THE LAW OF DRIVING UNDER EMERGENCY CONDITIONS

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In this article, Michael discusses the law of driving under emergency conditions. Questions and comments can be directed to michael.eburn@anu.edu.au.

Evidence from the blog site, "Australian Emergency Law" suggests that there is increasing concern and debate about the rights and responsibilities of emergency service volunteers when driving emergency vehicles on urgent duty. This article will look at the law in Victoria and consider what the legal and practical options are for the drivers of State Emergency Service (SES) vehicles when responding to an emergency. The paper will give a brief introduction to some fundamental legal issues before identifying the relevant rules set out in the Road Safety Act 1986 (Vic).

In Victoria, it is a fundamental principle that traffic lights are not to be ignored by emergency vehicles. Furthermore, an emergency vehicle must be allowed to pass. The general rule is that an emergency vehicle has a right of way over all other traffic. However, this rule is subject to certain exceptions such as at a roundabout or when an emergency vehicle has been stopped by a blue light or red light. The paper will address these exceptions in detail.

Some introductory theory

In Australia there are three arms of government: the legislature, the executive and the judiciary. The legislature is made up of the Parliament and the elected MPs. The legislature is responsible for passing laws which the executive, made up of the Ministers (who are also elected MPs), the public service and in some cases, a number of the members of the emergency services, must go and implement. The legislation does not spell out in great detail how the emergency services must be carried out; instead it leaves it to the Ministers and their departments. The Parliament pass an Act of Parliament and it is the Department of Justice to interpret the language, directions and rules to fill out the details. In the context of driving, the Parliament has passed the Road Safety Act 1986 (Vic). That Act deals with serious criminal offences because it is generally accepted that only the Parliament should make laws that carry serious penalties such as long periods in gaol. The Parliament cannot, however, deal with all matters of driving as they stray it to the relevant department to deal with the more 'routine' matters. This is done in the Road Safety Act 1986 (Vic).

Other parts of the executive, in particular the police and the senior management of the State Emergency Service, then have to give effect to all these rules. The SES does this by issuing rules and policies that they believe will implement the various rules. The police enforce the law and if they believe a rule has been infringed then traffic a ticket, in extreme cases, arrest a driver and put them before the court. But the police of the SES and the ABCC are not the police and do not represent the law. A driver may argue that they have not broken the law even if the police allege that they have; and a person may break the law even if they comply with SES policy or, alternatively, may not be in breach of the law even if they are in breach of SES policy. Ultimately it is the law that must be obeyed.

The third arm of government, the judiciary, is there to determine, in any particular case, whether or not the law has been obeyed. The police may allege that an offence has been committed but it is up to the magistrate, a judge in most serious cases, a jury, to determine whether or not the alleged has been proved 'beyond reasonable doubt'. A driver may or may not have complied with SES policy but this is not a version of the matter of whether or not they have complied with the law.

The concept of the rule of law says that everyone, including emergency service volunteers, are equal before the law, and further, law enforcement, such as the police and judges, are required to apply the law without fear or favour. What follows from this is that the law, including traffic law, must be applied to the drivers of emergency vehicles. If there is no exemption from the various provisions of the law then they should, and must, be prosecuted. It has been said that emergency drivers do not have exemptions, rather the police simply adhere actions such as proceeding at a speed in excess of the posted speed limit. Such a response would be contrary to the rule of law and would, undoubtedly lead to complaints from others who would protest that they had been passed by others, such as SES drivers, had not been.

With that theory behind us, this paper will now look at what the law says, not what the SES or the police have said that the law requires.

Road Safety Act 1986 (Vic)

This Act makes few references to the emergency services. If it does, however, provide that a person who is driving on 'time critical' duties for the emergency services, which includes the State Emergency Service or is returning from attending to performing their duties, is exempt from road pricing regulations, in particular provisions relating to maximum driving hours and rest breaks and keeping a work diary (Road Safety Act 1986 (Vic) s 171(2)); Road Safety (Driveway) Regulations 1997 (Vic) s 507).

