

Disaster events and disability discrimination



How might disability discrimination occur during a natural disaster?

About 1 in 5 people in Queensland have disability.¹ People living with disability are often more seriously affected by natural disasters and less able to recover from them than other members of the community.

During a natural disaster many people with disability may experience:

- physical barriers impacting their ability to escape the disaster or return to their property afterwards
- difficulty receiving or understanding information and directions about when and how to evacuate and how to get help
- other barriers to accessing essential services

These barriers can amount to discrimination.



Am I protected by anti-discrimination law?

If you are a person with disability and you believe you have experienced discrimination because of your disability, you may be protected by anti-discrimination law.

What is discrimination?

Direct discrimination



This is when you are treated less favourably than other people because of your disability. The treatment is different from the treatment of other people without your disability. This can include a failure to make reasonable adjustments for you.

For example, a person with disability being denied entry to an evacuation centre during an emergency because they rely on the use of an assistance dog.

Indirect discrimination



This is when you are treated the same as everyone else, but that same treatment has an unfair impact because of your disability. This treatment can be less obvious and occurs when there is an unreasonable requirement that you have difficulty complying with, because of your disability, while others without your disability can comply.

For example, a person who is unable to access their home after a natural disaster because the lift is inaccessible, but still has to pay rent.

When is discrimination allowed under the law?

Australian anti-discrimination laws allow exemptions which make some discrimination **not unlawful** in certain circumstances. A common exemption people use is 'unjustifiable hardship' where the person or organisation accused of discrimination argues that to accommodate a person's disability would cause them unjustifiable hardship.

Whether this is the case will depend on a number of factors, including:

- the adjustment that might need to be made to accommodate the person's disability
- any disruption that the adjustment might cause the person or organisation
- the cost of providing that adjustment
- the financial circumstances of the person or organisation
- the benefit for the person with disability and others from the adjustment

Other exemptions include the need to comply with other laws, including workplace health and safety laws and public health requirements.

Can I make a complaint about disability discrimination which occurred during, or in connection with, a natural disaster event?

If you were treated in a discriminatory way because of your disability during, or in connection with, a natural disaster event in Queensland, you may be able to make a complaint about disability discrimination to either the Australian Human Rights Commission (AHRC) or the Queensland Human Rights Commission (QHRC).

There are time limits for making a complaint, you have:

- 24 months to complain to the AHRC
- 12 months to complain to the QHRC

If you miss these deadlines for making a complaint, it may not be accepted. You may not be able to complain to both the AHRC and QHRC. **You should get legal advice before making a complaint.**



What happens when I make a disability discrimination complaint?

If your complaint is accepted by the AHRC or the QHRC, it will be referred for a confidential conciliation process. That means you will meet with the other party to discuss your complaint and try to resolve it. If it is resolved, you will enter a settlement agreement, which may include any terms you and the other party agree to.

Outcomes can include:

- a public or private apology
- an order to stop or to do a specific thing
- on rare occasions, compensation

If your complaint is not resolved at conciliation, you can ask for it to be referred to a court or tribunal for a hearing. There are also time limits that apply to referring your complaint to a court or tribunal. You should get legal advice as soon as possible after a conciliation to understand your options and these time limits.

Consider making your own Inclusive Emergency Response Plan

An Inclusive Emergency Response Plan (IERP) is tailored to the individual support needs of a person with disability.

The plan should include information such as your:

- personal care needs
- day-to-day supports
- needs in an evacuation
- care and management of assistance animals

It should also include how you will manage the loss of:

- essential services such as, water, power, transport and food
- any disability and personal care supports you rely on daily



An IERP will help you and your support network to be prepared for emergencies and respond and recover from them faster. Your plan should be reviewed and updated regularly and shared with your support network.

See the Queenslanders with Disability Network website for information about disaster and emergency planning: <https://qdn.org.au/our-advocacy/disaster-and-emergency-planning/>



Free legal advice about disability discrimination in a natural disaster

QAI is offering free legal advice to people with disability who have experienced discrimination as a result of a natural disaster.

You can call QAI on [1300 130 582](tel:1300130582) to request an appointment.

This factsheet has been prepared by Queensland Advocacy for Inclusion (QAI), an independent legal and advocacy organisation for people with disability in Queensland (www.qai.org.au) using funding provided by the Commonwealth Government, via the Queensland Government, as part of its flood legal assistance program. This publication is for general information only. It must not be relied on as legal advice. You must seek legal advice about your own particular circumstances.

Endnote

1 Australian Bureau of Statistics, [2018 Survey of Disability, Ageing and Carers](#).