

VSS FACT SHEET

Legal Protection for Emergency Service Volunteers

Every year volunteers from the SA Country Fire Service (SACFS) and the SA State Emergency Service (SASES) respond to hundreds of emergencies throughout the State.

The *Fire and Emergency Services Act 2005* provides significant powers to officers of the SACFS (section 97) and the SASES (section 118). At the scene of a fire or other emergency an officer of the SACFS may:

- enter any building
- remove unsafe structures
- direct evacuations
- shut off the supply of water.

An officer of the SASES has similar powers at the scene of an emergency.

When exercising these powers in an honest way, emergency service volunteers are protected from liability by Section 127 of the *Fire and Emergency Services Act 2005* and Section 4 of the *Volunteers Protection Act 2001*. For example, legal liability for any damage to property will lie against the Crown, instead of the volunteer.

These immunity provisions complement the existing legislation which allows for injured volunteers and families of deceased emergency service volunteers to be covered by workers compensation or similar arrangements.

It is important to appreciate that this immunity will not prevent emergency service volunteers from being asked to attend Court to give evidence at a coronial inquiry or other legal hearing.

The SACFS, SASES and SAFECOM are committed to ensuring that members of the emergency services sector can carry out their important work of protecting the community, secure in the knowledge that the law will protect them.

Examples where protection under section 127 may or may not occur include:

Possible acts that would be covered	Acts that would not be covered
Undertaking back-burn operations	Intentional or malicious destruction of property
Evacuating members of the public from residential premises	Intentionally inflicting harm or injury to a person
Removing vegetation during the course of firefighting	Corrupt conduct



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FREQUENTLY ASKED QUESTIONS

Question **What does ‘liability’ mean?**

Answer In the legal context ‘liability’ is a legal responsibility for one’s act or omissions. In the context of section 127 of the *Fire and Emergency Services Act 2005*, it operates by excluding liability for certain events. Therefore, if a volunteer’s action falls within the scope of section 127, then the officer responsible would have no legal obligation to compensate any other person as a result of that claim. Liability in this case would lie against the Crown. The most common way that liability can arise is through negligence.

Question **What does ‘negligence’ mean?**

Answer The term ‘negligence’ refers to instances where a person breaches a duty of care which they owe to another person, with the result that loss or damage is suffered by that other person. For the purpose of this document the law of negligence is concerned with determining the standard of behaviour below which a person will be held liable to other people for loss suffered by them as a result of that behaviour.

Question **What does ‘immunity’ mean?’**

Answer The term ‘immunity’ means exemption from criminal prosecution or legal liability or punishment under certain conditions. For the purpose of this document, liability is transferred to the Crown except in the case of where the Crown disputes that it is liable for the act or omission of the member. Where negligence can be proven, the Crown will not provide immunity to the member.

Question **What does ‘an honest act or omission’ mean?**

Answer Section 127 of the *Fire and Emergency Services Act 2005* provides for immunity against criminal liability if a member causes injury, loss or damage through an honest act or omission. This is sometimes known as acting in ‘good faith’. The dictionary definition of ‘good faith’ is ‘honest of purpose’. Courts have also held that just because an act was undertaken negligently, or with a lack of skill, does not necessarily mean that the person did not act in good faith. Considerations such as these are taken into account by a court when determining whether or not actions were taken as a result of honest intentions.

Question **Is there any type of conduct for which no protection will be available to an emergency services volunteer?**

Answer Certain categories of conduct will not be covered by any protection or indemnity, and are entirely the responsibility of the member involved. For example, criminal conduct, or serious and wilful misconduct in the course of undertaking duties are matters which may result in officers being personally liable for criminal and/or civil penalties.

This information brochure has been prepared to provide general assistance to members of the SACFS and SASES about liability arising out of the performance of their duties. It is not intended that this document be relied upon as providing comprehensive advice.

In relation to specific situations in which liability may arise, volunteers should ask their immediate supervisor and legal advice can be obtained through SACFS or SASES headquarters if needed.