



*“What does the ‘Prepare, Stay and Defend or Leave Early’ policy mean for me?”*

Legal liabilities of emergency workers and emergency-service organisations  
in Victoria

Bushfire Cooperative Research Centre

July 2007

# “What does the ‘Prepare, Stay and Defend or Leave Early’ policy mean for me?” – Legal liabilities of emergency workers and emergency-service organisations in Victoria

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## I. Introduction

The “Prepare, Stay and defend or Leave Early” policy (the Policy)<sup>2</sup> emphasises that in the case of bushfires, often the safest option for people caught in the path of a bushfire is to remain in their homes so that they are (i) protected from the radiant heat of the oncoming fire and (ii) able to take measures such as putting out invading embers to protect their homes from being destroyed by the fire. If homeowners feel they are unable to protect their homes whether it is due to physical impairment or lack of preparedness, then it would be safer for these people to leave early long before the danger of the fire presents itself. The policy is in recognition that the most dangerous option is to evacuate through the fire front and that most houses are lost due to ember attack which can greatly be controlled by able-bodied people in the building<sup>3</sup>.

This paper focuses on addressing the question of what the Policy would mean to individual emergency workers and emergency service organisations in Victoria specifically<sup>4</sup>. It is not the intention of this paper to summarise the entire area of emergency law or cover the powers and liabilities of Emergency Services Organisations (ESOs) and their members over Crown land (eg. State forests, national parks, public land)<sup>5</sup>. The legal aspects relating to bushfire management may appear complicated due to the changing nature of the common law and the range of relevant fire and emergency service legislation over our State and Territory jurisdictions. The apparent complexity of our law often results in many feeling confused and fearful of what one can or cannot do as a rescuer or as an Emergency Services Organisation (ESO). Further, rescuers would often, in the heightened moment of an emergency, just revert to “common sense” in deciding what they will ultimately do. It is therefore important that rescuers and ESOs understand clearly what powers they have and understand that often the acts they believe they “must” do, such as forcefully evacuating people from their family home in the face of a fire, are misguided. This is important in light of the recognition that such last minute evacuations are often fatal and not supported in law.

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<sup>1</sup> Elsie Loh is a Research Officer at the Centre for Risk and Community Safety and qualified legal practitioner. This work was carried out under the funding of the Bushfire CRC and the Program C *Prepare, Stay and Defend or Leave Early* project. I also wish to thank Prof John Handmer for his comments and his time in reviewing the paper and Ms Rebecca Monson for her initial work on the Program C Legal project.

This publication does not constitute any form of legal advice and is not a policy document. The Bushfire CRC recommends seeking independent legal advice on the issues outlined in this publication. The Bushfire CRC will not be held accountable for any decisions made based upon the contents of this publication.

<sup>2</sup> See Australasian Fire Authorities Council (AFAC)’s *Position Paper on Bushfires and Community Safety* issued on 28 November 2005.

<sup>3</sup> See John Handmer J and Amalie Tibbits, ‘Is staying at home the safest option during bushfires? Historical evidence for an Australian approach’ (2005) 6 *Environmental Hazards* 81-91 for more background on the policy.

<sup>4</sup> The Victorian State Emergency Services (SES) was not covered in this paper as it is not expected that the SES would be dealing with the Policy.

<sup>5</sup> The Chapter therefore does not look at the liabilities of Land Management Agencies, such as State/Territory Parks & Wildlife Agencies that may also have powers to manage fires.

This paper will consider the powers, liabilities and immunities that are relevant to emergency workers and ESOs. The paper aims to reassure emergency workers that in the context of the Policy (therefore, deciding whether to evacuate or not), there is little to worry about as long as they act within the scope of the policy. I note that it is not the intention of this paper to summarise the law in this area.

## II. Powers

Legislation gives ESOs broad powers to do whatever is necessary to manage a fire and reduce injury or risk of injury to life and property. These powers include the power to *issue* an evacuation warning. More specific powers give some ESOs and their personnel, in some states, the power to *order* and undertake an evacuation, and even forcefully evacuate people.

