

Risk management for Tasmanian sport and recreation organisations

5. Insurance 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/FDIS31000:2009.

Insurance and risk management

This information sheet discusses the role of insurance in risk management. It highlights that risk management is not insurance and vice versa.

In addition, this information sheet offers an overview of the types of policies which may be applicable to SROs and what they generally cover.

Introduction

Adequate insurance cover is imperative for SROs. At many sporting facilities, insurance obligations are imposed on clubs and management by user agreements. User groups may also be required to have their own insurance for their equipment and contents, when renting or hiring a facility.

SROs should be aware of their insurance needs and requirements, and ensure these are met. An SRO should discuss these with an insurance broker who has an understanding of the risks faced by SROs.

Every individual involved in an SRO should be protected with appropriate insurance. Members should check with their SRO to ensure adequate cover is provided. If it is not, members should take out insurance individually through their SRO. Many SROs provide insurance for public liability, professional indemnity and/or personal accident for members.

For more information on insurance, see www.insurancecouncil.com.au.

Risk management and insurance are not the same thing

Insurance is a contract under which the insurer agrees, in consideration of a premium paid by the insured, to indemnify the latter against loss resulting from certain events. The policy is the document which contains the term of the contract.

Insurance is, subject to the terms of the policy, compensation that is payable to the individual covered if an insured risk eventuates.

Risk management is the process the SRO should put in place to prevent the risk from eventuating, so the insurance should not have to be called upon.

Types of risk

The risks that SROs may attract can be generally categorised under three headings.

- **Loss of assets**

This will typically include the damage or loss of buildings, fittings and furniture, equipment, money, stock or vehicles. This could be by fire, explosion, storm or other water damage, impact, vandalism, theft, misappropriation, breakdown or other forms of physical damage.

- **Loss of earning capacity**

An organisation's income may be jeopardised if property is partly or completely destroyed, leaving the business unable to fully trade, while continuing to incur ongoing expenses.

- **Loss from liabilities incurred**

This relates to any liabilities that may attach to an organisation or its members, including:

- employees
- public
- motor vehicles, watercraft or aircraft
- coaching
- directors and officers,
- legal expenses
- tax audit
- medical/hospital expenses
- pluvial (rain damage)

Questions SROs should ask their broker before taking out an insurance policy

It is recommended that the following questions be raised and clarified with the SRO's insurance broker.

- **What is covered?**

Ask the broker to clearly identify and explain what the policy covers. In particular:

- What type of liabilities does the policy indemnify you for?
- Is it public liability or professional indemnity?
- Does the public liability include product liability?
- What is excluded?

Exclusions are generally included in a contract of insurance. For example, under a public liability insurance policy, personal injury may exclude libel, slander, defamation and child molestation.

- **Who is covered under the policy?**

Seek clarification as to which entities and/or persons are covered under the policy. Does it extend to all members, officers, officials, volunteers, coaches and referees?

Does it cover an SRO's subgroups and branches, whether it be state associations in the case of a national sporting organisation, or local organisations in the case of a state or peak industry body? Do these entities need to be individually named, or is sufficient to say the policy covers 'all members and affiliates'?

In relation to a public liability policy, does this also extend to bodily injury to a member of the SRO, resulting from another member?

- **When are you covered?**

- Does the policy cover all things in the course of the SRO's business?
- How has the SRO's business been defined and are the SRO's objectives properly described in the insurance policy?



- Does the cover include official events?
- Does the cover include social events?
- What is the period of coverage? For example, 1 July 2011 to 30 June 2012.

- **Where are you covered?**

There are two aspects to this:

- where the claim is made
- where the breach/incident occurred.

This will be particularly relevant to overseas competitions and events, as most policies will only cover claims made in Australia. Policies may specifically exclude claims/incidents which occurred in Canada and the United States.

- **What is the level of cover?**

What is the maximum amount the SRO will be indemnified for if liability is established? For example, in the case of public liability insurance, is it \$5 000 000 or \$10 000 000? Is this the total amount for an individual claim, or for all total claims over the policy period?

- **Is it a 'claims made' or an 'occurrence' policy?**

A 'claims made' policy is an insurance policy for which claims will only be accepted when the claim is made within the period of insurance. For example, if your policy covers the period from 1 July 2011 to 30 June 2012, only claims made during this period will be covered, regardless of when the incident occurred.

An 'occurrence' policy on the other hand, will cover any incidents which happen within that period of insurance, regardless of when the claim is subsequently made.

- **What is the duty of disclosure and the consequences if it is breached?**

An SRO has an obligation under statute, to disclose every matter that it knows or could be

reasonably expected to know, which is relevant to an insurer's decision on whether to insure and on what terms.

This duty of disclosure means that an SRO should advise the insurer of all potential claims that may be made against the SRO.

