"What does the 'Prepare, Stay and Defend or Leave Early' policy mean for me?"

Legal liabilities of emergency workers and emergency-service organisations in South Australia

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By Elsie Loh[1]

Centre for Risk & Community Safety, RMIT University

I. Introduction

The "Prepare, Stay and defend or Leave Early" policy (the Policy)[2] 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[3].

This paper focuses on addressing the question of what the Policy would mean to individual emergency workers and emergency service organisations in South Australia specifically. 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)[4]. 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 of the respective 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 to support their actions and understand that often the acts they feel they "must" do to protect against injury or loss of life, such as forcibly evacuating people from their family home in the face of an approaching 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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[2] See Australasian Fire Authorities Council (AFAC)'s *Position Paper on Bushfires and Community Safety* issued on 28 November 2005.

[3] 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.

[4] 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 forcibly 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[5]. Historically, an order to evacuate could be lawfully refused on the basis of pecuniary interest.[6] 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.[7] In some states, however, the right to refuse an order to evacuate on the basis of pecuniary interest has been overridden.

In South Australia, a "mandatory evacuation model" applies. Under this model, emergency services are allowed to evacuate and, if necessary, forcibly evacuate anyone from any area to another area. The term "mandatory", however, can be quite misleading in the context of the Policy as it is termed from the perspective of the evacuee and not the emergency worker. This may give an impression to some people that emergency workers must evacuate people in the face of a bushfire. This in fact is not the case. It is "mandatory" in the sense that the evacuee must evacuate should an emergency service order them to do so (also giving an emergency worker the power to forcibly evacuate a person who refuses to evacuate), but there is no legal requirement that such an order to evacuate or a forced evacuation be made in the first place. The decision of the emergency worker to evacuate is in actual fact discretionary. The term "discretionary evacuation model" is therefore more appropriate than "mandatory evacuation model" in the context of the discussion here and this paper will henceforth use the term "pecuniary interest evacuation model" and "discretionary evacuation model" accordingly.

Further, although most states and territories have some legislation regarding evacuation, none provide a definition of its meaning[8]. 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 dangerous or potentially dangerous area to a safer area, and the eventual return of those persons to

[5] Nicholas Karanev, 'Assessing the legal liabilities of emergencies' (2001) Autumn, *Australian Journal of Emergency Management* 21.

[6] *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.

[7] Ibid 571.

[8] Please note that the SA State Emergency Management Committee has endorsed on 7 October 2005 the following definitions of 'Directed Evacuation' and 'Self-Evacuation' in their Evacuation Policy Statements 1 and 3. Directed Evacuation defined as the 'controlled and managed movement of people from a threatened area to a place of safety in accordance with the provisions of the *Emergency Management Act 2004* and other relevant legislation'. Self-Evacuation is defined as the 'self-initiated movement of people froma threatened area to a place of safety':

their initial location.[9] 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 SA Metropolitan Fire service ("MFS"), SA Country Fire Service ("CFS"), police force and emergency services officers during an emergency or disaster or major incident:

During a fire

The Metropolitan Fire Service ("MFS"), Country Fire Service ("CFS") and the State Emergency Services ("SES") have powers to:

> (e) remove, or cause to be removed, to such place as the authorised person may determine, any person or animal, or direct the evacuation or removal of any person or animal;
> (f) direct or prohibit the movement of persons, animals or vehicles[10];

A fire-fighter or a member of the CFS may also carry out the above acts in the absence of an officer under section 42(3) and section 97(3) of the *Fire and Emergency Services Act* 2005 (SA) (*"FES Act")*.

State Emergency Services ("SES") members do not have powers to evacuate in the event of a bushfire. They only have powers to evacuate in the event of a flood or storm or where they are directed by the State Emergency Operations Controller to deal with an emergency where no other agency has *lawful authority* to assume command of the emergency operation[11]. As there are lawful authorities who deal with bushfires, the latter case would not apply in the Policy context. SES members may however be asked to assist, at their request, members of Police Commissioner, MFS or the CFS in dealing with any incident or emergency[12]. Further, they may be required to deal with a bushfire emergency until such time the MFS or CFS that has lawful authority assumes control of operations[13].