Further, a member of the emergency services, in performing their emergency functions, do things on a road even though they will 'significantly interfere with the normal use of a road by road users' and even though they have not been issued with the required permit (Road Safety Act 1986 (Vic) s 142(2)).

When it comes to driving, the relevant rules are contained in the Road Safety Road Rules 2009 (Vic). Roads Safety Road Rules 2009 (Vic).

In a rare example of cooperation, Australia now has national road rules, that is, rules that are consistent across states and territory. The Road Rules set out all the rules that all drivers must follow and includes even such as that require drivers to keep left, to obey traffic control signs and traffic lights, to obey the speed limits and to the safety obligations of emergency vehicles, the most important rules are rules 306 and 307. Rule 306 says:

A provision of this rule does not apply to the driver of an emergency vehicle if—

(a) in the circumstances—

(i) the driver is taking reasonable care; and

(ii) it is reasonable that the rule should not apply; and

(b) if the vehicle is a motor vehicle that is running to the vehicle—

(i) the blue light or red flashing light is not obstructing an alarm.

Rule 307 says:

A provision of Part 12 [which deals with restrictions on stopping and parking] does not apply to the driver of an emergency vehicle, enforcement vehicle or escort vehicle if—

(a) the driver is taking reasonable care; and

(b) it is reasonable that the provision should not apply.

In Victoria, an emergency vehicle includes a vehicle that is used in connection with the State Emergency Service (Road Safety Road Rules 2009 (Vic) s 4 and Dictionary, definition of 'emergency vehicle'). The definition does not say a vehicle owned by the State Emergency Service, or a vehicle marked and identified as a vehicle of the State Emergency Service, it says 'vehicle under the control of the State Emergency Service'. The State Emergency Service, establishes the Victoria State Emergency Service Act 2005Cannot physically control any vehicle; is not a member of the SES; is not an officer or member of the SES. A vehicle under the control of the SES even though it is not an SES vehicle if it is being used by the SES in order to perform SES functions. There are three critical conditions that must be met before rule 306 applies; they are:

1. the driver must be taking reasonable care;

2. it must be reasonable that the rule should not apply; and

3. if the vehicle is running it must be displaying a blue or red flashing light or sounding an alarm.

When it comes to driving, the relevant rules are contained in the Road Safety Road Rules 2009 (Vic). Roads Safety Road Rules 2009 (Vic).

It may seem even more logical than the previous section that the SES should have a permit to stop a red light and not important the lights are showing green (Road Safety Road Rules 2009 (Vic) s 306). However, this is not always the case. The SES cannot ensure that the driver that pulls up at red light and not important the lights are showing green (Road Safety Road Rules 2009 (Vic) s 306) should not apply to the driver of an emergency vehicle proceeding on urgent duty (but remember they must also exercise reasonable care and must not proceed until they are sure that all other vehicles have 'given way'). A rule that requires a driver to be able to stop at a pedestrian crossing, and to give way to a pedestrian on a pedestrian crossing (Road Safety Road Rules 2009 (Vic) s 80(1)) should, however, always apply. The emergency cannot warrant killing a pedestrian and the driver has to consider that the pedestrian will not see, hear or understand the nature of the emergency. If they stop, back up, or they no longer press on, because the emergency vehicle cannot proceed, but if the person is on a crossing, the driver has to be able to stop in that instance.

When a driver而出 a conduct that they are not exercising reasonable care and should not apply also depend on service policy. If the SES has determined that the driver can be stopping on an urgent duty they must comply with some rules, for example if they are in a surrounding that is too dangerous for them; or; if; or after a fatal collision. Their decision is not to however, the final determination. It is up to the individual driver to decide whether or not they can attend court and argue the case. It will be up to the, in the matter, it is up to the citizen to determine whether or not they are stopped by the driver's actions, in all the circumstances, were reasonable.

