

FIREPOINT



IAAI JOURNAL



Firepoint

ISSN 1035 2287

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**FIREPOINT: IF YOU HAVEN'T PAID YOUR FEES FOR THE
CURRENT YEAR, PLEASE DO SO NOW.**

EDITORIAL

There are two major articles in this issue.

Jim Munday, who was invited to speak at the IAAI Annual Training Conference 2008 in Denver, Colorado, gives a wide ranging summary of some of the important papers presented at that meeting.

From Queensland, Special Counsel Brady Cockburn presents an in-depth discussion of the obligations and legal liabilities of those who attend a fire scene.

As well, incoming NSW President Greg Kelly discusses a National Conference and a National Organisation in his first President's report.

Best wishes to all members for the coming holiday season.

Wal Stern



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Issue No. 76, ISSN 1035 2287

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IAAI Annual Training Conference, Denver Colorado,

27 April – 2 May 2008

I was surprised and honoured to receive an invitation late in 2007 to be one of the international speakers at this year's IAAI-ATC. I was asked to present (or 'teach classes' in IAAI parlance) on three topics, two of which have already been the subject of presentations here in NSW. These were the Antarctic fire investigation which I carried out for the British government some years ago, and an overview of thermal damage interpretation on bodies and clothing. I also made a presentation on some aspects of arson investigation, including recent developments in physical evidence recovery from fire scenes.

The week's program was very full, with three simultaneous streams of

classes, and of course I was unable to take in any of the presentations which clashed with mine.

However I did manage to get to some very interesting sessions and in particular those from Peter Mansi, Steve Avato, John Lentini and Jim Quintiere & Bobby Schaal. There were many other sessions which looked equally interesting, including some on technical matters ranging from *Long-Term Thermal Residence in Woody Debris Piles* to *LP Gas Service Requirements and Incident Investigation*.

There were also some non-technical classes of direct relevance to practising investigators such as those on Ethics and Selection of Expert Witnesses, the latter a

revealing insight into the mind of the lawyer preparing for litigation and keen to ensure the evidence will stand up.

Copies of handouts from the presentations should be available to International members via the IAAI website www.firearson.com

although these obviously do not have the impact of the speaker input.

This article is based on a presentation given at the NSWAFI AGM and training evening on 14 August 2008 and will consider only four of the major presentations. The first was that of Peter Mansi from the London Fire Brigade (UK) who described the investigation into a fire in a retail building which led to the

deaths of two firefighters. This was a complex investigation carried out for the Coroner. The origin and cause of the fire played only a relatively small part in the investigation, which mainly focused on the fire development and spread and the operational procedures, in an attempt to discover how and why these firefighters became trapped and ultimately perished.

The answer turned out to involve a very complex set of circumstances, requiring both fire science and engineering principles to explain the spread through a complex structure and knowledge of firefighting operations to explain what went wrong and why. In order to explain this to the Coroner and a jury of lay people (in England the Coroner usually sits with a jury if a death at work is involved and for some other cases), Mansi made

a very comprehensive and animated PowerPoint presentation which was given in the court over a period of a day or so. At the conclusion of the case, he was given permission by the Coroner to use this as a training aid to help prevent similar tragedies occurring elsewhere, on the proviso that only he (Mansi) would present the material due to the in-depth understanding and familiarity with the case required.

The investigation required construction of a detailed timeline from the BA logs and other information which could be tied to specific stages in the fire development. The structure, while not especially large, was quite complex. It was spread over several levels with both stairways and concealed communication between them. Modelling carried out by BRE/FRS was able to show how the

fire had moved through the building, especially during a period when no water was being applied due to operator errors and some communication breakdowns, which received adverse comment from the Coroner. The only good news was that both occupants of the residential accommodation above the shop premises were rescued without injury.

To the organisation's credit, London Fire Brigade has agreed to disseminate the presentation and inquest findings, despite the Coroner's criticisms, in order to advise other fire services of the problems encountered and lessons learned. Paul Bailey (former President of the NSWAFI) has expressed interest in having Peter Mansi deliver the presentation to NSWFB and possibly other AFAC members.

