



Insurance and Risk Management

For Sport and Recreation Organisations



Website Insurance Information

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1 What is Insurance?

Insurance is best explained as a contract or "insurance policy" between an insurance company and a person (the Insured) under which the insurance company agrees to indemnify or pay the Insured for a specified loss (as a result of defined loss) in return for the Insured's payment of a dollar amount (a premium).

The types of risk Insured against are set out in the insurance policy. The degree of risk will determine the level of the premium. In cases where the Insurer considers the risk too high they may choose not to offer coverage.

2 Why is it important to Insure?

All activities, whether they are business activities, sporting activities, recreational activities or simple day-to-day tasks carry a certain level of risk. Insurance is essential to protect individuals and the assets of the organisations should one of these risks actually occur. Insurance also performs a social function because it ensures those who have suffered loss, potentially through no fault of their own, can be adequately compensated.

Insurance is extremely important for sport and active recreation organisations. Most of these organisations rely heavily on volunteer involvement. However, despite the importance of insurance to the financial position of an organisation, employees, volunteers and participants; organisations must remember that insurance is only a part of the risk management process. Insurance will not of itself reduce the risks that an organisation is exposed to in the way a comprehensive risk management plan can.

3 Types of Insurance

There are many different types of insurance. For this reason it is recommended that an organisation seek professional advice from an insurance broker or lawyer in relation to the types of insurance necessary for their specific circumstances. For further general information in relation to sport insurance, the following may be of assistance:

- http://www.treasury.qld.gov.au/subsites/groupinsurance/need_ins_now.htm
- <http://www.ica.com.au/>

The main types of insurance relevant to sport and active recreation organisations are:

- i. Public Liability Insurance;
- ii. Professional Indemnity Insurance;
- iii. Directors and Officers Liability Insurance;
- iv. Sports Injury (Personal Accident) Insurance;
- v. Property Damage Insurance;

- vi. Workers' Compensation Insurance; and
- vii. Event and liability insurance.

3.1 Public Liability Insurance

Public Liability Insurance provides cover for claims arising out of injury, death and property damage (i.e. damage to another person's property) suffered by a third party as a result of an occurrence happening in the course of an organisation's business or activities.

Essentially, Public Liability Insurance covers claims that occur on any part of the organisation's facilities or amenities as a result of negligence or breach of some other duty. Examples of claims on public liability insurance may include:

- i. Slips, trips and falls;
- ii. Dangerous playing surfaces or activity sites;
- iii. Injury via physical contact (although assaults and other criminal behaviour are generally excluded); and
- iv. Poor equipment (includes equipment fixed to the ground and non-fixed equipment, i.e. from goal posts to gymnastic landing mats, climbing equipment).

NOTE:

The negligent provision of advice or a breach of any professional duty is not covered by public liability insurance.

Sport and active recreation organisations must ensure that their public liability insurance is relevant to their individual circumstances. A suitable public liability insurance policy for a sport or active recreation organisation should cover the following:

- i. *First Aid Treatment* – covers an organisation should they be held liable for injury as a result of the provision of first aid;
- ii. *Member to Member Cross Liabilities* – this covers each participant and organisation separately in respect of claims made against them by any person, including other members;
- iii. *Umpires/Referees Liability* – provides cover should referees/umpires be held liable for injury or damage to property as a result of their officiating in a game;
- iv. *Goods Sold/Products Liability* - provides cover to the organisation in relation to injury or damage arising from products sold or supplied. Examples may include the sale of food or beverage, or the supply of sporting or activity equipment;

- v. *Car parks* – car parks may be treated as separate to the rest of a sport and active recreation organisation's grounds. For this reason it is important for organisations to check their lease agreement carefully, and if uncertain seek clarification from the lessor;
- vi. *Property in physical control* - in some cases, goods or property entrusted to a sport or active recreational body while organising an activity can become their responsibility for safeguard against loss or damage. This type of coverage would cover an organisation in the event that the goods or property were damaged or destroyed;
- vii. *Insurance to cover any indemnities required by the lease of premises* - in such cases, the Insurer should be made aware that the landlord requires an indemnity from the tenant and insurance cover should be broad enough to cover such an indemnity. Public liability policies however can contain exclusions for liability arising as a result of such clauses; and
- viii. *Occupiers insurance* - this covers persons entering and using the organisation's facilities.

Organisations must remember that this list is not exhaustive and that the terms and conditions vary from Insurer to Insurer. Indeed, some policies may exclude cover for some of the matters discussed above. For this reason it is important that exclusion clauses be closely examined to ensure that the policy meets the needs of the organisation, and advice on policy coverage be obtained from an insurance broker.

