

Have you been affected by Cyclone Debbie?

April 2017



After Tropical Cyclone Debbie - how Maurice Blackburn can help you and your family

Maurice Blackburn has the largest plaintiff insurance practice in Australia, with 12 offices in Queensland. Many union members know the firm for its longstanding commitment to assisting union members and their loved ones.

As people continue the recovery effort after Cyclone Debbie, many face upheaval and hardship as they assess the damage and try to get their lives back on track. Maurice Blackburn want to make sure people are aware of their legal rights when it comes to:

- 1 Your job
- 2 Making an insurance claim;
- 3 Exposure to asbestos in the clean up.

Job affected by Tropical Cyclone Debbie? Know your employment rights

The recent tropical cyclone has, and will continue to, affect the jobs of many members in FNQ. Workers may be faced with redundancy, dismissal and pay issues as employers deal with the impacts. If your employment is affected by Tropical Cyclone Debbie, it is important you know your legal rights.

The *Fair Work Act 2009 (Cth)* (FW Act) sets out your minimum statutory entitlements. You may have additional entitlements if your employment is covered by an award or enterprise agreement or if you have a written contract of employment.

My employer has been forced to close. Can I be stood down or forced to take annual leave?

The FW Act allows employers to stand down employees without pay where they cannot usefully be employed because:

- the employer's machinery or equipment has broken down and the employer is not, on reasonable grounds, responsible for the break-down, or;
- work has stopped for a reason outside the employer's control.

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“many face upheaval and hardship as they assess the damage and try to get their lives back on track.”



Your employer may allow you to take paid or unpaid leave instead of being stood down.

There may be additional circumstances under an enterprise agreement or contract in which an employer can stand down employees, or additional rules may apply.

Make sure you check your contract of employment and/or enterprise agreement for any provisions dealing with stand down.

The FW Act allows an employer to require employees to take annual leave. The requirement must be reasonable.

An award or an enterprise agreement may impose additional obligations on your employer. For example, it may require your employer to give you notice before asking you to take annual leave.

An employer must not unreasonably refuse a request by an employee to take annual leave.

I couldn't get to work during Tropical Cyclone Debbie. Am I entitled to take annual or natural disaster leave?

There is no general entitlement to 'natural disaster leave'. But some industrial instruments contain provisions allowing employees to take special leave during natural disasters such as tropical cyclones.

Not all employees have access to this leave. Check your contract of employment, award and collective agreement to see if this applies to you.

An employer may allow employees to take annual leave or long service leave at its discretion. An employer must not unreasonably refuse your annual leave request.

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My family has been affected by Tropical Cyclone Debbie. Can I take personal or carers leave?

Most employees are entitled to take paid personal leave to provide care or support to a member of their immediate family, or a member of their household, who requires care or support because of an unexpected emergency. An 'unexpected emergency' includes a natural disaster such as the tropical cyclone crisis.

Personal leave accrues at 10 days per year and is cumulative. If you've exhausted your entitlement to personal leave, or you are a casual employee, you may be eligible to take a further two days of unpaid leave for each unexpected emergency.

Employers may ask employees to provide evidence of the care or support required. You must comply with a request to provide reasonable evidence.

A member of my family is seriously ill because of Tropical Cyclone Debbie. Am I entitled to take compassionate leave?

An employee is entitled to take two days paid compassionate leave for each occasion when a member of the employee's household or immediate family dies, or has an injury or illness that poses a serious threat to his or her life. Compassionate leave can be taken to spend time with the ill or injured person. It may also be taken after their death.

Casual employees are entitled to take unpaid compassionate leave.

If you are covered by an award or a collective agreement, or have a written contract of employment, you may have a more beneficial entitlement.

I'm volunteering during Tropical Cyclone Debbie. Am I entitled to Community Service Leave?

Employees covered by the FW Act have an entitlement to unpaid community service leave when they are engaged in voluntary emergency management activity, including responding to a natural disaster.

Community service leave covers absences from work for reasonable travelling time, participation in the emergency management activity and reasonable rest time immediately after the activity.

To be eligible for community service leave you must be a member (or have a member-like association with) a

recognised emergency management body such as the SES. It is not enough to simply volunteer to assist.

If you take community service leave, you must notify your employer as soon as possible. This can be after the leave has started.

I couldn't make it to work during Tropical Cyclone Debbie. What happens if I lose my job?

Your employer must have a valid reason to terminate your employment. Ordinarily, failure to attend work without notice and/or excessive absenteeism forms a valid reason. However, it may not be a valid reason where you were unable to attend work due to a natural disaster.

Employees should contact their employer as soon as possible and advise them of the reason for their absence, and give a realistic estimate of when they will be able to return to work.

If your employment is terminated because you could not attend work due to Tropical Cyclone Debbie, you may be able to bring an unfair dismissal claim. Unfair dismissal claims must be brought within 21 days of the date of termination but can be extended in exceptional circumstances. **Note: you should bring your claim as soon as possible.**

I'm going to lose my job because of Tropical Cyclone Debbie. What are my rights?

Following crises such as tropical cyclones, employers whose businesses are affected may be forced to retrench employees. This is called redundancy.

For the purposes of an unfair dismissal application, a redundancy must be genuine. A redundancy will be genuine if:

- 1 your employer no longer needs your job to be done by anyone due to operational reasons; and
- 2 your employer has complied with any consultation provisions under an industrial instrument; and
- 3 the employer has considered whether it would have been reasonable to redeploy the employee within its enterprise or an associated enterprise.

