

Events involving sport or adventure activities (NSW)

Legal information for NSW community organisations

This fact sheet covers:

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



Caution – COVID-19 restrictions

The ability of organisations to hold events are subject to any COVID-19 restrictions in force in your state or territory. You need to make sure your organisation complies with these restrictions.

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



In 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 injury or damage is the result of a well-known and understood risk inherent 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



Case example

A cricket player suffered a serious eye injury while playing indoor cricket. There were no signs on the premises warning of the general risks involved in playing indoor cricket or the specific risks of eye injury.

The High Court of Australia held that the risk of a player being struck in the face by a ball was so obvious that the standard of reasonableness did not require specific warnings about that risk.



Related Not-for-profit Law resource

For more information about your organisation's occupational health and safety obligations see our [Occupational Health and Safety webpage](#).

Warnings and waivers

It's 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.

Such waivers can eliminate some claims (for example, by excluding, restricting or modifying the consumer guarantees relating to the supply of recreational services under the Australian Consumer Law in certain circumstances). However, waivers of this type don't necessarily negate the duty of care owed to participants. In particular, a participant who has signed a waiver may still claim that the organisation acted negligently and that the organisation is still bound by its duty of care to the participant.

In circumstances where the law says that the organisation's duty of care involves giving reasonable warning of the inherent risks involved in the activity, a waiver or disclaimer may be appropriate. The waiver or disclaimer serves to give the participant sufficient knowledge of the risk, such that they can then decide for themselves and then voluntarily assume the risk. Again, a warning of this type is unlikely by itself to discharge the organisation's duty of care. The waiver or disclaimer needs to be backed up with all sensible precautions (for example, suitably qualified staff and proper safety harnesses, amongst other things, for an indoor rock climbing activity).

Your organisation should seek legal advice prior to preparing a waiver.



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

It's good practice for your community organisation to monitor the planning and organisation of its events, including monitoring the behaviour of staff and volunteers involved in conducting the event.

It's 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 events conducted by your organisation. If your organisation follows an established risk management procedure, this 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. Such a risk management strategy can also be useful when your organisation seeks public liability insurance and may help your organisation negotiate a better premium (that is, a lower cost for the insurance).



Related resources

There are many resources available to assist in assessing risks and preparing risk management strategies. We have included links to the resources section at the end of this fact sheet.

Are there Codes of Practices or Standards we can follow?

Adventure Activity Standards

The Adventure Activity Standards (**AAS**) contain industry-recognised minimum standards for organisations conducting 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 demonstrate compliance 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'.



Related resource

[Outdoors NSW & ACT's website](#), the peak body for the outdoors in NSW and the ACT (formerly known as Outdoor Recreation Industry Council of NSW / ORIC), has [detailed information about the Adventure Activity Standards \(AAS\)](#).

Sporting Standards

If you organise and hold sports activities, there are a number of useful injury prevention and legal compliance initiatives that have been developed to assist your organisation.

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 answering frequently asked questions 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, and
- [Safety Guidelines for Children and Young People in Sport and Recreation](#) is a resource that has been developed by [Sports Medicine Australia \(SMA\)](#) (the peak national multi-disciplinary member organisation that provides leadership in the area of the healthy participation of Australians in physical activity and sport)

What insurance will we need?

Not all risks can be avoided. Public liability insurance is the main kind of insurance necessary for your community organisation to protect itself against claims made by participants of your sporting and adventure activity events in respect of injury arising out of those events.

Your organisation should also carefully consider whether its insurance covers acts or omissions by its volunteers that cause harm or damage, and also whether volunteers are protected if they are hurt in the same way an employee would be protected. You may need specific insurance to cover your volunteers.



Related Not-for-profit Law resource

For more detailed information about insurance issues, see our [webpage on risk and insurance](#).

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, see:

- the [NSW Government's website on WWC checks](#) for more information, and
- our guide to screening checks in NSW on our webpage on background checks

Parent or guardian's informed consent

If your sporting event involves children under the age of 18, it's important for your community organisation to seek parent or guardian consent and obtain relevant medical information.

A parent or guardian consent (or waiver) form will not relieve a community organisation from its duty of care towards the child while the child is participating in the event. The consent form will also not prevent the organisation from being held liable (legally responsible) 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 risks of the activities that their children will be undertaking. It also provides evidence of an acknowledgement by the parent of those risks and, may possibly contain an agreement about who will bear responsibility for the costs if an injury occurs.

Medical consent

It's 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

If the Australian Privacy Principles apply to your organisation you must comply with the relevant privacy regulations when dealing with such personal information.

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 and child protection** that may affect your organisation's activities. The [Play by the Rules website](#) 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 website](#) contains many fact sheets on different topics. The following topics contain relevant further information:

▶ [Risk and insurance](#)

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

▶ [Background checks](#)

This page features resources on background screening of potential employees and discrimination in recruiting employees and volunteers

▶ [Fundraising and events](#)

This page contains resources on the main legal issues when fundraising in Victoria.

▶ [Communications and advertising](#)

This page offers information on advertising and promotions and social media, such as Facebook and Twitter.

▶ [Work health and safety](#)

This section covers laws that protect the health, safety and welfare of employees, volunteers and other persons who are at, or come into contact with a workplace.

Standards, legal and risk management resources

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

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

▶ [Outdoors NSW & ACT](#)

Outdoors NSW & ACT (previously the Outdoor Recreation Industry Council of NSW / ORIC) is the peak industry body representing the interests of outdoor practitioners and employers in NSW & the ACT. The page provides a link to download the [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).

▶ [Sports Medicine Australia: Polices 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.