How to avoid legal action – what you need to know about emergency management law

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How to avoid legal action

What you need to know about emergency management law

- What the law actually says, not what people think it says.
- The real risk of litigation
- Recent developments in case law.

What the law actually says, not what people think it says.

- The law understands emergencies happen.
- Statute law –
  - empowers and protects the agencies.
  - Provides a means to resolve conflicts between competing interests.
- Common law – requires conduct that is ‘reasonable’, but that takes into account the circumstances that exist.

The real risk of litigation

- Is very low; actions against the emergency services are rare, despite reported ‘fears’.
- Between 1868 and 2010 (143 years), 71 ‘bushfire’ cases had some form of judgment from a court.

Who gets sued

- The usual ‘targets’
  - 1867-1997 Landowners;
  - 1884-1979 Railway companies
  - From 1977 Electrical utilities
  - From 1995 State government emergency services.

    See Eburn & Dovers (2012) ’Australian wildfire litigation’ *International Journal of Wildland Fire* **21**, 488–497.

NSW Rural Fire Service

- 263 claims 1989-2010 (doesn't include fire fighters' 'Workers Comp' or car accidents on public streets).
- Range from the very small to the large.
- 28 had court proceedings filed; 235 settled 'out of court'.
  - 65% were about fires;
  - 27% were about motor vehicle accidents
  - 8% were 'other'.

Conclusion?

- Day to day or routine fires do not lead to litigation.
- There is a constant ‘trickle’ of claims for compensation for small scale damage caused by the actions of the fire authorities.
- Significant fire events such as the Black Saturday fires now trigger litigation almost before the fires are extinguished.

(see *Matthews v SPI Electricity &Utility Services Corporation (No. 1)* [2011] VSC 167).

But what's the result?

- The law says government agencies should be treated like ordinary people.
- Ordinary people do not have a duty to rescue, neither to governments or their agencies.

Recent developments in case law.

- Consider:
  - *Stuart v Kirkland-Veenstra* (2009) 237 CLR 215
  - *Warragamba Winery v New South Wales* [2012] NSWSC 701
  - *Myer Stores v State Fire Commission (Tasmania)* [2012] TASSC 54
  - *Stannard v Gore* [2012] EWCA Civ 1248

Stuart v Kirkland-Veenstra

'Personal autonomy is a value that informs much of the common law. It is a value that is reflected in the law of negligence. The co-existence of a knowledge of a risk of harm and power to avert or minimise that harm does not, without more, give rise to a duty of care at common law... expressed in the most general way, the value described as personal autonomy leaves it to the individual to decide whether to engage in conduct that may cause that individual harm.'

[88]-[89](Gummow, Hayne and Heydon JJ)

Warragamba Winery v New South Wales

- No duty of care.
- 'Shared responsibility' – what did the plaintiff's do to protect themselves.

Myer Stores v State Fire Commission

"At least in relation to property damage, legislation in this State since 1920 had reflected a policy that the financial burden of unfortunate operational decisions should be borne by insurers, or by the uninsured. That seems possibly to have been a quid pro quo for the State providing fire-fighting services which, in times long past, were provided by insurance companies, and not at the expense of the public."

[41] (Blow J).

Stannard v Gore (UK)

"The moral of the story is … make sure you have insurance cover for losses occasioned by fire on your premises."
[50] (Ward LJ).

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Questions, comments, discussion?

Thank you.

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