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Guide: Insurance and risk management for Victorian community organisations

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Overview

Thinking about 'risks', 'insurance' and related legal issues does not have to be a scary or negative process. All activities in life involve risk and, of course, there are some risks associated with the activities undertaken in all community organisations.

If your community organisation understands these risks, there are many things that the people involved in your organisation can do to eliminate risks or minimise the chance of them occurring.

Where the potential risks can't be avoided, your community organisation can look at the insurance options that may be available to protect against those risks.

This guide outlines:

- some of the processes and practices your community organisation can put in place to avoid or minimise the risks associated with running a community organisation;
- basic information about insurance;
- the circumstances in which a community organisation may be required by law or a contract to get insurance or should otherwise consider getting insurance;
- information about the different types of insurance available; and
- tips to consider before getting insurance for your organisation.

> **Note:** The information in this document is a guide only, and is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information is written for people and organisations affected by the laws in Victoria, Australia, and is current at 1 April 2013.

When should an organisation consider risk and insurance?

There are several key points in time when organisations should consider risks, risk management and insurance. Risks can expose your organisation, and sometimes individuals, to liability that can have serious financial and reputational consequences.

An organisation should consider its risks when:

- when it initially sets up
- when it starts offering services or products, or changes the type of services or products offered
- when it starts employing staff or using volunteers
- when it starts using new premises

- when it enters into relationships with other organisations like partnership agreements or services agreements
- when there are changes to the laws that affect the organisation
- when unexpected incidents have occurred that raise liability issues, and
- as good risk management practice, once a year before the organisation's AGM, to ensure that risks are identified and addressed, and that insurance cover is still meeting the needs of the organisation.

Many organisations establish a risk committee that is responsible for undertaking this analysis, and reporting back to the board or committee.

What are the risks of running a community organisation?

If you are involved in a community organisation, no matter what size, it is a good idea to spend at least a short amount of time discussing two simple questions:

- 'what "bad things" might happen as a result of the operation or activities of our organisation?'
- 'what can we do to avoid these risks, or at least minimise the chance they will happen?'

This isn't a waste of time – it is good practice and could actually save your organisation a lot of time and money in the future.

Risk assessment doesn't have to be a formal process (although if you are a large organisation, or one that conducts higher risk activities, like children's camps, you may well need to document a formal risk management plan).

For some organisations with low risk activities, assessing risks can simply mean setting aside an hour at a committee meeting to consider any risks that might occur during the operation or activities of the organisation.

When thinking about the risks which arise from the *operation* of your organisation, focus specifically on the risks which may arise from the involvement of those 'internal' to the organisation (i.e. its members, staff or volunteers).

When thinking about the *activities* of the organisation, give particular consideration to how your organisation's external interactions (for example with the public or regulatory bodies) may raise risks.

Examples may include:

- someone (a volunteer, employee, member of public) slips in our building and injures themselves
- someone steals our organisation's money

- someone has an allergic reaction to the food we sell (or just serve)
- we get robbed and all our equipment is taken
- our building floods or is burnt down and we lose all our records
- an employee undertakes activities without authorisation
- our computer equipment fails or we get a virus and we lose all our documents and data, or
- one of our volunteers has a car accident while out visiting a client.

> **Tip:** If you want a full list of possible risks , there are a number of risk identification tools you can use, some of which have been designed specifically for community organisations. Please see the Related Resources section at the end of this document.

The *Associations Incorporation Reform Act* 2012 – An additional risk incorporated associations should consider

If your group is an incorporated association, there is a new risk that your organisation should specifically consider as a result of the new Associations Incorporation Reform Act 2012 (AIR Act) which came into effect in Victoria on 26 November 2012.

Section 87 (AIR Act Indemnity) of that Act states:

> *An incorporated association must indemnify each of its office holders against any liability incurred in good faith by the office holder in the course of performing his or her duties as an office holder.*

The AIR Act Indemnity means that your organisation must pay back or reimburse its office holders for liabilities that they incur when carrying out their obligations as an officer holder (so long as the liability is incurred in good faith).

For the purpose of the AIR Act Indemnity, your organisation's office holders include not only the committee members, but any senior employee or volunteer who:

- makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of your organisation, or
- can significantly affect your organisation's financial standing in their role.

As the AIR Act Indemnity is new, there is some uncertainty about how it will operate. The words of the indemnity are broad and similar to legislative provisions adopted in company law.

The AIR Act Indemnity requires organisations to indemnify office holders for liabilities they incur to third parties, as a result of breaches of their obligations as office holders. The money paid to an office holder under the AIR Act indemnity comes out of your organisation's money or insurance held by your organisation which covers these liabilities.

Your organisation should assess the risk of being required to reimburse office holders who have incurred liabilities and consider whether your organisation can afford to meet them, or whether this would expose your organisation to serious financial difficulties.

Many organisations may already provide a similar indemnity to their office holders, either through their rules or through an agreement. These organisations would normally also have directors and office holders liability insurance, and the AIR Act Indemnity may not increase their risk profile. These organisations need to remember that regardless of the indemnity in their rules, the AIR Act indemnity now applies as well.

