




**Community  
Legal Centres  
Queensland**

# Disaster Management Law 101

CLCQ webinar series

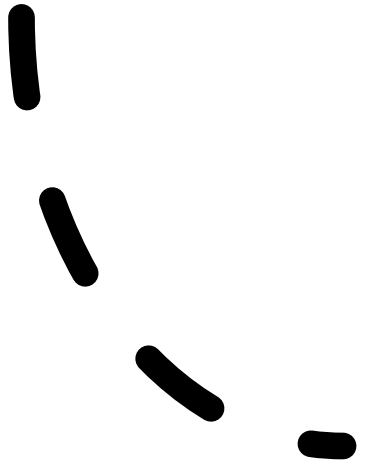
25 July 2023



Community Legal Centres Queensland pay our deepest respects to Aboriginal and Torres Strait Islander peoples as the traditional custodians of the land in Australia, and recognise their continuing connection to land, water and culture.

We pay respect to Elders past, present and emerging.

We acknowledge the stories, traditions and living cultures of First Nations peoples and commit to fostering a culture of learning and working together in the spirit of reconciliation and access to justice.



# General disclaimer

The information in this presentation is general in nature and is not a substitute for legal advice.

The information in this presentation reflects the laws today, 25 July 2023.

Laws change regularly.

This information might not be relevant or apply at a later date.

*This webinar is provided under the Disaster Resilience and Capacity Building Project led by Community Legal Centres Queensland, and jointly funded by Queensland Reconstruction Authority and the Commonwealth government.*



# Session overview



Queensland  
**Disaster  
Management  
Arrangements  
(QDMA)**



Foreshadowed  
reforms to QDMA



Concept of **shared  
responsibility**



**Disaster justice** and  
human rights

# Queensland geography

- Queensland is more than twice as likely to face a disaster than any other Australian state.
- Four climatic zones: tropical, subtropical, hot arid, warm temperate.
- East and West of the Great Dividing Range are 'high energy' and 'low energy' landscapes. North has coastal plains and salt flats, and a rugged upland region in the North-West.
- **22% of continental Australia - 1,730,648 square km and 6,973 km coastline**



## PREVENTION

Key activities  
Reporting, Assessing,  
Planning, Training &  
Exercising

## PREPAREDNESS

Key activities  
Reviewing, Planning,  
Training, Exercising, Cabinet  
Submission & Community  
Awareness

## RESPONSE

Key activities  
Responding, Recovering,  
Meetings & Reporting

## RECOVERY

Key activities  
Post Event Series  
i.e. Meetings  
Assurance Activities  
Review & Assess

## Seven most significant natural hazards for QLD

### Joint highest priority

- tropical cyclones
- riverine flooding

### Second highest priority

- severe weather events

### Equal third highest priority

- coastal inundation
- heatwaves

### Fourth highest priority

- bushfire

### Fifth highest priority

- earthquakes.



Diagram from State Disaster Management Plan p21,  
Hazard assessment from Queensland State Natural  
Hazard Risk Assessment 2017 p 88

# Main objects – Section 3

(1) To help communities:

- i. Mitigate the potential adverse effects of an event
- ii. Prepare for managing the effects of an event
- iii. Effectively respond to, and recover from, a disaster or an emergency situation

(2) To provide effective disaster management for the State.



Queensland

## Disaster Management Act 2003

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# How are these objects achieved? Section 4

- Establish disaster management groups at local, district and State levels
- Prepare disaster management plans and guidelines
- Declare a disaster situation
- Establish the Office of the Inspector-General Emergency Management (IGEM) <https://www.igem.qld.gov.au/>
- Ensure communities receive information about preparing for, responding to and recovering from disasters.





# Key definitions: Disaster - Section 13

## Meaning of *disaster*

- (1) A *disaster* is a serious disruption in a community, caused by the impact of an event, that requires a significant coordinated response by the State and other entities to help the community recover from the disruption.
- (2) In this section—  
*serious disruption* means—
  - (a) loss of human life, or illness or injury to humans; or
  - (b) widespread or severe property loss or damage; or
  - (c) widespread or severe damage to the environment.



