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# Why volunteers shouldn't worry (too much) about being sued

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# Will I be liable if ...?

# Suing the emergency services is hard

- Do they owe a duty of care?
- What is the extent of that duty?
- The answers to these questions are not clear – they are being considered in litigation currently before the ACT Supreme Court.

# Suing the volunteers is harder...

- And no-one wants to...

# The Rural Fire Service

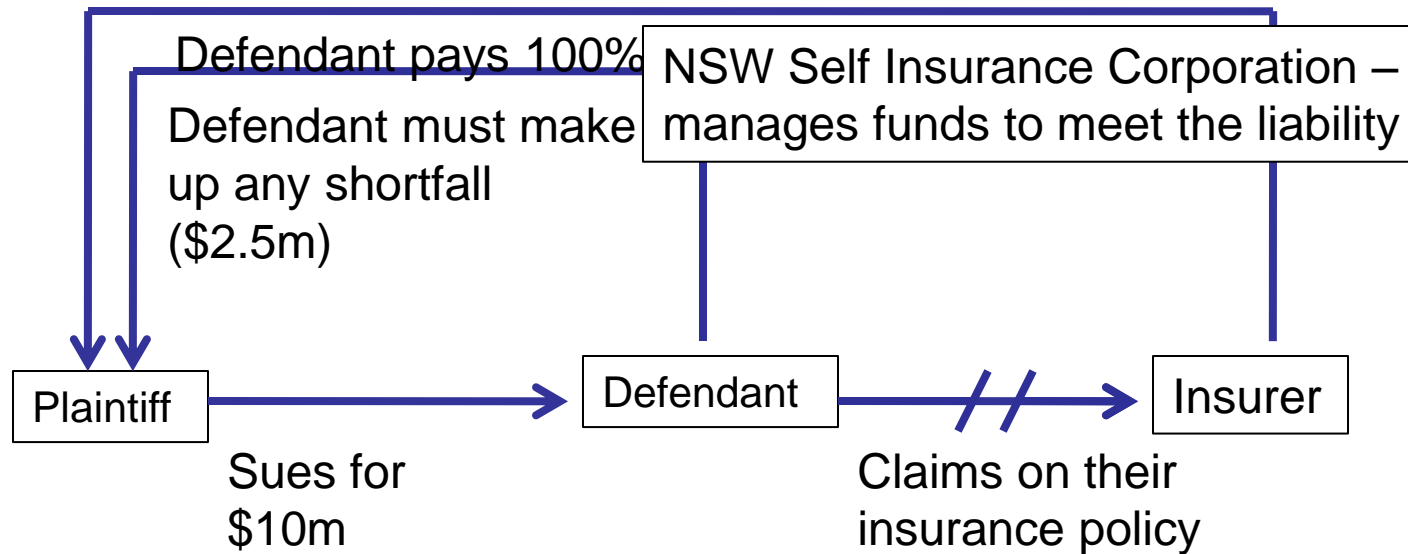
- Is part of the Government or Crown;  
*Public Sector Employment And Management Act 2002 (NSW)*  
s 4C and Schedule 1.
- Legal proceedings are brought against  
‘The State of NSW’;  
*Crown Proceedings Act 1988 (NSW) s 5.*
- The State is a self insurer;  
*NSW Self Insurance Corporation Act 2004 (NSW).*

# Normal Insurance Self Insurance

If the insurer can get out of it, then...

If the insurance isn't enough (eg there is only \$7.5m cover, then ...)

Meets the defendant's liability but...