Tip: Organisations that already have an indemnity should compare the indemnity they provide with the Act indemnity. The Act indemnity could be narrower or broader than your existing indemnity. Organisations with a narrower indemnity than the AIR Act indemnity should talk to their insurer about whether their insurance covers the AIR Act indemnity as well as their rules indemnity.

It is not a requirement of the AIR Act that your organisation take out insurance, however this is one way of managing the risk presented by the AIR Act Indemnity – and organisations should be consider if purchasing insurance is an appropriate response to this new risk for your organisation.

See "Directors and officers liability insurance or management association liability insurance" in this Guide for more information about purchasing relevant insurance.

What measures can we take to avoid or minimise risk?

There are many measures your community organisation can take to minimise both:

- the chance that a risk will occur, and
- the impact on your organisation if the risk does occur.

When people consider risk management, many people immediately think: 'insurance'. While getting insurance is one possible measure your community organisation can use to manage risk, it might not be the best or only option.

For example, think about the risk of a break-in at your organisation's offices, and someone stealing all the computers. Having contents insurance may help to buy new computers, but it won't help to replace the data and files on your computer system (eg. membership or client details).

Some of the other measures your organisation might also consider are making sure the building has adequate security (to minimise the risk of break-ins occurring in the first place), and making sure your organisation regularly makes a backup of its computer files and takes it off-site (to minimise the impact if the risk occurs).

Tip: Your organisation may wish to think about including 'Risk Management' as a standard agenda item at meetings (i.e. meetings of the governing body of your organisation as well meetings of the staff or volunteers).

This does not have to be a long discussion. It may just be a chance for your organisation to discuss ongoing risks and whether the measures your organisation has put in place to manage them are working.

It may also be a chance to think about whether new risks have arisen which need to be dealt with by the organisation. For larger organisations, you may wish to have a risk management sub-committee of your board or committee of management.

The kinds of measures which can avoid or minimise risks are wide-ranging. Some types of measures your organisation can take (discussed in detail below) are:

- creating a safe physical environment
- safety when providing goods and services to the public
- staff and volunteer safety guidelines
- computer and electronic security, and
- financial controls

Creating a safe physical environment

Place of operation

Your organisation may wish to carry out a regular inspection of the place or places (i.e. building, office, hall, oval, club rooms) where it operates. An inspection, both inside and outside, can help identify safety issues and potential risks for staff, volunteers, contractors, clients, and the public. Check that all paths and steps are non-slippery, clear of obstacles and well signposted. All work surfaces should meet the required standards and be properly maintained.

Equipment or machinery

If your community organisation uses machinery or equipment, you should ensure the machinery is safe, and regularly tested. It is important to document instructions for use of equipment and train staff and volunteers in its safe use. Testing and maintenance records may need to be kept. Only people who are trained and authorised to use certain equipment should be allowed to use it. Public access to equipment and machinery should be restricted, if necessary.

Vehicles

If your community organisation has vehicles, it should maintain and regularly service them. Drivers should be properly trained and licensed, and limits should be set on how long or how far someone can drive in a given period. If you regularly transport particular equipment (for example oxygen tanks), appropriate restraints should be provided in vehicles.

Fire

It is important for your community organisation to protect its premises and staff in the case of fire by having active fire alarms, sprinklers and extinguishers in place. You should also have a system in place that ensures this equipment is regularly checked (perhaps linking this with an annual event such as your AGM). Your organisation should establish an emergency or evacuation plan and make sure staff and volunteers are aware of, and practice it.

Crime and vandalism

The protection of premises against theft and criminal damage can be improved by measures such as installing locks, outside lighting, alarms, surveillance and security systems.

Events

Many community organisations hold fundraising events and festivals and, again, it is important to ensure these are held in a safe physical environment. Some things your community organisation may consider for avoiding risks at these events are:

- crowd or traffic controls
- alerting local authorities and obtaining the relevant permits
- planning an emergency evacuation procedure in case of fire (including clear exit signs), and
- ensuring that any equipment you are using meets the relevant safety standards.

For more information on occupational health and safety best practice see 'Occupational Health and Safety' and 'Organising Events' listed in the Related Resources section at the end of this document.

Providing goods or services to the public

Offering food and or drink

If your organisation serves food to the public, it is important for it to ensure that any food it makes, serves and stores is free from contamination. There are regulatory requirements for food storage and handling set out by local and state governments of which your organisation should be aware. If your organisation serves alcohol, it should ensure that it has any required licences, as well as policies covering the responsible service of alcohol and how to deal with intoxicated persons.

For more information about the laws that apply to 'Organising Events', including events involving food and alcohol, see the Related Resources section at the end of this document.

Providing services or advice

If your community organisation provides services or advice, it is important that the service or advice is reliable, accurate and safe. It is important that all of the people involved in your organisation (including members of the governing body, staff and volunteers) are properly trained and supervised, competent and aware of the legal obligations they are subject to when carrying out their duties.

There are some areas where it is against the law for anyone but a qualified professional to give advice. For example, the *Legal Profession Act 2004* (Vic) makes it an offence for anyone other than a lawyer to provide legal advice.