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Not all dismissals that arise from the tropical cyclone crisis will be genuine redundancies. If you believe that your employment has been terminated without a valid reason, you may be able to seek a remedy for unfair dismissal. Unfair dismissal claims must be brought within 21 days of the date of termination, unless there are exceptional circumstances.

Under the FW Act you are eligible for redundancy pay if you have been employed for at least 12 months and your job is made redundant. There are some exceptions. Under the Act, only your service from 1 January 2010 is counted for the purpose of calculating your entitlement.

However, if you had an entitlement to redundancy pay in an industrial instrument before 1 January 2010, some or all of your service may be counted.



“...if you lose your job, your employer must still pay your employment entitlements...”

In addition, you will be entitled to be paid in lieu of notice of termination, and to be paid your statutory entitlements, including accrued annual leave.

My employer can't reopen. What happens to my employment entitlements?

If your employer's business closes because of Tropical Cyclone Debbie and you lose your job, your employer must still pay your employment entitlements, including redundancy (if applicable), notice of termination and your accrued entitlements such as annual leave.

Your employer must pay these amounts to you immediately after your employment is terminated. If your employer cannot pay your entitlements, you may be eligible for assistance through the Commonwealth Government General Employee Entitlements and Redundancy Scheme (GEERS). More information on GEERS is available at www.deewr.gov.au/geers.

Your insurance rights

How do I submit a claim?

When you submit a claim to your insurance company, be as detailed as possible and take photos that show the state of your property and contents. Take time to prepare a full list of

all the items lost or damaged. Make a copy of any claim you submit.

You don't have to prove whether the damage was caused by a storm or a tropical cyclone, this is up to your insurer.

What happens next?

Insurance companies will be processing many claims for Tropical Cyclone Debbie, so your claim may take a little while. Insurers must fast track your claim if you are in urgent financial need, or make an advance payment to you within five business days to address your immediate financial need.

If you haven't heard from your insurer within 3 weeks of submitting your claim, you should complain in writing to the company. Hopefully your claim will be paid in full, however, if this doesn't happen, you have the right to appeal.

What are my legal rights?

If your insurance claim is rejected or you feel you have been treated unfairly, you can:

- appeal to your insurance company to reconsider its decision (each company will have its own appeals process, so check their website or call the company)
- take your claim to the Financial Ombudsman Service (1800 367 287)
- seek legal advice.

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Cleaning up after Tropical Cyclone Debbie? Exposed to asbestos?

The continuing support of thousands of FNQ volunteers to help the community rebuild after Tropical Cyclone Debbie has been a wonderful show of strength and community spirit. However, it's an important reminder to anyone cleaning up in the wake of a severe weather occurrence that there are occupational health and safety risks, and in some situations, people may be exposed to asbestos.

What is asbestos?

Asbestos is a strong and heat resistant material that was commonly used in Australian buildings built from the 1950s through to 1985. It was used in more than 3000 products.

Tropical cyclone victims and volunteers may be exposed to asbestos fibres and asbestos dust when demolishing and removing asbestos products including cement sheeting for internal external walls; corrugated roofing; ceiling linings; lagging on pipes for insulation; vinyl flooring and tiles; and asbestos cement cladding.

How can I protect myself from asbestos exposure?

Wear an approved respirator mask and protective clothing while you are cleaning up after Tropical Cyclone Debbie, even if you don't think there are any asbestos products. **Note:**

When handling asbestos products your clothes may be contaminated with asbestos dust- wear your mask when handling them before and during washing.

Asbestos products should be disposed of professionally. Your local council will be able to advise you if there is an asbestos material collection after Tropical Cyclone Debbie, or give you the name of a professional asbestos removalist. Don't throw asbestos products out with regular household hard waste because this will potentially put other people at risk of asbestos exposure and will contaminate all of the waste.

How do I know if I am handling asbestos products?

It's not always easy to tell if the products you are handling contain asbestos. The best rule of thumb is to ask or check if you are unsure prior to handling an item. If you are still unsure, notify your local council and then move on and work in another area with products you know are safe. **Note: there is no safe level of exposure to asbestos fibres, so it is better to be on the safe side.**

What should I do if I've been exposed?

Most people who have been exposed to the dangerous fibres don't go on to contract a related disease. Asbestos-related

diseases often take between 10 and 60 years to develop. If you are concerned, you should see your doctor.

People involved in the post-cyclone Debbie clean up can also register their asbestos exposure for free on the National Asbestos Register. This quick and easy online register lists the details of your exposure. Even though you are currently healthy, your details are secure on the register in case you later go on to be diagnosed with an asbestos-related disease. If this happens, the register will help us to assist you in a future claim for compensation.

Registration is at no cost and is obligation free.

Where do I go for more information?

For more information contact Maurice Blackburn Lawyers on freecall 1800 675 346, or phone your local office:

- **Brisbane:** (07) 3016 0300
- **Browns Plains:** (07) 3809 7400
- **Caboolture:** (07) 5316 0900
- **Cairns:** (07) 4051 3233
- **Gold Coast:** (07) 5561 1300
- **Ipswich:** (07) 3280 7100
- **Mackay:** (07) 4960 7400
- **Rockhampton:** (07) 4999 3800
- **Strathpine:** (07) 3490 4700
- **Sunshine Coast:** (07) 5430 8700
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- **Townsville:** (07) 4772 9600

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