Professor Jim Quintiere from the University of Maryland, affectionately known as Dr Q, and Bobby Schaal (Bureau of Alcohol, Tobacco, Firearms and Explosives within the US Department of Justice) jointly presented the results of some detailed research into the comparison of fire modelling predictions with actual results in a series of multi-compartment test fires. This work built on previous experiments using single-compartment fires of known parameters, and helped to validate the equations used in the CFI Calculator basic modelling package.

This is available as a free download for International members via the CFITrainer.net website and is a useful compilation of the most commonly used fire engineering calculations in a very user-friendly format. It can be used on a PC (or Mac) or

programmed into a suitable calculator for field applications

The presentation was lengthy and incorporated numerous photographs of the structure before, during and after burning as well as large amounts of video footage. Each structure was set up as a two-room plus hall layout and furnished as a bedroom and living/dining room. It was fully instrumented with temperature and radiant heat flux measurements and the opportunity was also taken to test smoke alarm and domestic sprinkler responses.

Electrical power and lighting circuits were energised (US standard) and monitored to record activation of protective devices and other responses.

These tests were terminated soon after flashover took place in the

second compartment (living room), some 4-5 minutes after flashover in the ignition compartment (bedroom). As expected, the post-fire indicators in the living room could still be recognised as showing fire spread to it from the bedroom via the hallway. However, within the bedroom the usual post-fire indicators typically produced by fuel-controlled fires were difficult to identify. Ventilation-controlled burning in the post-flashover stage had superimposed other patterns and indicators.

This theme was taken up later in the week during an unscheduled presentation by Steve Carman, then of the BATFE and now a consultant in California.

He spoke about some recent research on post-flashover burning which was carried out collaboratively with Dr Q.

This emphasised the importance of ventilation in producing burning patterns which unwary investigators might think were fuel-related. Such indicators typically include low burns on or through wooden floors (potentially mimicking liquid spill patterns), severe damage to walls opposite ventilation openings, deeper char on timbers facing vents irrespective of fuel disposition, thermal damage to metals and concrete due to flame turbulence and intense damage remote from known high heat release fuel packages.

John Lentini, author of *Scientific Protocols for Fire Investigation*, spoke initially on the subject of Myths and Misconceptions in fire investigation. This was largely a review of much material already addressed in his book, *Kirk's Fire Investigation 6th Edition* (DeHaan) and the

most recent versions of NFPA921. Nevertheless, the historical background was of interest and illustrated how some of the misinterpretations of physical evidence arose and how deeply entrenched they became.

This was to the point that he still encounters investigators in the USA testifying in court that spalled concrete (or in one remarkable case a phenomenon described as 'spaulding'!) inevitably indicates ignitable liquid use, that glass crazing indicates rapid fire build-up, accelerated fires burn hotter than 'normal' fires, etc.

No-one was spared from criticism in the talk, with errors in earlier versions of Kirk's and NFPA921 being pointed out as well as the more well-known problems with texts such as O'Connor's and Carroll's books. To be fair, Lentini

even acknowledged his own subscription to many of the myths in his early years of practice and that he had written reports based on interpretations which he now knew to be plain wrong.

This caused some discussion as to the ethical course of action which should be adopted if an investigator found that evidence used to imprison a person or deny an insurance claim was later found to be incorrect, a theme picked up in the afternoon session on the Innocence Project (see below).

The second part of Lentini's morning presentation followed from this and looked at the problems of expectation and confirmation bias. These phenomena, while well known to scientific and medical researchers, are often not considered by fire investigators. In

particular, the influence of what is known as 'domain irrelevant' information on the initial hypothesis formation and subsequent data collection can be both strong and very detrimental to an objective and scientific investigation. I hope to obtain permission to reproduce his paper on expectation and confirmation bias in a future edition of "Firepoint".

While it is true that Lentini has generated a good deal of discussion, often polarised and not entirely good-natured, among the fire investigation community in the USA, I believe that this question is very important and his position is worthy of consideration.

In the afternoon following the sessions on myths and expectation bias, Lentini led a panel discussion on the Innocence Project.

This is a US-based organisation which first came to prominence some years ago through the use of modern DNA techniques to challenge convictions mainly in homicide and sexual assault cases.