Work tasks and responsibilities should be divided appropriately among staff and volunteers. Staff and volunteers should be encouraged to report incidents of bad practice to management. Your organisation may wish to write down a brief document that sets out a procedure by which the organisation will effectively investigate such complaints.

Staff and volunteer safety

Staff screening

Your organisation should have policies for screening staff and volunteers, particularly if your organisation provides services to the public. Screening could include interviews, reference checks and police checks. If anyone in your organisation is involved in child related work, the *Working with Children Act 2005* (Vic) makes it mandatory that they apply for, and pass, a Working with Children Check.

For more information about the legal issues relating to the screening of staff or employees, see the Related Resources section at the end of this document.

Staff safety

If your organisation is providing services to the public, it should also think about the kind of measures that need to be put in place to protect staff from harm – this could be harm from the public in general or harm from those you are providing services to.

Computer and electronic security

Many community organisations store important data and records on computer equipment either belonging to the community organisation, or its members and/or volunteers. Measures that can be taken to safeguard information include:

- password protect your computers
- back-up your computers, and store the back-up drive off site
- have adequate virus and firewall protection, and
- have policies that limit access to confidential data or personal information.

Financial controls

Nearly all community organisations have to deal with money. This could be small amounts (the $10 membership fees from all 10 club members, the takings at the end of a sausage sizzle), or large amounts (such as a government grant or the proceeds of a major fundraising appeal). No matter what amount of money your community organisation has, you should consider having guidelines in place to ensure that money is handled appropriately.

Some people involved in community organisations may resist the idea of having guidelines or policies in place to deal with handling money. Some common feelings may be:

- 'we all know and trust each other here'
- 'it's too bureaucratic to have to write down all expenses'
- 'we hardly have any money, it's not worth it', and
- 'it's rude or embarrassing to have to ask employees or volunteers for receipts'.

These concerns can easily be answered by the following points:

- While all of the members of the organisation may currently know each other well, this might not always be the case. Writing down and following standard procedures for dealing with money will ensure the organisation starts out as it means to continue - as a successful, professional community organisation.
- The amount of money an organisation has is irrelevant for the purposes of good financial practices. If your organisation is receiving money from the public or from members, no matter

how small the amount, it needs to account for that money. Part of the responsibility of being a not-for-profit organisation is to ensure that all moneys are accounted for and re-invested into the operations of the organisation.

- Financial policies and procedures also work to protect individuals (volunteers / employees) from being wrongly accused if funds go missing.
- The directors/committee of management members of your organisation have a legal duty to ensure that the organisation is financially responsible and they could be personally liable if it is not.
- If the organisation is incorporated, it will be required to provide annual accounts to the regulator. In some circumstances these accounts will need to be audited. Having basic written records of money that has been received and spent by the organisation is necessary for this purpose.

Think about establishing a set of financial procedures and training staff and volunteers to follow these. Obviously the more money you are dealing with the more stringent the measures should be. Some basic examples for a small organisation include:

- requiring two signatures on cheques (and, of course, no pre-signing of blank cheques!)
- requiring authorisation for certain levels of expenditure, and
- keeping detailed ledgers of all financial transactions.

Insurance basics

Just like the safety and other measures discussed above, insurance is another way that a community organisation can protect itself from financial loss as it goes about its activities.

Insurance can also help to protect individuals involved in a community organisation (such as the board or committee of management and the organisation's officers, employees and volunteers), by reducing the individuals' exposure to liability resulting from their activities for the community organisation.

Your organisation (and associated individuals) may wish to think of insurance like this - it allows your organisation to transfer particular risks that it cannot avoid or minimise (and cannot afford!) to an insurance company. The insurance company agrees to take on the risk (that is, agrees to be the one who will pay if things go wrong). However, the insurance company agrees to do this for a fee (often known as a premium) and only on certain terms and conditions.

What is an insurance policy?

An insurance policy is the document that sets out the terms and conditions on which the insurance company agrees to insure your organisation against particular risks (for a fee). An insurance policy is a contract - a legally binding agreement between you and the insurance company.

The written terms of an insurance policy are very important. Your community organisation can only claim on your insurance policy if the thing that goes wrong is covered by your insurance policy and it follows the procedures (like notification) required by the policy.

For example, if financial loss as a result of flood is not covered by your insurance policy, the insurance company does not have to pay to fix damage caused by a flood. If the insurance policy only covers financial loss to the amount of $500, this will be all that the insurance company has to pay you, even if your organisation losses $5,000. If the insurance policy only covers your organisation for its activities in Victoria, any liability that occurs interstate (for example when your group travels to go to a conference) may not be covered.

Your community organisation needs to make sure it understands exactly what is and isn't covered in the insurance contract.

What should we look for in an insurance policy?

Insurance can be costly. If your organisation is going to spend money on a policy it should make sure that the cover is suitable, so it can ultimately claim on the policy if something goes wrong. In particular, look at:

- what the policy covers and in what circumstances (the terms and conditions of the policy)
- whether there are any exclusions (events or actions that are not covered by the policy)
- how much the insurer agrees to pay for different events (this amount is sometimes capped)
- if there is any 'excess' (an amount your organisation may have to pay to claim on the policy)
- whether there are any waiting periods before your organisation can make a claim
- how much the insurance policy will cost you (often known as 'a premium')

> **Tip:** In Australia, there are laws, like the *Insurance Contracts Act 1984* (Cth) and *Financial Services Reform Act 2001* (Cth) which regulate the way that insurance policies are sold and the information which insurers (and others who sell insurance on behalf of insurers) must tell your organisation.