The terms “pecuniary interest evacuation model” and “mandatory evacuation model” are often used to describe the different situations when evacuation is or is not allowed<sup>6</sup>. Historically, an order to evacuate could be lawfully refused on the basis of pecuniary interest.<sup>7</sup> A pecuniary interest is a property right that can include goods and chattels. It is based on the principle, dating back to the Middle Ages, that a person who is not a felon or unlikely to act unlawfully can freely enjoy her or his property rights unencumbered by the state.<sup>8</sup> In some states, however, the right to refuse an order to evacuate on the basis of pecuniary interest has been overridden.

The pecuniary interest evacuation model allows a person with a pecuniary interest in land or in any goods or valuables on the land or in the building to lawfully refuse an order to evacuate. This is the position adopted by Victorian legislation<sup>9</sup>.

The reasons for the adoption of this model can be found in the parliamentary debates following the February 1983 Ash Wednesday bushfires:<sup>10</sup>

- remaining in the home is often the safest course of action during a bushfire;
- exclusion of a pecuniary interest clause is contrary to individual civil rights;
- the power to forcefully remove people from their homes during a disaster is likely to increase public confusion and panic, as well as choking the road system and increasing the difficulty of combating the disaster;
- forceful evacuation is administratively unworkable, as it imposes a duty of care on ESO personnel, who in theory, are made liable for any injury or death occurring under their assumed control<sup>11</sup>.

Further, although most states and territories have some legislation regarding evacuation, none provide a definition of its meaning. In the future this may become legally problematic, as the courts may be faced with the question of what an evacuation actually is. This paper defines evacuation as the planned relocation of persons, by an emergency services organization or their members, from a

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<sup>6</sup> Nicholas Karanev, ‘Assessing the legal liabilities of emergencies’ (2001) Autumn, *Australian Journal of Emergency Management* 21.

<sup>7</sup> *Balfour v Balfour* [1919] 2 KB 571. ‘Each house is a domain into which the King’s writ does not seek to run, and to which his officers do not seek to be admitted’: at 579.

<sup>8</sup> *Ibid* 571.

<sup>9</sup> *Emergency Management Act 1986* (Vic) s 24(7).

<sup>10</sup> Karanev, above n 5, 21.

<sup>11</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, vol. 372, 2530-2533.

dangerous or potentially dangerous area to a safer area, and the eventual return of those persons to their initial location.<sup>12</sup> This is the definition as adopted by the Emergency Management Australia (EMA). It is noted that “evacuation” is not defined by AFAC.

The following is a summary of the powers of the members of the Metropolitan Fire Brigade, the Country Fire Authority, police force and the Coordinator in Chief of Emergency Management when a state of disaster or an emergency area has been declared:

### ***Rural area***

The Chief Officer of the Country Fire Authority (“CFA”) and a police officer may order a person to withdraw and may remove or direct a member of the CFA or police force to remove the person if the person is interfering with the operations and where he or she does not have a pecuniary interest in the land, building or goods<sup>13</sup>.

### ***Metropolitan area***

Within the metropolitan area, a member of the Metropolitan Fire Brigade (“MFB”) and a police officer may order anyone who is not a member to withdraw but may not forcefully remove that person if they have a pecuniary interest in the land, building or goods<sup>14</sup>.

However, a senior member of the MFB may forcefully remove a person (or cause person to be removed) if he or she is interfering with the operations of the unit and there has been a call for assistance (“alarm of fire”)<sup>15</sup>. The provision is silent in relation to the relevance of the existence of a pecuniary interest by the person being removed. This interest may be overridden by the fact that the MFB has responded to a specific call for assistance.

### ***State of disaster***

Where a state of disaster is declared by the Premier of Victoria in accordance with s23 of the *Emergency Management Act 1986*, the Coordinator in Chief of Emergency Management (or a person authorised to act) may compel the evacuation of persons from the declared area of disaster but cannot forcefully evacuate persons who have a pecuniary interest in the land, building or goods<sup>16</sup>.