Declaration of major incident, emergency or disaster

The State Co-ordinator (the Police Commissioner) as appointed under section 14 of the *Emergency Management Act* 2004 (SA) ("*EM Act"*), being the Commissioner of Police at the time, may declare an emergency to be an "identified major incident" or a "major emergency"[14]. Similarly, the Governor may declare an emergency to be a "disaster" under section 24 of the *EM Act.* Section 21 of the *EM Act* allows guidelines to be published by the State Emergency Management Committee (SEMC) to set

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[9] 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.

[10] *Fire and Emergency Services Act* 2005 (SA) s42(2)(e) and (f), s97(2)(e) and (f) and s118(2)(e) and (f) respectively.

[11] *Fire Emergency Services Act* 2005 (SA) s108(1)(d) and (e).

[12] *Fire Emergency Services Act* 2005 (SA) s108(1)(c).

[13] *Fire Emergency Services Act* 2005 (SA) s108(1)(e).

[14] *Emergency Management Act* 2004 (SA) s22 and 23 respectively.

out the circumstances in which an emergency should be declared. Unfortunately, these guidelines do not appear to be available or have been published.

Once such emergencies have been declared accordingly, the State Co-ordinator or an authorised officer appointed under section 17 of the *EM Act* have the powers under section 25(2)(e) and (f) to do the following:

> (e) remove, or cause to be removed, to such place as the State Co-ordinator or authorised officer thinks fit, any person or animal, or direct the evacuation or removal of any person or animal;
> (f) direct or prohibit the movement of persons, animals or vehicles;

Summary

In the case of a fire or where a specific state of emergency is declared, statutory powers appear to privilege emergency response operations over pecuniary interests of owners. In both instances, substantial fines of up to $20,000.00 are applicable should a person refuse to adhere to the instructions of an authorised fire and emergency workers to be removed[15].

The most important point that must be made is that the decision by an emergency responder to order persons be evacuated is a **choice** and must be considered carefully as it is often an onerous, costly and dangerous task. Further, as such forced evacuations involve a degree of deprivation of civil liberties, the power should only be used in situations of great urgency. In such situations, it is extremely difficult to provide the public with the information – such as why an evacuation is necessary and where they are being evacuated to – which is necessary to obtain informed consent. The context in which forced evacuations are likely to occur therefore has the potential to expose ESOs and their personnel to actions for trespass to the person. There is also the potential for legal and political fallout regarding the use of 'reasonable force' to force an evacuation if a person refuses to leave his or her home. Kanarev notes that "it would not be politically acceptable to evacuate a person from their home at gunpoint."[16] Finally, every stage of an evacuation – including withdrawal, shelter and return – the ESO personnel who are involved in the process are likely to assume a duty of care. Directing or transporting people away from a danger area, providing welfare for evacuees and ensuring their safe return to their homes involves a responsibility towards the public. Thus any stage of the evacuation process may create a claim for negligence.

Further, as the decision to stay and defend or leave early is to be exercised by the people themselves in accordance with the Policy, the focus of ESOs should not so much be on whether to initiate forced evacuations but 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[17].

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[15] *Fire and Emergency Services Act* 2005 (SA) s 42(4), 97(4) and s118(4), and *Emergency Act* 2004 (SA) s 28.

[16] Kanarev, above n 4, 22.

[17] 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).

Finally, it is clear that members and ESOs acting in accordance with the Policy (where last minute evacuations should generally not take place) would be acting within the law. Where evacuations are necessary and the rescuer decides in their expert opinion to evacuate, then what is required of the emergency responder is that the rescue be done in a reasonable and competent manner and to ensure that they do not by their actions make the situation worse.