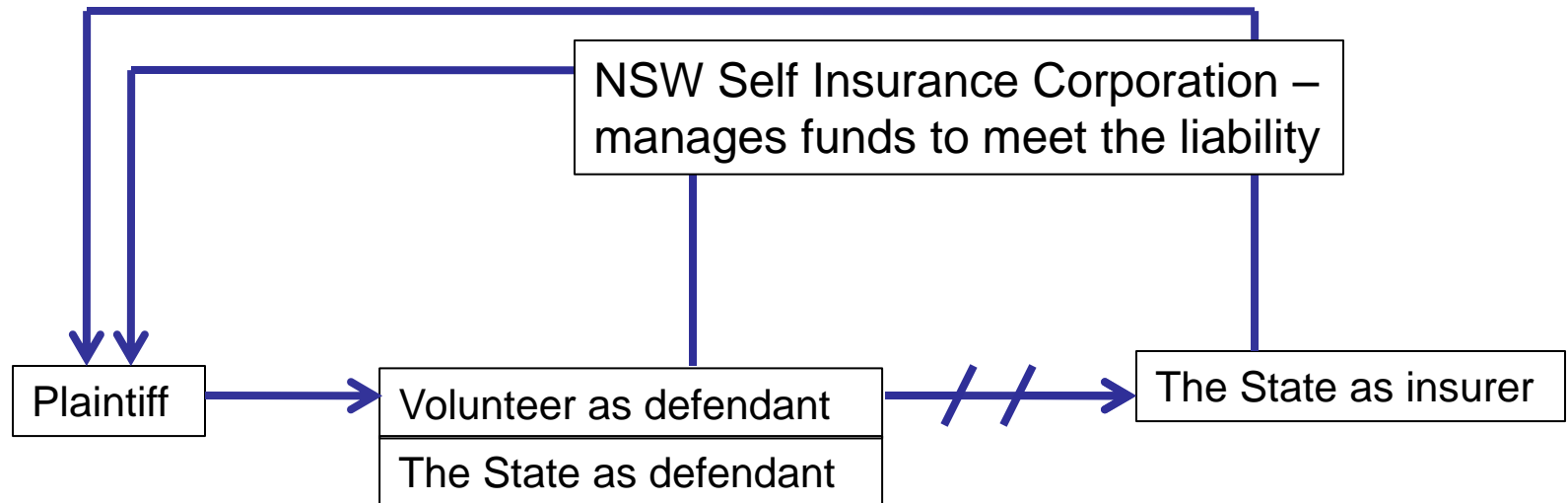


# So, a plaintiff can...

- Sue the volunteer, or the State of NSW – who's going to have the funds to pay?
- The State *isn't* your insurer...
  - “*If you do what we've trained you to do we'll stand by you, otherwise you're on your own, mate*”

# If the State *was* your insurer...

## But the State is the defendant





# Why is the State the defendant?

- The State will be liable (if anyone is) for the actions of the RFS, but the RFS can only act through it's staff and volunteers.
- "... the Crown is ... liable in respect of the tort committed by a person in the service of the Crown ..."

- *Law Reform (Vicarious Liability) Act 1983* (NSW) s 8

"person in the service of the Crown" does not include an employee of the Crown.

# Volunteers are protected

- *Rural Fires Act 1997* (NSW) s 128.
- *Civil Liability Act 2002* (NSW) s 61.

# *Rural Fires Act 1997* (NSW) s 128

“A matter or thing done or [not] ... done by a protected person or body does not, if [it] ... was done in good faith for the purpose of ... this or any other Act, subject [that] person personally, or the Crown, to any action, liability, claim or demand.”