Duty of disclosure also applies in the case of renewal, extension, variation or reinstatement of a contract of insurance.

The duty of disclosure does not require disclosure of matters which:

- the insurer knows, or ought to know, as an insurer
- are common knowledge
- diminish the risk.

If an SRO fails to comply with its duty of disclosure, the insurer may have a remedy. To obtain such remedy, the insurer needs to first show that the failure to disclose meant that it entered a contract it would not otherwise have entered. If the non-disclosure is fraudulent, the insurer may have the right to void the contract and/or decline insurance.

If the non-disclosure is not fraudulent, then under the contract, liability may be restricted to the amount it would have been otherwise, if the insurer had been properly informed.

SROs should inform their broker immediately of any incident for which they may be liable. Whenever in doubt, SROs should advise their brokers of any potential claims which may be made against them.

For example, if someone is seriously injured on their premises, and at the time of the incident it appears that it resulted from another party's negligence (such as from equipment supplied by a third party), the SRO should nevertheless advise their broker, in case they are also joined as a party.



The types of insurance policies that might be applicable to SROs

The following is a general overview of the types of policies which may be applicable to SROs and what they generally cover.

It should be noted that the specific nature of the insurance cover an SRO has will depend on its contract of insurance, which is usually encompassed in the insurance policy. This must be examined in detail, in order to determine the exact level and nature of cover.

- **Public liability insurance (also called broadform policy)**

This is how an SRO protects itself against any claims made by a third party, in respect of injury or property damage arising from the operation or conduct of the SRO's business.

Note that this usually does not cover property damage to the SRO's own assets, but rather covers property damage for a third party. For example, it is likely to cover a person who enters the SRO's premises and slips on a wet surface and sustains an injury. Another example may be where an SRO holds an event and a competitor sustains some form of injury.

The policy may also cover injuries resulting when an SRO sells or supplies food, drinks or merchandise, such as equipment and clothing. This is commonly referred to as product liability insurance.

SROs may also have public liability insurance for a specific event, to protect itself against claims made by a third party.

Owners and occupiers of premises have a responsibility to keep premises safe, so that other persons entering the premises are not injured. SROs must also use reasonable care to ensure that people in or near their venues are not injured as a result of negligence by the proprietor or sporting participant. This duty extends to spectators, tradesmen and other visitors to the premises.

- **Professional indemnity insurance**

Generally, this type of policy covers professional people in the business of providing professional services, including giving advice and acting on behalf of others. It covers individuals for legal liability when there has been error, omission or neglect by the individual, in the carrying out of those professional duties.

In sport or recreation, this equates with negligence or error occurring during instructions, advice or assistance by a coach, manager or medical professional. Because error or neglect can lead to the professional being sued for negligence, professional indemnity cover insures them against such claims. Policies can also include damages for libel, slander and defamation.

There is often an overlap between professional indemnity insurance and directors' and officers' liability insurance. The contract of insurance must be reviewed to ascertain the nature of cover.

- **Directors' and officers' liability insurance / associations liability insurance**

As stated above, this policy often overlaps with professional indemnity insurance cover.

Generally, this form of insurance is designed for board and committee members of SROs, who can be sued by their own organisations for acts of negligence (if it is alleged that they have breached the duty of care owed to their SRO).

This type of insurance policy is of particular importance where SROs have large financial turnovers, and conduct a significant number of events and public activities.

Incorporation provides some protection to board and committee members, but does not prevent individual directors and committee members from being sued for acts of negligence, where they fail to meet or breach their fiduciary duties owed to the association.



Where such action is proven, the personal assets of directors or committee members may be at risk.

Examples of actions that might be made against directors or committee members include:

- by an employee for unfair dismissal, discrimination or sexual harassment
- by creditors if the organisation trades while it is insolvent
- by potential members to the organisation who have their application rejected
- by members who have their membership unfairly terminated
- by members who believe they have been given advice that has led to a loss or injury.

Like any action, all of these examples will be dependent on the specific circumstances giving rise to the action.

• **Personal accident insurance**

This type of policy is applicable to individuals within SROs, such as participants and officials.

It can provide cover as protection against loss of income, if a person is unable to work through sickness or accident, in the form of weekly fixed payments. In the event of accidental death, the payment can be made in the form of a lump sum to dependants.

Other forms of benefit under this type of policy may include medical benefits, student assistance benefits, home help allowance and parents' inconvenience allowance in a case where a child is injured.

• **Occupational health and safety cover**

Each state and territory's occupational health and safety legislation applies to both SROs and not-for-profit organisations.

Such cover is available for employers, managers and others involved in sports activities. For example, SROs that pay groundsmen and

cleaners should bear in mind that as employers they are subject to occupational health and safety laws.