# Event - Section 16

## Meaning of *event*

- (1) An *event* means any of the following—
  - (a) a cyclone, earthquake, flood, storm, storm tide, tornado, tsunami, volcanic eruption or other natural happening;
  - (b) an explosion or fire, a chemical, fuel or oil spill, or a gas leak;
  - (c) an infestation, plague or epidemic;  
*Example of an epidemic—*  
a prevalence of foot-and-mouth disease
  - (d) a failure of, or disruption to, an essential service or infrastructure;
  - (e) an attack against the State;
  - (f) another event similar to an event mentioned in paragraphs (a) to (e).
- (2) An *event* may be natural or caused by human acts or omissions.



# Disaster or incident?

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An incident has some level of disruption, but it will not affect a community's ability to function.

Disasters are far more complex, cause serious disruption in a community, and require a coordinated effort across various agencies.



# Queensland has additional laws authorising emergency declarations and powers, including:



*Public Safety Preservation Act 1986 (Qld)*



*Police Powers and Responsibilities Act 2000 (Qld)*



*Police Service Administration Act 1990 (Qld)*



*Public Health Act 2005 (Qld)*



*Fire and Emergency Services Act 1990 (Qld)*



*Biosecurity Act 2014 (Qld)*



*Environmental Protection Act 1994 (Qld)*

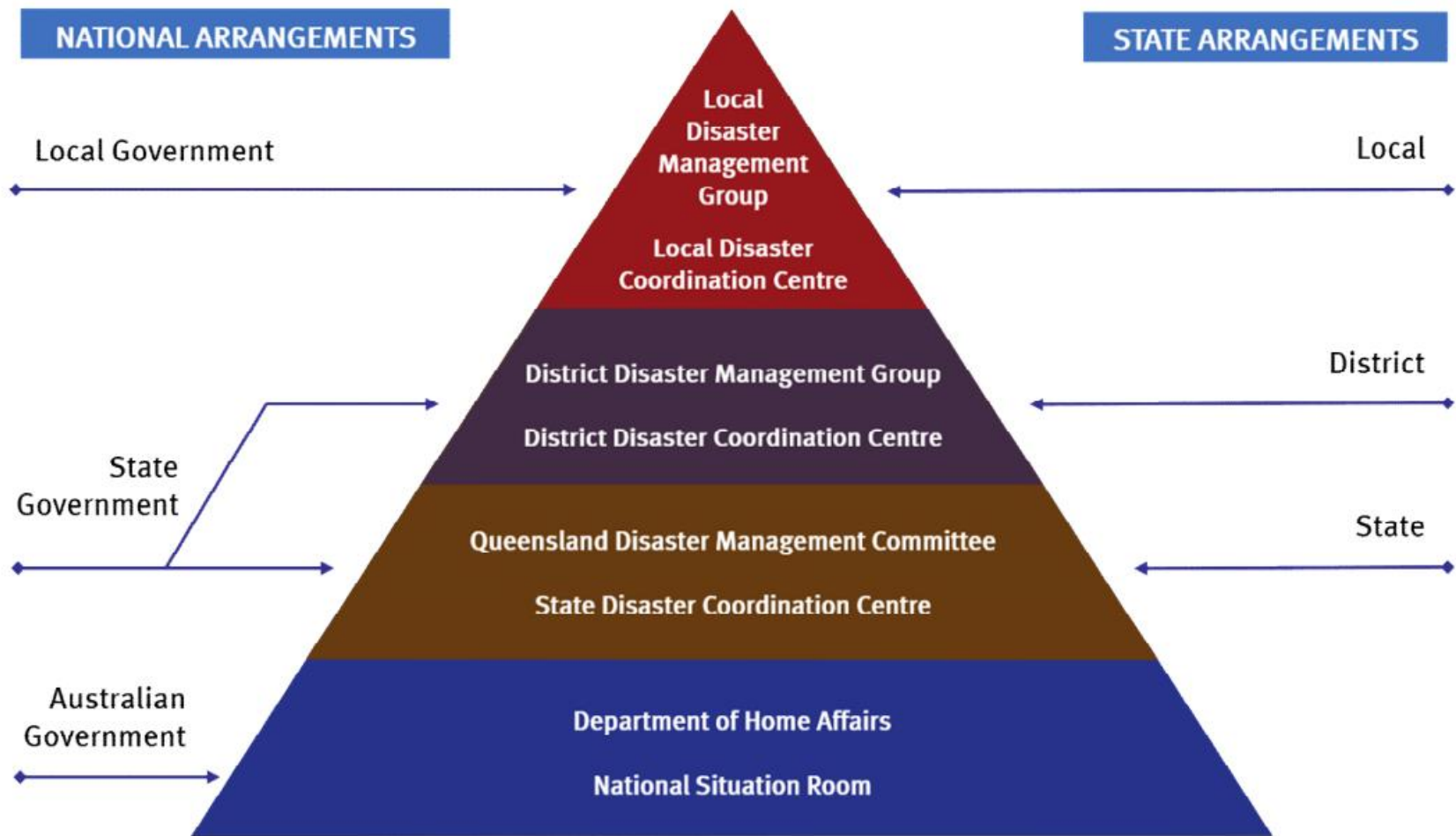
*National Emergency Declaration Act 2020 (Cth)*