What does our organisation need to do under the insurance policy?

An insurance policy is a contract - a legally binding document between you and the insurance company. This means that your organisation will have obligations (things that it has to do) to make sure the contract is and remains valid. Make sure you understand the terms and conditions of the policy, so that you know what these obligations are. Some standard obligations are set out below.

Provide full and accurate information

Your organisation needs to answer all questions in the insurance application honestly and accurately. If you are not sure about a question, discuss this with your insurer or broker. If not, you may give the insurer the wrong information and the insurer may be legally entitled not to pay your organisation's insurance claims. There are also provisions in most insurance contracts that allow the contract to be voided (ended) if the information you have provided is deliberately incorrect (fraudulent).

Keep your insurance up-to-date

It is just as important (particularly when your organisation renews its policy) to tell your insurer if your circumstances have changed.

Tip: It is a good idea to list 'insurance' as an agenda item for discussion at least once per year at a meeting of the board or committee of management of your community organisation. Your organisation could use this opportunity to review the organisation's insurance policies, and decide whether the cover is adequate or needs to be reviewed or changed. It may also be a good idea to get one person to have 'insurance' as their responsibility (eg. the Secretary).

Notify of incident

Some insurers may require you to notify them of an event or incident that may give rise to a claim within a certain time period. Make sure you know what the contract requires if there is an incident, and how to make an effective claim on your insurance.

Is our community organisation required to get insurance?

Even if your community organisation puts in place measures to avoid or minimise risk, your community organisation may still need to get insurance.

The three main questions your organisation needs to ask are:

1. Is our organisation required by law to get insurance?
2. Is our organisation required to get insurance under a contract or agreement that it has entered into?
3. Even if not required by law or contract, does our organisation need insurance?

These questions are each addressed below.

1. Is our community organisation required by law to have insurance?

In Victoria, there are laws which make it compulsory for individuals or organisations, including community organisations, to get insurance in certain circumstances.

The most common 2 examples are:

- workers compensation insurance: if your community organisation is an employer (that is, employs staff under employment contracts), the law requires your organisation to get Worksafe Injury Insurance (workers compensation insurance) for its employees
- third party motor vehicle liability insurance: if your community organisation owns or leases vehicles, it is required by law to insure against third party injury liability

Further information about workers compensation insurance and third party injury motor vehicle insurance are provided in more detail below.

There may also be other laws that require organisations operating in a particular field (such as housing) or a profession (such as legal or health) to have a certain kinds of insurance. You should seek legal advice about whether there are any laws that might require your community organisation to take out a particular type of insurance.

2. Is our organisation required to have insurance under a contract or agreement?

From time to time, a community organisation might enter into an agreement or contract with another party, which may require the community organisation to take out insurance.

For example, if your organisation wants to hire equipment, the hire agreement (which is a contract) may include a requirement that your organisation have building and contents insurance and public liability insurance. If your organisation is going to lease an office, building or land, the lease (which is a contract) may require your organisation to have public liability insurance. If your organisation signs an agreement to supply services (which is a contract) the agreement may require your organisation to have public liability, product liability and professional indemnity insurance. (Further details about all of these types of insurances are set out below).

Before your organisation signs a contract, it is important that you understand if the contract requires your organisation to get insurance and if the insurance is able to be purchased consistent with the terms of the contract.

Some agreements may require your organisation to take out a particular type or policy of insurance, and may include other requirements, such as that the insurance policies remain in place for the duration of the agreement. If your organisation does not take out insurance required under a contract, it will be in breach of the contract and at risk of a claim for loss or damages.

So, every time your organisation is considering entering into a contract (which may be called an agreement or a lease or any other name) read the contract carefully. It may be that the requirement to take out insurance is hidden in amongst the many paragraphs. If it does require your organisation to get insurance, read the terms carefully (eg. it may specify the type of insurance you need, how long you have to have the insurance, and the amount it must cover). If you have any doubts, or the requirements are unclear, seek legal advice. If you are obliged to arrange insurance covering other parties make sure that the policy you do arrange is consistent with your obligations.

Case Study: In 2005, an equestrian association (an incorporated association) was organising an equestrian championship event. It entered into a contract with an equestrian centre ('the centre owner') to hire their venue for the event. A condition of the contract was that the equestrian association was to make sure that the centre owner was named in their public liability insurance policy.

The association did not have the centre owner named as an interested party in its public liability policy, as it was required to do. At the event, two people were injured as a result of a hazard at the venue. The matter went to court and the judge found that the equestrian association was liable to pay the substantial medical costs for the people's injuries, because it had breached its obligations under the contract: *NSW Arabian Horse Association Inc v Olympic Co-ordination Authority* [2005] NSWCA 210.