Many of those convicted of such crimes were serving long sentences, were on death row or had already been executed when DNA analysis showed that they could not have committed the relevant offences.

Following some well-publicised allegations of miscarriages of justice in arson cases, Lentini and others became involved in reviewing some of the so-called expert scientific evidence on which many arson and arson-homicide convictions were based. They came to the view that much of this was 'junk science' discredited years ago but still being promulgated by some investigators and even

taught on some training courses up to the present day. Again, it is hoped that approval will be given to publish the discussion paper in a future edition of "Firepoint".

There was a great deal of discussion and it must be said that a lot of contributions from the floor were negative or hostile to the concept. There seemed to be a mindset among many investigators from law enforcement and fire service backgrounds that this was (a) just a way to get guilty people let off and (b) a misuse of science by experts being paid as 'hired guns' by defence teams.

Suggestions that junk science of the type described earlier in the day had no place in obtaining or sustaining convictions, and that rigorous testing of expert opinions against genuine research findings was a good thing for the

entire profession, were not welcomed by some delegates although others were fully behind the moves. It appeared to me that, despite the wealth of resources and large number of highly qualified investigators working there, levels of expertise and attitudes to professionalism among 'rank and file' investigators still lag some way behind those in Australia and the UK.

Steve Avato looked at the issues of expectation and confirmation bias from a different perspective. In a session titled '*Critical Thinking in Fire Investigation*' he looked at the ways in which a purely scientific / engineering approach may be influenced by the (strictly speaking) domain-irrelevant information referred to by Lentini. This was done in the form of a workshop session, in which the opening

scenario was set out and the delegates challenged to state which of three conclusions they would draw from the facts presented. Avato then put forward the view that any or all of those could be equally well justified, and a discussion ensued as to the weight which individual investigators attached to specific factors within the scenario (see attachment).

Avato then challenged us by adding more factors, none of which were in themselves related directly to the science / engineering aspects of origin and cause determination, and asking whether our conclusions changed. If so, he asked, then why and how could we justify that change, given that the science had not altered and the same investigative methodology still applied. It was interesting to see the difference in responses

between investigators with mainly 'scientific' or 'engineering' education and training, compared with those from a law enforcement or fire service background. The latter were much more likely to change their conclusions based on non-scientific information such as *'the owner of the block of sub-standard homes has applied for permission to redevelop the area'* or *'Cajun Dan was later found to have previous convictions for arson in another state'*.

There was also some discussion concerning the inflexibility of the (NFPA921 recommended) system of classifying fires only into one of three categories, which has been adopted throughout much of North America. Many investigators felt that this deprived them of the true role of an expert, to use judgement and offer a qualified opinion with

levels of likelihood. Those working mainly in the civil litigation field made the point that this was precisely what they were expected to do most or all of the time, and would probably (and rightly) be criticised by the judge if they attempted to 'squeeze' a complex opinion into a choice of three one-word conclusions.

However many of those working primarily in law enforcement felt discouraged by 'the system' from offering any opinion which went beyond one of those three bald statements. Indeed, some had been criticised by trial judges for doing so on the basis that this was a matter for the jury based on the factual evidence presented. Don't worry, I did not understand that either.

This article has only scratched the surface of

the material presented during the week and I would have liked to attend more sessions myself, but logistics did not permit. As with most conferences, some of the most valuable learning opportunities occurred outside the classroom during meals and social time.

It was good to catch up with some old friends and colleagues, and to meet some new ones. Good friends of the Australian chapters such as Jamie Novak and Kirk Hankins send their best wishes and look forward to an opportunity to visit again.

As Roger Bucholtz was unable to attend this year, I had the honour of representing the NSWAFI (Chapter 47) at the Chapter Presidents' lunch and conveying his greetings to the President and Council of the IAAI. The international training arrangements were

reviewed but (unfortunately for us in this part of the world) it has been decided that the ATC will always be located in the USA in future, where it will rotate between four or five regional centres. Although the idea of taking it offshore was attractive, both the NZ conference some years ago and the recent one in Canada were relatively poorly attended and made a significant financial loss.

