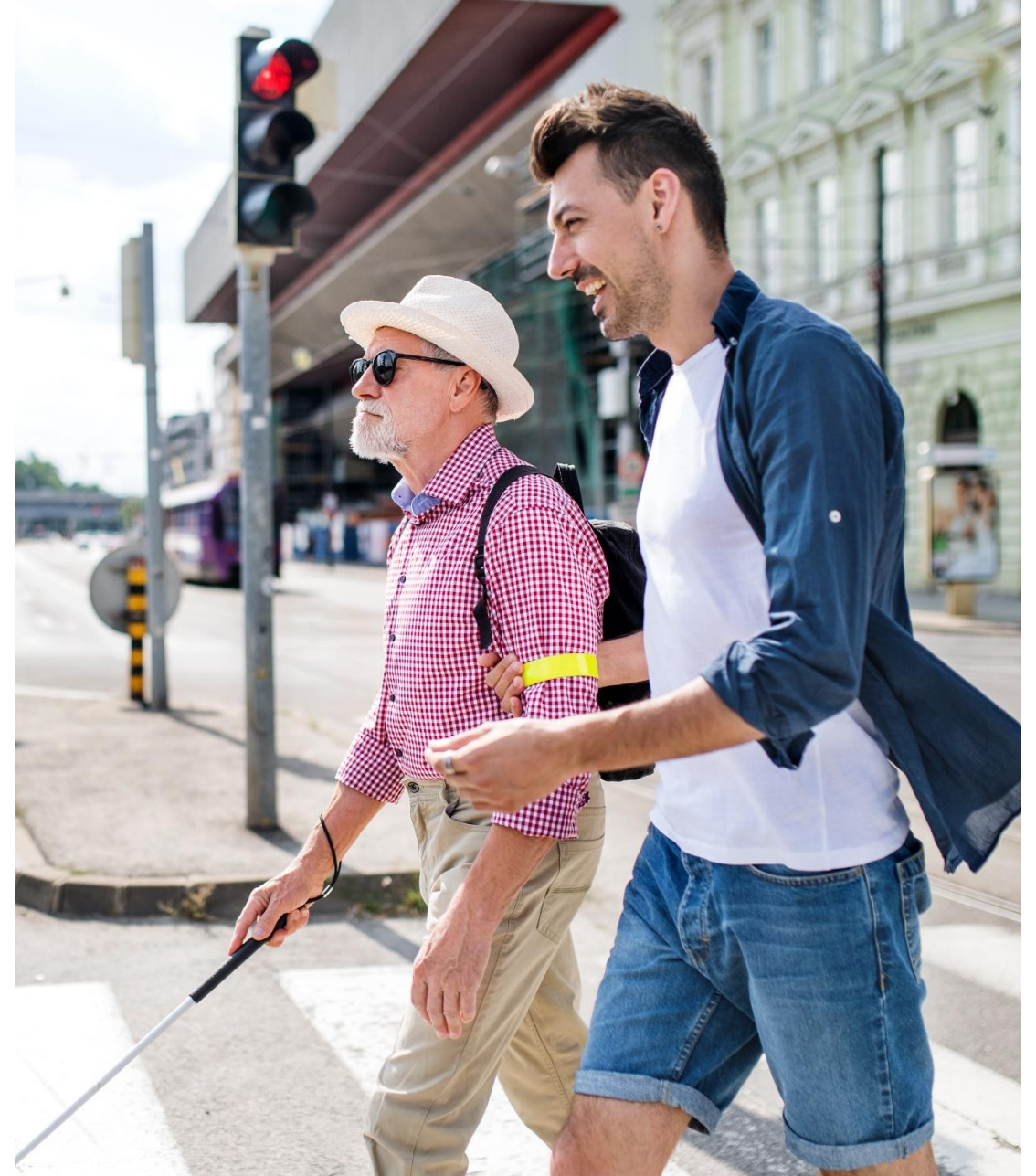
- A support worker has physically placed a mask over someone else's head against their will.
- A service provider or family member has subjected a person to physical violence.

If you experience violence or abuse you can call the police or the Disability Abuse Hotline. It is also important to know that you can break a public health direction to escape unlawful violence.



Public health directions

Public health directions are enforceable including by the Qld Police. If there is someone that is breaching public health directions in a serious way, you could call the police.



Talk to someone about your legal rights

If you want to talk to someone about your legal rights

If you think you have been discriminated against or your human rights have been breached as a result of a Covid-19 related issue, you can talk to a lawyer and seek legal advice. The following organisations might be able to help:

[Basic Rights Queensland](#) – call (07) 3847 5532

[Cairns Community Legal Centre](#) – call (07) 4031 7688

[Caxton Legal Centre](#) – call (07) 3214 6333

[Community Legal Centres Queensland](#) – you can use the Find legal help part of their website or call (07) 3392 0092

[Legal Aid Queensland](#) – call 1300 65 11 88

[QAI](#) – call (07) 3844 4200 or 1300 130 582

[Townsville Community Legal Centre](#) – call (07) 4721 5511

You can also find a private lawyer by using the Queensland Law Society [website](#).

