

## The Civil Defence Emergency Management Act 2002 and Civil Defence Volunteers: Information for Local Authorities

The CDEM Act 2002 does not specify *particular* duties or obligations of local authorities toward civil defence (CD) volunteers. Nor does it *prescribe* any requirements (codes of conduct, training standards, etc) of CD volunteers. The intent of the legislation is for CDEM Groups to determine the CDEM needs of their region and how best to meet those needs. This will include identifying what roles/functions are best filled by full time staff and what activities are appropriate for volunteers.

However, the CDEM Act does have some *general provisions* that affect CD volunteers.

### Provisions Concerning CD Volunteers

There are 2 sections of the Act which refer specifically to volunteers:

#### s. 17 (1) (b) – “Functions of CDEM Groups”

This provision relates to the competence and suitable training of personnel in CDEM Groups. It explicitly provides for the training of volunteers.

#### s. 18 (2) (a) – “General Powers of CDEM Groups”

This provision allows for the powers of the CDEM Group that are necessary or expedient to enable it to perform its functions. It states that CDEM Groups *may* recruit and train volunteers for CDEM tasks.

### Protection for CD Volunteers

The CDEM Act also protects CD volunteers while they are acting in a declared emergency. There are three important provisions that protect the rights of CD volunteers.

#### s. 108 (1) - “Compensation for loss or damage to personal property”

“Subject to subsections (3) and (4)<sup>1</sup>, every member of a Civil Defence Emergency Management Group, and any other person who carries out civil defence emergency management under the direction of the Director or a Civil Defence Emergency Management Group or a Controller or a Recovery Coordinator, and who suffers loss of or damage to his or her personal property occasioned by the exercise or performance of work or duties arising from a state of emergency is entitled to receive compensation equal to:

- (a) the value of any personal property that has been lost; or
- (b) the diminution in value of any personal property that has been damaged.”<sup>2</sup>

<sup>1</sup> Subsection 3 - Subsection (1) does not apply to any loss of or damage to property to the extent to which that loss or damage is covered by a contract of insurance.

Subsection 4 - A person is not entitled to receive any compensation under subsection (1) to the extent to which the person has recovered, or, having regard to the circumstances of the case, may reasonably be expected to recover, any damages, compensation, or *ex gratia* payment for the loss or damage.

<sup>2</sup> Any compensation payable under subsection (1) is paid by either the Crown [(5)(a)] if the person was carrying out CDEM under the direction of the Director or National Controller or the CDEM Group [(5)(b)]

s. 110 - "Protection from liability"

"(1) Except as provided in sections 107<sup>3</sup> to 109<sup>4</sup>, there is no cause of action against the Crown, or a Civil Defence Emergency Management Group, or an officer or employee or member of any of them, or against any other person, to recover damages for any loss or damage that is due directly or indirectly to a state of emergency.

(2) Subsection (1) applies whether the loss or damage is caused by any person taking any action or failing to take any action, so long as the act or omission occurred in the exercise or performance of his or her functions, duties, or powers under this Act.

(3) No person is exempted from liability under subsection (1) for any act or omission to act that constitutes bad faith or gross negligence on the part of that person."

s. 112 (1) - "Absence on duty not to affect employment rights"

"No person who is required by the Director or a Controller to be absent from his or her accustomed employment on civil defence emergency management duties during a state of emergency is liable to dismissal from that employment merely because of his or her absence on civil defence emergency management duties, whether or not his or her accustomed employer has consented to that absence."

This provision does not require the employer of a person absent on CDEM duties to pay to him or her any remuneration while they are absent from their employment.<sup>5</sup>

**General Comments**

The position of CD volunteers cannot be viewed in isolation. Volunteers are just one of the many groups of people involved in emergencies. The CDEM Act protects CDEM personnel, including volunteers, during declared states of emergency only. In other words, the provisions of the CDEM Act cover CDEM personnel acting in a declared civil defence emergency situation, but not a non-declared emergency situation.

A non-declared emergency raises no legal issues under the CDEM Act. CDEM Groups are not liable for the actions of CD volunteers or indeed any CDEM personnel in a non-declared emergency, nor are they expected to provide compensation under the CDEM Act.

However, other legislative compliance issues face local authorities regarding the conduct of volunteers. These raise a significant risk management issue for local authorities because in many cases they will be primarily responsible for the conduct of its volunteers. Examples include responsibilities under the Fair Trading Act 1986, Privacy Act 1993, Copyright Act 1994 and the Human Rights Act 1993. In addition, local authorities can be liable for negligence, or breaches of other tortious duties, if one of their volunteers acts negligently in the course of his or her commitment to that local authority. This is called the doctrine of vicarious liability and applies even if a local

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if the person was carrying out CDEM under the control of the CDEM Group, Group Controller, Recovery coordinator, or other person acting under the authority of the CDEM Group or Group Controller.

<sup>3</sup> CDEM Act 2002 s. 107 – "Compensation if property requisitioned"

<sup>4</sup> CDEM Act 2002 s. 109 – "Compensation for other matters"

<sup>5</sup> CDEM Act 2002 s. 112 (3)

authority had not committed a wrongful act or omission. An example would be a CD volunteer who operates a vehicle negligently or uses an unsafe vehicle.

In each of these examples it is irrelevant whether the volunteer is being paid for his or her services or whether they have a contract. The key issue is whether or not the volunteer is acting on the behalf of the local authority in the course of his or her commitment to that local authority. This point has been reaffirmed in the Health and Safety in Employment Amendment Act 2002, which states duties toward volunteers extend only where that person has an ongoing relationship with an organisation<sup>6</sup>.

For this reason, it is important that CD volunteers, who may have less CDEM training than paid employees, are aware of their legal position, particularly the difference between a declared and non-declared emergency. A volunteer's protection during a non-declared emergency is patchy. For example, a CD volunteer will be covered for accident and injury by ACC, but not for losses or damage to their property (vehicles, equipment, etc). In practice, these property losses could be off set by insurance cover. It is useful for all CDEM personnel to understand the legal difference between a declared and non-declared emergency. Volunteers, in particular, will be more likely to donate their time if they know they where they stand in the eyes of the law.

These potential problems highlight the importance of volunteer management in an emergency (declared or undeclared). The most effective way to protect the safety and well being of CD volunteers and to limit the liability of CDEM Groups is to properly manage and train volunteers. This particularly applies to "spontaneous" volunteers. CD volunteers should be informed about exactly what tasks they are being asked to undertake and under whose authority.

### Key Points

- a) Note that the CDEM Act only protects CDEM personnel, including volunteers, during a declared civil defence emergency.
- b) Note that the CDEM Group could be made to pay compensation for the actions of CDEM personnel during a declared emergency.<sup>7</sup>
- c) Note that it is important CD volunteers are aware of and understand their legal status prior to an actual emergency.
- d) Investigate the method of volunteer management, especially of "spontaneous" volunteers, that best suits your region as part of the CDEM Group planning process.
- e) Investigate the costs/benefits of insurance cover for CD volunteers.

Blair Robertson  
Policy Analyst  
Email: [blair.robertson@dia.govt.nz](mailto:blair.robertson@dia.govt.nz)

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<sup>6</sup> For further information see MCDEM volunteers page link to HSE Amendment Act document.

<sup>7</sup> CDEM Act 2002, s.108 (5) (b)