

Events involving sport or adventure activities

Legal information for NSW community organisations

This fact sheet covers:

- ✔ duty of care to participants in sporting activities
- ✔ warnings and waivers
- ✔ risk reduction
- ✔ standards and codes to follow
- ✔ insurance
- ✔ extra steps when children are involved, and
- ✔ medical consent.

Sporting and adventure activities often pose a greater than normal risk that participants could be injured.

There are a number of issues that your community organisation should carefully consider when planning events to ensure safety for participants and reduce the risk that your organisation could be liable (legally responsible) if something goes wrong.

Duty of care for sport or adventure activities

Generally, organisers of a sporting or adventure activity owe a duty of care to participants. This means that an organisation must take reasonable precautions against a foreseeable harm. In determining liability, relevant factors are:

- whether your organisation should have reasonably foreseen that its activities and actions (or inaction) could have caused loss, damage or injury to a participant, and
- whether reasonable steps were taken to mitigate (or reduce) that risk.

Summary

- an organisation's duty may extend to warning participants of identifiable risks associated with the event, providing appropriate instruction or taking specific actions to reduce risks such as appropriate care and maintenance of safety equipment
- if an injury or damage is the result of a well-known and understood inherent risk to the sport or adventure activity (such as falling off a bicycle), the organisers may not be liable for the injury. For example, the courts have held that a baseball club was not liable for not warning against the prospect of a collision between a fielder and base runner, as this was held to be a well-known and understood risk inherent to the sport of baseball, and
- the law assumes that participants should take reasonable care of their own safety, so where the

participant fails to take reasonable care for their own protection, their lack of self-care will be taken into account.

Warnings and waivers

It is a good idea to ask participants in sporting and adventure activities to sign a waiver that informs them of all the risks involved and relieves the organisation of liability for personal injuries or damage during the event. Waivers and disclaimers can help an organisation fulfil its duty of care by giving reasonable warning of the inherent risks involved in the activity so that participants can make an informed decision about whether to voluntarily participate.

It is important to note that waivers of this type cannot eliminate all liability, in particular where the organisation has acted negligently. Organisations must take sensible precautions (for example, employ suitably qualified staff and proper safety harnesses for an indoor rock climbing activity).

What steps can we take to reduce the likelihood of an incident?

It is good practice for your community organisation to monitor the planning and organisation of its events, including monitoring the behaviour of staff, volunteers and participants involved.

It is also good practice to develop a risk management procedure outlining your organisation's recognition of and approach to the foreseeable risks to participants involved in your events. Following an established risk management procedure can help avoid liability because it demonstrates that the organisation has taken reasonable precautions.

Any codes of practice and other standards in areas relevant to your events will be useful to guide the development of your risk management procedures. A risk management strategy can also be useful when your organisation seeks public liability insurance and may help your organisation negotiate a better premium (ie. a lower cost for the insurance). Insurance is discussed further below.

FURTHER READING

There are many resources available to assist in assessing risks and preparing risk management strategies, and links to some have been included in the Resources section below.

Are there Codes of Practice or Standards we can follow?

Adventure Activity Standards

The Adventure Activity Standards (**AAS**) contain industry-recognised minimum standards for organisations holding outdoor recreation activities for dependant groups (that is, where participants have a high level of dependence on the organisers and leaders of the event).

Though the AAS are voluntary guidelines and are not legally binding, they are a useful reference for commonly accepted best practice standards for these activities. If your organisation incorporates the AAS into the planning and implementation of your community organisation's sporting or adventure event, it may assist your organisation to get appropriate insurance cover and will show it has complied with its duty of care.

Currently, there are specific NSW AAS standards available for the following activities:

- abseiling
- archery
- artificial surface rock climbing
- bushwalking
- canoeing & kayaking
- canyoning
- challenge ropes courses
- mountain biking
- rock climbing, and
- sea kayaking.

It is proposed that the NSW AAS will be replaced by a set of uniform national standards that are being prepared to cover adventure activities throughout Australia to be called the 'Australian AAS'.

FURTHER READING

The Outdoor Recreation Industry Council of NSW (**ORIC**) [website](#) has detailed information about the AAS including the opportunity to download the NSW AAS.

Additional AAS published by other states and territories around Australia in respect of other activities can be found in the Resources section below.



Sporting Standards

There are a number of useful injury prevention and legal compliance resources that have been developed to assist organisations to plan and run sporting activities, particularly those involving children and young people. These include:

- [Play By the Rules](#): A tool which provides community organisations with practical information on model codes of practice, sample policies, relevant law and frequently asked questions and answers relating to sporting events, as well as online training resources for coaches, officials, administrators and participants.
- [Safe Conduct Guidelines for Sport and Physical Activity in Schools](#): A resource developed by the NSW Department of Education and Training.
- [Safety Guidelines for Children and Young People in Sport and Recreation](#): A resource developed by Sports Medicine Australia.

See the Resources section below for further information.

What insurance will we need?

Not all risks can be avoided and despite best efforts, your organisation may be held liable for an injury. *Public liability insurance* can help your organisation to protect itself against claims made by participants in your sporting and adventure activities in the event of injury.

For more information on insurance, see our Risk and Insurance page on the Information Hub at www.nfplaw.org.au/riskinsurance.

What about if we are organising sporting events for children?

Working with children

In NSW, the [Child Protection \(Working With Children\) Act 2012](#) (NSW) makes it mandatory for people who work in child-related work (in either paid or volunteer positions) to obtain a Working With Children check (**WWC check**).