It is important to assess this prior to entering into an insurance policy. If the proposed policy appears not to meet an organisation's requirements, the organisation can negotiate the terms with the insurance provider, compare policies of other insurance companies or seek the advice of an insurance broker or lawyer. An organisation can then make an informed decision about whether to accept the policy and the risk relating to the exclusions. The importance of ensuring that an insurance policy meets the needs of an organisation, as far as practicable, cannot be overstated.

3.2 Professional Indemnity Insurance

Professional Indemnity Insurance provides protection for an organisation against claims for compensation for breach of professional duty for negligence or breach of duty by way of act, error, omission or advice committed or alleged to have been committed in the conduct of their professional activities. This type of cover is particularly relevant to coaches, officials, instructors and referees.

It is important when obtaining professional indemnity cover to be aware of the “retroactive date”. This is the date back to which a policy will provide cover. Some policies specify a particular date, others given an unlimited retroactive date but exclude known claims and circumstances that may give rise to a claim. This is known as a “claims made” policy.

3.3 Directors and Officers’ Liability Insurance

This insurance indemnifies (protects) the Directors, Committee Members, Trustees, Executive Officers and any other Officers of the organisation against 'wrongful acts' committed in their capacity as an officer of the organisation. Wrongful acts may include breach of trust, breach of duty, neglect, error or omission.

3.4 Sports Injury Insurance (Personal Accident)

Sports Injury (Personal Accident) Insurance is designed to reduce the financial hardship caused to a participant who is injured as a result of participation in the sport or active recreation activity. Generally participants include all members of an organisation involved in the activity including actual participants, officials, volunteers, instructors and coaches. It is critical that the Constitution of the organisation define the classes and the claimant must be a current financial member. It is important to specify whom you want this type of insurance to cover and discuss this with your broker or lawyer at the time of taking out the policy. Not all policies are the same. Persons travelling to and from an activity would normally not be covered unless this was specified in the policy.

This type of insurance provides protection in the following ways:

- i. during training or practice;
- ii. in match games, fixtures or activities;
- iii. travelling (directly) to training, practice, games, fixtures or activities (if specified in the policy);
- iv. attending official functions of the sport and active recreation organisation; and
- v. touring for the purpose of participating in the sport and active recreation activity.

The benefits provided under a Sports Injury (Personal Accident) Insurance policy can cover such items as:

- Death - provides cover in the event of a participant's death. It is important to be aware that most policies will contain exclusions relating to the cardiovascular system (such as heart attacks and related symptoms).

- Permanent Total Disability - provides a benefit where a participant is injured while participating in the activity, and as a result of that injury is Permanently and Totally Disabled.
- Permanent Partial Disability - provides a benefit, usually a proportion of the benefit for Permanent Total Disablement, should a participant become Permanently Partially Disabled as a result of an injury sustained whilst participating in the activity.
- Non-Medicare Medical Expenses - provides a percentage reimbursement (up to 100%), usually with a limit per injury, for all non-Medicare medical expenses. This may include services such as private hospital (bed, theatre fees, etc), ambulance, physiotherapy, dental, chiropractic, podiatry and pharmacy. The payment of an excess is likely to be required. If the injured is covered by private health insurance, the Sports Injury (Personal Accident) Insurance policy will pay the balance above the private health insurance refund, subject to the percentage reimbursement selected, the limit per injury and the excess. Insurance benefits cannot be provided on medical expenses on which Medicare pays a benefit.
- Loss of Income - provides a benefit (or percentage as defined of actual salary, whichever is less) if an Insured person is injured participating in the activity and is unable to attend their normal income producing occupation (outside sport or active recreation participation income). An excess and a maximum benefit period generally apply. As methods of benefit calculation and payment can vary between policies, care needs to be taken in this regard.
- Home Help Benefit - reimburses a percentage (up to 100%) per week of the actual costs incurred for household duties (eg. cleaning, washing etc) An excess and a maximum benefit period generally apply.
- Student Assistance Benefit - reimburses a percentage (up to 100%) per week of the actual costs incurred for a student to continue their education. An excess and a maximum benefit period generally apply.
- Parents Inconvenience Allowance - this is paid as either an allowance or a reimbursement of expenses incurred by parents for each day a child is hospitalised because of an injury incurred while participating. A maximum daily benefit will apply, as well as a maximum benefit period. An excess may also apply.

The cover provided by a Sports Injury (Personal Accident) Insurance policy is limited. Therefore it is important to remember that not all of the above benefits will necessarily be included in a policy. Cover provided will vary from insurance company to insurance company, so it is important that organisations or individuals are aware of and fully understand the details of

the policy they purchase. As previously stated, it is wise to seek the services of an experienced professional in this area such as an insurance broker or lawyer.

It may be more cost effective for a sport or active recreation organisation to obtain Sports Injury (Personal Accident) Insurance Policy on a group basis with or through their association, State or National body. It is recommended that organisations contact their association, State or National body to explore this possibility.