“protected person or body” means ... any member of the Service,

# *Civil Liability Act 2002* (NSW) s 61

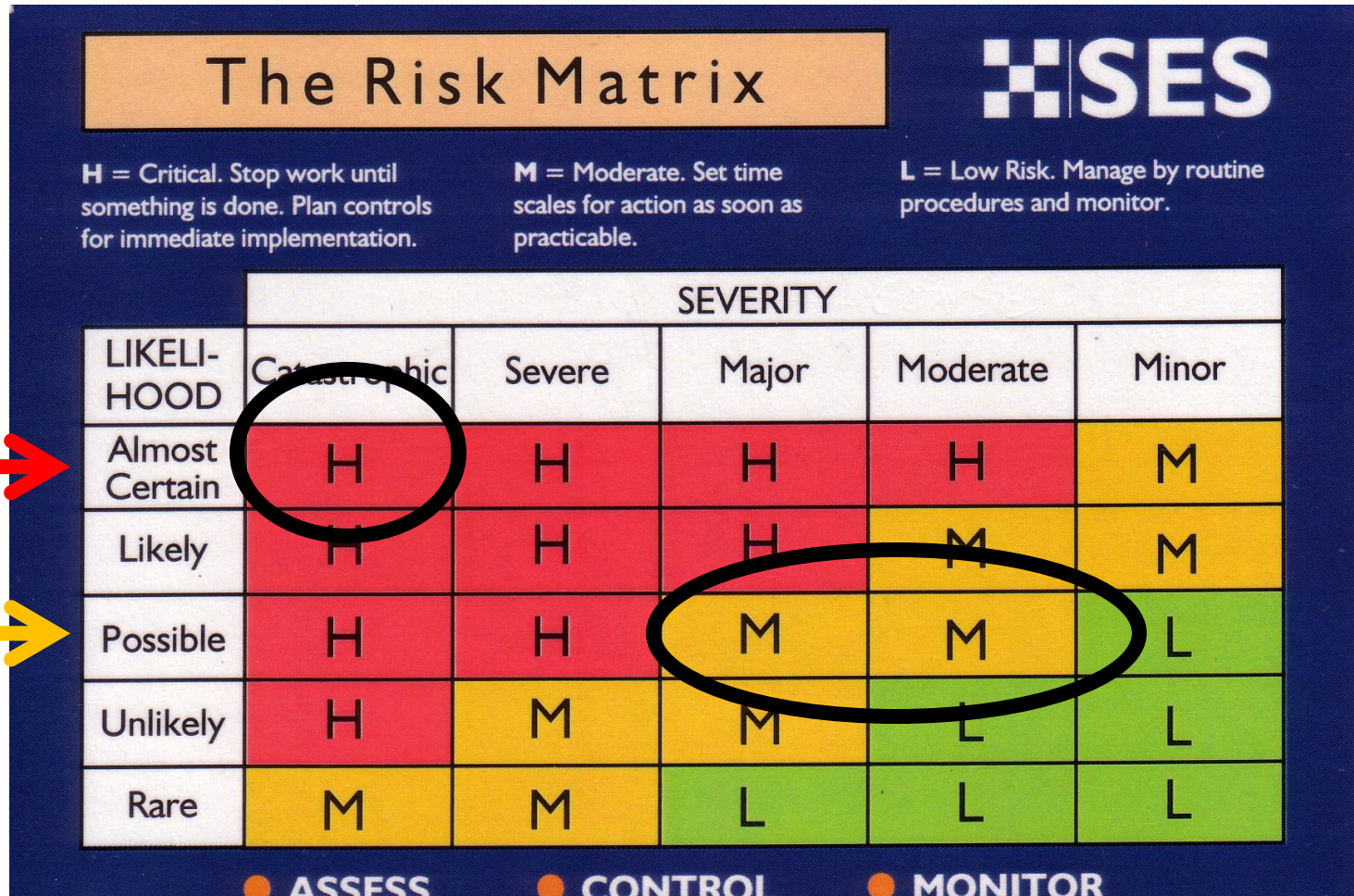
“A volunteer does not incur any personal civil liability in respect of any act or omission done or made by the volunteer in good faith when doing community work...”

- **NOTE** this section *does not* apply:
  - If the volunteer was engaged in criminal conduct (s 62);
  - If the volunteer was intoxicated (s 63);
  - If the volunteer was acting outside the scope of authorised activities or contrary to instructions (s 64);
  - If insurance was required (s 65); or
  - To motor vehicle accidents (s 66).

# Will the State abandon it's volunteers?

- Consider:
  - *Gardner v NT* [2004] NTCA 14;
  - *NSW v Fahy* [2007] HCA 20;
  - *NSW v West* [2008] ACTCA 14.

# Don't Stand by the volunteer?



# Exceptions

- Volunteers *will* be criminally liable for their actions.
- The biggest risk is in driving. The State will cover the civil liability, the driver *will be* liable for criminal offences.

See, for example: “Suspended sentence for Black Saturday firefighter who killed teen in smash” *The Age* 23 October 2009.

# Court like proceedings

- The Coroner and the Royal Commissioner!







# Questions?

- Thank you for your attention.

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