In terms of carrying out events involving sport or adventure activities, a WWC check is generally required for all people who have face-to-face contact with children, working or volunteering in connection with clubs, associations, movements, societies or other bodies of a cultural, recreational, sporting or community service nature providing programs or services for children and sporting, cultural or other entertainment venues used primarily by children.

RELATED RESOURCES

For more information about Working with Children Checks, see our Screening Checks Guide on the Not-for-profit Law Information Hub at www.nfplaw.org.au/recruitment. The [NSW Office of the Children's Guardian](#) website also contains further information on Working with Children Checks.



Parent or guardian's informed consent

If your sporting events involve children under the age of 18, it is important that your organisation seeks the written consent of a parent or guardian and obtains relevant medical information about each child.

A parent or guardian consent (or waiver) form will not fully relieve a community organisation from its duty of care towards the child while the child is participating in the event. Nor will the consent form fully prevent the organisation from being held liable if they do not meet the standard of care required. However, the form may serve as a useful document to inform the parents of children participating in an activity of the nature and unavoidable risks of the activities that their children will be undertaking. It provides evidence of an acknowledgement by the parent of those risks.

Medical consent

It is a good idea for your community organisation to obtain a completed medical information form from all participants to assist if an accident or injury does occur. Medical information forms can help medical personnel to treat the injured in the event of an emergency. The form should include:

- emergency contact numbers
- a list of medication the individual is currently taking and instructions (if necessary) on how to administer that medication

- a list of any allergies to medication
- any other relevant information such as whether a participant has a medical condition, and
- a request for consent to release the medical information to appropriate medical personnel.

What other laws should we be aware of?

There are many other areas of law that may be relevant where your organisation wishes to conduct an adventure or sporting activity.

- discrimination is one area. Anti-discrimination and equal opportunity law exists to ensure that we can all participate in public life in the community. In NSW there is specific legislation which prevents the discrimination of people, including within sport
- there are also laws about harassment, abuse, human rights, child protection and others that may affect your organisation's activities. The Play by the Rules site listed in the Resources section below provides information on these areas of law
- if the planned sporting or adventure activity event will take place on your organisation's premises, your organisation also has a duty of care to ensure people who use the premises are safe from any harm which could reasonably be caused through the condition of the premises or the activity conducted by the organisation on that premises, and
- an injury or incident may also be covered by occupational health and safety laws.

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law Information Hub contains many fact sheets on different topics. It can be accessed at www.nfplaw.org.au. The following topics contain relevant further information:

✔ Recruitment of employees – www.nfplaw.org.au/recruitment

This page contains a Screening Checks Guide, which covers Working with Children Checks in NSW.

✔ Risk and Insurance – www.nfplaw.org.au/riskinsurance

This page contains resources on background checks, occupational health and safety, negligence and incidents and accidents.

✔ Fundraising and Events – www.nfplaw.org.au/fundraisingandevents

This page contains resources on the main legal issues when fundraising

✔ Communications and Advertising – www.nfplaw.org.au/comms

This section offers information on advertising and promotions and social media, such as Facebook and twitter.

Standards, legal and risk management resources

✔ [Outdoor Council of Australia – Adventure Activity Standards](#)

The Outdoor Council of Australia website provides link to the applicable Adventure Activity Standards of the individual states and territories that maintain their own Adventure Activity Standards.

✔ [Outdoor Recreation Industry Council of NSW – NSW Adventure Activity Standards](#)

ORIC help outdoor recreation and education organisations better serve their members and promote their activities. The page provides a link to download the NSW Adventure Activity Standards.

✔ [Play by the Rules](#)

Play by the Rules is a government-supported initiative. The website provides information for child-based sports activities and has information about sports and the law (including discrimination, harassment, child protection, child abuse, complaint handling etc).

A NSW specific referral guide published by Play by the Rules can be found [here](#).

✔ [Sports Medicine Australia: Policies and guidelines developed by Sports Medicine Australia](#)

These guidelines have been published by Sports Medicine Australia to provide support and advice for conducting sporting activities.

NSW Government sites

✔ [NSW Department of Education and Training: Safe Conduct Guidelines for Sport and Physical Activity in Schools](#)

This website from the NSW Department of Education and Training provides guidelines on conducting sport and physical activity within the context of schools. Although aimed at schools, the Guidelines may be useful for community organisations that are organising sport and other outdoor activities.

✔ [NSW Office of the Children's Guardian – Working with Children Check](#)

This NSW government website provides information about the WWC check requirements including who must apply for a WWC check, how to apply and your organisation's obligations under the legislation.

➤ [NSW Office of Communities Sport & Recreation](#)

This NSW government website provides information about the legal issues that arise within sport and recreation activities. In particular, see the sections on member protection in the links on the left.

Legislation

➤ [Anti-Discrimination Act 1977 \(NSW\)](#)

This is a link to the NSW legislation that prohibits sexual harassment and discrimination in the provision of services on the basis of gender, race, disability, homosexuality and certain other characteristics.

➤ [Child Protection \(Working with Children\) Act 2012 \(NSW\)](#)

This is a link to the NSW legislation which sets out the requirements for people who need a Working with Children Check in NSW.

➤ [Civil Liability Act 2002 \(NSW\)](#)

This NSW legislation sets out some of the law in relation to legal action taken by people for personal injury and other damages claims.

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au

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