It is important that all participants are aware of exactly what cover is provided by an organisation's insurance policy. While it not necessary for an organisation to provide a copy of their insurance policy to participants, it is recommended that they make the details readily available if requested.

Consideration should be given to including details of what is covered and excluded as a clause within the organisation's registration form.

3.5 Property Insurance

Property Insurance covers property including buildings, furniture and fittings, plant and equipment, and other contents against loss or damage due to fire and other perils. Insurance of property belonging to an organisation can include any or all of the following policy classes:

- i. fire and extraneous events;
- ii. consequential loss (business interruption);
- iii. burglary;
- ix. money;
- x. glass;
- xi. machinery breakdown;
- xii. spoilage of frozen food;
- xiii. computer insurance;
- xiv. general property (including stock and equipment); and
- xv. accidental damage.

Note

Organisations may be able to minimise premiums payable for property insurance by installing security measures such as alarms, deadlocks or video surveillance. A broker or an Insurer will be able to provide greater information in relation to an organisation's individual circumstances.

3.6 Workers' Compensation Insurance

If a sport or active recreation organisation employs people, the organisation must take out a policy of insurance with WorkCover Queensland. That policy covers:

- i. payment of compensation (a no-fault system where payments of weekly income benefits, medical expenses and potentially lump sum compensation is paid; and
- ii. payment of damages in the event that a worker elects to seek damages for a work-related injury.

Essentially, Workers' Compensation Insurance extends to, and is compulsory for workers who are employed with an organisation and who are paid by the organisation. It does not cover volunteers or paid participants.

Useful information regarding Workers' Compensation can be found at www.workcover.qld.gov.au.

4 General Information in relation to Insurance

4.1 From whom should Insurance be obtained?

It is important for organisations to check their Insurer is recognised by the Australian Prudential Regulatory Authority ("APRA"). APRA is the regulator of Insurers who operate in the Australian market, and more information is available at the APRA website: <http://www.apra.gov.au> contains a list of authorised insurers.

If your Insurer is not APRA authorised, that is, if you have Insured with an off-shore Insurer, your cover may not be as secure as you think. By confirming that your Insurer is an APRA authorised Insurer you can be more confident that your Insurer will be able to honour any claims made under your policy.

You should exercise great care with off-shore insurers and only deal with the most reputable of brokers and insurers.

4.2 Who can assist an organisation to find an insurance company?

4.2.1 Insurance Brokers

Insurance brokers can arrange insurance for your organisation. They will canvass the insurance market and inform you of the most competitive premiums.

4.2.1.1 What is a Broker?

"Insurance broker" is defined in the *Insurance (Agents and Brokers) Act 1984* as a person who carries on the business of arranging contracts of insurance (insurance policies) as an agent for intending Insureds (i.e. an organisation seeking insurance). A broker works for the organisation seeking the insurance. It is

important that the difference between an Insurance Agent and a Broker is understood because they are not the same. An Insurance agent is an agent of the Insurer.

4.2.1.2 Obligations of Brokers

A broker must, as soon as practicable, give details of its fees to the Insured and, if requested, give details of any commission received from the Insurer for arranging the insurance policy. An insurance broker must, as soon as is reasonably practicable after arranging an insurance policy, inform the Insured of the name of the Insurer and the place of business of the Insurer. Brokers also owe a duty of care towards the organisation for whom it is arranging insurance. This means that Brokers are required to act in good faith and in the best interests of the insured organisation at all times.

4.2.2 Lawyers

Your lawyer will be able to assist you with your insurance issue but would not normally procure the insurance for you.

4.2.3 Insurance Agent

An insurance agent is an employee or contractor for an insurance company and therefore may have a conflict of interest when providing advice as to appropriate insurance policies.

4.3 What obligations exist between an Insurer and an Organisation?

4.3.1 Duty of Utmost Good Faith

An insurance policy is a contract based on the principle of "utmost good faith". This means that each party must act honestly and fairly with each other in their dealings. For this reason it is of paramount importance that an organisation complies with their "Duty of Disclosure" (see discussion below) and take steps to minimise loss to their organisation.

4.3.2 Legislation

When seeking insurance an organisation is obliged to disclose any matter to the insurance company that is relevant to their decision about whether to accept the risk. The obligations between Insurers and Organisations are set out in the *Insurance Contracts Act 1984*. An organisation seeking insurance has a duty to disclose to the Insurer, before the contract of insurance is entered into, every matter that is known to the Organisation (this is called the "Duty of Disclosure).

The duty of disclosure does not require the disclosure of a matter that:

- i. diminishes the risk;
- ii. is of common knowledge; or
- iii. the Insurer knows or in the ordinary course of the Insurer's business as an Insurer ought to know.

