

Emergency Vehicles and the law in New South Wales

Every day, ambulance officers, police officers and fire fighters put their lives at risk when they drive on urgent duty to the scene of an accident or emergency. It is both accepted and expected, that emergency workers will drive contrary to the normal rules of the road in such cases. But under what authority do they do so and what are their responsibilities, at law?

The use of motor vehicles in New South Wales is governed by the **Traffic Act, 1909** and the Regulations under that Act. The Act, amongst other things, sets out procedural matters with respect to the rules of the road, it also contains offences such as Negligent Driving; Menacing Driving; Speeding; Driving Under the Influence (DUI) and Driving with the Prescribed Concentration of Alcohol (PCA); and the requirements that drivers must be licensed and cars registered.

The Regulations contain the bulk of those things considered to be the rules of the road. The requirement to keep left, to give way to pedestrians, parking offences, the declaring of speed limits, clearways etc. It also sets out the requirements that vehicles must meet if they are to be registered. The majority of the "road rules" are found in the Regulations.

Naturally enough, all these rules, the Act and the Regulations, apply to Ambulances, Fire Engines and Police Vehicles. Accordingly, when considering what it is that the drivers of these vehicles can do, we must look to the Act and Regulations. Section 4A of the **Traffic Act** provides that there are speed limits and what the penalties for exceeding those limits are. Section 4A(7) says that:

- "The provisions of this section shall not apply to the driver of
- any motor vehicle whilst conveying a member of the police force on urgent duty;
 - any fire engine, reel or other similar vehicle whilst proceeding to a fire;
 - any ambulance vehicle whilst proceeding to the scene of an accident or to a hospital with an injured person; or
 - any vehicle referred to in paragraph (a) (b) or (c) whilst proceeding to any place to deal with an emergency.

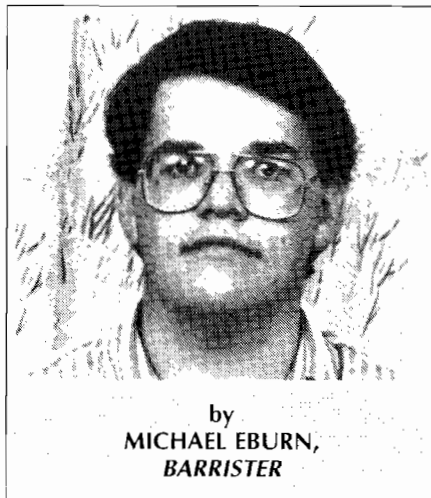
if the observance of those provisions would be likely to hinder the use of the vehicle for any purpose aforesaid. Provided that such driver shall give the best practicable warning so as to enable way to be made for such a vehicle.

Because it has been provided for in the Act, drivers are entitled to exceed the speed limits in the circumstances set out and when the **best practicable warning** is being given. I shall return to the question of what is the "best practicable warning" later.

What of the other rules, as set out in the Regulations. Regulation 132 of the Traffic Regulations says that none of the regulations apply to the drivers of emergency vehicles (police, fire and ambulance) provided that the

"... driver or officer shall give or cause to be given, the best practicable warning so as to enable way to be made for such a vehicle."

It seems therefore, that provided the "best practicable



warning" is being given, the driver of an emergency vehicle may exceed the speed limit or the road rules set out in the Regulations.

So what is the best practicable warning? Emergency vehicles are equipped with sirens. On the sounding of the siren, other vehicles are required (Regulation 80) to make way for the emergency vehicle. In the case of *Horan v. Smith*¹ the Supreme Court of the ACT considered the liability of a police officer who, whilst proceeding to investigate a burglar alarm at 6.30am drove through a red light. The blue flashing light was on, but the siren was not. There

was an accident and the officer was charged with disobeying a red traffic light. The ACT Ordinance was in the same terms as the NSW regulations and required the officer to give the "best practicable warning". The police officer said that he did not want to use the siren as he did not want to alert anyone who may have been at the scene.

The Court said that the obligation on the driver was to give the warning so as to alert others to the danger that he created by driving contrary to the normal rules. Consideration of the purpose for which the vehicle was being driven does not affect the obligation to give the "best practicable warning".

"The warning that must be given is the best that can be given having regard to the circumstances relating to the danger created by the vehicle and in particular the opportunity to be given to those so endangered to make way for the endangering vehicle. It has nothing to do with the purpose for which the vehicle is being used or its destination."

It is common experience to see police cars travelling through red lights with only their roof lights flashing. Ambulance Officers are reluctant to use the siren in the early hours of the morning. Without that warning being given, then s.4A(7), and regulation 132 do not apply and the driver has no legal right to speed or drive contrary to the road rules that normally apply.