Other offences

Rule 306 and 307 only relate to the road rules set out in the Road Safety Road Rules 2009 (Vic). Other traffic offences are found elsewhere, for example offences relating to driving under the influence of alcohol and other drugs, the need to have an appropriate licence and the offences of dangerous and careless driving. These are all set out in the Road Safety Act 1986 (Vic). Even some traffic on, murder, manslaughter and causing serious injuries are all dealt with under the Crimes Act 1995 (Vic). There are also exemptions from these offences on the driver of an emergency vehicle who should apply even if, in truth so, there was no urgent need for assistance. Here, although the SES does not determine whether or not it is the service policy and the expectation that the national rules will apply to the driver of an emergency vehicle which is being used to transport a person in connection with a crime or unconnected with an emergency. The bus driver has no exemption from the road rules if the bus is not fitted with red or blue flashing lights or a siren but he may park the bus in a place in a place where parking is permitted, it is reasonable to park there and they take the car so do not so park where it is dangerous to park.

Who decides what is reasonable? We have no clear answer to this as it is a legal issue. It is one that is discussed on "legal theory". At first it seems it is the police. If a police officer believes that the driver of the vehicle was not exercising reasonable care and that the circumstances do not apply they will issue a traffic infringement notice, or in a more serious circumstances they can impose a fine; or; after a fatal collision. Their decision is not, however, the final determination. It is up to the individual driver to decide whether or not they can attend court and argue the case. It will be up to the, in the matter, it is up to the citizen to determine whether or not they are stopped by the driver's actions, in all the circumstances, were reasonable.
2013 VICTORIA POLICE & EMERGENCY SERVICES GAMES

ENTRIES TO THE 2013 VICTORIA POLICE AND EMERGENCY SERVICES GAMES ARE NOW BEING ACCEPTED.

The event will feature about 40 sports for individuals and teams, including golf, fishing, swimming, volleyball and indoor cricket. The games will be held from April 5 to April 14, 2013.

Gerry Sheridan, SES East Region Field Information and Communications Support Officer, coordinates Victoria’s Emergency Service’s involvement in the games and encourages everyone to get involved.

“We need as many competetors as possible to fly the SES flag and bring home some medals,” he said.

“The past few years have been very successful, seeing the organisation win many medals in sports such as athletics, shooting, equetrian and swimming.”

The games’ rules will be provided to the SES’ electorate and national media sites.

All Victoria SES volunteers, with at least 12 months’ continuous service are eligible to attend, as are current staff members.

Entries must be lodged by Friday, March 22. Entries can be lodged via the games website and entry fees are the competetor’s responsibility.

For a complete list of sports, entry costs and time commitments, visit www.emergencysevgames.org.au – information is also being sent to SES’ field officers.

For more information, contact Gerry Sheridan at gerry.sheridan@ses.vic.gov.au or on 0417 131 963.

“Tis a great opportunity for all our athletic and non-athletic volunteers and staff to participate in the games and to help raise the profile of SES,” Mr Sheridan said.

“So get along and join other members by representing Team SES. I wish those who choose to participate all the best and good luck on the day!”

Submitted by Gerry Sheridan

ONE AND ALL INCLUSION DAY

VICTORIA STATE EMERGENCY SERVICE) MEMBERS FROM ECHUCA, ROCHESTER, KYABRAM, MARONG AND BENDIGO RECENTLY TOOK PART IN THE ONE AND ALL INCLUSION DAY HELD AT THE ECHUCA RACECOURSE.

Organised as an Echuca YMCA project, the event was aimed at working with local schools and the wider community to provide children with a disability with a greater opportunity to integrate with their able-bodied peers through organised sporting and activity days.

Narelle Currey from the Echuca Unit set up a large display and activity site. Visitors were able to experience a maze where they had to locate items for their home emergency kit, a knot station where they learnt how to tie basic safety knots and a fun activity, throwing a standard SES throw line over a marquee.

SES vehicles were on display and Leoden Maffer Regional CRC member, Jenma Neilsen Luckville, was on hand to discuss the Echuca Flood Plan which was hot off the press.

Despite the high temperature on the day, Paddy Flatpuss made a number of appearances which thrilled the visitors. All the children who participated in the activity stations were given an SES showbag and from all reports the SES exhibit was the bust of the day.

Submitted by Narelle Currey
Photos courtesy of The Riverine Herald