

Risk management for Tasmanian sport and recreation organisations

4. Compliance and risk management



This Sport and Recreation Tasmanian (SRT) information sheet is one of 10 that when combined provide a resource designed to assist sport and recreation organisations (SROs) to improve their understanding and application of risk management. The information sheets included in the resource are as follows:

1. Overview and introduction to risk management
2. Developing a risk-management culture
3. Applying risk management
4. Compliance and risk management
5. Insurance and risk management
6. Risk management in practice
7. Risk management policy template
8. Risk management plan template
9. Risk management audits
10. Risk management resources.

Information sheets one to five provide background information and theory and information sheets six to ten provide practical tools and templates. All sheets discuss risk management in accordance with the Australian Standard on Risk Management AS/NZS ISO 31000:2010 and the International Standard on Risk Management – Principles and Guidelines ISO/FDIS 31000:2009.

Compliance and risk management

This information sheet discusses risk management and its role in assisting an SRO to achieve compliance with a variety of legislative requirements, industry standards, codes of conduct, their own rules and contractual obligations.

Introduction

A number of areas in law create responsibilities and duties of care for SROs. Risks and legal claims which SROs could potentially face may arise from contract, statutory or common law obligations and include:

- negligence claims against the SRO, its members, officers, officials, coaches and volunteers (for example, claims for personal injury or claims against decisions made)
- criminal liability (including claims for sexual offences and discrimination)
- occupier's liability
- occupational health and safety
- workplace relations (for example an unfair dismissal claim).

For comprehensive information on Tasmanian legislation, visit www.thelaw.tas.gov.au.

Occupational, health and safety

Occupational health and safety legislation applies to all workplaces in Tasmania and covers all working people and volunteers. This legislation is relevant to all employers in the sport and recreation industry.

The legislation sets out an agreed process by which the health and safety of the workforce can be developed and enforced. The responsibilities of all persons in the workplace are covered.

All employers have a legislative duty, so far as it is practicable, to provide and maintain a working environment that is safe and without risk to health.

For further information, visit WorkCover Tasmania on www.workcover.tas.gov.au.

Health, food and beverage requirements

If food is prepared and served at any facility under the control of the SRO, quality control must be used (for example, not selling food that has expired, and maintaining high standards of cleanliness). All relevant health, food and beverage legislation, regulations and by-laws must be complied with.

Local government provides advice and assistance relating to these requirements and SROs should contact their local council for assistance. Contact details for all Tasmanian councils are listed on the Local Government Association of Tasmania's website at www.lgat.tas.gov.au.

It is strongly recommended that products liability insurance cover be taken out. An alternative is to ensure any public liability insurance is extended to cover food and beverage.

Liquor and gaming legislation

Where an SRO holds a liquor licence and/or a gaming licence it will have obligations under those licences and the legislation under which the licences are granted. Liquor licence obligations will include responsible serving of alcohol.

For more information, visit the Department of Treasury and Finances' website on www.treasury.tas.gov.au.

Associations incorporation legislation

SROs that are incorporated associations under this legislation must meet recurring obligations that include a requirement to hold an annual general meeting, to submit to the members at the annual general meeting a financial statement containing certain prescribed information and to lodge that statement with the Commissioner for Corporate Affairs.

The *Associations Incorporation Act 1964 (Tas)* requires certain matters to be included in the constitution of an SRO incorporated under this Act. Information regarding incorporation in Tasmania, including the benefits and obligations of incorporation, is available from the Sport and Recreation Tasmania website on www.sportandrecreation.tas.gov.au.

If an incorporated association carries on business outside its jurisdiction of incorporation and is allocated an Australian Registered Business Number (ARBN) under the Corporations Act, it must include its ARBN on every 'public document' and 'eligible negotiable instrument' that is signed, issued or published by it outside its jurisdiction of incorporation. In addition, on every such public document it must set out its name, the jurisdiction of incorporation, and notice of the fact that its members' liability is limited.

Compliance requirements under the Corporations Act are more extensive than under the *Associations Incorporation Act 1964 (Tas)*. Inquiries should be directed to the Australian Securities and Investments Commission at www.asic.gov.au.

Child protection legislation

There is no formal Act or screening program in respect to child protection in Tasmania as in other states, however individual employers may require police checks at their discretion.