However, if any Australian members have the opportunity to travel to the USA for the ATC in future years, I can thoroughly recommend it as a learning experience and a chance to meet other investigators sharing many of the same problems as ourselves. You never know, some of them may even have found a solution or two!

Jim Munday

Fire Investigation Scenario (Avato's Conundrum)

You are a fire investigator assigned to a municipal fire investigation Task Force. At approximately 0430 hours, in the winter months, you are requested to respond to the scene of a fire in a run down section of the city / town. You arrive on location and are advised that a room and contents fire has occurred in the kitchen area of a two-story residential structure located in the middle of a block of similar homes. Your exterior examination of the structure reveals smoke staining above the windows and the doorway of the first floor. There are no utilities to the building. The water, gas and electric service had been disconnected months before this fire. There is no apparent fire damage on the second floor. Smoke and fire damage is visible above the rear windows that correspond to the kitchen area. An interior examination reveals that there is no furniture or other indications that the property is occupied on a regular basis. The smoke and fire damage is consistent with a fire originating in the kitchen. The fire appears to have originated on or around the kitchen stove where a fire has been set using available combustible materials. A pot sits in the middle of the remains of the combustible materials. Inside the pot is some unidentifiable carbonaceous char. The fire appears to have originated at this point and spread to the cabinets above the stove. The cabinets appear to have been unsecured and hanging down prior to the fire. These cabinets and the combustible wall coverings appear to have supplied enough energy to cause flashover in the kitchen. An accelerant detection canine is brought to the scene, but does not alert. There are no unusual odors detected while processing the scene. There were no deaths or injuries associated with this fire.

The fire officer states that a neighbor called 9-1-1 to report smoke from the structure. The first engine arrived and observed smoke from the first floor. As they were stretching a single hose line through the front door, the kitchen went to flashover, but was quickly extinguished using a single hand line. There were no occupants in the house at the time the Fire Department arrived. The fire officer reports that he has responded to two other fires in this same property during the past three months. Both fires occurred on the second floor and were attributed to vagrants either smoking or trying to keep warm.

The reporting neighbor states that he observed a homeless man known as "Cajun Dan" exit the kitchen door about 10 minutes before the neighbor saw the smoke. A check with the police shows that "Cajun Dan" is a homeless man whose criminal history consists only of vagrancy and public drunkenness charges. Dan is unavailable for interview and may have left the city for a warmer climate.

You determine the fire to be:

Accidental Incendiary Undetermined



**NSW ASSOCIATION OF FIRE
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(IAAI CHAPTER No.47)

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President's Report

Welcome to another addition of "Firepoint" and my first message as President of the New South Wales Association of Fire Investigators. As we get closer to the end of 2008, we can look forward to a bright future as we move into 2009 and the years beyond.

In that light, I have been in contact in more recent times with the Victorian Association of Fire Investigators and the Queensland Association of Fire Investigators along with our New Zealand counterparts.

A combined meeting of representatives of each of those chapters will take place on 26 November in Queensland where we will be discussing a

National Fire Investigation Conference

Although that will be the key topic of discussion during that meeting, at the same time, we will also be canvassing the interest in forming a National or International Association of Fire Investigators. Our main concerns seem to be around the provision of services at a State or Island level depending on which country we are speaking about and the availability of information of people at those locations.

Interaction between people in the fire investigation industry and the networking which takes place along with the interchange of the information is a real benefit in being a member of our Associations.

At the same time, our isolation due to our location on the globe limits in some ways, the expansion of the general membership in any of the areas identified.

At the time of writing this article I am aware that the Victorian Association has been involved in an ongoing strategy to increase their membership to which they are to be congratulated. New South Wales, my own Chapter now has put in place some strategies to see our membership increase.

At the same time, we are of the understanding that the Queensland Association is focusing on keeping the interest and involvement in that area with increased membership also needed. It is therefore

apparent that with what might be considered finite resources, either in specialists able to provide training or information, or in the potential membership across Australia and New Zealand, that we might be better served through an amalgamation of those resources where people involved in either emergency services such as Police or Fire Brigades or industry related members such as the legal and insurance industries, could also become involved.

I believe there are a number of advantages in having an international body particularly in relation to Australia and New Zealand. Many of the insurers, law firms and specialists within the fire investigation industry operate in both countries.

