

Frequently Asked Questions

The following are frequently asked questions and answers related to risk and risk management.

Legislation (See the *Legal Terms, Key Concepts and Legislation* section for more information.)

What is the Volunteer Protection Legislation?

It is legislation enacted in South Australia that provides greater protection against volunteers being sued; however, organisations can still be sued.

Do the new privacy laws mean that we cannot give out members' details to our sponsors?

Yes, unless you have the permission of each member to do so.

Governance (See the *Governance – Conflicts of Interest* section for more information)

As a board member, when do I declare potential conflicts of interest?

As soon as taking office or as soon as the conflict becomes a potential issue.

Conflicts of interest arise when the personal or professional interest of a board member is potentially at odds with the best interests of the organisation.

Example conflicts of interest include:

- A board member or a close relative of the board member who personally contracts for the organisation
- Buying materials or services from a board member's company
- Having an association with another entity, for example a local council, whose decision may affect the organisation.

Insurance (See the *Risk Management and Insurance* section for more information.)

We often have cake stalls and sausage sizzles as part of our fundraising activities. Does our public liability cover us for food poisoning?

Not necessarily. You will need to check your public liability policy carefully. You may need a separate products liability insurance policy.

Child protection (See the *Child Protection* section for more information.)

Does our club have to insist on volunteers having a police check?

The *Children's Protection Act 1993* (SA) requires:

- All paid or volunteer persons holding a 'prescribed position' are required to complete a 'relevant history assessment' before they are engaged or appointed unless an exemption applies.

The relevant history assessment must include reviewing a National Police Check or alternatively undertaking a DCSI Screening for Working with Children.

There are situations where an exemption may apply, however, even if some people meet the criteria for exemption, organisations may still require people in these categories to undergo a relevant history assessment as a matter of good organisational practice, even if an assessment is not required by law.

Discrimination and harassment (See the *Legal Terms, Key Concepts and Legislation* section for more information.)

Our head coach has been overheard chatting up one of the young female players in his team. What should we do?

Advise the coach that this is unacceptable behaviour and (if you haven't already) adopt a code of conduct that all coaches and officials are required to sign. Organisations should have a member protection policy that covers discrimination and harassment. Everyone should be made aware of this policy (see the *Legal Concepts* section).

Several players are exhibiting behaviour undesirable to our club and the majority of members. How do we get rid of them? Will we be open to action?

Your club is responsible for its own set of membership rules. To remove an existing member you must follow the processes contained in your constitution.

An organisation has the power to decide who is and who is not a member.

Frequently Asked Questions *cont.*

As a leader of an activity group, I have suspicions that a child is being abused by his/her parent. Do I need to investigate and make sure before I do anything?

Legislation requires that if you are engaged in a delivery of services for children or in a management position for a recreation or sport organisation that provides a service to children, you are now a mandated notifier.

A mandated notifier's role is not to investigate or to prove that the abuse has occurred. Individuals in this role are simply required by law to report any suspicion on reasonable grounds that a child has been or is being abused to the Child Abuse Report Line (CARL) 13 14 78.

Liability (See the Legal Terms, Key Concepts and Legislation section for more information.)

When there is joint use of facilities (such as ovals), who is liable if something happens?

Potentially all parties (e.g. footy club, cricket club, council, state association) that have an interest are liable; therefore, all parties should have appropriate risk management and insurance policies.

For example, if a club uses a council building, reserve or facility, this often requires a formal agreement to be entered into. These agreements outline the roles and responsibilities of all parties. These agreements should be considered when developing appropriate risk management practices.

Who is liable if someone gets injured while trespassing on our property?

The club/organisation is liable, but the court is more lenient in these matters. The greater the effort taken to keep trespassers out, the more lenient the court will be. Take, for example, the story of a motorcyclist who was injured while trespassing in a national park.

The court upheld that the motorcyclist was not an invited user and there was no negligence on the part of the state government.

For events in public areas, such as roads, who is liable for unforeseen accidents?

The event manager or organiser may be liable; therefore, you need very good risk management procedures and insurance cover.

For high risk activity you might consider requiring all adult participants to complete a recreational services waiver as allowed under the *Fair Trading Act 1987 (SA)*.

How much can claims cost and what if an organisation can't pay?

There are no limits. Claims can exceed several millions of dollars. If an organisation can't pay, the court, in order to recover as much of the money as possible, will wind up the organisation. Directors and office bearers (if incorporated) will face only limited liability.

If the organisation is unincorporated, all directors/office bearers may also be personally liable.

WHS (See the *Legal Terms, Key Concepts and Legislation* section for more information.)

Who is a volunteer for WHS purposes?

You are a volunteer under the work health and safety laws if you are not working for payment or reward (although you may receive payment for out-of-pocket expenses).

Are there any penalties for not registering with ReturnToWork SA?

Yes. Unless you are exempt from registering, if you fail to register your business with ReturnToWork, you may be prosecuted and receive a penalty of up to \$10,000 for every worker you employ.

FURTHER ADVICE (See the *Help* section for more information.)

Where do we go for legal and insurance advice?

The Law Society of SA is a not-for-profit advisory service and will advise you of your best options.

Use an insurance broker for insurance matters.

See also the *Legal, Risk Management and Insurance and Child Protection* sections for more detailed information on some of the issues raised in these questions.