Project C6. 
Stay or Go - legal considerations

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Papers to date

1. Evacuation law discussion paper
2. Volunteers liability
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>
<thead>
<tr>
<th>Table 8A.5</th>
<th>Fire service organisations’ human resources</th>
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<tbody>
<tr>
<td></td>
<td>NSW (a)</td>
</tr>
<tr>
<td>Firefighting personnel</td>
<td>%</td>
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<tr>
<td>Firefighter personel</td>
<td>FTE</td>
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<tr>
<td>Permanent firefighters</td>
<td>FTE</td>
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<tr>
<td>Part-time and other firefighters</td>
<td>FTE</td>
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<tr>
<td>Support personnel</td>
<td>FTE</td>
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<tr>
<td>Total</td>
<td>FTE</td>
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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