The consideration of a National Conference also identifies the potential for a conference of this type to be rotated through both our countries and therefore various states or islands with specialists addressing areas of insurance, law and investigation.

The area of specialist investigation as opposed to scene examination is an area which could be further considered along with forensic accounting and the gathering of information in fire related matters.

On another note, from time to time investigators and particularly scene examiners come across very interesting matters which may be of interest in assisting others.

Could I encourage each of us when those matters come to light, given that at times they may involve litigation and therefore a delay can occur, that we take the time to put together those thoughts in relation to an article and supply them to "Firepoint" for either the entertainment or education of members which further extends the value in being a member of the Association.

I look forward to interacting with the other representatives of Queensland and Victoria along with New Zealand and of being of service to the members in 2009.

Should this article reach you around the time of

the festive season, may I take the opportunity to wish each of you and your families a very Merry Christmas and very happy and rewarding New Year.

Greg Kelly
President

What is an Arson Dog?

An accelerant-detection K-9 (arson dog) is a canine that has been trained to sniff out minute traces of accelerants that may have been used to start a fire. These K-9s go through extensive training before becoming certified arson dogs. Each arson dog is part of a team that is comprised of the K-9 and its handler. The handler is a law enforcement officer trained to investigate fire scenes. Not only are these teams trained to investigate the causes of fires but they are responsible for providing community outreach programs and educational seminars on fire prevention and safety.

Victorian Association of Fire Investigators Inc.

Website www.vicfire.com

2008 Victoria Police Arson and Explosive Squad Forum (AES)

On Friday 31 October 08 the AES conducted a forum on the importance of "INITIAL ACTIONS" at the Victoria Police Academy at Mt Waverly. With over 100 participants, they were entertained and informed by three excellent presenters.

Peter Endler from VICPOL commenced the forum with the basics of initial actions taken at scenes and relating to fire scenes and the problems involved. His objective was Preserve,

Prevent contamination and collect evidence, going through scene, combat agency and police roles and responsibilities.

Ken Legat from New Zealand Police

presented one of his interesting case studies. His thrust was control of the scene, choose, test and get the right experts, record and note scene activity, exhibit handling and recording with attention to detail all the way through.

For fires always take too many samples and have an ignition sequence that can be proven.

John Prunty from the London MET who was the SIO for the bombing in London on 5th July 2005 described the enormity of the incident, but with taking your time to formulate a plan and having the flexibility within the plan. Right people for the right jobs is another important factor. His thrust was the four R's – Reliance on personnel and plan, Robust decisions,

Record Keeping and Resources. He also emphasized the important of exercises to test plans and resources.

Remember: "its too late to learn to dance when the music starts playing."

The VAFI members that attended this forum left with good information and proven skills.

Back To Basics

The chapter held a "" "Back to Basics" session at the Boronia Fire Station on Saturday 25th October 2008 with 38 members attending.

The day was to provide a walk through fire investigation for revision and to increase knowledge of others. The day started with a theory

sessions on fire behaviour, with reconstruction of the fire investigation and fire scene indicators. After morning tea was a session on electrical fires and a demonstration of fire behaviour and flammable liquids.

Following the lunch break a discussion on fire causes, a second demonstration of fire causes and devices, then investigation techniques and interviewing skills.

The day finished with a open forum for questions.

The Chapter Committee wish to thank the committee members who presented sessions, Russell Lee, Trevor Pillinger, Ian Hunter and Brian Neal and a special thanks to Sharon Merritt CFA and Ken Legat NZPOL for their presentations.

During the day the AGM was held and a separate report is enclosed. Thanks also to the Staff at the Boronia Fire Station

for their assistance. Feedback from the members who attended commented favourably on the content, pace and selection of subjects and thought the food was good as well.

Victorian Chapter AGM

The Chapter held its Annual General Meeting on Saturday 25th October 08 at the Boronia Fire Station.

President Andrew Kerr chaired the meeting and presented the Presidents report on a successful 2007/2008 year for the Chapter.

The Treasurer's report showed the Chapter in financial stability.