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

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	Comments
- An officer of the Metropolitan Fire Service ("MFS") (s42(2)(e) & (f) *Fire and Emergency Services Act 2005* (*"FES Act"*)) - An officer of the Country Fire Services ("CFS") (s97(2)(e) & (f) *FES Act)* - A fire-fighter or any member of the CSF in the absence of an officer (s42(3) and s97(3) *FES Act*) - SES officer (s118 (2)(e)&(f) *FES Act*).	- Remove any person to a place the officer thinks fit - Direct or prohibit the movement of persons or vehicles	Where there is a fire or imminent danger of fire (or other emergency). Must be within fire district if Metropolitan Fire Service ("MFS") or in country if Country Fire Service ("CFS"). SES officer can take control if either MFS or CFS has not done so.	A fine of up to $20,000.00 is applicable should a person refuses or fail to comply with the requirement /direction (s42(4), s97(4) and s118(4) *FES Act*). A fine of up to $10,000.00 is applicable should a person obstruct operations (s125(1) *FES Act*).	Broad powers of the MFS, CFS and SES (and its officers) can be found at s26/s42(1), s59/s97(1) and s26/s118(1) *FES Act* respectively. Statutory powers privilege emergency response operations over the pecuniary interests of owners.
- State Co-ordinator - Authorised officers (s25(2)(e) and (f) *EM Act*)	- Remove any person to a place the officer thinks fit - Direct or prohibit the movement of persons or vehicles	Declaration of major incident, emergency or disaster (s25(1) *Emergency Management Act 2004* (*"EM Act"*))	May also remove any person who obstructs or threatens to obstruct response/ recovery operations (s25(2)(l) *EM Act*). A fine of up to $20,000.00 is applicable should a person refuses or fail to comply with the requirement /direction (s28 *EM Act*). A fine of up to $10,000.00 is applicable should a person obstructs operations (s29 *EM Act*)	Statutory powers appear to privilege emergency response operations over the pecuniary interests of owners.

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"[18].

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

[18] Please refer to H Luntz and D Hambly *Torts: Cases and Commentary* (5th ed, 2002) and D Baker et al, *Torts Law in Principle* (4th 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*[19] 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[20]. In the past, courts have defined it as meaning 'without any indirect or improper motive'[21]. 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 Rockdate Municipal Council*[22], 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 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.[23]

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[19] [2003] NSWCA 21.

[20] *Bankstown City Council v Alamdo Holdings pty Limited* [2005] HCA 46 at 59 (as per Gleeson CJ, Gummow, Hayne and Callinan JJ).

[21] *Board of Fire Commissioners v Argouin* (1961) 109 CLR 105 at 115.

[22] (1993) 116 ALR 460.

[23] Ibid 468.

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[24]. Relevant South Australian legislation appear to reinforce the doctrine of vicarious liability.

Reinforcing 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.

Though some legislation appear to limit liability, they only function to reinforce the doctrine of vicarious liability. For example, section 32 of the *EM Act* states that:

> (1) No civil or criminal liability will attach to the State Co-ordinator, an authorised officer or other person for an act or omission in good faith—
>
> (a) in the exercise or discharge, or purported exercise or discharge, of a power or function under this Act; or
>
> (b) in the carrying out of any direction or requirement given or imposed in accordance with this Act in relation to an emergency.
>
> (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

An individual's liability is, therefore, reduced from the test of "reasonableness" to one of "good faith" or "honesty" and/or "without recklessness"[25].

Section 127 of the *FES Act* provides that;

> (1) No civil or criminal liability will attach to a member of an emergency services organisation, a person appointed or authorised to act under this Act by the Commission, or other person for an honest act or omission—
>
> (a) in the exercise or discharge, or purported exercise or discharge, of a power or function under this Act; or
>
> (b) in the carrying out of any direction or requirement given or imposed at the scene of a fire or other emergency.
>
> (2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

[24] Michael Eburn, *Emergency Law* (2nd ed, 2005) 144-6.

[25] Other examples from other legislation include: *Emergencies Act 2004* (ACT) s198 and *Country Fire Authority Act* (Vic) s 92 and *Victoria State Emergency Service Act 2005* (Vic) s42, *Emergency Management Act* 2006 (Tas) s58.

In this instance, an individual's liability is reduced from the test of "reasonableness" to one of "honesty" (cf. "good faith").