If an organisation fails to comply with the duty of disclosure or a misrepresentation is made to the Insurer before the insurance policy was taken out, the following will occur:

- i. If the failure was fraudulent or the misrepresentation was made fraudulently, the Insurer may cancel the contract; and/or
- ii. If the Insurer is not entitled to cancel the insurance policy or, if entitled but has not done so, the Insurer may reduce the amount payable on a claim by the amount the premium would have been if the duty of disclosure had not occurred.

For example, an organisation that is aware that equipment is unsound but which fails to tell the Insurer, may have breached its Duty to Disclose.

5 Group Purchasing of Insurance

Sport and active recreation organisations may consider pooling their insurance in order to reduce insurance premiums and achieve better policy terms and conditions. By negotiating collectively with an insurer and buying in bulk, it is sometimes possible to negotiate a lower premium and/or enhanced conditions. Sports that have successfully negotiated group pooling of insurance on a national basis included Cricket, Tennis and Australian Rules Football. However, experience has shown that group pooling will generally only be possible if the organisations involved have implemented and enforced sound risk management policies throughout their organisation(s).

Sport and active recreation organisations should contact their association, State or National governing body to explore the option of group insurance further.

6 What claims can be made against sport and active recreation organisations?

One of the main areas of concern for sport and active recreation organisations is a claim for personal injury. Examples of how personal injury claims can arise include:

- i. Poor coaching or instructing technique;
- ii. Injury from other participants;

- iii. Injury as a result of facilities (such as playing fields and poorly maintained amenities);
- iv. Slips, trips and falls; and
- v. Claims arising out of misconduct (i.e. sexual misconduct and discrimination).

It is important that organisations understand that they may be vicariously liable for the actions of their paid and unpaid staff, i.e. employees, volunteers, officials etc. For this reason it is imperative that sport and active recreation organisations clearly explain to these people their respective duties and responsibilities. The development, implementation and enforcement of policies in relation to roles and expected behaviour, in conjunction with a sound risk management plan, will help an organisation manage, and therefore reduce the risk of being vicariously liable for the actions of their paid and unpaid staff.

6.1 Recent Reforms

The Queensland Government has implemented a number of actions to address the rising cost of insurance premiums experienced by many not-for-profit organisations and small businesses. These include: Stamp duty relief, law reforms, establishing a group purchasing scheme, risk management website and lobbying the Commonwealth Government to give the Australian Competition and Consumer Commission the power to monitor pricing.

The law reforms included implementation of the *Personal Injuries Proceedings Act 2002* and the *Civil Liability Act 2003*.

6.1.1 *Personal Injuries Proceedings Act 2002 ("PIPA")*

The PIPA aims to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury. To achieve this, PIPA:

- i. provides a procedure for speedy resolution of claims;
- ii. promotes early settlement;
- iii. ensures a claim cannot be filed in Court without a person being fully prepared to resolve the matter by settlement or trial; and
- vi. minimises legal costs.

For example, PIPA sets out a pre-Court process that aims to reduce the number of claims that go to Court. Notices of Claim must be delivered generally within nine months after the date of the accident or one month after a lawyer accepts instructions to act, whichever is the earlier. A compulsory settlement conference must be held and offers to settle the matter exchanged before a matter can proceed to Court. An example of the Claim Form can be found at www.justice.qld.gov.au/forms.

There are also significant amendments to the awarding of legal costs against Defendants in respect of claims where the damages are less than \$50,000.00. If you would like further information regarding PIPA, it is advisable for you to seek the advice of a lawyer.

The difficulty for sport and active recreation organisations is that where minors are involved, the obligation to provide a Notice of Claim can be significantly longer, until the minor attains the age of 18. Therefore claims for incidents which occurred many years ago, may arise.

If an organisation receives a Notice of Claim, they should immediately forward the Notice to their Insurer and seek legal advice. It is important that organisations do this as soon as possible as a response to the Notice of Claim may be required within a strictly enforced time period.

6.1.2 *Civil Liability Act 2003*

The *Civil Liability Act 2003* (Qld) amends PIPA and introduces provisions which change common law principles regarding liability in civil actions commenced on or after 9 April 2003.

Of particular interest to sport and active recreation organisations are the significant changes to the *Civil Liability Act 2003* in respect of:

- i. volunteers;
- ii. inherent risks;
- iii. dangerous recreational activities; and
- iv. obvious risks.

6.1.2.1 Volunteers

Under the *Civil Liability Act 2003* a volunteer in a sport and active recreation organisation can not be held personally liable for any act or omission done or made by the volunteer in good faith when doing work as directed by their organisation or as an officer holder of their organisation, providing that work is not for private financial gain or outside the scope of their duties or directions from the organisation.

NOTE

The protection of volunteers **does not** cover:

- i. criminal acts;
- ii. circumstances where the volunteer was intoxicated and failed to exercise due care and skill; and
- iii. circumstances where the actions of the volunteer are outside the scope of the activities authorised by the organisation concerned or are contrary to instructions given by the organisation.