The Coordinator of Chief of Emergency Management may also control and restrict entry into and movement within a disaster area<sup>17</sup>. This power is however limited to movement *into* and *within* the area and does not allow the Coordinator in Chief to compel persons with pecuniary interest to depart the area.

### ***Within a declared “emergency area”***

Police officers are also able to direct any person within an area declared to be an emergency area by the most senior officer in attendance in accordance with s36A of the *Emergency Management Act*

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<sup>12</sup> Department of Premier and Cabinet, *Report of the Inquiry into the 2002-2003 Victorian Bushfires - “Glossary”* (2003) 7-28; Australian Emergency Management, *Australian Emergency Manuals Series - Part 1: the Fundamentals - Manual 3: “Glossary”* (1998) 43.

<sup>13</sup> *Country Fire Authority Act 1958* s30(1)(g) and *Country Fire Authority Act 1958* s31(3)(b).

<sup>14</sup> *Metropolitan Fire Brigade Act 1958* s58.

<sup>15</sup> *Metropolitan Fire Brigade Act 1958* s32B(3)(d).

<sup>16</sup> *Emergency Management Act 1986* s24(2)(e).

<sup>17</sup> *Emergency Management Act 1986* s24(2)(d).

1986 to immediately leave and may use “reasonably necessary force” to ensure compliance<sup>18</sup>. It is unlikely, however, that the excessive use of physical force or violent threats would be considered “reasonable”. Police officers may prohibit persons with pecuniary interests from entering property and should the person be already on the property, he or she may have conditions placed on their staying.

### ***Recommendations***

The only recommended change for the legislation to be more align with the Policy is if residents are only permitted to stay if they have a pecuniary interest in a building that is, in the emergency worker’s opinion, prepared to survive a fire (as opposed to having a pecuniary interest in merely land or goods which provides no protection or in a vulnerable building). This will ensure that if residents wish to stay to protect their property, that they would be adequately protected by a building from the fire. This, however, may open the emergency workers’ opinion up to a greater level of scrutiny and potential civil liability.

As forced evacuation of people with pecuniary interests is not an option in Victoria, the focus of ESOs should be to provide timely and accurate information about the fire to residents to enable them to make an informed decision as to whether they should stay and defend or leave early. The central issue in the Policy (which is well-accepted by ESOs as best practice) is well-informed decision-making by the residents themselves and as such, prudence in advising residents is of utmost importance<sup>19</sup>.

***Table 1*** summarises the various powers related to evacuation in your relevant state/territory.

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<sup>18</sup> *Emergency Management Act 1986* s36B.

<sup>19</sup> See Elsie Loh, ‘Don’t get burnt by the law: the Legal Implications of the Prepare, Stay and Defend or Leave Early Policy’ in John Handmer and Kat Haynes (Eds.) *Community bushfire safety*. CSIRO publishing (forthcoming).

