



Question What are some examples of civil liability that would be covered by Section 127 of the *Fire & Emergency Services Act 2005*?

Answer If an emergency services volunteer acted honestly and within terms of his or her appointment, then Section 127 would cover loss or damage occurring as a result of:

- undertaking back-burn operations
- evacuating members of the public from residential premises
- removing vegetation in the course of firefighting; or
- use of reasonable force to enter premises

Question What are some examples of matters where no protection or indemnity would be available?

Answer Emergency services volunteers would not be protected for the following:

- intentional and malicious destruction of property
- intentionally inflicting harm or injury to a person
- corrupt conduct

Do you have any further questions?

Contact the Volunteer Management Branch on Freecall 1300 364 587

Disclaimer:

This information brochure has been prepared to provide general assistance to members of the SACFS and SASES about liability arising out 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.

Acknowledgements

This information pack has been produced by SAFECOM's Volunteer Management Branch, Level 10, 44 Waymouth Street, Adelaide SA 5000.

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Legal Protection for Emergency Services Volunteers

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

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

- enter and if necessary break into 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, emergency services volunteers are protected from liability by Section 127 of the *Fire & 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 legislation which exists to ensure that injured volunteers and families of deceased emergency service volunteers are covered by workers' compensation or similar arrangements.



South Australian
Fire and Emergency Services
Commissioner David Place

Section 127 of the *Fire & Emergency Services Act 2005* protects emergency service volunteers when acting honestly and within terms of their appointment.

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

You may be assured the SA Government and SAFECOM is committed to ensuring that members of the emergency services sector can carry out their important work of protecting the community in the knowledge that the law will protect them.

Common questions answered

Question What protection does section 127 of the *Fire & Emergency Services Act 2005* provide to emergency services volunteers?

Answer Section 127 (1)(a)(b); (2) and (3)(a)(b) of the *Fire & Emergency Services Act 2005* states:

127 – Protection from liability

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.
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.

Question What does 'liability' mean?

Answer In the legal context 'liability' means that a person has a legal obligation to pay money to another person as compensation for loss or damage which has been suffered by that other person. Section 127 of the *Fire & Emergency Services Act 2005* operates by excluding liability for certain events. If an 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 on 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 & 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, it 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 in an honest way.

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.