It is important to remember that while this section does not protect the organisation itself, it may encourage volunteers to offer their services. It would be useful for organisations to develop job descriptions and employment manuals for volunteers so that volunteers can be clear on their role and responsibilities. Consideration should also be given to a volunteer code of conduct. Organisations may require volunteers to acknowledge their understanding of these documents by signing a declaration. The declaration should then be kept by the organisation on the relevant file of the volunteer.

6.1.2.2 Inherent risk

An inherent risk is one that cannot be avoided by the exercise of care and skill.

Section 19 of the *Civil Liability Act 2003* recognises that if an inherent risk materialises, a person or organisation is not liable for ensuing damages. An example of this might be a broken rib in a rugby game as a result of a legal tackle, or a sprained ankle when bushwalking in difficult terrain. An illegal tackle in football or injuries resulting from a fall when rock climbing may or may not be an inherent risk. This is a difficult and developing area of law.

6.1.2.3 Dangerous Recreational Activities

The *Civil Liability Act 2003* states that a person is not liable in negligence for harm suffered by another person as a result of the materialisation of an **obvious risk of a dangerous recreational activity** engaged in by the person suffering harm (s.19).

What is a "dangerous recreational activity"?

Section 18 of the Civil Liability Act defines this as an activity engaged in for enjoyment, relaxation or leisure that involves a significant degree of risk of physical harm to a person. The definition not only encompasses outdoor activities such as rock climbing or bungee jumping, but also can extend to organised sport.

6.1.2.4 Obvious risk

An obvious risk:

- i. is a risk that would have been obvious to a reasonable person;
- ii. includes risk that are blatant or a matter of common knowledge;
- iii. can have a low probability of occurring; and
- iv. can be a risk that is not prominent, conspicuous or physically observable.

Participants engaged in such dangerous recreational activities are taken to be aware of and agree to the obvious risk(s) involved in participating. For this reason, the Act states that in respect of an obvious risk, there is no duty to warn a person of the risk (although there are some exceptions to this). If an organisation is in doubt about whether or not they have a duty to warn participants of risks involved in participating in their sport or recreation activity they should seek professional legal advice.

7 Types of Questions to ask when seeking Insurance

1. What sports insurance experience does the broker have?
2. What services will the broker provide?
3. How would the broker be remunerated?
4. The type of cover does the policy include?
5. Who does the policy cover? Does it cover your players, members, officials, and volunteers?
6. Is there excess on any claims or specific claims? If so, what is the excess?
7. Do exclusions apply to the policy? If so, what are they?
8. Do any special conditions apply to the policy? If so, what are they?
9. What is the scope of the cover? For example does it cover the organisation and its members etc when they are interstate or overseas? If yes, in what circumstances?
10. What is the premium? Can the organisation afford this?
11. Are there any reductions for the implementation of a Risk Management Plan? If yes, what are they and what is required?
12. Is the Insurer APRA approved?
13. Is the Insurer reputable?

7.1 Frequently Asked Questions

I need to get insurance for activities – who do I call and what do I ask them?

You should call an insurance broker or Lawyer. You should ask the questions listed above. Also think about the type of cover you are seeking, what are you wanting to cover, and how long you wish the insurance to last.

I have just taken over as President/Treasurer at a club and realise that we have been uninsured since the end of last season – what do I do?

You should immediately obtain a cover note by contacting an insurance broker or and Insurer.

Our premiums just went through the roof. Can we get the cost down or how can I negotiate with my insurer to get the cost down?

You may be able to reduce your premiums by implementing a sound Risk Management Plan. You should discuss this with your Insurer and any requirements that they may have. An Insurer may also reduce your premium if you implement

greater security measures such as alarms, deadlocks etc. Sport and active recreation organisations also may be able to reduce their premium by pooling with their State or National governing body. You should contact your State or National governing body to investigate this possibility.

I was just at a meeting and someone told me what they were paying for their insurance premium. It was a lot cheaper than ours. Why would that be and how can I change my insurer?

You should be aware that while insurance premiums may vary from one insurer to another, so do the terms and conditions of each policy. You should not rush into changing Insurers simply because another organisation has a lower premium. If the cover that you currently have adequately meets your organisations needs, it may be unwise to change to a different Insurer in order to get a lower premium, particularly if the policy was not as comprehensive or did not adequately meet the needs of your organisation. If on the other hand, you wish to investigate changing to another Insurer, you could negotiate a new insurance policy with a broker or another Insurer. If you then wish to change you would need to cancel your current policy. You should be aware that you might not be entitled to a refund of any premium amount that you have already paid your current Insurer.

I heard that the Government changed the law and now people cannot sue if they get hurt participating in sport or active recreation. Is this right?