Directors of SROs should also understand that a breach of occupational health and safety legislation by their SRO, may result in a personal criminal prosecution against them as individuals.

• **Worker's compensation**

If an SRO employs someone, even on a casual basis, then worker's compensation cover is required. While the specific worker's compensation legislation varies in each state and territory, generally such a policy will cover expenses such as wages and medical bills, if a person is injured at work.

Professional sports people can be subject to worker's compensation laws.

Volunteer workers are generally not employees and need to be covered under a policy for volunteer workers. In some states or territories, worker's compensation legislation offers coverage to volunteers.

In the Tasmanian context however, sport and recreation volunteers are not deemed to be workers and as a consequence do not enjoy workers compensation coverage.

SROs should take particular care when hiring a contractor, to ensure they are not deemed to be an employee. The contract should be properly drafted to state that the individual is clearly an independent contractor and not an employee. The contractor should also be required to carry their own public liability insurance, professional indemnity insurance (depending on the services they are providing) and workers compensation insurance (if they have their own employees).

For additional information on worker's compensation in Tasmania, see: http://www.wst.tas.gov.au/employment_info/workerscompensation



- **Property contents insurance**

This form of insurance generally covers the contents of the building owned by an SRO. For example, the SRO's equipment or all merchandise held on the premises by the SRO.

Such policies commonly cover:

- theft or burglary (or attempts)
- accidental breakage of glass, washbasins and other facilities
- damage to electrical household appliances by electrical 'burn out'
- may also cover against any legal liability on the part of the insured to pay damages arising as the occupier of the building.

Such policies may also include cover for cash stolen (usually limited to a specific amount), but is unlikely to cover money embezzled by employees (see fidelity insurance below).

- **Fidelity insurance**

This form of insurance provides protection to an SRO against fraud or misappropriation of funds by employees, directors or committee members. The specific means of misappropriation must be included in the insurance policy.

- **Building insurance**

This type of insurance covers buildings, such as premises owned by an SRO. Building insurance policies commonly include protection against risks such as:

- fire
- lightning
- riot or civil commotion
- acts of a malicious person
- impact by aircraft
- impact by vehicles, animals, television aerials or radio masts
- storm

- rain water, where it enters through an opening made by a storm (flood damage often being excluded)
- bursting, leaking or overflowing of water tanks, apparatus or pipes
- leakage of oil from fixed oil-heating installations.

Note that if premises are leased by an SRO from the local council or another party, the SRO will not be required to take out building insurance unless this is a requirement under the terms of the lease.

- **Travel insurance**

This type of policy generally provides cover against risks arising during travel, for example to an interstate or international competition. This can include losses arising from cancellation of flights, loss of baggage and personal contents, loss of equipment and personal injuries sustained during travel.

Conclusions

SROs should have appropriate insurance in order to protect their assets, including their people. In order to assess the insurance required, SROs should develop a risk management program and assess the type of risks the SRO is subject to.

Once the SRO has identified the risks, it can then ascertain what insurance is required, and whether that insurance is available and appropriate in the circumstances.

It must be remembered that after assessing the risks and purchasing appropriate insurance, SROs still retain a moral and sometimes a legal responsibility to manage risks, to minimise the possibility of losses or actions being taken against the organisation or individuals within it.

Insurance does not eliminate the need to develop a risk management plan which can assist in keeping insurance premiums at a realistic level, while reducing the inconvenience and trauma suffered in some loss situations.



While there should be a strong emphasis on reducing personal injury, SROs should also seek to reduce their insurance costs by providing better protection of their assets. This can be achieved through the use of deadlocks, alarm systems, security lighting, placing prominent signage advising a property is patrolled by a security firm, by having local residents keep an eye on that property, or by barring or meshing the windows.

There is also a number of things an SRO should do when looking for appropriate insurance.

- Consider tendering their insurance requirements, particularly if insurance is a major expense for the organisation.
- Consult a broker who has experience in dealing with SROs.
- Advise their broker in writing of their insurance requirements. Although this could also act as a double-edged sword, where a risk arises that was not mentioned to the broker.
- Read the policy to ensure it covers the risks outlined to the broker. When reviewing the policy, keep in mind the policy will be based on the underwriter's standard policy of insurance. Any amendments will be noted by way of endorsements to the policy. The schedule will outline the essential provisions of cover, which must be read with the other policy conditions.
- Advise their broker in writing of any potential claims before, during and upon renewal of the policy.

It is essential that SROs protect their assets through risk management and insurance. Although insurance is costly, successful risk management can lower insurance premiums over time.

If premiums increase to the extent that they become unaffordable or offer less protection, then SROs are forced to assess whether to undertake an activity. Unfortunately, it is not unusual to hear that SROs have cancelled an event, due to the high insurance premium required to cover the risks involved.

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