# Section 4A - Guiding principles

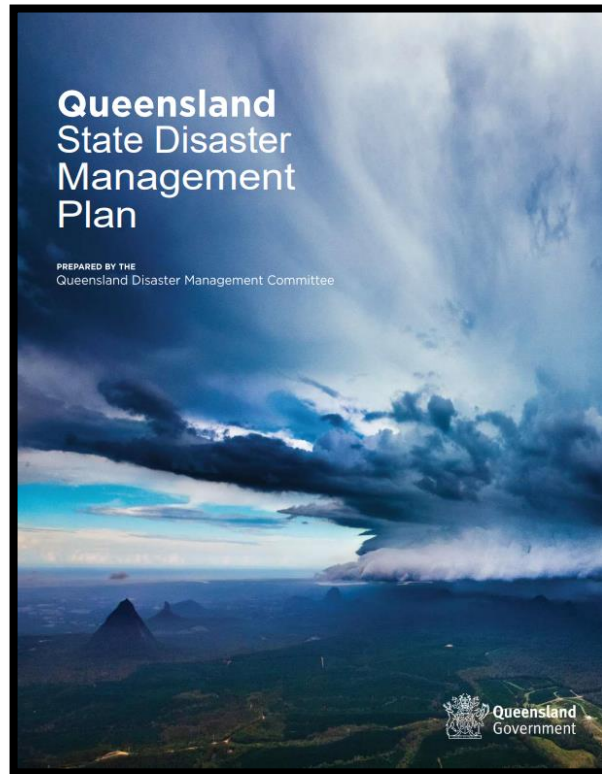
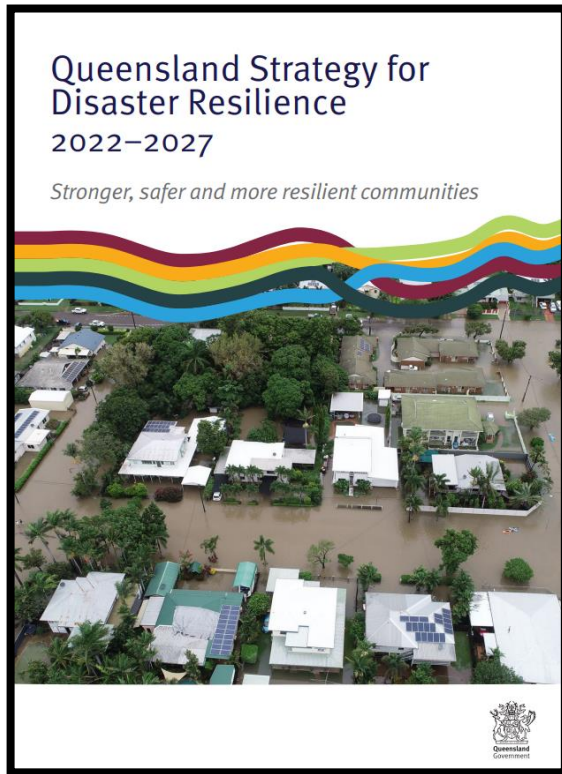
- Disaster Management should be planned across four phases – **prevention, preparedness, response and recovery (PPRR)**
- **All events** should be managed in accordance with:
  - Strategic Policy Statement (Framework)
  - State Disaster Management Plan
  - Disaster Management Guidelines
- **Local governments** should primarily be responsible for managing events in their local government area
- District groups and the State group should provide local governments with **appropriate resources and support** to help the local government carry out disaster operations.