**Table 1: Powers of emergency workers to evacuate**

Who has power/authority to act?	Action which is permitted by legislation	Conditions required for exercise of power	Enforcement of power
Chief Officer of the Country Fire Authority	Order a person to withdraw (s30(1)(g) <i>Country Fire Authority Act 1958</i> (“ <i>CFA Act</i> ”))	<ul style="list-style-type: none"> <li>- Within a country area</li> <li>- Land, building or premises is burning or is threatened by fire</li> <li>- Person is interfering with the operations, or person is in or on the relevant land, building or premises</li> </ul>	May remove, or direct a member of the fire brigade or police force to remove if person fails or refuses to comply with order to withdraw provided they do not have a pecuniary interest in the relevant land, building, or goods in it
Member of fire brigade	Order anyone who is not a member of the fire brigade to withdraw (s58 <i>Metropolitan Fire Brigade Act 1958</i> (“ <i>MFB Act</i> ”))	<ul style="list-style-type: none"> <li>- Within a metropolitan area</li> <li>- Premises are burning or threatened by fire</li> </ul>	May forcefully remove person, provided they do not have a pecuniary interest in the relevant land, building, or goods in it
Senior member of fire brigade	Order a person to withdraw (s32B(3)(d) <i>MFB Act</i> )  <i>Also see s32B(3)(e) MFB Act for broad powers.</i>	<ul style="list-style-type: none"> <li>- Within a metropolitan area</li> <li>- Person is interfering with the operations of the unit(s)</li> <li>- There has been an “alarm of fire” (call for assistance)</li> </ul>	May ‘cause’ person to be removed if he/she fails or refuses to comply with order to withdraw
Coordinator in Chief of Emergency Management	Compel the evacuation of a person (s24(2)(e) <i>Emergency Management Act 1986</i> (“ <i>EM Act</i> ”))	<ul style="list-style-type: none"> <li>- Declaration of a state disaster by Premier in accordance with s23 <i>EM Act</i>)</li> <li>- Area must be a declared disaster area</li> </ul>	May compel a person to evacuate, provided they do not have a pecuniary interest (s24(7) <i>EM Act</i> )
	Control and restrict entry into and movement within a disaster area (s24(2)(d) <i>EM Act</i> )	<ul style="list-style-type: none"> <li>- Declaration of a state of disaster/emergency</li> <li>- Area must be a declared disaster area</li> </ul>	May exercise powers to the extent that they do not compel a person to evacuate/leave area if they have a pecuniary interest (s24(7) <i>EM Act</i> ).

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Who has power/authority to act?	Action which is permitted by legislation	Conditions required for exercise of power	Enforcement of power
Police officer	Order a person to withdraw (s31(3)(b) <i>CFA Act</i> )	<ul style="list-style-type: none"> <li>- Within a country area</li> <li>- Land, building or premises is burning or is threatened by fire</li> <li>- Person is interfering with the operations, or person is in or on the relevant land, building or premises</li> </ul>	May remove if person fails or refuses to comply with order to withdraw provided they do not have a pecuniary interest in the relevant land, building, or goods in it
	Order anyone who is not a member of the fire brigade to withdraw (s58 <i>Metropolitan Fire Brigade Act 1958</i> (“ <i>MFB Act</i> ”))	<ul style="list-style-type: none"> <li>- Within a metropolitan area</li> <li>- Premises are burning or threatened by fire</li> </ul>	May forcefully remove person, provided they do not have a pecuniary interest in the relevant land, building, or goods in it
	Direct any person within the emergency area to immediately leave it (s36B <i>EM Act</i> )	<ul style="list-style-type: none"> <li>- Within an area declared to be an ‘emergency area’</li> </ul>	<ul style="list-style-type: none"> <li>- may use ‘reasonably necessary force’ to ensure compliance (s36B(5) <i>EM Act</i>).</li> <li>- person with pecuniary interest may be prohibited from entering property (s36B(2) <i>EM Act</i>).</li> <li>- person with pecuniary interest who is allowed in or is already on property may have conditions placed on their staying (s36B(1)(d) and (3) <i>EM Act</i>).</li> </ul>

#### **IV. Legal Actions**

ESOs and their members may be subject to legal action by the public for their exercise or failure to exercise the powers described in Table 1. There are two main types of legal actions that are relevant – criminal and civil legal actions.

A tort is a civil wrong where one party (the plaintiff) alleges another party (the defendant) has done something that has caused harm to the plaintiff which he/she is entitled compensation for. In the context of bushfire emergencies, the torts of assault/battery, trespass and negligence are the most relevant.

Members of an ESO may also be subject to criminal prosecution for crimes including homicide, causing serious injury, or assault. However, in order to prove most criminal offences, it must be shown that the person charged had the intention to commit the crime and this will not usually be the case in an emergency response situation. Some crimes require that the defendant was only reckless in relation to the consequences of their actions. Nevertheless, prosecutors must prove to the court that the accused is guilty of the crime “beyond reasonable doubt” which is a higher threshold than in civil cases. In civil law, the plaintiff only has to show his or her case on the “balance of probabilities”<sup>20</sup>.