There were some minor amendments to the Chapter Constitution to update and provide more guidance for the committee on membership of the Chapter. These were all passed after explanation by George Cooney. The elections of committee members this year

saw the return of all those on the committee to the following positions:

Vice President
Brian Neal

Treasurer
Rod East

Committee
Norm Jackson
George Cooney
Karen Ireland
Belinda Webb

Michael Weekes
Congratulations to all those who have been elected to the committee.

Victorian Chapter Committee 2008/2009

President
Andrew Kerr
VICPOL

Vice President
Brian Neal
CFA

Secretary
Trevor Pillinger
EDUC

Treasurer
Rod East
MFB

Committee
Nicole Harvey
CFA

Ian Hunter
MFB

Norm Jackson

George Cooney

Russell Lee
FSE

Karen Ireland
Forensic
VICPOL

George Xydias
Forensic
VICPOL

John Lording
INS

Belinda Webb
INS

Registrar
Alex Conway
MFB

Victorian Membership

Just a reminder that fees for 2008/2009 are now due and if any member has any enquires regarding membership contact Alex Conway 9420 3883. The Chapter

has at this time 141 financial members with renewals and new membership still arriving. VAFI Scholarship for 2009/2010 is open for applications by financial members and will close 31st May 2009.

TRAINING

March 2009 -
Training Session on
Marine Fires
Date to be confirmed
May 2009 - TBA

CFI Trainer

The IAAI Board of Directors and Executive Officers is proud to announce that on August 3, 2007 FEMA officially announced that IAAI was awarded another US Fire Administration Grant allowing IAAI to continue with the efforts of CFITrainer.net in the amount of \$841,000.00.

As most of you know this is the 4th such grant that IAAI has received. Through the

efforts of Jon Jones, Stonehouse Media and others this endeavor has been very successful for IAAI and its membership.

Also, remember to take advantage of this great opportunity by signing up for each of the classes on the IAAI web site CFITrainer.net

As you can appreciate, this kind of success does not happen by chance alone. Many individuals are involved in making this successful. Jon Jones, Rod Ammon, Liz Connolly, Kirk Hankins, David Sneed, the steering committee, the technical experts, Board Members and others involve hundreds of hours of professional knowledge and talent to this task.

The Board would like to thank the many people that make this endeavor so successful and ask for your continued support.

Fire Scene Obligations and Legal Liabilities

Brady Cockburn Special Counsel

A paper presented to the "Fire Scene Safety" seminar held in Brisbane on 11 September, 2008.

This paper looks at the legal obligations and potential legal liabilities of those persons who attend a Queensland fire scene, or those who send others to do so.

Who attends the fire scene?

Qld Fire & Rescue Service
Qld Police Service
Qld Ambulance Service
The Coroner
Workplace Health & Safety Officers
Electrical Safety Officers
Private Investigators & Engineers
Loss Adjustors/Insurance Reps
Members of the General Public
Owners and Occupiers of premises
Volunteers

Obligations of Fire Scene Attendants and those who send them

Obligations Common to All

To exercise care when driving to the fire scene

To conduct oneself appropriately!

To co-operate with each other

Section 8B *Fire and Rescue Service Act 1990*

Section 46 *Ambulance Service Act 1991*

Section 793 *Police Powers and Responsibilities Act 2000*

To exercise care when gathering evidence and preserving evidence

To protect staff from the risk of injury

The Obligations of the Employer

An employer is obligated to ensure the workplace health and safety of their employees

An employer must protect against workplace risks by:

Providing appropriate training

Providing appropriate directions

Providing safe plant and equipment

Establishing and enforcing a safe system of work

Duty is to protect against "foreseeable risks" not "far fetched and fanciful" ones

An employer who sends their staff to a fire scene must educate themselves about common dangers associated with fire scenes and train their staff with respect to them

This may include training with respect to:

Coming into contact with hazardous substances

Explosions

Using the wrong fire fighting agent for certain types of fires

Inhalation of certain carcinogenic substances

Attempting to retrieve persons from the scene in terms of safe manual handling loads and techniques

Building collapses due to unstable structures.

The Obligations of the QFRS

Duty to respond:

Section 8B *Fire & Rescue Services Act 1990*

Not absolute

Duty to protect other fire scene entrants from injury

Power to exclude

Again, not absolute

Duties with respect to evidence gathering and dealing with property:

Take careful notes!

