



PROGRAM C

→ **Project C6.**
Stay or Go - legal considerations

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PROGRAM C : Presentation Title

→ **Papers to date**

1. Evacuation law discussion paper
2. Volunteers liability

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Discussion paper - the law of evacuation

1. Powers
2. Liabilities
3. Immunities



Powers

What do you mean by 'evacuation'?
(undefined)



"Discretionary" evacuation model
Vs
Pecuniary interest evacuation model



Liabilities

1. Criminal liability - unlikely
2. Civil liability
 - a) Breach of statutory duty
 - b) Negligence*
 - c) Battery
 - d) Assault
 - e) False Imprisonment
 - f) Trespass to land



Immunities/ Indemnities

1. Authorised or done for purposes of Act
2. "Good faith"
3. Effect of indemnity clauses:
 - a) No effect - pure restatement of law
 - b) Reinforces vicarious liability (clarity?)
 - c) Changes - lowering of standard



Stay or go

1. Last minute evacuations

- Big “no-no” - research now clearly show this is not a reasonable thing to do,
- Leaving ppl in homes - better legally (remember, it’s not mandatory that you have to evacuate - it’s ‘discretionary’),
- If evacuate, take on more legal burden/liability by taking control over ppl & creating greater reliance.

2. Early evacuations

- Cannot force ppl to leave in Victoria (pecuniary int model),
- Considerations in deciding forced evacuation (to list).



Legal risks of volunteer fire fighters - how real are they?

Table 8A.5 Fire service organisations' human resources

	Unit (a)	NSW (b)	Vic (c)	Qld (d)	WA (e)	SA (f)	Tas	ACT	NT (g)	Aust
2003-04										
Firefighting personnel	%	79.5	87.5	77.1	74.2	98.8	65.1	89.2	84.1	76.3
Firefighting personnel	FTE	3 747	2 028	2 086	872	842	282	229	180	10 286
Permanent firefighters	FTE	3 225	2 010	1 930	860	752	262	229	174	9 462
Part time and other firefighters	FTE	522	18	156	12	90	-	-	6	804
Support personnel	FTE	967	976	618	303	30	151	102	34	3 181
Total	FTE	4 714	3 004	2 704	1 175	872	433	331	214	13 447
Volunteer firefighters (h)	no.	73 059	58 583	44 286	22 328	11 161	4 766	810	521	215 514
2004-05										
Firefighting personnel	%	79.2	71.7	77.9	74.8	98.8	63.7	75.5	96.3	78.5
Firefighting personnel	FTE	3 717	2 172	2 189	892	848	279	270	790	11 157
Permanent firefighters	FTE	3 232	2 172	2 026	864	752	279	270	188	9 783
Part time and other firefighters	FTE	485	-	163	28	96	-	-	602	1 374
Support personnel	FTE	977	859	620	304	28	159	88	30	3 085
Total	FTE	4 694	3 031	2 809	1 196	876	438	368	820	14 222
Volunteer firefighters (h)	no.	73 072	58 862	44 648	26 319	11 307	4 868	1 022	551	222 249

Source: Steering Committee for the Review of Government Service Provision, *Report on Government Services 2006*, Vol 1, January 2006, Canberra, 8A.5.



What is covered? Requirements.

1. What is a volunteer?
2. Community work
3. Community organisation

4. The concept of 'Good faith'



The exceptions - what is excluded from protection

Two main exceptions:

1. the volunteer knew, or ought reasonably to have known, that the action was outside of the work undertaken by the organization *or* contrary to instructions.
2. the volunteer's ability to provide the service in a proper manner was impaired by alcohol or drugs, unless consumed involuntarily or for therapeutic reasons.



Emergency Services' Organisation's liabilities

- Transfer of liabilities to ESO.
- Transfer of liabilities to Crown/State.
- Unclear in some jurisdictions - push for clarity.



Where to from here?

- The gap - what about the senior officers?
- We want to hear from you
 - Your concerns
 - Your stories
 - What you've been told by colleagues, lawyers, friends (etc.)
- Contact me: elsie.loh@rmit.edu.au