

10. **Q** What are some examples of matters which may not be covered by section 128 of the Rural Fires Act 1997, but which would be covered by Crown representation?

Answer:

Where an RFS officer does something in the course of their duties, but which is not based on a power contained in the legislation, then s.128 does not apply. However, an indemnity from the State may nevertheless be available.

Examples where this may be the situation include civil liability arising in the course of:

- Driving to or from a fire in a Rural Fire Service vehicle.
- Attending premises to get food or make purchases of some kind.
- Undertaking maintenance work on firefighting equipment.

In addition to matters involving civil liability, Crown representation may also be available to RFS volunteers called upon to give evidence at coronial inquiries.

11. **Q** What are some examples of matters where no protection or indemnity would be available?

Answer:

- Intentional and malicious destruction of property.
- Intentionally inflicting harm or injury to a person.
- Corrupt conduct.

12. **Q** What considerations apply to fire permits issued by RFS officers?

Answer:

The Local Government Act 1993 allows a council to delegate its powers to issue fire permits under the Rural Fires Act 1997. Where an Officer of the RFS has been delegated the power to issue permits, the "protection from liability" provisions (which are contained in both Acts) apply to such activities, and the same considerations which are outlined in this document also apply in interpreting the application of those provisions.

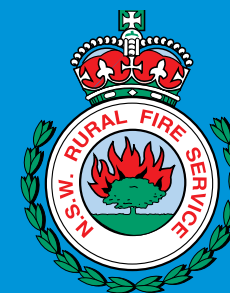
Do you have any questions?

Contact the NSW RFS Policy Officer,
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This document has been prepared to provide general assistance to members of the Rural Fire Service about liability arising out of RFS 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, members of the Service should ask their immediate supervisor and legal advice can be obtained through RFS Head Office if necessary.



Legal Protection for VOLUNTEER RURAL FIREFIGHTERS

Every year volunteer firefighters of the NSW Rural Fire Service respond to many hundreds of fires and other emergencies throughout the State.

The Parliament has granted the officers of rural fire brigades necessary and significant powers under the Rural Fires Act to control or suppress fires and to protect the community from fires and other threats. They include, among other things, the authority to:

- enter private property;
- close streets and other public places;
- carry out evacuations; and
- pull down unsafe structures and remove trees and other vegetation.

When exercising these powers volunteer rural firefighters are protected from liability by section 128 of the Rural Fires Act. For example, no legal liability for any damage to property will arise as a result of volunteer firefighters carrying out the functions of the Act in good faith.

These immunity provisions complement the special legislation which exists to ensure that injured volunteer firefighters and families of deceased firefighters are covered by workers' compensation arrangements.

In recent months concerns have been expressed to me about the extent of the protection afforded by section 128.

In response to those concerns I have obtained legal advice from the Crown Solicitor's Office which confirms that the section 128 protection from liability provision is adequate to protect volunteers who are acting in good faith in carrying out functions under the Act. Obviously, and appropriately, the legal protection does not apply to criminal acts whether they be intentional or negligent.

To better explain the legal protection afforded by section 128, arrangements were recently made for

six senior rural fire brigade officers from various parts of the State to meet with senior Crown lawyers to discuss the application of section 128 to volunteer firefighters.

The outcome of those discussions is presented in this brochure which I hope will further explain how section 128 works. It describes the general principles associated with the legal protection for volunteers and clearly demonstrates how the immunity applies to practical, on-the-ground situations experienced by firefighters.

It is important to appreciate that no legal immunity will ever prevent volunteer rural firefighters from being asked to attend Court to give evidence at a coronial inquiry or other legal hearing. In the event that you are called to Court the Government will ensure that you are provided with adequate legal representation.

Likewise, if a rural firefighter, acting in good faith, is involved in an incident not covered by section 128 of the Act, the Government will provide them with legal protection at any subsequent legal proceeding.

You may be assured that the NSW Government is committed to ensuring that members of the NSW Rural Fire Service can carry out their important work of protecting the community in the knowledge that the law will protect them.

I hope this brochure provides useful information for volunteers.

Bob Debus MP
Minister for Emergency Services
February 2001



1. What protection does section 128 of the Rural Fires Act 1997 provide?

Answer: (Section 128(1) of the Rural Fires Act 1997 is as follows:)

“A matter or thing done or omitted to be done by a protected person or body does not, if the matter or thing was done in good faith for the purpose of executing any provision (other than section 33) of this or any other Act, subject such person personally, or the Crown, to any action, liability, claim or demand.”

The phrase “protected person or body” is defined in the Act, and includes any member of the NSW Rural Fire Service. Under s.8(2) of the Rural Fires Act 1997, the NSW Rural Fire Service includes fire control officers and deputy fire control officers, and volunteer rural firefighters. It follows that s.128 of the Rural Fires Act 1997 applies to volunteer rural firefighters.

2. 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 128 of the Rural Fires Act 1997 operates by excluding liability for certain events. If an action falls within the scope of s.128, then the Rural Fire Service Officer responsible would have no legal obligation to compensate any other person as a result of that action.

The most common way that liability can arise is through negligence.

3. 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 purposes 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.

4. What does “indemnity” mean?

Answer:

An indemnity is an arrangement where one person has an obligation to “step in” and pay for another person’s liability. In relation to the NSW Rural Fire Service, this document looks at circumstances in which the Government may step in and indemnify volunteer firefighters for any liability which may arise in the course of their duties.

5. Section 128 of the Rural Fires Act requires “good faith”. What does “good faith” mean?

Answer:

An essential element of the protection provided by s.128 is that an officer must have acted 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 good faith.

6. When will Rural Fire Service volunteers be covered by s.128 of the Rural Fires Act?

Answer:

Where a Rural Fire Service volunteer is acting in good faith for the purpose of carrying out functions under the Rural Fires Act, s.128 of the Act protects the member from any liability for their actions. Where a person who has suffered loss or damage takes legal proceedings against the State or the member, a court, if it decides that the conduct in question falls within the scope of s.128, will hold that the person who suffered the loss is prevented from recovering for that loss from the State or the member. If it was not for s.128, the court would have no basis to prevent the person from recovering the loss.

7. If a Rural Fire Service volunteer is not covered by s.128 is any other form of protection available?

Answer:

In some circumstances, damage may have occurred as a result of fire fighting activities, but because of the particular situation s.128 may not apply to protect NSW RFS members from liability. There is a range of legislation in place in NSW which provides that emergency service members will be indemnified for liability arising in the course of their duties. The way in which Service members are protected in practice is through Crown representation. In order to be eligible for Crown representation, a member must have shown that their involvement in the proceedings or inquiry relates to NSW RFS duties, and that they have a substantial and direct interest in the proceedings. It is important that the member make full disclosure of the circumstances giving rise to the proceedings. Where there has been full disclosure and an application for Crown representation has been approved, the member is entitled to be indemnified against legal cost and any verdict (in civil proceedings) awarded against that member.

8. Is there any type of conduct for which no protection will be available to a Rural Fire Service 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.

9. What are some examples of civil liability that would be covered by s.128 of the Rural Fires Act 1997?

Answer:

If a RFS member acted in good faith then s.128 would cover loss or damage occurring as a result of:

- Undertaking back-burning operations;
- Evacuating members of the public from residential premises.
- Removing vegetation in the course of firefighting; or
- Use of reasonable force to enter premises.