No, this is not correct. Whilst the law has changed as a result of the *Civil Liability Act 2003* and encourages people to take more responsibility for their actions, if you are hurt participating in sport or active recreation as a result of a negligent action by the organisation or its agents you may still be entitled to damages. It is recommend that if you are hurt when participating in sport or active recreation you contact the organisation in relation to the types of insurance coverage they have or speak to a Lawyer.

Do the Government's law reforms about insurance only apply to bushwalkers and rock climbers?

No. The *Civil Liability Act 2003* contains significant changes in relation to volunteers and inherent risks, dangerous recreational activities and obvious risks in relation to all sport and recreation activities. The interpretation of the provisions of the Act dealing with inherent risks and dangerous recreational activities are complex. If you believe your organisation may be affected by these provisions, you should consult a lawyer.

We have just employed our first staff member after running everything with volunteers for years. Would they be automatically covered by our insurance?

All employers are required to take out Workers' Compensation for their employees under the *Workers' Compensation & Rehabilitation Act 2003*. You should also check with your insurer that your new staff member is covered as you may need to change your policy.

We have a big event coming up and its outdoors. Should I take out insurance to cover this event? Who provides this sort of cover?

Yes, it is important to ensure that all activities and events of an organisation are adequately insured. You can find out who provides this sort of coverage by contacting an insurance broker or Lawyer.

Should our coaches or instructors be taking out their own insurance?

Yes. It is in their interest to have their own policy. You should provide a copy of your policy to them so they can make an informed decision.

We are just a group of people that get together and go for a bike ride on Sunday morning. We were having coffee the other day and someone told us that by deciding a route and organising things that we could be responsible and get sued if the route is no good. They said we should insure. Do we have to be an incorporated organisation to get insurance?

No, you do not have to be an incorporated organisation to get insurance. Unincorporated associations may hold insurance policies to protect them from liability. For more information on your specific needs you should contact an insurance broker or lawyer.

We lease our land off the local Council; do we need to insure it?

The Agreement should specify your insurance obligations. If the agreement does not specify, you should clarify this with the lessor. In addition, you should make sure that the activities your organisation conducts on the land are covered by your own insurance policy. You should also be aware that car parks might not be covered by either your organisation's insurance or the insurance of your local Council. It is wise to cover this issue when negotiating the details of your agreement.

8 Risk Management

The Australian/New Zealand standard for Risk Management (AS/NZS4360) defines risk as *"the chance of something happening that will have an impact on objectives. It is measured in terms of consequences and likelihood."*

Risk Management is of paramount importance to sport and active recreation organisations. It helps protect members' safety and an organisation from legal liability. In addition it arms administrators with better information in order to make decisions, enable more effective asset management and maintenance and improves the perception of the organisation amongst its stakeholders.

8.1 Benefits of Risk Management

The benefits of Risk Management to sport and active recreation organisations include:

- more effective management of assets, events, programs and activities;
- a safer environment for participants, officials, spectators and volunteers;
- a broader thinking about business objectives and outcomes;

- a greater ability to meet the needs of members and other stakeholders;
- flow-on benefits through the systematic identification of organisational deficiencies;
- improved communication, both internally and externally;
- improved compliance with the law, regulations and other formal requirements;
- lower costs and enhanced budget certainty;
- enhanced image and reputation;
- better sport and active recreation outcomes;
- a better managed organisation; and
- better quality experiences for participants.

8.2 What Does Risk Management Involve?

Risk Management involves a 5-step process of:

1. identifying the risks;
2. analysing the risks;
3. evaluating the risks;
4. treating the risks; and
5. monitoring and reviewing the risks and implemented Risk Management Plan.

The following websites provide useful information to assist in risk analysis and refer to the process outlined above:

- the Queensland Government website – www.riskmanagement.qld.gov.au;
- the Standards Australia website – www.standards.org.au; and
- the Australian Sports Commission website – www.aussport.gov.au.

Set out below are some practical suggestions that may assist with reducing the risks that exist in your sport or recreational activity:

- i. Regular inspections of the organisation's facilities and sites to ensure that they are in sound condition. This may include, but is not limited to playing surfaces, clubhouses, activity places, amenities, grand stands and car parks. Such inspections should be documented so that at a later date it can be proved that there was a regular system of inspection in place.

If there are any risks in the venue or site itself they should be appropriately identified. This could extend to warning spectators of matters such as retractable seating.

- ii. If defects in the venue are identified then reasonable steps should be taken to make repairs, conduct the activity elsewhere or at a minimum, place warning signs in relevant areas to identify the danger.

