

# Events involving sport or adventure activities

Legal information for Victorian community organisations

## This fact sheet covers:

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- ▶ 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
  - ▶ other laws to be aware of.
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**When planning events which involve sporting and other high risk physical activities, there are a number of issues which your community organisation should carefully consider to help ensure the smooth and successful running of the event, as well as good risk management.**

By their nature sporting and adventure activities pose a greater than normal risk that participants could be injured. Those participants may be members of your organisation or the public.

## Who will be liable if someone participating in our activity is injured?

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Your community organisation may be legally responsible if someone injures themselves during a sporting or other outdoor activity planned by your organisation. However, this will depend very much on the facts of the case. If there has been an incident, you should seek specific legal advice.

Generally, organisers of a sporting or adventure activity owe a duty of care to participants. In summary, this means that an organisation must take reasonable precautions against a foreseeable risk of harm. In determining liability, courts will assess whether your organisation should have reasonably foreseen that its activities and actions (or inaction) could have caused loss, damage or injury to a participant.

For sports or higher risk outdoor adventure activities, the organisation's duty may extend to warning participants of identifiable risks associated with the event. The nature and extent of the required warnings will depend on the nature of the risk involved (see below for further information on waivers and warnings).

However, if the injury or damage suffered by a participant of your organisation's sporting or adventure activity was the result of a well-known and understood obvious risk associated with the sport or

adventure activity, the organisers may not be liable for the injury. For example, where a player suffered a serious eye injury while playing indoor cricket, and there were no signs on the premises warning either 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 to that effect.

The reasonableness of the organisation's behaviour will be measured against the assumption that the participant must take reasonable care for his or her own safety. Where the participant fails to take reasonable care for their own safety, the court will take this into account in assessing the degree to which the organisation's conduct caused the injury. If the participant is a child, this may have a bearing on the standard of care demanded from both the participant and the organisation.

#### FURTHER READING

For more information about your organisation's occupational health and safety obligations see the Not-for-profit Law Information Hub page on [OHS](#).

If the planned sporting or adventure activity is to take place on your organisation's premises, your organisation also has a duty to take reasonable care to ensure that people who use the premises will not be injured or damaged by reason of the state of the premises, or of things done or omitted to be done in relation to the state of the premises, or the activity conducted by the organisation on your premises.

Further, an injury or incident may be covered by occupational health and safety laws. For more information about occupational health and safety laws, see our [Occupational Health and Safety page](#).

## Is it sufficient to warn people or get them to sign waivers?

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It is a good idea to ask participants in sporting and adventure activities to sign a waiver which informs them of all the risks involved. The waiver form asks participants to acknowledge they accept the risks and that the organisation will not be liable for personal injuries or damage caused during your event.

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 do not 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 by 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?

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It is 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 is 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, and links to some have been included in the Resources section below. You may also wish to refer to our [Getting Started page](#) for more information.



# Are there Codes of Practices or Standards we can follow?

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## Adventure Activity Standards

In Victoria, the Adventure Activity Standards (**AAS**) are 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).

The AAS standards have not been incorporated into legislation and remain voluntary guidelines. However, guidelines such as these are a useful way of establishing some commonly accepted minimum requirements for these activities. Among other things, if your organisation incorporates these standards into the planning and implementation of your community organisation's sporting or adventure event, it may assist your organisation receiving appropriate insurance cover.

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

- abseiling
- artificial climbing structures
- bushwalking
- canoeing and kayaking

- challenge ropes courses
- snow sports
- four wheel driving
- horse trail riding
- mountain biking
- recreational angling
- recreational caving
- river rafting
- rock climbing
- snorkelling, SCUBA diving and wildlife swims
- surfing sessions
- river rafting
- trail bike touring, and
- management of outdoor activities in severe weather conditions.

Detailed information about these standards is available from [Outdoors Victoria](#) (see Resources section at the end of this fact sheet).

## 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:

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

## 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

### FURTHER READING

For more detailed information about insurance issues, see our Risk and Insurance page at [www.nfplaw.org.au/riskinsurance](http://www.nfplaw.org.au/riskinsurance).

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.

## What about if we are organising sporting events for children?

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### Working with children

In Victoria, the *Working with Children Act 2005* (Vic) makes it mandatory for certain people who work with children (in either paid or volunteer positions) to obtain a Working With Children check (**WWC check**).

When organising sporting or outdoor adventure events which involve children, your community organisation must ensure that all employees and volunteers that are required to obtain a WWC check do so. Most people can undertake child-related work while their application for a WWC check is being processed.

The WWC check is only one means of assessing your employee's and volunteers' suitability to work with children. In addition to the obligations required under the *Working with Children Act 2005* (Vic) your organisation should have sound screening and supervision practices in place.

#### FURTHER READING

For further information about WWC checks, read Not-for-profit Law's Working with Children Checks Guide at [www.nfplaw.org.au/recruitment](http://www.nfplaw.org.au/recruitment).

### Parent or guardian's informed consent

If your sporting event involves children under the age of 18, it is 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.

## What other laws should we be aware of?

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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 Victoria, the *Equal Opportunity Act 2010* prevents the discrimination of people in 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.

# Resources

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## 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](http://www.nfplaw.org.au). The following topics contain relevant further information:

### ▶ [Running the organisation](#)

This page contains resources to assist those running not-for-profit organisations to understand and comply with legal requirements.

### ▶ [Risk and Insurance](#)

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

### ▶ [Fundraising and Events](#)

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

### ▶ [Communications and Advertising](#)

This section 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.

## Legislation

### ▶ [Wrongs Act 1958 \(Vic\)](#)

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

### ▶ [Working with Children Act 2005 \(Vic\)](#)

This is a link to the Victorian legislation which sets out the requirements for people who need a Working with Children Check to be able to work with children in Victoria.

### ▶ [Equal Opportunity Act 2010 \(Vic\)](#)

## Other Resources

### ▶ [Play by the Rules](#)

This website provides resources on providing a safe, fair and inclusive environment.

### ▶ [Outdoors Victoria](#)

Outdoors Victoria is the peak body for all outdoor activities in Victoria.

A Not-for-profit Law Information Hub resource. Access more resources at [www.nfplaw.org.au](http://www.nfplaw.org.au)

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