Sections 56C & 56D *Fire & Rescue Services Act 1990* – receipts

The Obligations of the QAS

Duty to respond:

Section 3D *Ambulance Service Act 1991*

Not absolute

Duty to provide reasonable medical treatment

Treatment in the heat of the moment

Again, not absolute

The Obligations of the QPS

Duty to respond:

Section 2.3A *Police Service Administration Act 1990*

Duty to provide assistance at the fire scene

To fire officers - Section 793 *Police Powers and Responsibilities Act 2000*

To the coroner - Section 794 *Police Powers and Responsibilities Act 2000*

Duty to protect the public and evidence:

Wide powers

Crime scenes – s168 *Police Powers and Responsibilities Act 2000*

The Obligations of Others

The Coroner:

To investigate “reportable” deaths – s11 *Coroners Act 2003*

WHS Officers:

To inquire into the circumstances and probable causes of a workplace incident – s121 *Workplace Health and Safety 1995*

ESO Officers:

Investigation of serious electrical incidents – s137 *Electrical Safety Act 2002*

Private Investigators/Engineers:

No legislative provisions

Not to interfere with evidence

To seek the consent before entering premises

Casual Bystander:

Duty to respond – positive duty?

Owner/occupier of premises:

To provide assistance?

To warn of risks on property.

Liability of Fire Scene Attendants and those who send them

Perception v/s Reality

Perception

“[The fear of liability] has affected the effectiveness of

brigades getting in and doing their job. We tend to be told, 'If in doubt, get out.' We have better resources, much more expensive equipment and more training and yet our ability to get water onto a fire has deteriorated because people are worried about the liability. If you say, 'Go in and do it' and something happens, they do not want it on their neck ..."

Perception v/s Reality

Reality

The risk of being sued in the context of an emergency is very low and the risk of being successfully sued, even lower again.

But why?

Perception v/s Reality

Reality

The law provides legislative exemptions for many of the participants at a fire scene;

The law demands that people exercise "reasonable" care in the way they conduct themselves around others or other person's property, not absolute care.

The law judges conduct in the context in which that conduct occurred, not with the wisdom of hindsight.

If you are an employee, a claimant is unlikely to sue you in the first place and if they do, your employer will usually be obliged to indemnify you.

Liability of the Fire Officer

Allegations against a fire officer/QFRS may include:

Failing to reach a fire scene or begin the fire fighting operation in a timely fashion;

Failing to prevent the spread of fire to other property;

Damaging property at the fire scene;

Trespassing;

Conversion or theft of items;

Failing to provide adequate first aid;

Causing or failing to prevent personal injury to another including bystanders or a co-fire officer.

Failing to attend to the fire in a timely fashion:

Section 8B(b) *Fire & Rescue Service Act 1990*

Available resources

Failing to prevent fire spread:

Duty to do what is reasonable.

Section 129 *FRSA 1990*

Damaging property:

Sections 53-56 *FRSA 1990* – authorised powers

Reasonable force

Section 132 *FRSA 1990* – household insurance policies

Trespassing:

The mean spirited claimant

Powers of entry both during and after the fire under the *Fire & Rescue Service Act 1990*

If entry pursuant to one of these powers – no liability

Conversion or theft of goods:

If deliberate theft – criminal offence

Powers of seizure of items under *FRSA 1990* if reasonable belief that items are evidence of an offence under Act

Return of goods to rightful owner

Failing to provide adequate first aid:

Section 26 Civil Liability Act 2003 – protection from liability in respect of emergency first aid

Aid to be given in good faith and without reckless disregard

Causing or failing to prevent injury:

Traffic accidents on way to fire scene

The injured innocent bystander

Section 129 FRSA 1990 – exemption from liability and its limits

Injuring a co-worker

Injury due to a failure to comply with OHS laws

Using unreasonable force

What is “reasonable” force

Failing to prevent personal injury to those entering the scene lawfully and unlawfully

Control means obligation to warn

Securing the fire scene

Entry without lawful authority

Liability of the Police Officer

Allegations against a police officer/ QPS may include:

Trespassing either on the premises where the fire is located or on adjacent premises

Failing to provide adequate first aid.