Tip: Even if the agreement does not *require* your organisation to take out insurance, think about whether it would be a good idea to do so. For example, some contracts might require your organisation to 'indemnify' another person or body for any loss or damage caused to them or another party. If you agree to this, you may be agreeing to pay for damage that may occur as a result of your organisation's actions and/or the actions of others. You may need to seek advice about whether you can get insurance to cover your organisations for these risks.

3. Other times when an organisation might wish to get insurance

Even if not required by law or by contract, your organisation should consider whether it needs particular insurances, depending on its activities and operations.

For example, your organisation may have workers compensation insurance (as required by law) and public liability insurance (because it is required by a contract), but these insurances may not cover certain actions of the directors or committee of management members of your organisation. In this case, your organisation may wish to take out directors and officers insurance, in addition to the other insurances, to cover this risk.

Your organisation may wish to take out insurance if it recognises that:

- it faces certain risks (eg. the ones it was suggested your organisation list at the start of this document); and
- those risks cannot be adequately avoided or sufficiently minimised by adopting measures (such as the simple ones discussed above); and
- the organisation cannot afford to pay the amount of money that would be involved if the risk eventuated.

Tip: As insurance is costly, and insurance itself will not provide absolute protection against covered risks, a community organisation should also implement all other reasonably available and cost effective measures to avoid or minimise risk, as well as considering insurance.

Tip: Insurance is often a complex issue for community organisations, and it is recommended that you **contact an insurance broker** who has experience in arranging insurance for your sort of organisation to discuss your particular needs.

What insurance is right for our organisation?

Unfortunately it is too difficult to answer this question in this guide. There is no 'one-size-fits-all' insurance program for community organisations. Instead, a community organisation's insurance program must be informed by, among other things:

- its activities and operations;
- its preparedness to manage risks by ways other than insurance;
- the legislative and regulatory environment in which it operates;
- its contractual obligations owed to others; and
- the costs and benefits of particular types of insurance.

The costs of insurance can make it difficult for community organisations to insure themselves adequately. The following suggestions may be useful for some community organisations to reduce the cost of insurance.

Get advice before you buy

It is a good idea to get some advice about your organisation's insurance needs. Peak bodies and industry associations are often good sources of advice on appropriate insurance packages for community organisations. You may also wish to ask other community organisations (which operate in the same field as yours or equivalent organisations in other states) about their insurance plan.

Many insurance companies, insurance agents and insurance brokers offer risk management and insurance advisory services.

Tip: Be careful when seeking advice from insurance companies (directly) or insurance agents. Both the company and the agent will advise your organisation about the policies available from that insurer only. By contrast, insurance brokers are not employed by the insurer so may advise you about insurance policies available from a range of companies, and may be able to help you get a better deal. Insurance brokers are legally required to represent your interests.

In either case, the law requires that insurance agents and brokers be licensed and that they provide you with certain information about the policies they are advising you about (including how they are paid by the insurer, such as commissions).

Check whether a 'group' or 'blanket' scheme is available

Before taking out insurance, it is a good idea to consult with any peak bodies, funding bodies, umbrella bodies, parent or related organisations about insurance coverage. You may find that they have existing 'group' insurance arrangements that you can join, and these are often cheaper than taking out independent insurance.

For example, if your community organisation operates within a group or hierarchy of related organisations, it may already be covered by a group insurance program. The benefits of group insurance are that premium and insurance administration costs are likely to be less. Also the insurance cover may well be more comprehensive than might otherwise be the case due to increased buying power of the group, as opposed to an individual community organisation.

If you are eligible to be covered by a blanket or government scheme, it is important to:

- find out what your organisation needs to do to make sure it is covered by the scheme; and
- understand the extent of the insurance cover (i.e. in what circumstances your organisation can claim on the insurance) so you can decide whether it is enough, or whether your organisation may need additional insurance.

> **Example:** The National Association of Community Legal Centres (NACLC) is the peak body for community legal centres in Australia. NACLC has negotiated a national professional indemnity insurance policy that its member community legal centres can apply to be covered by.

> **Example:** Organisations that are funded by the Department of Human Services (DHS) under service agreements may be eligible for insurance arranged by DHS. For further information, see www.dhs.vic.gov.au.

Shop around

If there is no group or blanket insurance policy available for your organisation, it's a good idea to shop around for quotes to compare the different insurances available.

When doing so, it is critical for your organisation to pay very close attention to what, precisely, is being offered by an insurer. Lower prices often reflect lesser cover. Subtle differences between policies can often mean the difference between 'state of the art' protection and inadequate protection.

Try to bundle

If your organisation needs a few different types of insurance, you may be able to get a better price by buying an insurance package.

Some insurance agents and brokers have 'packages' that they have put together to suit community organisations. It may be worthwhile asking your agent or broker whether they offer any insurance packages tailored for community organisations, or any discounts for multiple policy purchases. You may be able to liaise with other groups (eg. all the groups that rent one hall) to bring more business in exchange for a better package.

What types of insurance are available?