- iii. Appropriate policies to manage identified risk(s) should be formulated and implemented (see below for outline of types of policies that should be implemented).
- iv. Systems should be in place to ensure a criminal history check is undertaken of those who are either employed or volunteer to work in sport or recreational activities where children are involved. Once a criminal history check has been completed, and where the person is deemed 'suitable' to work in child-related employment, the person will be issued with a 'blue card'. This should form part of a Child Protection Policy. Further information on this matter can be found below (10. Dealing with Children).
- v. Enquires should be made regarding the qualifications and experience of coaching and instructing staff to ensure that coaches and instructors with appropriate skill are provided to participants. SRQ provides funding for organisations to access coaching and officiating education and training.
- vi. Adequate first aid should be available at sport and active recreation events including:
 - First Aid Equipment; and
 - A person who has qualifications in First Aid.

An organisation should develop emergency procedures in relation to major incidents such as evacuation procedures etc.

- vii. Adherence to all workplace health and safety obligations as prescribed by the *Workplace Health and Safety Act 1995* if the Act applies.
- viii. Consideration should be given regarding protective clothing and equipment for participants. A protective clothing and equipment policy may be developed to address circumstances where such items are required. For example, are participants allowed to play with/without it?
- ix. Codes of Behaviour should be established for participants including but not limited to participants, coaches, instructors, managers, parents and supporters. It is recommended that the codes of conduct be communicated to the relevant people and that they acknowledge and understand the code by signing, for example, their own copy of the code which is kept by the organisation.
- x. Appropriate training should be provided to coaches, instructors, volunteers and employees of the organisation to ensure that they are familiar with laws applicable to themselves and their involvement with sport and active recreation organisations. This includes but is not limited to:
 - child safety;
 - workplace health and safety;
 - safety in respect of their sport or recreation activity; and

- responsibilities in respect of issues such as sexual harassment, equal opportunity and discrimination.

Details of such training should be documented. Participants should be requested to sign that they have attended such training. This will assist in demonstrating, should a claim be made, that the organisation has taken all reasonable steps to reduce injury. It may also demonstrate to an Insurer that appropriate risk management strategies are in place, thereby reducing an organisation's insurance premium.

- xi. Disciplinary and Complaint Tribunals and Appeal Committees should be established to deal with participants who breach an organisation's code of conduct. It is important to ensure that the committees have the appropriate scope and procedure to fulfil their function. In doing so it is extremely important that the organisation upholds and is seen to uphold the principles of natural justice which include the:
- right to be heard, which means all people have the right to a fair hearing with the opportunity to present their case;
 - right to have a decision made by an unbiased decision-maker; and
 - right to have the decision based on evidence.

Once policies and codes have been formulated, it is paramount that an organisation clearly and adequately documents and distributes them to the appropriate individuals. Additionally, for policies and codes to be effective an organisation must ensure that they are both complied with and enforced.

8.3 Policies

All sport and active recreation organisations must ensure their sport has appropriate policies in place. Most policies would be developed in conjunction with a risk management plan. The following list, although not exhaustive, is a useful starting point for organisations

- i. appropriate structure and constitution for control of limitation of liability;
- ii. disciplinary procedures and appeal process;
- iii. anti-discrimination policies;
- iv. anti-harassment policies;
- v. member protection policies;
- vi. extreme heat policies;
- vii. eligibility policies;
- viii. policy for accreditation of officials, coaches, instructors, managers and referees;
- ix. code of conduct policies for all stakeholders in the sport or active recreation activity;
- x. rules of the activity including details of playing surfaces, sites and venues, conditions, equipment and safety gear;
- xi. anti-doping policies;

- xii. workplace health and safety policies;
- xiii. compliance with Government policies for funding requirements;
- xiv. risk management policies;
- xv. quality assurance certification;
- xvi. medical protocols for injuries; and
- xvii. child protection policies.

8.4 Waivers

A waiver is a provision in a contract where the party giving the waiver agrees that they will not sue in respect of any damage, loss or injury that they suffer.

A well drafted waiver, in some circumstances can provide an organisation with protection from being sued. However, the waiver must be drafted carefully as courts are often prepared to interpret such clauses strictly against the organisation for whose benefit the waiver is given.

When considering the validity of a waiver, courts will consider the circumstance in which the waiver is obtained and whether the individual has had the risks adequately explained and had the opportunity to obtain advice on whether the waiver should be signed.

Waivers given by parents in respect of a child participating in a sport, activity or event are in most circumstances of little use, as Courts will construe such waivers very strictly. This is because a parent cannot 'sign away' the rights of a child.

However, even if a waiver is legally ineffective, they do assist with identifying a risk and providing evidence that the participant was aware of the risk at the time of participation in the event. Signage is another method of communicating the risk to the participants. If an organisation cannot get insurance, a waiver will not guarantee a protection from liability.