Causing damage to the property

Causing personal injury to another including bystanders

Trespassing:

Powers of entry under *Police Powers and Responsibilities Act 2000*

With a warrant – s157

To arrest without a warrant – s21

Suspicion of death or need for urgent medical treatment – s596

Imminent risk of injury or property damage – s609

Designated crime scene – s176

If entry is pursuant to one of these powers – no liability.

Failing to provide adequate first aid:

Section 26 *Civil Liability Act 2003* and Section 10.5 *Police Service Administration Act 1990* – protection from liability in respect of emergency first aid

Aid to be given in good faith and without reckless disregard or gross negligence

Damaging property:

Crime scene v/s non-crime scene – powers

Sudden or imminent need to use force – s635 *Police Powers and Responsibilities Act 2000*

Causing personal injury to others:

Use of reasonable force both to carry out functions as a police officer and to prevent obstruction to an ambulance officer – sections 614/615 & section 52 *Police Powers and Responsibilities Act 2000*

Removal of persons from crime scenes after direction given – s177 PPRA 2000

Question will always be what was “reasonable” force

If reasonable force used – no liability.

Liability of the Ambulance Officer

Any allegation against an ambulance officer/QAS is likely to be directed at a failure to provide treatment:

In a timely manner;

At all; or

In a professional manner.

Failing to attend to treatment in a timely fashion:

Available resources and need to prioritise

Failing to treat at all:

Decision to treat must be viewed in context of situation

Duty to do what is reasonable.

Failing to provide professional treatment:

s26 Civil Liability Act 2003 and
s39 Ambulance Service Act 1991

Emergency treatment given in
good faith and without reckless
disregard

Duty to do what is reasonable

Liability of the Volunteer Firefighter & SES Members

**Section 39 Civil Liability Act
2003 offers protection from
liability for acts or omissions
of volunteers done in good
faith when performing
“community work” organised
by a “community
organisation” (which would
include organisations like the
SES).**

**Liability will not however be
excluded where:**

The volunteer is committing a
criminal offence;

the volunteer is intoxicated;

the volunteer was acting outside
the scope of the organised
activity or against directions
given to the volunteer by the
community organisation;

the volunteer was required by
law to have insurance;

“community work” is defined by
section 38 to mean work that is
not for private financial gain and
that is done for a charitable,
benevolent, philanthropic,
sporting, recreational, political,
educational or cultural purpose,

and includes making donations
of food if the donations are not
for private financial gain and are
done for a charitable,
benevolent, philanthropic,
sporting, recreational, political,
educational or cultural purpose.

Vicarious Liability for a
precarious occupation

An employer will be liable for
acts or omissions by their
employees if the employee was
acting within the scope of their
employment or authority.

An employee will become
personally liable however if they
have gone off on a “frolic of
their own” (eg the theft of
something or a brutal assault
without lawful justification or
excuse). The conduct of the
employee has to be so far
removed from what was
authorised as to be beyond the
control of the employer.

Only in unusual cases will an
employer not offer legal
protection to their employee

Liability of those who send
others to the fire scene

Liability will arise where there
has been no genuine attempt to
protect an entrant to a fire scene
from a foreseeable risk be that
by way of failing to provide
sufficient training, equipment or
warnings about dangers to which
the person being sent might be
exposed.

In assessing what response an
employer should take to a risk,
the law will look at

The magnitude of the risk;

The degree of probability of it
occurring;

The expense and difficulty of
doing something about the risk.

Any other competing legal
duties the employer might.

Liability of those who send
others to the fire scene cont.

It's all about education of
common fire scene dangers.

Employers will become liable
for:

Negligent acts/omissions of
employees under vicarious
liability principles.

Negligent acts or omissions of
incompetent co-workers

Negligent acts or omissions of a
non-employee who is working
alongside an employee if the
circumstances dictate that there
should be some co-ordination of
the tasks by the participants at
the worksite in order to prevent
injury from occurring.

Psychiatric injuries (eg
constant exposure to horrific
events) if those injuries are
reasonably foreseeable.

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