This section sets out the main types of insurance that may be relevant to community organisations and the basic details of what those policies often cover and don't cover:

- workers compensation insurance
- motor vehicle insurance
- public liability insurance
- professional indemnity insurance
- buildings and / or contents insurance
- directors and officers liability insurance
- personal accident insurance / volunteers insurance
- fraud insurance

Warning: The following summaries offer very general information about each kind of insurance. The terms of insurance policies vary widely between different insurance companies. Your organisation should read the terms of any insurance policy it is considering very carefully. It is important that you understand what is and is not covered, and on what conditions, in the terms of any insurance policy. If in doubt, seek legal advice.

Workers compensation insurance

In Victoria, if your community organisation employs staff under employment contracts and your organisation's annual financial year payroll is expected to be more than $7500, you are required to take out WorkSafe Injury Insurance (i.e. workers compensation insurance) to cover the organisation's employees. (You may need to check the legislation in other states if your organisation has employees in other states.)

What does this insurance cover?

Workers compensation insurance provides benefits to an employee, including lost wages and medical expenses, if an employee is injured at work.

What is not covered?

Workers compensation insurance does not cover any person who is not employed by your community organisation under a contract of service. So, volunteers, members, directors and officers (who are not employees) are not covered. There are other insurances that are available to cover these people (which are discussed further below). In general, most independent contractors and consultants will not be covered by workers compensation insurance, and you should make sure that any contractors or a consultant your community organisation uses has their own insurance.

However, it is important to note that workers compensation law provides that, in some cases, a worker may be *deemed* to be an employee even if, applying the ordinary meaning, that worker is an 'independent contractor'. You may need to talk to a lawyer or your insurer about this issue.

Why might our community organisation need this cover?

It is compulsory for your organisation to get workers compensation insurance if you have employees (as defined by the law) and your organisation's annual financial year payroll is expected to be more than $7500.

What else should our organisation be aware of?

Substantial penalties can be imposed on employer organisations that fail to comply with workers compensation legislation.

Motor Vehicle insurance

In Victoria there is legislation that makes it compulsory for your community organisation to insure any motor vehicles it owns or leases against third party injury liability (compulsory third party insurance). This is required by the *Road Safety Act 1986* (Vic) and the *Transport Accident Act 1986* (Vic). The charge for this insurance (the TAC charge) is included in your annual registration renewal fee on each vehicle you own – no separate policy is needed.

Your organisation should consider whether further insurance is required to cover damage to property in vehicle accidents (including damage to your own or another person's property).

What does TAC insurance cover?

TAC covers individuals' personal injury expenses that arise from a transport accident. It is a no-fault scheme, and in most cases will cover injury costs even if someone from your organisation is at fault in the accident.

In general, claims must be made within 12 months of the accident. If another scheme is available to cover injury costs (eg Workcover) claims may need to be made under that other scheme.

The 'TAC charge' in your vehicle registration covers injuries to third parties only. These charges are used to pay for treatment and support services for people injured in transport accidents.

What is not covered?

Third party injury insurance does not cover property damage (eg damage caused in a car accident to buildings or another car, or damage to your organisation's vehicle).

Why might our community organisation need motor vehicle insurance cover?

If your organisation owns or leases vehicles it must have third party personal injury insurance. Your organisation should consider further cover that will cover costs arising from damage caused to property.

What else should our organisation be aware of?

There are a range of optional insurances for motor vehicles. The policies available to incorporated community organisations are similar to the policies available for individuals.

If you take out these optional insurances, your organisation should look carefully at what is covered. In general, most motor vehicle policies do not cover loss or damage resulting from mechanical, structural or electrical failure. Also, most policies will not cover loss or damage if the car was driven when it was known to be in an unroadworthy or unsafe condition. Your organisation should also look at any requirements that the insurance company might have about the people driving the vehicle (licence or age qualifications, eg. there may be an excess for drivers aged under 25 years).

Public Liability insurance

What does this insurance cover?

A public liability policy will protect a community organisation against its legal liability to pay:

- compensation to third parties (eg. members of the public) for bodily injury and/or property damage that may occur as a result of the community organisation's activities; and
- the legal costs that a community organisation may incur if it needs to defend bodily injury and property damage claims made against it.

What may not be covered?

When inquiring about public liability cover, your organisation should check whether the policy covers, not only the community organisation, but also its directors, officers, employees and volunteer workers. Your organisation should also check if the policy extends to include psychiatric injuries (including nervous shock) and loss of use of property (other than through actual damage to that property).

Your organisation should carefully read the terms of any public liability policy it is considering, but most public liability policies will not cover the following:

- claims for injury to a volunteer working for the organisation - this should be insured separately, under a personal accident or volunteer insurance policy (see below).
- claims for damage caused to property in a community organisation's custody or control - this should be insured separately under a building and contents insurance policy (see below).
- claims arising from negligent advice or negligent provision of some other service - these should be obtained separately, such as professional indemnity or directors and officers insurance policies.

Why might our community organisation need this cover?

Most, if not all, community organisations (including their employees and volunteer workers) interact with members of the public and their property. Therefore most community organisations face the possibility that a member of the public may be injured (or worse), or their property damaged, as a result of the activities or operations of the organisation.

