

EMPLOYMENT PROTECTION FOR VOLUNTEERS

The employment protection provisions of the *Emergency Management Act 2005* (the EM Act) come into play during an *emergency situation* (section 50 EM Act) or *state of emergency declaration* (section 56 EM Act). Both declarations can initially be declared for a 3 day period and can be extended.

Section 92 of the EM Act provides that attendance at an emergency management response does not interfere with or affect the calculation of things such as sick leave, long service leave or other benefits to which the volunteer is entitled.

The volunteer must also be paid their normal remuneration for time they would have ordinarily worked if not for attending to the emergency management response.

Part 9 of the EM Act provides for extensive protection of volunteers; protecting both their employment and remuneration, should they be required to attend to their duties during an *emergency situation* or a *state of emergency*.

Specifically, section 93 states:

(1) An employer must not victimise an employee of the employer for the reason that, or reasons that include the reason that, the employee was temporarily absent from employment because the employee was carrying out an emergency management response.

(2) It is a defence for the employer to show that —

(a) the absence was not reasonable having regard to all the circumstances; or

(b) that the victimisation did not occur for the reason, or for reasons that include the reason, referred to in subsection (1).

This means that it is unlawful for an employer to dismiss an employee for the reason that they were called to volunteer to provide a response at an *emergency situation* or *state of emergency*, within reason.

It is up to the employee and employer to establish the terms of the employee's volunteer commitment. That is, there may be certain circumstances where an employee's absence from work is unreasonable. For example: an employee who is the sole operator of a retail business.