In addition the *Children, Young Persons and Their Families Act 1997 (Tas)* imposes reporting obligations on all people who suspect abuse or



neglect of children and young people. Additional information relating to child protection is available via Sport and Recreation Tasmania's website on www.sportandrecreation.tas.gov.au.

Civil Liability Act 2002 (Tas)

Tasmania's *Civil Liability Act 2002* places emphasis on the personal responsibility of participants for actions resulting in their injury, where they are participating in a dangerous recreational activity with obvious risks. The Act affords public authorities and land owners who allow recreation on their land greater protection from liability.

For further information see Sport and Recreation's website on www.sportandrecreation.tas.gov.au.

Discrimination legislation

Under the *Anti-Discrimination Act 1998 (Tas)*, a person must not discriminate against another person on any of the following grounds: race, age, sexual orientation, lawful sexual activity, gender, marital status, pregnancy, breastfeeding, parental status, family responsibilities, disability, industrial activity, political belief or affiliation, political activity, religious belief or affiliation, religious activity, irrelevant criminal record, irrelevant medical record, or association with a person who has, or is believed to have, any of these attributes.

Areas of activity which are covered under the Act include:

- employment
- provision of facilities and services
- membership and activities of clubs.

An SRO must take reasonable steps to ensure that no member, officer, employee or agent of the SRO engages in discrimination or prohibited conduct. Failure to comply may result in the SRO being liable for any contravention of the Act committed by any of its members, officers, employees and agents.

The Office of the Anti-Discrimination Commission Tasmania (OADC) administers the state's equal opportunity laws, educates to prevent discrimination and harassment and receives

complaints of unlawful discrimination, harassment and victimisation.

In addition it provides a free and confidential enquiry service, advice on anti-discrimination laws, rights, responsibilities, policies and procedures, complaint receipt and handling, conciliation, education, policy review (fee for service), tailored training (fee for service) and Member Protection Information Officers (MPIO's).

For more information, visit the OADC website on www.antidiscrimination.tas.gov.au.

Additionally, Play By the Rules is a partnership between the Australian Sports Commission, the Australian Human Rights Commission, and all state and territory sport and recreation and anti-discrimination agencies. It can be found online at www.playbytherules.net.au.

Discrimination and SROs

By their nature, many sporting events or clubs will group participants into categories according to their sex, age and ability, in a manner that - strictly speaking - is discriminatory. Under certain circumstances however, limited discrimination is permissible by an SRO.

An SRO may apply to the OADC for exemption from the provisions of the Act, any conduct or activity which would otherwise contravene the Act. If granted, an exemption will last for a period of three years and must then be renewed.

SROs may be able to gain exemption for discrimination on the following grounds.

- Sex, if the use of any benefit provided by a club is not practicable to be used simultaneously or to the same extent by both men and women. Or if the benefit is provided for the use of men and women separately, or to both men and women in a fair and reasonable proportion.
- Sex, if the membership of the club is available only to persons of one sex.
- Age, if the membership of the club is available only to persons of a particular age group.



- Race, in relation to the use of any benefit provided by a club to preserve a minority culture, or to prevent or reduce any disadvantage that may be suffered by a member of that race.
- Disability, in access to public places, if the provision of access would cause unjustifiable hardship.

Where an SRO is running a competitive sporting event, the organiser may gain exemption for discrimination on the following grounds.

- Age, if the discrimination requires a child to be accompanied by an adult. This applies where there is a reasonable risk that the child may cause a disruption or endanger themselves, or another person, if not accompanied by an adult.
- Age, in relation to any competitive sporting activity by restricting participation to persons of a particular age group.
- Sex, only if participants are 12 years of age or more
- Disability, on the grounds of excluding a person from participating if the person is not reasonably capable of performing any action reasonably required in relation to that activity.
- Disability, if the disability is an infectious disease and it is reasonably necessary to do so in order to protect public health.

Tasmanian legislation prohibits any person from inducing another person to undergo a HIV test “for the purposes of employment or the provision of goods and services” (*HIV/AIDS Preventive Measures Act 1993 (Tas)*).