Queensland Disaster Management Structure  
 (IGEM Review of Queensland's Disaster  
 Management Arrangements (QDMA) p 51.

# Disaster Management 'Doctrine'



# Disaster declarations (ss 64-73)

- ✓ District disaster coordinator (i.e., police) for a district or part of a district, with approval of the Minister
- ✓ Minister and Premier for a state disaster
- X Local governments

Declaration in force 14 days unless the disaster ends sooner or is extended by regulation.

- Minister and Premier have power to extend without regulation.
- Declaration provides additional powers to nominated officers.



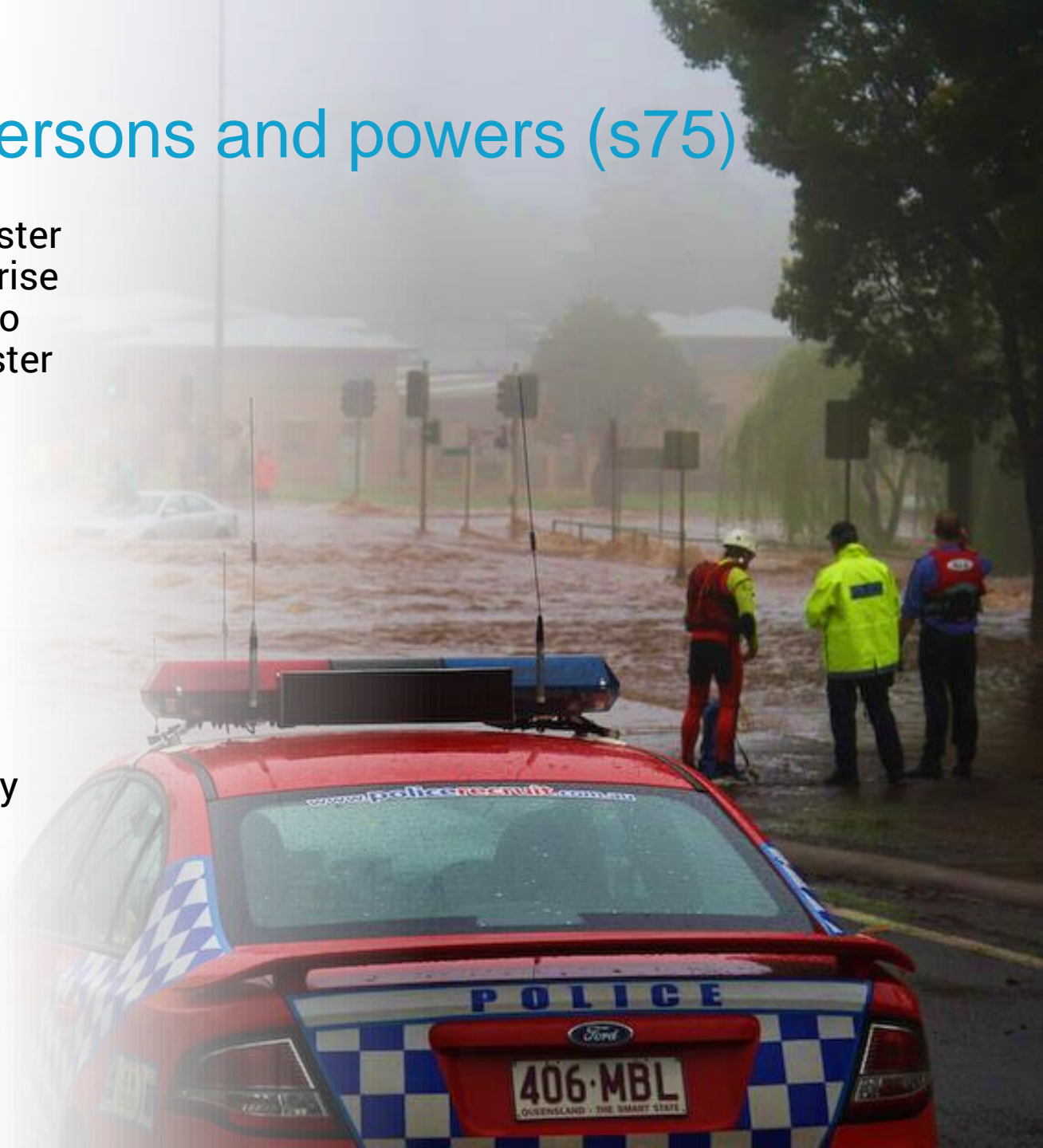


# Authorising persons and powers (s75)

Premier or district disaster coordinator may authorise the following persons to exercise declared disaster powers:

- Ambulance officer
- Fire officer
- Health officer
- Other persons with necessary expertise/ experience

Police are automatically authorised to exercise disaster powers.



# General powers (s77)

General disaster powers are extensive. They include:

- Controlling the movement of persons, animals, vehicles in or around the declared area
- Giving directions to regulate the movement of persons, animals, vehicles
- Evacuating persons or animals from the declared area
- Entering a place (without a warrant or consent of the occupier)
- Taking equipment into the declared area
- Containing an animal or substance
- Removing or destroying an animal, vegetation, substance
- Dismantling, demolishing or destroying a vehicle, building, structure
- Using, closing off, blocking a facility for drainage
- Disconnecting fuel, gas, electricity or water supply
- Disconnecting, shutting down any motor or equipment
- Road closures



# Powers to give direction about property (s78)

- Power to direct a property owner (by notice in an approved form) to put the property under the control, or at the disposal, of a person stated in the notice.
- If the property is residential premises or business premises, written approval from the district disaster coordinator is required.
- It is an offence to fail to comply with the direction unless the person has a reasonable excuse.

## Rescue powers (ss110-112)

- Premier or district disaster coordinator may authorise a person with necessary expertise or experience to exercise rescue powers.
- This includes the power to enter a place, use reasonable force, exercise general disaster powers.



# Protection from liability (s144) & WorkCover (s142)

- Protection from civil liability – the State, Councils, Minister, or officials are released for acts or omissions made under the Act, in good faith without reckless disregard for the possible occurrence of personal injury, or loss or damage to property from which liability would arise.
- This does not stop a person further limiting the person's liability by relying on a provision of the *Civil Liability Act 2003 (Qld)*.
- ✓ WorkCover insurance for people required to give help under general disaster powers or rescue powers.



# Part 10 Offence provisions (ss113-117)

**Authorised person** means a:

- (a) District disaster coordinator (i.e., police officer)
- (b) Declared disaster officer
- (c) Person authorised to exercise rescue powers

Offences:

- Impersonation of authorised person
- Obstruction of authorised person (unless reasonable excuse)
- Failure to comply with direction (unless reasonable excuse)
- Failure to help particular persons (unless reasonable excuse)

Maximum penalty for each offence – 100 penalty units (\$14,375)

Proceedings must start within the later of:

- 1 year after commission of the offence or
- 6 months after the offence comes to the complainant's knowledge, but within 2 years after commission of the offence.



# Compensation (ss119-120)

A person who suffers loss or damage because of the exercise of authorised disaster powers is entitled to just and reasonable compensation.

Compensation is not payable if:

- The amount for loss/damage is recoverable under a policy of insurance
- Conduct of the person contributed to the loss or damage
- Loss/damage would have happened in any event irrespective of the exercise of the power.



# Compensation process – ss121-124

- Apply to the Chief Executive in writing **within 90 days** after suffering loss and damage as **a result of the exercise of general disaster or rescue powers**.
- Application must state:
  - Details of the person's loss and damage
  - The amount of compensation claimed and the grounds for the amount claimed.
  - Any other relevant information
- Out of time application may be accepted if 'reasonable in all circumstances'
- Chief Executive must consider and decide the application within 60 days.
- Failure to decide equates to a decision to refuse to pay compensation.
- Chief Executive must provide written reasons for the decision.
- Reviewable decision – can apply to QCAT for a review of the decision.



# Case law

*Barns & Anor v Commissioner Queensland Fire and Emergency Services* [2019] QCAT 2

Publicans from the Murphy's Creek Tavern in the Lockyer Valley sought administrative review of an earlier decision to deny their claim for s121 compensation for costs (\$549,000) incurred from running the emergency evacuation and recovery centre.

