

Queensland Floods Bulletin - January 2011

We hope that this Bulletin finds you, your families and your businesses safe and well. The floods of the past week have caused enormous damage to many homes, businesses and personal property which will take weeks, if not months, to clean up, repair and rebuild.

In addition to the floods causing damage to property, the aftermath of the floods themselves can, in some circumstances, raise issues and disputes that would not otherwise arise in normal everyday circumstances.

Hemming+Hart Lawyers are pleased to provide the following bulletin on issues which are important now and will become more important as time progresses.

Insurance

Following the floods, many individuals, families and businesses will be looking to make claims under insurance cover they may have.

Some insurers may not cover some or all of the damage caused to your home or business by the floods. Hemming+Hart can assist with the following:

- Reviewing insurance policies to determine the type of cover and level of cover for any real property, personal property, businesses or business projects;
- Provide advice as to whether any damage suffered by you, your family or your business falls within the type and level of insurance cover that you or your business has; and
- Liaise with insurers to ensure fair treatment, prompt assessment of damage and, in appropriate circumstances, prompt payment.

Floods and Employees

While many people have suffered loss to property through the floods that have effected Queensland over the past few weeks, many employers are now facing a dilemma as to whether or not they have to pay employees who cannot attend work either because the floods have affected their workplace or homes.

The Fair Work Act 2009 provides a number of options that employers may consider to be able to provide their employees with paid or unpaid leave during these uncertain times.

1. Stand Down.

Under the Fair Work Act, where an

employee's award or contract of employment does not contain stand down provisions, an employer may be able to 'stand down' their workforce without pay. An employer may generally stand down their workforce, without pay, where the employer can not usefully employ their employees because of a stoppage of work for which the employer cannot reasonably be held responsible for, such as a natural disaster.

Before an employer stands down their workforce it is important they check the applicable award or industrial instrument to ensure there is no provision for paid leave in the event that wet weather prevents an employee from attending work.

2. Carer's Leave

If an employee is unable to attend work as a result of an unexpected emergency, such as a natural disaster, as they are required to stay at home and care for a member of their immediate family, or a member of their household, the employee may take paid carer's leave. For instance, if a parent is required to keep their child home from school because the school flooded, the parent may be able to take carer's leave.

Please note, employees accrue 10 days personal/carer's leave per annum which can be taken at any time. Once an employee has used their 10 days paid personal/carer's leave, employees are able to take 2 days unpaid carer's leave per occasion. If an employee asks to take carer's leave as a result of the flooding, employers are entitled to ask the employee for evidence as to why the leave is needed.

3. Community Service Leave

Community Service Leave is the right to be absent from work to engage in, travel to, or recover from, participation in an eligible community service activity.

Employers need to know that an employee depending on their specific circumstances may take an unlimited period of unpaid leave for the purpose of engaging in an eligible community service activity, such as assisting the SES, the Red Cross, the RSPCA, the Rural Fire Brigades Association of Queensland or a surf life saving association, in a natural disaster.

4. Annual Leave

Finally, some industrial instruments and employment contracts will allow an employer to direct their employees to take annual leave over a period of time. However, if an employer is able to direct their employees to take annual leave, an employee will only be paid for the leave they have accrued.

Redundancy

In the event that the damage to a business is so great that redundancies will have to be made it is important that employers understand their legal obligations to their employees.

A genuine redundancy may only occur when the employer no longer needs the employee's job to be done by anyone.

If an employer is considering redundancies, they also need to be aware that they will have to pay the employee who is to be made redundant all of their owing annual leave, as well as any wages owing for days worked prior to their redundancy.

Property Matters

Over the coming days, weeks and months, tenants and landlords may find that their leased residential or commercial premises have been damaged by the flood waters and are no longer habitable. To that end, disputes between tenants and landlords may arise.

Tenants and landlords should familiarise themselves with the terms and conditions of their lease agreements to determine:

- What their rights are;
- Where their liability lies;
- Whether they are requirement to provide payment relief in these circumstances (such as an abatement of rent); and
- Whether they are required to honour their lease agreements in cases where premises have been severely damaged.

Hemming+Hart is able to provide advice in this regard and can liaise with tenants and landlords to amicably resolve any disputes that may arise as a consequence of the floods.

If you are contracted to purchase or sell flood effected property careful consideration will need to be given to the terms of the Contract to determine where liability lies in the circumstances. Again, we are happy to review contracts to provide advice in this regard.

Financial Hardship

It is likely that some individuals, families and businesses will suffer financial disruption and hardship as a result of the floods. This may include the inability to attend work, or to open business for trade. If you, your family or business find yourselves in such a position, we advise that the best course of action is to keep in regular contact with your creditors to inform them of your current position and anticipated progress. Hemming+Hart are able to provide advice regarding your legal rights in this regard and can correspond with financial institutions and creditors to achieve a mutually acceptable outcome.

General Matters

Some other important matters to be aware of during this time are as follows:

- Correspondence of a legal nature should be attended to immediately. Review any legal correspondence that you or your business receives for time limits that apply. These time limits are generally imposed by legislation and are not subject to any extensions. To protect your legal position, it is important that all timeframes are adhered to. Please contact us immediately if you have concerns regarding any legal documents you or your business has received; and
- If you are a small business owner or primary producer, you may be entitled to special flood assistance grants from the Queensland Government. Please refer to www.qraa.qld.gov.au or www.business.qld.gov.au for further information regarding these grants, including eligibility criteria.

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