8.5 Record Keeping

Proper record keeping is an important part of risk management. Appropriate record keeping includes, but is not limited to:

- i. full and complete injury or incident reports which include details of when the event occurred, what occurred, who witnessed the event, whether treatment was provided etc;
- ii. if possible, statements should be taken from witnesses at the time of the event and those statements signed;
- iii. photographs or video footage should be obtained of any area where an incident occurred to provide a visual record of the injury site (i.e. If a playing field is uneven, video footage or photo footage should be taken of the alleged area where the event occurred);

- iv. as indicated above, records of training courses and who attended those training courses should be properly maintained;
- v. administrative records relating to individual and team participants including emergency contact details
- vi. administrative records relating to minutes of meetings, interoffice memorandums, correspondence received and sent; and
- viii. administrative records relating to each of their employees, volunteers and officials, including position descriptions, rosters etc.

9 Incorporation

Incorporation is another method of risk management. Many sport and active recreation organisations are set up as incorporated associations although they can be set up as companies under the *Corporations Act 2001*.

9.1 Incorporated Association

The benefits of the sport or active recreation organisation being an incorporated association are that:

- i. it is a legal entity separate from its members and can sue and be sued in its own name;
- ii. the association can enter into contracts and can acquire and dispose of property;
- iii. it can receive a bequest or gift in a will;
- iv. it will perpetually exist. This means that the incorporated association will remain in existence no matter who is a member until it is disbanded by operation of the law; and
- v. a secretary, member of a management committee or member of an incorporated association is generally not personally liable (except as provided in the rules of the incorporated association) to contribute towards the payment of debts and liabilities of the incorporated association.

An *unincorporated* association is not a separate legal entity and individuals must do things for the association in their own names. By becoming an incorporated association those persons who form the management committee of the association obtain a greater level of protection from personal liability.

How do we become an Incorporated Association?

The Office of Fair Trading administers the incorporation of associations. Further information can be found on their website at www.fairtrading.qld.gov.au.

Under the *Association Incorporation Act 1981*, an association can incorporate if (among other things) its purpose is not for the purpose of providing financial gain for its members.

Insurance requirements

Section 70 of the *Association Incorporation Act 1981* requires that on receiving a Certification of Incorporation the members of the management committee must ensure the Incorporated Association takes out insurance in respect of damaged property, death or bodily injury occurring upon the property of the Incorporated Association for a cover of at least \$1.1million and keep the insurance current at all times.

9.2 Incorporation under the Corporations Act 2001

Sport and active recreation organisations can be incorporated under the *Corporations Act 2001*. The benefits of doing so are the same as an incorporated association. However, it is considerably more expensive to incorporate and maintain. Further, the *Corporations Act 2001* places substantially onerous requirements and demands on Directors. Therefore it is generally inappropriate for smaller organisations.

Organisations should seek advice from a lawyer in relation to establishing their incorporated structure and any other requirements that they may need to comply with.

10 Dealing with Children

All sport and active recreation organisations associated with activities involving participants under 18 years of age are obliged to take steps to minimise the exposure of risk to children participating in activities in which the organisation is involved. Sport and active recreation organisations **must** comply with the following steps to ensure that they and the children involved in activities conducted by them are protected:

- i. Ensure all employees and volunteers are screened by obtaining and maintaining a current "Blue Card" (i.e. a Suitability Notice) from the Commission for Children and Young People in Queensland. This is a legal requirement of the *Commission for Children and Young People Act 2000 (Qld)* which has existed in Queensland since 1 May 2001 in relation to employees and since 1 May 2002 in relation to volunteers. If you are unsure whether members require a "Blue Card", please contact a lawyer or the Commission for Children and Young People for advice.
- ii. In relation to employees, ensure that thorough reference checks are conducted before commencement of employment.
- iii. Implement a child protection policy in your organisation, which should include:
 - a statement of the organisation's position on harassment and abuse;
 - the responsibilities of organisations and persons under the policy;
 - definitions and examples;
 - screening and police checks;

- codes of behaviour (for coaches, participants, officials, administrators, parents, spectators);
 - other misconduct;
 - process for making a complaint (formal and informal);
 - process for hearing a complaint; and
 - penalties that can be imposed.
- iv. A policy statement that any form of abuse of children, whether physical, sexual, verbal or emotional, will not be tolerated.
- v. A Code of Conduct particularising what conduct is considered unacceptable. The Code of Conduct may for example include expected behaviours during away trips with children under the age of 18, a requirement to have a second independent adult (such as a parent) present at all times, and prohibitions on certain types of behaviours, such as verbal abuse, inappropriate touching or inappropriate verbal comments.
- vi. A reporting and investigation process which must be followed in the event of a complaint of a breach of the policy has been made, which may include a requirement in certain circumstances to refer the matter to the appropriate authorities and to give notification to parents.
- vii. The process to be followed in relation to offenders in the event that the conduct has been found to occur. For example, for employees this may involve disciplinary or dismissal processes. In the case of members this will include steps required by the organisation's rules to suspend or terminate membership.