In an emergency, an ESO would usually be dedicated to saving lives and property. In such circumstances the defence of necessity may be used to defend a criminal prosecution. It will succeed where the defendant was faced with a choice between complying with the law and allowing great harm to occur, or minimising harm by breaking the law. The defendant must not have done any more than was reasonably necessary in the circumstances, and the harm done must not be disproportionate to the harm avoided. Therefore, though a criminal action brought by the State against an ESO or a member is possible, it would be unlikely.

The most common tort action that is brought in this area is **negligence**. Negligence is also the action that attracts the most media attention and the tort that most people in the emergency service area are most familiar with. Familiarity, however, does not always equate to understanding. It is, therefore, this cause of action that will be the focus of the next section.

The law of negligence in Australia is in a state of flux and is subject to scrutiny from the legislature, judiciary and the community. As a result, any attempt to comprehensively define the circumstances in which emergency services personnel are likely to be found liable in negligence is likely to be quickly outdated. Broadly speaking, a defendant may be found liable in *negligence* if:

1. they owed the plaintiff a duty of care in exercising their powers or performing their duties at an emergency;
2. they breached that duty by failing to exercise the required standard of care (i.e. to take “reasonable” care); and
3. the plaintiff suffered loss or damage as a result of the breach of duty.

Though it is open for the Court to decide that a rescuer is liable for the harm/damage suffered by an individual in that the rescuer owes a duty of care and has failed to take reasonable care, the Courts

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<sup>20</sup> Please refer to H Luntz and D Hambly *Torts: Cases and Commentary* (5<sup>th</sup> ed, 2002) and D Baker et al, *Torts Law in Principle* (4<sup>th</sup> ed, 2005) for a more in depth look at the area.

and the Australian public in general has always proven to be sympathetic to the cause of emergency workers. Australian Courts have proven to be sympathetic to the cause of emergency workers. The NSW Court of Appeal in *New South Wales v Brown*<sup>21</sup> found that the plaintiff “faced great difficulties” in finding that there was a duty of care owed by the police officers who were the emergency rescuers at that instance and recognises that,

“After the event it is always easy to suggest some further step, which will often be a small one, which could have been taken which would have avoided the accident or injury. However the standard is one of reasonable care, not one of perfection...”

The Court also recognizes the police officers “were not responsible for the accident and were simply trying to do their best in its aftermath”.

## V. Indemnities

In almost all civil cases, volunteers or employees will not face personal financial loss as they will be covered by common law vicarious liability or by its statutory equivalent. ESOs will, therefore, usually bear the financial cost of their members’ actions. In the last 2-3 years, there has been increased regulation of liability by statute, and in many states there are now statutory immunities ensuring that neither the individual nor their organisation is liable at all.

In some legislation, the ESO or member of ESO must show that the matter or thing was done in “good faith” in order to be protected under the immunity provisions. This concept of “good faith”, however, is not clear as it is undefined in legislation and judicial guidance on its definition is limited. Nevertheless, it is generally accepted that what is required of “good faith” is less than what is required in common law for liability, being “reasonable” (which is the relevant standard in relation to negligence). Therefore, volunteers will generally be protected under such protection provisions if they can show their acts were in good faith, even though their acts may have been unreasonable. If their acts had been reasonable in the first place (a higher standard than “good faith”) then they would have nothing to fear.

Generally, courts have found (rather unhelpfully) that what is ‘good faith’ will depend on the circumstances of each case<sup>22</sup>. In the past, courts have defined it as meaning ‘without any indirect or improper motive’<sup>23</sup>. More recently, the Federal Court has emphasised the notion of honesty, although this requires more than honest incompetence. In *Mid Density Developments Pty Ltd v Rockdale Municipal Council*<sup>24</sup>, Gummow, Hill and Drummond JJ describes the concept at paragraph 27:

“Good faith” in some contexts identifies an actual state of mind, irrespective of the quality or character of its inducing causes; something will be done or omitted in good faith if the party was honest; albeit careless...Abstinence from inquiry which amounts to a wilful shutting of the eyes may be a circumstance

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<sup>21</sup> [2003] NSWCA 21.