There is, therefore, a discrepancy between what is required from emergency workers when an emergency has been declared (act or omission to be done in good faith) and when it has not (act or omission to have been honest). It is unclear the reason for this discrepancy and whether "good faith" and the notion of honesty is the same, and if not, how they differ in meaning. Just like "good faith", it is unclear what acts or omission would be considered by courts to be "honest". This notion of honesty has not been clearly interpreted by the courts. It is certain, however, that honesty (like "good faith") is of a lower standard than "reasonableness" though it is not definite if it would have the same or similar meaning.

The 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 Crown will not be liable for acts done by an employee officer that are in good faith or honest (as if the employee is not found liable, then under the doctrine of vicarious liability, the Crown will also not be liable), the Crown 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 acts to clarify the applicability of the doctrine in the area of emergency service.

Furthermore, section 127(3) of the *FES Act* makes it clear also that a volunteer member may still be personally liable as follows:

> (3) A person (the ***injured person***) who suffers injury, loss or damage as a result of the act or omission of a member of an emergency services organisation who is a volunteer may not sue the member personally unless—
>
> > (a) it is clear from the circumstances of the case that the immunity conferred by subsection (1) does not extend to the case; or
> >
> > (b) the injured person brings an action in the first instance against the Crown but the Crown then disputes, in a defence filed to the action, that it is liable for the act or omission of the member.

Section 127(3) limits the ability of an injured person to bring an action against a volunteer member personally to two specific circumstances. Firstly, the injure person may sue a volunteer member personally in a circumstance as described in subsection 127(3)(a), where it is "clear" that immunity does not extend to the case. It is presumed that whether a case is clear or not is for the court to decide with this subsection possibly giving guidance to court to not hear a case of personal liability against a volunteer unless it is absolutely clear that the immunity under section 127(1) does not apply. This is important as the experience of being sued and going through a trial alone is often traumatic enough for the volunteer. Nevertheless, courts would not usually hear a case unless it has been determine preliminarily that it has some weight anyway, therefore, it is doubtful whether this subsection adds anything more to the protection.

Alternatively, an injured person may sue in the circumstance described in subsection 127(3)(b) which appears to confirm that a volunteer may not personally be sued unless an action has been brought against the Crown first and only where the Crown disputes the claim that it is liable for the action of the member. This subsection also attempts to add an extra level of protection for volunteers, not only in regard to the volunteer being liable but also in preventing a case being brought against him or her in the first place.

Police officers are also protected from liability for acts or omission which are "honest" in section 65 of the *Police Act* 1998 (SA), which states:

> (1) A member of S.A. Police does not incur any civil liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty conferred or imposed by or under this or another Act or any law.
>
> (2) A liability that would, but for subsection (1), lie against a member of S.A. Police lies against the Crown.

Liability for negligent acts and omissions of police officers are transferred to the Crown instead. Once again, this South Australia provision merely reinforces the doctrine of vicarious liability.

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

Party protected	Form of protection and conditions under which it will be provided	Comments
State co-ordinator, an authorised officer or other person	Immune from civil liability for acts or omissions done in *good faith* in the performance of a power or function under the *Emergency Management Act* 2004 (SA) or in carrying out direction or requirement given or imposed in accordance with the Act (s32 of the *Emergency Management Act* 2004).	Reinforces the doctrine of vicarious liability. Liability attaches to the Crown instead.
A member of emergency services, a person appointed or authorised to act under relevant Act by Commission or other person	Immune from civil liability for honest acts or omissions in the performance of a power or function under the *Fire and Emergency Services Act* 2005 (SA) or in carrying out direction or requirement given or imposed at scene of fire/emergency (s127 of the *Fire and Emergency Services Act*). A volunteer fire-fighter can only be personally sued if it is clear from the circumstances of the case that the immunity conferred by the legislation does not extend to the case or if the Crown contests its liability.	Reinforces the doctrine of vicarious liability. Liability attaches to the Crown instead.
Police officers	Civil liability for an honest act or omission when exercising or discharging a power or duty conferred upon them by law is transferred to the Crown. Relevant references: s65 *Police Act* 1998 (SA).	Reinforces the doctrine of vicarious liability. Liability attaches to the Crown instead.