Tribunal upheld the earlier decision not to accept the application.

Application was out of time. Tribunal also determined that it was the local community itself that established the recovery operation, not **as a result of general disaster or rescue powers** exercised by the District Disaster Management Group.





# “Shared responsibility”

United Nations Office of Disaster Risk Reduction *Sendai Framework for Disaster Risk Reduction (2015-2030)*

Australian National Strategy for Disaster Resilience:

“Political leaders, governments, business and community leaders, and the not-for-profit sector all adopt increased or improved emergency management and advisory roles, and contribute to achieving integrated and coordinated disaster resilience. In turn communities, individuals and households take greater responsibility for their own safety and act on information, advice and other cues provided before, during and after a disaster.”


Criticisms:

- Highly susceptible to politicisation
- A neoliberal construct; places responsibility on social actors for their own outcomes



# Reform is underway to 'modernise' Queensland Disaster Management System

- July 2021 Qld government commissions KPMG to review QFES
- Nov 2021 KPMG final report, 19 recommendations including:
  - SES and Disaster Management functions be transferred to Queensland Police Service.
  - Commissioner of Police to become Chief Executive for the purposes of the *Disaster Management Act 2003*.
- Oct 2022 Qld government accepts all but one of KPMG report recommendations
- Dec 2022 Qld government requests Inspector-General of Emergency Management (IGEM) to review QDMA
- April 2023 IGEM report endorses the transition to Qld Police



Home / Initiatives / Disaster and Emergency Services Reform

# Disaster and Emergency Services Reform

The Queensland Government is delivering one of the most significant bodies of change to Queensland's disaster and emergency management system, ensuring we are best placed to continue delivering exceptional services to all Queenslanders.

Work is underway ahead of the 2024 natural disaster season, with the goal to modernise service delivery arrangements, simplify operational structures and focus resources.

As part of the reforms, the Queensland Police Service (QPS) will be expanded to include disaster management functions, marine rescue activities in the soon-to-be-established Marine Rescue Queensland (MRQ), and the State Emergency Service (SES).

Want to know more? Visit the [Disaster and Emergency Management Reform site](#) or contact the [Reform Implementation Taskforce](#).

# Disaster Justice

“Disasters expose existing ‘everyday’ injustices, and disaster management, especially in the Preparation and Recovery phases **can contribute to either the perpetuation or minimisation of existing injustices, or the creation of new ones.**”

Lukasiewicz and Baldwin (Eds)  
*Natural Hazards and Disaster Justice: Challenges for Australia and Its Neighbours*,  
2020, p. 11



# All disaster management stages: PPRR

Examples of disaster justice considerations across each phase of disaster management:

**PREVENTION:** Land use planning decisions that zone public facilities (e.g., prisons, detention, inpatient mental health centres) in flood-prone areas.

**PREPARATION:** Evacuation procedures fail to account for accessibility requirements for people with physical disabilities.

**RESPONSE:** Local recovery centres discriminate against certain cohorts of people.

**RECOVERY:** Eligibility criteria for disaster recovery schemes, and emergency relief payments; how these schemes are administered, who misses out.



# Human rights as a vehicle for seeking disaster justice

## *Human Rights Act 2019 (Qld)*

- Right to recognition and equality before the law (s15)
- Right to life (s16)
- Right to freedom of movement (s19)
- Property rights (s24)
- Right to protection of families and children (s26)
- Cultural rights - generally (s27)
- Cultural rights - Aboriginal and Torres Strait Islander peoples (s28)

A disaster for human rights? Bill Mitchell, December 2020

<https://www.qsproctor.com.au/2020/12/a-disaster-for-human-rights/>

Normative international standards to guide states in ensuring disaster management is human rights-respecting and leaves no one behind.



# Disaster and Climate Justice Exchange

LAST WEDNESDAY  
OF THE MONTH  
**2:00-3:00PM**  
VIA ZOOM



Community  
Legal Centres  
Queensland

An informal, monthly drop-in space for any Queensland community legal centre staff to discuss climate change and extreme weather events, and how it is impacting you and your work.

Relevant sector updates and climate action news will also be provided.

More information: [monica@communitylegalqld.org.au](mailto:monica@communitylegalqld.org.au)



**Community  
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Queensland**

**Thank you**

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