Tasmanian legislation makes HIV testing a voluntary matter. However, the Secretary of the Health Department may, by formal request, exempt a person from the application of this provision, where testing is mandated by an incident where there was a risk of transmission. In these incidents, pre-and post-test counselling is required.

Compliance with industry standards or codes of conduct

A code of conduct is not a legally binding document. It serves as evidence of what a reasonable person would do in all the relevant circumstances.

‘Compliance’ in the sport and recreation area requires implementing and complying with current practices in the sport and recreation industry. SROs should look to their peak bodies for current information and guidelines. Again, this requires ongoing education, and the updating and reviewing of current practices.

Current practices in the sport and recreation industry are not generally contained in any code of conduct with the exception of the fitness industry.

Such codes as do exist should be complied with in principle, although it should be noted that compliance standards do change from time to time.

In signing any agreement with another organisation, an SRO should be cautious about agreeing to comply with such codes of conduct. An alternative may be to incorporate the most relevant principles or requirements into the agreement itself.

Compliance with own rules and purposes

Under the *Associations Incorporation Act 1964 (Tas)* the rules of an incorporated association constitute a contract between the association and its members. SROs incorporated under this legislation must therefore comply with those rules.

SROs should ensure:

- constituent documents are properly drafted and periodically reviewed
- new membership application and affiliation forms are sent to each member (whether affiliated clubs or individual members), so that all those who join an affiliated club immediately become affiliated to the parent association and therefore bound by its by-laws and rules
- a copy of the parent association’s constitution



and by-laws are sent to or at least available to each member in order to ensure that each is provided with the opportunity to become familiar with these.

Compliance with contractual obligations

A contract is a legally binding and enforceable agreement. It may be created by express words, either written or spoken, or by implication through the conduct or actions of the parties. With very few exceptions, contracts are not required to be in writing or evidenced in writing to be valid. However, it is clearly of great benefit to have the terms and conditions of contracts in writing.

Contract law has its sources in both common law and statute. The rules in relation to the essential elements of a contract are predominantly common law in nature. The legislation of most importance in relation to contracts is the *Competition and Consumer Act 2010 (Cth)*.

Six elements are required to form a legally binding contract.

1. Intention to create legal relations - the parties intend to enter into a binding legal arrangement, not just a friendly arrangement to shoot a few baskets together at a certain time.
2. Offer and acceptance - one party offers the terms, the other accepts.
3. Consideration - usually money, or a promise.
4. Capacity of parties - minors generally do not have capacity to enter into binding contract (accordingly, agreements generally cannot be enforced against a minor), nor can intoxicated persons, mentally insane persons, etcetera.
5. Reality of consent - consent must have been genuine, without mistake.
6. Legality of object - a contract for certain illegal acts cannot be enforced, or is void.

Administrators should ensure all six essential elements are present. Legal advice is recommended.

The law classifies statements made by the parties into two categories:

- representation - a statement made in the course of negotiation, not intended to be legally binding
- term of a contract, which is legally binding.

Care should be made in making representations made prior to a contract. Such statements can become part of the contract depending upon the time the statement was made, its form and the degree of reliance on expertise of the other party. If the statement is a 'term' of the contract, an action for misrepresentation may result.

It is prudent for all contracts to be in written form, rather than verbal - this relieves much of the difficulty of providing evidence of the terms of the contract in the event of dispute.

Where persons under 18 are involved, ensure the signatures of legal guardians are obtained. While SROs may not be able to enforce a contract against a minor, minors can often do so against an SRO.

There should be no undue influence in contracting. For example, no undue force or pressure should be placed on parties to the contract. Accordingly, SROs should recommend to athletes they obtain independent legal advice prior to contract.

Contracts in restraint of trade will be unenforceable, unless reasonable. The duration and extent of restraint will be examined, and whether the contract is contrary to the public interest. Certain terms will be implied in contracts by custom or by statutes. Commonly, in the sale of goods a term is implied that the goods are of merchantable quality.

Where breaches of contract occur or are threatened, the innocent party will have various rights and remedies, depending upon what is agreed and the significance of the breach. It is recommended that legal advice be sought.

Additional information regarding legal matters may be secured from: the Tasmanian Law Society on www.taslawsociety.asn.au, or Legal Aid on www.legalaid.tas.gov.au.



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