<sup>22</sup> *Bankstown City Council v Alamo Holdings Pty Limited* [2005] HCA 46 at 59 (as per Gleeson CJ, Gummow, Hayne and Callinan JJ).

<sup>23</sup> *Board of Fire Commissioners v Argouin* (1961) 109 CLR 105 at 115.

<sup>24</sup> (1993) 116 ALR 460.

from which dishonesty may be inferred...On the other hand, “good faith” may require that exercise of caution and diligence to be expected of an honest person of ordinary prudence.<sup>25</sup>

This means that a court will consider what a person’s state of mind actually was, as well as how a reasonable person with the same level of experience and expertise would have conducted themselves in the same circumstances. It would generally cover acts which are well meant but unreasonable.

The exclusion clauses in existence in Australia can be generally classified into three types – those that make no change to the common law, those that merely reinforce the notion of vicarious liability and those that appear to make some changes to the common law<sup>26</sup>.

### ***No Changes***

Section 37 of the *Emergency Management Act 1986* (Vic) appears to be a mere re-statement of the current common law position. The relevant section provides that (emphasis mine):

A volunteer emergency worker is not personally liable in respect of any loss or injury sustained by any other person as a result of the engagement of the volunteer emergency worker in emergency activity unless the loss or injury is caused by *the negligence or wilful default* of that worker.

That a person is not liable unless it is caused by “the negligence or wilful default” of an officer is, of course, the current common law position – that the exercise of statutory power which is not negligent cannot attract liability even if damage was caused. Further, this provision only seeks to protect *volunteer* emergency workers, not employees – but this is arguably of no significance as it would appear that both the volunteer and employed emergency worker would be under the same obligation to not act negligently.

### ***Reinforcing vicarious liability***

Further other legislation appear to reinforce the doctrine of vicarious liability. The common law doctrine of vicarious liability provides that an ESO, as the employer, would be liable for acts done by the employee officer, if the member was acting within the scope of their employment or authority. To disprove vicarious liability, the ESO must show that the conduct of the volunteer or employee was so far removed from what was authorised as to be beyond the control or influence of the ESO. An example of this type of provision is section 92(2) and (3) of the *Country Fire Authority Act 1958* which states (emphasis mine):

(2) A person to whom this section applies is *not personally liable* for any thing done or omitted to be done in *good faith*—

(a) in the exercise of a power or the discharge of a duty under this Act or the regulations; or  
(b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations.

(3) Any liability resulting from an act or omission that would *but for sub-section (2) attach to a person to whom this section applies attaches to the Authority.*

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<sup>25</sup> Ibid 468.

<sup>26</sup> Michael Eburn, *Emergency Law* (2<sup>nd</sup> ed, 2005) 144-6.

An individual’s liability is, therefore, reduced from the test of “reasonableness” to one of “good faith” or “honesty” and/or “without recklessness”<sup>27</sup>. Persons covered under this provision is defined by s92(1) and 30A of the *Country Fire Authority Act 1958* which includes:

- the Chief Officer,
- any officer exercising the powers of the Chief Officer,
- any officer or member of any brigade (including interstate fire brigades),
- a volunteer auxiliary worker, and
- A forest officer, the Chief Executive Officer or staff of Parks Victoria or an employee of the Department of Sustainability and Environment who is exercising powers of the Chief Officer of CFA or at the direction of an officer or member of the CFA.

The *Country Fire Authority Act* also states that liability that would, but for the section, apply to the person is to lie against the Crown. This means that though the Authority will not be liable for acts done by the person that are done in *good faith* (as if the employee is not found liable, then under the doctrine of vicarious liability, the Authority will also not be liable), the Authority would nevertheless be still liable for acts committed by the person which are *not reasonable*. This, of course, is in accordance with the doctrine of vicarious liability. It would appear that Parliament intends for these sections to merely clarify the applicability of the doctrine in the area of emergency service.