If this occurs, the member of the public will be able to take legal action against your community organisation. If your organisation is covered by public liability insurance, the costs of the court action and any compensation will be paid by the insurance company. If your organisation does not have public liability insurance it will be liable to pay the full costs of compensation and any legal fees that result from the incident. These can be extremely expensive, even if you win the case.

Public liability insurance is often a requirement in many contracts that community organisations will enter into in the course of their activities (including funding agreements, leases).

What else should our organisation be aware of?

Check whether any contracts or agreement your organisation might have require your organisation to have public liability insurance. It is often required if you are hiring a building or venue, or entering into an agreement with another organisation to provide services.

Products Liability insurance

What does this insurance cover?

A products liability policy will insure a community organisation against its legal liability to pay:

- compensation to third parties for bodily injury (including death) and/ or property damage caused by products manufactured, sold or distributed by the community organisation; and
- legal costs incurred by the community organisation in defending bodily injury and property damage claims made against it as a result of products manufactured, sold or distributed by the community organisation.

What may not be covered?

Products liability insurance does not usually cover the cost of recalling defective products.

Why might our community organisation need this cover?

If your community organisation manufactures, sells or distributes products to the public, products liability insurance should be considered. Because 'products' can include such things as food sold in office canteens and at fundraisers, even if your community organisation does not manufacture or sell products as part of its core operations, it should nevertheless consider this type of cover.

What else should our organisation be aware of?

Products liability insurance is often provided in combination with public liability insurance cover in the form of a 'general' or 'combined' liability policy. If your community organisation needs both public and product liability cover, it could investigate a combined policy.

Professional indemnity insurance

What does this insurance cover?

Professional indemnity policies are often required to protect against economic losses arising in the context of the provision of services and advice of some kind, eg. health services or legal services. A professional indemnity insurance policy will insure a community organisation against legal liability to pay:

- compensation to third parties for economic and other loss or damages as a result of some wrongful act (such as negligent acts or omissions or misleading or deceptive conduct) committed by the community organisation in the conduct of its business or profession; and
- the legal costs incurred by the community organisation in defending a claim for economic or other loss arising out of the wrongful act.

Please note that this cover is different from an indemnity that your organisation may provide to committee members in an organisation's rules. Such an indemnity provision protects against liability incurred in good faith by committee members.

What may not be covered?

Professional indemnity insurance policies usually exclude cover for liabilities assumed under a contract, unless that contractual liability would have arisen anyway (that is, if the contract did not exist). It is therefore important for any community organisation to check the liability and insurance consequences before signing any contract (such as a contract for the provision of goods and services). Other claims often excluded from professional indemnity cover include the costs of coronial, regulatory and administrative inquiries. However, it is sometimes possible to negotiate for these occurrences to be covered if necessary (for an extra fee).

Why might our community organisation need this cover?

Consider whether your community organisation is providing professional services or advice of some kind, eg. health services or legal services or other consulting or advice services.

Buildings and / or contents insurance

What does this insurance cover?

This insurance covers loss or damage to a community organisation's building and the contents within it, caused by specific 'events' or 'dangers' such as fire, storm and vandalism.

What may not be covered?

If your community organisation is taking out building or contents insurance, check the policy carefully so that you know exactly what 'events' or 'dangers' the policy covers.

Why might our community organisation need this cover?

If your community organisation owns its building or land, it should look to have both building and contents insurance. If your community organisation does not own its premises (e.g. it is leasing), the landlord will be responsible for obtaining insurance for damage to the building. However, your community organisation will still need to consider insuring the building's contents (e.g. all your equipment, furniture).

Directors and officers or management association liability insurance

What does this insurance cover?

Under a directors and officers liability insurance policy (often called 'D&O' insurance), the members of the Board or Committee of Management (and other 'officers') of a community organisation are insured against legal liability, including damages and legal costs, if they are sued for certain wrongful acts.

Wrongful acts can include negligently giving wrong advice, requesting someone to perform a dangerous task, dismissing staff without proper authority or process, discriminatory conduct and misleading or deceiving the public in some way. Directors and officers will only be covered if the wrongful act committed was within the scope of their position in the community organisation.

Technically speaking, it is the officeholders themselves who are insured under "D & O insurance", not the organisation. Usually, the organisation's articles of association will provide for the organisation to pay the premium on behalf of the office holders and any excess due if a claim is made on the policy.

You should check the exclusions to the policy, however, as there may be a "gap" between the liabilities you foresee your organisation being exposed to via its officeholders and the cover provided by the policy. This is a matter on which you should seek the specialist advice of your broker.

AIR Act indemnity

If your organisation has decided to use insurance to manage the risk presented by the 'AIR Act Indemnity' (discussed in *"What are the risks of running a community organisation?"* above), one way of doing this would be for the organisation to take out a D & O or Management Liability insurance policy. You need to check that D & O insurance will cover the risks raised by the AIR Indemnity.

Company reimbursement component

'D & O insurance' can also include a 'company reimbursement ' component, where the organisation, and not the office holders, is indemnified for monies which the organisation has itself paid as an indemnity to its office holders.

"Company reimbursement" policies are technically different from "D & O insurance' although it is typical for such policies to contain a component that covers the office holders directly and a component that covers the organisation directly, within the one policy wording.