What if the driver is doing all the right things. Lights and sirens are on, but there is an accident, is that the end of the matter? The answer is no. All that the driver is exempt from are those penalties provided for in the Regulations and the speeding provisions in the Act. The driver may still face charges of Negligent Driving or worse. The offence of Culpable Driving is contained in the *Crimes Act 1900*.² This offence is made out if it can be proved that the driver was driving at a speed³ or in a manner dangerous to the public so that there was an accident that caused death or grievous bodily harm. The Courts have said

¹, (1986) 4 MVR 349.

², Section 52A

³, Section 28 of the *Fire Brigades Act 1909* requires fire brigades "... notwithstanding any provision to the contrary in any Act, proceed with all speed to the place where such fire is ..." It could be argued that this section would absolve an officer from criminal responsibility under, say, s.52A of the *Crimes Act*. Given public policy considerations and the reasoning of the High Court in *Ardouin* below, it would be unlikely to succeed. It is however an argument that does not exist under the Ambulance and Police legislation.

EMERGENCY VEHICLES AND THE LAW IN NEW SOUTH WALES - CONTINUED

that there must be more than mere negligence (that is failure to take proper care), there must be

*"... some serious breach of the proper conduct of a vehicle upon the highway, so serious as to be in reality and not speculatively, potentially dangerous to others. This does not involve a mere breach of duty however grave, to a particular person."*⁴

There are also civil procedures. If there is an accident and someone is killed or injured, then an action may be brought if it can be shown that the accident was caused by the negligence of someone. Often it may be the driver of the emergency vehicle that comes through the intersection that is named as the defendant (though of course it will be the employer's insurance company that will be liable for any costs or damages awarded).

Section 46 of the *Fire Brigades Act 1909*⁵ provides that an officer is not liable for damage done by him in the course of his duties. The High Court⁶ held that this section did not extend to actions for negligence on the road. Similar legislation applies with respect to the other services and although it is somewhat different, the reasoning would seem to apply, and it is therefore arguable that the protection provided to police and ambulance officers would also not extend to road accidents.

In an English case⁷ the Court said that the duty of a police motorcyclist, travelling on urgent duty, must be judged

"... in exactly the same way as any other driver of a motorcycle in similar circumstances. He like any other driver, owed a duty to the public to drive with due care and attention and without exposing the members of the public to unnecessary danger."

That does not mean the circumstances, namely proceeding to an emergency are to be discounted.

*"The urgency of the errand can be taken into account in determining what speed is reasonable and what risks may be justified for its performance: see e.g. Daborn v Bath Tramways Motor Co. Ltd. But this does not mean that it is permissible to drive a fire engine, or any other fire brigade vehicle, in a negligent manner. It means only that whether there was negligence is a question of fact to be determined having regard to the circumstances."*⁸

The law is concerned to protect innocent users of the road who might come into collision with an emergency vehicle. The

driver of that emergency vehicle owes the same duty of care to other drivers. That is a duty to drive with due care and attention. When deciding whether the driver has exercised "due care" the court can look at all the circumstances, including the fact that the driver was proceeding to an emergency.

Notwithstanding the exemption from criminal penalty, a person who is hit by an ambulance, police car or fire engine may bring an action for damages. They will need to show that, in all the circumstances, the emergency vehicle was being driven at an excessive speed; that the driver failed to keep a proper lookout; or that the driver was in some other way negligent.

As the law currently stands then, the drives of emergency vehicles, when giving the best practicable warning possible, are exempt from most of the road rules. They can not get a ticket for a breach of the traffic regulations. In the event of a collision they may still be liable to prosecution for any other offence (other

than speeding or an offence under the Traffic regulations) like any other driver. For the purposes of a civil action, they may be sued like any other driver. The question of whether they were negligent or not will be determined in accordance with the standards applied to "ordinary" drivers.

MICHAEL EBURN

⁴. *McBride v The Queen* (1965) 115 CLR 44.

⁵. For similar provisions, see s.23 of the *Ambulance Services Act 1990*; s.112 of the *Police Services Act, 1990*.

⁶. *Ardouin v Board of Fire Commissioners* (1961) 109 CLR 105.

⁷. *Gaynor v Allen* (1959) 2 QB 403

⁸. *Ardouin v. Board of Fire Commissioners* supra @ 125 per Windeyer J.

* REMEMBER *

This is your magazine, so if you have articles you would like to submit or ideas for new sections in the magazine please do not hesitate to contact me.

DENNIS ROGAN, Editor.

Proudly Supporting the Ambulance Officers

PHOENIX SCIENTIFIC INDUSTRIES LTD

UNIT C, 6 LYON PARK ROAD, NORTH RYDE, 2113

**PHYSIO
CONTROL**

Physio Control
is represented
in Australia by

PHOENIX

Phone:

(02) 887 3377

Fax:

(02) 888 6018