### ***Lowering of standard***

The *Metropolitan Fire Brigades Act 1958* (Vic) does change the common law significantly by changing the standard of care that is expected from a duty to take reasonable care to a duty to act in “good faith”<sup>28</sup>. Section 54A of the *Metropolitan Fire Brigades Act 1958* states:

- The Chief Officer and any member of a unit are not personally liable for anything done or omitted to be done in *good faith*—
- (a) in the exercise of a power or the discharge of a duty under section 32B, 32C, 55, 55A, 55B, 55C, 55D or 55E; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under that section.

The effect of this Act is that liability of the member and the MFB is removed completely even if it can be shown that the conduct was not “reasonable” but only if “good faith” can be established.

Some legislation expressly removes liability from the member of the emergency service and the government if good faith can be shown. The *Metropolitan Fire Brigades Act* is however silent on whether an action can be brought against the MFB and/or the State where the member has acted in good faith. Under the doctrine of vicarious liability, however, if the member is not liable, then the

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<sup>27</sup> Other examples from other legislation include: *Emergencies Act 2004* (ACT) s198 and *Emergency Management Act 2004* (SA) s 32 and *Victoria State Emergency Service Act 2005* (Vic) s42, *Emergency Management Act 2006* (Tas) s58.

<sup>28</sup> Similar protection clauses from other jurisdictions include: *Fire Brigades Act 1989* (NSW) s78, *State Emergency and Rescue Management Act 1989* (NSW) ss41 and 59, *State Emergency Services Act 1989* (NSW) s25, *Rural Fires Act 1997* (NSW) s128, *Disaster Management Act 2003* (Qld) s144, *Bush Fires Act 1954* (WA) s63, *Fire Brigades Act 1942* (WA) s64, *Fire and Emergency Services Authority of Western Australia Act 1998* (WA) s37, *Emergency Management Act 2005* (WA) s100, *Disasters Act 1982* (NT) s42, *Fire and Emergency Act 1996* (NT) s47.

employer will not be liable either. Though silent, it would appear that these sections also provide protection for the member and ESO.

### Conclusion

The protection accorded by legislation differs according to which State or Territory the emergency worker and/or service is in. There is no doubt that it is Parliament’s intention that some form of protection is accorded to ESOs and their members. Of course, none of these provisions have actually been brought to Court and been interpreted to date. Though the above analysis is helpful to give some idea as to immunities that exist for practitioners in the emergency area, the extent of protection these provisions *actually* provide (above that which is accorded in common law) is yet to be seen.

**Table 2: Indemnities available to ESOs and their members**

<b>Party protected</b>	<b>Form of protection and conditions under which it will be provided</b>	<b>Comments</b>
Members of the MFB	The individual is not <i>personally</i> liable for any act or omission done in good faith in the exercise of a function under the relevant Act or in reasonable belief that conduct was in exercise of the Act  Relevant reference: s54A <i>Metropolitan Fire Brigades Act 1958 (Vic)</i> .	Section probably protects ESOs as well since the individual is not subject to personal liability for such acts (it follows therefore that the principal cannot then be vicariously liable).
Member of CFA (including volunteer workers)	The individual is not <i>personally</i> liable for any act or omission done in good faith in the exercise of a function under the relevant Act or in reasonable belief that conduct was in exercise of the Act.  Relevant references: s92 <i>Country Fire Authority Act 1958 (Vic)</i> , s42 <i>Victoria State Emergency Service Act 2005 (Vic)</i> .	Reinforces the doctrine of vicarious liability. Liability attaches to the CFA Authority instead of the relevant member for acts done which are unreasonable/negligent only (cf. done in “good faith”).
Volunteer emergency worker (see s4 of Act for definition)	The individual is not <i>personally</i> liable in respect of any loss or injury sustained by any other person unless the loss or injury is caused by the <i>negligence or wilful default</i> of that worker.  Relevant reference: <i>Emergency Management Act 1986 (Vic)</i> s37.	Mere restatement of the common law. Individuals are still liable for negligent acts done.