Where your organisation holds a "company reimbursement" policy separately from the 'D & O policy' held by its office holders, the organisation's policy can include cover for the payment of any excess due under the 'D & O insurance' in the event that the organisation is are required to make a claim under that policy, and may also cover where your organisation is required to pay its office holders under the AIR Indemnity.

What may not be covered?

Directors and officers liability insurance does not cover the community organisation itself for wrongful acts. This would generally be covered through the public liability or professional indemnity insurance. Also note that D&O insurance will not cover acts which are outside the scope of the person's position within the community organisation (eg. criminal acts like fraud would not be covered). For organisations that are incorporated as a company limited by guarantee, the *Corporations Act* specifically provides that directors can't be insured for unlawful acts.

Why might our community organisation need this cover?

Your community organisation may want to consider this cover if its constituent documents (rules, constitution or by-laws) grants an indemnity to its directors and officers.

The AIR Act now requires all Victorian incorporated associations to indemnify officer holders from the assets of the organisation. If your organisation has limited resources, the AIR indemnity will be of little value to your office-holders unless the organisation has Directors and Officers liability insurance. This is because unless you have insurance, the amount your organisation can indemnity officers for is capped by the assets of the organisation.

If your organisation does not have appropriate insurance, the AIR indemnity also exposes your organisation to the possibility that it may have to pay all of its assets to an office holder under the indemnity.

Warning: The AIR Indemnity will only protect officer holders of an incorporated association to the extent of the organisation's assets. Eg. if an officer holder has a liability of $200,000 and the organisation only has $120,000 in assets, the organisation must pay these assets to the office holder. This will have two negative outcomes – the office holder will still have an $80,000 liability, and the organisation will no longer have any assets and may be required to wind up.

Personal accident insurance (volunteer insurance)

What does this insurance cover?

Personal accident or volunteer insurance will cover members and volunteers of a community organisation for expenses incurred in the event of accidental injury, disability or death which occurs while the volunteer is doing work for the community organisation. The insurance is usually extended to include cover for loss of income if the volunteer is unable to work as a result of an injury sustained when volunteering for the community organisation.

It is important to make sure any volunteer insurance policy appropriately covers the type of volunteers engaged by your organisation. For example, some volunteer insurance policies might have age restrictions, or specify certain types of volunteer which are excluded from the policy, such as student placements. It is also important to understand that there may be some limitations on when benefits under the policy will become payable, known as 'waiting periods'. These differ from policy to policy. You should investigate and be aware of the waiting periods that may apply.

Why might our community organisation need this cover?

Workers compensation insurance will only cover your organisation's employees. You may wish to think of this insurance as being like 'workers compensation' insurance for your volunteers.

Unlike WorkSafe Injury Insurance for employees, it is not compulsory for an organisation to take out personal accident insurance for volunteers. However, because volunteers are a central part of many not-for-profit organisations, it is useful to ensure that both the organisation and the volunteers are protected in the event of an accident.

Fraud insurance

What does this insurance cover?

Also referred to as 'fidelity insurance', fraud policies insure against losses caused by misappropriation of funds and/or property by employees or committee members of a community organisation.

Why might our community organisation need this cover?

When considering whether this type of insurance is necessary, your organisation should weigh the potential for misappropriation of its funds and the risk management measures it can take to prevent this occurring, (see above, 'financial controls') against the expense of fraud insurance.

What happens when something goes wrong?

Notifying your insurer

It is important to notify your insurer as soon as possible when:

- any event causing loss or damage occurs
- a claim is made against your organisation, or
- any fact or change in circumstance which may create a claim in future (do this before renewing your policy).

Claims against your organisation

A "claim" against your organisation may be indicated by receipt of a letter of demand or by the service of a legal process (such as a writ or statement of claim).

However, it is not only when a claim is actually made against your organisation that you need to inform the insurer.

Generally, if your organisation has professional indemnity insurance; or insurance covering its employment practices or the conduct of its officers, the policy will operate on a "claims made" basis. "Claims made" policies insure your organisation against liabilities during the particular 12 month period for which the insurance policy is in effect.

Each subsequent 12 month period of insurance will usually exclude from cover any claims made on the policy which arise from "known circumstances", being circumstances which you became aware of prior to the inception of that period of insurance which might later give rise to a claim on the policy. This means it is very important to notify your insurer of anything that has given rise to a claim or could in future give rise to a claim as soon as possible, so that the issue cannot be excluded on a "known circumstances" basis.

The insurer will record the circumstances you have notified them of on your policy for the purpose of covering your organisation should those circumstances develop during a later period of insurance and your organisation needs to claim under its insurance policy.

Related resources

Related legislation

*Insurance Contracts Act 1984 (*Cth*)*

Associations Incorporation Reforms Act 2012 (Vic)

Related PilchConnect Resources

For online legal information resources for Victorian community organisations about:

- insurance see www.pilch.org.au/insurance
- occupational health and safety see www.pilch.org.au/OHS
- organising events (including food and alcohol) see www.pilch.org.au/events
- employees and volunteers see www.pilch.org.au/thepeopleinvolved